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
March 17, 2010

Members present: Thomas Collins; Gary Cupo; Darrel Farkus (United/Oxford); Margaret Koller; Alan Maesaka (Aetna); Gale Simon (DOBI); Christine Stearns; James Stenger; Tony Taliaferro (AmeriHealth); Joyce Gralha (Horizon); Kevin McNally (DHSS); Dutch Vanderhoof (*arrived at 10:25*).

Others participating: Ellen DeRosa, Executive Director; Rosaria Lenox, Program Accountant; DAG Vicki Mangiaracina (DLPS); Chanell McDevitt, Deputy Executive Director; Neil Sullivan, Special Deputy (DOBI); Neil Vance, Managing Actuary (DOBI).

I. Call to Order

E. DeRosa called the meeting to order at 10:00 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. She determined a quorum was present.

E. DeRosa introduced Tom Considine, Acting Commissioner for DOBI, and his Chief of Staff, Ken Kobalowski. Commissioner Considine spoke briefly to the Board members, stating that he believes the work of the Board is important, and that he encouraged innovative thought to exert downward pressure on rates to avoid cannibalization of the market.

II. Public Comments

Joan Fusco, speaking on behalf of the New Jersey Association of Health Underwriters (NJAHU), stated that NJAHU appreciates the carrier's concerns with small employers having the ability to purchase multiple plans from multiple carriers and thus would support a change in Board policy that would limit small employers to the purchase of multiple plans through a single carrier.

Michael Magaro, a broker, indicated he believed the position of NJAHU would limit the ability of brokers to service small employers and thus he favored no change to the current policy that allows small employers to purchase multiple plans from multiple carriers. .

Doug Lubenow, a broker, stated support for continuing to allow employers to purchase multiple plans from multiple carriers, noting that, in southern New Jersey, employers and employees look closely at networks, and not all of the carriers provide comparable in-network access to Philadelphia health care providers, nor do all of the carriers offer the same products.

Terry Brophy, a broker, stated he believes Aetna is circumventing the rules of the small employer market with the commission policy that only provides commissions when 75% of the group enrolls with Aetna.

Ralph Borzillo, of Aetna, stated that Aetna's goal is to grow its business with a sustainably competitive portfolio of products both in New Jersey and nationally. He indicated that the recently introduced underwriting requirements were intended to sustain a competitive portfolio. He supported the NJAHU position of allowing purchase of multiple plans from one carrier.

Additional discussion ensued, with Board members and the public asking and responding to questions regarding the sizes of the average small group, employer and employee behavior, and available data.

N. Vance (DOBI) stated that there is evidence that "slice" business (where employees of a small employer have the opportunity to select from among multiple plans) poses an underwriting concern. He acknowledged that he cannot quantify the savings if "slice" were to be eliminated. He noted that every carrier actuary will state he or she believes or has evidence of adverse selection stemming from multiple plans. He stated that as a matter of actuarial and insurance theory, when consumers are given the opportunity to select benefits the selection will be matched to their health care needs.

III. Minutes – *February 3, 2010*

T. Taliaferro made a motion to approve the open session minutes for February 3, 2010. T. Collins seconded the motion. The Board voted in favor of the motion with J. Gralha abstaining.

IV. Actuarial Presentation

N. Vance provided an update on the status of the SEH market. He noted that most of his data stemmed from data for 2008 and/or the first six months of 2009. He indicated the following:

- Premiums have increased between 20 to 30%, with the greatest increases applying to groups with the oldest average ages.
- Enrollment has decreased during the 2009 calendar year, with enrollment standing at about 793,000 as of 12/31/2009.
- Most economists suggest that the SEH market should fail by design because the better risks have little real incentive to enter or remain in the pool, causing a "death spiral": guaranteed issue results in healthy risks subsidizing unhealthy risks; community rating results in younger risks subsidizing older risks.
- Contrary to the common belief, the SEH market has not failed, but instead, appears to grow and shrink based on business cycles. He stated that the enrollment was largest for the SEH market in 1999 (at 925,000 lives), then shrank to 870,000 in 2002 before growing again to 920,000 in 2005. He suggested that:
    - Health insurance is not like other types of insurance (which is designed to protect wealth), and that going without it can result in dire consequences, creating a stronger incentive to purchase.
    - The purchase by small employers must be made within the confines of the small employer market, creating a greater level of stability for the market.

