

**FINAL**  
**MINUTES OF THE MEETING OF THE**  
**NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD**  
**AT THE OFFICES OF THE**  
**NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE**  
**TRENTON, NEW JERSEY**  
**September 7, 2010**

**Directors present by phone:** Darrel Farkus (Oxford); Sandi Kelly (Horizon); Tom Pownall (Aetna Health, Inc.); Christine Stearns; Tony Taliaferro (AmeriHealth); Lisa Yourman.

**Directors present in person:** Neil Vance (DOBI)

**Others participating:** Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; DAG Eleanor Heck.

**I. Call to Order**

E. DeRosa called the meeting to order at 10:03 A.M. She announced that notice of the meeting had been published in two newspapers of general circulation and posted at the Department of Banking and Insurance (“DOBI”), the DOBI website, and the Office of the Secretary of State in accordance with the Open Public Meetings Act. A quorum was present. She noted that votes would be by roll call because the meeting is being held via teleconference.

**II. Annual Meeting: Election of Officers and Composition of Committees**

E. DeRosa reminded Board members that this was the annual meeting at which the Board elects its Chair and Vice Chair and reconsiders composition of its standing committees.

*Election of Chair*

S. Kelly nominated M. Taylor as Chair, and T. Pownall confirmed that M. Taylor is willing to continue serving as Chair.

**S. Kelly made a motion, seconded by C. Stearns, to elect M. Taylor as Chair, and by a roll call vote, the Board unanimously elected M. Taylor as Chair for another year.**

*Election of Vice Chair*

C. Stearns nominated S. Kelly as Vice Chair, and S. Kelly confirmed she is willing to continue to serve as Vice Chair.

**C. Stearns made a motion, seconded by T. Taliaferro, to elect S. Kelly as Vice Chair, and by roll call the Board unanimously elected S. Kelly as Vice Chair for another year.**

*Reconstitution of Committees*

E. DeRosa reminded the Board that, because there are only seven members currently sitting on the Board, committees should continue to be limited to no more than 3 Board members if meetings are not to become subject to New Jersey's Open Public Meeting Act. The Board then discussed the current composition of the Committees, which are as follow:

*Technical Advisory Committee (TAC)*

DOBI  
Horizon  
AmeriHealth

*Legal Committee (Legal)*

DOBI  
Horizon  
Aetna

*Operations & Audit Committee (OAC)*

DOBI  
Oxford  
Aetna

*Marketing Committee (Marketing)*

Horizon  
Oxford  
C. Stearns

L. Yourman indicated she would like to participate on a committee. C. Stearns stated that she would like to return to the Legal Committee whenever the Board's vacancies are filled, and said she was willing to give up her membership on the Marketing Committee.

**S. Kelly made a motion, seconded by T. Pownall, to reconstitute TAC with its current membership. By roll call vote, the motion carried unanimously.**

**S. Kelly made a motion, seconded by C. Stearns, to reconstitute the Legal Committee with its current membership. By roll call vote, the motion carried unanimously.**

**S. Kelly made a motion, seconded by D. Farkus, to reconstitute the OAC with its current membership. By roll call vote, the motion carried unanimously.**

**N. Vance made a motion, seconded by S. Kelly, to revise the constitution of the Marketing Committee membership as follows:**

**Horizon, Oxford and L. Yourman.**

**By roll call vote, the motion carried unanimously.**

**III. Minutes – July 13, 2010 Open Session**

**T. Taliaferro made a motion to approve the Open Session minutes of the July 13, 2010 meeting. T. Pownall seconded the motion. The motion carried, with C. Stearns, N. Vance and L. Yourman abstaining.**

**IV. Staff Report**

*Expense Report*

E. DeRosa presented the September Expense Report, with expenses totaling \$48,467.10, which involved primarily salaries and benefits for staff, and the services of Withum, Smith+Brown (WSB) related to loss audits. She noted that some information is on two separate lines because the expenses occurred in separate fiscal years.

**L. Yourman made a motion, seconded by D. Farkus, to approve the September Expense Report. By roll call vote, the motion carried unanimously.**

E. DeRosa requested approval for the transfer of \$48,600 from the Board's money market funds to the Board's checking account to cover the payment of the September expenses.

