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
MAY 12, 2020

Directors participating: Joseph Camargo; Philip Gennace (DOBI); Sandi Kelly (Horizon); Robert Morrow (United); Colleen Picklo; Thomas Pownall (Aetna); Tony Taliaferro (AmeriHealth).

Others participating: Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; Rosaria Lenox, Managing Financial Officer; Eleanor Heck, Deputy Attorney General.

I. Call to Order

E. DeRosa called the meeting of the IHC Board to order at 10:00 A.M. She announced that notice of the meeting had been posted at the Department of Banking and Insurance ("DOBI"), on the DOBI website, at the Office of the Secretary of State, submitted to the State House Press Corps, and published in three newspapers of general circulation in accordance with the Open Public Meetings Act.

*E. DeRosa noted that, pursuant to P.L. 2020, c. 2, as a result of the public health state emergency declared by Governor Murphy on March 9, 2020 through Executive Order 103 (subsequently extended by Executive Order 119 on April 7, 2020) due to the COVID-19 pandemic, the IHC Board's regularly scheduled meeting was being held entirely telephonically rather than at the Board's offices in Trenton. She stated that, in accordance with P.L. 2020 c. 11, electronic notice of the change in the meeting and the means by which the public could attend the meeting telephonically was posted on the Board's website, and issued electronically to all known interested parties.

E. DeRosa determined a quorum was present. She stated that voting would be by roll call.

Members of the public were asked to identify themselves.

II. Review of Minutes – April 14, 2020; April 21, 2020; April 24, 2020

The Board reviewed minutes for three meetings that took place in April.

S. Kelly made a motion, seconded by J. Camargo, to approve the minutes of the meeting of April 14, 2020 without amendment. By roll call vote, the motion carried.

S. Kelly made a motion, seconded by R. Morrow, to approve the minutes of the meeting of April 21, 2020 without amendment. By roll call vote, the motion carried.

S. Kelly made a motion, seconded by T. Pownall, to approve the minutes of the meeting of April 24, 2020 with amendments. By roll call vote, the motion carried.

III. Report of Staff – *Expense Report; Reinsurance Program*

Expense Report
R. Lenox presented the expense report for May 2020 with expenses totaling $18,336.48 for the Board's share of staff salaries and fringe. She noted that with the changed working situation, the Department's fiscal office could make the transfer of funds from the Department held IHC account to the Department held SEH account for these operational expenses this month, subject to the IHC Board approving such transfer.

T. Taliaferro made a motion, seconded by C. Picklo, to approve the transfer of $18,336.48 from the Department's IHC Board account to the Department's SEH Board account for the payment of the IHC Board's May operating expenses. By a roll call vote, the motion carried.

Reinsurance Program: Payment Parameters; Quarterly Reinsurance Requests; Audits
E. DeRosa reported that, following the Board meeting on April 24, she sent the Commissioner a memo with the Board-recommended plan year 2021 payment parameters with an Attachment Point of $35,000, a Copayment Cap of $245,000, and coinsurance of 50%. She explained that on May 4, 2020 the Commissioner accepted the recommendation of the IHC Board. E. DeRosa further explained that information regarding the payment parameters for PY2021 will be included in the rate filing instructions for CY2021, which are expected to be released soon.

E. DeRosa stated that carriers submitted their 1Q2020 reinsurance requests by April 30th, totaling $20,496,959.54. She noted that this amount is about $3.5 million less than the amount reported for 1Q2019. In response to questions from Board members, E. DeRosa stated that, thus far, quarterly reinsurance information has been released in the aggregate, because that is what is required by the statute, but that the Board could discuss whether it wanted to release information with more detail.

E. DeRosa reported that Agreed Upon Procedures (AUPs) are being carried out by WithumSmith+Brown (WSB) under contract with the Department. She stated that WSB is working with each carrier simultaneously, reviewing claims, premiums, and enrollment files. She stated the expectation is that WSB will be able to produce preliminary AUP results by mid-June so that the Board can provide a well-founded request for an appropriation from the Legislature.

E. DeRosa reminded Board members that the claimed reinsurance amount for CY2019 totals $295,368,929.45, while the federal pass-through funds totaled $180,201,687, leaving a difference of $115,167,242.45, assuming no increases or decreases in the total requested reinsurance amount (including run-out) upon conclusion of the AUPs. She further explained that the reinsurance amount is to be paid through a combination of the federal pass-through funds, plus collections from the NJ Individual Responsibility tax, and appropriations from the general fund, in that order, and while the collections from the tax are not yet known, it is reasonable to assume that a request for some amount from the general fund will be needed. She noted that the change in the 2020 fiscal year did not alter the date for making a request to the Legislature for funding, because the statute specifies June 30th.

IV. Amendments to Standard Plans – Draft

E. DeRosa discussed proposed amendments that she believed were needed to the IHC policy forms because of the enactment of three New Jersey laws in early 2020: P.L. 2019, c. 343 (Chapter 343, requiring coverage for breastfeeding support); P.L. 2019, c. 361 (Chapter 361, amending New Jersey's existing contraceptive mandate); and P.L. 2019, c. 472 (Chapter 472, establishing a requirement for carriers to have monthly cost sharing limits on at least 25% plans offered,).

