

**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
June 18, 2008**

Members participating: Bob Benkert (United); Tom Collins; Gary Cupo; John Foley (CIGNA); Jack Kalosy (HealthNet); Margaret Koller; Bill Manning (Aetna); Gale Simon (DOBI); Christine Stearns; Jim Stenger; Neil Sullivan (Horizon); Tony Taliaferro (AmeriHealth); Dutch Vanderhoof.

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

I. Call to Order

J. Stenger called the meeting to order at 10:05 A.M. E. DeRosa 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. A quorum was present.

II. Elections

E. DeRosa announced to Board members that two of the Board seats were up for a vote: a small business representative (currently, James Stenger) and an HMO representative (currently CIGNA). She reminded the Board members that notice of the election and solicitations for nominations had been issued on April 9, 2008, some ballots had been received, and carriers that had not yet voted could vote at this meeting. She noted that James Stenger was the only nominee for the small business representative’s seat, and CIGNA was the only nominee for the HMO representative’s seat, but write-in votes are permitted.

Upon distribution and subsequent collection of ballots at the meeting, R. Lenox tallied the votes, and determined that James Stenger was elected for another three-year term as a small employer representative, and CIGNA was elected for another three-year term as an HMO representative.

III. Public Comments

J. Stenger opened the floor for public comments. There were none.

IV. Minutes – April 15, 2008

D. Vanderhoof offered a motion to approve the minutes of the Open Session of the April 15, 2008 Board meeting. T. Collins seconded the motion. The Board voted unanimously in favor of the motion.

V. Staff Report

Expense Report – June 2008

R. Lenox presented the expense report for June 2008; expenses totaled \$2,319.14.

J. Kalosy offered a motion to approve the payment of the expenses specified on the June 2008 expense report. G. Cupo seconded the motion, and the Board voted unanimously in favor of the motion.

Draft Readoption of N.J.A.C. 11:21

E. DeRosa reminded Board members that N.J.A.C. 11:21 (Chapter 21) would expire in February of 2009, and thus, it is time to start working on a readoption notice. She stated she had sent to Board members an existing copy of Chapter 21 and an outline of items needing to be changed as part of the readoption, including amendments necessitated by the prosthetics and orthotics legislation (P.L. 2007, c. 345), which requires revisions to the reimbursement standards in the rules because of the requirement to use the Medicare rates for these services, among other things. She noted that several of the subchapters of Chapter 21 are actually DOBI's, and thus, the readoption needed to be coordinated with Bob Mellilo, DOBI's Director of Regulatory Affairs.

The Board members discussed other potential issues to be addressed in revisions to the rules. E. DeRosa explained the Board can propose amendments to the rules at any point in time, but noted that DOBI cautioned against doing any unnecessary changes that could be controversial during the readoption process, as that runs the risk of the rules not being readopted timely, resulting in a technical lapse in the rules. E. DeRosa explained further that those items suggested for revision upon readoption are primarily intended to address either recent legislative requirements, or to clear up potential areas of confusion in application of federal and state law (including interaction of Medicare as Secondary Payer provisions and the civil union partner laws, removal of references to domestic partners in the COBRA provisions of the policy forms, and inconsistencies in exclusions between the contract and certificate forms for the HMO plan. She explained she had also suggested the Board might want to revise N.J.A.C. 11:21-7.13 (which has to be amended anyway because of the prosthetic and orthotic legislation) to reference the Ingenix outpatient hospital profile as a method for determining appropriate reimbursement for such services, rather than paying billed charges, and to remove references to "reasonable and customary" charges.

Upon further discussion, the Board members agreed to establish an ad hoc committee to review the current rules, plan designs and policy forms, and compliance standards, including provider reimbursement, and whether any additional modifications may be appropriate as a matter of public policy. The Board members also generally agreed they needed more time to review the suggested changes to be made upon readoption, and it was determined that Board members should provide comments, if any, to E. DeRosa by July 18th in this regard.

The Board members agreed the ad hoc committee could have up to 7 members, and would include the following representatives:

- Horizon
- Christine Stearns
- AmeriHealth

- Jim Stenger
- DOBI
- Gary Cupo
- HealthNet

E. DeRosa stated she would send out an invitation for the first meeting, and the committee would determine how frequently it would meet thereafter.

Enrollment data

E. DeRosa reported that the most recent enrollment data showed that IHC enrollment is continuing to increase, while SEH numbers are declining. She noted the decline in the SEH numbers is substantially the result of decreased enrollment of dependents. Board members discussed the possible dynamics for the decrease in the dependent numbers under employer coverage, noting that some employers are reducing contributions towards dependent coverage based on equity issues for similarly-situated employees, while many employers are actively discouraging or prohibiting enrollment of dependents in employer plans if the dependents are already covered by another employer. It was also noted that the sole growth in the IHC market is through the Basic & Essential plans.

VI. Marketing Committee Report

C. McDevitt reported the Marketing Committee had met again to discuss an updated version of the SEH Buyer's Guide and a trifold brochure, both of which had been included in the Board packets, along with three sets of frequently-asked questions. She explained that, while not apparent in the paper format, the online version of the documents would have links to other relevant information, including Medicare, the IRS, U.S. Department of Labor, etc., and in addition, the tables for calculating employees and participation would be offered as fillable forms online.

There was a request that the trifold be put into a flyer format instead or in addition to the trifold format, so that the information can be sent by email and easily read. There was some discussion as to whether the buyer's guide was still too technical to be called a buyer's guide.

