

**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  
April 19, 2000**

**Members present:** Linda Ilkowitz (Guardian); Darrel Farkus (Oxford); Jane Majcher (DOBI); Kevin Monaco; Tony Taliaferro (AmeriHealth); Dutch Vanderhoof (arrived at 10:00 a.m.).

**Members Participating Via Teleconference:** Gary Cupo; Thomas Daniels (CIGNA); Larry Glover (arrived at 10:02 a.m.); Mary McClure (NYLCare); Robert Shalango (United Healthcare); Mike Torrese (Horizon BCBSNJ); Dutch Vanderhoof (initially participated by phone); and Bonnie Wiseman (DOHSS).

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

**I. Call to Order**

W. Sanders called the meeting to order at 9:35 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. W. Sanders took roll call. A quorum was present.

W. Sanders explained that since some members were participating by phone that it would be important for them to identify themselves when speaking.

**II. Public Comments**

W. Sanders asked if any member of the audience wished to offer comments concerning the items stated on the agenda. No comments were offered.

**III. Minutes**

*March 22, 2000*

**J. Majcher offered a motion to approve the minutes of the Open Session of the March 22, 2000 Board meeting. L. Ilkowitz seconded the motion. By roll call vote, the Board voted in favor of the motion, with K. Monaco and M. Torrese abstaining.**

**IV. Staff Report**

*Expense Report (see attached)*

**D. Vanderhoof offered a motion to approve the payment of the expenses specified on the April 19, 2000 expense report. J. Majcher seconded the motion. The Board voted unanimously in favor of approving the motion.**

*Legislative Update*

W. Sanders reported that the Board materials included copies of two news releases.

He said one release announced that the Governor sent a Family Care bill to the Legislature. He noted that the bill calls for free or low-cost health insurance for uninsured families with income of up to 200% of the federal poverty level.

L. Ilkowitz suggested that the Board should closely monitor the bill as there would be the risk that employers might discontinue coverage so employees could secure coverage through Family Care. Joan Fusco (Horizon BCBSNJ) noted that if employees who were eligible for Family Care waived the employer coverage employer groups might have difficulty satisfying the 75% participation requirement.

W. Sanders said the second news release discussed the signing of legislation that will reimburse doctors and hospitals for losses resulting from the liquidations of HIP and APPP.

*Board and Committee Lists*

W. Sanders noted that updated Board member and Committee lists were included in Board materials.

*Cost Savings and Program Changes*

W. Sanders said the Marketing Committee would be meeting on May 5, 2000 to discuss the recommendations various Board members submitted. The Finance and Operations Committee would meet to discuss the recommendations on May 4, 2000.

*Effective date of Rule Adoption*

W. Sanders noted that the Board's amended rule concerning broker commissions that specifically stated that commissions may not vary based on group size or on the number of lives enrolled was effective April 1, 2000. M. Torrese asked if a Bulletin was released to alert carriers. W. Sanders said that all carriers were sent a copy of the rule proposal and rule adoption.

*Task Force on Accessibility and Affordability*

**W. Sanders said that he was the Department's designee serving on the Affordability and Accessibility of Coverage Task Force. He reported that the Task Force would be considering bare bones plans and whether such plans might be beneficial. He said the task force was also reviewing barriers that exist with respect to medical savings accounts and the corresponding high deductible plans. He also noted that the Task Force was examining purchasing pools as a possible mechanism to reduce the cost of coverage.**

## V. Report of Legal Committee

W. Sanders reported that the Committee set a meeting schedule for the balance of the year. He said that Gale Simon accepted the role of Chair of the Committee.

