

IN THE MATTER OF THE CHALLENGES)	
AND REQUEST FOR HEARING OF TIME)	
INSURANCE COMPANY REGARDING THE)	
NEW JERSEY INDIVIDUAL HEALTH)	FINAL DECISION AND ORDER
COVERAGE PROGRAM BOARD OF)	IHC ADMINISTRATIVE ORDER
DIRECTORS' ISSUANCE OF THE DECEMBER)	No.07-IHC-02
18, 2006, INTERIM RECONCILIATION OF)	
THE 1997/1998 AND 1999/2000 LOSS)	
ASSESSMENTS AND THE 2001/2002 LOSS)	
ASSESSMENT)	

This matter has been opened by the New Jersey Individual Health Coverage ("IHC") Program Board of Directors ("Board") pursuant to the authority of N.J.S.A. 17B:27A-2 et seq., and all the powers expressed or implied therein. This matter involves a challenge by the Time Insurance Company ("Time"), a member of the IHC Program, of the Interim Reconciliations of the 1997/1998 and 1999/2000 loss assessments and the 2001/2002 loss assessment issued by the IHC Board on December 18, 2006. For the reasons set forth below, the IHC Board denies the challenge and request for hearing.

Background

The IHC Board was created pursuant to N.J.S.A. 17B:27A-10 as part of the enactment of L. 1992, c. 161 (N.J.S.A. 17B:27A-2 et seq.) (the "IHC Act"), which was enacted to address a crisis in the availability of "individual" health coverage -- that is, medical and hospital coverage for people not eligible to be insured under a group health insurance policy or Medicare. N.J.S.A. 17B:27A-2 (definition of "eligible person"). In order to increase availability of individual health coverage, the IHC Act provides two incentives for carriers to actively participate in the IHC market by offering individual health benefits plans. First, the IHC Act permits a carrier that writes individual health benefits plans to seek reimbursement of certain losses the carrier incurs for the individual health benefits plans it writes (N.J.S.A. 17B:27A-12a(1)(b)). Those reimbursements are funded by assessments on members of the IHC Program. All carriers that

have inforce health benefits plans in New Jersey are IHC Program members, regardless of whether a carrier offers health benefits plans in the individual, small employer, and/or large employer markets.¹ All IHC Program members are liable for assessments for reimbursable losses incurred by carriers offering individual health benefits plans, but a carrier has the opportunity to earn at least a partial exemption if the carrier offers individual health benefits plans. The second incentive set forth in the IHC Act permits a carrier that writes individual health benefits plans in New Jersey to earn an exemption from liability for such assessments by enrolling an assigned number of individual lives. N.J.S.A. 17B:27A-12d.

The IHC Board promulgated regulations to implement the IHC Act, codified at N.J.A.C. 11:20. A provision of the rule governing loss assessment methodology was challenged in 1998, and eventually invalidated by the New Jersey Supreme Court pursuant to In re New Jersey Individual Health Coverage Program's Adoption of N.J.A.C. 11:20-1 et seq., 179 N.J. 570 (2004). The invalidated regulatory provision had provided that loss assessments uncollected as the result of the grant of exemptions would be collected through a "second tier" calculation apportioned among non-exempt carriers. Following the invalidation of that provision, the IHC Board adopted a new rule at N.J.A.C. 11:20-2.17 on December 18, 2006, establishing the "adjusted net earned premium" method used in the calculation of the distribution of the net paid losses among IHC Program members. The adjusted net earned premium method provides for the

¹ A "member" of the IHC Program is a carrier that issues or has in force health benefits plans in New Jersey. Member shall not include a carrier whose combined average Medicare, Medicaid, NJ FamilyCare and NJ KidCare enrollment represents more than 75% of its average total enrollment for all health benefits plans or whose combined Medicare, Medicaid, NJ FamilyCare and NJ KidCare net earned premium for the two-year calculation period represents more than 75% of its total net earned premium for the two-year calculation period." N.J.S.A. 17B:27A-2.

distribution of the second tier among both non-exempt and partially-exempt carriers. The new regulation applies to loss assessments for the 1997/1998 calculation period going forward.

The information used in calculating both loss assessments is derived from the "Assessment Report," a filing based on a form found at Exhibit K of the IHC Board's regulations. During the calculation periods that are the subject of the challenge, every IHC Program member was required to file an Assessment Report no later than March 1 following the end of each two-year calculation period.

The Assessment Report collects information about the amount of net paid losses of IHC Program members for their business in the individual market; that amount forms the basis of the loss reimbursements for which those carriers may be eligible. In order to evaluate the amount of net paid losses for which reimbursements are sought, the IHC Board, in the normal course of its operations, commissions independent audits pursuant to N.J.A.C. 11:20-8.8. An independent loss audit may result in an adjustment to the reimbursable net paid losses as set forth in the Assessment Report. N.J.A.C. 11:20-8.8(c). Accordingly, the IHC Board commissioned independent audits for the carriers that sought reimbursements for the 1997/1998 and/or 1999/2000 calculation periods, including Time.

At its meeting on December 5, 2006 the IHC Board voted to issue assessment invoices and notices of interim reconciliations of the 1997/1998 and 1999/2000 loss assessments and to issue an initial loss assessment for the 2001/2002 calculation period. The invoices for 1997/1998 and 1999/2000 were interim reconciliations because the IHC Board had already issued loss assessments for those calculation periods. Because the

1997/1998 and 1999/2000 loss assessments had been calculated using the methodology that the Supreme Court of New Jersey subsequently invalidated, it was necessary for the loss assessments to be re-calculated using a new methodology. The IHC Board recalculated these loss assessments using the methodology set forth in N.J.A.C. 11:20-2.17 as adopted and operative December 18, 2006.

