

NEW JERSEY  
**SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD**

Trenton, NJ 08625

IN THE MATTER OF NATIONAL  
HEALTH INSURANCE COMPANY'S  
APPEAL OF THE NEW JERSEY SMALL  
EMPLOYER HEALTH BENEFITS  
PROGRAM BOARD'S DENIAL OF  
NON-MEMBER STATUS FOR  
CALENDAR YEAR 1994

**FINAL ADMINISTRATIVE ORDER No. 96-01**

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

WHEREAS, pursuant to N.J.A.C. 11:21-8.1, carriers may be certified as non-members of the SEH Program by filing an appropriate certification with the SEH 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 SEH Program on February 27, 1995, which notice was received by the SEH Board on March 3, 1995; and asserted non-member status on the basis of N.J.S.A. 17B:27A-25(d). In response to NHIC's request, the SEH Program Executive Director, on May 25, 1995, advised NHIC that a request for non-member status on the basis of N.J.S.A. 17B:27A-25(d) had to comply with the certification described in the SEH Program rules, N.J.A.C. 11:21-8.3(b). On June 1, 1995 Eva Green of NHIC responded that NHIC "has not issued any group policies in New Jersey." In a letter dated August 10, 1995, from Edward J. Dauber, counsel for NHIC, Mr. Dauber asserted that NHIC satisfied each of the requirements of on the basis of N.J.A.C. 11:21-8.3(b), "[a]lthough NHIC has not issued any group policies in New Jersey." The letter conceded, however, that New Jersey small employers received coverage through a policy issued by NHIC to the United Service Association for Health Care;

WHEREAS, the SEH Board considered and denied NHIC's request on October 18, 1995 on the grounds that NHIC's non-member certification failed to satisfy the criteria set forth in N.J.A.C. 11:21-8.3. The Board's decision was conveyed to NHIC by

letter to Eva A. Green dated October 26, 1995, incorporated herein by reference and attached hereto.

WHEREAS, NHIC appealed the Board's decision by letter dated November 13, 1995 on the grounds that:

- 1) the Board erred in denying non-member certification on the grounds that NHIC had failed to satisfy the requirements of both N.J.A.C. 11:21-8.3(b)(1) and N.J.A.C. 11:21-8.3(b)(2). NHIC asserted that these provisions were separate grounds for non-member certification and should not both have to be satisfied for a carrier to be a non-member of the SEH Program; and
- 2) the Board erred in denying non-member certification on the grounds that the group health insurance policy issued to the United Service Association for Health Care was not issued in New Jersey. NHIC asserted that the requirement in N.J.A.C. 11:21-8.3(b)(2)(i), that the carrier applying for non-member status have "issued only one health insurance policy in New Jersey" should not be interpreted to mean that the carrier had to have actually issued one group policy in New Jersey "but instead is aimed at a limit of one such policy being used in the State." NHIC further asserted that the place where the policy was written should not have been relevant to the analysis of a carrier's application for non-member status.

WHEREAS, the SEH 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.

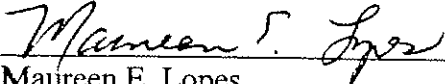
Based on the undisputed facts, the Board's legal conclusions are the following:

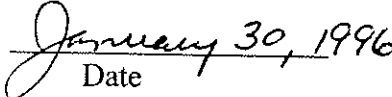
- 1) the Board finds that a contested case hearing is not required because NHIC's letter appealing the Board's decision did not raise an issue of material fact with regard to the Board's decision that would have required an opportunity for a hearing under N.J.A.C. 11:21-8.6(c) or the Administrative Procedure Act;
- 2) the Board finds that the criteria listed in N.J.A.C. 11:21-8.3(b)(1) and N.J.A.C. 11:21-8.3(b)(2) do not both have to be satisfied for a carrier to obtain non-member status. However, NHIC's assertion that such a reading of the rule was the basis for its initial decision is incorrect. The Board's letter conveying its initial decision to deny NHIC's request for non-member status stated that neither of these criteria, nor N.J.A.C. 11:21-8.3(b)(3), had been satisfied by NHIC's request for non-member status. The Board did not assert that more than one provision had to be satisfied by NHIC; and
- 3) the Board finds unpersuasive NHIC's assertion that N.J.A.C. 11:21-8.3(b)(2) does not require that the carrier seeking non-member status have issued one group health insurance policy in New Jersey, since this runs contrary to the plain wording of the Board's rule and the intent of the law.

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

IT IS on this 29th day of January, 1996,

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. NHIC is hereby directed to file with the Board a market share report, which is Exhibit CC of the Appendix to the SEH Program Rules, N.J.A.C. 11:21-1.1 et seq., on or before February 21, 1996 so that NHIC may be included in the 1994 assessment of member carriers. As a member of the SEH Program, NHIC is subject to all other provisions and requirements set forth in the law and rules, including, but not limited to, continuation of non-standard health benefits plans, offering of standard plans, minimum loss ratios, filing of rates, enrollment reports, etc.

  
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Maureen E. Lopes  
Chair, SEH Board

  
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Date