INSURANCE
NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Individual Health Coverage Program
Assessments for Total Reimbursable Net Paid Losses for Two-Year Calculation Periods Beginning with 1997 and 1998

Adopted New Rule: N.JA.C. 11:20-2.17
Adopted Amendment: N.J.A.C. 11:20-2.7

Proposed: February 21, 2006 at 38 N.J.R 1159(a)

Adopted: October 17, 2007 by the New Jersey Individual Health Coverage Program Board, Ellen DeRosa, Executive Director.

Filed: November 22, 2006 as R. 2006 d. 445 with substantial technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17B:27A-2 et seq.

Effective Date: December 18, 2006.

Expiration Date: December 7, 2010.

Summary of Hearing Officer Recommendations and Agency Responses:

The New Jersey Individual Health Coverage (IHC) Program Board held a public hearing on March 14, 2006 to receive oral testimony with respect to proposed new rule N.J.A.C. 11:20-2.17. Ellen DeRosa, who at the time was the Deputy Executive Director of the IHC Board, served as hearing officer.

Victor Paguia, Chief Actuary of Celtic Insurance Company offered testimony.

The record of the public hearing may be reviewed by contacting Ellen DeRosa, Executive Director, IHC Board, PO Box 325, Trenton, NJ 08625-0325. The hearing officer made no recommendations to the IHC Board in response to the comments or as part of a review of the proposal.

Summary of Public Comments and Agency Responses:

Written comments were received from: New Jersey Association of Health Plans (which stated that its comments were on behalf of six carriers, but did not identify them); Health Net of the Northeast, Inc.; MEGA Life and Health Insurance Company; Riker Danzig Scherer Hyland Perretti, LLP on behalf of CIGNA Healthcare of New Jersey; Windels Marx Lane & Mittendorf, LLP on behalf of United States Life Insurance Company in the City of New York, The Guardian Life Insurance Company of America, Chubb Colonial Life Insurance Company of America, Jefferson-Pilot Life Insurance Company, Massachusetts Mutual Life Insurance Company, Time Insurance Company and John Alden Life Insurance Company, and Victor Paguia, Chief Actuary of Celtic Life insurance Company.

1. COMMENT: The commenter expressed his full support of the proposal inasmuch as it reaffirms the principle of full reimbursement of reimbursable losses. The commenter discussed the individual health coverage program's goals of access and portability and commented that the program has succeeded in meeting those goals. The commenter said he supports the adjusted net earned premium methodology set forth in the proposal. He said he believed it complies with the Supreme Court ruling that invalidated the two-tier approach used in the original methodology and that the proposed methodology is a fairer and more intuitive method of allocation. He said he believed the adjusted net earned premium methodology corrects the inherent inequity that existed in the old methodology.

RESPONSE: The Board thanks the commenter for his support of the proposal.

2. COMMENT: The commenter said he supports the use of 1997/1998 as the effective date for the proposed new rule. He asked, however, that the final rule address the timing

of the invoices or refunds on recalculated assessments for the 1997/1998 and 1999/2000 calculation periods.

RESPONSE: The Board thanks the commenter for his support of the use of 1997/1998 as the effective date for the new rule. Regarding the timing of invoices, for the 1997/1998 and 1999/2000 periods, the Board intends to mail loss assessment notices after N.J.A.C. 11:20-2.17 is operative. The immediate payment of any refunds due as a result of the calculation will be dependent upon receipt of the amounts due. In the event of challenges to the payment of a loss assessment, disputed assessment amounts will be deposited in a separate interest bearing account and will not be available for disbursement.

3. COMMENT: The commenter said he supports the use of 1997/1998 as the effective date for the proposed new rule. He asked, however, that the final rule address the timing for the payment of full reimbursement to those carriers entitled to loss reimbursement.

RESPONSE: The proposed rule contemplates full reimbursement of losses pursuant to N.J.S.A. 17B:27A-12a(1)(b). However, the payment of full reimbursement to carriers entitled to reimbursement for losses for the 1997/1998 and 1999/2000 periods will be dependent upon receipt of the amounts due. In the event of challenges to the payment of a loss assessment, disputed assessment amounts will be deposited in a separate interest bearing account and will not be available for disbursement. Given the possibility that the Board will not be in a position to make payments by a date certain, the Board does not agree with the commenter's suggestion to include timing in the adoption.

