Original Final

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE AND SECURITIES REGULATION
HEARING OFFICER
810 FIRST STREET, N.E., SEVENTH FLOOR
WASHINGTON, D.C. 20002

THE DEPARTMENT OF INSURANCE AND SECURITIES REGULATION (PETITIONER)	)	
v.	)	**SC #HMO-99-01**
THE GEORGE WASHINGTON UNIVERSITY HEALTH PLAN (RESPONDENT)	)	

DECISION AND ORDER

Jurisdiction

District of Columbia Department of Insurance and Securities Regulation v. George Washington University Health Plan, SC #HMO99-01 came before Leslie E. Johnson, Hearing Officer, Department of Insurance and Securities Regulation (DISR) on April 20, 1999, April 27, 1999 and April 28, 1999, pursuant to the Health Maintenance Organization Act of 1997, D.C. Code, Title 35, Chapter 45; the Health Insurance Portability and Accountability Federal Law Conformity and No Fault Motor Vehicle Act of 1998 (D.C. HIPAA) and the District of Columbia Administrative Procedures Act, D.C. Code, Section 1-1509 (1992 Repl.).

Former Acting Commissioner, Reginald H. Berry by Order HIPAA-99-01, dated February 2, 1999 delegated his authority to hear SC #HMO-99-01 and issue a final decision to Leslie E. Johnson, Hearing Officer. Current Acting Commissioner Lawrence H. Mirel, by Delegation Order – HIPAA-99-01 also delegated his authority to hear SC HMO-99-01 and issue a final decision to Leslie E. Johnson, Hearing Officer.

Procedural History

On September 4, 1998, the George Washington University Health Plan (GWUHP) sent a notice of its intention not to renew to Tag Team Communication, Inc.'s (Tag Team) group health care contract. On September 8, 1998, GWUHP sent notices to Tag Team and its members/subscribers indicating that the reason for non-renewal was Tag Team's "consistent delay in making premium payments".

Tag Team filed their initial complaint with the United States Department of Labor. On September 24, 1998 this complaint was sent via facsimile to the Department of Insurance and Securities Regulation (DISR). On September 25, 1998, the DISR forwarded correspondence to the George Washington Universtiy Health Plan's (GWUHP's) Chief Executive Officer, directing him to show cause why GWUHP should not be held in violation of the renewability provisions of the Health Insurance Portability and Accountability Federal Law Conformity and No-Fault Motor Vehicle Act of 1998 (D.C. HIPAA). In its October 2, 1998 Response to the DISR, GWUHP denied any violation of HIPAA. On October 7, 1998 DISR held a meeting with Tag Team

Communications, Inc. (Tag Team) and George Washington University Health Plan (GWUHP). Ms. Rickford, HMO Attorney, DISR, Former Acting Commissioner Berry and representatives of GWUHP were in attendance. The purpose of the meeting was to review the decision by GWUHP to non-renew the health care contract and to gather information concerning the instant matter. On October 26, 1998, Ms. Rickford forwarded correspondence to each party requesting responses to several questions regarding the contract and its non-renewal.

On November 24, 1998, Former Commissioner Kelly issued an Order and an Analysis of the Issues in this Matter, No. HMO-99-01. On December 9, 1998, GWUHP requested a hearing in this matter pursuant to D.C. Code Sections 35-4519(d)(1) and 35-4523©(2). On January 28, 1999, Former Acting Commissioner Berry conducted a Commissioner's Conference to clarify the interpretation of provisions in HIPAA for GWUHP and Tag Team. The parties agreed to hold this conference, which included representatives and counsel for Tag Team, GWUHP, the DISR, and federal representatives from the Departments of Health and Human Services and Labor.

On March 19, 1999, Ms. Rickford, issued Show Cause Order SC #HMO-99-01 directing GWUHP to show cause why the November 24, 1998 Order of Former Commissioner Kelly should not stand. On March 25, 1999, an Amended Show Cause Order was issued. An Official Notice of Hearing was issued on March 23, 1999, setting a hearing date of April 20, 1999. A Revised Analysis of the Issues of Former Commissioner Kelly's November 24, 1998 Order was issued on March 31, 1999. On

April 12, 1999, a pre-hearing conference was held to determine the scope of the hearing on SC# HMO-99-01. At the pre-hearing conference, the parties agreed to address the issue of premium payment arrearages, in addition to the other issues outlined in the show cause order. The first DISR hearing on SC #HMO-99-01 took place on April 20, 1999. The second and third day of hearings took place on April 27 and 28, 1999.

Issues Considered

1. Whether the United States Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, August 21, 1996 (HIPAA) and D.C. HIPAA affords protections to associations?

2. Whether Tag Team is a bona fide association?

3. Whether the employees of Tag Team and the members of Tag Team have the same eligibility requirements under the GWUHP Contract?

4. Whether the Tag Team is a mixed association?

5. Whether the individual market rules and group market rules under D.C. HIPAA apply to the Tag Team's health care contract?

6. Whether a health insurer can non-renew a health care contract?

7. Whether George Washington University Health Plan (GWUHP) non-renewed Tag Team Communication Inc.'s (Tag Team) health care contract in violation of the District of Columbia Health Insurance Portability and Accountability Federal Law Conformity Act and No-Fault Motor Vehicle Act of 1998, D.C. Code, Title 35, Chapter 10A, sections 1026 and 1033 (1999, Supp.) (D.C.HIPAA)?

8. Whether Tag Team, individual members of Tag Team and employees of Tag Team have the right to guaranteed renewability in the instant case?

9. Whether the Hearing Officer should decide the amount of premium payment arrearages?

Analysis

Historical Background

SC HMO-99-01 filed by the Petitioner is the first such matter to be received and considered by the Department of Insurance and Securities Regulation under the District of Columbia Health Insurance Portability and Accountability Federal Law Conformity Act and No-Fault Motor Vehicle Act of 1998 (D.C. Code, Title 35, Chapter 10A, Section 1021(3) (1999, Supp.). Therefore, this is a case of first impression that arises before the Hearing Officer.

On August 21, 1996, President Clinton signed into law a federal bill, entitled the Health Insurance and Portability and Accountability Act of 1996 (Pub. L. No. 104-191) (HIPAA). Since enactment of HIPAA each state has either adopted the federal version of HIPAA or implemented its own alternative mechanism to the federal requirements. On July 2, 1997, the D.C. Health Insurance Portability and Accountability Federal Law Conformity Emergency Act of 1997, D.C. Code, Title 35, Chapter 10A, (1999 Supp.) (D.C. HIPAA) became effective. This law adopts the federal version of HIPAA.

The Council of the District of Columbia enacted D.C. HIPAA "to provide individual and group health insurance subscribers in the District of Columbia the benefits and protections mandated by the Health Insurance Portability and Accountability Act of 1996. . ." The D.C. Council enacted the minimum federal standards in HIPAA. Therefore, the interpretation of D.C. HIPAA is guided by the Federal Government's interpretation of HIPAA and the regulations. D.C. HIPAA applies to the instant case because a health care contract was entered into between The George Washington University Health Plan (GWUHP) and Tag Team Communications, Inc. (Tag Team) on September 16, 1997, more than two months after the effective date of D.C. HIPAA.

