

**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
September 25, 2009**

Members present by phone: Thomas Collins; Gary Cupo; Darrel Farkus (United/Oxford); Sandy Herman (Health Net); Lee Ann Bailey (Aetna); Margaret Koller; Neil Sullivan (Horizon); Tony Taliaferro (AmeriHealth); Joseph Tricarico (DHSS); Dutch Vanderhoof.

Members present in person: Gale Simon (DOBI)

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

I. Call to Order

T. Taliaferro called the meeting to order at 12:05 P.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. She stated that, because most Board members were participating by phone, attendance and votes would be taken by roll call. Following roll call, she determined a quorum was present.

II. Minutes – August 19, 2009

T. Taliaferro made a motion to approve the open session minutes for August 19, 2009 without amendment. D. Vanderhoof seconded the motion, and the Board voted in favor of the motion, with D. Farkus and J. Tricarico abstaining.

D. Vanderhoof made a motion to approve the executive session minutes for August 19, 2009 with technical amendments. T. Collins seconded the motion, and the Board voted in favor of the motion, with D. Farkus and J. Tricarico abstaining.

III. Mental Health Parity and Addictions Equity Act (MHPAEA)

E. DeRosa reminded Board members that the purpose of this meeting was to continue discussions of how to address the federal MHPAEA generally. She noted the primary point of contention is whether the Board should include provisions for mental health/addictions parity in all standard small employer plans, or only in those plans offered to employers that are New Jersey-defined small employers not otherwise qualifying for an exemption from MHPAEA because they are not small employers as defined by the Health Insurance Portability and Accountability Act (HIPAA). She reminded Board members that the Centers for Medicare and Medicaid (CMS) had provided the option of limiting the provision to New Jersey-defined small employers that are not HIPAA-defined small employers *if* the SEH Board could offer assurances that carriers would be able to reliably identify such small employers both at initial sale and over time. E DeRosa stated that the SEH Board decided at its August meeting, after much discussion,

to request more information from member carriers as to whether the companies believed they could distinguish such employers, what tools they might need to do so, and whether doing so was cost effective.

E. DeRosa reported that she had received information from carriers, indicating a range of .4% to 1% increases in premiums if parity is expanded in all small employer plans (2 carriers had suggested the premium increase would be about 1%, 1 carrier stated it would be about .75%, one stated it would be about .5% and 2 stated it would be about .4%). She said one carrier stated that it believes it can achieve the necessary variable administration of the parity provisions among small employers because only about 3% of its currently enrolled New Jersey-defined small employers fail to be HIPAA-defined small employers. She reported that another carrier, however, had stated the cost of variable administration would be prohibitive for the carrier. The question arose as to whether all of the carriers had considered provision of applied behavioral analysis (ABA) benefits for autism treatment without the \$36,000 cap built into P.L. 2009, c. 115 when pricing MHPAEA for the small employer plans – it was unclear whether all had. E. DeRosa also reminded Board members that staff had prepared a worksheet at the Board's request to help identify which employers are HIPAA-defined small employers, which are New Jersey-defined small employers, and which must comply with MHPAEA as well as COBRA and Medicare Secondary Payor (MSP) provisions.

E. DeRosa noted another issue regarding the autism ABA benefits is the licensing of the providers that perform ABA, inasmuch as there is no licensing entity for such providers, but the existing standard plans require health care providers to be licensed. She stated there is a national organization, the Behavior Analyst Certification Board, which issues two types of certifications specific to ABA, requiring rather extensive education, training and experience: a BCBA (Board Certified Behavior Analyst), and a BCABA (Board Certified Assistant Behavioral Analyst). E. DeRosa went on to note, however, that there are very few certified BCBAs or BCABAs in New Jersey.

Extensive discussions followed, including discussion of the: use of a variable provision similar to those used for COBRA and MSP, which would apply unless the employer is not a HIPAA-defined small employer; use of an optional rider to include MHPAEA provisions, with the employer deciding whether to buy it or not; use of a mandatory rider available only to employers required to comply with MHPAEA; and, modification of only a single small employer plan to include MHPAEA, which any employer could purchase, or which might be available for purchase by only those small employers subject to MHPAEA. There was discussion of whether all of the options comply with both New Jersey and the federal guaranteed issue requirements, and whether it might be sufficient to place the onus on employers to determine whether the firm had to comply with MHPAEA. The Board members also discussed whether the existing annual certification form, with or without a new worksheet, would provide adequate and timely information to determine whether a small employer had become subject to MHPAEA, and what obligation carriers have to gather the information. The audience provided some input on this subject. It was noted that, if parity will not be included for all small employers, there is greater importance in gathering census information timely to determine whether MHPAEA applies because of the difference in benefit levels and rating involved when MHPAEA applies as

compared to when it does not. There was acknowledgment that use of the certification at renewal would not necessarily provide information in a timely manner.

S. Herman made a motion to make all small employer contracts comply with the parity requirements of MHPAEA regardless of the status of the small employer based on the cost information provided by the carriers. G. Cupo seconded the motion. By roll call vote, the motion carried, with 7 votes in favor, and 3 votes against.

E. DeRosa stated she would revise the SEH contract forms consistent with the vote. She stated that carriers will have to begin administering the SEH policies consistent with MHPAEA beginning in October 2009 for employer groups subject to MHPAEA, under the compliance with law provision, but will not have to come into compliance with any changes in the SEH rules until after the effective date (or operative date, if later) of the amendments or new rules. She stated she is hoping to have new rules and forms proposed, adopted and operative for April 1, 2010, when carriers are required to begin using and reissuing the updated SEH forms.

The SEH Board briefly discussed P.L. 2009, c. 115, regarding what definition of “developmental disability” was intended in the legislation, and whether the intention was to have limits for physical therapy, occupational therapy and speech therapy benefits for treatment of developmental disability under the contracts separate and apart from any limits on such therapies as they apply to treatment of other conditions. E. DeRosa stated that attempts to write language into the SEH contract forms had raised many questions. The Board suggested that the Ad Hoc committee (as previously composed) meet again to discuss some of the issues, and make appropriate recommendations.

IX. Close of Meeting

G. Simon offered a motion to adjourn the Board meeting, which was seconded by M. Koller. The Board voted unanimously by roll call in favor of the motion.

[The meeting adjourned at 1:45 P.M.]