

**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
February 3, 2010**

Members present: Gary Cupo; Darrel Farkus (United/Oxford); Margaret Koller; Alan Maesaka (Aetna); Gale Simon (DOBI); Christine Stearns; James Stenger; Tony Taliaferro (AmeriHealth – *arrived at 10:15 A.M.*); Michael Torrese (Horizon); Joseph Tricarico (DHSS); 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 10:00 A.M. E. DeRosa announced that notice of this special 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 determined a quorum was present.

II. Public Comments

There were no public comments.

III. Minutes – *January 20, 2010*

M. Torrese made a motion to approve the open session minutes for January 20, 2010. A. Maesaka seconded the motion. The Board voted in favor of the motion with G. Cupo abstaining.

IV. Legal Committee Report

E. DeRosa handed out the minutes of the meeting which had been held on February 2, 2010, and asked Board members to take some time to read and digest the information.

C. Stearns made a motion to table discussion of the Legal Committee’s report until the Board’s next meeting. The motion was seconded by D. Vanderhoof. The Board voted in favor of the motion.

E. DeRosa said that, given the additional time now available, the minutes would be circulated to the entire Legal Committee for review.

V. Amendments to the Policy Forms (MHPAEA, Autism/Developmental Disability mandate, Michelle’s Law); Postponement of Operative Date

E. DeRosa informed the Board members that, subsequent to the Board's prior meeting, Governor Christie had issued Executive Order 1, establishing a moratorium on rulemaking for at least 90 days – until approximately April 20th, which means the Board will not be able to propose amendments to the policy forms until some time after the moratorium ends. She suggested, however, that the Board proceed to review the amendments to the policy forms necessary to bring the forms into compliance with various recent federal and state laws, so that the Board can take action quickly after the moratorium ends.

Further, she suggested the Board discuss whether the Board wants to continue with the previously agreed-upon postponement of the April 1, 2010 operative date (to October 1, 2010) for the rule/form amendments adopted by the Board in August 2009. She noted that the primary reason for postponing the operative date was because the Board had assumed it would be proposing its additional policy form amendments soon (and adopting them prior to October 1, 2010), and did not want to force carriers to have to reissue forms in close succession.¹ She said that, given the current circumstances, there may be little need to postpone the April 1 operative date. Board members generally agreed that postponing the operative date of the rules to October 1 appeared unnecessary, but that April 1 was not realistic either because some companies had shifted compliance priorities based on the postponement.

D. Vanderhoof made a motion to file a notice with the Office of Administrative Law postponing until June 1, 2010, the operative date of the policy forms adopted on August 18, 2009. C. Stearns seconded the motion, which carried by a unanimous vote of the Board.

E. DeRosa walked the Board members through the amendments to the policy forms, the highlights of which include:

- Removal of the separate hospital copayment requirement in Plan B, to comply with the DOBI minimum standards rules for managed care plans, restricting use of both a copayment and coinsurance for the same service/benefit.
- Addition of a new set of physical therapy (PT), occupational therapy (OT) and speech therapy (ST) benefits for treatment of autism and other developmental disabilities (A/DD), so that treatment of A/DD with these services does not diminish the PT, OT and ST benefits for treatment of other illnesses and injuries, consistent with the terms of the law establishing the A/DD mandate. There was discussion about whether to increase the PT/OT benefits, which currently combine the total benefit for the two types of services. The Board elected to aggregate the benefits for treatment of any conditions, including A/DD.
- Removal of distinctions for “biologically-based mental illness” in order to comply with the federal Mental Health Parity and Addiction Equity Act (MHPAEA), because the federal law requires parity for treatment of mental illnesses without regard to the etiology.
- Removal of distinction between inpatient and outpatient benefits for mental illness and substance abuse.

¹ The October 1 date had been chosen because the Board believed it reasonable to assume any policy form amendments the Board proposed could be adopted prior to October 1; plus, DOBI's minimum standards amendments would be effective in September 2010, requiring a change to SEH Plan B forms.

- Inclusion of provisions addressing the federal law referred to as Michelle's Law, allowing college students to continue on a parent's policy following withdrawal from full-time student status for health conditions, subject to certain standards.
- Inclusion of "Board Certified Behavior Analysts" (BCBAs) and "Board Certified Assistant Behavior Analysts (BCaBAs) within the definition of practitioner as providers of applied behavior analysis for treatment of autism. *T. Taliaferro stated that he has concerns about carrier liability in authorizing payment to unlicensed practitioners.*
- Inclusion of new benefit for coverage of New Jersey Early Intervention Service family cost share (copays) for PT, OT and ST to the extent of diagnosis for A/DD.
- Addition of more facilities where substance abuse and mental illnesses may be treated.
- Inclusion of "war exclusion" language (this is not a new issue, but something that the SEH Board has inadvertently failed to deal with over the years)
- Correction of discontinuance and replacement language to match DOBI regulatory language (not a new issue, but something that simply hasn't previously been addressed).
- Revision to the educational services exclusion provision to avoid exclusion of applied behavior analysis for treatment of autism. (It was noted that the insurance benefit should only be augmenting, not replacing, services that may otherwise be paid for through the school system.)

It was noted that some reference to biologically-based mental illness was retained in the policy forms. E. DeRosa explained that the particular language was retained given the possibility that the Legislature may seek to remove autism and pervasive developmental disorder from the definition of biologically-based mental illness in order to address the interaction of the A/DD mandate with MHPAEA.

The question arose whether MHPAEA only requires parity for in-network benefits, when a policy has in- and out-of-network benefits available. E. DeRosa stated it was her understanding that parity was required for both in- and out-of-network benefits.

E. DeRosa stated that she was asking for comments on the draft amendments by March 1, so that she could be able to make changes in time for the scheduled March 17, 2010 Board meeting. She noted that she was looking in particular for comments from medical directors regarding the revised definition of "illness" in which she has included mental illness.

Following discussion, E. DeRosa clarified that the SEH Board's Plan B is the only plan that violates the DOBI-amended minimum standards for health benefits plans, but she stated there are some filed optional benefit riders that will also violate the minimum standards if the carriers fail to change the riders, primarily because the riders stack the cost sharing requirements.

D. Farkus noted he would like to see the employer certification form revised as soon as possible in the existing regulatory environment.

VII. Public Comments

A commenter – referencing back to the tabled Legal Committee Report – stated that the use of a split commission design employed by a carrier when an employer’s group has business placed with multiple carriers will circumvent the guaranteed issue requirements.

VIII. Close of Meeting

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

[The meeting adjourned at 11:25 A.M.]