

NEW JERSEY
New Jersey Individual Health Coverage Program
CN 325
Trenton, NJ 08625

IN THE MATTER OF FIRST OPTION HEALTH PLAN OF
NEW JERSEY'S APPEAL OF THE INDIVIDUAL HEALTH
COVERAGE PROGRAM BOARD'S ASSESSMENT FOR
REIMBURSABLE LOSSES AND ADMINISTRATIVE
EXPENSES FOR CALENDAR YEAR 1994

FINAL ADMINISTRATIVE ORDER No. 96-01

WHEREAS, the New Jersey Individual Health Coverage ("IHC") Program Board is authorized by the Individual Health Insurance Reform Act of 1992, N.J.S.A. 17B:27A-2 et seq., and regulations promulgated thereunder, to administer the IHC Program, to assess members of the IHC Program on the basis of their proportionate share of program losses and administrative expenses and to take any legal actions necessary to recover assessments owed to the IHC Program;

WHEREAS, First Option Health Plan ("First Option") is a health maintenance organization authorized to offer health benefits plans in New Jersey which reported, in a market share and net paid loss report ("Exhibit K") dated April 25, 1995, net earned premium of \$7,443,348 for calendar year 1994;

WHEREAS, First Option did not submit a request to be exempt from the assessment for reimbursement of losses for calendar year 1994 in accordance with N.J.A.C. 11:20-9.2;

WHEREAS, the IHC Board, on November 21, 1995, assessed First Option for its share of reimbursable losses and administrative expenses of the IHC Program for calendar year 1994 in the amount of \$107,227;

WHEREAS, First Option appealed the assessment by letter dated December 18, 1995, and a subsequent letter on February 6, 1996, on the grounds that:

- 1) First Option was precluded by the IHC Board from offering individual health benefits plans during 1994 and was not, therefore, a member of the IHC Program for that period;
- 2) the IHC Board's imposition of an assessment on First Option is a result of the Board's refusal to permit First Option to offer individual health benefits plans in 1994; and, consequently:
 - a) the Board's actions are arbitrary, capricious, unreasonable, and constitutionally discriminatory as applied to First Option; and,
 - b) the Board's actions deprive First Option of federally protected substantive due process and equal protection rights.
- 3) the IHC Board permitted another HMO that was not federally qualified to market the standard HMO health benefits plan, in lieu of the five standard health benefits plans, but did not permit First Option to do so.

First Option requested a hearing on its appeal;

WHEREAS, the Board has considered First Option's appeal and request for a hearing with regard to the assessment for reimbursable losses and administrative expenses of the IHC Program for calendar year 1994.

Based on the undisputed facts, the Board hereby concludes:

- 1) First Option's appeal does not raise issues of material fact and does not, therefore, constitute a contested case requiring a hearing, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.;
- 2) First Option is a "carrier," as defined at N.J.S.A. 17B:27A-2, subject to the IHC Act, and is therefore, a "member" of the IHC Program;
- 3) As a member of the IHC Program, First Option is liable for an assessment to reimburse carriers issuing individual health benefits plans which sustain net paid losses, unless the member has received an exemption from assessment. N.J.S.A. 17B:27A-12.
- 4) First Option did not apply for, or receive, an exemption from losses for calendar year 1994, nor did First Option receive from the Commissioner of Insurance relief from the payment of losses in accordance with the IHC Act or IHC Program rules. Since First Option did not apply for an exemption in 1994, its ability to offer individual health benefits plans could not have mitigated its assessment. Therefore, whether First Option was prohibited from offering the standard HMO plan in 1994 is of no relevance to its liability for an assessment for calendar year 1994 reimbursable losses and program expenses.
- 5) For the same reasons stated in (4) above, the IHC Board's treatment of another HMO, with regard to permitting such HMO to offer the standard HMO health benefits plan in lieu of the five standard health benefits plans has no relevance to the question of First Option's liability for payment of an assessment for calendar year 1994 reimbursable losses and program expenses.

NOW THEREFORE, pursuant to the authority granted to the Board by N.J.S.A. 17B:27A-2 et seq., and all powers expressed or implied therein, and the decision of the Board as expressed by approval of this Administrative Order;

IT IS on this 13th day of February, 1996,

ORDERED that First Option's request for a hearing, and its appeal of the 1994 assessment are hereby denied. The Board will release from escrow the assessment paid by First Option unless the Board receives within 15 days of First Option's receipt of this final order written notice from First Option of its intention to appeal this final order to the Appellate Division of the New Jersey Superior Court.. If such appeal has not been filed within 45 days of First Option's receipt of this final order, the Board will release from escrow the assessment paid

by First Option and make such funds available for payment to carriers eligible for reimbursement of losses. If an appeal is filed, the assessment will remain in escrow until the Appellate Division issues an order to release such funds.

Kevin O'Leary, Executive Director

Date