MAXICARE HEALTH PLANS INC
Form 10-Q
November 15, 2004

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SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-Q

þ **Quarterly report pursuant to Section 13 or 15(d) of the Securities Act of 1934 for the quarterly period ended September 30, 2004**

or

o **Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Commission file number: 0-12024

MAXICARE HEALTH PLANS, INC.

(Exact name of registrant as specified in its charter)

Delaware **(State or other jurisdiction of incorporation or organization)**	**95-3615709** **(I.R.S. Employer Identification No.)**
14241 East Firestone Boulevard, La Mirada, California **(Address of principal executive offices)**	**90638** **(Zip Code)**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes þ **No** o

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13, or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court.

Yes þ **No** o

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Securities Exchange Act of 1934). o **Yes** þ **No**

Common Stock, $.01 par value 9,991,926 shares outstanding as of November 12, 2004.

MAXICARE HEALTH PLANS, INC.

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PART I: FINANCIAL INFORMATION

Item 1: Financial Statements.

MAXICARE HEALTH PLANS, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED BALANCE SHEETS
(Amounts in thousands except par value)

	September 30, 2004	December 31, 2003
	(Unaudited)	
Current Assets		
Cash and cash equivalents	$ 3,572	$ 5,361
Other current assets	22	25
Total Assets	$ 3,594	$ 5,386
Current Liabilities		
Accrued salary expense	$ 85	$ 91
Other current liabilities	6,280	6,814
Total Current Liabilities	6,365	6,905
Long-Term Liabilities	1,800	1,938
Total Liabilities	8,165	8,843
Shareholders Equity (Deficit)		
Common stock, $.01 par value - 80,000 shares authorized, 9,992 shares issued and outstanding	98	98
Additional paid-in capital	283,466	283,466
Accumulated deficit	(288,135)	(287,021)
Total Shareholders Equity (Deficit)	(4,571)	(3,457)
Total Liabilities and Shareholders Equity (Deficit)	$ 3,594	$ 5,386

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MAXICARE HEALTH PLANS, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Amounts in thousands except per share data) (Unaudited)

	For the three months ended September 30,		For the nine months Ended September 30,	
	2004	2003	2004	2003
Revenues				
Investment income	$ 9	$ 8	$ 24	$ 22
Other income	9	13	9	3,413
Total Revenues	18	21	33	3,435
Expenses				
Health care expenses				(1,146)
Salary, general and administrative expenses	555	537	1,147	1,333
Litigation and contract settlement charges				250
Total Expenses	555	537	1,147	437
Income (loss) before income taxes	(537)	(516)	(1,114)	2,998
Income tax provision				
Net income (loss)	$ (537)	$ (516)	$(1,114)	$ 2,998
Net income (loss) per common share:				
Basic income (loss) per common share:				
Basic income (loss) per common share	$ (.05)	$ (.05)	$ (.11)	$ .31
Weighted average number of common shares outstanding	9,992	9,992	9,992	9,825
Diluted income (loss) per common share:				
Diluted income (loss) per common share	$ (.05)	$ (.05)	$ (.11)	$ .31

Weighted average number of common and common dilutive potential shares outstanding	9,992	9,992	9,992	9,825

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MAXICARE HEALTH PLANS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS EQUITY (DEFICIT)

(Amounts in thousands)

	Number of Common Shares	Common Stock	Additional Paid-in Capital	Accumulated Deficit	Total
Balances at December 31, 2003	9,992	$ 98	$283,466	$(287,021)	$(3,457)
Net loss (unaudited)				(1,114)	(1,114)
Balances at September 30, 2004 (unaudited)	9,992	$ 98	$283,466	$(288,135)	$(4,571)

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MAXICARE HEALTH PLANS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(Amounts in thousands)
(Unaudited)

