

**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 22, 1998**

Members present: Justin Fiedler (BCBSNJ); Karen Dickinson (HIP of New Jersey); Nancy Fiorentino (DOHSS) (arrived at 9:55 a.m.); Charlotte Furman (Anthem Health & Life); Larry Glover, Chair; Linda Ilkowitz (Guardian); Jane Majcher (DOBI); Catherine St. John (The Prudential); Eric Wilmer (Celtic); Dutch Vanderhoof (arrived at 10:15 a.m.).

Others present: Ellen DeRosa, Deputy Executive Director; DAG Josh Lichtblau (DOL); Wardell Sanders, Executive Director; Libby Swanke (sitting of behalf of NJBIA, as an observer, without voting rights).

I. Call to Order

L. Glover called the meeting to order at approximately 9:45 a.m. W. Sanders announced that notice of the meeting had been published in three newspapers and posted at the Department of Banking and Insurance (“DOBI”) and the Office of the Secretary of State in accordance with the Open Public Meetings Act. A quorum was present.

II. Public Comments

L. Glover asked if any person attending the meeting wished to offer any comments. No comments were offered.

III. Public Hearing on Standard Health Benefits Plans as Included in the Proposed Readoption with Amendments: N.J.A.C. 11:21 and Appendix Exhibits A through KK

W. Sanders asked if any meeting attendees wished to offer oral comments with respect to the standard health benefits plans, set forth in Appendix Exhibits A, F, G, V, W, Y, Z, AA, HH and II to N.J.A.C. 11:21. No attendee came forward to offer comments. W. Sanders said the public hearing would remain open until 10:00 a.m.

IV. Minutes

June 17, 1998

C. St. John offered a motion to approve the open session minutes of the June 17, 1998 Board meeting, as amended. J. Majcher seconded the motion. The Board voted in favor of the motion, with one abstention (C. Furman).

V. Report of the Policy Forms Committee

E. DeRosa reported that the Committee met on July 13, 1998 to discuss optional benefit riders, and the prescription drug coverage provided under the standard plans. She referred the Board to the Minutes of the Policy Forms Committee contained in the Board packets.

Optional Benefit Riders

E. DeRosa reported that Oxford submitted two riders which would amend PPO plans B, C, D and E and POS Plans C, D and E. She explained that the riders provided alternate deductible amounts, alternate coinsured charge limit amounts and allowed for a waiver of the physician visit copayment and/or hospital confinement copayment. She reported that the Committee recommendation was to find the two riders complete and in substantial compliance, subject to receipt of some modifications. She said that the Committee asked her to contact the analyst at Oxford to request that necessary corrections be provided prior to the Board meeting. E. DeRosa reported that she learned that the analyst was out of the office preparing for the Bar Exam and it was not possible to contact him. In light of the absence of a Board meeting in August 1998, E. DeRosa suggested that the Board not defer consideration of the rider filing until September 1998. She indicated that the Board could find the filing complete and in substantial compliance, subject to receipt of corrections. She noted that Oxford had been very cooperative in connection with prior filings. The alternative would be to find the filing incomplete and not in substantial compliance, based on the necessary corrections. A finding that the filing was incomplete and not in substantial compliance would delay use of the riders until such time as the Board acted to find a corrected filing complete and in substantial compliance. DAG J. Lichtblau noted that the filing was dated June 11, 1998. The regulations include a 45-day deemer provision for optional benefit riders. He noted, therefore, that the Board must take some action or the carrier could deem the filing complete and in substantial compliance. After some discussion, the Board concluded that it would be appropriate to find the filing complete and in substantial compliance, and give the carrier a deadline by which to provide the necessary modifications to the filing.

J. Majcher offered a motion that the Board find the two Oxford riders complete and in substantial compliance, subject to receipt of necessary modifications to be received by a date staff would specify in the letter. C. Furman seconded the motion. The Board voted unanimously in favor of approving the motion.

Coverage for Prescription Drugs

E. DeRosa explained that staff received a fair number of inquiries, primarily from agents, concerning whether the SEH standard plans cover the prescription drug Viagra. She reported that the Policy Forms Committee considered the issue. The Committee reviewed the definitions of "Prescription Drugs" and "Medically Necessary and Appropriate" as well as the benefit text for prescription drugs in both the standard health benefits plans and the standard prescription drug riders. She reported that the Committee believed the language was clear and that a drug which satisfies the definition of a Prescription Drug must be covered, provided, of course, that the prescription drug is medically necessary and appropriate treatment. She said the Committee believed a carrier could deny coverage for Viagra on the basis that it was not medically necessary and appropriate treatment for an injury or illness of a particular individual, but that a carrier could not administer the standard plans with a blanket exclusion for Viagra. E. DeRosa said that the Committee recommended that a Bulletin be released to carriers and interested parties to advise them of the fact that the language in the standard health benefit plans would not support a blanket exclusion of coverage for Viagra and that carriers must cover medically necessary and appropriate prescription drug treatment.

