

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
July 10, 2018

Directors participating: Joseph Camargo; Ulysses Lee (United); Philip Gennace (DOBI); Colleen Picklo; Thomas Pownall (Aetna); Sandi Kelly (Horizon); Tony Taliaferro (AmeriHealth).

Others participating: Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; Christine Machnowsky, Deputy Executive Director; Jeffrey Posta, Deputy Attorney General; Eleanor Heck, Deputy Attorney General.

I. Call to Order

E. DeRosa called the meeting of the IHC Board to order at 10:00 A.M. She announced that notice of the meeting had been posted at the Department of Banking and Insurance (“DOBI”), on the DOBI website, at the Office of the Secretary of State, submitted to the State House Press Corps, and published in three newspapers of general circulation in accordance with the Open Public Meetings Act. A quorum was present. She stated that voting would be by roll call because some directors were participating by phone.

II. Review of Minutes – June 12, 2018 and June 25, 2018

June 12, 2018

C. Picklo made a motion, seconded by J. Camargo, to approve the minutes of the meeting of June 12, 2018 without amendment. By roll call vote, the motion carried.

June 25, 2018

C. Picklo made a motion, seconded by U. Lee, to approve the minutes of the meeting of June 25, 2018 without amendment. By roll call vote, the motion carried.

III. Report of Staff

Expense Report

E. DeRosa presented the expense report for July, noting that \$11.88 has been allotted to pay the Courier-Post for notice of the extra public meeting in June, \$10,890.87 has been allotted for salaries to be paid to the Small Employer Health Benefits (SEH) Program and \$3,348.50 has been allotted for payment to WithumSmith+Brown for audit services. These expenses total \$14,251.25.

E. DeRosa stated that a transfer of \$14,200 from the IHC Board’s Wells Fargo Money Market account to its checking account would be necessary to pay these expenses.

T. Pownall made a motion, seconded by J. Camargo, to approve payment of the expenses reported, and transfer of \$14,200 from the Board’s Money Market account to its checking account to do so. By roll call vote, the motion carried.

IV. Report of the Operations and Audit Committee and the Technical Advisory Committee

Final Administrative Assessment

S. Kelly explained that the Operations and Audit Committee (OAC) and the Technical Advisory Committee (TAC) each met to discuss the Final Administrative Assessment for Fiscal Year 2016-2017. She noted that the original assessment was based on the 2013 and 2014 Exhibits K and that the Final Administrative Assessment utilizes the 2015 and 2016 Exhibits K. She noted that the IHC Board owes the carriers \$209,876.28 and that certain carriers owe the IHC Board \$1,615.75.

E. DeRosa explained that the liability for Freelancers was distributed among other carriers and that the IHC Board has filed a Proof of Claim against the Freelancers estate and that, if any money is recovered from the Estate, it will be distributed to the other carriers.

E. DeRosa explained that any vote to proceed with paying refunds to carriers would require the transfer of funds from Treasury to the IHC Board checking account.

P. Gennace made a motion to approve the final administrative assessment and to proceed with the transfer of funds from Treasury. T. Pownall seconded the motion. By roll call vote, the motion carried.

V. Report of the Legal Committee

Good Faith Marketing Report

E. DeRosa stated that the Legal Committee discussed and considered the meaning of the phrase “during the prior calendar year” as used in N.J.A.C. 11:20-24.6, which sets forth the Good Faith Marketing requirements required of carriers in accordance with N.J.S.A. 17B:27A-4. She noted that members of the Legal Committee believed that the phrase as used in the rules implies that a carrier must market during all of the prior calendar year, and that attempts to “slice and dice” the time period creates a slippery slope towards allowing a carrier to ignore the requirement.

U. Lee asked if the Legal Committee discussed whether the entire calendar year meant 365 days in the year and E. DeRosa clarified that nothing else was determined by the Legal Committee other than what is memorialized in the Legal Committee minutes.

E. DeRosa said the Board needs to go into Executive Session to discuss pending or anticipated litigation and receive legal advice from counsel about the Oxford Good Faith Marketing Report. She said the Board would resume Open Session discussion following the Executive Session. E. DeRosa noted that Oxford would be recused from all discussion of the Oxford Good Faith Marketing Report that occurs in Open Session and all Oxford representatives must leave the room during Executive Session.

