

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
October 21, 2009

Members present: Gary Cupo; Joyce Gralha (Horizon); Sandy Herman (Health Net); Alan Maesaka (Aetna); Margaret Koller (*arrived 10:13*); Brendan Peppard (United/Oxford); Niranjan Rao (*arrived 10:13*); Gale Simon (DOBI); James Stenger; 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

E. DeRosa 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. She noted this constituted the Annual Meeting of the Board. She determined a quorum was present.

II. Public Comments

There were no public comments.

III. Review of Officers and Committees

After ascertaining that J. Stenger was willing to serve another term as Chair, and that T. Taliaferro was willing to serve another term as Vice Chair, and determining there were no other nominees, **B. Peppard made a motion, seconded by D. Vanderhoof, that J. Stenger and T. Taliaferro serve as Chair and Vice Chair of the SEH Board, respectively, for an additional term. The motion carried unanimously.**

The Board considered its standing committees and their composition. It was noted that, with the number of filled Board seats now at 17, committee membership could rise to 8 members, but that increasing the committee membership might be short-lived, because Guardian will lose its seat on the SEH Board when it can no longer demonstrate it is a carrier primarily in the small employer market; further, HealthNet will lose its seat if it is acquired by UnitedHealthCare. There was further discussion that CIGNA should be taken off committees until CIGNA gives notice of its new representative, and S. Herman indicated that HealthNet no longer needed to be on the Marketing Committee. Board members volunteered to participate on a reconstituted Legal Committee.

G. Simon made a motion, seconded by S. Herman, to reconstitute all of the Committees as follows:

**Policy Forms: M. Koller, AmeriHealth, United, HealthNet, DOBI, Horizon
Legal: Aetna, AmeriHealth, Horizon, United, C. Stearns, G. Simon, and D. Vanderhoof
Finance & Auditing: DOBI, United, AmeriHealth, Horizon, T. Collins, HealthNet
Marketing: Horizon, D. Vanderhoof, G. Cupo, T. Collins, United, M. Koller**

The motion was approved by a unanimous vote.

IV. Minutes – September 25, 2009

D. Vanderhoof made a motion to approve the open session minutes for September 25, 2009 with amendments. T. Taliaferro seconded the motion, and the Board voted in favor of the motion, with J. Gralha, Dr. N. Rao and A. Maesaka abstaining.

V. Report of Staff

Expense Report

R. Lenox discussed the Board's expenses for October of 2009, totaling \$148.67.

D. Vanderhoof made a motion, seconded by J. Gralha, to approve payment of the expenses set forth on the October 2009 expense report. The motion passed by unanimous vote.

Riders submitted by Oxford Health Plan and Oxford Insurance

B. Peppard recused himself from discussions about and action on the matter to avoid the appearance of impropriety because of the interest of his employer, UnitedHealthCare, in the outcome of the action.

S. Herman recused himself from discussions about and action on the matter to avoid the appearance of impropriety because of the potential interest of his employer, HealthNet, in the outcome of the action.

E. DeRosa discussed the submission of riders by Oxford Health Plan and Oxford Health Insurance companies, to supplement Oxford's HMO products and all versions of its Standard Plans B, C, D and E by providing coverage for hearing aids up to \$5,000 for each hearing impaired ear for covered persons regardless of age (expanding upon Grace's Law). She stated staff recommended finding the filings to be complete, and that the companies had filed rates with DOBI.

G. Cupo made a motion, seconded by N. Rao, to accept the recommendation of staff for both riders. The motion carried with a unanimous vote of Board members participating in the action.

Request for November Meeting regarding MHPAEA and P.L. 2009, c. 115

E. DeRosa requested that the Board consider scheduling a meeting in November. She explained that staff was not yet in a position to present the Board with a proposal implementing P.L. 2009,

c. 115 (requiring coverage for certain developmental disability and autism treatments) because there are still a lot of open issues, but that she hopes they will be resolved within the next few weeks. The meeting was tentatively scheduled for November 18 at 10:00 A.M., with seven Board members confirming they could attend. E. DeRosa requested that everyone else contact her by October 23rd, so that she could determine if there would be a quorum.

VI. Report of the Finance and Audit Committee (FAC)

E. DeRosa reported that the FAC had reviewed the recommendation of the Joint Evaluation Committee regarding the bid on the Board's jointly-issued Request for Proposal for auditing services with the Individual Health Coverage Board. She stated the Joint Evaluation Committee had recommended awarding the bid to Withum, Smith+Brown (WSB), noting that the IHC Board had previously voted in favor of the award to WSB based on the recommendation by the IHC Board's Operations and Audit Committee following the Joint Evaluation Committee's report.