	For the nine months ended September 30,	
	2004	**2003**
Cash Flows from Operating Activities:		
Net income (loss)	$(1,114)	$ 2,998
Adjustments to reconcile net income (loss) to net cash used for operating activities:		
Changes in assets and liabilities:		
Decrease in estimated claims and other health care costs payable		(736)
Changes in other miscellaneous assets and liabilities	(675)	(2,345)
Net cash used for operating activities	(1,789)	(83)
Cash Flows from Investing Activities:		
Collection of note receivable from shareholder		3,408
Net cash provided by investing activities		3,408
Net (decrease) increase in cash and cash equivalents	(1,789)	3,325
Cash and cash equivalents at beginning of period	5,361	2,636
Cash and cash equivalents at end of period	$ 3,572	$ 5,961

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MAXICARE HEALTH PLANS, INC. AND SUBSIDIARIES

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Note 1 Business Description

Maxicare Health Plans, Inc., a Delaware corporation (MHP or the Company), is a holding company that formerly operated health maintenance organizations and other subsidiaries, primarily in the field of managed healthcare. As of March 15, 2002 all operations of MHP and its subsidiaries were terminated. MHP and its subsidiaries have not engaged in any business activities since that date. At September 30, 2004 we had negative net worth of $4.6 million and a working capital deficiency of $2.8 million. See Note 2 below.

All significant subsidiaries formally operated by MHP (the California and Indiana HMOs and Maxicare Life and Health Insurance Company, Inc.) were placed into bankruptcy, rehabilitation and administrative supervision, respectively, in May of 2001 and are currently in liquidation. Accordingly, these former subsidiaries were no longer included in our consolidated financial statements after May 2001. We will receive no distribution of assets from the California HMO, are very unlikely to receive any distribution of assets from the Indiana HMO, and cannot determine whether or not we will receive a distribution of assets from Maxicare Life and Health Insurance Company, Inc. Any distribution from Maxicare Life and Health Insurance Company, Inc., if assets ultimately are available for distribution, will require regulatory approval.

We own Health Care Assurance Company, Ltd. (HCAC), a captive insurer that provided certain insurance coverage to MHP and its subsidiaries. Effective January 31, 2002, all policies underwritten by Health Care Assurance Company, Ltd., have terminated or expired.

Note 2 Liquidity and Going Concern Issues

At September 30, 2004 MHP and subsidiaries (collectively we or the Company) had a consolidated working capital deficiency of approximately $2.8 million, and a deficiency in shareholders equity of approximately $4.6 million. Furthermore, of our total cash and cash equivalents of $3.6 million at September 30, 2004, $1.2 million was held at HCAC. The transfer of cash to MHP from HCAC requires the approval of regulatory authorities.

As noted above, we had no continuing business activities after March 15, 2002. We have no access to cash that is held at HCAC except to the extent regulatory authorities approve the transfer of cash to MHP. As set forth below in Note 4, substantial claims have been or may be asserted against us. Such claims, when resolved, may be far in excess of liabilities reported in the Consolidated Balance Sheets.

These conditions raise substantial doubt about our ability to continue as a going concern. The financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result from the outcome of these uncertainties.

Management is exploring possible strategies to realize any possible value remaining in the Company; however, given our financial condition, our stock price and the claims against us, it is very possible that management will not be successful in these efforts, and we may seek protection under the Bankruptcy Code.

Note 3 Significant Accounting Policies

The accompanying unaudited consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles for interim financial information. In the opinion of management, all adjustments considered necessary for a fair presentation, which consist solely of normal recurring adjustments, have been included. All significant intercompany balances and transactions have been eliminated.

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Basis of Consolidation

The accompanying unaudited consolidated financial statements include the accounts of the Company and its subsidiaries. The accounts of the California HMO, the Indiana HMO and Maxicare Life and Health Insurance Company, Inc. are not consolidated. All significant intercompany balances and transactions have been eliminated.

Accounting Policies

For further information on the Company and our accounting policies refer to the consolidated financial statements and accompanying footnotes included in our annual report on Form 10-K for the year ended December 31, 2003.

Earnings per Share

The denominator used in calculating both basic and diluted earnings per share in the Consolidated Statements of Operations is the weighted average number of shares outstanding for each period indicated. All potentially dilutive securities, consisting solely of employee stock options, were antidilutive for each of the periods presented in the Consolidated Statements of Operations.

