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

Proposed New Rule N.JA.C. 11:20-2.17

Authorized By: New Jersey Individual Health Coverage Program Board, Wardell Sanders, Executive Director.

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

Calendar Reference: See Summary below for an explanation of the exception to the rulemaking calendar requirements.

Proposal Number: PRN 2005-55

Interested persons may testify with respect to the proposed new rule at a **public hearing** to be held on Tuesday, March 14, 2006 at 9:00 A.M. at the New Jersey Department of Banking and Insurance, Conference Room 218, 20 West State Street, Trenton, New Jersey.

Submit written comments by April 22, 2006 to:

Wardell Sanders
Executive Director
New Jersey Individual Health Coverage Program
20 West State Street, 11th Floor
PO Box 325
Trenton, NJ 08625-0325
Fax: (609)633-2030
Email:wsanders@dobi.state.nj.us

The agency proposal follows:

Summary

The New Jersey Individual Health Coverage (IHC) Program Board of Directors (IHC Board) will hold a public hearing on the proposed new rule at the time and place set forth above. Written comments will be accepted until the date set forth above for receiving written comments.

The IHC Program Board was charged by the Legislature with implementing and regulating the reformed individual health benefits coverage market pursuant to the Individual Health Insurance Reform Act, P.L. 1992, c. 161 as amended, and codified at N.J.S.A. 17B:27A-2 et seq. (the "IHC Act" or the "Act"). A key provision of the Act is a loss assessment and reimbursement mechanism. The Legislature designed the loss reimbursement mechanism to encourage carrier participation in the reformed individual health coverage market. Many states have some mechanism to compensate carriers that insure high risk individual lives, whether through a state subsidized high risk pool or carrier subsidized risk adjustment mechanism. Pursuant to the IHC Act, all carriers selling some form of health coverage in New Jersey are required either to offer individual coverage and assume their fair share of the market or to pay a loss assessment to the IHC Program in order to fund the loss assessment. The Program assesses carriers for reimbursable program losses on the basis of their net earned premium from health benefits plans in force in New Jersey, regardless of whether those plans are large group, small group, or individual plans. The loss assessments are used to reimburse carriers for certain losses in the individual market. (Carriers are also assessed to fund the administrative expenses of the IHC Program). Any carrier that applies to be exempt and that meets a non-group enrollment target established by the Board for a specific two-year calculation period is exempt from its share of the loss assessment for that period. A carrier that meets a pro rata portion of its non-group enrollment target qualifies for a pro rata exemption.

The Board proposes a new rule to govern the calculation and distribution of loss assessments for the two-year calculation periods beginning with 1997/1998. A provision of the Board's prior rule at N.J.A.C. 11:20-2.17, which was reproposed in 1998 and which covers loss assessment periods for 1997/1998 and thereafter, was invalidated 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). Although the Court invalidated a portion of the Board's loss assessment rule, it did not mandate a specific assessment methodology. Taking this into consideration, and because of the litigation surrounding appeals of loss assessments and the loss assessment rule, the Board decided to receive informal public input as permitted under N.J.A.C. 1:30-5.3(a). Specifically, the Board invited interested parties to provide comments regarding both the methodology for the loss assessment and the calculation periods to which the new methodology should apply. Six parties presented comments to the Board at its December 14, 2004 meeting.

The Board considered the Supreme Court's decision, the statutory provision providing for loss assessments set forth at N.J.S.A. 17B:27A-12, and the input that it received and developed the proposed new rule set forth at N.J.A.C. 11:20-2.17, which applies to loss assessments beginning with the 1997/1998 two-year calculation period. This method for apportioning losses provides for full reimbursement of reimbursable losses, while also taking into account the effect of exemptions earned pursuant to N.J.S.A. 17B:27A-12d. It is also the Board's intent that the new method comply with the decisions of the New Jersey Superior Court, Appellate Division, and the New Jersey Supreme Court. See 353 N.J.Super. 494 (App Div. 2002) and 179 N.J. 570 (2004).

The methodology that the IHC Board proposes to use in determining the loss assessment can be calculated in two ways, both of which result in the same loss assessment liability for each member. First, one can calculate the loss assessment in separate steps, or "tiers." The first "tier" of the loss assessment would consist of an apportionment of the loss assessment, that is, the total amount to be reimbursed, among IHC Program members according to market share based on reported net earned premium. Members qualifying for full or pro rata exemptions from the loss assessment would be relieved of all or some of their liability, calculated according to the percentage of satisfaction of their non-group enrollment target. Amounts uncollected as a result of those exemptions would then be apportioned among both the partially exempt and non-exempt members in an additional calculation (that is a second "tier"), according to both market share and the extent of a member's exemption. Carriers with full exemptions have no loss assessment liability. Amounts relieved through the exemption in the second tier are then assessed in a third tier. Additional tiers are included until the amount relieved is less than one cent.

