

IN THE MATTER OF A REFUND)	
IMPROPERLY WITHHELD BY)	
PERFECTHEALTH INSURANCE COMPANY)	IHC ADMINISTRATIVE ORDER
IN CONNECTION WITH THE DECEMBER 18,)	No.08-IHC-03
2006 RECONCILIATION OF THE 1997/1998)	
ASSESSMENT)	

This matter has been opened by the New Jersey Individual Health Coverage ("IHC") Program Board of Directors ("Board") pursuant to its authority set forth at N.J.S.A. 17B:27A-2 et seq., and all the powers expressed or implied therein. This matter involves monies owed by the IHC Board to Alta Health & Life Insurance Company (formerly known as Anthem Health & Life Insurance) following reconciliation of loss assessments for the 1997/1998 and 1999/2000 calculation periods, which, with respect to the 1997/1998 calculation period, were mistakenly remitted to The PerfectHealth Insurance Company (formerly known as Anthem Health & Life Insurance Company of New York). The PerfectHealth Insurance Company refuses to return the funds it received, although the company has failed to establish any legal entitlement to the funds.

Background

The IHC Program

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"). The IHC Act was intended 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. The IHC Act provides two incentives for carriers to offer individual health benefits plans, thereby increasing the number of carriers *actively* participating in the individual market, and thus, consumer choice. First, the IHC Act permits a carrier that writes individual health benefits plans to seek reimbursement of some of the losses the carrier may incur for its individual health

benefits plans (N.J.S.A. 17B:27A-12a(1)(b)), the costs for which are borne by other carriers through assessments. Second, the IHC Act permits a carrier that writes individual health benefits plans to elect to become exempt from assessments for loss reimbursements **if** the carrier enrolls an assigned number of individual lives (N.J.S.A. 17B:27A-12d); a carrier may not seek both reimbursement for losses and exemption from loss assessments for the same time periods (N.J.A.C. 11:20-9.2(b)3).

Reimbursements for the losses are funded by assessments on all members of the IHC Program (“loss assessments”). With few exceptions, 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. Thus, carriers bear some liability for loss assessments whether or not they actively participate in the individual market.

Pursuant to N.J.S.A. 17B:27A-11, the IHC Board promulgated regulations at N.J.A.C. 11:20 to implement the IHC Act, setting forth standards at N.J.A.C. 11:20-8 for reporting losses. In order to collect uniform information about the reported net paid losses incurred by IHC Program members for their individual market business (that is, unaudited net paid losses), the Board developed the Assessment Report.¹ Every IHC Program member is required to file an Assessment Report no later than March 1 following the end of each two-year calculation period in question.

¹ The Assessment Report – originally called the “Carrier Market Share and Net Paid Loss Report” -- is more commonly referred to as Exhibit K because it is found at Exhibit K of the Appendix to the IHC Board's regulations. (It may be noted that the deadline for filing Exhibit K is now April 1st annually.)

Alta Health & Life Insurance

Alta Health & Life Insurance Company (“Alta”) is an IHC Program member because it has health benefits plan premium in New Jersey, even though it does not offer individual health benefits plans. Alta, known as Anthem Health & Life Insurance until a name change in late 1999, has been an IHC Program member from the inception of the IHC Program in 1993. Reference throughout to Alta and its actions includes Anthem Health & Life Insurance Company when referring to a time period during which Alta operated under its former name.

The PerfectHealth Insurance Company

The PerfectHealth Insurance Company (“PerfectHealth”) was formerly known as Anthem Health & Life Insurance Company of New York. In calendar year 2000, PerfectHealth first reported health benefits plan premium in New Jersey, and became an IHC Program member.² Reference throughout to PerfectHealth and its actions includes Anthem Health & Life Insurance Company of New York when referring to a time period during which PerfectHealth operated under its former name. *December 18, 2006 Reconciliation of the 1997/1998 and 1999/2000*

Assessments

The Assessment Reports for the 1997/1998 and 1999/2000 calculation periods were due March 1, 1999, and March 1, 2001, respectively. Alta filed an Assessment Report for the 1997/1998 calculation period dated April 26, 1999, and filed an Assessment Report for the 1999/2000 calculation period on March 1, 2001 (revised June 22, 2001). Alta’s Assessment Reports for both calculation periods were filed using NAIC No. 67369, Group 769 identification. Alta’s Assessment Report for 1997/1998 showed a combined net earned premium of

