

NEW JERSEY
INDIVIDUAL HEALTH COVERAGE PROGRAM

20 West State Street, 11th Floor

P.O. Box 325

Trenton, NJ 08625

Phone: (609) 633-1882 x50306

Fax: (609) 633-2030

E-mail: wsanders@dobi.state.nj.us

**IN THE MATTER OF THE INDIVIDUAL HEALTH
COVERAGE PROGRAM BOARD'S AGREED UPON
PROCEDURES REVIEW OF PROTECTIVE LIFE
INSURANCE COMPANY'S NET PAID LOSSES FOR
CALENDAR YEARS 1997/1998**

ADMINISTRATIVE ORDER NO. 04-01

WHEREAS, the New Jersey Individual Health Coverage Program ("IHC") Board of Directors (the "IHC Board") is authorized by the Individual Health Insurance Reform Act of 1992 ("IHC Act"), P.L. 1992, c. 161 (N.J.S.A. 17B:27A-2 *et seq.*), and regulations promulgated thereunder and set forth at N.J.A.C. 11:20-1.1 *et seq.*, to reimburse carriers for certain losses and to fund reimbursements with an assessment on each member of the IHC Program based on the proportion that the member's net earned premium for a calculation period preceding the assessment bears to the net earned premium for all members of the IHC Program for that calculation period; and

WHEREAS, Protective Life Insurance Company ("Protective") was a "carrier" and a "member" of the IHC Program as defined in the IHC Act for the 1997/1998 two-year calculation period; and

WHEREAS, pursuant to N.J.S.A. 17B:27A-12a(1)(b), if a carrier's claims paid for all individual health benefits plans during a two-year calculation period exceed 115% of the carrier's net earned premium and any investment income thereon for that two-year calculation period, the amount of the excess shall be the "net paid loss" which shall be reimbursable to the carrier; and

WHEREAS, the reimbursements issued pursuant to N.J.S.A. 17B:27A-12a(1)(b) are funded by the assessment of all IHC Program member carriers, pursuant to N.J.S.A. 17B:27A-12a(2); and

WHEREAS, pursuant to N.J.S.A. 17B:27A-12a(1)(b) and N.J.A.C. 11:20-8, carriers issuing individual health benefits plans and seeking reimbursement were required to file with the Board, among other things, the carrier's net earned premium, claims paid

and net investment income for open enrolled community rated individual health benefits plans in New Jersey on a two-year basis; and

WHEREAS, the IHC Board developed a form known as a Market Share and Net Paid Loss Report ("Exhibit K") for the purpose of such reporting, as set forth at N.J.A.C. 11:20-8 and Appendix, Exhibit K; and

WHEREAS, Protective filed an Exhibit K with the IHC Board dated February 24, 1999, certifying a net paid loss of \$0 for the 1997/1998 two-year period; and

WHEREAS, Protective filed a first revised Exhibit K dated April 14, 1999, certifying a net paid loss of \$423,748 for the 1997/1998 two-year period; and

WHEREAS, Protective filed a second revised Exhibit K dated May 24, 1999, certifying a net paid loss of \$412,248 for the 1997/1998 two-year period; and

WHEREAS, Protective filed a third revised Exhibit K dated July 22, 1999, certifying a net paid loss of \$577,505 for the 1997/1998 two-year period; and

WHEREAS, on November 17, 1999, the IHC Board assessed IHC Program members for the 1997/1998 two-year calculation period, which assessment was based, in part, on Protective's reported net paid loss of \$577,505; and

WHEREAS, on June 23, 2000, the IHC Board issued an interim reconciliation on IHC Program members for the 1997/1998 two-year calculation period, which interim reconciliation was based, in part, on Protective's reported net paid loss of \$577,505; and

WHEREAS, pursuant to N.J.S.A. 17B:27A-11m, N.J.A.C. 11:20-2.3(b)13 and N.J.A.C. 11:20-8.8, the IHC Board has the authority to commission an independent audit of the net paid losses of any carrier seeking reimbursement of those losses; and

WHEREAS, the Board required each carrier requesting reimbursement for net paid losses in 1997/1998 to execute a certification (the "Loss Certification") certifying that it was familiar with the provisions of N.J.A.C. 11:20-8.8, and in which it agreed that advance payments made by the IHC Board for filed net paid losses were subject to audit and adjustment, ¶¶ 4-5, that it stood ready, willing, and able to return any overpayment found as the result of the IHC Board's net paid loss audit, with interest, within thirty (30) days of receiving a written request from the IHC Board, ¶ 10; and

