

**FINAL**  
**MINUTES OF THE OPEN SESSION 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**  
**November 21, 2012**

**Members present:** Gary Cupo; Darrel Farkus (Oxford); Patrick Gillespie (CIGNA); Joyce Gralha (Horizon); Margaret Koller; Mary Ellen Peppard; Thomas Pownall (Aetna Health Inc.); Christine Stearns; Neil Sullivan; Tony Taliaferro (AmeriHealth); Dutch Vanderhoof.

**Others participating:** Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; DAG Eleanor Heck (DLPS).

**I. Call to Order**

T. Taliaferro 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**

There were no public comments.

**III. Staff Report**

*Minutes – September 19, 2012*

**G. Cupo made a motion, seconded by D. Vanderhoof, to approve the draft minutes from September 19, 2012, amendments. The motion carried.**

*Expense Report and Transfer of Funds*

E. DeRosa presented the September expense report, with expenses totaling \$1,235.65, primarily for WithumSmith+Brown (WSB) audit costs, and an order for new check stock, as well as public notices for the Board’s 2013 meeting schedule. She requested that the Board approve the expenses, and also requested that the Board approve a transfer of \$1,200 from the Board’s Money Market fund to the Board’s checking account to pay the expenses approved.

**D. Vanderhoof made a motion, seconded by P. Gillespie, to approve the November 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 expenses. The motion carried.**

*Rule Proposal – Summary of Benefits and Coverage (SBC)*

E. DeRosa reminded the Board that: the U.S. Department of Health and Human Services (HHS) adopted a template for SBCs that carriers are required to complete for each policy and distribute

to employers for further distribution to employees; carriers and employers were required to begin using the SBCs as of September 23, 2012; she had prepared draft amendments to the policy forms to help accommodate the process, which was similar to language that had been distributed to the Board at the September meeting when discussing the related bulletin issue. She reminded the Board that the language is intended to provide employers notice of their obligation to distribute the SBCs to employees after receiving SBCs from the carrier, and to create a contractual process that demonstrates that distributions of the SBCs occurred consistent with federal requirements. She reminded the Board it had discussed whether there were other alternatives to help educate employers about the obligation, and had assigned that task to the Marketing Committee, which would report a little later. The Board discussed the process for proposal and adoption, and she explained she would send a bulletin to carriers permitting them to use the language via the Compliance and Variability Rider, and that she would like to use the Board's expedited rule-making authority, especially because the federal requirement is already in effect.

**T. Pownall made a motion, seconded by D. Vanderhoof, to propose amendments to Exhibits A, F, G and HH of the appendix to the small employer rules to incorporate the language regarding the SBCs. The motion carried.**

*Election for a Small Employer Representative and Committee Participation*

E. DeRosa informed the Board that John Harmon, who was recently elected to the Board as a person representing minority small employers, has since resigned from his position. She said he did not provide a reason for his resignation. She explained that staff would send out another request for nominations form with the hope of having another representative seated in February.

E. DeRosa reminded the Board that the Finance and Audit Committee is still looking for participants. She reiterated the importance of the role of the committee, and asked for additional company representatives to consider volunteering someone with an accounting background to work on the committee.

**IV. Report of the Marketing Committee**

E. DeRosa explained that the information the Marketing Committee recommended for the website had been included in the previously-distributed board packet, and asked for reactions and comments. She noted that the Committee had decided that there is more information besides the SBC issue for the Board to post for small employers; hence the document discusses other topics related to the federal Affordable Care Act (ACA). One Board member expressed some concern regarding the discussion of medical loss ratio, and asked for more time to consider it. The Board agreed that all members could have until November 30<sup>th</sup> to submit comments to staff, and if no substantive changes are requested, that staff would post the information online.