E. DeRosa explained that in the last quarter of 2019, the Board had voted to propose to make changes to its standard plan forms based on some additional statutory changes that occurred earlier, but that she had not as yet obtained approval to send the proposal to the Office of Administrative Law for publication; consequently, she is adding these newest draft amendments with the prior Board-approved amendments, rather than create a new and separate proposal. She then highlighted the following specific issues, and explained how she had dealt with them in schedule pages and other provisions of the policy forms, as necessary:

- Chapter 472 requires carriers to establish a monthly cost-sharing cap for up to 25% of a carrier's plans that include prescription drugs, but no less than one plan, with the cap at $150 for silver, gold, or platinum plans, and $250 for bronze plans.
- Chapter 472 exempted catastrophic plans, but not high deductible health plans (HDHPs); instead, Chapter 472 specified that the cap for HDHPs is the lowest deductible permissible for an HDHP (the self-only deductible being $1,400 for PY2021, and family deductible being $2,800 for PY2021)
- Chapter 361 expands the current requirement to cover female prescription contraceptives to include coverage of drugs, devices, products and procedure on an in-network basis without regard to gender, and whether sold by prescription or over-the-counter (as long as approved by the Federal Food and Drug Administration), as well as male and female sterilization, counseling and management of side effects, among other things, some of which do not meet the definition of contraceptive-related preventive services under the Affordable Care Act (ACA) regulations which rely on United States Preventive Services Task Force recommendations. The benefits must be covered without any cost sharing, except as required for HDHPs
- Chapter 361 specified that, with respect to HDHPs, coverage of male contraceptives and male sterilization can be subject to a deductible for HDHPs, but only the lowest deductible permitted for an HDHP.
- The interaction of Chapter 472 and Chapter 361, especially with respect to HDHPs, results in some unusual presentations on schedule pages, with carriers needing to break-out contraceptives from other preventive services (because some contraceptive services will be subject to cost-sharing), as well as breaking-out contraceptives from prescription drug coverage given that contraceptives may be subject to no cost-sharing while other prescription drugs will be subject to cost-sharing, albeit limited monthly amounts in some instances.
- With respect to Chapter 472, the law did not specify whether the cap applies only for generic drugs, when a choice between a brand name and generic drug is possible, and this remains an issue that must be addressed.

- Chapter 343 requires coverage of services provided and recommended by a lactation consultant and lactation counselors, who do not otherwise qualify as practitioners under the current definitions in the policy forms, necessitating an amendment of the definition of practitioner to include them. E. DeRosa noted the situation is similar to the requirement for carriers to provide coverage of services rendered by ABA providers for treatment of autism at a point in time prior to licensing of such practitioners.

E. DeRosa asked carriers to take the draft mark-up in-house for discussions, and return comments to her as soon as possible, but before the scheduled June meeting. She acknowledged that she would like to provide a new mark-up during the June meeting.

V. Good Faith Marketing

E. DeRosa stated that all carriers had submitted their required marketing reports in accordance with N.J.A.C. 11:20-24.6, and all submissions were complete. She noted that only four carriers needed to submit marketing reports for CY2019, as CIGNA completed its withdrawal prior to that year. She stated that all carriers submitted evidence of good marketing efforts, as detailed in the report prepared by staff and provided to the Board, along with staff's recommendation to find that each company marketed in good faith in CY2019.

T. Taliaferro recused himself from the discussion and any action to be taken on the recommendation of Good Faith Marketing by AmeriHealth, because of his employer's interest in the outcome of the action.

S. Kelly made a motion, seconded by C. Picklo, to find that AmeriHealth Ins. Company marketed in good faith during calendar year 2019. By roll call vote, the motion carried.

S. Kelly recused herself from the discussion and any action to be taken on the recommendation of Good Faith Marketing by Horizon, because of her employer's interest in the outcome of the action.

C. Picklo made a motion, seconded by T. Pownall, to find that Horizon Blue Cross Blue Shield marketed in good faith during calendar year 2019. By roll call vote, the motion carried.

T. Taliaferro made a motion, seconded by S. Kelly, to find that Oscar Garden State Ins. Company marketed in good faith during calendar year 2019. By roll call vote, the motion carried.

R. Morrow recused himself from the discussion and any action to be taken on the recommendation of Good Faith Marketing by Oxford Health Insurance, because of his employer's interest in the outcome of the action.

S. Kelly made a motion, seconded by J. Camargo, to find that Oxford Health Insurance marketed in good faith during calendar year 2019. By roll call vote, the motion carried.

VI. Close of Meeting

S. Kelly made a motion, seconded by C. Picklo to adjourn the meeting. By roll call vote, the motion carried.

[The meeting ended at 11:10 A.M.]

Public Who Acknowledged Attendance:

- Nicki Sandelier, NJBIA