1. Whether the United States Insurance Portability and Accountability Act of 1996, Public Law 104-191, (HIPAA) and D.C. HIPAA affords protections to associations?

Ms. Julie Walton, Health Insurance Specialist, United States Healthcare Financing Agency (HCFA) testified that pursuant to the renewability provisions of HIPAA and D.C. HIPAA, issuers have the right to cancel the coverage of a member of a bona fide association when he/she ceases to maintain membership. However, if the association is not bona fide, the issuer cannot cancel the coverage of the association members. Associations, whether they meet the test of being bona fide associations or not, fall within the scope of the renewability provisions of HIPAA and D.C. HIPAA and therefore are afforded protections. (Walton's testimony, pp. 31-32; 35-36; 64 and 67 (April 20, 1999) and Government's Exhibit 1 and 2). GWUHP presented no testimony on this issue.

Accordingly, the Hearing Officer finds that associations are afforded protections under HIPAA and D.C. HIPAA, and that the association does not have to be a bona fide association to be protected under either law.

2. **Whether the Tag Team is a bona fide association?**

D.C. Code, Title 35, Chapter 10A, section 1021(3)(1999 Supp.) defines a "bona fide association" as an association which:

(A) Has been actively in existence for at least 5 years
(B) Has been formed and maintained in good faith for purposes other than obtaining insurance;
(C) Does not condition membership in the association on any health status-related factor relating to an individual (including an employee or an employer or a dependent of an employee);
(D) Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to such members (or individuals eligible for coverage through member);

(E) Does not make health insurance coverage offered through the association available other than in connection with a member of the association; and
(F) Meets such additional requirements as may be imposed under laws of the District of Columbia.

The record in the instant case demonstrates that at the Commissioner's Conference on HIPAA (held January 28, 1999), Erling Hansen, Director of Legal and Regulatory Affairs for GWUHP, stated that GWUHP performed underwriting practices to determine whether to cover members of Tag Team. (Defendant's Exhibit 9 at 3-8 and Julie Walton's testimony pp. 69-70). Therefore, Tag Team is not a bona fide association, it fails to meet the criteria of D.C. Code section 35-1021(3)©. GWUHP uses underwriting methodologies to determine the eligibility of association members for coverage under the health plan. Accordingly, the Hearing Officer finds that Tag Team is not a bona fide association.

3. Whether the employees of Tag Team and the members of Tag Team have the same eligibility requirements under the GWUHP Contract?

Petitioner's witness, Timothy Mattox, Founder and President of the Business and Professional Association of Metropolitan Washington (Tag Team) testified as to the eligibility requirements on the Face Sheet to GWUHP's Group Health Benefits Contract. Mr. Mattox testified that Subsection 10, "Eligibility Requirements" of the GWUHP contract requires that ". . .only full and part-time employees who work a minimum of 20 hours per week are eligible to become subscribers. Use attachment sheet to describe exceptions. Seasonal employees are not eligible. Check if attachment sheet is used. It is not checked." (Mattox's testimony, p. 30).

GWUHP Exhibit 2, Group Health Benefits Contract issued by GWUHP, Standard Option Plan (GRPSTD.DC {12/6/94}, Article 4. Eligibility and Enrollment states in pertinent part: ". . .Only those eligible employees or Group members who meet the Health Plan's eligibility and enrollment requirements as described herein and in the Group Face Sheet may enroll in the Health Plan. Subscribers must complete and the Group shall submit the proper enrollment application forms(s), including payment of applicable premiums, within the time periods specified below."

> 1. Eligibility: To become a Subscriber, an eligible employee must: (1) permanently reside or work in the Health Plan's Service Area; (2) work a minimum of 20 hours per week (applicable for the covered employee); and (3) meet all other eligibility requirements established by the Group and the Health Plan, subject to any applicable probationary (or waiting) periods. No change in eligibility requirements is effective without the written consent of an official. . ."

Provisions in GWUHP's health care contract (GWUHP Exhibit 2), in Article 4 and Article 1 make distinctions between the terms "employee" and "Group Member".

The Government contends that the use of two different terms – "employee" and "Group member" in GWUHP health plan contract indicates that each word has a different meaning. Therefore, the meanings of the words cannot be synonymous. It argues that the drafters of the contract must have intended that the terms have separate and distinct meanings. Furthermore, the Government contends that if any ambiguity exists, under the canon of *contra proferentem,* it should be construed against the insurance company (in the instant case the health maintenance organization) as the drafter of the contract.

Germany v. Operating Engineers Trust Fund of Washington, D.C., 789 F. Supp. 1165, 1169 (D.D.C. 1992).

The Government also argues that the definitions of the terms "Group" and "Member" in the health care contract supports the interpretation that "Group member" means "Association member". The word "Group" is defined as ". . .[t]he employer, labor union, trust, association, partnership, or other organization or entity which has entered into a contract with the Health Plan to provide Covered Services to eligible employees or group members, including eligible Family Members described herein." (GW Health Plan Exhibit 2, Contract at Article 1). The Government also contends that the word "Member (or Enrollee") is defined to ". . .include the Subscriber and his/her eligible Family Members(s). . . who (1) meet all eligibility requirements as set forth herein; (2) are listed in the completed application form submitted to and approved by the Health Plan; and (3) have paid the applicable premium. Only Members shall be entitled to receive Covered Benefits." (GW Health Plan Exhibit 2, Contract, Article 1). The Government argues that by using the words – "Group" and "Member" – as found in the definition section of GWUHP's health care contract, it is logical to interpret "Group member" to mean association member or member of Tag Team in the health care contract.

Further, the Government contends that it is inconsistent to interpret the eligibility restrictions in the GWUHP's Group Health Benefits Contract and the Face Sheet (which constitutes the health care contract) only with respect to employees of the association. The health care contract does not indicate any restrictions for non-employee members of

the association. In addition, Tag Team did not impose additional eligibility requirements on its association members. However, the Government argues that GWUHP sought to impose the "Small Business Owner/Independent Business Person" eligibility criteria to the Tag Team association members. At the October 7, 1998 meeting at DISR, representatives from GWUHP (Erling Hansen and Greg Gesterling) could not show where these requirements were in the contract or the face sheet. They could not show that Tag Team had notice of the existence of the criteria. Also, the Government states there was no evidence introduced at the hearing to show the association had notice of this additional eligibility criteria. (Mattox's testimony, pp. 42-46, 193-195).

GWUHP provided no testimony or evidence on the issue of whether the employees of Tag Team and the association members of Tag Team have the same eligibility requirements under the GWUHP Contract. A detailed review of the GWUHP Contract by the Hearing Officer demonstrates that the contract provides for two classes of subscribers – employees of the Association and Association members. Employees of the Association must meet the eligibility requirements of the Face Sheet to GWUHP's Group Health Benefits Contract, subsection 10, Eligibility Requirements and Standard Option Plan, Article 4, Eligibility and Enrollment. However, the health care contract has no restrictions for non-employee members of the association.