**L. Yourman made a motion, seconded by C. Stearns, to approve the electronic transfer of \$48,600 from the money market account to the checking account for purposes of paying the expenses. By a roll call vote, the motion carried unanimously.**

*Rule Proposal amending policy forms to comply with PPACA and several state laws*

E. DeRosa reported that the proposal to amend the policy forms for the IHC Program had been approved by Governor's Counsel for filing with the Office of Administrative Law (OAL), but then a call with the U.S. Department of Health and Human Services (HHS) on September 2 raised additional issues, particularly with respect to annual limits, and the impact upon the Basic & Essential (B&E) Plan. She noted that there will be a process for applying to obtain a waiver from compliance with certain federal standards if compliance would result in a significant disruption to the market or create an excessive expense, but that the rules and terms remain to be published. She stated she sent revised proposals to Governor's Counsel, breaking the original proposal into two: one for Plans A/50 through D and the other regarding the B&E specimen. She said that she told Governor's Counsel and stated in the proposal the Board did not want to eliminate or seek legislative revisions to the B&E Plan until taking the opportunity for a waiver, and was awaiting further guidance from HHS.

E. DeRosa reported that HHS' guidance thus far, suggests that a carrier typically would seek a waiver, but she has asked and is waiting for an answer from HHS as to whether the Board could seek a waiver for the B&E Plan. Some Board members indicated the waiver standards could be quite steep, depending on HHS' interpretations of "decrease in access" and "increase in premiums."

E. DeRosa noted that, because "essential benefits" still requires more detail, it is possible that some B&E benefits can still be subject to annual limits, although clearly, not all. Until that is known for certain, she stated she believes that the waiver is an option that should be pursued, and then legislative changes to the B&E Plan if HHS rejects the waiver request.

There was general agreement that the Board should not take a position on whether carriers must or may continue to offer the B&E Plan after September 23, 2010, but that the Board would not recommend that DOBI take any enforcement action against a carrier that elected not to offer B&E after that date if the carrier ceased offering it under the belief that federal law essentially prohibited the sale. The Board asked that E. Heck consider whether and how the Board and carriers should be complying with the federal law in light of a statutorily mandated sale of a policy that features annual benefit limits.

E. DeRosa noted that annual dollar limits for preventive services apply to out-of-network benefits. She also clarified that:

- the indemnity plans currently still include limits on preventive services just as the out-of-network components of the PPO and POS plans do.
- the Emergency Room copayment is permissible (under state law) because it is a disincentive for use of an emergency department when admission does not result within 24 hours, not an actual copayment.

There was agreement to continue with the proposal process if Governor's Counsel authorizes filing of the revised proposals.

#### **IV. Report of the Operations and Audit Committee (OAC)**

E. DeRosa stated that the OAC met to review financial reports for the program, and that if anyone with questions should contact R. Lenox with them next week. She said the OAC recommended acceptance of the financial statements as presented.

She noted that R. Lenox developed a table detailing the status of the loss audits, which indicated that:

- the 1997-1998 period remains open because:
  - the Time audit remains outstanding; however, both Deloitte & Touche and Time had made movement on the audit during the summer
  - the UICI audit remains open, pending a response from UICI on the draft agreed upon procedures report
- the 1999-2000 period remains open for the same reasons as the 1997-1998 period
- the 2001-2002 period remains open because Withum, Smith+Brown cannot complete the Time audit until the prior audits are completed
- the 2003-2004 and 2005-2006 periods remain open because the Guardian audits are not yet complete
- the 2007-2008 period remains open because the Celtic audit is not yet complete.

E. DeRosa noted that there has been progress on all of the audits.

E. DeRosa reported that collections for the 1993, 1994, and 1995 reconciliations are almost complete, with a few carriers paying late, only one still missing, and no challenges thus far.

She reported that 94.7% of the recently-billed additional administrative assessment had been collected as well, and that the budget had been updated to reflect the consulting contract for the reimbursement methodology.

**V. NJ Protect (Temporary High Risk Pool, also known as a Preexisting Condition Insurance Plan)**

E. DeRosa reported that the NJ Protect Program officially was launched at the beginning of August, but has had a slow take-off. She indicated there has been lots of interest, but suggested that the volume of documentation required may be delaying submission of applications and enrollment.

**VI. Executive Session**

E. Heck indicated she had legal advice regarding the consulting contract. Upon further discussion, it was determined that the Board did not expect to have any additional business upon its return from Executive Session.

**T. Taliaferro made a motion, seconded by L. Yourman, to move into Executive Session for the purpose of obtaining advice from counsel. By roll call vote, the motion carried unanimously.**

*[The Board was in Executive Session from 11:10 A.M. until 11:30 A.M.]*

**VII. Close of Meeting**

**The Board immediately adjourned the meeting upon its return from Executive Session, having already voted unanimously to do so by roll call pursuant to a motion made by L Yourman and seconded by D. Farkus.**

*[The meeting adjourned at 11:30 A.M.]*