

FINAL
MINUTES OF THE MEETING OF THE
NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD
HELD TELEPHONICALLY PURSUANT TO EXECUTIVE ORDER 103 (MURPHY)
May 11, 2021

Directors participating: Philip Gennace (DOBI); Sandi Kelly (Horizon); Robert Morrow (United); Colleen Picklo; Thomas Pownall (Aetna), Tony Taliaferro (AmeriHealth).

Others participating: Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; Rosaria Lenox, Managing Financial Officer; 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.

E. DeRosa noted that, pursuant to P.L. 2020, c. 2, as a result of the public health state of emergency declared by Governor Murphy on March 9, 2020 through Executive Order 103, subsequently extended,¹ due to the COVID-19 pandemic, the IHC Board’s regularly scheduled meeting was being held telephonically, and not at the Board’s offices in Trenton. She stated that, in accordance with P.L. 2020 c. 11, electronic notice of the change in the meeting and the means by which the public could attend the meeting telephonically was posted on the Board’s website, and issued electronically to all known interested parties.

E. DeRosa determined a quorum was present. She stated that voting would be by roll call.

Members of the public were asked to identify themselves; public attendees, if any, are identified at the end of these minutes.

II. Minutes – April 13, 2021, and April 29, 2021 (Open and Executive Session)

The IHC Board considered each set of minutes from the April 13th and April 29th meetings, previously distributed. No amendments were offered.

R. Morrow made a motion, seconded by T. Taliaferro, to approve the minutes of the meeting of April 13, 2021. By roll call vote, the motion carried.

C. Picklo made a motion, seconded by T. Pownall, to approve the Open Session minutes of the meeting of April 29, 2021. By roll call vote, the motion carried.

C. Picklo made a motion, seconded by P. Gennace, to approve the Executive Session minutes of the meeting of April 29, 2021. By roll call vote, the motion carried.

¹ Executive Order 103 (Murphy) has been continuously extended multiple times since originally issued, the most recent extension occurring on April 15, 2021, pursuant to Executive Order 235 (Murphy).

III. Report of Staff – Expense Report

Expense Report

R. Lenox presented the expense report for May 2021, totaling \$11,700.08, which amount is for staff salaries and shared expenses with the Small Employer Health Benefits (SEH) Program. She stated that the Board can approve an internal transfer by the DOBI fiscal office of the amount due from the IHC Board's DOBI account to the SEH Board's DOBI account for the salaries and shared expenses.

S. Kelly made a motion, seconded by T. Pownall, to approve the payment of the shared expenses, including salaries, via a transfer by the DOBI of \$11,700.08 from the IHC Board's account to the SEH Board's account within the DOBI. By roll call vote, the motion carried.

IV. Rule Proposal/Draft Notice of Adoption

E. DeRosa discussed the changes made to the draft Notice of Adoption to address Board decisions at the April 29th meeting, and to clarify the response to commenters.

She reminded Board members that one commenter objected to the proposed change to the premium payment provisions because the commenter surmised the change meant that carriers would be required to accept third party payment of premiums without limitation. She stated that she had revised the draft response somewhat to note that the requirement to accept third party payments is not entirely open-ended, being predicated upon federal rules at 45 C.F.R. 156.1250, which requires acceptance of third party payments but is specific to Ryan White HIV/AIDS programs, tribal organizations, and government-sponsored programs, as well as New Jersey's longstanding requirement that Medicaid – a government program – be permitted to pay premiums for private insurance based on Federal statutes from 1973. She also noted that the response indicates that if, in the future, the Board determines it would be beneficial to provide additional guidance regarding third party premium payments, the Board would propose amendments to its Program Compliance subchapter at N.J.A.C. 11:20-24, where it normally sets forth such requirements and guidance rather than within the policy forms.

E. DeRosa reminded Board members that one commenter had asked whether, pursuant to P.L. 2019, c. 361, carriers could exclude certain contraceptive drugs, devices or products from coverage so long as coverage is provided for a therapeutic equivalent, or whether such items with a therapeutic equivalent must still be covered subject to cost-sharing. E. DeRosa explained she revised the response to be more consistent with the Board's discussions during the April 29th meeting. She explained that the response acknowledges that P.L. 2019, c. 361 permits use of a closed formulary to the extent that therapeutic equivalents exist, but that the response points out current state rules nonetheless require coverage under the prescription drug benefit of such formulary-excluded drugs, devices and products, and that federal law specifies that, for those items that meet the requirements of 42 U.S.C. 300gg-13(a)(4) as preventive care, the coverage under the prescription drug provision would be without cost-sharing.

E. DeRosa reminded the Board that it had previously moved contraceptives out of the prescription drug benefit, but that carriers electing to use a closed formulary for therapeutic equivalents would now cover the non-formulary contraceptives subject to the prescription drug benefit. She

explained this means that the drugs, devices and products could be subject to medical necessity, and carriers may limit the prescription to less than 6 months, but items that meet the preventive definition would be without cost-sharing. She noted another option, which was first suggested and subsequently adopted by the SEH Board, and discussed during the IHC Board's April 29 meeting, would be for a carrier to forego use of therapeutic substitutions, in which event, the carrier may continue to cover all contraceptives under the contraceptive provisions of the policy. She stated that she had revised the draft Notice of Adoption using the SEH Board's approach of allowing the carrier the choice of whether to institute use of the therapeutic equivalents, or not.