4. COMMENT: The commenter asked that the timing for 2001/2002 and 2003/2004 assessments be stated in the adopted regulation.

RESPONSE: The Board intends to mail loss assessment notices after N.J.A.C. 11:20-2.17 is operative. The Board believes that stating such timing in N.J.A.C. 11:20-2.17 itself is unnecessary and potentially confusing since the specific dates for assessments for subsequent years would not be likewise specified.

5. COMMENT: Two commenters noted that the Economic Impact statement indicated that "carriers not participating in the individual market will see reduced loss assessment liability, carriers in the individual market seeking exemptions will see increased loss assessment liability, and carriers that are fully exempt will not be affected by the proposed new rule." The commenters observed that the result, as demonstrated on the spreadsheets posted on the DOBI website, is that "carriers that write nearly all the coverage in the individual market and write most of the insured business in the group markets will be penalized and required to pay millions of dollars to carriers that (a) either choose not to write any coverage in the individual market; or (b) chose to serve it modestly and only for a short period of time." The commenters noted that the IHC Board has contended that the assessment mechanism is a means to encourage participation in the market, yet the rule, as proposed, does not further that goal. The commenters contend that "the proposed new rule will simply reward carriers for exiting the market," a result that is inconsistent with paying for losses so as to expand access to coverage. The commenters contend that "the loss assessment mechanism no longer serves any useful function, and in fact, today, serves perversely to funnel money to carriers no longer in New Jersey. This aspect of the law needs to be repealed as part of any market reform."

RESPONSE: The commenter correctly noted that the proposed loss assessment methodology may result in an increased assessment liability for certain carriers that write

the majority of individual coverage in New Jersey. The commenter also correctly noted that the Board has indicated that the assessment mechanism is a means to encourage participation in the individual market and make coverage available to the public. The Board believes the proposed loss assessment methodology will continue to serve as a mechanism to encourage participation in the market. Exempt carriers that seek to sell individual coverage will be entitled to a reduction in loss assessment liability, based on the number of non-group persons the carrier insures.

For example, if a carrier's target number of lives is 1000, and the carrier insures 600 non-group person lives, the carrier will have met 60 percent of its target. That carrier's loss assessment liability will be reduced by 60 percent. The greater the number of non-group person lives the carrier insures, the greater will be the percentage satisfaction of the target assigned to the carrier, resulting in a greater reduction in loss assessment liability for that carrier. In other words, the carrier's loss assessment liability is directly tied to insuring individuals in New Jersey. The Board believes that such methodology encourages active participation in the individual market.

The commenter's assertion that the proposed loss assessment methodology would reward carriers exiting the market fails to recognize that only carriers that have collected premium from individual health benefit plans during the two-year calculation period are eligible to seek reimbursement for losses. See N.J.A.C. 11:20-8.5. A carrier that sought an exemption in one two-year period may elect not to seek an exemption for a subsequent two-year period. All carriers issuing individual health benefits plans have an opportunity to seek reimbursement for losses and that includes those carriers the commenter indicated "write nearly all the coverage in the individual market."

The commenter's opinion concerning lack of usefulness of the assessment mechanism and desire that this aspect of the law be repealed are beyond the scope of the proposal.

6. COMMENT: The commenter objected to what the commenter referred to as the retrospective application of the proposed assessment methodology back to the 1997/1998 calculation period. The commenter indicated that such application creates a "severe injustice to carriers," such as the commenter, that actively participated in the individual market. The commenter stated that the increased retroactive assessment "is contrary to any reasonable expectation" a carrier would have had related to participation in the individual market during 1997 and 1998. The commenter recognized that the proposal Summary addressed the invalidation and expiration of the assessment methodology that was previously used for the 1997/1998 calculation period.

RESPONSE: The commenter correctly noted that the proposal Summary stated that the prior rule at N.J.A.C. 11:20-2.17 for assessment periods 1997/1998 and thereafter was invalidated by the Supreme Court of New Jersey. Given that the assessment rule that was used to calculate the 1997/1998 loss assessment was invalidated, the Board could not use the invalidated methodology in calculating the 1997/1998 loss assessment. Therefore, the Board needed to craft a loss assessment methodology, starting with the 1997/1998 calculation period, that would be consistent with the Court's ruling. Therefore, no change is being made in response to the comment.