Separate notices dated December 18, 2006 were issued for each calculation period. Each notice included an invoice. The invoices of the interim reconciliations of the 1997/1998 and 1999/2000 loss assessments also explained the reasons for the interim reconciliations, and the manner in which the loss assessment shares had been re-calculated, including the application of the assessment methodology set forth in N.J.A.C. 11:20-2.17, effective and operative on December 18, 2006. The 2001/2002 loss assessment explained the assessment methodology set forth in N.J.A.C. 11:20-2.17 and how the loss assessment had been calculated, based on the newly-promulgated regulation.

In determining the amount of reimbursable losses to be collected in each loss assessment, the IHC Board relied, as is its practice when calculating and issuing loss assessments, on the most up-to-date available information regarding net paid losses. Any adjustments necessary as the result of net paid loss audits that have not been completed at the time of a loss assessment or reconciliation thereto will be made in a subsequent reconciliation.

The independent loss audits completed to date have resulted in some adjustments to the reimbursement amounts to which the audited carriers were entitled, and consequently, to the net paid losses. Notably, the independent audits of Time Insurance

Company for the 1997/1998 and 1999/2000 calculation periods have not yet been completed.

In accordance with N.J.A.C. 11:20-2.15 and -20.2, an IHC Program member may appeal the amount of an assessment within 20 days after receiving notice of the assessment. Time submitted a letter dated January 9, 2007 in response to the IHC Board's December 18, 2006 notice of interim reconciliation for the 1997/1998 and 1999/2000 loss assessment and notice of the 2001/2002 loss assessment.

The Challengers' Contentions

Time acknowledges that it does not challenge the adjusted net earned premium methodology utilized to calculate the 1997/1998 and 1999/2000 interim reconciliation assessments or the 2001/2002 loss assessment. Time raised a challenge to the underlying net paid losses used to determine the total amount of losses for which the IHC Board issued loss assessments. Time contends that its net paid losses are greater than those listed in the loss assessment spreadsheets. While Time also contends that its overall assessment liability would be lower if the larger net paid amounts were used, it is unclear to the IHC Board how Time concluded that a greater total loss amount would reduce the liability of a carrier. Time requested an administrative hearing pursuant to N.J.A.C. 11:20-2.15 and 20.2.

Discussion

Time's argument hinges on its contention that the net paid losses used to calculate the total losses for each assessment period are incorrect. Specifically, the net paid losses shown on the interim reconciliations for 1997/1998 and 1999/2000 for Time are lower than Time originally filed with the IHC Board as its net paid losses. The loss amounts

included in the total net paid losses for each carrier were marked to identify those amounts that are still pending completion of the independent audits. The loss amounts for Time were so marked.

Because Time² was a carrier seeking reimbursement for net paid losses for 1997/1998 and 1999/2000, the IHC Board commissioned an independent audit of Time's earned premium, claims paid, net investment loss and net paid loss. The independent audits have not yet been completed. Correspondence from the IHC Board dated December 29, 2004, May 4, 2005 and June 7, 2006 identifies various reasons that have thus far precluded completion of the loss audits. In any case, since the loss audits have not been completed, the reimbursable loss amounts due to Time for 1997/1998 and 1999/2000 are subject to change. Further, N.J.A.C. 11:20-2.17(d)5 provides that "a final reconciliation shall be issued approximately 90 days after all outstanding matters have been resolved, including but not limited to the completion of the independent audit of each member seeking reimbursement of losses."

In accordance with N.J.A.C. 11:20-8.9, an IHC Program member denied reimbursement in whole or in part as a result of the IHC Board's review of the independent audit may appeal the IHC Board's determination and request a hearing within 20 days of receipt of written notification of the Board's final determination. Although, as noted above, a carrier may challenge its loss assessment share pursuant to N.J.A.C. 11:20-2.15, the IHC Board finds that Time's appeal is essentially an appeal of the amount of its loss reimbursement amount, as set forth in the assessment spreadsheets, rather than a challenge to the amount of its loss assessment. Since the final audit reports

² Name change effective April 1, 1998 from Time Insurance Company to Fortis Insurance Company; Name change effective September 6, 2005 from Fortis Insurance Company to Time Insurance Company.

for Time have not been issued, the IHC Board therefore finds that Time's challenge to the unaudited loss amounts shown on the assessment spreadsheets is premature.

Because the IHC Board does not find Time's appeal to be related to the December 18, 2006 notice of interim reconciliations for the 1997/1998 and 1999/2000 loss assessment and the 2001/2002 loss assessment, the IHC Board does not believe there is a need to provide a hearing on the matter. The IHC Board notes that Time did not request that the amounts it paid be held in an interest-bearing account.

Order

NOW THEREFORE, pursuant to the authority granted to the IHC Board by N.J.S.A. 17B:27A-2 et seq., N.J.A.C. 11:20-1 et seq., and all powers expressed or implied therein,

IT IS on this 13th day of February, 2007,

ORDERED that Time Insurance Company's challenge to the December 18, 2006, interim reconciliations of the 1997/1998 and 1999/2000 loss assessments is hereby denied; and

IT IS FURTHER ORDERED that Time's request for a hearing regarding the December 18, 2006 interim reconciliations of the 1997/1998 and 1999/2000 loss assessments and 2001/2002 loss assessments is hereby denied.

This Order constitutes a final agency decision and is effective immediately. Any appeals from this Order must be filed with the New Jersey Superior Court, Appellate Division, within 45 days from the date of service of the Order.

/s/ Mary Taylor, Chair 2/13/07
Individual Health Coverage Program Board