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
November 9, 2010

Directors present: Darrel Farkus (Oxford); Sandi Kelly (Horizon); Christine Stearns; Neil Sullivan (DOBI); Tony Taliaferro (AmeriHealth); Mary Taylor (Aetna Health, Inc).

Others participating: Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; Deputy Attorney General (DAG) Eleanor Heck.

I. Call to Order

E. DeRosa called the meeting to order at 10:00 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.

II. Minutes – *October 4, 2010 (Open Session)*

S. Kelly made a motion, seconded by T. Taliaferro, to approve the Open Session minutes of the October 4, 2010 meeting, with amendments. The motion carried by a unanimous vote.

III. Staff Report

Expense Report and Transfer of Funds

E. DeRosa presented the November Expense Report, with expenses totaling $38,045.97, primarily for staff salaries and fringe benefits, and the services of Withum, Smith+Brown (WSB) related to loss audits, but also staff expenses related to training, and tolls and parking expenses related to a speech.

M. Taylor made a motion, seconded by D. Farkus, to approve the November Expense Report. The motion carried unanimously.

E. DeRosa requested approval for the transfer of $38,100 from the Board's money market funds to the Board's checking account to cover the payment of the November expenses.

T. Taliaferro made a motion, seconded by M. Taylor, to approve the electronic transfer of $38,100 from the money market account to the checking account for purposes of paying the November expenses. The motion carried unanimously.

Readoption of IHC Program Rules

The Board considered the draft proposed readoption of N.J.A.C. 11:20 with amendments and repeals. E. DeRosa explained that N.J.A.C. 11:20 expires December 7, 2010, so a readoption

will be necessary to prevent the rules – including those adopted by the Board in its October meeting to comply with the federal Patient Protection and Affordable Care Act – from expiring. Among other things, the Board suggested that the readopted rules maintain provisions regarding forced conversion at N.J.A.C. 11:20-3.4 as well as N.J.A.C. 11:20-24.7 to address the possibility that carriers still may choose to change the number of plans they offer in the IHC market. The Board also suggested changes to provide greater explanation of the removal of rules regarding the loss assessments, to discuss interest payments upon reconciliation, to remove references to special enrollment periods in subchapter 12, and to maintain the return address on the revised Exhibit K. It was noted that the IHC contracts refer to "plan years" but the term is not defined; however, the Board agreed that such a definition should be added to the list of future rule changes instead of being included in the readoption proposal.

M. Taylor made a motion, seconded by D. Farkus, to propose the draft readoption with amendments of N.J.A.C. 11:20 and the rules and appendix exhibits subject to the Board's jurisdiction, revised consistent with the Board's discussions. The motion carried unanimously.

IV. Report of the Legal Committee

E. DeRosa reported that the Legal Committee met to review the proposed readoption, and approved it with some changes. She stated that the Legal Committee also addressed an issue raised by Guardian Life Insurance Company (Guardian), which had recently realized it had not nonrenewed a small number of pre-reform individual plans (with approximately 60 lives) following its withdrawal from the IHC market, as well as about 4 conversion policies made upon the request of group members. Guardian was willing to nonrenew everything but the conversion policies, and thus, was seeking a waiver from the IHC withdrawal requirements for the conversion policies. E. DeRosa explained that she had suggested Guardian establish a trust for those policies, but Guardian had been unwilling to do so. She stated that the Legal Committee found the IHC rules to be explicit regarding withdrawal of all individual health benefits plans when a carrier withdraws from the IHC market, and that the Board has no discretion to provide a waiver for conversion policies. E. DeRosa also explained that the Centers for Medicare and Medicaid would consider the withdrawal of the Guardian plans as creating a special enrollment event for purposes of Medicare and Medicare Supplement, so the oldest of the policyholders would not be discriminated against by virtue of the withdrawal. She noted that Guardian would provide enrollment reports as a means to monitor the withdrawal.

S. Kelly made a motion, seconded by T. Taliaferro, denying Guardian's request for an exception to the withdrawal requirement with respect to Guardian's conversion policies. The motion carried unanimously.

E. DeRosa agreed to draft a response to Guardian, which would be sent jointly with the DOBI, because the withdrawal rules are now under the DOBI's jurisdiction.

V. Navigant – Consultant Contract for Rating Methodology

E. DeRosa reported that E. Heck was drafting a contract to memorialize the agreement between the IHC Board and Navigant.

VI. Plan Waiver from Annual Limits Application

E. DeRosa stated the U.S. Department of Health and Human Services (HHS) had released written guidance regarding states seeking waivers from compliance with the June 18, 2010 federal interim final regulations (regarding annual policy limits), but that she subsequently received a call from HHS advising her that it was not clear the waiver process would apply to limits on preventive services. She noted, however, that she intended to seek a waiver limited to the B&E benefits for out-of-hospital diagnostic services ($500 total), the physician visits ($700 total) and the wellness benefits ($600 total), as set forth in the New Jersey statutes, as soon as possible.

The question arose as to whether it is permissible to have a cap on out-of-network preventive benefits, and E. DeRosa stated that she had been advised by HHS that it is acceptable.

VII. Loss Audits

E. DeRosa provided an update regarding the on-going loss audits:

- Time Insurance Company (audits for the 1997-1998 and 1999-2000 calculation periods) – Time provided Deloitte & Touche (D&T) with financial statements for 1997-1998, but D&T had to go back to Time for the 1999-2000 financial statements. D&T indicates it has not yet received the investment income documentation requested.
- UICI/AEGON (audits for the 1997-1998 and 1999-2000 calculation periods) – D&T issued draft audit reports, but the company has not yet commented or signed the management representation letter.
- Guardian Life Insurance Company (audits for the 2003-2004 and 2005-2006 calculation periods) – WSB has uncovered some noncompliant practices (for instance, failing to bill proper rates), and is asking more questions and for more documentation.
- Celtic Insurance Company (audit for the 2007-2008 calculation period) – WSB has nearly concluded the audit.

VIII. Close of Meeting

S. Kelly made a motion, seconded by D. Farkus, to close the meeting of the Board. The motion carried unanimously.

[The meeting adjourned at 12:15 P.M.]