² As Alta withdrew from the small group market beginning October 1999, it steered nonrenewing small employers to PerfectHealth. In addition, via an assumption reinsurance agreement in December 1999, PerfectHealth acquired a book of small employer business from Great West Life & Annuity Insurance Company. However, subsequent to

\$26,003,419. Alta's Assessment Report for 1999/2000 showed net earned premium separately for calendar years 1999 and 2000, totaling \$5,449,405 for 1999 and totaling \$4,419,561 for 2000.

Because it was not then a member of the IHC Program, PerfectHealth did not file an Assessment Report for the 1997/1998 calculation cycle. PerfectHealth first filed an Assessment Report on March 1, 2001 for the 1999/2000 calculation cycle. PerfectHealth's Assessment Report was filed using the NAIC No. 60049, Group 671 identification. PerfectHealth included a statement from its actuary, Gloria W. Smith, dated February 23, 2001, with its Assessment Report for 1999/2000 clarifying why its Assessment Report showed New Jersey small group premiums for calendar year 2000 only (totaling \$6,498,211), noting that all earned premium from the New Jersey small group business for 1999 was reported on Alta's NAIC statement blank.³

The IHC Board issued invoices to carriers for their respective loss assessments for the 1997/1998 and 1999/2000 calculation periods, as well as their respective shares of budgeted IHC Program administrative expenses. Alta paid a total of \$1,190,032.21 in satisfaction of the assessment against it for 1997/1998 losses combined with 2000/2001 administrative expenses ("1997/1998 assessment"). Alta also paid a total of \$29,783.07 in satisfaction of the assessment against it for 1999/2000 losses combined with 2002/2003 administrative expenses ("1999/2000 assessment"). PerfectHealth paid nothing towards the 1997/1998 assessment because it was not a member of the IHC Program during that period and wrote no business in New Jersey during that period. PerfectHealth paid \$19,610.64 in satisfaction of the assessment against it for the 1999/2000 assessment.

calendar year 2002, PerfectHealth no longer reported health benefits plan premium in New Jersey, and ceased being an IHC Program member.

³ The actuary's statement was not required as part of the filing, but apparently intended to highlight the agreement in which Alta steered employers to PerfectHealth as Alta withdrew from the small employer market.

Multiple events occurred following the 1997/1998 and 1999/2000 assessments that eventually resulted in the interim reconciliation of the loss assessments for 1997/1998 and 1999/2000, approved by the IHC Board at its meeting on December 5, 2006 (“2006 interim reconciliation”). The IHC Board issued invoices to carriers on December 18, 2006, setting forth each carrier’s revised loss assessment liability, with an explanation of how the amounts were calculated and a spreadsheet setting forth the data for all carriers that were IHC Program members during the respective calculation periods. The revisions resulted in some carriers owing more money to the IHC Program, while some carriers were due refunds.⁴ Pursuant to the IHC Board’s 2006 interim reconciliation, Alta was owed a refund by the IHC Board of \$984,798.30 for 1997/1998, and \$11,082.63 for 1999/2000. PerfectHealth was owed a refund of \$7,297.35 for 1999/2000; it was not owed a refund for 1997/1998 as it was not a member of the Program during that period and thus was not required to, and, in fact, did not pay an assessment for that period.

Carriers owing money to the IHC Program were required to make payment within 30 days from receipt of the invoice. Then, on April 30, 2007, after the vast majority of carriers owing money had paid, IHC Program staff issued a letter to each carrier to which the IHC Program owed money, explaining that the IHC Board had voted to send out partial payments of amounts due. (Partial payments were made based on funds available for distribution – at 85.2618% for 1997/1998 and 99.5317% for 1999/2000. Final reconciliation will be prepared upon settlement of outstanding assessment disputes, and completion of audits.) The letter also requested that carriers verify the method of reimbursement each preferred.

⁴ The IHC Board issued invoices to 99 carriers for the 1997/1998 calculation period, and invoices to 104 carriers for the 1999/2000 calculation period.

