

IN THE MATTER OF THE CHALLENGE	)	
AND REQUEST FOR HEARING BY	)	
CELTIC INSURANCE COMPANY	)	
REGARDING THE NEW JERSEY	)	FINAL DECISION AND ORDER
INDIVIDUAL HEALTH COVERAGE	)	IHC ADMINISTRATIVE ORDER
PROGRAM BOARD OF DIRECTORS'	)	No. 07-IHC-03
ISSUANCE OF THE DECEMBER 18, 2006	)	
INTERIM RECONCILIATION OF THE	)	
1997/1998 LOSS ASSESSMENT	)	

This matter has been opened by the New Jersey Individual Health Coverage ("IHC") Program Board of Directors ("Board") pursuant to the authority of N.J.S.A. 17B:27A-2 et seq., and all the powers expressed or implied therein. This matter involves a challenge by Celtic Insurance Company ("Celtic"), a member of the IHC Program, of the interim reconciliation of the 1997/1998 loss assessment issued by the IHC Board on December 18, 2006. Celtic framed its submission to the IHC Board as a request for hearing in addition to expressly asserting issues that Celtic recognized were purely legal. Therefore, the IHC Board is considering it as both a challenge to the interim reconciliation of the 1997/1998 loss assessment and a request for hearing. For the reasons set forth below, at its meeting of February 13, 2007, the IHC Board voted to deny the challenge and request for hearing.

Background

The IHC Board was created pursuant to N.J.S.A. 17B:27A-10 as part of the enactment of L. 1992, c. 161 (N.J.S.A. 17B:27A-2 et seq.) (the "IHC Act"), which was enacted to address a crisis in the availability of "individual" health coverage -- that is, medical and hospital coverage for people not eligible to be insured under a group health insurance policy or Medicare. N.J.S.A. 17B:27A-2 (definition of "eligible person"). In order to increase availability of individual health coverage, the IHC Act provided two

incentives for carriers to actively participate in the IHC market by offering individual health benefits plans. First, the IHC Act permits a carrier that writes individual health benefits plans to seek reimbursement of certain losses the carrier incurs for the individual health benefits plans it writes (N.J.S.A. 17B:27A-12a(1)(b)). Second, the IHC Act – which funds the reimbursements of losses by assessing carriers that are IHC Program members – permits a carrier that writes individual health benefits plans in New Jersey to earn an exemption from liability for such assessments by enrolling an assigned number of individual lives (N.J.S.A. 17B:27A-12d). All carriers that have inforce health benefits plans in New Jersey are IHC Program members, regardless of whether a carrier offers health benefits plans in the individual, small employer, and/or large employer markets. All IHC Program members are liable for assessments for reimbursable losses incurred by carriers offering individual health benefits plans, but a carrier has the opportunity to earn at least a partial exemption if the carrier offers individual health benefits plans.

In 1997, the calculation period and the methodology used for determining IHC Program losses and assessments for those losses pursuant to P.L. 1997, c. 146 ("Chapter 146"). In February 1998, notwithstanding that the Legislature had changed the annual assessment cycle to a two-year calculation period effective 1997/1998, Celtic reported certain data regarding, among other information, claimed net paid losses for calendar year 1997. The IHC Board's Executive Director sent Celtic a letter dated April 1, 1998 explaining that because of the change to a two-year calculation period, the IHC Board had no legal basis for acting on Celtic's filing for 1997.

The IHC Board adopted rules in September 1998 implementing the new two-year calculation cycle and methodology, and billed IHC Program members on November 17,

1999 for the 1997/1998 losses as well as administrative expenses. The IHC Board subsequently issued an interim reconciliation of the 1997/1998 Loss and Administrative Assessment on June 23, 2000. Following both the November and June billings, various IHC Program members successfully appealed their respective assessment liabilities, stating that the net earned premium used in the assessment calculation was incorrect. In addition, one carrier challenged the 1997/1998 loss assessment, contesting, among other issues, the validity of a provision of the loss-assessment rule. Pursuant to the IHC Board's regulations, that carrier paid its entire loss assessment amount, but the disputed portion of the payment was placed in a segregated, interest-bearing account pending the outcome of the dispute. The rule in question was also contested in a separate challenge to the IHC Board's rule adoption, and was eventually invalidated by the New Jersey Supreme Court. In re New Jersey Individual Health Coverage Program's Adoption of N.J.A.C. 11:20-1 et seq., 179 N.J. 570 (2004). Accordingly, the carrier that had challenged the 1997/1998 loss assessment received a refund of the disputed funds.

As a consequence of the adjustments to net earned premiums resulting from the appeals and of the New Jersey Supreme Court's decision, the IHC Board had to adjust certain carriers' net earned premium amounts with a corresponding adjustment to each carrier's assessment liability, and to collect the amounts necessary to compensate for the refunds of disputed 1997/1998 loss assessment payments.

In addition, the IHC Board, in the normal course of its operations, commissioned independent audits pursuant to N.J.A.C. 11:20-8.8 to evaluate the amount of net paid losses for which reimbursements were sought for the 1997/1998 calculation period. The audits completed to date have resulted in some adjustments to the reimbursement

amounts to which the audited carriers were entitled, and consequently have resulted in some adjustments, to the net paid losses. The independent audit of Celtic's 1997/1998 net paid losses -- including signature by Celtic of a management representation letter -- has been completed and issued.

