

IN THE MATTER OF THE APPEAL BY)	
HUMANA INSURANCE COMPANY)	
REGARDING THE NEW JERSEY)	
INDIVIDUAL HEALTH COVERAGE)	
PROGRAM BOARD OF DIRECTORS')	IHC ADMINISTRATIVE ORDER
ISSUANCE OF THE OCTOBER 16, 2007)	No. 08-IHC-02
2005/2006 LOSS ASSESSMENT AND THE)	
2008/2009 ADMINISTRATIVE)	
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 an appeal by Humana Insurance Company ("Humana") of the 2005/2006 loss assessment and the 2008/2009 administrative assessment issued by the IHC Board on October 16, 2007. For the reasons set forth below, at its meeting of February 11, 2008, the IHC Board voted to grant the appeal.

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"). The IHC Act provides for an assessment mechanism to fund the losses incurred by certain carriers as well as fund the administrative costs associated with the operation of the IHC Program. All carriers that have inforce health benefits plans in New Jersey are IHC Program members, and thus subject to assessment, regardless of whether a carrier

offers health benefits plans in the individual, small employer, and/or large employer markets. (N.J.S.A. 17B:27A-11a) (authority of the IHC Board to issue assessments).

The assessments are based on net earned premium data carriers report bi-annually on the Exhibit K New Jersey Individual Health Coverage Program Assessment Report (“Exhibit K”). (N.J.A.C. 11:20-8). Exhibit K includes several worksheets. The Exhibit K Part C Premium Data Worksheet is used to specify the total accident and health premium as reported on the NAIC Statement blank as well as to identify premium that is excepted from the definition of net earned premium. (N.J.S.A. 17B:27A-2). The directions set forth on the Exhibit K Part C Premium Data Worksheet stated “ excepted premium amount is limited to amounts paid by federal government and does not include premium paid by insureds.”

The IHC Board issued Advisory Bulletin 07-IHC-01 in which the IHC Board provided direction to carriers concerning how to report Medicare Part D Premium on the Exhibit K Part C Premium Data Worksheet. Consistent with the direction set forth on the Exhibit K Part C Premium Data Worksheet for Medicare Advantage and Medicare + Choice premium, the Bulletin advised carriers to except the premium paid by the Federal Government and include the portion of the premium paid by the insured.

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. Humana submitted a letter dated November 1, 2007, in response to the IHC Board’s October 16, 2007 assessment.

The Challenger’s Contentions

In its November 1, 2007 letter, Humana stated that the net earned premium used as the basis for the loss and administrative assessment, as reported on the 2005/2006 Exhibit K Part C Premium Data Worksheet was overstated. Humana noted that the overstatement was the result of having followed the instructions for the completion of the Exhibit K Part D Premium Data Worksheet which directed carriers to except premium amounts paid by the Federal Government for Medicare Advantage and Medicare + Choice Coverage, but include the premium paid by the insured.

Humana cited 42 CFR 422.404 which precludes any state from imposing a premium tax, fee or similar assessment with respect to any payment CMS makes on behalf of Medicare Advantage enrollees or any payment by the beneficiaries.

Humana stated that the net earned premium Humana reported on the 2005/2006 Exhibit K should have been \$40,158 (not \$7,554,340) in recognition of the fact that Federal law preempts an assessment based on premiums that include the amount of premium paid by Medicare Advantage beneficiaries.

Discussion

The IHC Board concurs with Humana's contention that 42 CFR 422.404 preempts that inclusion of any premium paid by a Medicare Advantage beneficiary in the calculation of a carrier's net earned premium. Similarly, the IHC Board notes that 42 CFR 423.440 preempts the inclusion of any Medicare Part D premium in the calculation of a carrier's net earned premium.

Since Humana included Medicare Part D premium as paid by the beneficiaries in the net earned premium reported on Exhibit K, and the inclusion of such premium is

precluded by Federal law, Humana along with all member carriers will have the opportunity to re-file the 2005/2006 Exhibit K.

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 11th day of February, 2008,

ORDERED that Humana's challenge to the October 16, 2007 assessment is hereby granted. The IHC Board will provide an opportunity for all member carriers to re-file the 2005/2006 Exhibit K and the IHC Board will issue an initial reconciliation which will limit Humana's assessment liability to the amount determined by Humana's proportionate share based on the net earned premium as reported on the re-filed Exhibits K. Humana will be paid a refund such that it is liable only for the amount calculated and due as a result of the interim reconciliation. Such refund will be paid upon completion of the process outlined in Advisory Bulletin 08-IHC-02, a copy of which is attached.

/s/ Mary Taylor, Chair
Individual Health Coverage Program Board

Date: