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
September 15, 1999

Members present: Gary Cupo (arrived @ 10:00 a.m.); Darrel Farkus (Oxford); Linda Ilkowitz (Guardian); Charlotte Furman (Anthem Health & Life); Jane Majcher (DOBI); Mary McClure (NYLCare) (Arrived @ 10:50 a.m.); Cindy Qiu; Michael Torrese (Horizon BCBSNJ); Dutch Vanderhoof (arrived @ 10:00); Eric Wilmer (Celtic); Bonnie Wiseman (DOHSS).

Others present: Ellen DeRosa, Deputy Executive Director; DAG Jennifer Fradel (DOL); Pearl Lechner, Program Accountant; Joanne Petto, Assistant Director.

I. Call to Order

J. Majcher called the meeting to order at 9:45 a.m. E. DeRosa 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.

J. Majcher introduced and welcomed Cindy Qiu, a newly appointed Board member.

Public Comments

E. DeRosa asked if any member of the audience wished to offer comments concerning the items stated on the agenda. Harry Witsen asked if it would be acceptable to read a copy of a letter the New Jersey Association of Health Underwriters sent to the Commissioner concerning a broker commission issue. E. DeRosa said he could read the letter. H. Witsen said the agents believe paying lower commissions to agents for group business with 2-4 employees was de facto underwriting. E. DeRosa said the Legal Committee considered the issue and that the report of the Legal Committee would address the issue.

III. Minutes

July 21, 1999
C. Furman offered a motion to approve the minutes of the Open Session of the July 21, 1999 Board meeting, as amended. L. Ilkowitz seconded the motion. The Board voted in favor of the motion, with C. Qiu abstaining.

IV. Staff Report

Expense Report (see attached)

L. Ilkowitz offered a motion to approve the payment of the expenses specified on the September 15, 1999 expense report. C. Furman seconded the motion. The Board voted in favor of approving the motion, with C. Qiu abstaining.

2Q99 Enrollment Report

J. Petto said the second quarter enrollment reports indicated that a number of the groups that had been covered under HIP plans that were terminated as of March 31, 1999 did not secure replacement coverage.

M. Torrese suggested that it would be important for the Board to explore whether the decrease in enrollment may be the result of groups enrolling for health coverage under a Professional Employer Organization (PEO) plan. E. DeRosa said that staff recently received some information on PEOs that may assist with the determination as to how to deal with PEOs.

L. Ilkowitz commented that the percentage of groups that were previously uninsured appeared to be greater than in the past.

E. DeRosa reminded the carrier members of the Board that the Board initiated a cost reduction study in the spring and that several carriers had not yet provided cost information such that the Board can make an informed decision regarding the plan design changes the Marketing Committee suggested. She said the Marketing Committee believed some features that would reduce cost would provide an incentive to employers to offer coverage and thus increase enrollment.

V. Report of the Policy Forms Committee

E. DeRosa reminded the Board that it had voted to use the expedited rule proposal process to propose changes to the standard plans to comply with the laws concerning coverage for a biologically-based mental illness and the dental mandate. She said the hearing was held on September 2, 1999 and no persons came to comment. She said one carrier submitted written comments. She said both the Legal Committee and the Policy Forms Committee were asked to comment on the draft summary of comments and responses. She reviewed each of the commenter's written comments and suggested responses with the Board.

E. DeRosa said Comment 1 suggested that mutually exclusive terms be used to define a "biologically-based mental illness" and that which is not a biologically-based mental illness to avoid potential confusion. She said the draft response agreed with the commenter and that the forms would be changed to define "biologically-based mental illness" and "non-biologically-based mental illness." D. Vanderhoof inquired if Alzheimer's disease would be considered a "biologically-based mental illness." B. Wiseman explained that it would be a "biologically-based mental illness" after a diagnosis has been made.

E. DeRosa said Comment 2 questioned why the term "Mental or Nervous Condition" was amended in the proposal to delete the reference to the primary treatment methods. She explained that the draft response agreed with the commenter that the primary treatment methods should be included in the new definition of a "non-biologically-based mental illness." C. Furman questioned if including the primary treatment methods in the definition of "non-biologically-based mental illness" but not in the definition of "biologically-based mental illness" would be confusing. E. DeRosa said that while it might be confusing, the definition of "biologically-based mental illness" was taken from the law and therefore, it might not be wise to modify that definition. The Board agreed the definition should be consistent with the law.

E. DeRosa said Comment 3 suggested that the indemnity–based plans should include a provision allowing pre-approval for outpatient treatment of a "biologically-based mental illness." E. DeRosa said she framed the response based on the Board's discussion and vote during the July Board meeting concerning whether to include a pre-approval requirement. She said that based on that discussion, the draft response declines to make a change to allow pre-approval for outpatient services for the treatment of a "biologically-based mental illness" in indemnity-based plans.

E. DeRosa said Comment 4 commented that the language intended to comply with the dental mandate was confusing. She explained that the response describes the coverage as coverage for hospitalization and general anesthesia as well as coverage for dental services for a medical condition covered by the plan. She said that the forms closely tracked the language of the law and that she was reluctant to deviate very much from the law. She suggested that by reversing the order of one of the clauses it might make it clearer that dental services covered under the plan are being addressed. She noted that most of those who reviewed the draft responses agreed. C. Furman noted that she was one who disagreed that reversing the order helped provide clarity.

E. DeRosa said Comment 5 addressed the use of brackets to show deletions. E. DeRosa noted that the response referred to the use of brackets as a convention of the Office of Administrative Law.