Stock-Based Compensation

We account for stock-based compensation under the recognition and measurement principles (the intrinsic-value method) prescribed in Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employees,* and related interpretations. Compensation cost for stock options is reflected in net income and is measured as the excess of the market price of the Company s stock at the date of grant over the amount an employee must pay to acquire the stock.

We have adopted the disclosure provisions required by Statement of Financial Accounting Standards (SFAS) No. 148, *Accounting for Stock-Based Compensation Transition and Disclosure*.

No compensation expense was recorded under the intrinsic value method for the three and nine months ended September 30, 2004 and 2003. Additionally, no material expense would have been recognized under the fair value method for the three and nine months ended September 30, 2004 and 2003.

On October 13, 2004, the Financial Accounting Standards Board concluded that SFAS No. 123R, *Share-Based Payment*, which requires all companies to measure compensation cost for all share-based payments (including employee stock options) at fair value, would be effective for public companies for interim or annual periods beginning after June 15, 2005. SFAS No. 123R will eliminate our ability to account for share-based compensation using the intrinsic value method permitted under Opinion No. 25. We will utilize the modified prospective method, recognizing compensation cost for share-based awards to employees based on their grant-date fair values from the beginning of the period in which the recognition provisions are first applied as if the fair value-based method had been used to account for all employee awards. Under this transition approach, compensation cost will be recognized for all awards granted, modified or settled after the date of adoption as well as to any awards that were not fully vested as of that date. Any adjustments to recognize share-based liabilities at fair value from the beginning of the year through the date of adoption will be recognized as a cumulative effect of a change in accounting principle. We intend to apply the new rules beginning July 1, 2005.

Note 4 Commitments and Contingencies

Litigation and Contract Terminations

On or about June 25, 2001, the Commissioner of the Indiana Department of Insurance (the Commissioner), as the rehabilitator of Maxicare Indiana, Inc., our Indiana HMO, filed a complaint (the Complaint) in the Marion County Circuit Court of Indiana against us and the five directors of the Indiana HMO, one of whom was a director of the Company. The Commissioner amended the Complaint on February 1, 2002. The Complaint, as amended, alleges, in substance, that: (1) the directors of the Indiana HMO breached their fiduciary duty by failing to maintain a plan providing for continuation of care benefits in the event that the Indiana HMO was placed in receivership, and that the Company is also liable for such failure; (2) the Company fraudulently concealed the financial condition of the Indiana HMO; (3) the Company manipulated the finances of the Indiana HMO for the Company s own benefit; and (4) the Company received preferential and/or fraudulent transfers of money from the Indiana HMO. While the amended Complaint requests money damages in largely unspecified amounts, we understand the Commissioner s claims against us to be in excess of $48.0 million. All defendants answered the amended Complaint on April 5, 2002. Pre-trial discovery has not been

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completed. We believe that the claims against us are without merit and intend to vigorously defend the suit. The amounts sought by the Commissioner are significantly in excess of liabilities recorded on our Consolidated Balance Sheets. The ultimate resolution of this matter, if unfavorable, could materially affect our consolidated financial position, results of operations and cash flows.

Effective January 1, 2001, we entered into a Pharmacy Benefits Management Agreement (the PBM Agreement) with Medimpact Healthcare Systems, Inc. (Medimpact). The PBM Agreement called for Medimpact to process and fill within its network of contracting pharmacies prescriptions for members of Maxicare Life and Health Insurance Company, Inc., the California HMO and the Indiana HMO. The PBM Agreement called for us to reimburse Medimpact for the cost of drugs dispensed and to pay per transaction administrative fees on a bi-weekly basis. As a result of the Indiana HMO being placed in rehabilitation and the California HMO s bankruptcy, Medimpact allegedly has not received reimbursement for certain prescriptions filled on behalf of the members of those subsidiaries. Although it has yet to do so, Medimpact may seek reimbursement from us for such costs in an amount not presently known. We, in turn, believe that we have claims against Medimpact for rebates due to us.

By order dated March 9, 2001, the Missouri Department of Insurance approved the transfer of all of the outstanding shares of Maxicare Life and Health Insurance Company, Inc. from us to Maxicare Indiana, Inc., on the condition that control of Maxicare Life and Health Insurance Company, Inc. remain with us. We believe that this condition has not been complied with and that, accordingly, the transfer of the Maxicare Life and Health Insurance Company, Inc. shares by us to Maxicare Indiana, Inc. is null and void. We intend to present our position to the Missouri Department of Insurance at the appropriate time.