Therefore, the Hearing Officer finds the following: (1) The employees of Tag Team and members of Tag Team have different eligibility requirements under the GWUHP contract. (2) The employees of Tag Team must meet the eligibility

requirements by (A) permanently residing or working in the Health Plan's Service Area; (B) working a minimum of 20 hours per week (applicable for the covered employee); and (C) meeting all other eligibility requirements established by the Group and the Health Plan, subject to any applicable probationary (or waiting) periods. (2)There are no specific eligibility requirements in GWUHP health care contract for association members who are not employees. (3) GWUHP shall submit to the Hearing Officer any basis, other than unemployment, for disenrolling Leonardo Salvarrey, Douglas Salama and Calixer Tobar within ten (10) days from the issuance of this Decision and Order. GWUHP shall enroll Leonardo Salvarrey, Douglas Salama and Calixter Tobar as association members under Tag Team's health care contract, if it fails to submit legal support in compliance with the statutory requirements indicating that each person should not be an enrollee.

4. **Whether the Tag Team is a mixed association?**

Julie Walton, Health Insurance Specialist, Health Care Financing Administration, testified that a mixed association is ". . . an association composed of various entities that could be small employers, even large employers and also private individuals ." (Walton's testimony, pp. 43-44). Timothy Mattox, Founder and President of Tag Team testified that Tag Team is composed of two employees who work twenty hours or more a week (small group) and individual members of the association who are not its employees. (Mattox's testimony, pp. 20, 107-108 and GWUHP Exhibit 9, p. 2). The Tag Team's individual members consist of independent and small businessmen, students, and retired persons. (GWUHP Exhibit 9, p. 2). Coverage of the small group is regulated under the

group market rules in D.C. HIPAA and HIPAA, and the individual association members' coverage is regulated under the individual market rules. GWUHP presented no testimony or evidence on the issue of "mixed associations".

Accordingly, the Hearing Officer finds that Tag Team is a mixed association because it consists of a small group of employees and individual members of an association who are not its employees.

5. Whether the individual market rules and group market rules under D.C. HIPAA apply to the Tag Team's health care contract?

Government's witness, Ms. Walton, Health Care Specialist, HCFA, testified that when an association serves a mixed membership, the members who are buying coverage through the association have protections through whichever provisions they fit into – group market rules or individual market rules in HIPAA and D.C. HIPAA. (Walton's testimony, p.44). She also testified that ". . . HIPAA divides the world between group and individuals based on whether there's a group health plan in existence." The Government contends that the group market provisions of HIPAA and D.C. HIPAA regulate small employers whose health care coverage is sold to employees. However, when there is no group health plan, the coverage sold is regulated under the individual market provisions. This application will occur, even if, the State or District of Columbia regulates the entity as a group. Therefore, the health care coverage provided to associations must be related to employment to regulate it with the group market rules. (Walton's testimony, pp. 55-56, Government's Exhibit 5, p. 16956; Government's

Exhibit 6, p. 16992; D.C. Code, Title 35, Chapter 10A, section 1033 (1999, Supp.). The Government also contends that individuals that purchase health care coverage in the Tag Team association are covered by the individual health insurance rules of D.C. HIPAA and HIPAA and that the two Tag Team employees are covered under the group health insurance rules for small employers because the coverage relates to their employment. (GW Health Plan Exhibit 9, p.2; Government's Exhibit 2, p. 50; and D.C. Code, Title 35, Chapter 10A, section 1026(e) (1999, Supp.). GWUHP presented no testimony or evidence on this issue.

Accordingly, the Hearing Officer finds that individual market rules and the group market rules in D.C. HIPAA apply to Tag Team's health care contract because a mixed membership that includes a small group of employees and individual association members are being served by GWUHP's health care contract.

6. Whether a health insurer can non-renew a health care contract?

The Government contends that the general rule is that individual insurance market rules require a health insurer to renew or continue in force individual health insurance coverage at the option of the individual. When coverage is through an association, both the association and the individual members of the association have the right to guaranteed renewability of the health care coverage. If dependents are covered through the individual members of the association, then the dependents have no guaranteed renewability right. Under the group market rules, a health insurer must renew health

insurance coverage with respect to all insureds at the option of the employer. (Walton's testimony, pp. 34-36; 48; 57-60; D.C. Code, Title 35, Chapter 10A, section 1026 (a) and section 1033 (1999 Supp.) and GWUHP Exhibits 1, 2, 3, 4, 6).

The Government contends the exception to the above general rule is that health insurance coverage in the individual market and the group market may be non-renewed by the health insurer based on one or more specific reasons as stated in D.C. HIPAA , D.C. Code, Title 35, Chapter 10A, section 1026 (b) and 1033 and HIPAA.

GWUHP contends that "as a general principle, . . . an insurer may choose to non-renew an insured for any reason." (George J. Couch, Cyclopedia of Insurance Law Section 68.12 (2d rev. ed. 1983); Gahres v. PHILCO Ins. Co., 672 F. Supp. 249, 253 (E.D. Va. 1987). GWUHP argues that this common law principle is based on the concept that when the insurer exercises its decision to renew, the contract has been fully performed and no further obligations exists under the contract. D.C. HIPAA requires renewal of existing health insurance under Section 35-1026. However, D.C. HIPAA also specifically provides that when an insured fails to make timely premium payments, the insurer may non-renew the contract. (Section 35-1026 of D.C. HIPAA).

Accordingly, the Hearing Officer finds that a health insurer can non-renew a health care contract. D.C. HIPAA, D.C. Code Sections 35-1026 (individual market rules) and 35-1033 (group market rules) both provide for circumstances under which a health

insurer that offers health insurance coverage in the individual or group market can non-renew a health contract.

7. Whether George Washington University Health Plan non-renewed Tag Team's health care contract in violation of the District of Columbia Health Insurance and Portability and Accountability Federal Law Conformity Act and No-Fault Motor Vehicle Act of 1998 (D.C. Code, Title 35, Chapter 10A, sections 1026(b)(1) (1999, Supp.)?

D.C. HIPAA in pertinent part states as follows:

Section 35-1026. Renewability of Individual Health Insurance Coverage.

(a) Except as provided in this section, a health insurer that provides individual health insurance coverage shall renew or continue in force such coverage at the option of the individual.

(b) A health insurer may nonrenew or discontinue health insurance coverage of an individual in the individual market based on 1 or more of the following:

(1) The individual has failed to pay premiums or contributions in accordance with the terms of the health insurance coverage or the issuer has not received timely premium payments.

Section 35-1033. Renewability.

(a) Every health insurer that offers health insurance coverage in the group market in the District of Columbia shall renew such coverage with respect to all insureds at the option of the employer except:

(3) For nonpayment of the required premiums by the policyholder or contract holder, or where the health insurer has not received timely premium payments;

Government's Position

It is the Government's position that a health insurer can nonrenew a health care contract; and that health insurance coverage in the individual and group may be non-renewed by the health insurer based upon one or more specific reasons as stated in D.C. HIPAA and HIPAA. However, it is the Government's position that in the instant case GWUHP waived its right to non-renew the Tag Team's health care contract by accepting premium payments, pursuant to a Supreme Court case, based on a breach for late premium payments. The Government contends that GWUHP must rely on another basis other than late premium payments in this case. Therefore, the Government argues that GWUHP's non-renewal of Tag Team's health care contract is a violation of D.C. HIPAA, because no valid basis was used by GWUHP.