E. DeRosa reported that G. Simon told the Committee that a couple of large group carriers have filed riders that provide an exclusion for the treatment of sexual dysfunction rather than limiting the exclusion to a specific drug. L. Glover asked if the standard plans would cover other treatments for sexual dysfunction. E. DeRosa said the standard plans do not contain an explicit exclusion, but that carriers could rely on a determination as to whether the treatment was medically necessary and appropriate to treat a covered person's injury or illness. C. Furman suggested that the Bulletin should be expanded to address medically necessary and appropriate treatment for sexual dysfunction in general, listing Viagra as one example. The Board agreed that the Bulletin should not be specific to Viagra.

E. DeRosa asked Board members to provide any comments on the draft Bulletin no later than July 29, 1998. She reminded the Board that based on current policy language, the forms provide coverage for medically necessary and appropriate treatment or an injury or illness, which would include treatment for sexual dysfunction. In addition, she asked that Board members provide feedback as to whether they believe the standard plans should cover Viagra and treatment of sexual dysfunction. If the Board were to conclude that coverage for treatment of sexual dysfunction should be excluded under the standard plans, she said the Board would need to propose forms changes consistent with that conclusion.

Advisory Bulletin 98-SEH-05

E. DeRosa reminded the Board that it recently adopted amendments to standard Plans B - E and HMO-POS to modify the coverage for the treatment of mental or nervous conditions. The amendments were intended to address the requirements of federal law concerning mental health parity, and are effective September 1, 1998. She said that the Legal Committee requested that she draft a Bulletin to discuss the impact of such amended coverage on group plans that were effective prior to September 1, 1998 which

are subject to federal law concerning mental health parity. She summarized the Bulletin as advising carriers that if a group is subject to federal law and secures coverage prior to September 1, 1998, or the date the carrier implements the amended text, if earlier, that the carrier would be required to waive the internal dollar limits contained in the plan and provide coverage for mental or nervous conditions without the imposition of any internal dollar or day limit. The amended text would be included in the plan as of the first anniversary date. She said the Legal Committee reviewed the Bulletin and found it acceptable. She asked that Board members provide any comments no later than July 29, 1998.

VI. Close of Hearing

W. Sanders asked if any members of the public wished to offer oral comments on the proposed policy forms. No person expressed an interest in offering oral comments. W. Sanders stated that since no person was interested in offering oral comments that the Public Hearing was concluded. The hearing closed at 10:15 a.m.

VII. Report of Staff

Expense Report (see attached)

J. Fiedler offered a motion to approve the payment of the expenses specified on the July 22, 1998 expense report, with the addition of \$5,159.07 as payment to the Attorney General's Office. C. St. John seconded the motion. The Board voted unanimously in favor of approving the motion.

Legislative Activity

W. Sanders referred to the July 22, 1998 memorandum contained in Board materials. He noted that there had been no significant changes in state legislative activity since the June 1998 report.

W. Sanders noted that on the federal level, however, that "HealthMarts" either are, or will be, included in a House bill. He said that a copy of letter to the Chairman of the Commerce Committee from the National Conference of State Legislatures and the National Association of Insurance Commissioners was included in Board materials. He noted that the concerns expressed in the letter included the fact that such plans would not be subject to consumer protection laws and that such plans would undermine state health reforms by fragmenting the health insurance market. Healthy groups would gravitate to HealthMarts and unhealthy groups would seek coverage under reform plans that offer protection. L. Ilkowitz said that the provision for HealthMarts had already been included in the House Bill. She characterized the HealthMarts as being similar to the HIPC's which were a component of the Clinton health reform bill several years ago. She said that there was a sense that the provisions for HealthMarts would be dropped from the House Bill if it ever reached conference with the Senate version.

Rulemaking

W. Sanders reported that the SEH Board's proposed readoption with amendments of N.J.A.C. 11:21 was filed with the Office of Administrative Law and mailed to interested parties on July 2, 1998. He said the proposal was scheduled to be published in the August 3, 1998 *New Jersey Register*. He said written comments must be received by August 14, 1998. W. Sanders explained that the comments would be forwarded to the Legal Committee for consideration with the expectation that the Board would be in a position to adopt the proposed readoption with amendments during the September 16, 1998 Board meeting.

DOBI Bulletin 98-11

W. Sanders said the Board materials include a copy of DOBI Bulletin 98-11 which addresses the filing of annual loss ratio reports.