This method can also be calculated in a simpler, one-step process. That calculation would also calculate loss assessments using members' market shares. It would then adjust each carrier's net earned premium, as reported on the carrier's Exhibit K, to account for full and pro rata exemptions. A fully-exempt carrier's adjusted net earned premium would be reduced to $0. The net earned premium of a carrier with a pro rata exemption would be reduced by the percentage of that carrier's non-group enrollment target that it satisfied. For instance, if it satisfied 40 percent of its non-group enrollment target, its adjusted net earned premium would be calculated by reducing its Exhibit K net earned premium by 40 percent. Finally, the net earned premium of a carrier that did not qualify for an exemption would be the same as the net earned premium set forth in Part C on that member's Exhibit K. A carrier's loss assessment share would then be determined by multiplying the member's market share, based on the member's adjusted net earned premium, by the total reimbursable losses. The methodology is set forth in detail at proposed N.J.A.C. 11:20-2.17. Figure 1 below illustrates a hypothetical loss assessment that follows this one-step process assessing for $100.00 in reimbursable losses.

Figure 1:

Carrier Name	**Reported Net Earned Premium on Exhibit K (NEP)**	**Market Share**	**Exempt %**	**Net Earned Premium Adjusted by Exemption %**	**Market Share % Using Adjusted NEP**	**Assessment Amount**
	[Exhibit K Part C]	[Carrier NEP / Market NEP]		[NEP x (100% - Exempt %)]	[Carrier Adjusted NEP / Market Adjusted NEP]	[Market Share % Using Adjusted NEP x Market Losses]
A	$300.00	30%	0%	$300.00	41.67%	$41.67
B	$200.00	20%	0%	$200.00	27.78%	$27.78
C	$200.00	20%	100%	$0.00	0.00%	$0.00
D	$200.00	20%	40%	$120.00	16.67%	$16.67
E	$100.00	10%	0%	$100.00	13.89%	$13.89
Total	**$1,000.00**	**100%**		**$720.00**	**100.00%**	**$100.00**

The methodology set forth in proposed N.J.A.C. 11:20-2.17 was identified and suggested by one of the parties in the appeal of the Board's 1998 readoption with amendments, and by a number of others who provided comments to the Board. In the process of seeking input from interested parties, no party identified any other methodology for allocating losses that would provide for the full reimbursement of losses. Nor did the Board itself identify any other methodology which would provide for full reimbursement.

The proposed new rule also sets forth the requirements for payment of the assessment, good faith errors, deferrals and how funds are treated in the event of dispute. The new rule notes that the IHC Board shall not be liable for a carrier's misidentification of the disputed portion of an assessment invoice. Thus, the Board would not be liable for interest payments in the event a carrier incorrectly identified the amount of assessment in dispute. In addition, any refund of an incorrectly identified amount would be made as such time as the Board believed was appropriate, but no later than the final reconciliation of the calculation period.

As the Board has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rule will affect all carriers that are liable for a share of the loss assessment. The proposed rule distributes a greater share of the losses among carriers that chose to enter the individual market and seek an exemption as compared to those carriers' liability pursuant to the assessment methodology set forth in N.J.A.C. 11:20-2.17, which expired on December 31, 2005. .

The Board believes that for some carriers an important factor in entering the market was to seek to avoid the additional loss assessment liability of the second-tier assessment set forth in the expired regulation. The Board believes that the proposed new rule may provide a lesser incentive for some carriers to enter or stay in the market and seek an exemption as compared to the expired rule.

A reduction in the number of carriers participating in the market will have a negative impact on consumers. If carriers choose to withdraw from the individual market, consumers will have fewer carriers from which to choose when purchasing coverage.

Economic Impact

The proposed new rule will have a significant economic impact on virtually all the IHC Program member carriers. N.J.S.A. 17B:27A-2 et seq. sets forth criteria for a carrier being considered an IHC Program member carrier. As the IHC Program membership include every carrier that has net earned health benefit premium in New Jersey during a two-year calculation period, the rule will impact not just those carriers that elect to market individual health benefit plans to residents of New Jersey, but also those carriers with health premium that elect not to market individual coverage. Currently, there are approximately 90 member carriers, of which approximately 12 carriers are currently offering individual coverage.

The Board has created draft loss assessment spreadsheets, using the proposed methodology in N.J.A.C. 11:20-2.17, based on existing data for the 1997/1998, 1999/2000, 2001/2002, and 2003/2004 two-year loss assessment periods. Although these spreadsheets provide a fairly precise measure of the economic impact of the proposed rule on IHC member carriers, they are not final because audits of losses or other changes may affect each carrier's final liability. These draft spreadsheets are on the Department of Banking and Insurance website at: http://www.nj.gov/dobi/reform.htm.

