Final
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 7, 2007

Members participating: Wilson Beebe; Robert Benkert (United); Thomas Collins (arrived 10:35); Gary Cupo (arrived at 10:25); John Foley (CIGNA); Jack Kalosy (HealthNet – arrived 10:55); Gale Simon (DOBI); Christine Stearns; James Stenger; Tony Taliaferro (AmeriHealth); Mary Taylor (Aetna); Mike Torrese (Horizon); Joseph Tricarico (DHSS).

Others participating: Ellen DeRosa, Executive Director; Rosaria Lenox, CPA, Program Accountant; DAG Vicki Mangiaracina (DLPS); Chanell McDevitt, Deputy Executive Director.

I. Call to Order

E. DeRosa called the meeting to order at 10:10 a.m. She announced that notice of the meeting had been published in two 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. E. DeRosa took roll call. A quorum was present.

II. Public Comments

E. DeRosa invited public comments. None were offered.

III. Minutes

January 17, 2007

T. Taliaferro offered a motion to approve the minutes of the Open Session of the December 13, 2006 Board meeting, without amendment. M. Torrese seconded the motion. The Board voted unanimously in favor of the motion.

IV. Staff Report (1)

Expense Report

R. Lenox presented the expense report for March, 2007, totaling $2387.50.

W. Beebe offered a motion to approve the payment of the expenses specified on the March 2007 expense report. J. Tricarico seconded the motion. The Board voted unanimously in favor of the motion.

Enrollment Report

R. Lenox reported that only the SEH enrollment report through 12/31/06 was final; the IHC enrollment report has not yet been finalized, but will be forwarded to the Board members when it is. She noted that the SEH report indicates an increase in enrollment for the SEH market.

Report Due Dates
E. DeRosa reminded carrier representatives on the Board that March 1 was the due date for several reports, but that many carriers still have not submitted various exhibits (Exhibits CC, BB1, BB2, BB6). She urged carriers to make sure to get their reports in promptly.

Fee Schedule/Reimbursement Information – Review of N.J.A.C. 11:21-7.13
Staff distributed prepared packets of information to Board members, and C. McDevitt gave a brief overview of the packets' contents. As requested by Board members, C. McDevitt had compiled information about the Medicare RBRVS as well as the Ingenix PHCS (which carriers are currently required to work from pursuant to N.J.A.C. 11:20-24.5). C. McDevitt explained that she had included materials in the packet because she believed the material was more fact-oriented than persuasion-oriented. She also included recent news articles reporting criticisms of recent Department of Banking and Insurance (DOBI) rule proposals regarding amendments to the automobile PIP fee schedule and an amendment to N.J.A.C. 11:22-5, requiring carriers to reimburse out-of-network physicians at a rate comparable to at least 150% of the Medicare RBRVS. The packet contained the following information:

1. *Ingenix Benchmarking Products* (a power point presentation prepared by Ingenix for the Board in November 2005)
2. April 7, 2006 CMS letter to MedPAC regarding the 2007 Medicare RBRVS conversion factor
3. February 28, 3007 CMS letter to MedPAC regarding the 2008 RBRVS conversion factor
4. CMS Sustainable Growth Rates & Conversion Factors (Final 2007 SGR)
5. *2007 RBRVS – What Is It and How Does It Affect Pediatrics?* (American Academy of Pediatrics)
6. *How to Repair our "dysfunctional" reimbursement system* by Robert B. Doherty (American College of Physicians, 2004)
7. *Wither Primary Care?* by Michael J. Pentecost, M.D. (Kaiser Permanente Journal 2006)
8. *Three Basic Words: Usual. Customary. Reasonable.* by Managed Care Dental
9. *Cost of Overhauling Physician Payment System Substantial, Aides Say,* by Drew Armstrong (Commonwealth Fund)
10. *Doctor's payments for auto accidents focus of lawmakers,* by Joe Donohue (The Newark Star-Ledger, Feb. 9, 2007)
11. *Plan would raise fees for some doctor visits – Medical Society criticizes out-of-network proposal*, by Bob Groves (Bergen Record, Jan. 10, 2007)

There was discussion as to whether the information in the packet adequately expressed carrier viewpoints. C. McDevitt explained that her intent in including the particular pieces was to provide some information for Board members about the mechanics of the two fee-schedule or reimbursement methodologies, not advocacy as such. C. Stearns asked what the Board's real intent is in reviewing the information. E. DeRosa stated that the Board had expressed some concern about continuing to use the PHCS for out-of-network medical expenses, as well as concern about hospital billed charges. E. DeRosa noted that staff had also had a discussion with Concentra regarding their system for pricing hospital claims, and was considering whether to explore more with that company regarding development of fee schedules for hospital-related bills. M. Taylor noted that Aetna is concerned with nonfacility payments issues.