T. Taliaferro made a motion, seconded by T. Pownall, to approve the Notice of Adoption as drafted and presented to the Board. By roll call vote, the motion carried.

The Board discussed how to proceed with implementation of the changes. E. DeRosa noted that the Board's action to approve the Notice of Adoption starts the review process, and that it is uncertain when the Notice of Adoption will be filed with the Office of Administrative Law (OAL), which is necessary for the adoption to become effective. She explained that, given the uncertainty of the filing date, carriers will need a later operative date in order to incorporate some of the changes and produce new policy forms. She suggested using the Compliance and Variability Rider (C&V) initially, but indicated that, because the adoption contains a large set of amendments, carriers should expect to issue new policies with the amendments incorporated, preferably no later than January 1, 2022. E. DeRosa suggested the Board establish an operative date of the first of the month immediately following four months after the effective date of the adoption, which is consistent with what the Board has done in the past; consequently, carriers would use the C&V Rider for existing business and new issues prior to the operative date, and then issue new policies on and after the operative date. She also suggested that the Board may need to revisit the issue if the Notice of Adoption cannot be filed with OAL by August 1.

V. Good-faith Marketing Reports for Plan Year 2020

E. DeRosa reported that all carriers filed their reports electronically and timely. She then briefly described the minimum standards that carriers must meet to be considered to be marketing in good-faith during the prior calendar year: the carrier's application includes at least three standard individual health benefits plans (or an HMO plan if the carrier is an HMO); the carrier proves that it undertook at least one individual consumer directed marketing effort in direct support of the sale of the standard health benefits plans; and the carrier did not provide misinformation regarding the plans offered or eligibility for such plans.

E. DeRosa described the information submitted by each carrier.

T. Taliaferro recused himself from the discussion and any action taken by the Board with respect to Good-faith Marketing by AmeriHealth Insurance Company of New Jersey and AmeriHealth HMO, Inc., because of his employer's interest in the outcome of the action.

E. DeRosa explained that AmeriHealth listed 14 plans on its combined insurer/HMO application, and included multiple pieces of marketing materials for both brokers and individual use, in English and Spanish. She recommended finding the companies to have marketed in good faith.

S. Kelly made a motion, seconded by T. Pownall, to find AmeriHealth Insurance Company of New Jersey and AmeriHealth HMO, Inc. to have marketed individual standard health benefits plans in good faith during calendar year 2020. By roll call vote, the motion carried.

S. Kelly recused herself from the discussion and any action taken by the Board with respect to Good-faith Marketing by Horizon Healthcare Services, Inc., and Horizon Healthcare of New Jersey, Inc., because of her employer's interest in the outcome of the action.

E. DeRosa explained that Horizon listed 8 plans on its insurance application and one on its HMO application, and included multiple pieces of marketing materials for use by brokers and individuals, including materials in Spanish.

C. Picklo made a motion, seconded by T. Taliaferro, to find Horizon Healthcare Services, Inc., and Horizon Healthcare of New Jersey, Inc. to have marketed individual standard health benefits plans in good faith during calendar year 2020. By roll call vote, the motion carried.

E. DeRosa explained that Oscar Garden State Health Insurance Corporation listed six plans on its application made available through brokers, and included multiple pieces of marketing materials for use by brokers and individuals.

S. Kelly made a motion, seconded by C. Picklo, to find Oscar Garden State Health Insurance Corp. to have marketed individual standard health benefits plans in good faith during calendar year 2020. By roll call vote, the motion carried.

R. Morrow recused himself from the discussion and any action taken by the Board with respect to Good-faith Marketing by Oxford Health Insurance, because of his employer's interest in the outcome of the action.

E. DeRosa explained that Oxford Health Insurance listed three plans on its application available on its website and Broker portal, and submitted multiple marketing materials for use primarily by brokers, but also individuals. E. DeRosa noted, however, that some of the training materials provided to brokers contained questionable or curious information, specifically, instructing brokers to ask tobacco questions, which are not relevant for New Jersey, and indicating that if a consumer is not interested in one of the Oxford plans, the broker should discuss Oscar's plans.

E. DeRosa confirmed she sent a letter of concern to the person who filed Oxford's information with the Board as well as Oxford's representative on the Board. Board members suggested E. DeRosa refer the matter to the DOBI for investigation, but agreed Oxford demonstrated the required marketing effort.

S. Kelly made a motion, seconded by C. Picklo, to find Oxford Health Insurance to have marketed individual standard health benefits plans in good faith during calendar year 2020. By roll call vote, the motion carried.

VII. Close of Meeting

C. Picklo made a motion, seconded by T. Pownall, to adjourn the meeting. By roll call vote, the motion carried.

[The meeting ended at 10:50 A.M.]

Identified Public Attendees:

Robert Axelrod, Oscar Garden State Health Ins. Corp.²

² Robert Axelrod is a member of the Small Employer Health Benefits Program Board of Directors, as are several of the Directors on the IHC Board; however, there was not a quorum of the SEH Board present, and all actions taken were for the benefit of the IHC Board.