E. DeRosa described the agency-initiated changes that were intended to correct an oversight regarding coverage for prescription drugs to treat a mental illness.

D. Vanderhoof offered a motion to adopt the policy forms changes. G. Cupo seconded the motion. The Board voted in favor of the motion, with C. Qiu abstaining.

E. DeRosa said that the proposal indicated the Compliance and Variability Rider would be available for carriers to use to implement the forms changes. She said she hoped to be able to use E-mail to release the text to carriers and thus avoid making multiple copies of disks. The Board suggested that carriers should be asked if they prefer E-mail or disk or hard copy.

VI. Report of the Legal Committee

E. DeRosa said the Committee met on Monday and that she had not had time to prepare minutes of the Committee meeting prior to the Board meeting. She noted that a couple of issues arose after the Board meeting agenda was prepared that the Legal Committee considered in addition to the issues that were noted on the Board meeting agenda.

Filing of Multiple Employer Arrangement (MEA)
E. DeRosa said the Committee reviewed a filing made pursuant to N.J.S.A. 17B:27A-19 from an entity that claimed to be a multiple employer arrangement (MEA). She reported that the Committee believed the insured or self-funded status of the program would have a bearing on the action to be taken. She said the committee believed more information was needed before a decision could be made as to how to handle the filing. C. Lynch, the attorney who submitted the filing, commented that the program is fully self-funded.

Filing of Aetna U.S. Healthcare group hospital confinement application
E. DeRosa explained that the Committee did not consider the filing since the Department had disapproved the hospital forms with which the application would be used.

Waiting period provision and "continuous service"
E. DeRosa explained that the Committee considered whether an absence during the waiting period could constitute a break in "continuous service" and thus prevent an employee from satisfying the waiting period. She said the Committee believed the carrier would not know about a break in service unless the employer notified the carrier. She said the committee believed employers and carriers had been administering the provision based on their own guidelines and that it was not necessary for the Board to intervene. D. Vanderhoof said he had a case in which the carrier refused to allow an employee to be enrolled for coverage after the employee had a break in continuous service due to a work-related injury. E. DeRosa asked how the carrier learned about the injury so as to state that the employee would not be enrolled. D. Vanderhoof agreed to check the circumstances and whether the employer or the carrier determined that the employee was ineligible to enroll because the waiting period had not been satisfied.

Commissions Based on Group Size
E. DeRosa reported that the Committee considered the issue raised by H. Witsen at the beginning of the meeting. She said the Committee believed it would be helpful to gather data to establish whether there was a connection between morbidity and group size. That data could be gathered from the carrier seeking to pay a lower commission for groups of 2-4 employees, from other carriers as well as national data. E. DeRosa said the Committee thought there might be other carriers paying commissions that vary based on group size but that the Board staff did not have a complete list of commissions. She asked if agents would provide any commission data. Carrier Board members agreed to provide information concerning commissions.

D. Farkus noted that the unit cost to enroll a group with 2-4 lives is greater than the cost to enroll larger groups. He suggested that the commission payment should be considered a claim cost rather than an administrative cost. D. Vanderhoof noted that reduced

commission would discourage the sale of coverage to groups with fewer than 5 employees.

L. Ilkowitz suggested that the Unfair Trade Practices Act might address commission levels. C. Furman suggested that the NAIC model regulation might also address commission levels.

J. Majcher said the Department would be prepared to take action if it is determined that the payment of a lower commission for 2-4 life groups violates a law.

Notice of termination
E. DeRosa said the Committee considered whether a carrier could require that an employer give at least 30 days advance notice before terminating a group plan. She said the Committee found nothing in the law or forms to support such a requirement. D. Farkus said the real question was whether a carrier could defer a requested termination until the first of the month. He said it was difficult to receive a termination request mid-month and take action to terminate the coverage. He noted such mid-month termination could necessitate per diem premium payment. E. DeRosa said the Board and Committee would need to give mid-month terminations some further consideration. She said the Committee discussed whether a carrier could be required to retroactively terminate coverage and determined that a retroactive termination could not be demanded.

VII. Report of the Finance and Operations Committee

FY2000 Budget
P. Lechner reviewed the FY2000 budget, explaining some of the difference between budgeted and actual amounts. M. McClure questioned the large difference between actual printing costs for 1999 and what is budgeted for 2000. P. Lechner explained that printing costs have been much greater in prior years. E. DeRosa said the Buyer's Guide will likely require revision as a result of changes to the plans and therefore additional money may be required for typesetting and design work.

C. Furman offered a motion to approve the FY2000 budget. L. Ilkowitz seconded the motion. The Board voted unanimously in favor of the motion.

1999 Assessment
P. Lechner briefly discussed the assessment. J. Petto explained the columns that were needed to redistribute the assessment liability of the carriers that have been liquidated.

E. Wilmer offered a motion to approve the 1999 assessment. C. Furman seconded the motion. The Board voted unanimously in favor of the motion.

Draft Representation Letter
P. Lechner said Deloitte & Touche (D&T) revised the Draft Representation letter. The Committee believed the revision was acceptable.

1994 and 1995 Draft Audits

P. Lechner said the Board already approved the 1994 and 1995 audits but that Scott Sanders of D&T noted that one of the footnotes regarding the Board's investment of funds needed to be amended. DAG J. Lichtblau worked with S. Sanders to revise the text. P. Lechner noted that the numbers in the statements were not changed.

VIII. Close of Meeting

J. Majcher offered a motion to adjourn the Board meeting. D. Vanderhoof seconded the motion. The Board voted unanimously in favor of adjourning the meeting. [The meeting adjourned at 11:35 a.m.]

Attachment: Expense Report