

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
December 21, 2016

Members participating: Herbert Ames; Mary Beaumont; Bob Benkert (United/Oxford); Gary Cupo; Margaret Koller; Lauren Lalicon; Nicholas Peterson (Horizon); Thomas Pownall (Aetna Inc.); Brendan Peppard (DOBI); Tony Taliaferro (AmeriHealth); Dutch Vanderhoof.

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

I. Call to Order

E. DeRosa called the meeting to order at 10:02 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. Minutes – October 19, 2016

M. Koller made a motion, seconded by M. Beaumont, to approve the minutes of the meeting of October 19, 2016. By roll call vote, the motion carried, D. Vanderhoof, B. Benkert, and B. Peppard abstaining.

IV. Staff Report

Expense Report

R. Lenox presented the expense report for December, totaling \$10,037.40, attributable to costs for legal notices of the Board’s 2017 meeting dates, legal services from the Division of Law, and audit services from WithumSmith+Brown. R. Lenox stated that the Board would need to transfer \$10,000 from its Money Market account to its checking account in order to pay the expenses.

D. Vanderhoof made a motion, seconded by G. Cupo, to approve payment of the December expense report, to transfer \$10,000 from the SEH Board’s Wells Fargo Money Market

account to its Wells Fargo checking account for the purpose of paying operating expenses. By roll call vote, the motion carried.

V. New Jersey Loss Ratio Report for Calendar Year 2015

Gary Weiss presented the 2015 Loss Ratio Report prepared by the Department of Banking and Insurance, noting the following:

- Carriers refunded more than \$5.5 million in the small employer market, which is lower by \$400,000 than the refunds for CY2014
- The overall loss ratio for the SEH market was 82.2% in CY2015, lower than the loss ratios for both CY2014 and CY2013
- Loss ratios varied by carrier, ranging from a low of 60.9% to a high of 113.2%
- Enrollment in the small employer market continued to decline throughout CY2015

G. Weiss stated that the report would be posted on the Department's website. When asked if he had any comments regarding 2016, G. Weiss stated there was nothing specific at this time.

VI. Report of the Legal Committee: Guaranteed Renewability as Employers Shrink and Grow in Size

E. DeRosa stated that questions had arisen regarding how to comply with guaranteed renewability requirements as employers shrink or grow, and that the issue had been considered by the SEH Legal Committee. She noted that the Board traditionally has stated that employers could retain small employer plans after becoming large employers, but explained that the Legal Committee recommended some changes to the Board's position after reconsidering the legal issues. Specifically, the Legal Committee concluded that:

1. When an employer shrinks into the small employer market, the employer cannot renew the plan issued to it as a large employer; rather, the carrier is obligated to offer the small employer a health plan that is fully compliant with federal law (a qualified health plan), otherwise, the carrier violates federal law.
2. When an employer grows beyond the small employer market, the employer may renew the small employer plan because there is no prohibition on large employers being covered under qualified health plans, but a carrier's related obligations vary based upon whether the small employer plan was purchased inside or outside of the SHOP.
 - a. If the original small employer plan was purchased outside of the SHOP, the carrier must amend the group policy to provide infertility benefits (a large group mandate). Also, the carrier may rate the policy consistent with its rating practices for the large group market, must comply with the large group 85% MLR, and must remove the group's experience from the small employer single risk pool.
 - b. If the small employer plan was purchased inside of the SHOP, the amendment requirement would apply, but the rating need not change; the index rate applicable for small groups continues to apply and the employer's experience is retained within the small group risk pool.

The Legal Committee also noted that employers that grow into large employers have guaranteed issue rights under federal law to obtain coverage from carriers offering large employer plans

without meeting participation or contribution requirements. The Legal Committee noted that rating differences between the large and small group markets might be an issue for some employers, but employers should not be denied coverage.

E. DeRosa explained that the Legal Committee recommended that something be issued in writing – such as a bulletin.

The question arose as to whether treatment is different for situations in which the employer size does not actually change, but the employer's classification changes from being small to being large based on the change in New Jersey's applied definitions. Several differing points of view were expressed. The Board requested that the Legal Committee address this issue as well, so that the question and answer could be included in the written correspondence issued by the Board.

It was also noted that, because renewals for 2017 had already begun, and the Board's guidance would not be disseminated for at least several more weeks, the uniform approach the Board is seeking to achieve may not be applied across the market until later in 2017.

VII. Proof of Employer Status

E. DeRosa stated that she and the NJBIA have been receiving questions and complaints about providing proof of employer status. She indicated that carriers appear to be requiring a WR-30 (the quarterly wage report filed with New Jersey's Division of Revenue), but that some brokers and payroll companies state that they are unable to provide WR-30s. She suggested that the Board establish an ad hoc committee to address the problem. The following agreed to be on the ad hoc committee:

- Horizon
- AmeriHealth
- Aetna
- United
- Mary Beaumont
- Dutch Vanderhoof

E. DeRosa asked that carriers provide information on what proofs they have been accepting.

VIII. Change n DAG Representation

E. DeRosa informed the Board that E. Heck will not be representing the Board in 2017. E. Heck stated she had been providing legal services to the Board for six years, and found it intellectually fascinating and personally rewarding. Board members thanked her for her service.

IX. Public Comments

There were no public comments.

X. Close of Meeting

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

[The meeting adjourned at 10:48 A.M.]