In support of its position, the Government maintains the following:

The contract between GWUHP and Tag Team requires the premium payments to be made on the first day of the coverage month. (Greenawalt's testimony, pp.282-283; GWUHP Exhibit 2, p.10(A). The Government's witness, Timothy A. Mattox, Founder and President of Tag Team testified that the Tag Team made premium payments forty-five days after the due date that was outside the grace period, but which GWUHP accepted. (Mattox's testimony, p. 118 and 229; GWUHP Exhibit 3). In fact, Mr. Mattox stated that GWUHP accepted a partial payment of premiums in a check dated January 6, 1998. (GWUHP Exhibit 4). The Government argues that GWUHP accepted all late payments – partial and/or full. (Greenawalt's testimony, p. 338; Government's Exhibit

22, p.2). A chief financial officer for GWUHP established a payment plan for the Tag Team after it had failed to make five to six months of premium payments in 1995. (Mattox's testimony, pp. 241-242; 266). Timothy Mattox, Government witness also testified that: (1) The Tag Team was unable to pay premiums timely because it tried to verify premium payments due. (2) Tag Team had outstanding eligibility and reconciliation issues. (3) Partial premium payments could be made if there was an outstanding reconciliation issue. (4) Tag Team found errors in the premium bill relating to the type of enrollment of members, and members that should or should not be enrollees. (5) GWUHP's actions could reasonably be interpreted by Tag Team to have extended the Grace Period. (6) GWUHP was flexible in accepting errors in regard to retroactive additions and deletions to the health plan, as well as, accepting late payments until the December 2nd letter from Mr. Zar-Afshar, the GWUHP began to strictly enforce its contract. (Mattox testimony, April 27, 1999, pp.63-66; 85; 149-150; 163-164; 169-170; 178; 221; 223-225; 227; 230-232; 242-244; 261; 267-268; Greenawalt testimony, April 28, 1999, pp.355; 357-358; Government's Exhibit 26 at Tab "E".).

The Government also argues that acceptance of late payments by GWUHP with no penalty attached looked like approval of Tag Team's payment practices. It cites Government's Exhibit 4 as evidence of partial payments accepted by GWUHP. It also refers to Greenawalt's admittance that GWUHP did not always process Tag Team's transmittals, which contributed to the premium payment bill being inaccurate. (Greenawalt testimony, April 28, 1999, pp. 309; 332-333).

The Government contends that in order to determine whether GWUHP can properly renew the health care contract of Tag Team, one must look at the plain language and intent of D.C. Code, Title 35, Chapter 10A, sections 1026 and 1033 (1999, Supp.). The Government cites Jones v. District of Columbia, 212 F.Supp. 438, 443 (D.C.D.C.), aff'd, 323 F.2d 306 (D.C. Cir. 1963) for the proposition that it "is elementary that a statute is to be read in the light of the problems it was designed to resolve, and the court must find every intendment in favor of the validity of the act and necessary to its purpose." The Government states D.C. HIPAA is intended to provide individual and group health insurance subscribers in the District of Columbia the benefits and protections mandated by the Health Insurance Portability and Accountability Act of 1996. That Act is intended to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery . . . and for other purposes. D.C. Code, Title 35, Chapter 10A, section 1026 (1999, Supp.) requires health insurers to renew or continue in force health insurance coverage at the option of the individual. D.C. Code, Title 35, Chapter 10A, section 1033 (1999, Supp.) requires health insurers to renew coverage with respect to all insureds at the option of the employer. The exception to these general rules is nonpayment or late payment of premiums. The Government contends that in order to interpret the exceptions in sections 1026 and 1033 of D.C. HIPAA, one should

". . .reason in light derived from extraneous connected circumstances. . ." (Black's Law Dictionary 6th Edition, definition of "construction", p. 312). Therefore, the Government argues all of the circumstances surrounding the late premium payments should be considered.

Based on the above facts, the Government argues that the GWUHP engaged in a course of conduct, which caused the Tag Team to think that it could continue to pay premiums after the due date and grace period. (Mattox's testimony, pp. 231-232). The GWUHP's action of accepting payments of premiums that were late and partial payments caused the Tag Team confusion. Furthermore, the Government argues that GWUHP's continuous actions of engaging in a relaxed policy to enforce the terms of the contract should require GWUHP to give formal notice that it will strictly operate in accordance with the terms of the contract. GWUHP gave such notice only after Former Commissioner Kelly's November 24, 1998 Order, in a letter dated December 2, 1998 from Mr. Zar-Afshar.

The Government also argues that GWUHP's failure to give notice to the Tag Team should prevent GWUHP from enforcing the formal terms of the agreement until the matters involved in the current proceeding are resolved as it relates to non-renewal of Tag Teams's health care contract. Further, the Government contends, GWUHP should not be permitted to benefit by non-renewing Tag Team's health care contract because of its failure to process transmittals, which contributed to the inaccuracy of the association's premium payment bills. In addition, to allow GWUHP to non-renew the Tag Team's health care contract would permit GWUHP to be free to go back and forth at its will, which would amount to abuse of discretion. The Government argues Tag Team would not know from month to month which policy was in force. GWUHP cannot use

discretion to the disadvantage of the subscriber. Discretion should be used in such a way that no party losses.

The waiver provision in GWUHP's health care contract states that ". . .The waiver by either party of, or the failure of either party to object to, a breach or violation of any provision shall not operate as, or be construed to be, a waiver of any subsequent breach thereof." (GW Health Plan Exhibit 2, p.35). The Government contends that GWUHP waived the right to nonrenew Tag Team's health care contract based on the breach for late premium payments. It cites Phoenix Life Insurance Company v. Raddin, 120 U.S. 183 (1887) and Chanda, et al. V. District of Columbia, et al., 1992 WL 212373 (D.D.C.), in support of its position. The United States Supreme Court in Phoenix held that "[I]f insurers accept payment of a premium after they have notice of a change in the habits of the assured which, by the terms of the policy, would cause a forfeiture, they thereby waive the forfeiture." The District of Columbia Court in Chanda held that "[acceptance of payments] by an insurer after the insurer knows that there has been a breach of a condition of the policy constitutes a **waiver** of the right to void the policy based on that breach." The Government contends that in the past, Tag Team paid the premium bill sent by GWUHP. Then the Tag Team stopped paying premiums to GWUHP for five to six months. Then GWUHP put Tag Team on a payment plan. Subsequently, GWUHP knew Tag Team made premium payments late, but constantly accepted them. The Government argues that by these actions, GWUHP, waived its right to void or non-renew the health care contract based on a breach for late premium payments.

GWUHP's Position

GWUHP contends that it did not non-renew Tag Team's health care contract in violation of D.C. HIPAA. GWUHP submits that the individual rules under D.C. Code, Title 35, section 1026 apply to Tag Team's contract. As a general rule, under D.C. HIPAA , a health insurer that provides health insurance in the individual market must renew or continue in force and individual's health insurance coverage unless the individual opts to discontinue the coverage. However, the statute lists five exceptions to this guaranteed renewability of individual health insurance coverage. GWUHP contends that the first exception, (under Section 35-1026), failure to make timely premium payments, applies to this matter.

