

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
June 19, 2013

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

Others participating: Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; Rosaria Lenox, Program Accountant; Eleanor Heck, Deputy Attorney General.

I. Call to Order

E. DeRosa called the meeting to order at 10:05 A.M. E. DeRosa announced that notice of the meeting was provided to three newspapers and the State House Press Corp, 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. Minutes -- May 22, 2013

T. Pownall made a motion, seconded by G. Cupo, to approve the minutes of May 22, 2013 with amendments suggested by E. Heck. The motion carried.

IV. Staff Report

Expense Report

R. Lenox presented the expense report for June, with expenses totaling \$76.00 for the *New Jersey Legislative Manual*. She noted that no transfer of money would be necessary to pay the expense if approved.

C. Stearns made a motion, seconded by M. Koller, to approve the June expense report. The motion carried.

Financial Statements for 3QFY14

R. Lenox presented the SEH Program’s financial statements for the third quarter (ending March 31) of fiscal year 2014, including the: Statement of Net Assets, Statement of Changes in Net Assets, Statement of Cash Flows, and the Comparison of Budget and Actual Expenses. She noted that the Board’s account with the Department of Banking and Insurance was negative for a little while during the quarter because the IHC Board was temporarily unable to remit its share of

staff salary and fringe, but that the negative balance has since been corrected. She stated that the SEH Board has \$74,561.56 remaining for the final quarter of FY2014, and that she anticipated the fiscal year will end with a positive balance. The question arose as to whether the fringe percentage is finalized, and R. Lenox stated the Board budgeted fringe at 38% of salaries, but that it would not be final until the end of the fiscal year.

V. Optional benefits rider

E. DeRosa reported that one rider had been received from AmeriHealth.

T. Taliaferro recused himself from discussion or any action specifically with respect to AmeriHealth's rider filing because of the interest of his employer in the outcome of Board action on the matter.

E. DeRosa explained that the rider for AmeriHealth's HMO plan is substantially a mirror of the one previously filed by AmeriHealth for its non-HMO products, and provides vision benefits for covered persons over age 19 to make the adult vision benefit comparable to the pediatric vision benefit in the underlying plan. She recommended the Board find the filing complete.

G. Cupo made a motion, seconded by T. Pownall, to approve the AmeriHealth HMO rider. The motion carried.

VI. Transition Communication

E. DeRosa discussed the draft letter she had prepared for communicating with small employers regarding the changes in plans and market options in 2014. She explained that this communication is intended to be on Board letterhead and set the stage for carriers to provide their own, more specific communications regarding renewal and termination of existing plans. She said she is hoping the information will reduce the number of inquiries coming to the Boards and the DOBI, and provide some greater credibility to carrier actions to comply with the federal law. She indicated she was trying to keep it to 2 pages, and was seeking comments by July 10.

A question arose about the reference to affordability and 9.5% of household income versus employee income. It was agreed that, although the law refers to household income, the current IRS guidance provides employers with a safe harbor in determining whether the offered coverage is affordable by looking at employee income, so the letter needs to be modified in that regard. There was also agreement that the letter should be revised to recognize some softness regarding certain requirements, while trying to clarify timing issues. Board members also suggested the letter provide URL addresses to find additional material online.

VII. Report of the AD Hoc Committee (Application/Certification)

E. DeRosa reported that the Committee had a productive meeting, going line-by-line through the application and suggesting changes to accommodate requirements of the federal Affordable Care Act (ACA) and general business purposes, but that the work was not complete. She noted that this application will be for non-SHOP business.

VIII. Report of the Ad Hoc Committee (Program Compliance)

E. DeRosa reported that the Committee had two significant questions: (1) whether carriers should count towards group participation those employees who waive employer coverage because they are eligible for an individual premium tax credit; and, (2) whether the SEH Program must comply with the annual employer open enrollment period required by the federal rules, during which employers that cannot meet the participation (or contribution) requirements are permitted to enroll anyway. She said the Committee noted that, despite the annual employer open enrollment period, carriers can terminate non-complying employers upon anniversary, but that such employers can get coverage through another carrier during the open enrollment period – or possibly from the same carrier if the employer buys a new plan. The Committee thought it likely that groups would gravitate to January renewal dates, and that there will be a significant percentage of groups bouncing from one carrier to another annually. The Committee asked that the Legal Committee consider the issue of whether the non-SHOP segment of the market has to comply with the annual employer open enrollment requirement.

IX. Report of the Legal Committee

E. DeRosa reported that the Legal Committee focused on definitions for its first meeting. She stated that the Committee did not expect a substantially complete product on this project until other rule changes become more clear-cut. She noted that the Committee spent significant time discussing late enrollees in light of the impending prohibition on preexisting condition limitation provisions, as well as the definition of small employer, which all agreed would become a dual definition to address both state and federal requirements.

The question arose whether there have been any considerations regarding employee leasing, but it was agreed there had not been much discussion as yet, although there has been some federal guidance indicating that most leased employees will be considered employees of the lessor rather than the lessee.

X. Report of the Marketing Committee

D. Farkus reported that the Committee had tried to balance the need for information with the ability of the carriers to capture and report useful data, and the Committee is asking carrier Board members to take the revised enrollment reports back to their staffs to see whether the new data requests are doable, and for other suggestions. He indicated that the Committee thought it best to maintain the existing report until the data for 2014 has been submitted in order to track the migration of the business. He stated that the Committee recommended adding two reports to separately track enrollment through SHOP and the non-SHOP enrollment. He explained that the newer reports should pick up the changed features of the market, and the Committee hoped to obtain data by metal tier, deductible ranges and maximum out-of-pocket ranges, as well as enrollment in high deductible health plans.

The question arose whether movement between the SHOP and non-SHOP portions of the market can be tracked, and it was acknowledged that such tracking is not possible.

It was suggested that some copayment ranges be included in the two reports so carriers can determine if data for such ranges can reasonably be captured for the reports. Some Board

members indicated this is information employers are interested in, so that they can evaluate what is generally being purchased.

XI. Out-of-Network (OON) Reimbursement

T. Taliaferro stated that he was aware that the discussion at the prior SEH Board meeting was to move ahead with stakeholder meetings regarding the OON reimbursement issue, but asked to revisit the issue, because he has concerns about the timing of stakeholder meetings and the rule proposal. Some Board members expressed similar concerns about being able to really do justice in the outreach effort, and implementation effort given all of the other matters requiring attention at this time. Other Board members expressed a concern about continuing to use the existing methodology, and a general desire to resolve the matter, but agreed to go back to their companies and see what timeframes might be acceptable. It was agreed that any postponement should include a commitment to proceed sometime in early 2014. It was noted that medical providers have strong opinions about the matter, so the issue cannot be ignored, but needs to be dealt with thoughtfully and judiciously.

VII. Public Comment

A member of the audience asked for clarification regarding participation requirements, noting that the SEH law establishes a 75% participation requirement, while the federal law specifies 70%. It was explained that the federal rules permit states that have established a participation standard to continue to use it.

The commenter asked what the result would be if a group with 12 eligible employees renews in 2014 with 3 valid waivers and 9 enrollees, but subsequently has a member who is eligible for a premium tax credit who decides to pursue it (thus, no longer meeting the 75% SEH participation requirement). It was explained that this group could be nonrenewed, and could not buy coverage through the SEH or SHOP until the annual employer open enrollment period, although each employee could buy individual coverage, possibly with tax credits.

X. Close of Meeting

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

[The meeting adjourned at 11:30 A.M.]