

**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  
March 8, 2011**

**Directors present in person:** Darrel Farkus (Oxford); Neil Sullivan (DOBI).

**Directors present by phone:** Sandi Kelly (Horizon); 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 10:03 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 stated that votes would be by roll call because many of the Board members were participating by phone.

**II. Minutes – January 11, 2011 (Open Session)**

**N. Sullivan made a motion, seconded by M. Taylor, to approve the Open Session minutes of the meeting of January 11, 2011, with amendments. By a roll call vote, the motion carried.**

**III. Staff Report**

*Expense Report and Transfer of Funds*

E. DeRosa presented the March Expense Report, with expenses totaling \$48,826.81, primarily for salaries and fringe for staff, the Division of Law for legal services, and the services of Withum, Smith+Brown (WSB) related to loss audits. E. DeRosa also explained that there was a Federal Express expense for which NJ Protect will reimburse the IHC Board.

**M. Taylor made a motion, seconded by S. Kelly, to approve the March Expense Report. By a roll call vote, the motion carried.**

E. DeRosa then requested approval for the transfer of \$48,800 from administrative funds in the Wells Fargo Money Market account to the IHC Board’s checking account for the payment of operating expenses.

**T. Taliaferro made a motion, seconded by D. Farkus, to approve the electronic transfer of \$48,800 from the IHC Board’s Wells Fargo Money Market account to the checking account**

**with Wells Fargo for purposes of paying operating expenses. By a roll call vote, the motion carried.**

*Advisory Bulletin 11-IHC-01*

E. DeRosa stated that she had released Advisory Bulletin 11-IHC-01 on February 28, 2011 providing guidance on the notice that carriers must send to policyholders with respect to the waiver granted to New Jersey by the U.S. Department of Health and Human Services (HHS) for the annual limits contained in the statutory Basic and Essential (B&E) Plan. She noted that the notice attached to the advisory bulletin differs from the notice developed by HHS in order to address the circumstances of the waiver for the B&E Plans in New Jersey. She further explained that carriers must issue the notice contained in the advisory bulletin to inform policyholders and start using it with new issues by April 1, 2011. E. DeRosa also stated that carriers must acknowledge receipt of the bulletin and confirm use of the attached notice so that she may provide proof to HHS, if necessary, that appropriate notice was sent. She stated that the bulletin does not address what to do with B&E riders that eliminate one or more of the annual limits for which the waiver was requested and granted. She noted that, in response to a call from a carrier regarding its B&E plan rider, she told the carrier it is appropriate for carriers issuing such riders to include information with the notice explaining the effect of the rider, and that she did not believe it is necessary for the carriers to submit anything for review regarding the additional information.

*Nominations for Board Seats*

E. DeRosa reported that nominations for three Board seats were sent out March 4, 2011, with the intent to hold an election at the May 10, 2011 meeting. She noted that the seats up for election include the health service corporation representative, the health maintenance organization representative and the representative of foreign health insurance companies authorized to do business in New Jersey. She noted that nominations are due no later than April 6, 2011, and that it is acceptable for a current holder of a seat to nominate itself.

*Buying Richer Plans Outside of the Open Enrollment Period*

E DeRosa stated that it appears that an increasing number of people are avoiding the restrictions established in N.J.A.C. 11:20-12 that generally permit currently covered people to buy richer plans – buy-ups – only during the rule-designated annual open enrollment period. She explained that people are terminating their existing coverage, being uninsured for a day or two, and then submitting an application for new, richer coverage, often with the same company. She noted she has received complaints of carriers' unwillingness to process the policies (which is not appropriate), but that the consumers and brokers are basically making an end-run around the rules. She asked whether the Board wanted to look more closely at the matter. Board members discussed possible reasons for the increased incidence of requests to upgrade coverage and whether putting in more barriers is something that would be permissible under federal law at this time, then suggested that the Legal Committee consider the issue. In addition, both Horizon and Oxford stated they would look more closely at their own business and provide some data, including what the time frame is for most buy-ups (e.g., within 90-days after an initial purchase of a B&E Plan).