The Board agreed to provide comments to staff by July 31st on all of the material.

VII. Legal Committee Report

Gender reassignment exclusion and the Law Against Discrimination

E. DeRosa reported the Legal Committee dealt with the question of whether the exclusion in SEH policies for benefits for or coverage of services rendered when related to gender reassignment treatments was in violation of New Jersey's Law Against Discrimination ("LAD" and specifically, N.J.S.A. 10:5-12). She stated the issue was raised by an attorney taking the position gender identity is a protected class under the LAD, and that by including the exclusion for treatment of gender identity issues, the policy forms (and consequently, the SEH Program) was aiding and abetting discriminatory activity, which is prohibited by the LAD. E. DeRosa said the attorney highlighted a checklist produced by the Division on Civil Rights (DCR) for

employers for purposes of determining if their workplaces and policies are consistent with the LAD, and made reference to insurance as part of employee benefits. E. DeRosa reported the DCR had stated that the employee benefits section of the checklist was for voluntary compliance with the LAD, and that the DCR did not take the position that exclusion of benefits for gender identity treatment would constitute a violation of the LAD. She stated the Legal Committee noted that there are specific provisions in the LAD exempting insurance from the LAD's applicability. She said the Legal Committee recommended no action on the issue, other than to respond to the attorney.

After some discussion, the Board agreed this is an issue the Ad Hoc committee should consider further by looking at how the issue is dealt with in the large group market, and letting the attorney provide additional information as well if the attorney wishes to do so.

Independent Contractor

E. DeRosa reported the Legal Committee considered multiple questions regarding independent contractors. She said the Committee considered whether the SEH statutes and/or rules permitting small employers to offer independent contractors coverage under the small employer policy conflicts with the New Jersey Department of Labor (DOL) standards regarding classification of employees, and determined that, technically, there is no conflict. She stated that the Legal Committee also considered whether some of the requirements for the offer of coverage to independent contractors made it more likely that a small employer would run afoul of the DOL classification standards, and determined it was entirely possible, because of a requirement in the SEH rules that independent contractors eligible for coverage must work exclusively for the employer (and meet the 25 hour per week rule as well), which is problematic in light of case law and federal revenue rulings by the internal revenue service that indicate "independent contractors" receiving 75% of their work through a single business owner should be treated as employees. E. DeRosa stated the Legal Committee had noted the exclusivity requirement is arguably inappropriate, especially when it doesn't even apply to actual employees of the employer, and suggested the Board remove the requirement from the rules. (The requirement does not exist in the statute.)

The Board members discussed the 25-hour requirement, which most Board members also considered problematic, but Board members agreed there was nothing to be done to change it, because the 25-hour standard is in the statute. Because this requirement cannot be removed, Board members debated whether the Board materials should caution employers that coverage of independent contractors may bolster arguments that the person is misclassified and result in fines and other penalties for the employer. Board members also discussed whether the SEH concepts of "temporary" workers may be problematic in light of the reported DOL classification audit standards, and agreed that this question should be included in a memorandum prepared for John Jacobi, Office of Governor's Counsel, highlighting questions regarding the SEH law and DOL's application of the "ABC test" of employment status. The Board agreed to table any further action on the issue.

VIII. Finance & Audit Committee (FAC) Report

Final administrative expense assessment (reconciliation) for 2000 through 2005

E. DeRosa reported the SEH Board is in a position to perform reconciliations of the administrative assessments for 2000 through 2005 now that the audits for fiscal years 2000 through 2005 had been completed. She stated the FAC had reviewed the summary spreadsheets and spreadsheets for specific years prepared by staff for the purpose of performing a final assessment for the years in question. She reported the FAC recommended proceeding to bill, to issue refunds after the collections have occurred, and also recommended mailing only the summary spreadsheet for all years in question, and netting amounts (by company) so that each carrier receives only one bill and/or one check (if any). E. DeRosa explained the spreadsheets for each of the years would be posted on the SEH website so that companies could review the details if they wished.

When asked if all companies will be receiving refunds, E. DeRosa explained that companies whose marketshares had grown during the time in question would not receive refunds. She also explained that there is no *de minimis* on what the SEH Board is required to refund.

Gary Cupo made a motion to mail bills with the explanatory notice and summary spreadsheet to all SEH Program members. J. Kalosy seconded the motion, and the Board approved it unanimously.

Financial statements and budget

R. Lenox discussed the financial statements for the 3rd quarter of FY08. She reported the SEH Program is still within budget, being under by \$11,867.

Audit process for FY2006 through 2009

C. McDevitt reported the FAC had reviewed the difference between using the full Request for Proposal process, and using the modified Scope of Work process available through an existing Treasury contract with 10 companies for financial auditing services, and recommended using the Scope of Work process first. There was brief Board discussion about the contents of the Scope of Work.

T. Taliaferro made a motion to send out the Scope of Work to elicit responses for auditing services for FY2006 through FY2009, with clarifications as discussed. J. Kalosy seconded the motion, and the Board voted unanimously to approve it.

IX. Public Comments

There were no public comments.

X. Additional Business

There was no new business; however, E. DeRosa alerted Board members to the New Jersey Business and Industry Association's 2008 Health Benefits Survey (included in the Board members' meeting materials) which shows average cost increases for health insurance per employee in the group market for employers with fewer than 50 employees and those with 51+ employees, and how employers are coping with the cost increases.

XI. Close of Meeting

D. Vanderhoof 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 11:35 P.M.]