

NEW JERSEY  
**INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD**

CN 325

Trenton, NJ 08625

IN THE MATTER OF FIRST OPTION HEALTH PLAN  
OF NEW JERSEY'S APPEAL OF THE INDIVIDUAL  
HEALTH COVERAGE PROGRAM BOARD'S  
ASSESSMENT FOR REIMBURSABLE LOSSES AND  
ADMINISTRATIVE EXPENSES FOR CALENDAR  
YEAR 1995

**FINAL ADMINISTRATIVE ORDER No. 96-22**

WHEREAS, the New Jersey Individual Health Coverage ("IHC") Program 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, First Option Health Plan ("First Option") is a health maintenance organization ("HMO") authorized, under a certificate of authority dated June 1, 1994 issued pursuant N.J.S.A. 26:2J-1 et seq., to operate as an HMO and to offer health benefits plans in New Jersey;

WHEREAS, by letter dated November 21, 1994, John Adessa, President and CEO of First Option, notified the IHC Board that First Option had applied for federal qualification pursuant to 42 U.S.C. 300e et seq. and expected approval to be granted by February, 1995. Mr. Adessa requested a waiver of the calendar year 1994 assessment, or, in lieu thereof, a waiver of the assessment for plans A-E, which it could not offer;

WHEREAS, the Board, by telephone, asked for clarification of the November 21, 1994 letter and received another letter from John Adessa, dated December 30, 1994 explaining that First Option would not be offering the indemnity plans A-E but would offer the HMO plan upon receiving federal qualification. First Option further sought a "waiver similar to the waiver to Oxford under similar conditions and circumstances."

WHEREAS, following review of the December 30, 1994 letter by the IHC Board's Technical Advisory Committee, the Board notified First Option, by letter dated January 31, 1995, that the Board could not waive the assessment for First Option. The letter clarified that the Board had not waived the assessment of Oxford Health Plan, but had permitted Oxford to offer the HMO plan while its application for a certificate of

authority to offer health insurance was being reviewed and approved by the Department of Insurance;

WHEREAS, by letter dated February 8, 1995, First Option asked that the Board permit First Option to offer only the HMO plan while its federal qualification application was pending before the federal Health Care Financing Administration (HCFA);

WHEREAS, following the Board's consideration of First Option's request at its May 9, 1995 meeting, the Board, by letter dated May 10, 1995, sought additional information from First Option, specifically, 1) a letter from HCFA indicating that First Option would receive federal qualification; and 2) whether, in the event it did not receive federal qualification, First Option intended to apply for a certificate of authority to offer indemnity plans A-E;

WHEREAS, by letter dated May 3, 1995, the IHC Board notified all member carriers of the minimum number of non-group persons required to be enrolled in order to obtain an exemption from assessment for reimbursable losses for calendar year 1995 and that requests for exemption were due on or before June 1, 1995. First Option was notified that its minimum number of non-group persons for calendar year 1995 was 382, based on its reported net earned premium for 1994;

WHEREAS, by letter dated May 31, 1995, First Option submitted a request to be exempt from the assessment for reimbursement of losses for calendar year 1995 in accordance with N.J.A.C. 11:20-9.2;

WHEREAS, the Board notified First Option, by letter dated June 30, 1995, that its request for a conditional exemption had been granted but that the IHC Act and regulations required First Option to offer plans A-E, in addition to the HMO plan, or, once First Option obtained federal qualification, the HMO plan alone;

WHEREAS, on October 9, 1995, First Option filed rates for the HMO plan with the Board, pursuant to N.J.A.C. 11:20-6.1 et seq. Following telephone conversations between the Board and First Option to attempt to correct deficiencies in its filing, by letter dated December 13, 1995, the Board notified First Option that its rate filing had been deemed complete but that First Option could not offer the HMO plan until it provided written notice to the Board of having received federal qualification;

WHEREAS, by letter dated December 29, 1995, the Board notified First Option that the Board had received information that First Option had been offering the HMO plan to individuals in New Jersey and reiterated the Board's position that First Option could not offer the HMO plan until it had provided notice to the Board that it had received federal qualification. The letter sought information to support First Option's oral assertions that it had received federal qualification;

WHEREAS, by letter dated January 4, 1996, First Option asserted that it had received from HCFA on December 19, 1995 oral notification that its federal qualification had been approved, but that written notification had been delayed by a furlough affecting all federal workers. On January 24, by facsimile, the Board received a copy of a letter from HCFA, dated December 15, 1995, approving first Option's request for federal qualification;