#### **IV. Operations & Audit Committee (OAC) Report**

##### *NJ Protect Audit*

*S. Kelly recused herself from the discussion and action to be taken on the NJ Protect audit issue because her employer, Horizon, will be a subject of the audit in question.*

*N. Sullivan recused himself from the discussion and action to be taken on the NJ Protect audit issue because of restrictions imposed upon him in taking action directly related to the interest of his former employer, Horizon, which will be a subject of the audit in question. [Avnee Parekh acted as representative of the DOBI.]*

E. DeRosa reported that one firm, Withum Smith + Brown (WSB), submitted a proposal in response to the request for auditing services issued under T-2458 (an existing contract between the Department of Treasury and several accounting firms). She stated that the Evaluation Committee had reviewed the proposal and recommended engaging WSB, and that the OAC had reviewed the proposal and the Evaluation Committee's report and also recommended engaging WSB to perform a financial audit of NJ Protect for the time it was in operation in 2010 (August through December 2010). E. DeRosa explained that a final audit report is due to the U.S. Department of Health and Human Services on NJ Protect by June 30, 2011 for the 2010 period.

**M. Taylor made a motion, seconded by D. Farkus, to engage Withum Smith+Brown to perform a financial audit of NJ Protect for the calendar year ending December 31, 2010. By roll call vote, the motion carried.**

##### *Financial Statements*

E. DeRosa presented the Board's financial statements for the six month period ending December 31, 2010, prepared by staff and reviewed by the OAC, including the Statement of Net Assets, the Statement of Changes in Net Assets, the Statement of Changes in Assets and Liabilities – Loss Assessment Fund, the Statement of Cash Flows, and the Comparison of Budget to Actual Expenditures, which shows that expenses continue to be under budget.

##### *1996 Final Reconciliation*

E. DeRosa explained that both the Operations & Audit Committee (OAC) and the Technical Advisory Committee (TAC) had met to review updates to the spreadsheets regarding the reconciliation of the assessments for 1996. She reminded Board members that the 1996 loss assessment applied the 2-tier methodology, in which carriers with 100% exemptions had no loss assessment obligation, but carriers with partial exemptions had a prorated obligation during the first tier of assessments, but no further obligation the second tier assessment. She also reminded the Board that an initial reconciliation had occurred in 2006, when the CIGNA case first closed, and that this subsequent reconciliation was occurring because all audits are complete and Protective Life Insurance (Protective) had concluded its litigation with the Board. She explained that the reconciliation includes multiple distributions, including distribution of reimbursements for audited losses to eight carriers that had sought such reimbursements, distribution of refunds to other (assessed) carriers following certain adjustments, distribution of the interest owed to

CIGNA, distribution of interest to two companies owed reimbursements that were no longer in the market after 1996, and distribution of late fees collected in the reconciliation process (but only to carriers that did not pay the late fees). She stated that both the OAC and TAC had recommended that the IHC Board issue invoices for the amounts due to the IHC Board (\$742.07), and refunds and reimbursements to those carriers to which payments are due, with interest (\$4,971,945.23).

**M. Taylor made a motion, seconded by N. Sullivan, to issue invoices for amounts due to the IHC Board, and to issue reimbursements and refunds with interest and allocated late fees to those carriers to whom reimbursements and/or refunds are due, in accordance with the Final Assessment Reconciliation for 1996 spreadsheet. By a roll call vote, the motion carried.**

E. DeRosa stated that, in order for the reimbursements and refunds to be made, it would be necessary for the IHC Board to authorize transfers of funds. She noted that two transfers would be necessary – one to release funds that had been restricted based on the Protective appeal (\$712,376.35), and the other to then move all of the funds to be distributed (\$4,971,945.23) from the Treasury account to the Board's checking account.

**T. Taliaferro made a motion, seconded by D. Farkus, to transfer \$712,376.35 held in the restricted fund balance in Treasury to the unrestricted funds held in Treasury in the DOBI account, then to transfer \$4,971,945.23, from the unrestricted funds held in Treasury to the IHC Board's checking account at Wells Fargo. By a roll call vote, the motion carried.**

#### **V. Technical Advisory Committee (TAC) Report**

E. DeRosa reported that TAC had briefly considered the question of what the rate impact would be to remove the existing \$600 annual limit for preventive care in the B&E Plan, but would consider it more fully at the scheduled May meeting.

#### **VI. Update on the proposed readoption of IHC Program rules**

E. DeRosa reminded Board members that she held a hearing immediately prior to the Board meeting regarding the proposed readoption of the IHC Board's rules within N.J.A.C. 11:20, and received no comments and there were no participants. She noted that the comment period will continue until March 19.

#### **VII. Close of Meeting**

**S. Kelly made a motion, seconded by D. Farkus, to close the meeting of the Board. By a roll call vote, the motion carried.**

*[The meeting adjourned at 11:10 A.M.]*