

NEW JERSEY
INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Trenton, NJ 08625

IN THE MATTER OF NATIONAL HEALTH
INSURANCE COMPANY'S APPEAL OF THE
NEW JERSEY INDIVIDUAL HEALTH
COVERAGE PROGRAM BOARD'S DENIAL
OF NON-MEMBER STATUS

ADMINISTRATIVE ORDER

WHEREAS, the New Jersey Individual Health Coverage Program ("IHC") Board is authorized by the Individual Health Insurance Reform Act of 1992, N.J.S.A. 17B:27A-2 et seq., and regulations promulgated thereunder, to administer the IHC Program, to assess members of the IHC Program on the basis of their proportionate share of program losses and administrative expenses and to take any legal actions necessary to recover assessments owed to the IHC Program;

WHEREAS, pursuant to N.J.A.C. 11:20-1.2, carriers may be certified as non-members of the IHC Program by filing an appropriate certification with the IHC Board by March 1 of the year following the calendar year for which non-member certification is sought;

WHEREAS, the National Health Insurance Company ("NHIC") requested non-member status in the New Jersey Individual Health Coverage Program on February 27, 1995, which notice was received by the IHC Board on March 3, 1995;

WHEREAS, the certification asserted that NHIC was a "carrier" but was not a member of the IHC Program because the accident and health premium it reported to the Department of Insurance for calendar year 1994 was entirely attributable to coverages "expressly excluded from the definition of 'health benefits plan' and 'net earned premium'" in the IHC rules, N.J.A.C. 11:20-1.2;

WHEREAS, in detailing what coverages were "expressly excluded" under the IHC rules, NHIC did not cite coverages excluded in the rules, but instead stated that "the [accident and health] premiums were for members of an association who by virtue of their membership in that group were not 'eligible persons' to be covered by a 'health benefits plan' as those terms are defined at N.J.A.C. 11:20-1.2;"

WHEREAS, according to NHIC's certificate of authority on file with the Department of Insurance, NHIC is licensed to issue health benefits plans in New Jersey;

WHEREAS, according to information presented to the Small Employer Health Benefits Program Board by Eva Green, Vice President of the Compliance Department of NHIC, (a copy of which was obtained by the IHC Board) and confirmed by a May 2, 1995 letter to the IHC Board by Paul J. Dillon, of Greenberg, Dauber and Epstein, counsel to NHIC, NHIC has issued a group master policy of insurance (#USA-50) to United Service Association for Health Care ("USAHC") under which members of USAHC receive certificates evidencing medical coverage;

----- WHEREAS, NHIC has voluntarily filed forms and rates with the IHC Board to ----- participate in the IHC Program, and has reported persons enrolled in standard plans as of December 31, 1994;

WHEREAS, the IHC Board considered the certification of non-member status submitted by NHIC and, at its March 7, 1995 meeting, unanimously voted to deny non-member status. On March 29, 1995, the IHC Board issued a letter to NHIC denying its request for non-member status. The Board's decision was based on NHIC's failure to state legal grounds for non-member status, as follows:

- "1) National Health Insurance Company is a carrier, as defined in the Individual Health Insurance Reform Act, N.J.S.A. 17B:27A-2 et seq. and has inforce health benefits plans covering residents of the State of New Jersey. As such, National is a member of the IHC Program, subject to assessment;
- 2) National has filed forms and rates with the IHC Program Board and has reported sales of standard individual health benefits plans in calendar year 1994. As such, National is a member of the IHC Program, subject to assessment;
- 3) The Board rejects National's assertion that a resident of the State of New Jersey who is a member of an association is not an 'eligible person' by virtue of membership in that association."

WHEREAS, NHIC sought reconsideration of the Board's action April 18, 1995, by letter from Paul J. Dillon of Greenberg, Dauber and Epstein, on following bases:

- 1) that New Jersey's insurance laws, as applied to NHIC and United Service Association for Health Care ("USAHC"), are preempted by the Employee Retirement Income Security Act of 1974 ("ERISA");
- 2) that, based on its non-membership in the New Jersey Small Employer Health Benefits Program, the premiums received by NHIC were for members of an association who by virtue of their membership in that group were not 'eligible persons' to be covered by a 'health benefits plan' as those terms are defined at N.J.A.C. 11:20-1.2; and
- 3) NHIC has not sold any standard health benefits plans in New Jersey, notwithstanding its having filed forms and rates with the IHC Board.

WHEREAS, the New Jersey Individual Health Coverage Program Board ("the Board") has considered NHIC's appeal and request for a hearing with regard to the Board's denial of NHIC's request for non-member status.

Based on the undisputed facts, the Board's legal conclusions are the following:

- 1) the Board does not believe a dispute of its determination that NHIC is a member of the IHC Program constitutes a contested case requiring a hearing, pursuant to the Administrative Procedure Act;
- 2) the IHC Act provides that an "individual health benefits plan" includes "a certificate issued to an eligible person which evidences coverage under a policy or contract issued to a trust or association, regardless of the situs of delivery of the policy or contract, if the eligible person pays the premium and is not being covered under the policy or contract pursuant to continuation of benefits provisions applicable under federal or State law." Therefore, a certificate issued to an individual New Jersey resident, or to each of several employees of the same employer where the employer does not contribute to, and remit payment for, such insurance coverage, evidencing coverage under the group master policy NHIC issued to USAHC is an "individual health benefits plan" subject to all of the requirements of the IHC Act;
- 3) NHIC is a "carrier" that had inforce "health benefits plans" on December 31, 1994, and is, therefore, a member of the IHC Program, subject to assessment. As such, it fails to meet the criteria for non-member status enumerated in N.J.A.C. 11:20-13.2
- 4) NHIC has filed standard health benefits plans with the IHC Board and has reported persons enrolled in standard plans. Independent of the grounds set forth in (3) above, by virtue of its filing standard health benefits plans and issuing such coverage to eligible persons, as demonstrated by its own enrollment reports filed with the Board, NHIC is a member of the IHC Program; and
- 5) New Jersey's insurance laws, as applied to NHIC and USAHC, are not preempted by ERISA.

NOW THEREFORE, pursuant to the authority granted to the Board by N.J.S.A. 17B:27A-2 et seq., and all powers expressed or implied therein, and the decision of the Board as expressed by approval of this Administrative Order;

IT IS on this 30th day of May, 1995,

ORDERED that NHIC's appeal of the Board's denial of non-member status for calendar year 1994 is denied, as is NHIC's request for a hearing. Accordingly, if the IHC Board has not received from NHIC a Market Share and Net Paid Loss Report by June 8, 1995, the IHC Board will calculate NHIC's assessment for 1994 reimbursable program losses and administrative expenses as provided in N.J.A.C. 11:20-2.17(c)(1).

Date

Kevin O'Leary
Executive Director