In support of its position, GWUHP maintains the following:

When interpreting a statute (herein D.C. Code, Title 35, section 35-1026 (b) (1)), one must first look to the language of the act itself. Keenan v. Washington Metro. Are Transit Authority, 643 F. Supp. 324 (D.D.C. 1986). ("[T]he Court must look first at the plain meaning of the statute"). "The meaning of the statute must, in the first instance be sought in the language in which the act was framed, and if that is plain,. . .the sole function of the courts is to enforce it according to its terms." Caminetti v. Unitede States, 242 U.S. 470, 485, 37 S.Ct. 192, 194, 61 L.Ed. 442 (1917). When the language is clear and unambiguous and does not produce an absurd result, a court will not look beyond its

plain meaning. Hayes v. United States, 707 A.2d 59, 62 (D.C. 1998) (quoting Pixley v. United States, 692 A.2d 438, 440 (D.C. 1997); see, McPherson v. U.S., 692 A.2d 1342, 1344-45 (D.C. App. 1997) ("In interpreting a statute, we are mindful of the maxim that we must look first to its language; if its words are clear and unambiguous, we must give effect to its plain meaning.") Moreover, "courts are bound to give effect to the literal meaning [of a statute] without consulting other indications of intent or meaning when the meaning of the statutory text itself is 'plain' or 'clear and unambiguous'.

GWUHP contends in the instant case, that the meaning of D.C. HIPAA Section 35-1026(b) is clear and unambiguous. Every health insurer in the individual market has an absolute statutory right to non-renew any insured that fails to pay premiums as per the health insurance contract. Nonpayment, late payment or any other violation of the premium payment provisions of the health insurance contract gives the insurer a right not to renew the contract. In this way, the legislature sought to allow insurers to exercise their preexisting common law right to non-renew if insureds failed to pay premiums in a timely fashion. Accordingly, GWUHP argues that the Plan has an affirmative statutory right not to renew Tag Team's insurance contract if it fails to pay premiums due or if the insurer has not received the premiums due or if the insurer has not received the premiums due in a timely fashion.

According to GWUHP, Tag Team failed to make timely payments in accordance with the applicable contractual terms. In support of its position, GWUHP points to, first, Former Commissioner Kelly's finding that Tag Team had a "continuous practice of

paying its premium late" in his Analysis of the Issues in the Matters Concerning Tag Team and GWUHP (November 24, 1998). Second, Timothy Mattox, admitted under oath at the hearing that Tag Team failed to pay its premiums in a timely manner on at least seven out of twelve occasions during the contract year 1997-98. (Mattox's testimony, pp.124-125) Third, Tag Team's own documents demonstrate that the contract holder failed to make timely premium payments within the contractual grace period. (GWUHP Exhibit 3) Fourth, GWUHP submitted copies of specific checks reflecting Tag Team's untimely payments that are part of the record as GWUHP Exhibit Four (4). GW Health Plan maintains that these documents and testimony demonstrate that, in at least seven out of twelve premium months, Tag Team's payments were outside of the contractual Grace Period, and therefore, untimely and not in accordance with the terms of the contract.

GWUHP contends that, under D.C. HIPAA, Section 35-1026(b), the timeliness of Tag Team premium payments is governed by the contract. GWUHP points to the statute's exception to renewability for an insured's failure to pay in accordance with "the terms of the health insurance contract." (D.C. HIPAA Section 35-1026(b)(1). GWUHP maintains that the Contract between the GWUHP and Tag Team sets forth the applicable time frames for premium payments in Article 3(a): "[t]he first day of the month of coverage." Article 3(B) sets forth a Grace Period for premiums: "[a] grace period of 30 days shall be allowed within which the group must pay premiums during which time this Contract shall remain in force."

GWUHP maintains that it made regular and repeated requests for premium payments in accordance with the terms of the Contract. In support if its position, GWUHP points to, first, the testimony of Mr. Mattox, who admitted under oath at the hearing that he received several requests for premium payments from GWUHP. (Mattox testimony, pp. 121-122; Government's Exhibit 20). Second, the record demonstrates that every invoice sent during the 12-month contract period indicated that the due date was the first of the following month. (Government's Exhibit 20) In addition, each invoice carried a reminder that "your contract requires prepayment of monthly premiums." (Mattox testimony, p. 122; Government's Exhibit 20). The record also shows that the GWUHP repeatedly sent Tag Team notices that its premium payments were late and that failure to pay in accordance with the terms of the contract might result in termination of the Contract. (GWUHP Exhibits 6, 7 and 22).

GWUHP argues that Tag Team contends that the Association was given oral permission to pay premiums outside of the Grace Period by Joe Greenawalt, a Health Plan employee. Mr. Mattox testified that Mr. Greenawalt told him that it was all right to pay the premiums 45 days late. (Mattox's testimony, p.207, Lines 15-21). Mr. Greenawalt denied that he ever told Tag Team that it was all right to pay its premiums late. GWUHP contends that no authorized agent of GWUHP extended the time within which Tag Team was required to pay premiums. GWUHP presented evidence and testimony to demonstrate that the 1997-1998 Contract was not orally modified or amended. First, GWUHP points to the provision of the Contract which expressly identifies the particular Plan corporate officers authorized to modify or change the

Contract between the GWUHP and Tag Team. (GWUHP Exhibit 12, Contract, Article 14, pp. 32-33).

Second, GWUHP presented testimony showing that Mr. Greenawalt was neither a corporate officer nor authorized to amend the Contract. (Greenawalt's testimony, p.279). Third, GWUHP points to the testimony of Mr. Mattox, wherein he admitted knowing that Mr. Greenawalt was not a corporate officer authorized to amend the insurance contract. (Mattox testimony , p. 210, Lines 10-14). GWUHP submitted several documents showing that GWUHP repeatedly attempted to enforce the payment terms of the contract by sending warning letters to Tag Team. (GWUHP Exhibits 6, 7 and 22).

GWUHP contends that Tag Team argues that the decision of GWUHP to non-renew the contract was based on GWUHP's alleged concerns with medical underwriting problems, evidenced by GWUHP's failure to state a reason for non-renewal in its September 4, 1998 letter to Tag Team Furthermore, GWUHP submitted a notice letter, dated September 28, 1998, from Eileen H. Wilson, Vice President, Marketing and Sales, to each Tag Team subscriber, explaining the decision to terminate the Tag Team was due to the "consistent delay in making premium payments." (GWUHP Exhibit 5).

Evaluation and Analysis of the Evidence (Issue #7)

In determining whether George Washington University Health Plan non-renewed Tag Team Communications, Inc.'s health care contract in violation of D.C. HIPAA, the statute must first be considered. D.C. HIPAA Sections 35-1026 and 35-1033 (individual market and group market sections respectively) permit a health insurer to non-renew a health care contract when the health insurer (issuer) has not received timely premium payments.

The following facts presented through testimony and evidence at the hearing demonstrate overwhelmingly that GWUHP did not receive timely premium payments from Tag Team during the majority of the 1997-1998 contract year.

