

**FINAL**  
**MINUTES OF THE MEETING OF THE**  
**NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD**  
**AT THE OFFICES OF THE**  
**NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE**  
**TRENTON, NEW JERSEY**  
**February 18, 2009**

**Members present:** Gary Cupo; Darrel Farkus (United/Oxford); Joyce Gralha (Horizon); Sandy Herman (Health Net); Margaret Koller (*arrived at 10:15*); Ulysses Lee (Guardian); Thomas Pownall (Aetna); Gale Simon (DOBI); Christine Stearns; Jim Stenger; James Sweeny (CIGNA); Tony Taliaferro (AmeriHealth); Dutch Vanderhoof.

**Others participating:** Ellen DeRosa, Executive Director; Rosaria Lenox, Program Accountant; DAG Vicki Mangiaracina (DLPS); Chanell McDevitt, Deputy Executive Director.

**I. Call to Order**

J. Stenger called the meeting to order at 10:05 A.M. E. DeRosa announced that notice of the meeting had been published in two newspapers 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. Public Comments**

*D. Farkus recused himself during the public comment period to avoid any possible perception of conflict of interest with respect to his employer, United Health Care/Oxford.*

Jill Squiers, of the New Jersey Hospital Association, provided comments to the proposed readoption of the N.J.A.C. 11:21 with amendments. The comments were substantially the same as those submitted in writing to the readoption proposal.

**III. Minutes – December 17, 2008**

**D. Vanderhoof made a motion, seconded by S. Herman, to approve the open session minutes of the December 17, 2008 meeting, as amended. The motion carried, with U. Lee and J. Gralha abstaining.**

**IV. Staff Report**

*Expense Report – February*

R. Lenox presented the expenses payable, totaling \$3,239.50.

**T. Pownall made a motion, seconded by D. Vanderhoof, to approve payment of the expenses. The motion carried by a unanimous vote of the Board.**

### *Optional Benefit Riders*

E. DeRosa noted three optional benefit riders had been filed by the Oxford companies.

*D. Farkus recused himself from the discussion and any action to be taken with respect to the optional benefit riders because of the interest of his employer, United Health Care/Oxford, in the outcome of the action.*

E. DeRosa explained that Oxford Health Plans had filed two riders for the HMO Plan, one of which would permit employers to choose to have cost-sharing amounts accumulate over either a plan or a calendar year, while the other rider would allow members to have access to United's nationwide provider network without referral. She stated that staff recommended that the filing of both riders be found complete.

E. DeRosa also explained that Oxford Health Insurance Company had filed a rider for use with all of its plans allowing employers to choose to have cost-sharing amounts accumulate over either a plan year or a calendar year. She stated staff recommended the filing of this rider be found complete.

**D. Vanderhoof made a motion, seconded by T. Taliaferro, to accept the recommendation of staff with respect to all three of the riders. The motion carried by unanimous vote of Board members participating in the action.**

### *Transfer of Funds*

R. Lenox reminded Board members that, because of the downturn in the markets, the SEH Board's funds collected for administrative expenses had been retained in Department of Banking and Insurance accounts to safeguard against possible losses. She reported that the balance in the SEH Board's Wachovia (Wells Fargo) checking account is now at \$3,139.83, which is less than what is necessary to pay current expenses. She recommended transferring \$30,000 from the DOBI account to the Board's checking account to cover current and expected expenses through the end of fiscal year 2009.

**C. Stearns made a motion, seconded by G. Simon, to authorize the transfer of \$30,000 from SEH Board money held in DOBI accounts to the SEH Board's Wachovia (Well Fargo) checking account. The motion carried by unanimous vote.**

### *Board Vacancies and April Voting*

E. DeRosa reported that the terms for four Board seats are expiring shortly: one for a person representing small businesses (currently held by Thomas Collins), two representing carriers primarily in the small employer market (currently held by AmeriHealth Insurance Company and HealthNet Inc.), and one representing carriers in the larger employer market (currently held by UnitedHealthcare of New Jersey). She stated the notices for nominations were sent out, and should be returned by March 13, 2008, and that elections had been scheduled for the April 22, 2008 meeting.

*State Ethics Commission*

E. DeRosa told Board members that the State Ethics Commission would be sending information soon directly to each Board member regarding financial disclosure filing requirements.

**V. Finance & Audit Committee (FAC)**

*Financial Statements*

R. Lenox discussed the SEH Program's financial statements for the second quarter of fiscal year 2009, including the Statement of Net Assets, Statement of Changes in Net Assets, Statement of Cash Flows and Comparison of Budget and Actual Expenditures. She noted total costs for the SEH Program are running below budget, with \$163,518.87 remaining on hand to cover 3rd and 4th quarter expenditures.

*Investment Policy*

E. DeRosa told Board members that the Individual Health Coverage (IHC) Program's auditors, Withum, Smith+Brown had recommended the IHC Board have a stated investment policy, and that staff had raised the issue with the FAC as to whether the SEH Board should also have a stated investment policy. She reported that the FAC had considered the question and believed it appropriate for the SEH Board to have a written investment policy. She stated the FAC asked staff to draft an investment policy for FAC review, and that staff is now drafting such a policy, with the understanding that the basic goal for the SEH Program is to invest its funds in a manner that is as risk-free as possible. She said she expected the draft policy to be available for the Board's consideration at the April meeting.

