

**FINAL**  
**MINUTES OF THE OPEN SESSION 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**  
**December 18, 2013**

**Members present:** Herbert Ames; Charles Cerniglia (Oxford); Gary Cupo; Margaret Koller; Nicholas Peterson (Horizon); Thomas Pownall (Aetna Health Inc.); Christine Stearns; Neil Sullivan (DOBI); Tony Taliaferro (AmeriHealth); Dutch Vanderhoof.

**Others participating:** Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; Eleanor Heck, Deputy Attorney General.

**I. Call to Order**

T. Taliaferro called the meeting to order at 10:15 A.M. E. DeRosa announced that notice of the meeting was provided to three newspapers and the State House Press Corps, 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 Comment**

There were no public comments.

**III. Minutes – November 20, 2013 and November 27, 2013**

The Board separately considered two sets of minutes.

**D. Vanderhoof made a motion, seconded by C. Stearns, to approve the minutes of November 20, 2013 with amendments. The motion carried.**

**D. Vanderhoof made a motion, seconded by M. Koller, to approve the minutes of November 27, 2013. The motion carried, with C. Stearns and H. Ames abstaining.**

**IV. Staff Report**

*Expense Report*

E. DeRosa presented the expense report for December, with expenses totaling \$4,372.53. She explained that expenses are primarily attributable to the costs of the program audit by WithumSmith+Brown, and Legal fees from the Office of the Attorney General, along with fees for publication of notices in the newspapers for meetings and the rule proposal. E. DeRosa also stated that, to pay the expenses, the Board would need to transfer \$4,400 from the Board’s Money Market account to its checking account.

**D. Vanderhoof made a motion, seconded by G. Cupo, to approve the payment of the expenses on the December expense report, and to transfer \$4,400 from the SEH Board's Wells Fargo Money Market Fund to its Wells Fargo checking account in order to pay the expenses. The motion carried.**

*Optional Benefit Riders*

E. DeRosa stated that the Board received two optional benefit riders, one from Aetna and one from Horizon.

*T. Pownall recused himself from the discussion and any action that might be taken by the SEH Board with respect to the rider filing submitted by Aetna Life because of the interest of his employer in the outcome of the matter.*

E. DeRosa explained that Aetna Life submitted an amendment to an earlier-submitted rider in order to make some of the cost-sharing variable, specifically with respect to E-visits. She stated the rider provides benefit increases relative to the standard plan, and recommended the Board find the filing complete.

**G. Cupo made a motion, seconded by M. Koller, to find the filing complete. The motion carried.**

*N. Peterson recused himself from the discussion and any action that might be taken by the SEH Board with respect to the rider filing submitted by Horizon because of the interest of his employer in the outcome of the matter.*

E. DeRosa explained that Horizon submitted a rider to add Blue Card benefits, which provides members access to the networks and services of Blues plans in other states at an in-network level. She stated this is a benefit increase relative to the standard plan, and recommended the Board find the filing complete.

**D. Vanderhoof made a motion, seconded by G. Cupo, to find the submission complete. The motion carried.**

*Financial Statements for FY14Q1*

E. DeRosa stated that the financial statements were sent to the Finance and Audit Committee, which had no questions or comments about the information. She noted that the Board has budgeted \$256,550 for FY14, and has spent \$59,293 thus far, so appears to be in good shape. She suggested that if anyone had questions about the financial statements, they hold them until Rosaria Lenox is available, and indicated that no action by the Board is required for these documents.

**V. Notice of Adoption: Rule Proposal – Policy Forms and Subchapters 1, 3, 4, 6, 7 and 17**

E. DeRosa explained that a hearing was held on December 10, 2013 to receive verbal comments on the rule proposal, but received none. She noted there was one attendee at the hearing, but that

he indicated he had no comments. She stated that the hearing officer's report is discussed in the summary of the adoption notice.

E. DeRosa proceeded to discuss the comments and responses to the rule proposal, which included the following:

- Whether an immediate family member can be counted as an eligible employee in determining whether an employer is a small employer under Part A of the small employer definition, to which the answer is yes, if the family member is actually an employee (Part A being substantially similar to New Jersey's original definition of small employer).
- Whether an employer might qualify for small employer coverage by virtue of hiring part-timers (because Part B of the small employer definition dispenses with the 25-hour standard), to which the answer is yes, if the number of part-timers will result in at least 1 employee.
- Consternation that the amended definition of small employer precludes the purchase of small employer coverage by husband-wife employer groups starting in 2014, to which the response was that federal law requires the change, and that husband-wives can purchase in the individual market.
- Whether coverage under plans issued by two different carriers would count towards participation, to which the response was that the question was beyond the scope of the rule proposal.
- Whether the Board would provide guidance regarding establishment of a measurement period, to which the response was that the question was beyond the scope of the rule proposal.

E. DeRosa reminded Board members that, with respect to the participation question, carriers continue to work under their most recently submitted underwriting rules in accordance with Bulletin 10-SEH-04, and suggested that carriers review their guidelines and provide the Board with updated guidelines, if necessary.

The Board suggested seeking clarification from CMS as to: 1) what the definition of an immediate family member is; and, 2) whether a husband and wife who formed a C-corporation and are also employees of it would qualify to be covered under a small employer plan even if there were no other employees.

The Board discussion also noted that the change regarding treatment of husband-wife groups technically results from the federal HIPAA statutes and rules. It was explained that CMS had not actively sought New Jersey's compliance with the HIPAA definition because New Jersey's definition was more liberal and not inconsistent with the purpose of HIPAA; however, the discrepancy between the federal and state definitions is more problematic with the implementation of the federal ACA, because of rating and single risk pool requirements, and the federal guaranteed issue standards for the individual market. It was noted that any small employer plan offered to husband-wife groups would have to be offered to any individual pursuant to federal law.

E. DeRosa noted a couple of agency-initiated changes being made upon adoption for purposes of clarification (regarding S-corporation ownership) or enhancing consistency between the rules and the policy forms (regarding nonrenewal notifications).

**T. Pownall made a motion, seconded by M. Koller, to approve the notice of adoption, with the changes as noted and discussed in the draft. The motion carried.**

Discussion then turned to the operative date of the rules. It was agreed that the operative date for new plans is January 1, 2014. However, for transitional plans – those plans that a carrier has agreed to permit to renew in 2014 (limited to those plans with anniversary dates up to and including October 1, 2014) in accordance with guidance from the federal government – the operative date will be upon renewal.

E. DeRosa agreed to send out the revised forms electronically to carriers as soon as possible to help expedite the process for issuing new plans.

#### **VI. Public Comment**

A member of the audience asked for clarification whether an employer that has multiple part-time employees may add together the hours of the part-timers to produce one or more full-time equivalent employees (FTEs), and in accordance with Part B of the small employer definition, if there is at least one FTE, the employer may qualify as a small employer. E. DeRosa responded that this is accurate.

#### **VII. Close of Meeting**

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

*[The meeting adjourned at 11:10 A.M.]*