    - Employees' needs and demands plus employers' desires to compete combined with favorable federal tax treatment help to make the purchase decision a little more attractive
- The loss ratio for 2008 for the market was at 86.2%, up significantly, and suggesting that another 5% increase in rates could be justified if seeking to bring the average loss ratios down to 80%. Nevertheless, there is significant variation in loss ratios among carriers.
- The most recent rate actions are based on partial 2009 experience with mixed results. Change in experience between 2008 and 2009 is not as dramatic as it was for the prior period.
- Trends in rates are primarily tied to poor experience that N. Vance believes is tied to the "Great Recession" which may be exaggerating otherwise more minor vulnerabilities, including:
    - the natural business cycle (in a bad economy, employers and employees may both decide to drop/waive coverage, which may result in an anti-selection impact – COBRA subsidization through the federal ARRA legislation seems to be helping ease that a little);
    - adjustments to carrier pricing (some may have been too aggressive in prior years);
    - medical cost inflation;
    - cumulative effects of new mandated benefits;
    - "slice" business, which results in an average of 3.16 employees/contract (down slightly since 1999, when the average was 4 employees/contract);
    - changes in the Individual Health Coverage (IHC) Program, both in terms of the Basic & Essential policies and permissible age-rating changes may make the IHC market a better value for younger employees as compared to staying with the group coverage;
    - liberal options for 2-person groups (i.e., many can go into either the SEH or IHC market);
    - reductions in the number of dependents covered;
    - carrier reluctance to re-rate policies off-cycle following the addition of older lives to a census; and
    - Risk pool manipulation by employers that have non-SEH options because of multi-state operations.
- The number of lives in the IHC market is growing, reaching nearly 112,000 as of 12/31/2009, an 18,000+ life increase over 12/31/2008. The increase in IHC enrollment is probably attributable to the Basic & Essential policies, increasing riders, and age-rating for both the B&E policies and (more recently) some standard plans.

Upon questioning, N. Vance stated that the DOBI does not have data as to how many small employer contracts may have 1, 2 or 3, etc., lives, only the average number of lives per contract, but suggested the carriers could provide the data if requested. He indicated he can draw some conclusions based on the enrollment data he receives, and that he believes Aetna has one of the larger average numbers of employees/per contract, at 5+ employees. He stated that he could not state with certainty that the average age of the small groups had changed over time because he did not think the age distribution data set forth in the carrier's actuarial memorandums are routinely updated, but suggested that the carriers could provide this information if requested.

In response to a question speculating whether rate increases are an issue of utilization and/or utilization compression (because people are trying to obtain services before losing coverage due to lay-off, etc.) or rating formulae, N. Vance stated that he did not believe the rate increases could be attributed substantially to a single factor.

In response to a question as to whether DOBI receives claims information by category of claim (in-patient, prescription drug, etc.), N. Vance stated that he does not receive that level of detail for the SEH market.

In response to a question about whether he believed age rating was a big factor in the increase in enrollment in the IHC market, N. Vance stated he believed so, but did not necessarily think that a relaxation in the age-rating restrictions in the small employer market would have as big an impact upon enrollment in the market, since the SEH's starting point in the change would be significantly different compared to that of the IHC. He indicated, however, that actuaries at the carriers might be more positive about that concept.

V. Report of Staff

Expense Report
R. Lenox provided information about the expense report for March, which included expenses totaling $14,332.76 for legal services, staff licensing fees, fees for public notices, and approximately $9,000 for the services of Withum, Smith+Brown.

D. Vanderhoof made a motion, seconded by C. Stearns, to approve the expenses on the March 2010 expense report. The motion carried unanimously.

Optional Benefits Rider – Oxford

D. Farkus recused himself from discussion and any action to be taken on a rider filing submitted by Oxford Health Plans because of the interest of his employer in the outcome of the action.

E. DeRosa explained that Oxford Health Plans had submitted a rider amending its HMO-POS plan to provide coverage for hearing aids up to $5,000 for each hearing impaired ear for members regardless of age. She recommended the rider be found complete.

G. Cupo made a motion, seconded by M. Koller, to find the Oxford Health Plan rider filing complete. The motion carried unanimously.

Transfer of Money
R. Lenox stated that, since the Board had approved payment of the most recent expenses, the Board needed to request a transfer of funds from the DOBI account to the Board's checking account at Wachovia in order to pay for operating expenses through the end of the current fiscal year. She stated that $10,000 should be sufficient for operating expenses until the end of FY10.