Generally, 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.

Consumers enrolled with carriers that have additional loss assessment liability may be adversely affected if carriers choose to raise rates as a result of the additional loss assessment liability. The law governing individual health benefits plans does not contain a "no pass through" provision as is found in other laws. See, for example, N.J.S.A. 17B:27A-44 (administrative assessments for Small Employer Health Benefits Program may not be charged to policyholders).

Federal Standards Statement

There are no other Federal laws that apply to this rule.

Jobs Impact

The IHC Board does not anticipate the creation or loss of any jobs as a result of the new rule.

Agriculture Industry Impact

The new rule will have no impact on the agriculture industry, other than the general impact felt by all industry groups and the general public.

Regulatory Flexibility Analysis

The IHC Board believes that all carriers subject to these rules have in excess of 100 full-time employees or are located outside of the State of New Jersey and, thus, are not "small businesses," as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required. Nevertheless, to the extent that there may be carriers that meet the definition of a "small business," the following analysis would apply.

The proposed new rule may impose a greater impact in that small businesses may be required to devote proportionally more staff and financial resources to achieve compliance. The requirements are discussed in the Summary above, and costs in the Economic Impact above. The IHC Board has found, however, that any additional costs do not pose an undue burden in that the requirements herein are readily within a carrier's ability to comply. No professional services would have to be employed in order to comply with this rule.

The Individual Health Insurance Reform Act does not vary compliance requirements based on business size. To ensure consistency and uniformity in the market, the rule now proposed for adoption provides no differentiation in compliance requirements based on business size.

Smart Growth Impact

The new rule has no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rule follows:

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

(a) The Board shall assess members for reimbursable net paid losses, pursuant to N.J.S.A. 17B:27A-11a and 12, according to the procedures set forth in this Plan of Operation.

(b) The IHC Program Board shall determine the preliminary total reimbursable net paid losses, if any, for each preceding two-year calculation period beginning in 1997/1998 based upon the information submitted by members in Part E of the Exhibit K Assessment Report, completed pursuant to N.J.A.C. 11:20-8 (formerly known as the Carrier Net Paid Gain (Loss) Report and set forth in a superseded version of Exhibit K to N.J.A.C. 11:20). The Board shall determine the preliminary total reimbursable net paid losses, if any, approximately 60 days after all IHC members have provided complete Exhibit K Assessment Report filings.

(c) The total reimbursable net paid losses for the preceding two-year calculation period shall be the aggregate of the reimbursable net paid losses for all members issuing individual health benefits plans, reporting net paid losses for that two-year calculation period, subject to any independent audit performed pursuant to N.J.A.C. 11:20-8.8. The loss assessment shall provide for full reimbursement of reimbursable losses, notwithstanding the granting of exemptions pursuant to N.J.A.C. 11:20-9. No member shall be entitled to reimbursement of net paid losses if the member has not issued individual health benefit plans during the two-year calculation period or if the member has applied for a conditional exemption for the two-year calculation period.

(d) Every member shall be liable for its proportional share of the total reimbursable net paid losses for the preceding two-year calculation period unless the Board has granted the member an exemption from assessments for the preceding two-year calculation period in accordance with N.J.A.C. 11:20-9.

1. The Board shall provide a preliminary written notice to members of the total of all members' reimbursable net paid losses for the preceding two-

year calculation period and the amount of each member's anticipated loss assessment liability. This written notice shall be sent approximately 60 days after every IHC member has provided a complete Exhibit K Assessment Report as required by N.J.A.C. 11:20-8.

2. As necessary, the Board shall make adjustments to the preliminary notice of the loss assessment prior to issuing the loss-assessment invoice. Those adjustments may include, among other things, adjustments in market share, adjustments in net paid losses, and adjustments for deferrals granted pursuant to N.J.S.A. 17B:27A-12d(3) and N.J.A.C. 11:20-11.

3. The Board shall notify each member by invoice of its share of the loss assessment for the two-year calculation period. This invoice shall be sent approximately 60 days after the Board has completed its review of the Exhibit K Assessment Report filings for accuracy, including, but not limited to, consistency with other public filings provided to the State by the members.

4. The Board may issue interim assessments and reconciliations after the issuance of the loss-assessment invoice and before the issuance of the final reconciliation set forth in (d) 5 below.

5. The Board shall notify each member of the final reconciliation of the loss assessment for the calculation period by issuing an invoice setting forth the dollar amount payable by the member or credit due to the member. The final reconciliation shall be issued approximately 90 days after all outstanding matters have been resolved, including but not limited to the completion of the independent audit of each member seeking reimbursement of losses, and the issuance of a final judicial determination of

every appeal, including, but not limited to, those relating to the loss assessment for the two-year calculation period, exemptions from the loss assessment, independent net paid loss audits, and the payment of reimbursable losses. Any monies determined to be owed to or by the Board as a result of the final reconciliation shall be calculated without provision for interest.

