

NEW JERSEY
INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD
Trenton, NJ 08625

IN THE MATTER OF CIGNA HEALTHCARE'S APPEAL OF
THE INDIVIDUAL HEALTH COVERAGE PROGRAM
BOARD'S DENIAL OF AN EXEMPTION FROM
ASSESSMENT FOR 1994 REIMBURSABLE LOSSES AND
REQUEST FOR A HEARING

FINAL ADMINISTRATIVE ORDER NUMBER 96-20

WHEREAS, the New Jersey Individual Health Coverage Program ("IHC") 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 share of program losses and administrative expenses and to take any legal actions necessary to recover assessments owed to the IHC Program;

WHEREAS, Connecticut General Life Insurance Company is a "carrier" that is a member of the IHC Program. CIGNA HealthCare ("CIGNA") is an affiliated carrier of Connecticut General Life Insurance Company which filed on April 19, 1995 a request for exemption from assessment for reimbursable losses of the IHC Program pursuant to N.J.A.C. 11:20-9.2;

WHEREAS, on March 19, 1996 the IHC Board issued Administrative Order Number 96-18, incorporated herein by reference, which order denied CIGNA a pro rata exemption from assessment for 1994 reimbursable losses of the IHC Program on the grounds that CIGNA failed to make a good faith marketing effort to sell individual health benefits plans as required pursuant to N.J.A.C. 11:20-9.5(f);

WHEREAS, CIGNA appealed the Board's decision, by letter dated March 27, 1996 and requested reconsideration of the Board's decision and a hearing. By letter dated April 11, 1996, the Board asked that CIGNA provide a detailed explanation of why the Board's initial decision should be reconsidered, including the legal and factual bases for the appeal. CIGNA provided the requested information, by letter dated April 24, 1996;

WHEREAS, CIGNA asserts in its April 11, 1996 submission the following factual and legal grounds for its appeal:

- N.J.A.C. 11:20-9.6 does not establish clear and measurable standards to determine what constitutes a good faith effort to market individual health benefits plans;
- CIGNA helped craft and supported passage of the Individual Health Insurance Reform Act, N.J.S.A. 17B:27A-2 et seq., which created the IHC Program.
- The Board approved CIGNA's request for exemption in 1993 and granted a pro rata exemption from reimbursable losses, notwithstanding CIGNA's only having enrolled 266 persons, or 4.8% of its minimum number of non-group persons. Accordingly,

- CIGNA asserts that the increase in enrollment in 1994, to 673 persons, or 7.3% of its minimum number of non-group persons, is evidence of good faith marketing efforts;
- CIGNA's strategy for enrolling individuals rested on its participation in the Health Access New Jersey ("Access") Program, which provided subsidies for the purchase of individual health coverage. However, the implementation of the Access Program was delayed until 1995, thus frustrating CIGNA's strategy.

WHEREAS, the IHC Board considered CIGNA's appeal at its May 7, 1996 meeting. Based upon the undisputed facts, the Board concludes the following:

- N.J.A.C. 11:20-9.6 provides clear guidance for reporting a carrier's advertising, marketing and promotion efforts in direct support of sales of standard health benefits plans and sets forth the standards the Board will apply to determine whether the carrier made a good faith effort to market individual health benefits plans;
- Whether or not CIGNA helped craft and supported passage of the Individual Health Insurance Reform Act of 1992 is not relevant to the Board's determination of a good faith marketing effort in 1994;
- The Board adopted N.J.A.C. 11:20-9.6 on September 15, 1994 in order to provide guidance to carriers with regard to the good faith marketing requirement in N.J.A.C. 11:20-9.5(f) and to establish standards for the Board to determine whether a carrier should be granted or denied a pro rata exemption. CIGNA received a copy of the proposed rule and was given an opportunity to comment on the agency proposal, but did not do so. The Board approved CIGNA's request for exemption in 1993, notwithstanding its having enrolled only 4.8% of its minimum number of non-group persons, because no clear regulatory standards existed at that time to collect marketing information and evaluate carriers' efforts;
- N.J.A.C. 11:20-9.5(f)(2) clearly states that, if the Board finds that a member has not made a good faith effort to enroll or insure its minimum number of non-group persons, the Board shall not grant a pro rata exemption to the member. The assertion that CIGNA would have undertaken marketing efforts through the Access Program and would have enrolled more non-group persons if the Access Program had been implemented in 1994 is not relevant to an objective evaluation of CIGNA's actual marketing efforts in 1994;
- CIGNA'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..

NOW THEREFORE, pursuant to the authority granted to the Board by N.J.S.A. 17B:27A-2 et seq., N.J.A.C. 11:20-9.5(f)(2), 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 May, 1996,

ORDERED that CIGNA's request for a hearing and appeal of the IHC Board's decision to deny CIGNA's request for an exemption from assessment for 1994 reimbursable losses of the IHC Program is hereby denied. The Board will recalculate the 1994 assessment in accordance

with this Order and notify CIGNA within 45 days of the adjusted assessment due. The Board will place payment for the 1994 assessment reconciliation in escrow if the Board receives, within 15 days of CIGNA's receipt of this final order, written notice from CIGNA 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 CIGNA's receipt of this final order, the Board will make the assessment paid by CIGNA available for payment to carriers eligible for reimbursement of losses.

Kevin O'Leary, Executive Director

Date