

**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
October 21, 1998**

Members present: Justin Fiedler (Horizon BCBSNJ); Addie Gallagher (Anthem Health & Life); Larry Glover, Chair; Linda Ilkowitz (Guardian); Bryan Markowitz; Mary McClure (The Prudential); Fred Title (HIP of New Jersey); Dutch Vanderhoof; Bob Vehec (DOBI); Eric Wilmer (Celtic); Bonnie Wiseman (DOHSS).

Others present: Ellen DeRosa, Deputy Executive Director; DAG Eleanor Heck (DOL); Joanne Petto, Assistant Director; Wardell Sanders, Executive Director.

I. Call to Order

L. Glover called the meeting to order at approximately 9:50 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. Minutes

September 16, 1998

B. Vehec offered a motion to approve the open session minutes of the September 16, 1998 Board meeting, as amended. D. Vanderhoof seconded the motion. The Board voted in favor of the motion, with four abstentions (J. Fiedler, A. Gallagher, F. Title, B. Wiseman).

IV. Report of Staff

Expense Report (see attached)

J. Fiedler offered a motion to approve the payment of the expenses specified on the October 21, 1998 expense report. F. Title seconded the motion. The Board voted unanimously in favor of approving the motion.

Legislative Activity

W. Sanders referred to the summary of 1998 legislative activity that was included in Board materials. He specifically directed the attention of the Board members to the following:

P.L. 1997, c.97: W. Sanders noted that this law, which will take effect on December 3, 1998, prohibits carriers from denying benefits otherwise payable under a health benefit plan for expenses incurred in connection with treatment of injuries sustained as a result of domestic violence. E. DeRosa explained that while the standard health benefits plans do not contain an express exclusion for treatment of injuries sustained as a result of domestic violence, she had read reports of carriers basing claim denials on the pre-existing conditions exclusion. She assured the Board that she had not seen reports of such denials in the SEH market. However, to ensure that no such denial could occur, she said she would recommend that the text of the pre-existing conditions exclusion be amended to specifically state that the exclusion does not apply to treatment of injuries sustained as a result of domestic violence. She said the amendment could be made the next time the standard plans were amended.

A.2121 and A.2484: W. Sanders said that both of these bills would amend the laws governing the prompt payment of claims. He said that the DOBI provided written testimony in opposition to A.2121. A.2121 would reduce the period of time allowed for a carrier to either pay or contest a claim from 60 days to 30 days for claims processed manually, and to 17 days for claims processed electronically. A. 2424 would require carriers to acknowledge receipt of a claim within 7 days of the date of submission for manually processed claims, and within 72 hours for electronically submitted claims. Several Board members expressed concern with the requirements of these bills. L. Ilkowitz stated that the September 9, 1998 *Federal Register* contains the federal rule proposal that would regulate claims payments. She encouraged Board members to read the federal proposal and submit comments.

A.660: W. Sanders said that this bill would require coverage for the treatment of mental illness on the same basis as treatment for any other illness. He referred the Board to a copy of a letter he sent to Paula Hayes of the Mental Health Association in New Jersey. W. Sanders explained that P. Hayes had contacted him seeking permission to address the SEH and IHC Boards concerning coverage for the treatment of mental illness. He said he invited her to provide a written actuarial analysis of the cost impact of mental health parity on the standard plans. W. Sanders reported that an actuarial firm sent a letter regarding SEH coverage on behalf of the Mental Health Association. He noted that the letter contained incorrect assumptions concerning the nature of the coverage currently

provided under the standard SEH plans. Further, the letter drew a conclusion without providing a clear basis for the conclusion. He said his letter to P. Hayes clarified the actual coverage provided under the SEH plans and reiterated the request for a complete actuarial analysis. B. Markowitz noted that A.660 was tentatively scheduled for a hearing on November 9, 1998. He noted that there are misconceptions among members of the legislature concerning the levels of coverage currently provided for the treatment of mental illness. L. Ilkowitz suggested that the Board should write a letter to the DOBI to encourage the DOBI to comment on the bill and provide accurate data concerning coverage.