D. Farkus made a motion to authorize staff to request a transfer of $10,000 from the Boards accounts in DOBI to the Board's checking account at Wachovia (Wells Fargo) for

the purpose of paying operating expenses. D. Vanderhoof seconded the motion. The Board voted unanimously in favor of the motion.

VII. Finance and Audit Committee (FAC) Report

E. DeRosa noted that the FAC met twice since the Board's last scheduled meeting, once with the auditors, and then again to discuss the Board's budget and financial statements.

Program Audit

E. DeRosa reported that Withum, Smith + Brown (WS+B) indicated that all concerns raised in prior audits had been addressed, and that WS+B essentially had no issues. She said WS+B's SAS 115 letter only raised a concern about the Board's current investment policy, suggesting that the Board's funds be moved to conservative high yield investments. E. DeRosa reminded Board members that the money had been previously transferred to the non-interest bearing account with Treasury because of what had been occurring in the economy in 2008 and 2009.

Financial Statements and Budget; Assessments

R. Lenox reported that the FAC had reviewed and discussed the budget for the program for fiscal year 2011, and had recommended a budget totaling $260,000, which is slightly less than the budget that was used for 2010 fiscal year, based on the actual and forecasted expenses for the remainder of FY10.

T. Taliaferro made a motion, seconded by M. Koller, to approve the budget presented for the fiscal year ending June 30, 2011. The motion carried by unanimous vote.

R. Lenox stated that the Board would need to assess the carriers for the FY2011 budget, and that the assessment allocations had been prepared based on 2009 Exhibit CC's and reviewed and recommended by the FAC for adoption by the Board. She indicated that the SEH Program would need the funds no later than the end of FY2010.

T. Taliaferro made a motion, seconded by T. Collins, to approve the assessment of carriers for the SEH Program's FY2011 budget. The motion carried by unanimous vote.

R. Lenox reviewed the Statement of Net Assets, Statement of Changes in Net Assets, Statement of Cash Flows and Comparison of Budget and Actual Expenditures for the quarter ending December 2009, which were reviewed and accepted by the FAC.

R. Lenox explained that, based on the recommendation of WSB, she had explored other account options with Wachovia. She stated she had discussed with the FAC the option of opening a "High Performance Money Market" account with Wachovia, and changing the current commercial checking account to a Custom Business Checking account, noting that this would provide the SEH Board the opportunity to earn interest on the money in the money market account and eliminate service fees (of about $25/month), so long as the balance in both accounts remained over $5,000. She also noted this would allow the online transfer of funds between the money market and checking account. R. Lenox stated the FAC had recommended the Board accept this proposal.

Upon questioning, R. Lenox explained that money transfers to the money market or checking account from the DOBI account would still require Board approval, as evidenced in the minutes, and she also suggested that the amount maintained in money market and checking combined not be in excess of that insured by the Federal Deposit Insurance Corporation.

T. Collins made a motion, seconded by D. Vanderhoof, authorizing staff to open a High Performance Money Market and Custom Business Checking account in Wachovia and transfer funds from the DOBI Treasury account to the new accounts. The motion carried by unanimous vote.

VIII. Legal Committee Report

Participation requirements – issuing multiple plans to one employer by one or more carriers
E. DeRosa noted that the Legal Committee minutes of February 2, 2010 had been updated as of March 11, 2010 to include the material the Committee had considered. She stated the threshold question was whether the SEH Program statutes allow or require more than one plan to be made available to an employer. She explained that the Legal Committee believes that the statutes can be interpreted to mean that: (1) a carrier must issue multiple plans to a small employer, or that (2) a carrier may limit the number of plans it will issue to a small employer. E. DeRosa explained either interpretation would be consistent with the law and thus the selection of one or the other would be a policy decision for the Board.

It was noted that the question of how the business may be "sliced" is the underlying concern that gave rise to at least one new underwriting policy for broker commissions.

Extensive discussion followed, including reasons why employers should have the option to purchase multiple plans from the same carrier as well as from multiple carriers, the impact that the purchase of multiple plans from the same or different carriers has upon rates, and whether data is available and should be solicited from the carriers. It was noted that this issue has been raised multiple times, and monitoring of it by the carriers had been requested in prior years, but apparently no reports have been offered.

