

**FINAL
MINUTES OF THE MEETING OF THE
NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD
AT THE OFFICES OF THE
NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE
TRENTON, NEW JERSEY
January 11, 2011**

Directors present in person: Darrel Farkus (Oxford); Christine Stearns; Neil Sullivan (DOBI).

Directors present by phone: Sandi Kelly (Horizon); Tony Taliaferro (AmeriHealth); Mary Taylor (Aetna Health, Inc); Lisa Yourman.

Others participating: Ellen DeRosa, Executive Director; Rosaria Lenox, Program Accountant; Chanell McDevitt, Deputy Executive Director; Deputy Attorney General (DAG) Eleanor Heck.

I. Call to Order

E. DeRosa called the meeting to order at 10:03 A.M. She announced that notice of the meeting had been published in two newspapers of general circulation 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. A quorum was present. She stated that votes would be by roll call because so many of the Board members were participating by phone

II. Minutes – November 9, 2010 (Open Session)

S. Kelly made a motion, seconded by C. Stearns, to approve the Open Session minutes of the meeting of November 9, 2010. By a roll call vote, the motion carried.

III. Staff Report

Expense Report and Transfer of Funds

R. Lenox presented the January Expense Report, with expenses totaling \$48,150.35, primarily for the services of Withum, Smith+Brown (WSB) related to loss audits, salaries and fringe for staff and the Division of Law for legal services. R. Lenox explained that there was a Federal Express expense that is the responsibility of NJ Protect, for which NJ Protect will reimburse the IHC Board. It was briefly noted that NJ Protect is a part of the IHC Program, but is funded separately through a federal allotment, and that the IHC Program is not assessing member carriers for specific NJ Protect administrative expenses or claims.

M. Taylor made a motion, seconded by C. Stearns, to approve the January Expense Report. By a roll call vote, the motion carried.

R. Lenox then requested approval for the transfer of \$200,000 from administrative funds held by DOBI to the IHC Board’s Wachovia money market account for the payment of future expenses, and to earn interest for the IHC Program. She also requested approval for the transfer of \$48,200

from the Board's Wachovia money market fund to the Board's Wachovia checking account to cover the payment of the January expenses.

M. Taylor made a motion, seconded by S. Kelly, to approve the electronic transfer of \$200,000 from the administrative fund held in DOBI to the money market account at Wachovia for purposes of paying present and future expenses, followed by an electronic transfer of \$48,200 from the IHC Board's Wachovia money market account to its Wachovia checking account for purposes of paying the January expenses. By a roll call vote, the motion carried.

Update on the proposed readoption of IHC Program rules

E. DeRosa explained that the proposed readoption of the IHC Board's rules within N.J.A.C. 11:20 would be published in the *New Jersey Register* on January 18, 2011. She stated that a hearing will be scheduled for March 8, 2011, prior to the Board's meeting, but that the comment period will continue until March 19. E. DeRosa noted that the readoption is going through the regular Administrative Procedures Act process, not the Board's statutory expedited process. She stated she believes that the Board will be in a position to take action to adopt the proposed readoption during the regularly-scheduled May meeting.

Update on NJ Protect

E. DeRosa stated that NJ Protect has enrolled 274 people, and that AmeriHealth has signed a contract to participate in NJ Protect, although U.S. Department of Health and Human Services (HHS) has not officially given approval of this change yet.

E. DeRosa explained that HHS requires NJ Protect to be audited annually, and audited financial statements to be submitted by June 30th. E. DeRosa explained that staff would issue a Scope of Work to the auditing firms currently under contract with the New Jersey Department of Treasury in order to expedite the process. She said it will be necessary for the IHC Board to establish an evaluation committee to evaluate the proposals submitted. The IHC Board agreed, and three members (Oxford, DOBI and Christine Stearns) volunteered to participate on the committee.

E. DeRosa also noted that the DOBI had been awarded a Consumer Assistance grant by the U.S. HHS (as part of the Affordable Care Act), and anticipated funding some marketing materials for NJ Protect.

IV. Plan Riders – Basic & Essential (B&E) Plans

Oxford B&E Plan Rider

D. Farkus recused himself from discussion and action regarding the rider filed by Oxford because of the interest of his employer in the outcome of the Board's actions on the matter.

E. DeRosa explained the purpose of the rider, which is to remove the 90-day hospital confinement limit, add coverage of generic drugs (at a \$20 copayment) and brand name drugs (subject to a \$500 deductible and 50% coinsurance); remove the \$600 wellness service limit, addition of a \$3000 benefit each for durable medical equipment (DME) and hospice subject to a 50% coinsurance, plus addition of 50% coverage for home health. She noted that Oxford had

withdrawn its old riders, and thus, contracts with them would be nonrenewed, but Oxford members would have the opportunity to purchase the new rider. She recommended that the filing be approved.

L. Yourman made a motion, seconded by M. Taylor, to approve the rider filed by Oxford for its B&E Plan. By a roll call vote, the motion carried.

AmeriHealth B&E Plan Riders

T. Taliaferro recused himself from discussion and action regarding the riders filed by AmeriHealth because of the interest of his employer in the outcome of the Board's actions on the matter.

E. DeRosa explained that AmeriHealth had submitted amendments to both of its B&E Plan riders. She explained a primary purpose of the riders was to bring the contract language into compliance with new rules, and that, in addition, both riders establish a \$30 copayment for physician visits, and eliminate the limits for out of hospital diagnostic and wellness services. She explained that the amendment to the preferred rider also added coverage for services at a number of additional facilities, chemotherapy, home health care, hospice care, prosthetics and DME, and a limited prescription drug benefit (\$1500 subject to a 50% coinsurance). She recommended the filing be approved.

