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IN THE MATTER OF APPEAL BY  
UNITED STATES LIFE INSURANCE  
COMPANY OF THE CITY OF NEW YORK  
OF ITS LOSS ASSESSMENTS BY THE  
INDIVIDUAL HEALTH COVERAGE  
PROGRAM BOARD FOR THE 1997/1998  
AND 1999/2000 CALCULATION PERIODS

**ADMINISTRATIVE ORDER NO. 04-IHC-05**

This matter arises from an appeal and request for hearing by the United States Life Insurance Company of City of New York ("U.S. Life") with regard to its loss assessments by the New Jersey Individual Health Coverage Program ("IHC") Board of Directors for the 1997/1998 and 1999/2000 two-year calculation periods. 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, to assess each member of the IHC Program for its share of reimbursable losses and administrative expenses, based on the proportion that the member's net earned premium for the calculation period preceding the assessment bears to the net earned premium for all members of the IHC Program for that calculation period.

On August 4, 1998, the IHC Board readopted with amendments the regulations that govern the operation of the program. Included in those regulations was a provision providing for the loss assessment of carrier members. N.J.A.C. 11:20-2.17. CIGNA Healthcare and affiliated carriers challenged the readoption with amendments in New Jersey Superior Court, Appellate Division, alleging, among other things, that N.J.A.C. 11:20-2.17 was invalid. In re New Jersey Individual Health Coverage Program's Readoption of N.J.A.C. 11:20-1, et seq., 353 N.J. Super. 494 (App. Div. 2002), aff'd in part and rev'd in part, 175 N.J. 570 (2004). On August 2, 2000, U.S. Life moved successfully to intervene in the appeal, based on its appeal of the 1997/1998 loss assessment, as set forth below.

**The 1997/1998 Two-Year Loss Assessment**

During the pendency of the appeal, on November 17, 1999, the IHC Board issued an assessment invoice for the 1997/1998 calculation period, pursuant to N.J.A.C. 11:20-2.17, to each IHC member carrier (accompanied by a spreadsheet outlining the calculation of each IHC Program member's proportional share of the assessment). As

both a "carrier" and a "member" of the IHC Program, U.S. Life was included in the 1997/1998 loss assessment. U.S. Life's proportional share of the assessment was \$3,184,128.50 for reimbursable losses and \$17,423.23 for estimated administrative expenses, for a total assessment of \$3,201,551.73, based on U.S. Life's reported 1997/1998 net earned premium for health benefits plans of \$143,726,057.

Pursuant to N.J.A.C. 11:20-20.2, U.S. Life appealed the Board's assessment and filed a Request for a Hearing dated December 14, 1999. The appeal disputed U.S. Life's loss assessment and raised the following issues of law:

1. The assessment is inaccurate because the Board improperly granted pro rata exemptions to certain carriers, where such carriers seeking an exemption write substantially fewer non-group persons than are assigned to them by the IHC Board.
2. The assessment calculation set forth in the IHC Board's regulations is invalid because the regulations treat carriers that do not file for an exemption unfairly, and carriers that write very few individuals and receive a pro rata exemption are treated far better.
3. The assessment calculation set forth in the IHC Board's regulations is invalid because it exceeds the Board's statutory authority in that it permits the Board to grant a conditional pro rata exemption when a carrier fails to reach the minimum number of non-group person life years when the Board determines that good faith efforts have been made by the carrier to meet the minimum number.
4. U.S. Life challenged the assessment "on the basis of such other reasons that may come to light upon further discovery and investigation of the Board's basis for making the 1997/1998 [loss] assessments."

U.S. Life also provided payment of \$3,201,551.73 by check dated December 17, 1999, accompanied by a letter stating that U.S. Life disputed "the total amount due on the invoice." The IHC Board deposited \$3,184,128.50, the amount of the entire loss assessment billed, into a segregated interest bearing account in the State Treasury.

On June 23, 2000, the IHC Board issued an interim reconciliation invoice for the 1997/1998 two-year calculation period to each IHC Program member (again accompanied by a spreadsheet outlining the calculation of each carrier's updated assessment share under the reconciliation ). Pursuant to the interim reconciliation, U.S. Life was assessed an additional \$397,158.65 for reimbursable losses, minus \$51.92 for estimated administrative expenses, for a total assessment of \$397,106.73. U.S. Life provided payment of \$397,106.73 by check dated July 19, 2000. U.S. Life also provided a letter with the payment stating that it disputed "the total amount due on the [invoice]." The Board deposited \$397,158.65, the amount of the additional billed loss assessment amount, into the segregated interest bearing account in the State Treasury.

Thus, the total amount deposited into the Treasury account for the U.S. Life's appeal of its 1997/1998 loss assessment was \$3,581,287.15, the billed loss assessment

amount as revised by the interim reconciliation. However, the actual disputed portion of U.S. Life's 1997/1998 loss assessment amount, according to the methodology proposed by U.S. Life on pages six and seven of its Reply Brief, dated March 7, 2001, in the pending appeal and in other documents, was \$2,580,690. In a letter to the Board dated August 17, 2004, U.S. Life's counsel confirmed the disputed amount for the 1997/1998 calculation period by stating that "we calculate that US Life is owed \$2,580,690" for the 1997/1998 assessment period.

