

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
September 21, 2016

Members participating: Herbert Ames; Mary Beaumont; Gary Cupo; Margaret Koller (*arrived at 10:15*); Lauren Lalicon; Lisa Levine (United/Oxford); Brendan Peppard (DOBI); Nicholas Peterson (Horizon); Thomas Pownall (Aetna Inc.); Tony Taliaferro (AmeriHealth); Dutch Vanderhoof.

Others participating: Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; Rosaria Lenox, Managing Financial Officer; Eleanor Heck and Ryan Schaffer, Deputy Attorneys General.

I. Call to Order

E. DeRosa called the meeting to order at 10:05 A.M. She announced that notice of the meeting was provided to three newspapers of general circulation and the State House Press Corps, and posted at the Department of Banking and Insurance (“DOBI”), on the DOBI website, and at the Office of the Secretary of State in accordance with the Open Public Meetings Act. Following a roll call, she determined there was a quorum present, and stated that all votes would be by roll call because some of the Board members were participating by phone.

II. Public Comments

There were no public comments.

III. Introduction of New Member

E. DeRosa introduced and welcomed Lauren Lalicon as the newest elected small employer representative. Lauren provided some information about herself, including that she is a government representative for the New Jersey Chamber of Commerce.

IV. Minutes – August 17, 2016

T. Pownall made a motion, seconded by B. Peppard, to approve the minutes of the meeting of August 17, 2016. By roll call vote, the motion carried, with M. Beaumont and L. Lalicon abstaining.

V. Election of Officers and Reconstitution of Committees

E. DeRosa stated that it was time to elect officers, and reconstitute committees, noting the current Chair is T. Taliaferro, and the current Vice Chair is M. Koller.

T. Pownall made a motion, seconded by M. Beaumont, to re-elect T. Taliaferro as Chair. Following an assent by T. Taliaferro to continue serving, by roll call vote, the motion carried, with T. Taliaferro abstaining.

T. Taliaferro made a motion, seconded by T. Pownall, to re-elect M. Koller as Vice-Chair. In her absence, by roll call vote, the motion carried. M. Koller expressed her consent to the re-election upon joining the meeting.

E. DeRosa provided the current composition of the standing committees, as follows:

- the Legal Committee includes Aetna, AmeriHealth, DOBI, Horizon, and D. Vanderhoof
- the Finance & Audit Committee (FAC) includes AmeriHealth, DOBI, H. Ames, Horizon, M. Koller, and United
- the Marketing Committee includes D. Vanderhoof, Horizon, M. Koller, and United

She noted that both the Legal and Marketing committees would welcome additional participants. M. Beaumont expressed an interest in joining the Legal Committee, but no other changes were suggested.

D. Vanderhoof made a motion, seconded by B. Peppard, to reconstitute the standing committees as they currently exist, with the addition of M. Beaumont to the Legal Committee. By roll call vote, the motion carried.

VI. Report of the Finance & Audit Committee (FAC)

R. Lenox reported that the FAC met to discuss the year end financials and the Management's Discussion and Analysis (MDA) for the fiscal year ended June 2016, to which the FAC took no exception. She went over the MDA, noting that the Board assessed carriers for fiscal year 2017 budgeted expenses, and reconciled the fiscal year 2015 administrative expenses. She stated that an audit of the SEH Program for FY 2015 was completed, and an unqualified opinion was issued in January 2016. She explained that actual expenses were favorable to budget for FY2016, although expenses increased \$9000 due to legal fees. She then discussed the year-end financial statements, including:

- the Statement of Net Assets
- the Statement of Changes in Net Assets
- the Statement of Cash Flows
- the Comparison of Budget to Actual Expenditures

She noted that fringe is a little lower than the previous year.

VII. Readoption with Amendments of N.J.A.C. 11:21 and its Appendix

E. DeRosa discussed the draft notice of adoption of the proposed readoption of N.J.A.C. 11:21. She explained that the draft contained some changes from the proposal but that the changes were non-substantive in nature. She explained that a hearing was held on the proposal on August 18, and that representatives for two organizations, Savoy Associates and Teladoc, were in attendance, but did not provide comments that differed from their written comments. She noted that written comments were received until August 22, then proceeded to discuss the comments and draft responses, which follows.