G. Simon noted that the DOBI proposal amending N.J.A.C. 11:22-5 to require reimbursement out-of-network consistent with at least 150% of the Medicare RBRVS had proven to be quite controversial, generating a substantial volume of comments. DOBI had extended the comment period twice (now to early May). In addition, the Legislature has shown interest in the issue, with A-4075 having been introduced on March 6, 2007. G. Simon stated that the rule may not be adopted, and even if it is, the adoption may not look the same as the proposal. C. Stearns said there appears to be significant misunderstanding about the intent of the proposal, with many viewing it as rate-setting (in which the floor essentially becomes the ceiling).

W. Beebe asked if G. Simon could enlighten the Board as to what the discussions may be with the Commissioner regarding Senator Vitale's initiatives, as he is under the impression that there are some discussions with DOBI and the Senator regarding the role of the SEH Board and program for the market. G. Simon stated that she had not been involved in any such conversations, but that if she can get some information, she would pass it along.

E. DeRosa suggested that Board members review the material, and be prepared to discuss N.J.A.C. 11:21-7.13 in May, and what next steps the Board may want to pursue. G. Simon suggested that, if we decide to do comparisons with the RBRVS, to pay attention to specialty codes, where differences between the RBRVS and PHCS can be rather dramatic.

V. Report of the Finance and Audit Committee

Program Audit Reports for 1996 through 1999
Neil Vance delivered the report of the Finance and Audit Committee (F&A Cmte). He noted that this is an historic occasion, in that the Board would be voting on the first completed audits of the SEH Program, notwithstanding that the Program has been in existence for more than 10 years. He recounted the various reasons why an audit of the Program had not been completed earlier: it took some time before Program standards were established; initially, there was no accountant, and then there was a period of time between accountants for the Program; the process for obtaining the contract for the auditor.

N. Vance reported that D&T had met with the F&A Cmte, explained the four reports (FY1996, FY1997, FY1998 and FY1999), and fielded questions from committee members. He noted that the F&A Cmte had an opportunity to meet with and present questions to D&T without SEH staff in attendance. D&T's report essentially states the opinion that the financial statements of the SEH Program are appropriate for their purposes and accurately stated. The F&A Cmte recommends acceptance of the audit reports, including signing of the Management Representation letters.

E. DeRosa explained that, in order for the audits to be considered complete, someone must sign the Management Representation letters. Sanford Hermann (from HealthNet), a participant in the F&A Cmte, had agreed to sign the Management Representation letter on behalf of the F&A Cmte. E. DeRosa reported that, because of Executive Order 122 (McGreevey, 2004), it was unclear to the F&A Cmte and staff who else was required or permitted to sign the Management Representation letters. Staff had been under the impression that the Chair of the Board may be

required to sign (because of the language of the Executive Order), but D&T and F&A Cmte members thought it appropriate for someone from the staff to the Board – who are involved in the day-to-day operations of the Program, should sign, so staff had requested that V. Mangiaracina (who had been present at the F&A Cmte meeting with D&T) to look into the issue. V. Mangiaracina stated that she had discussed the question with an Assistant Attorney General who routinely works with various boards, commissions and councils, and there was consensus that it is appropriate for an Executive Director and a person who is or is acting in the capacity of an accountant for the entity to sign management representation letters. V. Mangiaracina stated that it is permissible, but not necessary, for the chair of a Board to sign such a representation.