There was brief discussion whether the Board should approve a plan that may not be in compliance with the federal law (i.e., the limited drug benefit), but Board members agreed the issue is a matter of interpretation of the federal law which is not within the Board's purview.

M. Taylor made a motion, seconded by C. Stearns, to approve the AmeriHealth B&E riders. By roll call vote, the motion carried.

V. Plan Waiver from Annual Limits Application

E. DeRosa stated HHS finally provided written approval of the waiver request she filed to allow the \$500, \$600 and \$700 limits to be retained under the B&E Plan. She noted that carriers are required to send a notice regarding waived plans within 60 days following the approval, but that the sample notice prepared by HHS for carriers obtaining waivers was not entirely appropriate for the B&E Plan situation, so she has requested from HHS that an alternative notice be allowed. She stated she is waiting for a response from HHS.

Because the HHS waiver is only good for 12 months at a time, E. DeRosa asked that the Board begin thinking about whether subsequent waiver requests should include the B&E Plan's \$600 preventive benefit as well. The Board asked that TAC consider the issue.

VI. Hospital Confinement Indemnity Plans – AFLAC issue

E. DeRosa explained that AFLAC (American Family Life Assurance Company) was requesting that the IHC Board amend its definition of hospital confinement indemnity coverage to allow greater flexibility for companies selling the coverage. Ed Donahue from AFLAC, and Bill Megna (AFLAC's local counsel), provided more detail about the product and the company's concerns, and suggested that the Board remove the definition from its rules, rather than amend it,

so that periodic amendments would not be necessary. AFLAC specifically noted that the coverage is an occurrence-based, not expense-incurred based policy (typically sold to groups on an employee-pay-all basis), and is subject to prior approval of the DOBI; and further, that AFLAC has no objection to a requirement that the company confirm that the AFLAC coverage is not being purchased in lieu of or as a replacement for health coverage. AFLAC stated that it offers a per day cash benefit in 47 other states that exceeds the \$250/day benefit it offers in New Jersey, and is prevented from offering the higher level of benefits in New Jersey because of the definition in the IHC rules.

The Board indicated it would consider the matter further, but requested more information from AFLAC, including more information about the products it offers in the other states.

VII. Reconciliation of 1993, 1994 and 1995 Loss Calculation Periods

E. DeRosa reported that both the Operations & Audit Committee (OAC) and the Technical Advisory Committee (TAC) had met to review updates to the spreadsheets regarding the pay-outs to carriers following the reconciliation of the 1993 through 1995 loss calculation periods, which now includes distribution of interest earned on monies held, and distribution of late fees collected in the reconciliation process (when the IHC Board billed carriers determined upon reconciliation to owe additional assessments for losses). Both the OAC and TAC had recommended that the IHC Board approve distribution of the funds as indicated on the spreadsheets, which included interest reported by Treasury through June 30, 2010, subject to updating for interest earned since July 1, 2010 to the date of distribution of the refunds.

M. Taylor made a motion, seconded by L. Yourman, to transfer \$1,782,507.80 from the funds held in the DOBI account, and \$6,410,540.98 plus interest earned from July 1, 2010 through the date the transfer is made from the funds held in Treasury to the IHC Board's checking account at Wachovia. By a roll call vote, the motion carried.

VIII. Operations & Audit Committee (OAC) Report – Financials

M. Taylor reported that, in addition to reviewing the reconciliation payment spreadsheets and methodology, the OAC also reviewed the Board's quarterly financial statements prepared by staff, which shows that expenses (at \$68,000) are currently coming in significantly under budget (by \$114,000).

IX. Technical Advisory Committee (TAC) Report

S. Kelly reported that, in addition to reviewing the reconciliation payment spreadsheets and methodology, the TAC had reviewed the quarterly B&E reports to discern whether the B&E plans are creating adverse selection in the market. S. Kelly stated that the TAC had found no evidence of adverse selection.

X. Updates on Loss Audits

E. DeRosa provided an update regarding the on-going loss audits. Most notably, Time Insurance Company recently provided additional information to Deloitte & Touche, which is under review.

In addition, E. DeRosa noted that the hearing regarding Protective Life Insurance had taken place on December 15, 2010, with Vicki Mangiaracina arguing the matter for the IHC Board. E. DeRosa explained that Protective continued its same arguments (that it should receive its fully-requested reimbursement without further audit action because there were no claims in dispute, it had substantially complied with the audit, and it was through no fault of Protective that it was unable to procure all of the relevant information from American Chambers Life). She explained that V. Mangiaracina continued to refute the arguments, but was able to add that Protective was well aware of American Chambers' precarious position before the conservatorship and liquidation of that company, because Protective had alerted the Ohio Department of Insurance to American Chambers' problems. E. DeRosa noted that the judge had asked no questions, and that V. Mangiaracina expected a decision on the matter relatively soon.

XI. Ethics Issue

L. Yourman brought to the Board's attention that she may be investigated for a possible ethics violation in her position as a member of the Fairlawn Board of Education based on an allegation of a conflict of interest in a due process request filed on behalf of her son under the federal Individuals with Disabilities Education Act. She stated she believes the Board should be aware of it, because there have been some news articles about her situation.

XII. Close of Meeting

S. Kelly made a motion, seconded by L. Yourman, to close the meeting of the Board. By a roll call vote, the motion carried.

[The meeting adjourned at 11:45 A.M.]