**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
March 21, 2001**

Members participating: Raymond Bascio (Horizon BCBSNJ); Gary Cupo; Sandy Herman (Guardian); John Kilgallin (CIGNA); Darrel Farkus (Oxford); Larry Glover; Mary McClure (NYLCare); Jane Majcher (DOBI); Bryan Markowitz (arrived at 10:15 a.m.); Kevin Monaco; Tim Stover (United); Tony Taliaferro (AmeriHealth); Dutch Vanderhoof; Bonnie Wiseman (DOHSS).

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

I. Call to Order

W. Sanders called the meeting to order at 10:10 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 member of the public wished to address the Board concerning an agenda item.

Comments

Wade Byrum of the New Jersey Association of Health Underwriters (NJAHU) said it was the opinion of the NJAHU that a commission structure based on per employee enrollment would be a violation of HIPAA since it would provide greater compensation for lower risk groups than for higher risk groups. He said that with the current percentage of premium commission structure, the commission bears a relationship to the risk.

Lynne Crowe of the NJ Association of Insurance and Financial Advisors (NJAIFA) said that her association supports the position of the NJAHU. The NJAIFA opposes the proposed Horizon commission structure.

Welcome

L. Glover noted that Raymond Bascio would be representing Horizon Blue Cross Blue Shield of New Jersey as the Board representative. L. Glover thanked Mike Torrese for his past service on the Board.

L. Glover noted that DAG Eleanor Heck would be the Board's counsel for the meeting. DAG E. Heck explained that DAG Prince Kessie had a schedule conflict.

III. Minutes

Open Session February 21, 2001
J. Majcher offered a motion to approve the minutes of the Open Session of the February 21, 2001 Board meeting, as amended. D. Vanderhoof seconded the motion. The Board voted in favor of the motion with B. Markowitz and K. Monaco abstaining.

IV. Staff Report

Expense Report (see attached)
D. Vanderhoof offered a motion to approve the payment of the expenses specified on the March 21, 2001 expense report. J. Majcher seconded the motion. The Board voted unanimously in favor of approving the motion.

Enrollment Data
J. Petto said that staff has been concerned with the accuracy and timeliness of the enrollment data provided by some carriers. The information provided by some carriers has apparently not been checked for accuracy or reasonableness. J. Petto said that while the Board materials included enrollment reports for 2Q, 3Q and 4Q 2000, she was only reasonably confident that the 4Q2000 information was accurate. She said that the number of lives was adjusted by about 70,000 to address reporting errors over the course of 2Q, 3Q and 4Q 2000. As a result, it is not possible to meaningfully measure the change in the enrollment for 4Q 2000 as compared to the previous quarter.

Other
W. Sanders said NJ FamilyCare was working on providing the data one of the Board members requested relative to the issue of whether there should be participation credit given for coverage under NJ FamilyCare.

W. Sanders said that Exhibit CC, the SEH Market Share Report required to be completed by SEH member carriers, was due March 1, 2001. He said about 30 carrier Exhibit CC filings have been received. He noted that for the prior reporting year, there were 57 member carriers. W. Sanders noted that mergers and withdrawals could account for some decrease in the number of member carriers, but that it was not likely to have resulted in a decrease of 27 members. He said staff was pursuing carriers that had not yet reported. He said carriers with late filings would be referred to enforcement.

W. Sanders said there was a news clipping in the Board materials concerning a committee being formed by the NJAHU to consider Professional Employer Organizations (PEOs). W. Sanders said he received evidence that suggests that some carriers have issued plans that are not consistent with the SEH Board's bulletin on PEOs. He said the web sites for the PEOs address the issue of control and state that the employer retains control. W. Sanders said he contacted the carriers involved and asked them to look into the matter.

V. Producer Compensation

W. Sanders said that in response to a request from J. Majcher, the Board's discussion of producer compensation had been tabled until the March Board meeting. He invited Board discussion of the producer compensation issue. (Effective April 1, 2001, Horizon announced it will pay commissions based on a per employee formula.)