M. Taylor had some questions about the language of the reports (which was substantially the same for each year audited). She questioned the language in the reports regarding federal grants, requested clarifications of what the term "concentrations" means, and what the reference to (the lack of intent of the Board to) withdraw from a multi-employer plan is meant to imply. V. Mangiaracina stated that M. Taylor's questions were very similar to ones that had been raised at the F&A Cmte meeting, and explained the intent of the language as she had understood the explanation provided by D&T, noting that much of the language is boilerplate, thus: D&T recognizes that the Board does not have or manage any federal grants, but includes language so that it is clear that D&T considered the matter and there was no issue for the time period in question; concentrations refers to activity(ies) or investment(s) of such a level that the activity(ies) or investment(s) could potentially result in instability in the financial profile of the Program – a situation D&T opined did not exist for the SEH Program; and, reference to a multi-employer plan essentially refers to the State Health Benefits Plan and the Public Employee Retirement System in which SEH Program staff participate as a matter of state law). M. Taylor requested that D&T revise the language of Paragraph 9 (concerning federal grants) to add the words "if applicable" so that it does not necessarily appear that the Board had any federal grants during the time period in question. Board members noted several other grammatical changes that should be made for the reports prior to finalizing them.

W. Beebe made a motion to accept the recommendation of the F&A Cmte to approve the D&T audit reports for the financial statements of the SEH Program for FY1996, FY1997, FY1998 and FY1999, with amendments. M. Torrese seconded the motion, and the Board voted unanimously to approve the motion.

Refunds of excess monies in the SEH administrative accounts
E. DeRosa continued reporting the events of the F&A Cmte, noting that the primary question of carriers on the call was when carriers could expect to receive refunds of excess monies from the SEH administrative accounts. E. DeRosa stated that R. Lenox will begin working on the reconciliations as soon as possible after the D&T reports are finalized. Money will be refunded to those companies that had paid in. In the event that there is no company to refund money to at this time, the funds will escheat; the balance will go to $0.

Continuing Program audit activity
M. Taylor asked whether the Board has the contracts for Program audits for FY2000 going forward. E. DeRosa explained that McEnerney, Brady & Company, LLC is the contracted

vendor for this task, and is ready to begin audits for fiscal years 2000 through 2005, but that the Board will have to engage in a separate contract for audits of subsequent fiscal periods.

VI. Report of Staff (2)

Civil Union Bulletin
E. DeRosa reminded Board members that she had sent out Bulletin 07-SEH-01 regarding the impact of the Civil Union Act (P.L. 2006, c. 103), which became effective on February 19, 2007. J. Stenger pointed out that federal law does not recognize civil unions, so employer contributions to coverage of a civil union partner will be considered taxable income to the employee. Both J. Stenger and W. Beebe indicated that rumor has it that the IRS may begin cracking down on both employers and employees in attempt to capture more taxable income and the taxes related thereto. The unintended consequence may be a decrease among employers in offering dependent coverage.

Financial Report
R. Lenox reported that the amount to be refunded for audited periods (FY 1996 through FY1999) is about $340,000.

VII. Other discussion

W. Beebe suggested that the issue of Senator Vitale's initiatives could be added to the Board's agenda. There was debate as to whether discussion of the matter was appropriate or necessary, but no consensus on whether to formally add the issue to the meeting agenda. All agreed that the Board could continue to make inquiry from time to time from DOBI representatives, and that Board members could seek information on their own.

J. Stenger noted that feedback from some producers indicates clients that have purchased HSA plans are encountering rate increases that are comparable to products without an HSA, and were dismayed, because they had assumed the rates would be less. J. Kalosy and other carrier representatives suggested some reasons why high deductible health plans (HDHPs) are likely to have similar rate increases regardless of whether the HDHP is coupled with an HSA.

Board members debated whether to refine the SEH reporting forms to capture rating and enrollment information in a more detailed manner (similar to the IHC reports, which capture information by deductible and copayment options for plans), in an effort to better determine trends in the SEH market. Board members debated whether the enhanced information provided by the increased detail in reporting warranted the increased complexity for carriers. There was no consensus on the question.

VIII. Public Comments
No public comments.

IX. Close of Meeting

M. Torrese offered a motion to adjourn the Board meeting. T. Collins seconded the motion, and the Board voted unanimously in favor of the motion.

[The meeting adjourned at 11:20 A.M.]