Paul Marden, Healthplan CEO New Jersey at UnitedHealthcare, Inc, was present at the meeting and was accompanied by a court reporter. E. Heck noted that the court reporter that accompanied Oxford would also have to leave the room during Executive Session and bring with her any equipment she utilizes. Paul Marden requested and was given the opportunity to address the IHC Board before the IHC Board entered Executive Session.

Paul Marden stated that he believes Oxford marketed in good faith. He explained that Oxford has not fundamentally changed how its marketing is done in New Jersey for quite some time. However, he explained that in 2017, Oxford transitioned its service and operational team to a new platform. They changed the website and script used for customer service representatives. This new team focused on marketing multiple plans in multiple states. Once Oxford became aware of the inaccurate information given in New Jersey, Oxford took steps to correct this problem. He explained that the set-up is now New Jersey specific and that the customers are now routed to certified advisors. These advisors receive four hours of training, are tested and undergo ongoing quality monitoring.

He further noted that November through December is the most critical time for 2018 enrollment and that Oxford marketing was operational for the fourth quarter of 2017 in time for open enrollment and any special enrollment periods. Although he admitted that Oxford had issues with its marketing, he stated that Oxford did market in good faith and that any errors were due to a shift in platforms and sales teams.

He further noted that Oxford has significant business in New Jersey, specifically the small employer market, and that Oxford is well aware that selling and marketing plans in the individual market is required in order to continue to sell plans in the New Jersey small employer market. He stated that it would never be worth compromising this business. He also stated that Oxford met the Good Faith Marketing standards because they had a link to five different plans, rate information and enrollment forms.

Paul Marden noted that Oxford also has a broker portal called the E-Store, which was not included in the Good Faith Marketing Report, and that this was operational from November 1, 2016 throughout 2017. He further noted that 168 brokers had access to information from the E-Store which houses information not just for New Jersey but for all other states and other plans. He explained that, if a broker could not find information from the E-Store, the broker could go to another source for this information, including the Broker Service Center and a 1-800 telephone number. He noted that the UHOne direct sales unit, contacted through the 1-800 telephone number, had information available at the start of open enrollment throughout 2017. He stated he understands that 434 recorded phone calls between Oxford customer service representatives and prospective consumers were reviewed by the Department of Banking and Insurance, and several customer service representatives asked questions they should not have asked, but explained that this occurred primarily because these representatives sell in several states and acted in error and have since been retrained.

Paul Marden noted that Oxford has already acknowledged its errors by entering into a Consent Order and paying a sizeable fine of \$2.5 million and that this issue constituted a majority of this fine. He also stated that, if a carrier is required to market 365 days in a year, then any online outage would prevent the carrier from complying. He noted that the IHC Program's mission as stated in N.J.A.C.11:20-1.6 is to increase access and coverage and, without Oxford in the market, less access to coverage would be available.

He noted that Oxford has already paid a penalty, got the message and made corrections.

The Board agreed to proceed to Executive Session for the reasons previously stated.

[U. Lee recused himself from discussion and any action that may be taken regarding good faith marketing by Oxford during 2017 because of the nature of his employment by Oxford and the interest of his employer in the outcome of any action on the matter.]

C. Picklo made a motion, seconded by J. Camargo, for the reasons stated. By roll call, the motion carried.

All members of the public, including the court reporter and her equipment, and Oxford representatives left the conference room.

Executive Session at 10:36 – 11:38 am

E. DeRosa thanked Oxford for the new information and noted that, in light of this new information, Oxford's previous Good Faith Marketing Report may not have reflected all of Oxford's good faith marketing activities. Therefore, the IHC Board is reopening the filing and does not consider that Oxford's Good Faith Marketing Report was complete as of June 1, 2018. Oxford has until August 1, 2018 to provide supplemental information about its Good Faith Marketing efforts during 2017. Oxford must also provide documentation.

One Board member asked Paul Marden why the marketing efforts mentioned today were not mentioned before. Paul Marden noted that the Division managing the marketing efforts didn't inform him. E. DeRosa noted that this explanation should also be noted in the supplemental report that Oxford plans to submit. E. DeRosa clarified that any and all marketing efforts conducted in 2017 by Oxford should be included in this supplemental Good Faith Marketing Report and that it is not limited to the E-Store and broker portal mentioned for the first time today.

VI. Close of meeting

S. Kelly made a motion, seconded by J. Camargo, to adjourn the meeting. By roll call vote, the motion carried.

[The meeting ended at 11:47 A.M.]