WHEREAS, on December 15, 1999, Protective, by J. Burrell Bailey, Jr., Vice President and Group Actuary, signed the Loss Certification and returned the Certification to the IHC Board, thereby confirming its understanding that advance payments for filed net paid losses were subject to audit and adjustment and that Protective was ready to return any overpayment; and

WHEREAS, the IHC Board provided Protective with the following three payments for reimbursement for its asserted net paid losses based on Protective's certification in its July 22, 1999 Exhibit K for its 1997/1998 net paid losses:

- | | |
|----------------------|-------------------|
| 1. December 28, 1999 | \$184,221.65 |
| 2. April 12, 2000 | \$108,230.30 |
| 3. August 22, 2000 | \$ 52,055.64; and |

WHEREAS, the IHC Board further compensated Protective for its asserted net paid losses by issuing an assessment credit for the carrier's administrative and loss assessment liability of \$117,496.38, which represents the amount the IHC Board billed Protective in its November 17, 1999 invoice of \$104,530.83 and its June 23, 2000 invoice of \$12,965.55; and

WHEREAS, the IHC Board contracted with Deloitte & Touche ("D&T"), an independent accounting firm, to perform independent "agreed upon procedures" ("AUPs") of carriers seeking reimbursement of net paid losses of less than \$1 million for the 1997/1998 two-year calculation period, which procedures were performed in accordance with generally accepted accounting standards established by the American Institute of Certified Public Accountants; and

WHEREAS, D&T began its AUPs of Protective's net paid losses as reported on its third revised Exhibit K in April 2002; and

WHEREAS, D&T issued to the IHC Board an Accountant's Report on Applying Agreed-Upon Procedures ("AUP Report") dated November 6, 2002; and

WHEREAS, the AUP Report states, among other things, that Protective represented that "detailed listings, by policy, were not available for premium activity for the 11-month period from January 1997 to November 1997 (AUP Report, § A1) and that Protective failed to explain significant differences in premium and claims information between its Annual Statement Blanks and its Exhibit K filing (AUP Report, § A6 and B4); and

WHEREAS, the IHC Board found at its May 11, 2004, meeting that based on the information provided by D&T in the AUP Report, Protective had failed to provide sufficient information to document its request for reimbursement of its net paid losses for the 1997/1998 calculation period; and

WHEREAS, based on that finding, the IHC Board, at its May 11, 2004 Board meeting, voted to find Protective ineligible for reimbursement for the 1997/1998 calculation period and to require Protective to repay with interest all amounts already paid to it; and

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, and the decision of the IHC Board as expressed by this Administrative Order,

IT IS on this 5th day of August, 2004,

ORDERED, that Protective is ineligible for reimbursement of any net paid losses for the 1997/1998 calculation period; and

IT IS FURTHER ORDERED, that Protective Life pay to the IHC Board a total of \$514,541.62 to reimburse the IHC Board for the following:

\$344,507.59 -- prepayment of 1997/1998 net paid losses
\$117,496.38 -- loss and administrative expense assessment credits
\$ 46,155.15 -- interest that the IHC Board would have earned on the
\$462,003.97 payments and credits
\$6,382.50 -- one half of the cost of the work by D&T related to the
agreed upon procedures pursuant to N.J.A.C. 11:20-8.8(b)

\$514,541.62 -- TOTAL;

IT IS FURTHER ORDERED THAT Protective Life make payment of \$514,541.62 within 30 days of the date of this Order, by issuing a check payable to:

Treasurer - - State of New Jersey/Individual Health Coverage Program” and mail the payment to the IHC Program at:

IHC Program
20 West State Street, 11th Floor
P.O. Box 325
Trenton, NJ 08625-0325

or wire transfer to:

Wachovia Bank, N.A.

PO Box 7618

Philadelphia, PA 19101-7618

ABA #: 031201467

Account #2100000000377

Account Name: Dept. of Banking and Insurance

Confirmation of the wire transfer must be faxed to Rosaria Lenox, Program Accountant, Individual Health Coverage Program, (609) 633-2030.

Wardell Sanders, Executive Director
Individual Health Coverage Program Board

DATE: _____