We previously leased certain industrial space in Los Angeles under an agreement that expired in May 2004. The landlord claimed that we were obligated to surrender that space in its original condition and to pay for certain repairs. In September 2004 we settled this claim for payment of approximately $27,000 and exchanged general releases with the landlord. The landlord retained its right under the lease to seek environmental remediation, but acknowledged in writing that it had no present knowledge of such claim. We will no longer be reporting on this matter. .

Six former employees of the Indiana HMO have made demand on us for the payment of approximately $400,000 in severance payments. We believe these claims are without merit.

Other than those noted above, no claims have been filed against us by the creditors of Maxicare Life and Health Insurance Company, Inc., the California HMO or the Indiana HMO. However, such creditors may file claims against us in the future.

Note 5 Other Income

In the nine months ended September 30, 2003 MHP recognized $3.4 million of other income pursuant to the settlement of an action brought by the Company that sought recovery in connection with the underpayment of amounts due for health care coverage provided to employees of the United States Office of Personnel Management.

Note 6 Health Care Expenses

In the nine months ended September 30, 2003 the Company recognized negative health care expenses of $1.146 million in connection with termination of the claim notice period for certain reinsurance coverage provided by HCAC.

Note 7 Litigation and Contract Settlement Charges

The Consolidated Statements of Operations for the nine months ended September 30, 2003 reflect a litigation and contract settlement charge of $250,000 in connection with the settlement of certain litigation with the Trizetto Group, Inc. (Trizetto). The charge represents the amount by which the cash settlement paid to Trizetto during the second quarter of 2003 exceeded amounts previously accrued. Pursuant to the settlement agreement, the Company paid $1.25 million to TriZetto, issued 250,000 shares of the Company s common stock to TriZetto and returned to TriZetto certain warrants that TriZetto had issued to it. No cost was recorded in the Consolidated Statements of Operations for the shares issued to Trizetto since the fair value of the shares was immaterial.

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Item 2: Management s Discussion and Analysis of Financial Condition and Results of Operations.

Results of Operations, Rehabilitation and Bankruptcy

Current Status

We have had no active business since March 15, 2002 and have no reasonable prospects of obtaining or generating any active business. We have no means of generating additional cash.

We are exploring possible strategies to realize any possible value remaining in the Company. Any such strategy may include the ultimate liquidation of Health Care Assurance Company, Ltd.; however, because of our financial condition and the claims of our creditors, we may seek protection under the Bankruptcy Code.

Liquidity and Working Capital Deficiency

As noted above, we have terminated all operations. At September 30, 2004, we had a consolidated working capital deficiency of approximately $2.8 million and a deficiency in shareholders equity of approximately $4.6 million. Furthermore, of our total cash and cash equivalents of $3.6 million at September 30, 2004, $1.2 million was held at Health Care Assurance Company, Ltd. The transfer of cash to MHP from Health Care Assurance Company, Ltd. requires the approval of regulatory authorities.

In February 2004, we entered into a Settlement Agreement and Mutual Release with a former executive under the terms of which we paid that executive $550,000 in addition to amounts already attached by the executive under a lien, for a total payment of $1,317,000.

During the third quarter of 2004 we transferred $1.3 million from HCAC to MHP after receiving appropriate regulatory approval.

We have certain contractual undertakings for which we may be liable and there are various alleged claims that may be asserted against us, including, among others, undertakings to and/or purported claims against us by vendors and former employees of our subsidiaries who have provided goods or services to those subsidiaries.

We are involved in certain litigation, and claims have been made against us, in the normal course of business. In some instances the amounts sought exceed those accrued in our Consolidated Balance Sheets. The ultimate liability for these legal actions cannot be determined and could materially affect our consolidated financial position, results of operations or cash flows, if resolved unfavorably. See Note 4 Commitments and Contingencies to our Unaudited Condensed Consolidated Financial Statements.