There was discussion that the Board needs to focus on the medical loss ratio issue at the January meeting to determine whether and what recommendations should be made for revising the New Jersey statutes regarding New Jersey's small employer 80% loss ratio requirement in light of the implementation of the ACA. It was also acknowledged that the DOBI is aware of the problems, and has been in discussions with carriers already.

## **V. Report of the Finance and Audit Committee (FAC)**

E DeRosa reported that the FAC met with representatives of WSB to discuss WSB's audit findings. She explained that WSB was issuing an unqualified opinion, and that the FAC had nothing to discuss regarding the findings. She noted that the audit report had been finalized already and then she distributed copies to Board members.

E. DeRosa explained that staff had changed the Board's checking account (which was the reason for the purchase of new checks), because the long-standing account had become subject to a monthly service fee when it was finally converted to the Wells Fargo Bank platform earlier in 2012 (Wells Fargo did not immediately convert all of the Wachovia accounts after acquiring Wachovia, so the issue did not arise prior to 2012). She stated that a banker at Wells Fargo assisted staff in finding another service fee-free checking account among the bank's portfolio.

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

E. DeRosa reported that the Ad Hoc Committee is recommending that the SEH Board adopt use of the Medicare Resource-based Relative Value Scale (RBRVS) at 150%. She stated that the Ad Hoc Committee asked staff to develop a white paper outlining: the history of the Board's reimbursement rules; why a new method is necessary; and, the process used by the Board in proposing a new method, including the research involved and the options available. She noted that the white paper had been provided to the Board for consideration. She said that the Ad Hoc Committee had not made any recommendation about how to address expense items for which there is no data available on the RBRVS (that is, expenses that require a "gapfill").

The Board discussed the recommendation, the white paper and how to proceed. There was agreement that the objective is to find a replacement for the no-longer updated Prevailing Healthcare Charges System (PHCS), and that the Board must explain its rationale carefully and thoroughly. There was general agreement (but not a consensus) that using the RBRVS is a reasonable reimbursement method to employ, and general agreement (but not a consensus) to set reimbursement at 150% of the RBRVS. However, there was also general agreement that the Board needs to work harder to make its arguments, and to reach out to stakeholders to explain the situation. The Board asked for revisions to the white paper, requesting: a discussion about why the Board believes it appropriate to move away from a charge-based reimbursement system; a discussion of the economics of the situation (i.e., utilization of out-of-network benefits needs to decrease generally in order to constrain growth in premiums and maintain the viability of PPO/POS products); a discussion acknowledging that there is a gap in the information available to people because the ability to determine what a carrier will pay (through various online tools or customer service) doesn't always fully explain what the consumer will pay out-of-pocket; and, development of an executive summary, and use of plainer language, to the extent possible. It was agreed the white paper should touch on both the bigger policy issues as well as the day-to-day consumer issues. The Board asked that the revised paper be reviewed by the Ad Hoc Committee again, and suggested that it not include a recommendation of a specific percentage of the RBRVS as yet.

N. Vance agreed to put together data showing the increase in PPO premiums and decrease in enrollment.

The Board discussed briefly its intention to have stakeholder meetings, without concluding any specific detail, other than that the white paper should be made available to stakeholders in advance of any meeting(s).

## **VII. Executive Session**

**D. Vanderhoof made a motion, seconded by M. Koller, to go into executive session for the purpose of obtaining legal advice from counsel regarding the out-of-network reimbursement issue, which may result in one or more actions by the Board when the Board reconvenes in Open Session. The motion carried.**

*[The Board was in Executive session from 11:30 until 11:40 A.M.]*

## **VIII. Executive Session Minutes – September 19, 2012**

**C. Stearns made a motion, seconded by G. Cupo, to approve the Executive Session minutes of September 19, 2012 as amended. The motion carried.**

## **IX. Public Comments**

There was no public comment.

## **X. Close of Meeting**

**D. Vanderhoof made a motion, seconded by J. Gralha, to adjourn the meeting. The motion carried.**

*[The meeting adjourned at 11:42 A.M.]*