7. COMMENT: The commenter stated that under the methodology used to calculate the original 1997/1998 assessment, its liability was $674,957. Using the proposed assessment methodology, its liability will be $1,769,051. The commenter further said

that during the two-year period, it enrolled over 75 percent of its non-group person target, and was able to do so because the plans it offered were priced based on anticipated costs of participation in the individual program. The commenter said that "the generally applied rule is that a regulation only applies prospectively," and cited two Appellate Division cases. Therefore, the commenter believes "it is manifestly unfair to apply it on a retrospective basis."

RESPONSE: The assessment rule that was used to calculate the 1997/1998 loss assessment was invalidated by the Supreme Court of New by the Supreme Court of New Jersey in In re New Jersey Individual Health Coverage Program's Readoption of N.J.A.C. 11:20-1 et seq., (179 N.J. 570 (2004) In re IHC Readoption). Given that the assessment rule that was used to calculate the 1997/1998 loss assessment was invalidated, the Board could not use the invalidated methodology in calculating the 1997/1998 loss assessment. Therefore, the Board needed to craft a loss assessment methodology, starting with the 1997/1998 calculation period, that would be consistent with the Court's ruling. Accordingly, no change is being made in response to the comment.

8. COMMENT: The commenter said the "Board's own procedures require a prospective application of the proposed regulation." The commenter noted that minimum enrollment share is set at the beginning of a calculation period and exemption requests must be filed prospectively. "Prospective application will more closely comport with the legislative intent to encourage carriers to actively participate in the market and be consistent with the Board's other regulations." The commenter noted that the invalidated regulation was in effect until December 31, 2005, when it expired.

RESPONSE: The commenter correctly notes the prospective nature of many of the Board's procedures. The application of the proposed rule to the 1997/1998 and 1999/2000 calculation periods is necessitated, however, by the Supreme Court of New Jersey's invalidation of the prior assessment methodology. In November 1999, the Board assessed member carriers for the 1997/1998 period using the methodology that the Supreme Court later determined was not valid. Given that ruling, the Board was required to develop a methodology to replace the invalidated methodology. Simply taking no action to revise the loss assessment for the 1997/1998 period was not an option because the necessary monies needed to be collected pursuant to a valid methodology. The fact that an invalid rule was effective until December 31, 2005 does not mean the Board cannot propose a new rule to be effective prior to December 31, 2005 or that the Board must somehow continue to use the invalidated rule until December 31, 2005. The fact that the rule did not expire until December 31, 2005 did not give the Board the authority to apply it, in light of the judicial invalidation of the rule. No change is being made in response to this comment.

9. COMMENT: One commenter suggested that N.J.A.C. 11:20-2.17(c) should be revised to add a new item to read: "unless the member has been approved for discontinuation from the individual health benefits market within eighteen months of the two-year calculation period." The commenter explained that the 18-month period is necessary because a carrier that has received approval to withdraw from the individual market is required to give at least 180 days notice of non-renewal to policyholder. It may take nearly 18 months for the member to non-renew all existing plans. While the carrier is not issuing any new plans, the carrier is nevertheless continuing individual coverage.

The commenter believes that the action of continuing that coverage inforce should be sufficient to allow a carrier to seek reimbursement for losses.

RESPONSE: The Board notes that the regulation addressing the calculation of net paid losses or gains, N.J.A.C. 11:20-8.5(a), addresses the commenter's concern with the period following a withdrawal during which the carrier continues inforce plans. N.J.A.C. 11:20-8.5(a) states that "a member that does not have any net earned premium for standard individual plans or basic and essential healthcare services plans during a two-year calculation period shall not be considered to be issuing coverage, and thus shall not complete Part E and is not eligible for reimbursement." The Board's practice has been, and continues to be, that carriers that have net earned premium from the standard individual plans or the basic and essential plans during the calculation period are considered to be issuing coverage. Thus, the action of continuing coverage inforce is sufficient to allow a carrier to seek reimbursement. No change is being made in response to this comment.

10. COMMENT: Referring to N.J.A.C. 11:20-2.17(c) as discussed in Comment 9 above, the commenter said "it is unreasonable to revise the rule applicable to 1997-2000 at this late date." If a carrier filed to withdraw in 1998, the commenter noted that the proposed rule affects the carrier's reimbursement status long after the filing.

RESPONSE: N.J.A.C. 11:20-2.17, as proposed, addresses the calculation of assessments needed to fund loss reimbursements. It does not address the determination of the amount of loss reimbursement sought by a carrier. No change is being made in response to this comment.

