

**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
December 12, 2002**

Members participating: Gary Cupo; Darrel Farkus (Oxford); John Kilgallin, Chair (CIGNA); Sandy Herman (Guardian); Vicki Mangiaracina (DOBI); Mary McClure (Aetna Health); Robert Shalongo (United); Jim Stenger; Michael Torrese (Horizon BCBSNJ); Dutch Vanderhoof (arrived at 10:05 a.m.); Bonnie Wiseman (DOHSS) (arrived at 10:07 a.m.).

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

I. Call to Order

J. Kilgallin called the meeting to order at 10:00 a.m. He announced that notice of the meeting had been published in three newspapers and posted at the Department of Banking and Insurance (“DOBI”), the DOBI website, and the Office of the Secretary of State in accordance with the Open Public Meetings Act. Roll call was taken. A quorum was present.

II. Public Comments

J. Kilgallin asked if any member of the public wished to address the Board. No comments were offered.

III. Minutes

October 16, 2002

M. McClure offered a motion to approve the minutes of the Open Session of the October 16, 2002 Board meeting, as amended. V. Mangiaracina seconded the motion. The Board voted in favor of the motion, with R. Shalongo abstaining.

IV. Staff Report

Expense Report (see attached)

D. Farkus offered a motion to approve the payment of the expenses specified on the December 12, 2002 expense report. M. Torrese seconded the motion. The Board voted unanimously in favor of approving the motion.

Revised meeting Schedule for 2003

W. Sanders suggested that the November 2003 meeting shown on the draft schedule be moved to December 3, 2003 to allow for better spacing between meetings. The Board agreed.

Regulatory Report

W. Sanders reported that the DOBI adopted its rules regarding purchasing alliances. He said that copies of the adoption which was published in the November 4, 2002 *New Jersey Register* were included in Board materials. He said that since he had received dozens of calls regarding the alliances he distributed copies of the law, proposal and adoption to interested parties.

Legislative Report

W. Sanders reported that the IHC Board recently proposed rules to implement P.L. 2001, c. 368 which requires carriers in the individual market to offer a basic and essential health care services plan. He noted that the law requires the IHC Board, in consultation with the SEH Board, to evaluate the effectiveness of offering such a plan in terms of the availability of affordable health coverage, and recommend whether the same plan or a similar plan should be made available to small employers. The report will be due in January 2004, two years after the effective date of the law. W. Sanders noted that the report is also supposed to address recommendations regarding expanding the number of standard plans or making modifications to the standard plans.

2003 Premium Comparison Survey

E. DeRosa reported that most carriers submitted the necessary data to compile the 2003 survey. She said that two carriers had failed to provide the data that was due November 1, 2002 and that the carriers had been unable to provide the information to date. E. DeRosa said that the DOBI actuary, Neil Vance, had offered his staff to input the data. E. DeRosa said she accepted that offer of assistance.

2002 Performance Report

B. Wiseman commented that the 2002 Performance Report provided good news and bad news. The good news was that NJ HMOs are improving as compared to prior years. She said the bad news is that NJ HMOs still lag behind the region and the rest of the nation.

Staffing Issues

W. Sanders said the Board has the authority to hire a Program Accountant and has interviewed a candidate that he thinks would be good for the position and is working with the DOBI to pursue hiring him.

W. Sanders said he hired Loretta Curry as a consultant on a temporary basis to assist primarily with incoming calls. He said Loretta previously worked for Horizon and is familiar with both the IHC and SEH programs.

Nomination for Board Seats

W. Sanders said that five Board seats are up for election. A draft nomination form was included in Board materials. The form serves to give notice of the election and solicit nominations. He noted that the seats are for: one small employer representative; one minority small employer representative; two seats for carriers primarily in the small employer market and one seat for a carrier primarily in the large employer market. He reminded those present that only SEH member carriers can nominate and vote.

V. Report of the Policy Forms Committee

Prescription Drug Rider

E. DeRosa said the policy Forms Committee met to consider comments the SEH Board received relative to the prescription drug rider as a result of the Board's rule proposal in January 2002 as well as comments provided by a Board member during the October Board meeting.

E. DeRosa discussed the comments that must be addressed in the rule adoption.

Audit Procedures

One commenter asked that the audit procedures text be made variable. E. DeRosa reported that Mike Malloy of the DOBI advised that the DOBI has determined that audit procedures can be included in either the pharmacy rider or in the pharmacy contract. Therefore, the Committee recommended that the commenter's suggestion be accepted.

Other Charges

One commenter asked that the "Other Charges" provision of the rider be expanded to include information regarding the role of the NJ Board of Pharmacy regarding the ability for a pharmacy to charge for other services related to the dispensing of drugs. E. DeRosa said the language the commenter suggested was taken from the pharmacy law and thus the commenter's suggested change could be accepted.

Diabetic Supplies

One commenter asked about coverage for diabetic supplies and how they should be covered. E. DeRosa said the Committee noted that supplies must be covered, but that carriers may elect to cover supplies under the pharmacy coverage or under the medical plan.