J. Majcher stated that the DOBI would not take a position on the producer compensation issue. She said the DOBI reviewed a host of information that included the predictions, but no evidence that demonstrated that the compensation structure being proposed by Horizon would have untoward effects in the marketplace. Further, she noted that much discussion seems to focus on possible violation of a Board regulation, and not a DOBI regulation. Thus, if the Board believes there to be a violation of its regulation, the Board, not the DOBI, should take action. For example, if it is found to undermine guaranteed issue, then the Board may want to amend its regulation. J. Majcher said the DOBI believes it might be possible to interpret the Board's regulation in more than one way. She cautioned Horizon to do its "homework" to be in a position to explain and possibly defend its position. Likewise, she suggested that the Board seek additional guidance from HCFA and look to other states' experience with such a commission structure.

D. Vanderhoof said it was very clear that Horizon's new commission structure is a "blatant attempt to steer certain groups to other carriers." He explained that Horizon even published a "report card" that specifically noted which groups would allow the agent to earn the greatest amount of money.

J. Majcher said that there is a difference between a policy viewpoint and determination as to what is or is not illegal.

D. Vanderhoof predicted that allowing Horizon to use the new commission structure would lead other carriers to follow suit. He suggested that it would become an access issue. D. Vanderhoof explained by means of a lawnmower analogy. There are small, flat lawns to be mowed and there are large hilly lawns to be mowed. If a person with a lawn mowing business will be paid the same amount for mowing a small flat lawn as he or she would be paid for mowing a large hilly lawn, there would be no incentive for the person to work longer and harder to mow the large hilly lawn. It would be a far better allocation of resources to seek out only the small flat lawns. The larger, hilly lawns are likely to be ignored. Thus, D. Vanderhoof concluded that Horizon's commission policy would discourage brokers from writing higher risk groups.

D. Vanderhoof suggested that if Horizon were truly concerned with keeping costs down, which is the reason Horizon offered for making the commission change, then Horizon should just reduce the percentage paid to agents. Keeping commissions on a percentage of premium basis would retain the necessary incentive to serve all size groups.

S. Herman said he was troubled to learn that Horizon had distributed information stating the cases for which the agents would make more money on commissions. He said that Horizon's new structure would act to decouple commissions from medical care costs. He said he read the letter from the Health Care Financing Administration (HCFA) that the NJAHU commenter had referred to during comments given during the February Board meeting. He said he understood that the question posed to HCFA had been whether there could be a lower commission paid for groups of fewer than 10 employees as compared to the commission for groups of 10 or more employees. S. Herman said he did not think the HCFA letter addressed the Horizon commission issue where there would be a fixed amount paid per employee, regardless of the size of the small employer group. Further, S. Herman said he called the New York Department of Insurance and was advised that for New York business, the Department would not be concerned with a per employee commission provided it were to be done consistently. S. Herman said he did not think the new commission structure would violate either State of federal law.

M. McClure said that a per employee commission seemed inherently fair. It is only in the context of a comparison to the rest of the market that it may seem unfair. She said that Aetna USHealthcare does not feel "threatened" by Horizon's new structure. M. McClure said she believed brokers would place the business based on what is best for the customers. If a per employee commission were thought to be a violation of the Board's regulation then the Board would be saying that the only commission structure that may be used is a percentage of premium structure. She said she would not support a restriction that would make it impossible for carriers to use alternate methodologies.

R. Bascio said that the comparison of case data was sent out to brokers in response to broker demand for such data. He said the information provided a sampling to give the brokers an idea of how the new structure would work.

D. Vanderhoof said the information Horizon sent was not a mere sampling. It was a comprehensive listing of all cases the agent has. D. Vanderhoof said Horizon's representatives told the agents to look at the groups where they would make less commission and move those groups elsewhere. He said it was clear that Horizon was trying to steer higher risk groups to other carriers by means of the compensation to agents. Regarding the conversation with the NY Department that S. Herman referred to, D. Vanderhoof noted that in a pure community rated environment the effect of a per employee commission would not be similar to the effect on the New Jersey modified community rated market.

