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

THE DEPARTMENT OF INSURANCE AND SECURITIES REGULATION (DISR)	)
v.	**SO # HMO-00-01**
AMERICAN PREFERRED PROVIDER PLAN FOR THE MID ATLANTIC, INC. (APPP or APPP-DC)	)

Decision and Order of Suspension

Jurisdiction

Pursuant to the Health Maintenance Organization statute (D.C. Code, Title 35, Chapter 45, Section 4501 *et. seq.* (1997 Repl.)) the District of Columbia Department of Insurance and Securities Regulation (DISR) hereby issues a decision and order of suspension in the matter of *DISR* v. *American Preferred Provider Plan for the Mid Atlantic, Inc.* (APPP or APPP-DC).

Procedural History

The Department of Insurance and Securities Regulation, Insurance Bureau, issued an Order of Suspension/Notice of Revocation, Case Number SO HMO-00-01, on March 20, 2000. On April 18, 2000, APPP requested a hearing. The official notice of the hearing was issued by DISR on April 27, 2000. The hearing was scheduled for 10:00 a.m. on May 18, 2000. On May 17, 2000, APPP filed a Motion For Consent Order. DISR filed no opposition. On May 23, 2000, DISR filed a Motion To Amend The Order Of

Suspension/Notice Of Revocation to correct a typographical error in the net worth balance and deficiency figures indicated in the Order of Suspension/Notice of Revocation.

Issues Considered

The following issues were considered:

1. Whether APPP's net worth meets the statutory requirements in D.C. Code, Title 35, Chapter 45, § 4512 (1997 Repl.).

2. Whether APPP has an acceptable plan to correct its deficiency in accordance with D.C. Code, Title 35, Chapter 45, § 4519 (c) (1997 Repl.).

Analysis

1. **Whether APPP's net worth meets the statutory requirements in D.C. Code, Title 35, Chapter 45, § 4512 (1997 Repl.).**

D.C. Code, Title 35, Chapter 45, § 4512 (a)(2) requires that a health maintenance organization (HMO) *maintain* the minimum net worth requirement for protection against insolvency. The minimum net worth requirement for APPP pursuant to D.C. Code, Title 35, Chapter 45, § 4512 (a)(2) is $1,000,000.00. Pursuant to the Financial Condition Examination Report of APPP issued by the Commissioner on January 28, 2000, APPP's net worth as of December 31, 1998 was $(2,241,250.00) which is a deficiency of $(3,241,250.00). *See* page 15 of the Financial Condition Examination Report. Further, APPP's unaudited 1999 annual statement filed with DISR on March 7, 2000, indicates that its net worth is $(204,580.00) which is a deficiency of $(1,204,580.00). In a Motion For Consent Order filed by APPP on May 17, 2000, APPP admitted that it does not currently comply with the District of Columbia's minimum net worth requirements for health maintenance organizations.

ACCORDINGLY, the Commissioner finds that APPP's net worth is below the minimum net worth requirement for health maintenance organizations. In addition, the Commissioner finds that APPP is insolvent because its net worth is a negative value.

2. **Whether APPP followed the procedures to correct the net worth deficiency in accordance with D.C. Code, Title 35, Chapter 45, § 4519 (c) (1997 Repl.).**

D.C. Code, Title 35, Chapter 45, § 4519 (c) (1997 Repl.) requires " . . .the following when insufficient net worth is maintained:

> (1) Whenever the Commissioner finds that the net worth maintained by any health maintenance organization subject to the provisions of this chapter is less than the minimum net worth required to be maintained by § 35-4512, the Commissioner shall give written notice to the health maintenance organization of the amount of the deficiency and require:
>
> > (A) Filing with the Commissioner a plan for correction of the deficiency acceptable to the Commissioner; and
> > (B) Correction of the deficiency within a reasonable time, not to exceed 60 days, unless an extension of time is granted by the Commissioner.
>
> (2) Such a deficiency shall be deemed an impairment, and failure to correct the impairment in the prescribed time shall be grounds for suspension or revocation of the certificate of authority or for placing the health maintenance organization in conservation, rehabilitation, or liquidation. . ."