W. Sanders said the Committee discussed several issues.

## VI. Temporary leave

**The Committee considered whether a carrier may require an employee to satisfy the waiting period applicable to the employer's plan upon return from a temporary leave. The Committee believed that even though the employee may not be paid during the temporary leave, that the employee should not be required to satisfy the waiting period that applies to newly hired employees. W. Sanders said the Committee did not consider the issue of when the employment relationship ends.**

### *Commissions*

The Committee considered a carrier request for a rule change that would permit waivers with respect to the regulation that precludes a carrier from paying different commission rates based on geographic area. W. Sanders said the Committee was concerned with the potential for red-lining. He said the Committee believed the standards for a review of a requested waiver would be difficult to craft. He said the Committee recommended that the Board not amend its regulations to allow a carrier to apply for a waiver with respect to commissions.

D. Vanderhoof noted that managed care networks often need to provide incentives in order to penetrate a new area. He suggested that the Board should consider allowing different commissions in such a circumstance.

### *Professional Employer Organizations (PEOs)*

W. Sanders explained that PEOs are sometimes referred to as employee leasing or co-employers. PEOs are typically entities that provide services to employers. He said the legal issue was identification of the employer. He said the Committee discussed the possibility of risk segmentation, with less attractive risks perhaps being directed to the SEH Program that enjoys the protection of guaranteed issue. The Committee also considered the concern voiced by agents with regard to the sale of coverage by unlicensed agents. The Committee believed that the determination of the employer would be key and noted that the employer is the one who, among other things, controls hiring and firing and salary. Carriers would have to exercise due diligence to determine who the employer is.

If the PEO is determined to be the employer, and there are greater than 50 employees employed by the PEO, the group plan would be subject to the rules governing large group coverage.

If the PEO has insufficient control over any of the employees of a client company to be considered the employer, the plan is a Multiple Employer Welfare Arrangement, MEWA. If the plan were fully insured, the MEWA would have to offer the standard plans. If the plan were self-funded, the plan would have to comply with the stop loss requirements of the SEH law.

W. Sanders said the Committee recommended that the Board release a Bulletin concerning PEOs. He said that due to the sensitive nature of the issue, he would want Governor's Counsel to review the Bulletin prior to release.

D. Farkus commented that a small business, although part of a PEO, might apply for SEH coverage. L. Ilkowitz suggested that carriers would apply various tests to determine who the employer is. D. Vanderhoof noted that he had not encountered any PEO that would satisfy the definition of employer, based on the common law test.

*[L. Glover left the meeting at 10:40 a.m.]*

G. Cupo said that it would be important for self-funded plans to understand that the stop loss amounts apply on a per employer basis and not to the entire entity.

## **VII. HIPAA Compliance**

W. Sanders explained that HIPAA issues cross over from the small group to the large group market and vice versa. He said the Committee suggested that the Board contact HCFA to seek further clarification. D. Vanderhoof recalled that the Board previously received a letter from HCFA addressing many of the issues the Legal Committee considered. He asked why the Board did not act based on that clarification. W. Sanders said the Committee believed there were a number of outstanding issues.

**L. Ilkowitz offered a motion that the Board send a letter to HCFA to request clarification concerning HIPAA-related issues. J. Majcher seconded the motion. By roll call vote, the Board voted in favor of the motion, with 11 in favor and one opposed, D. Vanderhoof.**

D. Farkus suggested that it might be helpful to find out if the SEH forms could be considered for approval in the large group market. He notes that rates for the plans would also have to be considered.

## **VIII. Report of the Policy Forms Committee**

**E. DeRosa said the Committee met to discuss specific language for the home health care and private duty nursing coverage. She reported that the Department expressed some concerns with the approach the Committee had taken and that she would speak with the Department to better understand the concerns and how they might be addressed.**

E. DeRosa said the Committee would next address the three-tier prescription drug rider the Board had previously discussed as being a desirable option.

**IX. Executive Session Minutes**

**D. Vanderhoof offered a motion to approve the minutes of the Executive Session of the March 22, 2000 Board meeting. B. Wiseman seconded the motion. By roll call vote, the Board voted in favor of the motion, with K. Monaco and M. Torrese abstaining.**

**X. 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 the motion.**

[The meeting adjourned at 11:10 a.m.]

Attachment: Expense Report