

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
July 18, 2012

Members participating in person: Thomas Collins (*until about 10:25*); Gary Cupo; Darrel Farkus (Oxford); Patrick Gillespie (CIGNA); Joyce Gralha (Horizon); Margaret Koller; Mary Ellen Peppard (*at about 10:30*); Thomas Pownall (Aetna Health Inc.); Neil Sullivan (DOBI); Tony Taliaferro (AmeriHealth); Dutch Vanderhoof.

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

I. Call to Order

T. Taliaferro called the meeting to order at 10:15 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

James Stenger stated that he was happy to attend the meeting as a member of the public.

III. Special Election

E. DeRosa reminded Board members that, because of the tie vote for the representative of minority small employers, nomination requests for that position and ballots were issued after the May meeting. She noted that not all SEH members had voted absentee, and handed out ballots to those present who requested them. She reminded members that HMOs and affiliated non-HMO carriers may vote separately.

She further explained that two individuals had been nominated: Mary Ellen Peppard, who is with the New Jersey State Chamber of Commerce, and John Harmon, Sr., who is with the African-American Chamber of Commerce of New Jersey.

Upon tallying the vote, R. Lenox announced that Mary Ellen Peppard had been elected to fill the position. At this point, Thomas Collins, the sitting minority small employer representative, graciously moved from the Board to the audience. M. Peppard was present, and moved to sit with the Board.

M. Peppard introduced herself, stating that she had been with the State Chamber of Commerce for 6 years, but would shortly be leaving to take a job lobbying for the New Jersey Food Council, which represents food retailers, suppliers, farmers, etc., of all sizes. She said she is looking forward to serving on the SEH Program Board. Board members and staff introduced themselves.

IV. Staff Report

Expense Report and Transfer of Funds

R. Lenox presented the July expense report, with expenses totaling \$1,641.07 for legal services from the Division of Law, subscriptions and her continuing education courses. She also requested that the Board approve a transfer of \$1,600 from the Board's Money Market fund to its checking account if the expenses were approved.

P. Gillespie made a motion, seconded by D. Farkus, to approve the July expense report, and the transfer of funds from the Board's Wells Fargo Money Market account to the Board's Wells Fargo checking account to pay such operating expenses. The motion carried.

Quarterly Financial Reports

E. DeRosa stated that the Board's 3rd quarter financial reports for the period ended March 31, 2012 (3Q12) had been sent to the members of the Finance and Audit Committee (FAC) for comment. She noted that, because the FAC members had no comments, the FAC did not meet.

R. Lenox provided an overview of the following 3Q12 financial reports for the SEH Program: the Statement of Net Assets, the Statement of Changes in Net Assets, the Statement of Cash Flows, and the Comparison of the Budget to Actual Expenditures. She said that the Board currently has \$76,875 available, and that she anticipates about \$15,000 will be in excess of actual expenditures at the close of the fiscal year.

Policy Form Amendments

E. DeRosa discussed the draft proposed policy form amendments, which are being made to accommodate changes to state and federal law. She noted that she had requested Board members submit comments on the prior draft before the meeting, but she received no comments. She explained she received comments from the IHC Board members on similar draft amendments to the IHC policy forms, and she elected to incorporate relevant comments from the IHC Board in the most recent draft of the SEH amendments. She highlighted the following amendments:

- Inclusion of a specific benefit for oral anti-cancer medications (pursuant to state law) in all but Plan A. E. DeRosa explained that she drafted detailed language describing the process for obtaining the benefit consistent with discussions with the New Jersey Association of Health Plans, but that the language is presented as variable text because the IHC Board suggested carriers with different administrative practices for obtaining the same end result should be able use their alternative practices, so long as they otherwise comply with the law.
- Expansion of the preventive benefits to comply with the requirements of the federal Affordable Care Act (ACA). She noted that these amendments apply across the SEH plans, including Plan A. She explained that the amendments eliminate the dollar limits applicable to preventive services, and that she included a catch-all preventive services phrase, so that it would not be necessary to go through the rulemaking process to amend the forms each time the preventive benefits evolved pursuant to federal law.

E. DeRosa explained the rest of the administrative process for proposing and eventually adopting the draft amendments. She stated that, if the Board used its expedited rulemaking authority, it is possible that the comment period would end prior to the Board's next meeting date, in which case, the Board might be in a position to adopt the amendments on September 19th, but that otherwise, the Board could hold a special meeting to adopt the revised forms, rather than waiting until November.

Board members discussed the operative date of the amendments, and concluded it is reasonable to assume January 1, 2013 as the operative date, although the Board will not actually set that until it votes to adopt the amendments. The Board also discussed whether to permit the use of the compliance variability rider in lieu of requiring carriers to reissue all policy forms, and concluded the amendments would be presented well through a compliance variability rider, particularly because forms had been reissued following the 2010 amendments.