APPP was given written notice on January 31, 2000 to submit a plan for correction of the net worth deficiency that was acceptable to the Commissioner within ten business days of the notice or on Monday, February 14, 2000. APPP received notice in the January 31, 2000 letter that the failure to submit a timely corrective action plan would result in grounds for suspension or revocation of its HMO certificate of authority. On the due date, APPP requested and was given an additional week or until Friday, February 18, 2000 to submit its corrective action plan. On February 18, 2000, APPP requested and received an additional extension of one business day or until Tuesday, February 22, 2000 to submit its corrective action plan. APPP filed its initial corrective action plan on February 19, 2000. DISR granted the company additional time (to the close of business Wednesday, March 1, 2000) to submit an amended corrective action plan that complies with the statutory requirement. An amended corrective action plan was filed by APPP on March 1, 2000.

The two plans filed by APPP to correct its net worth deficiency are summarized below:

- <u>February 19, 2000 Plan</u>

  APPP proposed:

  - To sell APPP to Agape Health Associates, Inc.

- To improve profitability by reducing administrative expenses
- To market its administrative services as an ASO to generate income

APPP also claimed it could meet its contractual obligations with D.C. Medicaid and providers, and reimburse all medical and administrative expenses.

- March 1, 2000 Plan

  APPP claimed an improvement in its fortunes as follows:

  - The officers of Agape, Inc. have received a Letter of Guarantee to provide $1,500,000.00 to correct the deficiency (*See* attached letter)
  - The financial position of APPP-DC, as of January 31, 2000 had improved by $700,000.00 (*See* the attached unaudited financial statements)
  - The New Jersey Department of Insurance has been asked to forgive the $1,667,000.00 contribution, otherwise it is most likely uncollectible (*See* the attached letter from New Jersey)

The plans submitted by APPP to correct its net worth deficiency were not sufficient. The supporting documents were not attached. The offer to sell APPP to Agape Health Associates, Inc. and forgiveness of the $1,667,000.00 contribution from APPP- New Jersey were denied by the Deputy Attorney General in the New Jersey Department of Insurance and Liquidator for APPP-New Jersey. In addition, there was no cash infusion into APPP to increase its net worth to the minimum net worth requirement of $1,000,000.00 pursuant to D.C. Code, Title 35, Chapter 45, § 4512 (a)(2) (1997 Repl.) and no viable plan to maintain the minimum net worth statutory standard was provided.

ACCORDINGLY, the Commissioner finds that APPP has neither filed a plan to correct its deficiency that is acceptable nor corrected its deficiency.

Findings of Facts

The Commissioner makes the following findings of facts based on the correspondence from APPP, the New Jersey Department of Insurance, and the Financial Condition Examination dated January 28, 2000:

(1) That APPP received its certificate of authority to operate in the District of Columbia as a health maintenance organization on January 26, 1998.

(2) That APPP is a stock corporation and it was incorporated in the District of Columbia on September 6, 1996.

(3) That the sole stockholder of the Company is Dr. Madgy El Amir.

(4) That a financial condition examination of APPP was conducted at its principal offices located at 1501 M Street, N.W., Washington, D.C.

(5) That the general review and analysis of the company's operations and business affairs was made for the period under examination and its financial condition as of December 31, 1998.

(6) That the basis for convening the examination was the turnover in APPP's management resulting in numerous delays in providing required financial statements (for example, on January 28, 1999, DISR received the third quarter 1998 financial statement in a format approved by the National Association of Insurance Commissioners (NAIC), which was due on November 15, 1998), the fact that APPP reported surplus notes in its financial statements that were not reviewed or approved by DISR, and the New Jersey Department of Insurance placed APPP's affiliate, American Preferred Provider Plan, Inc. (APPP-NJ) in rehabilitation.

(7) That Dr. Richard Ashby (President and CEO of APPP) received a draft examination report in October 1999 which detailed the examiner's findings that APPP was below the minimum net worth requirements.

(8) That the draft report was the first notification to APPP of the specific amount of net worth deficiency.

(9) That the adopted financial condition examination report stated that APPP had a net worth balance of $(2,241,520.00), which is a deficiency of $3,241,520 = {$(2,241,250.00) + $(1,000,000) [the minimum net worth requirement that APPP must maintain]} as of December 31, 1998.