Disposition of Subsidiaries

The California and Indiana HMOs and Maxicare Life and Health Insurance Company, Inc. are currently in liquidation. We will receive no distribution of assets from the California HMO, are very unlikely to receive any distribution from the Indiana HMO, and may or may not receive a distribution from Maxicare Life and Health Insurance Company, Inc. Any distribution from Maxicare Life and Health Insurance Company, Inc. if assets ultimately are available for distribution, will require regulatory approval.

Results of Operations

The Quarter Ended September 30, 2004 Compared to the Quarter Ended September 30, 2003

We reported a loss of approximately $500,000, or $0.05 per diluted share, in both the quarter ended September 30, 2004 and the quarter ended September 30, 2003. We had no revenue other than insignificant amounts of interest income in either of the quarters ended September 30, 2004 and 2003. All expenses in the quarters ended September 30, 2004 and 2003 were salary, general and administrative expenses.

The Nine months Ended September 30, 2004 Compared to the Nine months Ended September 30, 2003

We reported a loss of approximately $1.1 million, or $0.11 per diluted share, for the nine months ended September 30, 2004 compared to net income of approximately $3.0 million, or $0.31 per diluted share for the nine months ended September 30, 2003. We had no revenue other than insignificant amounts of interest income in the nine months ended September 30, 2004. All expenses in the nine months ended September 30, 2004 were salary, general and administrative expenses. Net income for the nine months ended September 30, 2003 reflects the following events that occurred in the second quarter of 2003:

The recognition of other income of approximately $3.4 million in connection with a settlement recovering the underpayment of amounts due to us for health care coverage provided to employees of the United States Office of Personnel Management;

the recognition of $1.146 million of income, reflected as negative health care expense, in connection with the expiration of certain notice periods in connection with certain insurance provided by our Health Care Assurance Company, Ltd. subsidiary; and

the recognition of $250,000 of expense in regards to the settlement of litigation with the Trizetto Group, Inc.

Contractual Obligations

In our annual report on Form 10-K for the year ended December 31, 2003, we reported on our contractual obligations as of that date. Through September 30, 2004 there were no material changes to that information.

Forward Looking Statements

The statements in this Form 10-Q may be forward-looking statements that are subject to risks and uncertainties. In particular, statements in this Form 10-Q that state our intentions, beliefs, expectations, strategies, predictions or any other statements relating to our future activities or other future events or conditions are forward-looking statements. Forward-looking statements are subject to risks, uncertainties and other factors, many of which are beyond our control, including, but not limited to, those identified under Risk Factors and Management s Discussion and Analysis of Financial Conditions and Results of Operations in our Form 10-K for the year ended December 31, 2003 and Management s Discussion and Analysis of Financial Conditions and Results of Operations in this Form 10-Q, as well as those described in any other filings by us with the Securities and Exchange Commission, as well as general economic conditions, any one or more of which could cause actual results to differ materially from those stated in such statements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

As of September 30, 2004, we had approximately $3.6 million in cash, no marketable securities and no restricted investments. Our investment policies emphasize return of principal and liquidity and are focused on fixed returns that limit volatility and risk of principal. Because of our investment policies, the primary market risk associated with our portfolio is interest rate risk. As of September 30, 2004, we did not have any outstanding bank borrowings or debt obligations.

Item 4. Controls and Procedures

Our chief executive officer and chief financial officer have supervised and participated in an evaluation of the effectiveness of our disclosure controls and procedures as of a date within 90 days of the date of this report, and, based on their evaluations, they believe that our disclosure controls and procedures (as defined in Rule 13a-14(c) of the Securities Exchange Act of 1934, as amended) are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported, within the time periods specified in the Commission s rules and forms. As a result of the evaluation, there were no significant changes in our internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation.

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PART II OTHER INFORMATION

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits

31.1	Certificate of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certificate of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certificate of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certificate of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

	MAXICARE HEALTH PLANS, INC (Registrant)
Date November 12, 2004	/s/ PAUL R. DUPEE, JR
	Paul R. Dupee, Jr., Chief Executive Officer
Date November 12, 2004	/s/ JOSEPH W. WHITE
	Joseph W. White Chief Financial Officer