Enrollment Reports (first quarter 1998)

W. Sanders said that the enrollment data carriers provided to the Board indicated an increase in SEH enrollment in Q1 98 as compared to Q4 97 enrollment. He noted that approximately 87% of the plans covering small employer groups were standard plans.

W. Sanders also noted that enrollment in the IHC market for the same period had decreased. He said there is no solid data concerning why individuals drop coverage. D. Vanderhoof said that the Department of Labor statistics for 1996 indicate that there is an increasing number of uninsured persons in New Jersey.

1999 Meeting Schedule

W. Sanders asked the Board to consider the tentative 1999 Board meeting schedule which was included in Board materials. He explained that it was necessary to reserve the room for meeting dates in 1999. W. Sanders noted that the Board had been scheduling 11 meetings per year, and providing separate notice of any additional meetings that may be necessary. He proposed that the Board reduce the number of scheduled meetings to 10, with August and December being the months with no scheduled meetings. He explained that preparation for Board meetings consumes a significant amount of staff time and that there is generally difficulty getting a quorum for meetings in August and December. He said that a meeting could be noticed for August and/or December in the event a filing were received which required immediate attention and that any such meeting could likely be conducted via teleconference. He reported that the IHC Board considered the 10-scheduled meeting suggestion and agreed to notice meetings based on a 10-meeting schedule. The SEH Board agreed that a 10 scheduled meeting schedule would be appropriate, but suggested that the room be reserved for the possibility of meetings in August and December. W. Sanders asked Board members to provide comments on the proposed meeting dates so that the 1999 meeting schedule may be finalized.

Board Membership

W. Sanders explained that the acquisition of NYLCare by Aetna USHealthCare was complete. He reported that he asked the Attorney General's Office for guidance concerning what impact, if any, the acquisition would have on the Board position held by NYLCare. He also reported that E. Gallagher, who had represented NYLCare on the

Board and had been involved with the reform since inception, had resigned from NYLCare.

Bulletin on State Continuation

W. Sanders said that staff receives a large volume of calls from employers, employees and brokers concerning continuation of coverage. He reminded the Board that it had previously considered and approved an informational piece that explained the continuation right. He said that the informational piece required updating to reflect changes in the SEH law and that the frequently asked questions contained in the informational piece required updating to reflect some new frequently asked questions. He said he had not shared the Bulletin with a committee since it was similar to the prior informational piece. He asked that Board members provide any comments no later than July 29, 1998.

Rehabilitation of Centennial Life Insurance Company

W. Sanders advised the Board that the Kansas Insurance Department placed Centennial Life Insurance Company in rehabilitation. While Centennial did not write a large number of individual or group plans in New Jersey, the DOBI suggested that he write a letter to advise the Rehabilitator of the loss ratio and refund requirements of the IHC and SEH programs. He said that a copy of his letter, signed by him as well as G. Simon on behalf of the DOBI, was included in Board materials. He said that G. Simon indicated there was probably little chance any refunds that might be due would actually be paid to policyholders.

Employee Leasing Companies/Professional Employer Organizations

W. Sanders said that information on Employee Leasing Companies/Professional Employer Organizations was included in Board materials. After some discussion as to whether there should be an ad hoc committee named to evaluate these entities and their impact on the SEH market, the Board determined that no ad hoc committee should be named at this time. Rather, Board members were asked to forward all information on these types of entities to W. Sanders.

Outreach

W. Sanders reported that the legislative offices that had received the informational mailing of the new Buyer's Guides continue to seek additional copies of the Buyer's Guides.

W. Sanders reported that there had been an increase in the number of visitors to the Web site, as noted in the memorandum that was included in Board materials. He said that J. Petto had released a memorandum to all interested parties to advise them that they could establish a link to the Web site. He said that about 15 to 20 entities had responded, indicating they would or had created links.

W. Sanders noted that Wenzel had sent out a press release on the new Buyer's Guide prior to the termination of their contract. The release was also provided to Chamber of Commerce offices. He said that a few calls were generated by the press release.

VIII. Executive Session

L. Ilkowitz offered a motion to move into Executive Session to receive advice from counsel. J. Majcher seconded the motion. The Board voted unanimously in favor of moving into Executive Session. W. Sanders advised that the Board would not return to Open Session to discuss additional matters.

[Break: 10:55 a.m.- 11:05 a.m.]

[Executive Session: 11:05 a.m. -11:45 a.m.]

IX. Close of Meeting

J. Fiedler offered a motion to close the meeting. E. Wilmer seconded the motion. The Board voted unanimously in favor of closing the meeting. The meeting adjourned at 11:45 a.m.

Attachments:

Exhibit 1 July 22, 1998 Expense Report