**FINAL**
**MINUTES OF THE ANNUAL 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 19, 2012**

**Members participating in person:** Mary Ellen Peppard; Neil Sullivan.

**Members participating by phone:** Gary Cupo; Darrel Farkus (Oxford); Patrick Gillespie (CIGNA); Joyce Gralha (Horizon); Margaret Koller; Thomas Pownall (Aetna Health Inc.); Niranjan Rao, M.D.; Christine Stearns; Tony Taliaferro (AmeriHealth); Dutch Vanderhoof.

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

## 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. A quorum was present. She stated that voting would be by roll call because of the number of board members participating by phone.

## II. Public Comments

There were no public comments.

## III. Annual Meeting

E. DeRosa stated that this meeting is the Board's "Annual" meeting, at which the Board typically elects its Chair and Vice Chair and reconstitutes its committees.

*Chair*

**G. Cupo made a motion, seconded by P. Gillespie, nominating T. Taliaferro to serve as Chair of the Board until the next Annual meeting.** No other nominations were made. T. Taliaferro indicated he was willing to serve as Chair. **The motion carried by unanimous roll call vote.**

*Vice Chair*

**N. Sullivan made a motion, seconded by P. Gillespie, nominating M. Koller to serve as Vice Chair of the Board until the next Annual meeting.** No other nominations were made. M. Koller indicated she was willing to serve as Vice Chair. **The motion carried by unanimous roll call vote.**

*Committees*

E. DeRosa asked whether there were any changes in committee membership. M. Koller volunteered to participate on the Finance & Audit Committee (FAC), and M. Peppard volunteered to participate on the Marketing Committee. Carriers agreed to check with their companies about possible additional participation on the FAC; however, there were no other changes in committee membership suggested.

**P. Gillespie made a motion, seconded by D. Vanderhoof, to maintain membership on the committees as is, with the exception of adding M. Koller to the FAC and M. Peppard to the Marketing Committee. By roll call vote, the motion carried.**

Accordingly, the committees are composed as follows:

Policy Forms
CIGNA Healthcare
UnitedHealthcare
AmeriHealth
Horizon
Margaret Koller
DOBI

Finance & Audit
Horizon
Oxford Health Plans
AmeriHealth
Margaret Koller
DOBI

Legal
Aetna Health, Inc.
AmeriHealth
Horizon
Christine Stearns
Dutch Vanderhoof
DOBI

Marketing
Horizon
Oxford Health Plans
Margaret Koller
Dutch Vanderhoof
Gary Cupo
Mary Ellen Peppard

## IV. Staff Report

*Minutes – July 18, 2012 (Open Session and Executive Session)*

**P. Gillespie made a motion, seconded by G. Cupo, to approve the draft minutes from July 18, 2012, of the open session of the Board, without change. By roll call vote, the motion carried.**

**D. Vanderhoof made a motion, seconded by P. Gillespie, to approve the draft minutes from July 18, 2012, of the executive session of the Board, without change. By roll call vote, the motion carried.**

*Expense Report and Transfer of Funds*

R. Lenox presented the July expense report, with expenses totaling $93.00 for the costs of public notices for the rule proposal approved by the Board in July. She also requested that the Board approve a transfer of $60,000 from the Department funds to the Board's Money Market fund in

order to earn interest. She explained that $60,000 is the estimate of the amount of Board funds currently held in in the Department that will not be needed for salaries and fringe.

**D. Vanderhoof made a motion, seconded by P. Gillespie, to approve the September expense report, and the transfer of funds from the Department to the Board's Wells Fargo Money Market. By roll call vote, the motion carried.**

*Rule Adoption – Policy Form Amendments*
E. DeRosa stated that the comment period for the proposed amendments to the policy forms expired on September 4, without any comments being received. She also stated that she held a hearing for the proposal on August 30, 2012, and received no comments through that venue either. She recommended adopting the proposed amendments without change. She noted that the effective date of the amendments is the date the Board adopts them, but suggested the Board establish a later operative date, so that carriers will have an opportunity to make the form changes required. E. DeRosa recommended January 1, 2013 as the operative date, indicating that it is the date the Board previously discussed, and it would be consistent with the operative date adopted by the Individual Health Coverage Program Board for substantially similar amendments.

The Board briefly discussed the operative date. After confirming that carriers could use the Compliance and Variability Rider to make all of the amendments to the policies, and agreeing that a bulletin would be issued explaining the adoption, the Board agreed to a January 1, 2013 operative date.

