

120 Monument Circle Indianapolis, IN 46204



LETTER OF COMMENT NO. 144

Technical Director – File Reference No. 1600-100 Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Re: File Reference No. 1600-100

Exposure Draft: Proposed Statement of Financial Accounting Standards— Disclosure of Certain Loss Contingencies—an amendment of FASB Statements No. 5 and 141(R), dated June 5, 2008

Dear Sir or Madam:

WellPoint, Inc. ("WellPoint") is the largest health benefits company in terms of commercial membership in the United States, serving over 35 million members as of June 30, 2008 and with total revenues of \$61.1 billion for the year ended December 31, 2007. WellPoint appreciates the opportunity to comment on the FASB's (the "Board") proposed statement (the "Proposed Statement") regarding disclosure of certain loss contingencies.

### Summary

We commend the Board in its effort to enhance disclosures of loss contingencies. However, we believe that the current disclosure requirements of FASB Statement No. 5, Accounting for Contingencies ("FAS 5"), provide investors and other users of financial statements with adequate information regarding a company's loss contingencies. We believe that the expanded disclosure requirements for loss contingencies described in the Proposed Statement could be detrimental to a company and its investors. WellPoint's specific concern is that the proposed changes could have an adverse impact on stock price and shareholder value by generating additional litigation and/or negatively influencing existing cases filed against a company.

We agree with the concerns raised by the chief litigators from a group of other large U.S. corporations in their letter to the Board dated December 4, 2007. We also agree with the concerns raised by the Association of Corporate Counsel and the American Bar Association in their letters to the Board dated July 25, 2008 and August 5, 2008, respectively.

To supplement these comment letters, we would like to submit the following additional concerns:

#### Comments

# Potential for Additional Litigation and Losses

We believe the expanded disclosures described in the Proposed Statement will likely put companies at a disadvantage by requiring the disclosure of estimates of maximum or likely losses that are not considered probable under FAS 5. Estimating non-probable loss contingencies exaggerates the likely outcome of the litigation and may generate new litigation (and subsequent losses) as a company's estimates of maximum or likely losses from litigation could be significantly different than the actual outcome or settlement of the cases involved. As a result, the propensity for additional litigation could increase as plaintiffs may well be emboldened to pursue meritless claims. This could be detrimental to the overall financial condition of a company, as defending litigation that is without merit costs money.

Further, any additional disclosures, other than descriptions of litigation, could be used by plaintiffs in a fashion that could alter the outcome of legal proceedings and settlement discussions to the detriment of the company and therefore its shareholders. For example, management of a company may determine that a loss is not probable for a specific case and, therefore, no loss contingency is recorded. However, if that company is required to disclose additional information about the case, including details about the company's defense strategy and other factors that will likely impact the ultimate outcome, the plaintiff could use that information to strengthen their case. As a result, management may need to change their determination of the likelihood of loss from "non-probable" to "probable," which would then require the recognition of a loss contingency in the financial statements.

# Proposed Disclosures Do Not Add Value to Investors

Litigation is very complex. We believe the additional disclosures in the Proposed Statement may confuse less sophisticated investors who do not have the technical expertise to understand such disclosures, potentially resulting in poor investor decision making.

We acknowledge that the Board recognizes additional information about certain loss contingencies may be prejudicial to a company's position. However, the proposed aggregation of disclosures at a higher level for such information may not address the problem as sophisticated users of financial statements may still be able to decipher those cases from others aggregated at a lower level. Finally, given the complexities of each individual case, aggregation may not be possible or meaningful to the users of financial statements.

### **Operational Requirements**

In addition to the concerns previously expressed regarding the impact of the expanded disclosure requirements related to litigation, we would also like to express concerns

related to the operational requirements necessary to include such information in the financial statements. While many companies likely have the relevant litigation information at hand, most will need to adapt their disclosure protocols and practices to analyze that information and prepare it in a format that complies with the disclosure requirements of the Proposed Standard. In our opinion, the effective date of the Proposed Statement for fiscal years ending after December 15, 2008 would not allow sufficient time to make the operational changes necessary to change a company's disclosure protocols and practices.

### Conclusion

We believe the proposed disclosure requirements included in the Proposed Statement do not improve the financial reporting of loss contingencies and would not provide investors and other users of financial statements more useful information. We believe the current disclosure requirements of FAS 5 provide appropriate information to investors without exposing a company to additional risks of litigation, loss and adverse financial impact to investors. It is our recommendation that the Board retain the current disclosure requirements of FAS 5.

Should the Board move forward with the Proposed Statement and require the proposed expanded disclosures regarding loss contingencies, we request the Board reconsider the timing of the effective date of the Proposed Statement, given the final statement would not be issued until the later part of 2008, which will not allow sufficient time for adoption at December 31, 2008. We believe a one-year delay would allow all parties involved to modify their processes to comply with the Proposed Statement.

\* \* \* \* \*

We appreciate the opportunity to provide comments on the Proposed Statement and hope the Board finds our comments helpful. Should you have any questions on our comments or wish to discuss any of our responses with us directly, please feel free to contact me directly at 317/488-6770.

Very truly yours,

WellPoint, Inc.

Wayne S. DeVeydt Executive Vice President and Chief Financial Officer

Copy to: Angela F. Braly

President and Chief Executive Officer

John Cannon

**Executive Vice President and General Counsel**