

NEW JERSEY
New Jersey Individual Health Coverage Program

CN 325
Trenton, NJ 08625

IN THE MATTER OF AMERICAN BANKERS LIFE
ASSURANCE COMPANY OF FLORIDA'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. 96-02

WHEREAS, the New Jersey Individual Health Coverage ("IHC") Program Board is authorized by the Individual Health Insurance Reform Act of 1992 ("IHC Act"), 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 shares of program losses and administrative expenses and to take any legal actions necessary to recover assessments owed to the IHC Program;

WHEREAS, American Bankers Insurance Company of Florida ("ABIC") and American Bankers Life Assurance Company of Florida ("ABLAC") are affiliated insurance companies authorized to offer health benefits plans in New Jersey.

WHEREAS, ABIC reported accident and health premium to the Department of Insurance for calendar year 1993 in the amount of \$3,807,874. The IHC Board assessed ABIC on that basis, in the amount of \$50,476.

WHEREAS, in response to the 1993 assessment bill, the IHC Board received a letter from May Bishuty, dated July 25, 1994, in which ABIC asserted it was not a member of the IHC Program because it did not deliver or issue for delivery a health benefits plan during calendar year 1993 and that all accident and health premiums reported to the Department of Insurance fell into categories of coverage excluded from the IHC Acts from the definition of "health benefits plan."

WHEREAS, in response the IHC Board's request for additional information, dated September 1, 1994, the Board received a letter from Kathryn Zeidler, Associate Corporate Counsel, dated September 23, 1994 stating that neither ABIC nor ABLAC offered health benefits plans in New Jersey, but offered instead only accident-only, disability income, and credit insurance. Ms. Ziedler attached to her letter certifications of non-member status in the IHC Program for both ABIC and ABLAC, signed by Arthur Heggen, Chief Financial Officer, which affirmatively stated that ABIC and ABLAC had neither issued nor had inforce a "health benefits plan" as defined at N.J.A.C. 11:20-1.2. In response to a request for further clarification by the Board, Kathryn Ziedler affirmatively stated in a subsequent letter, dated October 12, 1994, that ABIC had never written and did not have inforce a "health benefits plan."

WHEREAS, the IHC Board rescinded the 1993 assessment of ABIC and ABLAC on the basis of the carriers' filings of the aforementioned non-member certifications and clarifying statements.

WHEREAS, notwithstanding the communications described above, ABLAC acknowledged by letter dated February 28, 1995, signed by Leighton Robinson, that ABLAC had inforce in 1993 and 1994 a closed block of small group health benefits plans. ABLAC then filed with the Small Employer Health Benefits Program Board, on April 7, 1995, a Carrier Small Employer Market Share Report showing net earned premium from small employer group health benefits plans for calendar year 1993 in the amount of \$17,532.14. ABLAC also reported to the IHC Board, in a market share and net paid loss report ("Exhibit K") dated February 28, 1995, net earned premium of \$6060 for calendar year 1994;

WHEREAS, on the basis of the reported net earned premium reported for calendar years 1993 and 1994, the IHC Board, on November 21, 1995, assessed ABLAC for its share of reimbursable losses and administrative expenses of the IHC Program for calendar years 1993 and 1994 in the amount of \$388, exclusive of penalty interest accrued.

WHEREAS, ABLAC appealed the assessment by letter dated December 1, 1995, on the grounds that:

- 1) ABLAC's net earned premium from small employer health benefits plans was not subject to assessment by the IHC Board because it was subject to assessment by the New Jersey Small Employer Health Benefits Program Board;
- 2) the IHC Board was foreclosed from assessing ABLAC for 1993 because ABLAC's certification of non-member status, filed on September 23, 1994, should have been deemed approved under N.J.A.C. 11:20-13.4.

WHEREAS, the Board has considered ABLAC's appeal with regard to the assessment for reimbursable losses and administrative expenses of the IHC Program for calendar years 1993 and 1994.

Based on the undisputed facts, the Board hereby concludes:

- 1) ABLAC'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) ABLAC is a "carrier," as defined at N.J.S.A. 17B:27A-2. As a condition of issuing "health benefits plans" in New Jersey, a carrier must either issue individual health benefits plans or pay an assessment. N.J.S.A. 17B:27A-4. The term "health benefits plan" as defined by the IHC Act, "means a hospital and medical expense insurance policy ... delivered or issued for delivery in this State." ABLAC had inforce in 1993 and 1994 "health benefits plans" as defined by the IHC Act. N.J.S.A. 17B:27A-2. ABLAC is a carrier subject to the IHC Act, and is therefore, a "member" of the IHC Program. N.J.S.A. 17B:27A-10;

3) As a member of the IHC Program, ABLAC 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) ABLAC did not apply for, or receive, an exemption from losses for calendar years 1993 or 1994.

5) ABLAC's certification of non-member status, filed on September 23, 1994 is not deemed approved under N.J.A.C. 11:20-13.4 for two reasons: first, the request for non-member certification was not filed by April 1, 1994, as required by N.J.A.C. 11:20-13.3(a); and, second, the certification filed on September 23, 1994, signed by ABLAC's Chief Financial Officer, Arthur Heggen, contained erroneous information. In no event would a false or incorrect certification be deemed approved, nor would such deemer foreclose the Board from assessing ABLAC once correct information to the contrary was received.

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 ABLAC's appeal of the assessments for 1993 and 1994 reimbursable program losses is hereby denied. ABLAC is hereby ordered to pay to the New Jersey Individual Health Coverage Program the full amount of assessment, \$388, plus penalty interest of \$88.40, for a total of \$476.40, within 15 days of the date of this final order. Failure to pay the assessment will result in the Board's referring this matter to the Attorney General for collection and to the Department of Insurance for consideration of whether revocation of ABLAC's authority to offer health benefits plans in New Jersey and imposition of any other penalties or fines available under law are warranted.

Kevin O'Leary, Executive Director

Date