*Jointly-issued RFP*

E. DeRosa reported the FAC had considered whether to engage future auditing services (for fiscal year 2009 and thereafter) through a joint bid process with the IHC Board, in part to streamline the bidding and award process, and in part to make the request for proposals more attractive to potential bidders. The FAC members agreed with the concept, but requested staff to draft a written process for the joint request, evaluation and award for further consideration of both the FAC and the IHC Board's Operations & Audit Committee.

**VI. Reconstitution of the Legal Committee**

E. DeRosa reminded the Board that it had not reconstituted its Legal Committee as yet, but needs to do so soon, because there are some issues that should be considered by such a committee. She noted that, because the Board currently has 15 seats filled, the maximum number of participants on the Legal Committee is now 7 to avoid a quorum of the Board, but 8 Board members have expressed interest.

Lengthy discussion ensued regarding: how soon additional vacancies on the Board might be filled; whether composition of the Legal Committee should be limited to attorney representatives; Guardian's withdrawal from the SEH market as a result of the requirements of P.L. 2008, c. 38; and, whether the number of carriers represented on the Legal Committee should be limited.

Following a 10-minute break, *T. Taliaferro made a motion that membership for participation on the Legal Committee require the participant to have a representative qualified as an attorney,*

*seconded by J. Gralha.* There was further discussion on the motion, and no apparent consensus on whether a law degree should be a necessity for participation on the Legal Committee. *T. Taliaferro withdrew his motion.*

Following additional discussion, J. Stenger requested the Board move forward on the agenda.

## **VII. Adoption of the Proposed Readoption of N.J.A.C. 11:21, with Amendments**

*D. Farkus recused himself from discussion and any action taken on the readoption of N.J.A.C. 11:21 due to a perceived conflict of interest on the part of his employer, UnitedHealthCare Group, in the matter.*

E. DeRosa discussed the comments to the proposed readoption with amendments, stating the majority of the comments objected to the proposal to replace the phrase “reasonable and customary” with “allowed charges” and continuing use of the Prevailing HealthCare Charges System from Ingenix (including for out-of-network hospital services). She explained briefly that the responses to the Ingenix-related comments generally acknowledge the Board’s awareness of the settlement regarding the Ingenix database, and the Board’s intent to continue requiring carriers to use the database until such time as the Board is able to evaluate another database or methodology. She stated that the responses regarding the “allowed charges” objections explained that the change in terminology had not altered the underlying definitions or methods. She further explained that only a limited class of substantive changes could be made upon adoption, and if the Board wanted to entertain any, a reproposal would be necessary, delaying adoption of the readoption.

E. DeRosa stated there are some agency-initiated changes being made upon adoption, including a non-substantive one made to recognize the change in a U.S. Department of Labor agency name, a substantive but permissible change to bring the rules in line with “Grace’s Law,” P.L. 2008, c. 126, enacted December 30, 2008, which requires coverage of hearing aids for children through age 15. She noted the adoption also requires continuous open enrollment for over-age dependents up to age 31, based on P.L. 2008, c. 38.

Following discussion, the Board requested some minor language changes.

**D. Vanderhoof made a motion to adopt the readoption as it was proposed, plus the agency-initiated changes and language modifications suggested by the Board. S. Herman seconded the motion. The Board voted unanimously in favor of the motion.**

E. DeRosa asked the Board how they wished to require carriers to proceed in putting the policy changes into operation following the adoption of the readopted rules and amendments. She noted that many changes have been made to the policies since 2004, when the Board last required carriers to issue new contracts and certificates, and suggested that permitting carriers to issue yet another rider is probably undesirable. Upon discussion it was determined that carriers should be required to begin issuing new and renewal policies no later than the first of the month following the sixth month after the effective date of the adoption of the readopted rules with amendments.

### **VIII. Public Comments**

There were no public comments.

### **IX. Executive Session**

**G. Simon made a motion to move into executive session for the purpose of obtaining legal advice, followed by possible additional action upon return to open session. U. Lee seconded the motion, and the Board voted unanimously in favor of the motion.**

*[The Board moved to Executive Session from 11:50 A.M. until 12:00.]*

### **X. Formation of Ad Hoc Committee**

E. DeRosa asked if anyone was willing to participate on an ad hoc committee to discuss the Health Insurance Portability and Accountability Act (HIPAA) issues raised by the Centers for Medicare and Medicaid (CMS) in its periodic review of New Jersey's small employer program to determine compliance with HIPAA.

AmeriHealth, Aetna, Horizon, DOBI and D. Vanderhoof volunteered for the ad hoc committee.

### **XI. Restrictions on buying Standard Plans of lesser Actuarial Value**

J. Stenger stated carriers are indicating a dramatic drop-off in enrollment, and believe the 12-month limitations on buying-down to a less rich policy are at least partly to blame, because employers unable to purchase a lower cost plan are choosing to drop coverage altogether. He questioned whether the Board might issue a moratorium on the rule. There was some agreement among Board members that the rule is unnecessary, and also not easily enforced if an employer elects to drop coverage with one carrier and purchase a standard plan of lesser actuarial value from another carrier. V. Mangiaracina stated she would like to review the statute (N.J.S.A. 17B:27-50) and rule (N.J.A.C. 11:21-7.4) before the Board took any action on the matter.

### **XII. Close of Meeting**

**D. Vanderhoof offered a motion to adjourn the Board meeting, which was seconded by S. Herman. The Board voted unanimously in favor of the motion.**

*[The meeting adjourned at 12:20 P.M.]*