11. COMMENT: The commenter said that while the Board's proposal said it was intended to comply with the Supreme Court's decision in In re IHC Readoption, supra, 179 N.J. 570, the commenter believes the proposed rule does not and should not be adopted. The commenter stated that "The Individual Health Coverage Act ('IHC Act') does not grant to the IHC Board the authority to alter the formula set forth in the Act." The commenter said, "the proposed regulations create an assessment formula that conflicts with the IHC Act." The commenter reminded the Board that in In re IHC Readoption, supra, the Supreme Court stated, "' the Board cannot change the statutory formula for the sharing of losses under the guise of administrative interpretation, '" Id. at 584.

The commenter further stated that "The IHC Act provides a complete, consistent formula for the sharing of losses in accordance with total market share." The commenter stated that the only deviations permitted to the formula set forth at N.J.S.A. 17B:27A-12a(2) are additional assessments permitted or required in the case of a shortfall for an impaired or insolvent carrier, where the original carrier maintains liability for the deferred assessment. The commenter stated that the proposed rule created an artificial market share that increases a carrier's proportionate share of reimbursable net paid losses. The commenter stated that this "fictionalized market share is neither permitted under the statute nor equitable to carriers" and, therefore, should not be adopted.

RESPONSE: The Board disagrees with the commenter's characterization of adjusted net earned premium as an "artificial" or a "fictionalized" market share. The Board notes that the commenter failed to recognize N.J.S.A. 17B:27A-12d, which provides for an exemption from the assessment, which may be either full or pro rata, and N.J.S.A.

17B:27A-12a(1)(b), which requires full reimbursement of carriers issuing individual health benefits plans in New Jersey that sustain net paid losses. The Superior Court, Appellate Division, has determined that the statutory provision requires full reimbursement of losses. In re IHC Readoption, 353 N.J. Super. 494, 524 (2002), aff'd in part and rev'd in part on other grounds, 179 N.J. 570 (2004). The proposed rule calculates carrier market share appropriately, taking those two provisions into consideration. No change is being made in response to this comment.

12. COMMENT: The commenter stated that "The IHC Act does not require or ensure full reimbursement of net paid losses." The commenter said the Act "specifically provides that there will not be full reimbursement of net paid losses whenever a carrier writes in the individual market and receives an exemption from assessment." The commenter believes that N.J.A.C. 11:20-2.17 ignores a carrier's statutory pro-rata exemption. The commenter believes that the funds available for reimbursement are reduced due to the operation of the exemption and that the IHC Act does not provide full reimbursement of losses.

RESPONSE: The Board disagrees with the commenter. The Superior Court, Appellate Division considered the loss assessment methodology and wrote "the Board has an obligation to assess members in a manner that will produce revenues sufficient to ensure that all carriers entitled to reimbursement will receive the full amount of their reimbursable losses." 353 N.J. Super. at 524. The Supreme Court of New Jersey did not reverse that finding of the Appellate Division and expressly determined that the IHC Board has the authority to include a second-tier calculation in the loss assessment. 179 N.J. at 582. No change is being made in response to this comment.

13. COMMENT: The commenter stated, "the IHC Act and the Supreme Court decision prevent the IHC Program from apportioning losses in accordance with 'adjusted' market share. Any so-called 'shortfalls' in potentially eligible reimbursable losses are not intended to be reallocated to the non-exempt or partially-exempt carriers. By using an 'adjusted' market share to reallocate so called 'shortfalls', the current proposed regulation eviscerates a carrier's statutory right to a pro-rata exemption. As such, the proposed regulation is ultra-vires of the IHC Act and would be void ab-initio. Therefore, it should not be adopted."

RESPONSE: The Appellate Division considered the loss assessment methodology and wrote, "the Board has an obligation to assess members in a manner that will produce revenues sufficient to ensure that all carriers entitled to reimbursement will receive the full amount of their reimbursable losses." 353 N.J. Super. at 524. The Supreme Court of New Jersey agreed with and affirmed "Judge Stern's well-reasoned opinion striking down the second-tier assessment regulation based on its present methodology," 179 N.J. at 579 (emphasis added). The Board finds nothing in the Supreme Court decision that could be read as preventing the Board from proposing the loss assessment methodology set forth in proposed N.J.A.C. 11:20-2.17. No change is being made in response to this comment.