S. Herman made a motion, seconded by D. Vanderhoof, to award the contract for auditing services to Withum, Smith + Brown, adopting the FAC's recommendations. The motion was approved by a unanimous vote.

The Board requested that V. Mangiaracina work with WSB on the contract.

VII. Report of the Ad Hoc Committee – Legal Questions

E. DeRosa reported that the Ad Hoc Committee met twice to discuss multiple questions, three involving implementation of P.L. 2009, c. 115 (autism mandate), and one regarding potential relief for certain employers in moving among plans.

Definition of developmental disability; autism definition

She stated that with respect to the question of the definition of developmental disability – a term used but not defined by P.L. 2009, c. 115, the Ad hoc Committee had indicated the existing definition in the SEH policy forms is probably consistent with the intent of the law, but decided against making any recommendation on the issue until more information was obtained from the drafters of the legislation. E. DeRosa explained that subsequently, she had spoken with individuals at the Office of Legislative Services (OLS), who stated the intent was for the term to be interpreted consistently with the definition in federal law. E. DeRosa noted that the issue for the policy forms is that they require manifestation of a disability at or before age 19, while federal law refers to age 22, meaning that there is a possibility that someone might meet the definition of developmentally disabled under federal law, but not be considered developmentally disabled under the policy, and thus, ineligible for the separate benefits of P.L. 2009, c. 115.

E. DeRosa went on to report that she had asked personnel at OLS what the definition of autism was meant to include, and had been told it should be understood to be the same as autism spectrum disorder.

Limits applicable to the therapy services

E. DeRosa stated the Ad Hoc Committee generally agreed that the language of P.L. 2009, c. 115 was clear that benefits provided for treatment of developmental disabilities (including autism) should not diminish the benefits for treatment of other conditions, but that the law did not indicate that the benefits for physical therapy (PT), occupational therapy (OT), or speech therapy (ST) as treatment of developmental disabilities had to be unlimited. She stated that DOBI had indicated it was unlikely to approve limits for PT, OT or ST for treatment of developmental disabilities that included limits on the number of days from diagnosis or beginning or treatment, or benefit limits on a per illness or injury basis. E. DeRosa indicated she had asked personnel at OLS about the issue, and they stated the question had not arisen during drafting of the legislation.

Recognized providers of ABA for autism treatment

E. DeRosa explained that the Ad Hoc Committee had recommended that the SEH policy forms' definition of provider – which typically requires that the provider deliver services within the scope of his or her state license – be amended to include individuals designated as Board Certified Behavioral Analyst (BCBA) and similar designations by the national Behavioral Analyst Certification Board, because New Jersey has no license requirement for behavior analysts, but the national organization has robust standards for receipt of certification. E. DeRosa noted that, in addition, a treatment plan is required for the services to be considered eligible for benefits, and both the diagnosis and the treatment plan must be established by a physician, not the ABA practitioner. N. Rao suggested that contact be made with the Medical Society to help in determining what an appropriate protocol for a treatment plan might be.

Board members questioned whether a carrier would be required to cover services delivered by providers not in the carrier's network. E. DeRosa stated she was still trying to understand whether the same providers in a carrier's network would also be providing early intervention services, which she believed might be the only instance in which network participation would be an issue. She stated she has been talking to individuals that oversee New Jersey's Early Intervention System, and that it was her understanding that the agencies through which early intervention services are obtained are not typically in carrier networks (hospitals being an exception), but that the practitioners delivering the services could be. She said she also intends to raise this and other issues in a meeting scheduled with legislative and partisan office staffers.

Can employers that had 51+ employees in the preceding year buy small employer coverage if they have 50 or fewer employees now?

E. DeRosa reported that the Ad Hoc Committee determined there really is no change to the SEH Program rules to accommodate such employers given that both the State and Federal law considers the employer's prior calendar year employment experience. She noted the issue is not new, but more problematic currently because so many employers had shrunk their workforces significantly in the current economic climate, and found themselves facing more significant rate increases than expected in their existing coverage because of credibility factors.

The question arose whether such groups could purchase nonstandard plans. There was consensus that only nonstandard legacy plans could be offered, and these should be complying with the SEH law; thus, they should only be sold to small employers meeting the definitions set

forth in the law, which are the same for both nonstandard and standard plans. Otherwise, the employer should be purchasing “large” group coverage, subject to the underwriting and rating requirements for large groups.

VIII. Public Comments

There were no public comments

IX. Close of Meeting

D. Vanderhoof offered a motion to adjourn the Board meeting, which was seconded by J. Stenger. The Board voted unanimously in favor of the motion.

[The meeting adjourned at 11:30 P.M.]