Formulary and Pre-Approval

A number of commenters expressed concern with the imposition of a formulary and with pre-approval requirements. E. DeRosa said the Committee noted that the formulary is an open formulary and that there are appeals procedures. Regarding pre-approval, the Committee noted that carriers may require pre-approval for only a limited number of drugs, and that a 96-hour supply is dispensed pending the carrier's determination regarding pre-approval.

E. DeRosa discussed the comments that were received outside the comment period. She said that while they would not be formally addressed in the adoption, the carrier providing the comments was entitled to responses.

Enforcement of rider provisions

The commenter questioned how the provisions of the rider could be enforced since pharmacists are not bound by the terms and conditions of a rider. E. DeRosa said the Committee believed the provider contract with the pharmacy could address compliance with utilization management provisions.

Dispensing 96-Hour Supply

The commenter expressed concern with dispensing a 96-hour supply of a drug that might not be approved in the pre-approval process and suggested that a carrier would have difficulty implementing such a requirement that would be unique to the SEH market. The commenter was also concerned with pharmacists having to break packages to dispense a 96-hour supply and questioned whether two dispensing fees would be given. E. DeRosa said the Committee recalled that the DOBI agreed to permit pre-approval provisions in prescription drug benefits with the understanding that consumers would not leave the drug store without medication and that a 4-day supply would be dispensed for use while the pre-approval process proceeded. The Committee noted that breaking packages and dispensing fees were administrative issues and not ones to be addressed in the rider. The Committee also noted that the DOBI requires the 96-hour supply in large group forms, so if the carrier did business in the large group market, the 96-hour requirement would not be unique to the SEH market.

E. DeRosa said that if the Board wished to adopt the prescription drug rider, with changes that the Board would need to vote to adopt. The Board agreed to give a delayed operative date of June 1, 2003 to give carriers ample time to implement the new rider.

V. Mangiaracina offered a motion to adopt the new prescription drug rider. D. Vanderhoof seconded the motion. The Board voted unanimously in favor of the motion.

Waiting Period

E. DeRosa said that as a result of a consumer inquiry, the Committee discussed the contract provision for waiting periods. A consumer worked for an employer that required a three-month waiting period. The employee worked 76 days into the three months and then was injured. Based on the language of the contract which required continuous full-time work during the waiting period, the employee will have to start a new three-month waiting period upon return to work. E. DeRosa said staff believed that result may not have been what the Board intended when crafting the contract language. E. DeRosa said the Committee suggested that the employer should have the ability to determine when the employee is eligible and would do that by informing the carrier that a waiting period has been served.

After discussion, the Board decided to refer the question to the Legal Committee and asked that the Legal Committee specifically consider hourly v. salaried; compensation; actually working. Does the Board have the ability to say what it means to be continuously on payroll? Should an average number of hours worked be considered?

VI. Report of the Legal Committee

Continuation

W. Sanders said the Committee considered whether an employer may require a continuee under State continuation or under COBRA to pay by certified check. He said the Committee considered such a requirement to be an impediment to coverage and that an employer may not require payment to be made in a specific form such as certified check absent a history by the employee of providing bad checks.

W. Sanders said the Committee considered whether a carrier may require an employer to pay the premium for a continuee who has not made payment. He said the Committee concluded that the employer should pay the bill as it was billed, even if a former employee still appears on the bill. Some carriers on the Board indicated that the employer could request a refund or credit from the carrier if the continuee does not subsequently make payment.

After some discussion, the Board agreed to consider this issue further after seeking information from carriers regarding a refund/credit process in the event the continuee does not make payment.

Eligibility for the Board seat for a minority small employer

W. Sanders said the Board would need to enter Executive Session to receive advice from counsel regarding this issue.

VII. Executive Session

M. Torrese offered a motion that the Board begin Executive Session in order to receive advice from counsel. D. Vanderhoof seconded the motion. The Board voted unanimously in favor of the motion.

W. Sanders said the Board would resume Open Session following Executive Session.

[Break: 11:30 a.m. – 11:43 a.m.]

[Executive Session: 11:43 a.m. – 11:58 a.m.]

VIII. Final Business and Close of Meeting

W. Sanders said the Board received an inquiry from Betsy Wertheimer and her employer, CCBI, regarding eligibility to run for the Board seat for a representative of a minority small employer. They contended that as an employee of a female-owned business, Ms. Wertheimer should be considered as representing minority small employers. He said the Board considered the small employer law and other state laws. He said that while some laws had provided for special status for both women and minorities, such laws did distinguish between women and minorities. Therefore, the Board concluded that B. Wertheimer would not be eligible to run for the seat to be held by a minority small employer solely by virtue of working for a female-owned business. The Board noted she would be eligible to run for the seat to represent small employers and that there are open appointed seats.

B. Wiseman offered a motion to adjourn the Board meeting. S. Herman seconded the motion. The Board voted unanimously in favor of the motion. [The meeting adjourned at 12:02 p.m.]

Attachments: Expense Report