T. Taliaferro made a motion to require that a primary carrier (which is a carrier that issues to a small employer group satisfying the 75% participation requirement) issue at least one health benefits plan to an eligible small employer group, while a second carrier may choose whether or not to issue an additional plan or plans to that eligible small employer. J. Gralha seconded the motion. The motion carried with 10 votes in favor and 2 opposed.

The Board then engaged in more discussion regarding implementation of the new interpretation of the guaranteed issue requirement, and finally determined an ad hoc committee would address the implementation issues.

[The Board took a break from 12:50 to 1:00 P.M.]

Producer Commissions

[A. Maesaka recused himself from the general discussion and any action taken on the issue because of the specific interest of his employer in the action.]

E. DeRosa reported that the Legal Committee believes the question of how carriers compensate producers is not an issue for the SEH Program unless the compensation is structured in such a way as to hinder the state and federal guaranteed issue requirements. She noted that the Legal Committee also noted that the underwriting criteria could not have any proxies for health.

The Board discussed the issues, including whether the elimination of commissions for general agents with respect to placement of very small groups (i.e., Aetna's recent compensation practice) was a proxy for health or had a substantial impact upon access to coverage for such groups. After some discussion, E. DeRosa noted that the Legal Committee probably had not adequately understood the difference between producers and general agents and the services they provide when discussing the question of whether the compensation arrangement had an impact on guaranteed issue. Ralph Borzillo, upon invitation of J. Stenger, stated that the elimination of the commission for general agents for groups under 4 employees was based on Aetna's position that it could provide the same services for such small groups in-house as are often provided by a general agent, and thus, retail brokers could place business directly with Aetna without the additional step of placing it through a general agent.

G. Cupo made a motion, seconded by D. Vanderhoof, to have the Legal Committee consider the producer compensation practice recently instituted by Aetna and whether its probable impact upon small employer access violates SEH marketing rules.

Following further discussion of the motion, **G. Cupo agreed to table the motion** until conclusion of discussion in Executive Session**.**

D. Farkus made a motion to move into Executive Session for the purpose of obtaining legal advice, which G. Cupo seconded. The motion carried.

[In addition to audience members, A. Maesaka and other Aetna representatives left the room, as did J. Stenger based upon his firm's specific relationship with Aetna. Members of the SEH Board who were "retail brokers" remained in the Executive Session meeting; however, after some discussion while in Executive Session, G. Cupo determined he should be recused from the Executive Session as well, because of his firm's compensation arrangement with Aetna.]

[Executive Session from 1:50 until 2:40 P.M. Open Session resumed at 2:50 P.M.]

G. Cupo withdrew his previously tabled motion.

[J. Stenger and G. Cupo each recused themselves from further Board action regarding the specific Aetna compensation arrangement because of the interest they and their firms have in the matter.]

G. Simon made a motion, seconded by D. Farkus, requesting that the Board solicit comments from Aetna and any interested general agent, to be submitted to E. DeRosa no later than March 31, 2010, regarding Aetna's current compensation arrangement, for purposes of providing impact information and legal theory for consideration by Deputy Attorney General V. Mangiaracina, so that she may render an opinion to the Board as to whether the practice is compliant with N.J.A.C. 11:21-17.5. The motion carried by a unanimous vote.

Formation of the Ad Hoc Committee on Implementation of Changes to SEH Guaranteed Issue Requirements

After some discussion, the Board elected to compose the *ad hoc* committee based on the composition of the most recently constituted *ad hoc* committees that had addressed SEH legal questions, to include:

- a representative from AmeriHealth
- C. Stearns
- D. Vanderhoof
- a representative from Horizon
- a representative from United
- T. Collins, and
- a representative of DOBI.

IX. Public Comments

Joan Fusco stated that she believed that, with the Board moving to a one carrier per employer option, the carrier should be required to issue multiple plans to the employers, and not be allowed to limit coverage to one plan.

Dan Keenan stated that the single carrier and single plan option minimizes concerns about both adverse selection and compensation issues, but that he does not believe it is really beneficial to small employers or their employees.

Ralph Borzillo stated he believes that the revised participation/guaranteed issue requirements substantially address concerns about adverse selection between carriers.

X. Close of Meeting

J. Stenger offered a motion to adjourn the Board meeting, which was seconded by T. Taliaferro. The Board voted unanimously in favor of the motion.

[The meeting adjourned at 3:05 P.M.]