The IHC Board adopted a new rule on December 18, 2006, establishing the "adjusted net earned premium" method as the one to be used in the calculation of the distribution of the net paid losses among IHC Program members for the 1997/1998 period onward. Because of the change in the methodology, and other aforementioned events, including adjustments to net earned premium and to net paid losses, resulted in the IHC Board voting on December 5, 2006 to issue another interim reconciliation of the 1997/1998 loss assessment in order to collect appropriate monies to "true-up" the 1997/1998 loss assessment to date. Dated December 18, 2006, the notice of the interim reconciliation of the 1997/1998 loss assessment explained the reasons for the true-up, and noted that it is not a final reconciliation for 1997/1998 because audits for certain carriers had not yet been completed. This interim reconciliation used the same reimbursement amounts used in the initial 1997/1998 loss assessment from November of 1999, except for adjustments to the reimbursement amounts resulting from the audits completed to date.

In accordance with N.J.A.C. 11:20-2.15 and 20.2, an IHC Program member may appeal the amount of an assessment within 20 days following notice of the assessment. Celtic submitted a letter dated January 11, 2007, clarified by a second letter, dated January 12, 2007, in response to the IHC Board's December 18, 2006 notice of interim reconciliation of the 1997/1998 loss assessment.

The Challengers' Contentions

In its January 11, 2007 letter, Celtic requested “to reserve its right to appeal the 1997/98 Loss Assessment, dated December 18, 2006.” Celtic stated that “the Board has once again calculated Celtic’s ‘reimbursable losses’ using an unlawful retroactive statutory reimbursement formula.” Celtic also objected “to the Board’s failure to issue an assessment [for 1997/98 losses] that raises monies sufficient to reimburse Celtic for losses incurred under the statutory funding formula that was in effect from January 1, 1997 to June 30, 1997.” Celtic contends it is owed an additional \$4,410,368 in reimbursable losses for the January to June 1997 period. Celtic’s January 12, 2007 letter requested that the January 11, 2007 letter be treated “as a formal request for an administrative hearing pursuant to N.J.A.C. 11:20-2.15 and 20.2.”

Discussion

Celtic’s argument hinges on its contention that the methodology set forth in the IHC Act for the IHC Program in 1993 should have been used to calculate Celtic’s losses from January to June of 1997, and that the statutorily-required methodology set forth in P.L. 1997, c. 146 should have been applied only as of July 1997. Although Celtic presents its challenge as a dispute of the December 2006 interim reconciliation, in essence, Celtic is disputing only the application of the 1997 methodology set forth in P.L. 1997, c. 146 to the original 1997/1998 loss assessment issued in November of 1999. However, Celtic’s time to raise arguments about whether the IHC Board should have used the prior loss-calculation methodology has long since passed.

Celtic had notice of the IHC Board’s intent to apply the loss-calculation methodology set forth in Chapter 146 to the entire 1997/1998 calculation period as early

as April 1, 1998, the date that the IHC Board's then-Executive Director notified Celtic of the Legislature's determination, as set forth in Chapter 146, that the loss assessment cycle had shifted to a two-year basis, with the first two-year calculation period beginning on January 1, 1997, and the IHC Board's resulting inability to act on Celtic's Exhibit K filing for 1997. Celtic had 45 days to appeal that determination, but it did not do so. Moreover, the then-existing rules at N.J.A.C. 11:20-2.17, adopted in August of 1998, implemented the changes set forth in Chapter 146.

Further, when the IHC Board issued the November 1999 loss assessment for 1997/1998, Celtic could have raised the issue within 20 days following receipt of the billing in accordance with N.J.A.C. 11:20-2.15. Celtic never filed a timely challenge to the loss assessment. Instead, Celtic paid its 1997/1998 loss assessment share without protest following the November 17, 1999 loss assessment, as it did following the June 23, 2000 interim reconciliation.

In addition, because Celtic was a carrier seeking reimbursement for net paid losses for 1997/1998, the IHC Board commissioned an independent audit of Celtic's earned premium, claims paid, net investment loss and net paid loss. The *Independent Auditor's Report*, issued May 12, 2003, specified a net paid loss of \$12,431,275 for Celtic. This loss amount is consistent with that shown on the 1997/1998 interim reconciliation issued on December 18, 2006. Furthermore, the audit report expressly states that the independent audit calculated "net paid loss" according to the criteria set forth in Chapter 146. In accordance with N.J.A.C. 11:20-8.9, an IHC Program member denied reimbursement in whole or in part as a result of the IHC Board's review of the independent audit may appeal the IHC Board's determination and request a hearing

within 20 days of receipt of written notification of the Board's final determination. However, Celtic signed a management representation letter concerning the independent audit of the 1997/1998 net paid losses without protest. At no time did Celtic challenge the audit results or seek a hearing pursuant to N.J.A.C. 11:20-8.9. Consequently, the IHC Board finds that Celtic's appeal is untimely

Finally, because Celtic has not set forth any disputed adjudicative facts to support transmittal to O.A.L., see High Horizons Dev. Co. v. State, 120 N.J. 40 (1990), the IHC Board finds that a trial-type hearing is not warranted.

Order

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,

IT IS on this 13th day of February, 2007,

ORDERED that Celtic's challenge to the December 18, 2006 interim reconciliation of the 1997/1998 loss assessment is hereby denied; and

IT IS FURTHER ORDERED that Celtic Insurance Company's request for a hearing regarding the December 18, 2006, interim reconciliation of the 1997/1998 loss assessment is hereby denied.

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

/s/ Mary Taylor, Chair 2/28/07
Individual Health Coverage Program Board
Date: