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
September 21, 2011

Members participating: Thomas Collins; Gary Cupo; Darrel Farkus (United/Oxford); Patrick Gillespie (CIGNA); Joyce Gralha (Horizon); Margaret Koller; Thomas Pownall (Aetna); Niranjan Rao, M.D.; Christine Stearns; James Stenger; Neil Vance (DOBI); Dutch Vanderhoof.

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

[From 10:00 A.M. until approximately 11:05 A.M., the Board members and alternate representatives participated in required ethics training by the State Ethics Commission. The training session was not part of the open public meeting; the Board did not discuss SEH matters or take any action during this time.]

I. Call to Order

E. DeRosa called the meeting to order at 11:15 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. Public Comments

There were no public comments.

III. Annual Meeting – election of Chair and Vice Chair; reconstitution of committees

E. DeRosa reminded Board members that it was the annual meeting, at which time all members have the opportunity to vote on the chair and vice chair positions and constitution of committees.

Chair

C. Stearns moved to nominate J. Stenger to serve as Chair, which motion was seconded by P. Gillespie. Following an indication of J. Stenger's willingness to serve, P. Gillespie moved to close the nominations, which was seconded by D. Vanderhoof, and carried. By affirmation, the Board elected J. Stenger as its Chair.

Vice Chair

J. Gralha moved to nominate T. Taliaferro to serve as Vice Chair, which motion was seconded by P. Gillespie. D. Farkus moved, and D. Vanderhoof seconded, to close the nominations. By affirmation, the Board elected T. Taliaferro as its Vice Chair.

Committees
The Board briefly discussed the constitution of the current committees, and determined that: (1) all members present were willing to continue participating on committees as currently assigned, and (2) no members present were seeking to join a committee with one or more unfilled seats.

T. Pownall moved, and P. Gillespie seconded, to continue membership on the standing committees as currently configured, and to permit the Chair to appoint additional interested members to standing committees as vacancies arise. The motion carried.

Accordingly, the standing committee composition is as follows:

Legal	*Finance & Audit*	*Marketing*	*Policy Forms*
Aetna	AmeriHealth	Horizon	AmeriHealth
AmeriHealth	DOBI	Oxford/United	CIGNA
DOBI	Horizon	D. Vanderhoof	Horizon
Horizon	Oxford/United	G. Cupo	Oxford/United
C. Stearns	T. Collins	M. Koller	M. Koller
D. Vanderhoof		T. Collins	

Minutes – *July 20, 2011*

N. Rao made a motion, seconded by C. Stearns, to approve the open session minutes for July 20, 2011. The motion carried, with J. Gralha, J. Stenger, N. Vance, P. Gillespie and D. Vanderhoof abstaining.

IV. Staff Report

Expense Report
E. DeRosa noted that there were no expenses, and thus, no Expense Report for September.

Optional Benefit Riders
E. DeRosa reported that AmeriHealth Insurance Company (AmeriHealth) had filed two increasing benefit riders. She explained that one amends the AmeriHealth plan offered with the Exclusive Provider Option (EPO) to permit members to access providers nationally through the National Access Program, so that members may use in-network benefits out-of-area. She noted that AmeriHealth had similar riders that applied to its standard PPO and HMO products, but needed a different rider for the EPO design. She further explained that the second rider amends the EPO-based plan to provide limited vision care benefits. She stated that the recommendation was to find both riders complete.

G. Cupo made a motion, seconded by J. Stenger, to find both described AmeriHealth riders complete. The motion carried.

T. Pownall recused himself from the discussion and action that might be taken on riders filed by Aetna Life Insurance Company because of the interest of his employer in the outcome of any action taken by the Board on the riders.

E. DeRosa explained that Aetna Life Insurance Company (ALIC) filed multiple riders amending all of its small employer plans issued on ALIC paper to add coverage for members who are residents of other states to the extent that the state in which they reside requires coverage of services or benefits in excess of what is included under the New Jersey small employer plan. She noted that there is no decrease in any coverage provided under the small employer plan, and that there was no increase in the premium being charged. Discussion ensued, noting the following:

- ALIC administratively has already been providing the benefits required by other states, and providing written evidence of the benefits (upon renewal) will not have an adverse impact upon ALIC's existing loss ratio or premiums, because the experience related to the riders has already been included with existing ALIC business, consistent with legal requirements that the experience flows to the state in which the policy is delivered.
- Carriers may file increasing riders for SEH plans, and the riders submitted by ALIC increase benefits with respect to members who do not reside in New Jersey.
- While the riders apply to a number of ALIC's standard plans, it only applies to those on ALIC paper, not Aetna Health Inc., which covers the majority of Aetna's business in the SEH market under HMO products.
- ALIC's stated intent is to be transparent.

G. Cupo made a motion, seconded by T. Collins, to find the filing complete. The motion carried.

V. Report of the Legal Committee

E. DeRosa stated that the Legal Committee continued to meet over the summer to consider amendments to the SEH policy forms to address federal restrictions on retroactive terminations. She noted that there were provisions in the SEH policy forms that clearly permitted rescissions for clerical error, as well as implied instances of permissible rescission, which now appear inconsistent with the federal restrictions. She explained that in the process of revising language, there had been much debate on how to rework the provisions to assure that the policy forms are consistent with the federal law, but do not prevent carriers from exercising retroactive terminations when permissible, such as in the case of actions or omissions that constitute fraud. E. DeRosa further explained that the revised language being recommended to the Board by the Legal Committee would: (1) permit retroactive termination of an employee (and his/her dependents) when the employee engages in fraud, but only to the date of the fraud, and with 30-days notice; (2) permit immediate, but not retroactive, cancellation of an entire group when an employer engages in a fraud; and (3) permit retroactive terminations for clerical errors by an employer, with the retroactive date going no further back than 2 months, and subject to the caveat that, if the employee has contributed to the premium, coverage remains in effect through the period that premiums were paid, and no premium refund is made for that time period. She

noted the additional caveat that, when the employer pays 100% of the premium, carriers may make refunds dependent upon whether claims were incurred during the two month period.

E. DeRosa stated that the Legal Committee also considered amendments to more closely align the policy form provisions regarding COBRA with the federal law, noting that the error arose some years ago with respect to the extra extension period based on disability, but had only recently come to her attention. She explained that there was no real change in the opportunity to select the extra 11 months of coverage, but that the time period for making the election was altered, so that continuees may make the selection within 60 days following the later of the date that: (1) the Social Security Administration gives notice of its determination of disability; (2) the continuee's coverage would otherwise have ended; or (3) the continuee received notice of COBRA continuation rights.

Discussion ensued regarding the refund of premiums, with essentially the following points being made:

- With respect to refund of premiums in the event of a request for a retroactive termination, carriers have had a *longstanding* choice to either (1) refund premiums in full and not pay claims incurred during the period in question, or (2) refuse the request to refund the premium because claims have been paid.
- Carriers that fully refund premium for a period during which it is subsequently determined a claim was incurred and paid may seek to recoup the payment from the health care provider (which, in turn, may seek payment from the patient); however, because the federal law substantially prohibits retroactive terminations in instances in which employees have contributed to the premium, this scenario should occur less frequently.
- The Legal Committee considered making all terminations prospective, but also recognized the financial needs of small employers who have erroneously paid premium for individuals not eligible for coverage.

Several Board members expressed concern that some carriers may decide whether to issue a refund based on the amount of claims incurred, which may disadvantage the health care providers and/or patients. While acknowledging the issue was not intended to be addressed by the original rulemaking activity, some Board members believed that the issue should be considered more fully.

E. DeRosa noted that the amendments recommended by the Legal Committee were intended to address changes in insurance instituted by the federal Patient Protection and Affordable Care Act effective as of 9/23/10 (in addition to the much earlier change to COBRA), and that carriers should be complying with these requirements administratively already. Accordingly, she suggested that the Board use its expedited rulemaking authority to propose the recommended amendments to bring the forms into compliance with the federal standards, explaining that subsequent amendments could be made, if necessary, to address additional recommendations from the Legal Committee. She also reminded Board members that the expedited rulemaking process would involve a public hearing.

D. Farkus made a motion, seconded by N. Rao, to request that the Legal Committee consider whether to eliminate carrier choice with respect to refund of premium, and establish a standard set of requirements for retroactive termination and refund of premium when employee contribution is not required. The motion carried.

D. Vanderhoof made a motion, seconded by P. Gillespie, to propose the amendments to the policy forms as recommended by the Legal Committee using the SEH Board's expedited rulemaking authority. The motion carried, with N. Rao abstaining.

VI. Finance & Audit Committee (FAC)

Financial Statements
R. Lenox noted that the Finance and Audit Committee (FAC) members received and reviewed the year end financial statements. R. Lenox briefly discussed the financial statements for the 4th quarter of FY 2011 (which ended June 30, 2011), including a Statement of Net Assets, a Statement of Changes in Net Assets, a Statement of Cash Flows, and a Comparison of Budget to Actual Expenditures. R. Lenox noted that FY2011 ended with assessment revenue of $14,215.69 in excess of expenditures.

Management's Discussion and Analysis (MDA)
R. Lenox also outlined the MDA she prepared for fiscal year ended June 30, 2011. She noted that the Board had assessed carriers approximately $260,000 during the period to fund the fiscal 2012 budget, which was recorded as deferred income. She stated expenses during fiscal 2011 were $245,784, and that the Board expected to refund about $14,215 following the close of the fiscal 2011 audit. She noted that salaries and fringe accounted for over 90% of total expenditures for fiscal 2011, with legal fees having come in at 2.8% (and approximately $18,200 less than expected). She stated that the auditor's kick-off meeting with the FAC was scheduled for October 3, 2011.

VII. Public Comments

There were no public comments.

VIII. Close of Meeting

D. Vanderhoof made a motion, seconded by P. Gillespie, to adjourn the meeting. The motion carried.

[The meeting adjourned at 1:00 P.M.]