Regulatory Update

W. Sanders reported that the adoption of the proposed readoption with amendments of N.J.A.C. 11:21 was filed with the Office of Administrative Law and that notice was sent to interested parties and carriers. He said it would appear in the October 19, 1998 *New Jersey Register*.

W. Sanders reported that staff has received inquiries from brokers and carriers concerning some of the changes that were adopted. He said that staff would prepare an Advisory Bulletin to release to carriers and brokers that would outline the key changes.

Transition Memorandum

W. Sanders reported that he prepared a memorandum to the new Commissioner, Jaynee LaVecchia, to provide her with background information on both the IHC and SEH Boards and advise her of some of the key issues before the Boards.

Outreach

W. Sanders reported that he spoke to a group of about 30 brokers in Floram Park, NJ on October 7, 1998. He said he spoke to a group of about 60 brokers at the Trenton Country Club on October 16, 1998.

E. DeRosa said she taught a 3-hour continuing education course on the IHC Program in Newark, NJ on October 7, 1998.

Policy Forms Activity

E. DeRosa reported that the Committee did not consider any optional benefit riders. She said that one carrier had submitted optional benefit riders, but that they were simply amendments to previously filed optional benefit riders. According to a Board Resolution, such submissions do not require Committee consideration. She referred the Board to a Report contained in Board materials that summarized the riders submitted by United Health Care. She said she reviewed the riders, found them acceptable, and already responded to the filing.

V. Report of the Legal Committee

W. Sanders reported that the Committee met on October 20, 1998. He referred the Board to the minutes of the Committee meeting that were included as recent additions to Board materials.

At what point is a Disabled Employee no longer an Eligible Employee?

W. Sanders reminded the Board that it had sent the disabled employee issue back to the Legal Committee for further consideration following the report of the Committee during the September 16, 1998 Board Meeting. W. Sanders said the Committee believes that it is primarily a matter for the employer to judge whether an employee who becomes disabled may remain on the plan as an active employee for a limited period of time. He noted that the Committee believed that if an employer wished to continue health coverage that the employer should likewise treat the person as an employee for purposes of unemployment taxes and worker's compensation. The Committee believed that carriers may hold the employer to a test of reasonableness in terms of whether keeping the employee on the plan is appropriate. W. Sanders said the Committee could not provide a precise formula that would apply in all situations.

E. DeRosa noted that she has received a fair number of questions from employers seeking guidance as to whether they are required to keep the employee on the plan for a certain period of time. She said she has not received calls from carriers commenting on employers who keep disabled employees on the plan for inappropriate periods. She also commented that keeping the employee on the plan as an active employee is not the only option available to an employer. A disabled employee would have the availability of either state continuation or COBRA continuation.

D. Vanderhoof expressed concern with the involvement of a carrier in the decision of the employer to allow an employee to remain on the plan as an active employee for a limited period of time. He suggested that a test such as status as of the second anniversary after disability might be reasonable. W. Sanders said that each case should be considered separately and that such a rule would not necessarily be appropriate.

Late Enrollee Status

W. Sanders reported that the Committee considered whether an employee who waived coverage under the group policy offered by the employer may enroll under a second policy that is subsequently offered by the employer. He said the Committee considered the potential for adverse selection. He reported that based on the law and the language in the standard plans, a person enrolling under the second plan would not be a late enrollee provided he or she enrolled under the second plan during the first 30 or 31 days. He noted that under HIPAA, a late enrollee is defined in terms of failure to enroll in the "group health plan" of the employer, and would result in a different response to the issue. He said the Committee recognized that the response to the legal question could lead to both positive and negative results. The legal response of not considering the person a late enrollee would afford the positive result of allowing a person who waived coverage under one managed care plan because the network did not contain certain doctors to later enroll

as a timely enrollee under another managed care plan that included the desired doctors. However, an employee may waive coverage under the first plan, become sick, and then enroll under a new plan offered by the employer and not be considered a late enrollee subject to the pre-existing conditions exclusion. The Committee recognized this possible negative consequence. However, based on the law and the policy forms, the Committee believed no other response to the question would be supportable.

D. Vanderhoof noted that the issue would only be significant in groups of 2-5 where the pre-existing conditions exclusion could apply. Further, he noted that if the person had prior creditable coverage there would be credit toward the pre-existing conditions exclusion. Thus, the response to the question may not have a broad impact on the market.