By letter dated February 7, 2001, U.S. Life requested that its appeal from the 1997/1998 loss assessment be deferred pending final resolution of the appeal pending in the Appellate Division.<sup>1</sup>

The IHC Board, on June 4, 2001, issued Order No. 01-IHC-01, in which it ordered that a determination with regard to U.S. Life's Appeal of its 1997/1998 assessment and Request for a Hearing, and the determination of whether there are genuine issues of material fact that require a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., be deferred pending resolution of the matter captioned In the Matter of the New Jersey Individual Health Coverage Program's Readoption of N.J.A.C. 11:20-1 et seq.

### **The 1999/2000 Two-Year Loss Assessment**

On March 25, 2002, the IHC Board issued an assessment invoice to U.S. Life for 1999/2000 two-year calculation period for \$236,033.09 for reimbursable losses and \$7,133 for estimated administrative expenses, for a total assessment of \$243,166.09. On April 26, 2002, the IHC Board received a payment of \$243,166.09. Included with the payment was a letter from U.S. Life in which it disputed the total amount of the 1999/2000 loss assessment invoice, "for the same reasons that [U.S. Life] had challenged the prior years' assessments," and requested a hearing pursuant to N.J.A.C. 11:20-20.2 and N.J.A.C. 11:20-2.15.

Using the same data that the Board had used to calculate its invoices for the 1999/2000 period and the assessment methodology proposed by U.S. Life, the Board calculated that \$129,483.79 was the real amount in dispute. The IHC Program's Executive Director sent a letter dated June 17, 2002 to U.S. Life, accompanied by a spreadsheet identifying this amount in dispute, to advise that the Board would deposit \$129,483.79 into a segregated interest bearing account in the State Treasury as disputed loss assessment funds. In a letter dated July 10, 2002, counsel for U.S. Life stated that the "spreadsheet accurately reflects US Life's position in the Appellate Division."

On May 14, 2002, the IHC Board issued Order No. 02-IHC-02, in which it ordered that "a determination with regard to U.S. Life's Appeal of its 1999/2000 assessment and Request for a Hearing, and the determination of whether there are

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<sup>1</sup> In the same letter, U.S. Life also asserted, for the first time, challenges to its loss assessments for the 1993, 1994, 1995, and 1996 annual calculation periods. Those challenges are addressed in IHC Order No. 04-IHC-06.

genuine issues of material fact that require a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., are hereby deferred pending the resolution of the matter captioned In the Matter of the New Jersey Individual Health Coverage Program's Readoption of N.J.A.C. 11:20-1 et seq."

### **The Appellate Division's and Supreme Court of New Jersey's Decisions in the Pending Appeal of the IHC Board's Readoption with Amendments of its Regulations**

On May 24, 2002, the Appellate Division issued its decision in In re New Jersey Individual Health Coverage Program's Readoption of N.J.A.C. 11:20-1 et seq., 353 N.J. Super. 494 (2002), and held, in part, that the IHC Board's second-tier assessment regulations was invalid to the extent that it was apportioned among non-exempt carriers. The court upheld the requirement that certain carriers must demonstrate that they had made good-faith efforts to market individual health coverage in New Jersey in order to qualify for an exemption from assessment.

The IHC Board petitioned the Supreme Court of New Jersey for certification, and the Supreme Court granted the petition. The Court also granted CIGNA's cross-petition for certification on, among others, the good-faith marketing issue.

On May 10, 2004, the Supreme Court affirmed the judgment of the Appellate Division invalidating the apportionment methodology for the second-tier calculation. In re New Jersey Individual Health Coverage Program's Readoption of N.J.A.C. 11:20-1 et seq., 175 N.J. 570 (2004). The Court also reversed the Appellate Division regarding the good-faith marketing requirement, and invalidated that regulation.

### **The IHC Board's Subsequent Determination Regarding U.S. Life's Appeals of its Loss Assessments**

Because the Supreme Court ruled that the Board's assessment methodology contained in the Board's 1998 readoption and set forth at N.J.A.C. 11:20-2.17 is invalid, and because U.S. Life timely appealed to the IHC Board from its 1997/1998 and 1999/2000 loss assessments, the Board voted unanimously at its September 1, 2004 Board meeting to grant U.S. Life's appeals of the 1997/1998 and 1999/2000 loss assessments and to refund to U.S. Life the disputed loss assessment amounts paid by U.S. Life and held in a segregated interest bearing account, plus the interest accrued thereon through the date that the disputed funds are transferred.<sup>2</sup>

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,

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<sup>2</sup> Because the IHC Board voted to grant U.S. Life's appeals as a matter of law, it is not necessary to consider U.S. Life's request for a hearing.

IT IS on this \_\_\_th day of October 2004,

ORDERED THAT U.S. Life's Appeal of its 1997/1998 and 1999/2000 loss assessment appeals are hereby granted, and

IT IS FURTHER ORDERED THAT the disputed assessment amounts of \$2,580,690 and \$129,483.79 for the 1997/1998 and 1999/2000 assessment periods, respectively, plus all interest accrued thereon through the date that the disputed funds are transferred, shall be refunded to U.S. Life.

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

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Wardell Sanders, Executive Director  
Individual Health Coverage Program Board

Date: \_\_\_\_\_