(e) The Board shall determine each member's loss assessment share by multiplying the member's market share, as determined pursuant to (e)1 below, by the total reimbursable net paid loss amount for the two-year calculation period.

1. The Board shall determine each member's market share by dividing the member's adjusted net earned premium, as determined pursuant to (e)1i, (e)1ii, or (e)1iii below, for the two-year calculation period by the aggregate adjusted net earned premium of all members for the two-year calculation period.

i. For a member that has been granted a full exemption, the member's adjusted net earned premium shall be $0.

ii. For a member that has been granted a pro rata exemption, the member's adjusted net earned premium shall be calculated as the reported net earned premium in Part C of its Exhibit K Assessment Report multiplied by (100 percent minus the percentage of the non-group enrollment target the member satisfied).

iii. For a member that has not been granted a full or pro rata exemption, the member's adjusted net earned premium shall be the same as the net earned premium that the member has reported in Part C of its Exhibit K Assessment Report.

2. Assessment amounts for members granted a deferral by the Commissioner, or subject to dispute by a member after the dispute is resolved in favor of the disputing member, shall be apportioned to the remaining members based on their respective market shares.

i. A member granted a deferral shall remain liable to the IHC Program for the amount deferred and for any additional amounts required by N.J.A.C. 11:20-11.6.

ii. Upon eventual payment of the deferred amount to the IHC Program, the members to whom the deferred amounts were reapportioned will be credited for those amounts previously apportioned to them.

3. A member shall not be liable for a loss assessment that is less than the minimum assessment set forth in N.J.A.C. 11:20-2.18.

(f) Loss assessment amounts are due and payable upon a member's receipt of the invoice for the loss assessment. Payment shall be either by bank draft made payable to the Treasurer--State of New Jersey, IHC Program, and sent to the address set forth in N.J.A.C. 11:20-2.1(h), or by wire transfer consistent with instructions in the invoice. The funds are deposited into the Board's account in Treasury.

1. Pursuant to N.J.S.A. 17B:27A-10f(4), members shall be subject to 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 assessment, unless the member has been granted a deferral by the Commissioner of the amount not timely paid.

i. The interest rate shall be 1.5 percent of the loss assessment amount not timely paid per month, accruing from the date of the invoice for the assessment.

ii. Payment of a loss assessment, or portion of an assessment, for which an interest penalty has accrued, shall include the interest penalty amount accrued as of the date of payment; otherwise, payment shall not be considered to be in full, and the interest penalty shall continue to accrue on the unpaid amount.

iii. Good faith errors that members report to the Board within 60 days of their occurrence shall not be subject to the interest penalty set forth in (f) 1i above. If a member makes an error relating to or involving a loss assessment or any other error resulting in non-payment or underpayment of funds, the member shall make payment of additional amounts due within five days of identifying the good faith error.

2. A member that disputes whether it is subject to a loss assessment, or that disputes the amount of the loss assessment for which it has been determined liable by the IHC Program Board, shall be liable for and make payment of the full amount shown on the assessment invoice, including any interest penalty accruing thereon. The member shall identify the amount in dispute, subject to verification by the Board. 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 disputed amount of the assessment shall be held in a segregated interest-bearing account until there has been a final adjudication of the dispute, or until such time as the Board determines that the member's appeal should be granted.

(g) A member may request that the Commissioner grant a deferral of its obligation to pay a loss assessment in accordance with N.J.A.C. 11:20-11.

1. If a member files a proper request for deferral within 15 days of the date of the invoice, that member may make payment of the amount of the assessment invoice pursuant to (e) above, to be held in a segregated interest-bearing account in accordance with the procedures set forth in (h) below, pending final disposition by the Commissioner of the deferral request.

2. If the member withholds payment, as permitted pursuant to (g)1 above, and the Commissioner denies the request for deferral, the member shall be subject to payment of the interest penalty set forth in (f)1 above, accruing from the date of the invoice for the assessment.

(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. Amounts of loss assessment in dispute or subject to a deferral request, including any interest penalty paid by a member pursuant thereto, shall not be disbursed to members having reimbursable net paid losses for the applicable two-year calculation

period, until such time as the dispute has been resolved against the disputing member, or the deferral denied, except that any portion of a loss assessment not in dispute or subject to a deferral request, or portions no longer disputed or subject to a deferral request, may be disbursed to members having reimbursable net paid losses for the applicable two-year calculation period year in accordance with (h) above.

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.