14. COMMENT : The commenter referred to the Social Impact and Economic Impact statements in the proposal and stated that such statements affirm that the proposal conflicts with the IHC Act. The commenter noted that the Social Impact statement states that "the proposed new rule distributes a greater share of losses among carriers that chose to enter the individual market and seek an exemption" and the Economic Impact

statement states that "consumers enrolled with carriers that have additional loss assessment liability may be adversely affected if carriers choose to raise rates as a result." The commenter stated that "there is no credible basis to adopt a rule that violates the express provisions of the IHC Act and the underlying legislative purpose."

RESPONSE: The substance of this comment was expressly considered by the Appellate Division.

> N.J.S.A. 17B:27A-12(a)(l)(b) specifically provides that if a carrier's 'claims paid for all health benefits plans during the two-year calculation period exceed 115% of the net earned premium and any net investment income thereon for the two-year calculation period, the amount of the excess shall be the net paid loss for the carrier that *shall be reimbursable under this act*.' (Emphasis added.) Furthermore, those reimbursements are to be funded by assessments on '[e]very member' of the IHCP 'unless the member has received an exemption from the board pursuant to [N.J.S.A. 17B:27A-12(d)] and *has written* a minimum number of non-group person life years as provided for in that subsection.' N.J.S.A. 17B:27A-12(a)(2). In fact, in order to make the necessary assessments, the Act grants the Board the 'specific authority' to 'assess members their proportionate share of program losses and administrative expenses in accordance with the provisions of [N.J.S.A. 17B:27A-12]' N.J.S.A. 17B:27A-11(a). Thus, the Board has an obligation to assess members in a manner that will produce revenues sufficient to ensure that all carriers entitled to reimbursement will receive the full amount of their reimbursable losses.
> …
> And because a full reimbursement is mandatory, the Board must reallocate the equivalent of the shortfall through the use of a second-tier assessment or something similar. [393 N.J. Super. at 524-25.]

No change is being made in response to this comment.

15. COMMENT: The commenter said that if the Board adopts any provisions of the proposed rule, such "provisions only should apply to years in which the IHC Program Board has not made any prior assessments."

RESPONSE: The Appellate Division wrote

> Since the appeal challenges only the 1998 re-adoption of, or amendments to, the regulations, we decline to apply our decision to the assessments made prior to that year or its 'two year calculation period.' We are told by appellants that actual assessments have not been made under the 1998 regulations. In any event, we do not address the impact of our decision on any carrier that has already paid a second-tier assessment under the invalidated regulation. Nor do we address how the Board may endeavor to collect any 'short-fall' which may flow from this decision. We leave initial consideration of the impact of our decision to the Board incident to its revision of the regulation. [535 N.J. Super. at 526-27.]

The Board notes that the Court left consideration of the impact of the decision to the Board. Since the loss assessment methodology set forth in the 1998 readoption with amendments was invalidated, and the Board has not billed final reconciliations for 1997/1998 and 1999/2000, the Board's proposal applies to the 1997/1998 and 1999/2000 calculation periods as well as future calculation periods.

16. COMMENT: The commenter stated that the "adjusted net earned premium" method "properly ensures that pro rata exempt members will pay their pro rata share of all assessments, but the proposal does not go far enough in correcting past assessments because it reaches back only to the 1997/1998 loss assessments. The 1993 – 1996 assessments were also calculated using the invalidated methodology and should likewise be recalculated under the new formula. Contrary to the Board's baseless argument in the pending appeal filed by U.S. Life, In re 1993 – 1996 Loss Assessments, Docket No. A-1453-04T2 (the 'U.S. Life Appeal'), there is no relevant difference between the pre- and post-1997 law with regard to the proper assessment methodology." The commenter noted that "these points are covered more fully in the briefs we submitted in the U.S. Life appeal."

RESPONSE: The Board appreciates the commenter's comment that the rule proposal "properly ensures that pro rata exempt members will pay their pro rata share of all

assessments." The Board disagrees with the commenter's statements that there is no relevant difference between the pre- and post-1997 law and that the 1993, 1994, 1995 and 1996 assessments need to be re-calculated using the "adjusted net earned premium" methodology. Please refer to the Response to Comment 15. The Board responded to the U.S. Life briefs. Copies of the briefs submitted by U.S. Life, as well as the IHC Board's briefs in response to U.S. Life's briefs, filed with the Appellate Division, are available for inspection at the Board's offices. The Board notes that oral argument on the matter was heard on September 20, 2006. The parties await a decision from the Appellate Division.