W. Sanders said that the related question of a group transfer was also considered. The Committee reached the same conclusion. If a person waived coverage under one policy offered by the employer, then the employer transferred coverage to another policy, the person may enroll under the new policy and not be considered a late enrollee.

VI. Report of the Operations Committee

Fiscal Year 1999 Budget and 1998 Assessment

P. Lechner explained the various entries for the budget. She made particular mention of the budgeted expense for new computers and for bookkeeping services, as these were unusual items. She noted that the total budgeted amount was \$447,630.

P. Lechner reviewed the 1998 Assessment Analysis. She referred the Board to the revised assessment sheet included in Board materials that included recently corrected exhibits from two carriers. She noted that while the FY 1999 Budget requires \$447,630, the Board only needs to bill for an assessment of \$178,365.

W. Sanders explained on the mention of the anticipated new computers for staff. He explained that the DOBI is purchasing a large volume of new computers and that the Boards will have the opportunity to take advantage of the volume purchase prices. He noted that staff has been using equipment that was purchased nearly five years ago. Technology has greatly advanced and the cost to upgrade the existing equipment would exceed the cost to purchase new equipment.

D. Vanderhoof asked for clarification as to the manner in which the salary component was shared with the IHC Board. W. Sanders explained that the salary item was shared 50%/50% with the IHC Board. M. McClure asked if the actual legal services expense for the 1998 was typical of prior years. P. Lechner explained that actual expenses for 1998 were lower than usual. As a result, she budgeted for an amount that significantly exceeds the actual expenses for 1998. J. Fiedler explained that the Operations Committee noted the extra work involved with billing for a second assessment should the first assessment prove to be insufficient. He said the Operations Committee believed it better to have some surplus that could then be applied toward the assessments for the next year.

W. Sanders commented the amount of work required of staff to secure accurate and complete records from carriers.

J. Fiedler offered a motion to approve the Fiscal Year 1999 Budget. L. Ilkowitz seconded the motion. The Board voted unanimously in favor of the motion.

D. Vanderhoof offered a motion to approve the revised 1998 assessment. F. Title seconded the motion. The Board voted unanimously in favor of the motion.

Filing of Late and/or Inaccurate Reports

W. Sanders said the Committee discussed a way to deal with carriers that have a pattern of filing enrollment reports late and/or inaccurately. He noted that the timely and accurate release of enrollment data has been hindered by a number of carriers. The Committee suggested that the report which staff prepares to summarize quarterly enrollment data could be used as a forum to identify those carriers that filed reports late or filed inaccurate reports. He said J. Petto would prepare a spreadsheet to chart patterns and practices of non-compliance. Carriers that consistently provide late or incorrect data would be referred to T. Smith for appropriate action. He said he spoke with T. Smith about the idea of identifying tardy or inaccurate carriers on the report that is distributed to Board members, other carriers and interested parties and reported that T. Smith did not have a problem with the Board so identifying carriers. J. Petto briefly discussed the nature of the errors which she has had to address. The Board agreed that it would be best to defer further discussion until they had the spreadsheet to provide a more complete picture of the problems.

4Q 1998 Financial Statement

W. Sanders noted that the 4Q 1998 financial statement was included in Board materials. He asked that any Board members who may have questions concerning the report direct them to P. Lechner.

VII. Executive Session

R. Vehec offered a motion to begin Executive Session. E. Wilmer seconded the motion. The Board voted unanimously in favor of the motion.

[Break: 11:00 a.m. - 11:10 a.m.]

[Executive Session: 11:10 - 11:35 a.m.]

VIII. Final Business and Close of Meeting

D. Vanderhoof offered a motion for the Board to enter into a contract with Hughes, McLaughlin & Co. to prepare the books for fiscal years 1996, 1997 and 1998. F. Title seconded the motion. The Board voted unanimously in favor of the motion.

D. Vanderhoof offered a motion to adjourn the Board meeting. B. Markowitz seconded the motion. The Board voted unanimously in favor of the motion. The meeting adjourned at 11:36.

Attachment: October 21, 1998 Expense Report