The April 30, 2007 letter sent to PerfectHealth stated it was in regard to Anthem Health & Life Insurance Company, and erroneously indicated that PerfectHealth was entitled to a refund for *both* the 1997/1998 and 1999/2000 calculation cycles. The information was at odds with the facts as well as the information previously set forth in the December 2006 interim reconciliation notice, which had not included PerfectHealth among the companies to which a refund was due for the 1997/1998 assessment. Additionally, PerfectHealth knew or should have known that Anthem Health & Life Insurance Company was unrelated to PerfectHealth. Nevertheless, Stuart Barlow of PerfectHealth, to whom the letter had been sent, contacted IHC staff by email requesting that the refunds identified in the April 30th letter be sent to his attention at PerfectHealth, and he included the amounts from the letter in his email. IHC Program staff replied that they could not identify the company(ies) based on the information stated in Mr. Barlow's email. Subsequently, Paul Trabold of PerfectHealth contacted IHC staff by email, and explained that the letter PerfectHealth received had referenced Anthem Health & Life Insurance Company, an entity he knew or should have known was unrelated to PerfectHealth. In the same email, he requested that the money be remitted by a check mailed to PerfectHealth in care of EmblemHealth, Inc. IHC Program staff then sent a check made out to PerfectHealth in the amount of \$846,919 (combining a refund amount of \$839,656.76 – 85.2618% of the \$984,798.30 due to Alta for the 1997/1998 assessment – and \$7,263.18, which is 99.5317% of the amount due to PerfectHealth for the 1999/2000 assessment).

The April 30, 2007 letter to Alta erroneously indicated that Alta was due no refund for the 1997/1998 calculation period, but was due a refund of \$11,030.73 for the 1999/2000 calculation period. IHC Program staff issued a check to Alta for the 1999/2000 calculation period on or about June 19, 2007. Subsequently, Harry W. Smith, Manager of Premium Tax for

Alta, contacted IHC Program staff inquiring as to when Alta could expect to receive some or all of the additional \$984,798.30 identified as being owed to Alta for the 1997/1998 assessment pursuant to the December 2006 interim reconciliation notice.

Discussion

Upon request of IHC staff, Harry W. Smith sent a letter to the IHC Program, dated September 6, 2007, explaining that Alta is the former Anthem Health & Life Insurance Company, and was a member of the IHC Program during the 1997/1998 calculation period, and provided proof to that effect. He provided proof of the payment made by Alta for the 1997/1998 calculation period in the amount of \$1,190,032.21 on or about December 27, 1999, as well as proof of payment of \$147,606.48 for the 1999/2000 calculation period on or about August 15, 2000.

IHC Program staff sent a letter, dated September 25, 2007, to PerfectHealth requesting the company return \$839,656.78 of the \$846,919 the IHC Program remitted to PerfectHealth, or provide proof of PerfectHealth's legal right to the money. PerfectHealth did neither. Instead, Carmine Morano, President of PerfectHealth, sent a letter to the IHC Program, dated October 10, 2007, stating that the company could not return the money because PerfectHealth had spent it already. PerfectHealth also stated it did not believe it should have to return the money because it had received assurances from IHC staff that the money was due to PerfectHealth. PerfectHealth further asserted that a monetary penalty it paid relating to business it had acquired from Alta in late 1999 might mean it was due this refund. Finally, PerfectHealth suggested that, given the similarity in the former names of the two companies, errors in collection and distribution of other funds could have occurred in the past. Notably, PerfectHealth did not argue it had paid an

assessment for the 1997/1998 calculation period, nor did it raise the existence of any agreement between it and Alta that would require that PerfectHealth receive Alta's refund.

It is clear from various records that Alta and PerfectHealth have always been two separate companies with separate ongoing rights and obligations, operating under separate NAIC codes and separate tax identification numbers. It is also clear that some of the information contained in the IHC Board's April 30, 2007 letters issued to Alta and PerfectHealth was based on a mistake of fact, incorrectly designating the refund for the 1997/1998 calculation period to PerfectHealth rather than Alta due to similarity of their prior names. However, PerfectHealth knew or should have known that it could not be owed a refund of assessments for the 1997/1998 calculation period because PerfectHealth was not a member of the IHC Program during that calculation period, and, in fact, had paid nothing towards the 1997/1998 assessments.