Timothy Mattox, Founder and President of the Business and Professional Association of Metropolitan Washington (Tag Team) testified, that based upon Tag Team's own calculations, premiums were paid to GWUHP outside of the Grace Period seven (7) months during the contract period of twelve (12) months (1997-1998). (Mattox's testimony, pp. 124-125). Mr. Greenawalt, Assistant Manager in the Accounts Receivable Department of GWUHP testified that during the 1997-1998 contract year, probably up to nine (9) of the twelve (12) months premiums, were paid after the expiration of the Grace Period. (Greenawalt's testimony, p.284). Tag Team's own documents demonstrate they failed to make timely premium payments within the

contractual period. (GWUHP Exhibit 3) Furthermore, GWUHP introduced into evidence copies of specific checks that were evidence of Tag Team's untimely payments. (GWUHP Exhibit 4)

The record also reflects that GWUHP made regular requests for premium payments in accordance with the health care contract. First, Mr. Mattox testified that at least starting in January 1998 he received invoices half a month ahead of time of the due date. (Mattox's testimony, pp.121-122). Second, every invoice that was sent during the 12-month contract period indicated that the due date was the first of the following month. (Government's Exhibit 20). Third, every invoice carried a reminder that "your contract requires prepayment of monthly premiums". (Mattox testimony, p.122). Fourth, the record also demonstrated that GWUHP sent Tag Team notices that its premium payments were late and that failure to pay in accordance with the terms of the contract might result in termination of the health care contract. (GWUHP Exhibits 6, 7 and 22).

Credible testimony (evidence) presented at the hearing demonstrate that Tag Team was not given oral permission to pay premiums outside of the Grace Period. The subject health care contract expressly identifies the GWUHP corporate officers who are authorized to modify or change the contract between GWUHP and Tag Team. (GWUHP Exhibit 12, Contract, Article 14, p. 32-33). Mr. Greenawalt, Assistant Manager in the Accounts Receivable Department for GWUHP was not (according to the terms of the contract) a corporate officer who was in fact authorized to modify or change the contract between GWUHP and Tag Team.

Mr. Mattox, testified that he was told by Mr. Greenawalt there was no problem with Tag Team paying up until 45 days late because "some report does not, . . . go up to management until the 15th of the month" (the 15th of the following month). (Mattox's testimony, pp. 207 – 211). However, Mr. Greenawalt, Assistant Manager in the Accounts Receivable Department for GWUHP, denied in his testimony that he told Tag Team it was all right for them to pay their premiums late. During questioning by Mr. Harrison, attorney for GWUHP, Mr. Greenawalt testified that he never told anybody at Tag Team that because he had a report due on the 15th day of the following month, it was okay to pay premiums by then. Mr. Greenawalt also stated that he never indicated to anyone at Tag Team that their Grace Period as set forth in their contract was extended. He also testified that he, as an individual, did not have the authority to modify a group contract, nor did he indicate to anyone that he did. (Greenawalt testimony, p.293)

Mr. Greenawalt offered credible testimony that he did not give permission to Tag Team to pay their premiums late. Credible evidence is defined by Black's Law Dictionary as evidence that is ". . . so natural, reasonable and probable in view of the transaction which it describes or to which it relates as to make it easy to believe it. . ." (Black's Law Dictionary, Sixth Edition, pp. 366-367) In this instance, Mr. Greenawalt's version of what occurred regarding whether permission was given to Tag Team to pay premiums late was more natural, reasonable and probable in view of the transaction between GWUHP and Tag Team. It is more likely that Mr. Greenawalt would not authorize Tag Team to pay their premiums late, since he was not a corporate officer

authorized to modify or change the contract (or the terms of the contract) between GWUHP and Tag Team.

The Hearing Officer does not find the Government's argument convincing on the issue of whether GWUHP waived its right to nonrenew Tag Team's health care contract. The Government contends that because GWUHP accepted premium payments untimely from Tag Team (thereby causing a breach of the health care contract), it waived its right to void or nonrenew the contract on that basis.

The Hearing Officer finds GWUHP's argument on the waiver issue convincing in light of what the statute (D.C. HIPAA) clearly provides. As GWUHP maintains, D.C. HIPAA provides that a health insurer is not required to renew a contract where premium payments have been untimely. The statute does not require nonpayment – merely untimely payment. D.C. HIPAA presupposes that GWUHP has "received untimely premium payments during the term of the contract, as the statute specifically provides that a health insurer may non-renew when the health insurer or issuer has not received timely premium payments. Had the Council of the District of Columbia intended to require health plans to not collect premiums in order to avail themselves of their nonrenewal rights, then the statute would not include the clause "or the issuer has not received timely premium payment." For these reasons, the Hearing Officer finds that GWUHP did not waive its right to nonrenew Tag Team's contract.

Accordingly, the Hearing Officer finds that GWUHP did not violate D.C. HIPAA in nonrenewing Tag Team's health care contract, because GWUHP did not receive timely premium payments from Tag Team for at least seven (7) of the twelve (12) months during the 1997-1998 contract year.

8. Whether Tag Team , individual members of Tag Team and employees of Tag Team have the right to guaranteed renewability in the instant case?

In deciding this issue, the Hearing Officer will consider the testimony of Ms. Julie Walton, Health Insurance Specialist with the Health Care Financing Administration. The Hearing Officer will give great weight to Ms. Walton's testimony regarding the interpretation of HIPAA and D.C. HIPAA for the following reasons: (1) Ms. Walton has had experience with HIPAA since 1985. She testified that when HIPAA was under consideration on Capital Hill in 1996 she was brought in to work on it. This work culminated in the enactment of the law in the summer of 1996. (2) Ms. Walton was the original member of the HIPAA team and the analyst that developed the department's regulations. (3) As part of Ms. Walton's primary role, she is responsible for evaluating whether States, (that are responsible under HIPAA for implementing the provisions), have in fact adopted and are enforcing the provisions of HIPAA. (Walton's testimony, pp. 23-27). The Hearing Officer will also strongly consider Ms. Walton's testimony because the instant matter is a case of first impression in the District of Columbia, D.C. HIPAA is a new statute and there is no D.C. HIPAA case law.

Guaranteed Renewability – Tag Team

Pursuant to the individual market rules under D.C HIPAA, Tag Team (association) does not have the right to guaranteed renewability because one of the exceptions to guaranteed renewability has been met. D.C. Code Section 35-1026(b)(1) allows a health insurer to nonrenew health insurance of an individual in the individual market, if the issuer has not received timely premium payments. In the instant case, GWUHP did not receive premium payments timely from Tag Team at least seven (7) out of twelve (12) months during the 1997-1998 contract year. Therefore, the Hearing Officer finds that Tag Team does not have the right to guaranteed renewability.

Guaranteed Renewability – Individual Members of Tag Team

Associations and individual members of associations have the right to guaranteed renewability. Coverage is renewable at the option of the individual. Generally, in the individual market, when there is an association, both the association and the individuals members of the association have the right to guaranteed renewability and their contracts are to be renewable at the option of the individuals. (The definition of individuals in D.C. HIPAA and Federal HIPAA includes associations).