17. COMMENT: The commenter stated that "There would be no disruption or significant adverse financial impact on any carrier if the Board were to re-calculate the 1993 – 1996 assessments and redistribute the funds in accordance with the Supreme Court mandate." The commenter noted that "these points are covered more fully in the briefs we submitted in the U.S. Life appeal."

RESPONSE: The commenter mistakenly understands the Supreme Court decision as having application to periods prior to the 1997/1998 calculation period. The Appellate Division wrote, "Since the appeal challenges only the 1998 readoption of, or amendments to, the regulations, we decline to apply our decision to the assessments made prior to that year or 'its two year calculation period." 353 N.J. Super at 526 The Supreme Court of New Jersey agreed with and affirmed "Judge Stern's well-reasoned opinion striking down the second-tier assessment regulation based on its present methodology." 179 N.J. at 579 (emphasis added). The Board finds nothing in the Supreme Court decision or the decision of the Appellate Division that could be read as requiring the Board to apply the assessment methodology set forth in proposed N.J.A.C. 11:20-2.17 to periods prior to the

1997/1998 calculation period. The Board responded to the U.S. Life briefs. Copies of the briefs submitted by U. S. Life, as well as the IHC Board's briefs in response to U.S. Life's briefs, filed with the Appellate Division, are available for inspection at the Board's offices. No change is being made in response to this comment.

18. COMMENT: The commenter suggested that the regulation should clarify that the 20-day time period in which to file a challenge to an assessment pursuant to N.J.A.C. 11:20-2.15(a) is measured from receipt of the N.J.A.C. 11:20-2.17(d)3 invoice and not from the N.J.A.C. 11:20-2.17(d)1 preliminary notice of assessment.

RESPONSE: This comment, which seeks clarification of N.J.A.C. 11:20-2.15(a), is beyond the scope of the proposal.

19. COMMENT: The commenter suggested that N.J.A.C. 11:20-2.17(d)2 should be revised to state that the Board will make "adjustments to the anticipated loss assessment liability in the preliminary written notice prior to issuing the loss assessment invoice."

RESPONSE: The Board disagrees with the suggested change since the adjustments discussed in N.J.A.C. 11:20-2.17(d)2 are more expansive than adjustments to loss assessment liability. As stated in the second sentence of N.J.A.C. 11:20-2.17(d)2, adjustments may be made to market share, net paid losses and in consideration of deferrals. No change is being made in response to this comment.

20. COMMENT: The commenter asked for clarification of N.J.A.C. 11:20-2.17(f)2 which states that the member is responsible to identify the amount in dispute and that the "Board shall not be liable for any misidentification by the member of the disputed amount that results in an insufficient amount being held by the Board." The commenter asked what it means for the Board not to be liable. The commenter stated it would be

patently improper if the Board intends that it would be liable only to refund the segregated amount plus interest. The commenter asked if the intention is that the Board would not be liable for interest on any amount in excess of that held in the segregated account.

RESPONSE: N.J.A.C. 11:20-2.17(f)2 states that "The member shall identify the amount in dispute, subject to verification by the Board." The member that challenges the loss assessment is responsible to accurately identify the amount in dispute. The Board will verify the amount using the best information available to the Board. The identified amount will be placed in a separate interest bearing account. Upon making a determination, as agreed to by the member and the Board, that the amount being held in a separate interest bearing account is not the correct amount, the Board shall be liable for the correct amount, and interest accruing on the correct amount as of the time the correct amount is determined. No change is being made in response to this comment.

21. COMMENT: The commenter said N.J.A.C. 11:20-2.17(g)1 and 2 imply that a member has two options pending the Commissioner's final disposition of a deferral request. The member may pay, in which case the money would be held in a segregated interest bearing account, or the member may withhold payment. The commenter suggested revised text that the commenter believes would clarify the choice. The alternate text would read as follows: "When a member files a proper request for deferral within 15 days of the date of the assessment invoice pursuant to (e) above, the member has two options pending final disposition by the Commissioner of the deferral request: the member can either withhold payment or pay and have the assessment held in a separate interest-bearing account."

RESPONSE: The commenter is correct in that the member seeking a deferral has two choices. The Board believes those choices are clearly set forth in N.J.A.C. 11:20-2.17(g) 1 and 2, where the option to pay is included in paragraph (g)1 and the option to withhold payment is set forth in paragraph (g)2. No change is being made in response to this comment.