PerfectHealth did not try to correct the situation. Early correspondence between PerfectHealth and IHC staff provided instructions for mailing of a check for a refund owed to Anthem Health & Life Insurance Company – an unrelated company -- to PerfectHealth in care of EmblemHealth, Inc., without PerfectHealth questioning the amount or identity of the company to which the money was owed. It wasn't until July 23, 2007 – after the check was in PerfectHealth's possession and control – that PerfectHealth even nominally questioned the appropriateness of the check. PerfectHealth asked IHC staff how to "book" the funds for accounting purposes, given that insurance companies should not show "other revenues." IHC staff responded that the IHC Program could not provide accounting advice, but suggested the funds be booked to the same account from which the assessments had been paid. PerfectHealth did not acknowledge that it could not identify such an account for the 1997/1998 assessment.

Nor did PerfectHealth raise a direct inquiry about whether it was the appropriate entity to receive the funds.⁵

PerfectHealth's October 10, 2007 letter does not support a legal right to the money, but merely attempts to cloud what is the only relevant issue: that PerfectHealth was not a member of the IHC Program during the 1997/1998 calculation period, paid no assessment for that period, and thus is ineligible for any 1997/1998 assessment refund. Consequently, the IHC Program is seeking the return of the \$839,656.78 remitted to PerfectHealth in error.⁶

PerfectHealth implies current error suggests past error, and thus, PerfectHealth might be entitled to at least a portion of the \$839,656.78. This argument is a non sequitur, and ignores that PerfectHealth would have no right of offset against Alta's 1997/1998 refund in any event. It is clear PerfectHealth was *not* assessed for the 1997/1998 calculation period, while Alta was, and PerfectHealth did *not* pay an assessment for the 1997/1998 calculation period, while Alta paid \$1,190,032.21. The 1997/1998 assessment and the 2006 interim reconciliation of the 1997/1998 assessment are based on the same Assessment Report submitted for Alta in April 1999, prior to PerfectHealth even becoming an IHC Program Member.

PerfectHealth has only been assessed by the IHC Program for the 1999/2000 and the 2001/2002 calculation periods – the periods during which PerfectHealth was a member of the

⁵ PerfectHealth's assertion that a fine it paid relating to business it had acquired from Alta in 1999 establishes an entitlement to this refund is clearly wrong. As PerfectHealth notes, the fine related to business acquired in 1999, not to the 1997/1998 assessment period. This fine is irrelevant to the issue of whether PerfectHealth must return the monies erroneously paid to it. PerfectHealth's suggestion that similarity in names between the two companies might have caused errors in the collection and distribution of funds previously is similarly unavailing. PerfectHealth offers no specific examples of any such errors or how they would be relevant to disposition of the subject funds. Additionally, neither PerfectHealth nor Alta previously raised any question about such possible errors.

⁶The IHC Program has not requested return of the \$7,263.16 remitted to PerfectHealth for the 1999/2000 assessment, and further, pursuant to the 2006 interim reconciliation of 1999/2000 assessments, the IHC Program admits to currently owing PerfectHealth an additional \$34 in refund for the 1999/2000 assessment (payable at a later date).

IHC Program.⁷ In neither instance did PerfectHealth receive an invoice stating it owed any amount approaching \$839,656.78. PerfectHealth paid a *total* of \$28,331.70 to the IHC Program for the 1999/2000 and 2001/2002 loss and attendant administrative assessments combined. Accordingly, there is no basis for refunding PerfectHealth \$839,656.78. PerfectHealth is not entitled to a refund of monies that it did not pay.

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 10th day of June, 2008, ORDERED that:

1. PerfectHealth shall remit \$839,656.78 to the IHC Program within 30 days from the date of this Order, regardless of any action taken or intent expressed by PerfectHealth to request a hearing before the IHC Board, or otherwise appeal this Order.

2. This Order constitutes a final determination by the IHC Board, from which PerfectHealth may request a hearing on this matter by complying with the requirements of N.J.A.C. 11:20-20.2.

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

⁷ The assessment against PerfectHealth for the 2001/2002 calculation period (also issued on December 18, 2006) is \$8,721.06, payment for which was received on February 26, 2007 via a check from HIP of Greater New York. The IHC Board has made no determination that any refunds are due to any carriers for the 2001/2002 loss assessment as yet.