Pursuant to D.C. Code Section 35-1026(b)(1), exceptions to the right of renewability include nonpayment of premiums or late payment of premiums. Under individual market rules, if the contract of the association is nonrenewed, the individual

members of the association are still entitled to their rights under the original contract, as long as none of the exceptions (in D.C. HIPAA Section 35-1026) have been met with respect to the individual members of the association. (Walton's testimony, pp. 31 – 37, D.C. HIPAA Section 35-1026).

In the instant case, none of the exceptions were applicable to individual members of Tag Team (association). Therefore, the Hearing Officer finds that the individual members of Tag Team have the right to guaranteed renewability and are entitled to their rights under the original contract.

Guaranteed Renewability – Employees of Tag Team

Employees of associations are covered under the group market rules of D.C. HIPAA. (Walton's testimony, p.28 and D.C. HIPAA Section 35-1033). They do not have the right to guaranteed renewability. They only have protections under the nondiscrimination rules in HIPAA. (Walton's testimony, pp. 32). Employees are not entitled to benefits under the original contract with the association. They may seek to elect coverage under a conversion contract offered by GWUHP.

Accordingly, the Hearing Officer finds based on D.C. HIPAA and credible testimony and evidence that: (1) Tag Team (association) does not have the right to guaranteed renewability in the instant case. (2) The individual members of Tag Team

have the right to guaranteed renewability. (3) Employees of Tag Team have no right to guaranteed renewability.

9. Whether the Hearing Officer should decide the amount of premium payment arrearages?

The Hearing Officer should not decide the amount of premium payment arrearages (if any) Tag Team owes GWUHP. The record is replete with instances where both parties record keeping proved to be less than adequate. (Mattox's and Greenawalt's testimony, Exhibits, Post-Hearing Submissions by GWUHP, Tag Team and the Government). Both GWUHP and Tag Team come to the table with unclean hands on the issue of the amount of outstanding premium payments, if any, owed by Tag Team to GWUHP. The individual members of the Tag Team association should not suffer for the inaccuracies in the books and records of both parties. Therefore, in order to resolve the issue of arrearages equitably, the Hearing Officer will order that the persons in both GWUHP and Tag Team who are responsible for the bookkeeping and record keeping meet together and reach an agreement as to what is owed in premium payment arrearages. If the parties cannot come to a resolution as to the amount of arrearages owed, then the parties are directed to obtain the services of outside financial consultants to review the books and records and come to a resolution of the amount of premium payments owed, if any. This is to be done within thirty (30) days. At the end of the thirty (30) day period, both parties will be required to file a report with the Hearing Officer detailing the resolution of the arrearages issue.

Findings of Fact

After a careful evaluation and analysis of the evidence, the Examiner finds, as a matter of fact:

1. A complaint by Tag Team was filed with the United States Department of Labor.

2. A copy of the complaint filed with the United States Department of Labor was sent to DISR by facsimile on September 24, 1998.

3. On September 25, 1998 DISR forwarded correspondence to GWUHP's Chief Executive Officer, directing him to show cause why GWUHP should not be held in violation of the renewability provisions of D.C. HIPAA.

4. On October 2, 1998, GWUHP sent a response to DISR denying any violation of D.C. HIPAA.

5. On October 7, 1998 DISR held a meeting with Tag Team and GWUHP to review the decision by GWUHP to non-renew Tag Team's health care contract and gather information concerning the instant matter.

6. On October 26, 1998, Ms. Rickford, HMO Attorney, DISR forwarded correspondence to both GWUHP and Tag Team requesting responses to several questions regarding the contract and its non-renewal.

7. On November 24, 1998, Former Commissioner Kelly issued Order No. HMO-99-01.

8. On December 9, 1998, GWUHP requested a hearing in the instant matter pursuant to D.C. Code Sections 35-4519(d)(1) and 35-4523(c)(2).

9. On January 28, 1999, Former Acting Commissioner Berry conducted a Commissioner's Conference to clarify the interpretation of D.C. HIPAA for GWUHP and Tag Team.

10. The Commissioner's Conference included representatives and counsel for Tag Team, GWUHP, DISR and federal representatives from the Departments of Health and Human Service and Labor.

11. On March 19, Ms. Rickford, HMO Attorney, DISR, issued Show Cause Order SC #HMO-99-01directing GWUHP to show cause why the November 24, 1998 Order #HMO-99-01, should not stand.

12. On March 23, 1999, an Official Notice of Hearing was issued by the Hearing Officer setting the hearing on SC# HMO-99-01 for April 20, 1999.

13. On March 25, 1999, an Amended Show Cause Order #HMO-99-01 was issued.

14. On March 31, 1999, a Revised Analysis of the Issues of Former Commissioner's Kelly's Order #HMO-99-01 was issued.

15. On April 12, 1999 a pre-hearing conference was held to discuss the scope of the hearing.

16. At the April 12, 1999 pre-hearing conference the parties agreed to address the issue of premium payment arrearages at the hearing, in addition to other issues outlined in the show cause order.

17. The hearing on SC #HMO-99-01 was conducted on April 20, 27 and 28.

18. SC #HMO-99-01 is the first such matter received and considered by DISR under D.C. HIPAA.

19. Federal HIPAA became law on August 21, 1996.

20. On July 2, 1997, D.C. HIPAA became law. It adopts the federal version of HIPAA.

21. The Council of the District of Columbia enacted D.C. HIPAA to provide individual and group health insurance subscribers in the District the benefits and protections mandated by Federal HIPAA.

22. The Council of the District of Columbia enacted the minimum federal standards in Federal HIPAA.

23. The interpretation of D.C. HIPAA is guided by the Federal Government's interpretation of HIPAA and the regulations.

24. D.C. HIPAA applies to the instant case because a health care contract was entered into between GWUHP and Tag Team on September 16, 1997, more than two months after the effective date of D.C. HIPAA.

25. Associations are afforded protections under HIPAA and D.C. HIPAA.

26. Associations do not have to be bona fide associations to be protected under HIPAA and D.C. HIPAA.

27. Tag Team is not a bona fide association because GWUHP performs underwriting practices to determine whether to cover members of Tag Team.

28. Only full and part-time employees of the association who work a minimum of 20 hours per week are eligible to become subscribers in GWUHP' health care plan.

29. There are no specific eligibility requirements in GWUHP's health care contract for association members who are not employees.

30. Tag Team is a mixed association. It is comprised of a small group (two employees of the association) and individual members who are not employees of the association. Coverage of the small group is regulated under the group market rules in D.C. HIPAA and HIPAA, and the individual association members' coverage is regulated under the individual market rules.

31. Individual market rules and group market rules under D.C. HIPAA apply to the Tag Team's health care contract.

32. Group market provisions of HIPAA and D.C. HIPAA regulate small employers whose health care coverage is sold to employees.

33. When there is no group health plan, the coverage sold is regulated under the individual market provisions.

34. Health care coverage provided to associations must be related to employment to regulate it under group market rules.

35. Individuals that purchase health care coverage in the Tag Team association are covered by the individual health rules of D.C. HIPAA and HIPAA.

36. The two Tag Team employees are covered under the group health insurance rules for small employers because the coverage relates to their employment.