(10) That APPP's minimum net worth requirement is $1,000,000 pursuant to the protection against insolvency provisions in the Health Maintenance Organization statute (D.C. Code. Title 35, Chapter 45, Section 4512 (a)(2)(A) (1997 Repl.)).

(11) That the final examination report was sent to the company on January 28, 2000.

(12) That APPP was given written notice on January 31, 2000 to submit a plan for correction of the net worth deficiency that was acceptable to the Commissioner within ten business days of the notice or on Monday, February 14, 2000.

(13) That APPP received notice in the January 31, 2000 letter that the failure to submit a timely corrective action plan would result in grounds for suspension or revocation of its HMO certificate of authority.

(14) That on the due date, APPP requested and was given an additional week or until Friday, February 18, 2000 to submit their corrective action plan.

(15) That on February 18, 2000, APPP requested and received an additional extension of one business day or until Tuesday, February 22, 2000 to submit their corrective action plan.

(16) That APPP filed its initial corrective action plan on February 19, 2000.

(17) That DISR granted the company additional time (close of business, Wednesday, March 1, 2000) to submit an amended corrective action plan that complies with the statutory requirement.

(18) On March 1, 2000, an amended corrective action plan was filed with DISR without the noted attachments.

(19) That APPP agreed to provide the corrective action plan documentation in an agreed upon manner by close of business, Friday, March 3, 2000.

(20) That no additional corrective action plan documentation was filed by APPP on March 3, 2000.

(21) That on March 8, 2000, the Deputy Attorney General for New Jersey indicated in a letter that APPP did not request that New Jersey forgive "the $1,677,000 contribution." Further, the New Jersey Deputy Attorney General stated that ". . . the liquidator expects all monies transferred from APPP-NJ to APPP-DC should be returned to the estate."

(22) That on May 11, 2000, APPP made an offer to the liquidator of APPP-New Jersey to write-off some of the $4.3 million owed by APPP to APPP-New Jersey ($1.1 million) in exchange for $500,000.00 payment and to negotiate a further reduction of the remainder of the outstanding debt which could be repaid once APPP meets statutory capital and surplus requirements for DISR.

(23) That the liquidator of APPP-New Jersey found APPP's May 11th proposal unacceptable.

(24) That to date no acceptable corrective action plan has been filed with the Commissioner of DISR.

(25) That APPP filed a Motion For Consent Order on May 17, 2000, which requested the following:

i. That the request for a hearing by APPP be withdrawn.

ii. That the hearing scheduled for May 18, 2000 be canceled.

iii. That APPP waives its right to a hearing in conjunction with this matter.

iv. That APPP does not currently comply with the District of Columbia's net worth requirements for health maintenance organizations.

Conclusions of Law

The Commissioner makes the following conclusions of law pursuant to the D.C. Health Maintenance Organization Act (D.C. Law 11-235: D.C. Code § 35-4501 *et. seq.*):

(1) APPP has failed to maintain the minimum statutory net worth requirement of $1,000,000.00 pursuant to D.C. Code, Title 35, Chapter 45, Section 4512 (a)(2)(A) (1997 Repl.).

(2) APPP has failed to present an acceptable plan to correct the deficiency pursuant to D.C. Code, Title 35, Chapter 45, Section 4519 (c) (1997 Repl.) which creates an impairment.

(3) APPP has failed to correct the impairment which is grounds for suspension or revocation of APPP's certificate of authority pursuant to D.C. Code, Title 35, Chapter 45, Section 4519 (c)(2) (1997 Repl.).

ORDER

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

1. The request for a hearing by APPP be withdrawn.

2. The hearing scheduled for May 18, 2000 be canceled.

3. APPP's certificate of authority to do business in the District of Columbia as a health maintenance organization **is hereby suspended** for the failure to maintain the minimum statutory net worth requirement.

4. APPP shall not enroll any additional enrollees except newborn children, other newly acquired dependents of existing enrollees, other newly eligible individuals, or enrollees assigned to the plan by the D.C. Department of Health, Office of Manage Care, and shall not engage in any advertising or solicitation whatsoever.

5. The existence of an impairment shall not prevent the issuance or renewal of a certificate, agreement, or contract when the enrollee exercises an option granted under the plan to obtain a new, renewed, or converted coverage.

Dated this 24th day of May, 2000.

Lawrence H. Mirel
Commissioner

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