22. COMMENT: The commenter seeks clarification that a member that has paid an assessment that is deposited into a segregated account either due to a deferral request or due to a dispute of the amount of the loss assessment will not be considered as having withheld payment and thus will not be charged interest from the date of the invoice in the event the deferral request or loss assessment challenge is denied.

RESPONSE: N.J.S.A. 17B:27A-10f(4) and N.J.A.C. 11:20-2.17(f)1 require the payment of an interest penalty on any loss assessment or portion of a loss assessment not paid within 30 days of the date of the invoice for the loss assessment. In the instance of a member's payment being deposited into a segregated interest bearing account, the only way a deposit can be made if there has been a payment. An interest penalty is only required when payment has not been made in a timely fashion. Therefore, no interest penalty will be charged if a member's payment that is to be deposited into a segregated interest-bearing account is made on time.

23. COMMENT: The commenter noted that the last sentence of N.J.A.C. 11:20-2.17(h)2 "seems to allow the Board to keep the interest earned in the 30-day period immediately preceding the refund" in situations where the member prevails and the Board must return the assessment plus the interest earned while the money was being held.

RESPONSE: The Board thanks the commenter for noting this point. The provision, as proposed, does not address the Board's actual practice. The last sentence in paragraph (h)2 has been revised on adoption to state: "The Board shall calculate the amount to be returned to the member, which amount shall be paid within 30 days and shall include the payment of interest up until the date of the expected payment." The Board believes this is a substantive change not requiring reproposal.

24. COMMENT: The commenter said that if the rule proposal is adopted, N.J.A.C. 11:20-2.7(c)2ii should be amended to refer to N.J.A.C. 11:20-2.17(h) instead of N.J.A.C. 11:20-2.17(g).

RESPONSE: The commenter is correct. The Board thanks the commenter for noting this necessary amendment. N.J.A.C. 11:20-2.7(c)2ii is being amended on adoption. The amendment is a technical change being made upon adoption.

Federal Standards Statement

There are no Federal laws that apply to this rule.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *__thus__*; **deletions from proposal indicated in brackets with asterisks*[thus]*)**:

11:20-2.17 Assessments for total reimbursable net paid losses for two-year calculation periods beginning with 1997 and 1998

(a) – (g) (No change from proposal.)

(h) The Executive Director shall deposit all monies received from the Treasury pursuant to this section in an interest bearing account maintained by the IHC Program Board for assessments. The Board shall approve the disbursement of all funds then in the

account, and any payments to those members determined by the IHC Program Board as having reimbursable net paid losses for the two-year calculation period, when the net paid loss audit is complete. Disbursement shall be in proportion to the member's share of the total reimbursable net paid losses for that two-year calculation period, until such available funds have been paid out, or a member's reimbursable net paid losses for that two-year calculation period have been reimbursed, whichever comes first.

1. (No change from proposal.)

2. Upon receipt of notice that amounts of loss assessment disputed or subject to deferral wherein the dispute is resolved in favor of the disputing member, or a deferral is granted, the Executive Director shall calculate the proportionate amount of interest, if any, paid by the member for late payment of the amount, and the proportionate amount of the interest earned on that amount while the amount was held by the Board and provide notice to the member of the principal amount and interest amount. ***[The calculated amount shall be returned to the member with interest within 30 days from the date the interest has been calculated.]*** ***The Board shall calculate the amount to be returned to the member, which amount shall be paid within 30 days and shall include the payment of interest up until the date of the expected payment.***

11:20-2.7 Financial administration

(a) - (b) (No change.)

(c) Bank checking accounts shall be established separately in the name of the IHC Program and shall be approved by the Board.

1. (No change.)

2. All cash and other assets shall be invested in accordance with the investment policy developed and approved by the Board as permitted by applicable law.

i. (No change)

ii. All investment income earned on loss assessment funds shall be credited to the IHC Program and shall be applied to reduce future loss assessments of members of the IHC Program, except as provided in N.J.A.C. 11:20-2.17***[(g)]*** *__**(h)***__ and except that interest earned on loss assessment funds due to a carrier shall be paid to that carrier to the extent that the investment income is earned during a subsequent loss assessment cycle in which the carrier is no longer seeking reimbursement.

(d) – (f) (No change.)