D. Farkus said he was troubled that the DOBI did not have sufficient information to determine whether the commission structure would be legal or not. He said he heard that the per employee rate was going to vary, based on the product sold. He said he would like to look at the Board regulation that address producers.

T. Taliaferro said that he would like to see the issue sent back to the Legal Committee for further consideration. He noted that additional information became available after the Committee originally discussed the issue.

B. Markowitz said he thought the questions before the Board should be: First, is it a violation of current regulations; and second, if it is not, should it be.

G. Cupo asked how the Board could request an interpretation from HCFA on whether the structure violates federal law. He also asked how long it might take to get a reply. D. Vanderhoof said he spoke with a HCFA representative and learned that HCFA was not aware that the per employee commission question had been previously asked. W. Sanders said that prior Board experience with asking HCFA questions suggested that it could take quite some time to secure a response.

B. Wiseman said she would like to see the information Horizon sent out that identifies which cases will make more commission and which cases will make less commission, based on the new commission structure. She also said she would like to see modeling.

R. Bascio said Horizon distributed a lengthy analysis of the commission structure during the prior Board meeting.

S. Herman said that while he did not believe the commission structure was blatant medical underwriting, he thought the broker's concern could be alleviated by paying a commission per person rather than per employee.

R. Bascio said that it the Board were going to vote on the commission structure that Horizon believed that the broker representatives on the Board would have to recuse themselves from the vote.

Going around the table, nine members said they had enough information to vote on whether the commission structure violated the regulations. Three members said they were not ready to vote. Two members did not indicate a position.

VI. Executive Session

W. Sanders asked for a motion so the Board could begin Executive Session to receive legal advice.

B. Markowitz offered a motion to begin Executive Session. J. Majcher seconded the motion. The Board voted unanimously in favor of beginning Executive Session.

W. Sanders said he would look for any members of the public in the cafeteria when Executive Session concludes.

[Break: 11:30 a.m. – 11:40 a.m.]

[Executive session: 11:40 a.m. – 12:35 p.m.]

VII. Producer Compensation (continued)

M. McClure offered a motion that the Board seek advice from the Attorney General's Office on the commission issue. T. Taliaferro seconded the motion. The Board voted unanimously in favor of the motion.

VIII. Election

W. Sanders counted absentee ballots as well as hand-delivered ballots cast by SEH member carriers. The winners in each category were as follows:

One representative of small employers:	Bryan Markowitz
One representative of minority small employers:	Larry Glover
One carrier primarily in the small employer market	Guardian
One HMO:	Aetna US Healthcare
One health, hospital or medical service corporation:	Horizon BCBSNJ

IX. Report of the Policy Forms Committee

Rider Filing
E. DeRosa said the committee reviewed a rider filing that made a slight revision to the open access riders for POS plans C and D that Horizon previously filed. She said the Committee recommended that the revised riders be found complete and in substantial compliance.

B. Markowitz offered a motion that the Horizon revised open access riders be found complete and in substantial compliance. M. McClure seconded the motion. The Board voted in favor of the motion with R. Bascio abstaining.

Policy Forms Changes
E. DeRosa reminded the Board of the summary list of changes that the Board considered during the January Board meeting. She referred to the policy forms documents that she had sent via e-mail to all Board members the previous day. She said she hoped to help the Board members understand what they would be reviewing in anticipation of the April Board meeting. She noted that many of the changes were made as a result of law and that the Board would not have discretion in terms of whether to include those changes which law requires. She said that there were, however, a number of changes being suggested about which the Board could vote to favor or to oppose the change. With that in mind, she went through the policy forms and pointed out those areas which the Committee proposed changing which would be subject to Board discretion and vote.

E. DeRosa agreed to prepare a summary list of these changes and provide it to the Board for use during Board member's review of the forms.

X. Close of Meeting

D. Vanderhoof offered a motion to adjourn the Board meeting. M. McClure seconded the motion. The Board voted unanimously in favor of the motion. [The meeting adjourned at 1:20 p.m.]

Attachments: Expense Report