37. Generally, a health insurer must renew or continue in force individual health insurance coverage at the option of the individual.

38. Generally, a health insurer must renew health insurance coverage with respect to all insureds at the option of the individual.

39. The exception to the general rule is that health insurance coverage in the individual and group market may be nonrenewed by the health insurer for the insureds' failure to pay premiums or late payment of premiums.

40. GWUHP did not receive timely premium payments from Tag Team at least seven (7) out of twelve (12) months during the 1997 – 1998 contract year.

41. GWUHP made regular requests for premium payments in accordance with the health care contract by sending Tag Team invoices and late notices.

42. Tag Team was not given permission to pay premiums outside of the Grace Period.

43. GWUHP did not waive its right to void or non-renew Tag Team's health care contract by accepting untimely premium payments.

44. Ms. Julie Walton, is a Health Insurance Specialist with the Health Care Financing Administration who has worked with HIPAA since 1985. When HIPAA was under consideration on Capital Hill in 1996, Ms. Walton was brought in to work on it. This work culminated in enactment of HIPAA in the summer of 1996.

45. Ms. Walton, was a member of the original HIPAA team and the analyst that developed the Department of Health and Community Service's regulations.

46. As part of Ms. Walton's primary role, she is responsible for evaluating whether States have adopted and are enforcing the provisions of HIPAA.

47. Tag Team (association) does not have the right to guaranteed renewability because (an exception to renewability applies) they paid their premium payments untimely at least seven (7) out of twelve (12) months.

48. The individual members of Tag Team have the right to guaranteed renewability because none of the exceptions to the right of renewability apply to them.

49. Employees of Tag Team are covered under the group market rules of HIPAA. They do not have the right to guaranteed renewability.

50. The record in the instant matter is replete with instances where both GWUHP and Tag Team's record keeping and bookkeeping has proven to be less than adequate as to the amount of premium payments owed, if any. (Mattox's testimony, Greenawalt's testimony, and Post-Hearing Submissions of GWUHP, the Government and Tag Team).

Conclusions of Law

After a careful evaluation of the evidence and findings of fact, the Hearing Officer concludes, as a matter of law that:

1. The United States Health Insurance Portability and Accountability Act of 1996

(HIPAA of Federal HIPAA) and the Health Insurance Portability and Accountability Federal Law Conformity and No-Fault Motor Vehicle Act of 1998 (D.C. HIPPA) affords protections to associations.

2. Tag Team Communications, Inc. (Tag Team) is not a bona fide association pursuant to D.C. Code section 35-1021(3)(C) because GWUHP uses underwriting methodologies to determine the eligibility of association members for coverage under the health plan.

3. Pursuant to the GWUHP Contract employees of Tag Team and members of Tag Team have different eligibility requirements. Employees of Tag Team must meet the eligibility requirements of Article 4 of the GWUHP Contract. Members of Tag Team (also called association members or group members) have no specific eligibility requirements under the GWUHP Contract.

4. Tag Team is a mixed association consisting of a small group of employees and individual members of the association who are not its employees.

5. Pursuant to D.C HIPAA coverage of the small group in Tag Team is regulated under the group market rules.

6. Pursuant to D.C. HIPAA coverage of the individual members of Tag Team are regulated under the individual market rules.

7. Pursuant to D.C. HIPAA individual market rules and group market rules apply to Tag Team's health care contract because a mixed membership that includes a small group of employees and individual association members are being served.

8. Pursuant to D.C. HIPAA, D.C. Code, Chapter 10A, sections 1026(b)(1) and 1033(a)(3) a health insurer can non-renew a health care contract.

9. GWUHP did not non-renew Tag Team's health care contract in violation of D.C. HIPAA (D.C. Code, Title 35, Chapter 10A, section 1026(b)(1) (1999, Supp.).

10. Pursuant to D.C. HIPAA individual and group market rules, Tag Team (association) does not have the right to guaranteed renewability in the instant case because GWUHP did not receive timely premium payments from the association in at least seven (7) of the twelve (12) months in the 1997-1998 contract year. Therefore, one of the exceptions to the right of guaranteed renewability was met.

11. Pursuant to D.C. HIPAA, individual market rules, the individual members of Tag Team have the right to guaranteed renewability because none of the exceptions to the right of guaranteed renewability were met by the individual members of Tag Team.

12. Pursuant to D.C HIPAA, group market rules, employees of Tag Team do not have the right to guaranteed renewability.

ORDER

Therefore, it is **HEREBY ORDERED** that:

1. GWUHP shall be permitted to non-renew Tag Team's health care contract.

2. The persons in GWUHP and Tag Team who are responsible for keeping the books and records must come to a resolution as to the amount of the premium payment arrearages, if any, owed by Tag Team to GWUHP. If the parties cannot come to a resolution as to the amount of the arrearages, then the parties are directed to obtain outside financial consultants to review the books and records and come to a resolution as to the amount of arrearages. The parties are required to come to a resolution of the amount of the arrearages within thirty (30) days and submit to the Hearing Officer a detailed report of the resolution, including a payment schedule.

3. Once a resolution as to the amount of the premium payment arrearages (if any) owed by Tag Team to GWUHP has been determined, Tag Team shall pay the premiums according to the payment schedule filed with the Hearing Officer.

4. GWUHP shall provide the individual members of Tag Team with their original health care contract.

5. GWUHP shall provide employees of Tag Team with an option to elect coverage under a conversion contract.

6. Tag Team shall immediately cease its current activities of advertising health insurance as a benefit in the Yellow Pages under the topic "Health Insurance" to attract association members. The same advertising restrictions shall apply to the attraction of employees. Tag Team shall be required to take the necessary steps to acquire the appropriate health maintenance organization producer license to continue to engage in such practice

7. Tag Team shall comply with the provisions in the District of Columbia Code, Title 29 to reflect the change in its name and the actual activity of the organization.

8. GWUHP shall verify the application submitted to determine eligibility for coverage of each employee or association member of Tag Team, pursuant to contract form number GRP-FACE (9/96) signed September 16, 1997, at the time the individual became a member of the health plan.

9. Tag Team shall furnish the necessary documentation to GWUHP so that a determination as to eligibility of each employee or association member for the group health care plan can be made promptly.

10. GWUHP shall not impose eligibility requirements specified for the association's employees on the association members who are not employees.

11. GWUHP shall submit to the Hearing Officer any basis other than unemployment for disenrolling Leonardo Salvarrey, Douglas Salama and Calixter Tobar within ten (10) days from the issuance of this Decision and Order.

12. GWUHP shall enroll Leonardo Salvarrey, Douglas Salama and Calixter Tobar as association members under Tag Team's health care contract, if it fails to submit legal support in compliance with the statutory requirements indicating that each person should not be an enrollee.

13. GWUHP shall review its procedures to determine the amount of premiums due by associations and groups. Upon completion of the review, copies of the procedure shall be submitted to the Hearing Officer, as well as, made available to its insured groups.

Dated this 30th day of August, 1999.

Leslie E. Johnson

Leslie E. Johnson

Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on _____, a copy of the foregoing Decision and Order SC# HMO-99-01 was sent by _____

to _____ at _____

_____.

_____

Name Date