- In summary, comments were received from 6 commenters: FAIR Health, Horizon BCBSNJ, the Medical Society of New Jersey, the New Jersey Hospital Association, Savoy Associates, and Teladoc.
- Several comments addressed the Board's reasoning for moving away from the PHCS, arguing that FAIR Health data could have been used earlier, and should be used now to assure transparency, particularly since other New Jersey State agencies require use of it, as do other States in certain contexts. The draft adoption makes no change to the rules based on the comments, noting that carriers may choose to use FAIR Health, that any reimbursement methodology selected would have to provide for transparency based on the rules as proposed, and that use of FAIR Health for other purposes did not mean it was the only or best option for this purpose.
- Several comments stated that standardization is still important, as evidenced by the ACA, and use of FAIR Health would enhance that, plus patients could be sure if FAIR Health is used that more of their out-of-network charges would be paid. The draft adoption makes no change to the rules, noting that the ACA's emphasis on standardization is with respect to covered services, not reimbursements. The draft response also points out that standardization on reimbursement methodology would provide no constraint on what out-of-network health care provider's charge, and cannot guarantee that "more" of the out-of-network charges will be paid by the carrier.
- Several comments argued that the Board's rulemaking process had been inadequate or inappropriate. The draft response explains that the Board followed all applicable requirements.
- Several comments misinterpreted the proposal, and objected to changes that were not actually made (e.g., a change to the child dependent age), or that were made specifically to address other administrative issues under other statutes (e.g., confidentiality of records). The draft responses suggested no changes to the rules based on the comments.
- Several comments related to the coverage of employers, urging that owners be allowed coverage under a small employer plan when all employees waive the offer, and suggesting that reference to 2% owners in S-corporations be changed to greater than 2%. There was also a suggestion to remove the Social Security Number reporting requirement from Exhibit T (The Small Employer Waiver of Coverage form). The draft response disagrees that owners could be covered when all employees waive, explaining that there would be no employee benefit plan. The draft response disagrees with the suggested change regarding 2% shareholders, but acknowledged a lack of consistency in the use of the term, resulting in an agency-initiated change to make all references to 2% the same. The draft response agrees with the suggestion to revise Exhibit T upon adoption.
- Several comments addressed telemedicine, one suggesting that the definition be more technology neutral, and more consistent with language in pending New Jersey legislation (A-1464 and S-291), and one suggesting that a formula (unspecified as yet) be established for cost-sharing for telemedicine rather than a fixed dollar amount. The draft responses suggest no change to the rules, noting that the Board would consider any legislation on telemedicine when and if enacted, but preferred not to make changes beforehand.

- Several comments noted some inconsistencies in language between the rules and policies, or between schedules and form content, etc. The draft responses acknowledge the inconsistencies, and incorporated changes upon adoption.

E. DeRosa discussed several additional agency-initiated changes suggested to be made upon adoption:

- to clarify that the provision of notice of use of emergency services will help facilitate claim processing (but is not required in order for claims to be paid).
- to revise the vision benefit language to reflect a 12-month benefit rather than a calendar year benefit.
- to assure that the definition of employee is consistent throughout the rules and forms.
- to revise the reporting deadline for Exhibit CC from 3/1 to 4/1 annually.

T. Pownall made a motion, seconded by N. Peterson, to accept the draft notice of adoption of the readoption of N.J.A.C. 11:21, with minor modifications as discussed in the meeting. By roll call vote, the motion carried.

The Board discussed how to effectuate the amendments. It was acknowledged the amendments would be effective upon filing, but agreed the amendments should apply to policies issued or renewed on or after January 1, 2017. Multiple Board members asked that carriers have the option to use a Compliance & Variability Rider. E. DeRosa agreed to draft text. The Board discussed the fact that rates for the first quarter of 2017 have been filed, and cannot be changed, but that new rates can be filed for later quarters, and the potential that small employers buying in the first quarter of 2017 would pay higher premiums than employers purchasing later in the year, when carriers will have had the opportunity to change rates to reflect new reimbursement methodologies. The Board noted, however, that carriers may elect to re-rate the plans sold in 1Q17 if rates for later quarters of the year are reduced.

Employer Application and Certification Forms

E. DeRosa noted that the Small Employer Application and Certification forms need updating, and asked for comments on draft revisions by September 28th.

VIII. Public Comments

There were no public comments.

IX. Close of Meeting

H. Ames made a motion, seconded by D. Vanderhoof, to adjourn the meeting. By roll call vote, the motion carried.

[The meeting adjourned at 12:00 noon.]