P. Gillespie made a motion, seconded by M. Koller, to approve the text of the draft amendments, to authorize proposal of the amendments through the SEH Board's expedited rulemaking authority subject to a 20-day comment period, and to approve carrier use of the SEH Board's compliance variability rider as a method for incorporating the amendments within policy forms already issued as an alternative to issuance of new policy forms for existing business following adoption of the proposed amendments. The motion carried.

V. Report of the Ad Hoc Committee (Retroactive Terminations)

As requested at the May meeting, D. Kalosieh, of Aetna, presented diagrams of the issues the Board is considering, setting forth who is liable for what action and the consequences at various points in time. It was generally agreed that the situation is easy when the carrier and the employer are interacting directly: the employer owes the premium through the date that it provides notice to the carrier of the termination of the employee's eligibility; the carrier retains responsibility for claims incurred through the date that the carrier updates eligibility records for provider use, but not thereafter. The issue is less clear when the employer uses a producer, and the producer does not immediately pass the information from the employer to the carrier.

Upon request, E. DeRosa briefly explained that, when the effective date for employee coverage under a small employer plan is immediate following a waiting period (if any), termination occurs as of the date the employee ceases to be eligible for coverage, but when the effective date is delayed to a date certain following a waiting period (if any), termination corresponds to the date certain (e.g., a first-of-the-month effective date results in an end-of-the month termination date.

The question arose whether the Board should continue discussions of the topic given the absence of N. Rao, who raised the issue. It was also noted that it may be reasonable to delay any changes until carriers can quantify the number of group contracts being offered on a noncontributory basis, since the issue of retroactive termination essentially only applies to employer-pay-all plans, which are becoming increasingly rare (contributory coverage is prospectively terminated in virtually all instances). This raised the question of how policies which are noncontributory for employee coverage, but contributory for dependent coverage, should be treated for purposes of

termination. Carriers were asked to research the number/percent of contracts that are noncontributory.

E. DeRosa stated that there continues to be misunderstanding among employers and producers about how the termination notice to the carrier should be handled, and that she believed the Board should identify methods for educating both. She suggested carriers should send notices regarding the termination process (and consequences) with renewal notices, and/or issue bulletins to employers in order to advise/remind employers that a 60-day option for correcting errors does not mean that the employer should wait 60 days to notify a carrier of a termination.

D. Vanderhoof made a motion, seconded by P. Gillespie, to table the discussion until further information is available regarding the number of group contracts issued and renewed that are noncontributory. The motion carried.

VI. Report of the Ad Hoc Committee (Out-of-Network Reimbursement Methodology)

E. DeRosa updated the SEH Board on the IHC Board's activity on the issue. She stated that: 1) Navigant provided more detail to the IHC Board on out-of-network utilization; 2) the IHC Board's Technical Advisory Committee (TAC) recommended setting reimbursement at 150% of the Medicare Resource-based Relative Value Scale (RBRVS), but the IHC Board has not yet taken action on the recommendation; and, 3) the IHC Board, through TAC, is researching the issue of how to address reimbursement for services for which the Medicare reimbursement methodology lacks data. E. DeRosa indicated that the SEH Ad Hoc Committee had not met since May.

The question arose whether moving to 150% of Medicare RBRVS simply transfers much more of the cost to the individual patient, and it was acknowledged that it does that, but only with respect to voluntary use of non-network services, which raised the second question of whether such out-of-network reimbursement would effectively move the market to closed network products. It was noted that DOBI's actuary, N. Vance, has stated previously that the SEH market is moving toward closed panel products even with the current reimbursement methodology. It was also noted that the large group market continues to buy policies with out-of-network benefits, but often employs the Medicare reimbursement methodology, and frequently does so at levels lower than 150% of the Medicare RBRVS.

The Board suggested the Ad Hoc Committee further discuss certain ideas it had previously considered, including whether offering employers some reimbursement options is a route the Board wants to pursue as a matter of public policy, and whether other reimbursement options, such as New Jersey's Personal Injury Protection (PIP) fee schedule, should be considered.

VII. Public Comments

There was no public comment.

VIII. Executive Session

P. Gillespie made a motion, seconded by D. Vanderhoof, to move into Executive Session for the purpose of obtaining legal advice on the minutes of May 16, 2012, the Open Public Meetings Act and the promulgation of policy forms, with action to be taken upon the Board's return to Open Session. The motion carried.

[The Board was in Executive Session from 11:45 to 11:50 A.M.]

IX. Minutes – of May 16, 2012

P. Gillespie made a motion, seconded by D. Vanderhoof, to approve the minutes of the meeting of May 16, 2012, with amendments. The motion carried.

XI. Special Announcement

T. Taliaferro recognized Thomas Collins for his long term of service on the SEH Board, and the many contributions he had made during his service, and thanked Thomas Collins for his unwavering representation of the minority community over the years.

XII. Close of Meeting

D. Vanderhoof made a motion, seconded by T. Pownall, to adjourn the meeting. The motion carried.

[The meeting adjourned at 11:55 A.M.]