WHEREAS, First Option reported, in a market share and net paid loss report ("Exhibit K") dated March 6, 1996, net earned premium of \$105,076,487 and 5,752 non-group persons, consisting of 149 community rated persons and 5,603 Medicaid recipients, 191 of whom could be counted toward its minimum enrollment share, for a total of 340 non-group persons enrolled for calendar year 1995;

WHEREAS, by letter and invoice dated June 12, 1996, the Board assessed First Option for its share of 1995 reimbursable losses in the amount of \$179,299, applying a prorata exemption of 89.01%, and administrative expense share of \$13,312.

WHEREAS, First Option paid its assessment in full, and, by letter dated July 19, 1996, appealed the assessment, and requested a hearing on its appeal. First Option also filed simultaneously a Notice of Appeal with the Appellate Division of the Superior Court of New Jersey, which appeal is premature. First Option asserts as grounds for its appeal that:

- 1) First Option was precluded by the IHC Board from offering individual health benefits plans during most of 1995 and was not, therefore, a member of the IHC Program for that period;
- 2) the IHC Board's imposition of an assessment on First Option is a result of the Board's refusal to permit First Option to offer individual health benefits plans during most of 1995; and, consequently:
  - a) the Board's actions are arbitrary, capricious, unreasonable, and constitutionally discriminatory as applied to First Option; and,
  - b) the Board's actions deprive First Option of federally protected substantive due process and equal protection rights and are in violation of 42 U.S.C. section 1983;

WHEREAS, the Board has considered First Option's appeal and request for a hearing with regard to the assessment for reimbursable losses and administrative expenses of the IHC Program for calendar year 1995.

Based on the undisputed facts, the Board hereby concludes:

- 1) First Option's appeal does not raise issues of material fact and does not, therefore, constitute a contested case requiring a hearing, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.;
- 2) First Option is a "carrier," as defined at N.J.S.A. 17B:27A-2, subject to the IHC Act, and is also a "member" of the IHC Program, as that term is defined by the IHC Act and Program rules;
- 3) As a member of the IHC Program, First Option is liable, pursuant to N.J.S.A. 17B:27A-12, for an assessment to reimburse carriers issuing individual health benefits plans which sustain net paid losses, unless the member has received an exemption from assessment.
- 4) First Option applied for an exemption and, based on its non-group enrollment as of December 31, 1995, received a prorata exemption from losses for calendar year 1995 of 89.01%.
- 5) Section 3(b) of the IHC Act, N.J.S.A. 17B:27A-4, requires that a carrier offer the five standard health benefits plans, except that a federally qualified HMO may offer a federally qualified HMO plan in lieu of the five standard plans A-E;
- 6) First Option did not receive approval as a federally qualified HMO until December, 1995, after which time the Board permitted First Option to offer the individual HMO plan in lieu of plans A-E.

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, by action of the Board on the 12th day of August, 1996,

ORDERED that First Option's request for a hearing, and its appeal of the 1995 assessment are hereby denied. The Board will continue to hold in escrow the reimbursable loss assessment paid by First Option pending its appeal of the Board's decision to the Appellate Division of the New Jersey Superior Court.

  
Kevin O'Leary, Executive Director

9-4-96  
Date

NEW JERSEY  
**INDIVIDUAL HEALTH COVERAGE PROGRAM**

20 West State Street, 10th floor

CN 325

Trenton, NJ 08625

609-984-2425

fax 609-633-2030

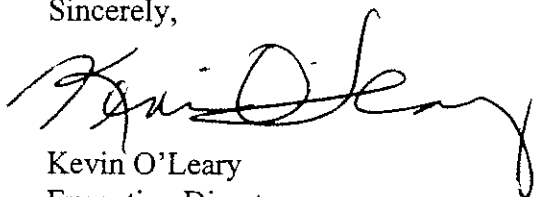
September 4, 1996

Ms. Elizabeth G. Litten  
DeCotis, Fitzpatrick and Gluck  
50 West State Street  
One State Street Square  
Trenton, NJ 08607-1375

Dear Ms. Litten:

Attached please find an order setting forth the Individual Health Coverage Program Board's decision on First Option's appeal of the 1995 assessment. Please feel free to call me if you have any questions.

Sincerely,



Kevin O'Leary  
Executive Director