**D. Vanderhoof made a motion, seconded by C. Stearns, to adopt the previously proposed amendments to the policy forms without change, specifying an operative date of January 1, 2013. By roll call vote, the motion carried.**

*Summary of Benefits and Coverage (SBC)*
E. DeRosa briefly explained that the U.S. Department of Health and Human Services (HHS) had adopted a template for SBCs that carriers are required to complete for each policy and distribute to employers for further distribution to employees, noting that carriers would be required to begin using the SBCs as of September 23, 2012. She further explained that, upon request of some of the carriers, she prepared language potentially to be included in the policy forms providing employers notice of their obligation to distribute the SBCs to employees, and requiring employers to certify and demonstrate to carriers, upon request, that distributions of the SBCs occurred. She stated that she would like to send out the notice to carriers by bulletin permitting them to use the language via the Compliance and Variability Rider, and to obtain feedback on whether carriers want the wording in the policies, in which event, a rule proposal would be necessary. The Board discussed whether there were other alternatives to help educate employers about the obligation, and it was noted that carriers should be providing other educational information to employers already. It was discussed and explained that the language in no way increases any obligation on the employer, because the employer's obligation exists under federal law already, and that the suggested language was really a way for carriers to prove compliance to HHS, if necessary. There was general agreement that the Board needs to consider how it will communicate multiple aspects of the federal Patient Protection and Affordable Care Act to

various constituencies, including employers, and it was determined that the Marketing Committee should meet to further discuss and come up with some recommendations.

*[T. Pownall left the meeting at about 11:00 A.M.]*

**D. Vanderhoof made a motion, seconded by M. Koller, to move into Executive Session for the purpose of obtaining legal advice regarding rulemaking standards, after which further action by the Board was possible. By roll call vote, the motion carried.**

*[The Board was in Executive Session from 11:05 until 11:10 A.M.]*

**C. Stearns made a motion, seconded by P. Gillespie, to issue the bulletin allowing carriers to use suggested language in the Compliance and Variability Rider as a means of satisfying federal requirements for assuring distribution of SBCs, and authorizing staff to draft policy form amendments as a proposed rule change to be considered by the Board at its November meeting. By roll call vote, the motion carried.**

## V. Report of the Ad Hoc Committee (Gender Affirmation Surgery)

E. DeRosa provided a brief update on the issue, reminding members that the Board had received a request from Pro Bono Partners to remove the specific exclusion of coverage of surgery for sex reassignment in the standard plans. She noted that Pro Bono Partners periodically sends additional information, including a recent statement from the Centers for Medicaid and Medicare (CMS) explaining that the agency considers sex discrimination to include discrimination on the basis of transgender status, which the U.S. Department of Health and Human Services' Office of Civil Rights will investigate. E. DeRosa explained that the Committee considered the CMS statement and determined that it does not compel the Board to revise the policy forms, because CMS is not stating that medical services for gender reassignment are required to be covered, but rather, that coverage denials can not be based solely on an individual's transgender status.

E. DeRosa stated that the Committee discussed the matter in terms of public policy in light of ramifications of the federal Affordable Care Act. She said the Committee thought that removal of the exclusion could be viewed as a new mandate which, in accordance with CMS guidance, the State would have to finance starting in 2014 (when coverage is purchased through a health insurance exchange). The Committee felt it did not have enough information yet to make any recommendations, and wanted to continue fact-gathering regarding costs and utilization.

*[Dr. Rao and M. Koller left the meeting at about 11:15 A.M.]*

## VI. Report of the Ad Hoc Committee (Out-of-Network Reimbursement Methodology)

E. DeRosa explained that the Committee met twice since the last Board meeting, developed some questions to elicit certain data the Committee thought it needed, but was unable to make recommendations during the September meeting because not all carriers have yet supplied the information requested. She stated that the Committee discussed procedural issues, and suggested

the Board consider holding multiple stakeholder meetings which would inform the development of a rule proposal that explains and clarifies the reasons the Board reaches specific conclusions.

## VII. Report of the Finance and Audit Committee (FAC)

R. Lenox reported that the FAC had met and reviewed the financial statements for the period ended June 30, 2012 and Management's Discussion and Analysis (MDA) for the periods ended June 30, 2011 and 2012, noting that the FAC recommended acceptance of the financial statements as presented. She briefly discussed the MDA, noting that it addresses the final reconciliation for 2011 administrative expenses. She then discussed the financial statements with the Board, including: the Statement of Net Assets; the Statement of Changes in Net Assets; the Statement of Cash Flows; the Comparison of Budget to Actual Expenditures. She noted that the Board was under budget by a little more than $12,000 for FY12, and that the funds will be refunded to carriers after completion of the administrative audit. She stated that the auditors will be coming to the Board's offices starting October 1.

Upon questioning, R. Lenox confirmed that the IHC and SEH Boards split the cost of staff salaries and fringe evenly, but because there is a time lag in the charges, and fringe in only billed by the DOBI once per year, it often appears uneven, but there is an eventual true-up, and is taken into consideration in the financial statements.

## VIII. Public Comments

There was no public comment.

## IX. Close of Meeting

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

*[The meeting adjourned at 11:30 A.M.]*