

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
May 18, 2016

Members participating: Herbert Ames; Mary Beaumont (*joined at 11:20*); Gary Cupo; Patrick Gillespie (Cigna); Margaret Koller; Lisa Levine (United/Oxford); Brendan Peppard (DOBI); Nicholas Peterson (Horizon); Thomas Pownall (Aetna Inc.); Tony Taliaferro (AmeriHealth); Dutch Vanderhoof.

Others participating: Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; Rosaria Lenox, Program Accountant; Eleanor Heck and Ryan Schaffer, Deputy Attorneys General.

I. Call to Order

E. DeRosa called the meeting to order at 10:05 A.M. She announced that notice of the meeting was provided to three newspapers of general circulation and the State House Press Corps, and posted at the Department of Banking and Insurance (“DOBI”), on the DOBI website, and at the Office of the Secretary of State in accordance with the Open Public Meetings Act. Following a roll call, she determined there was a quorum present, and stated that all votes would be by roll call because some of the Board members were participating by phone.

II. Public Comments

There were no public comments.

III. Minutes – April 20, 2016

M. Koller made a motion, seconded by T. Pownall, to approve the minutes of April 20, 2016. By roll call, the motion carried.

[During the roll call, it appeared that H. Ames may have been disconnected from the call. It did not appear that he was able to reconnect.]

IV. Staff Report

Readoption of N.J.A.C. 11:21, with proposed amendments and proposed repeals

E. DeRosa stated that she distributed a draft of proposed amendments to Board members on May 5, received some comments, and then distributed revised text on May 17. The Board discussed the May 17th draft proposal.

The definitions of “allowed charge” and “eligible employee” are deleted from N.J.A.C. 11:21-1.2, and the terms are deleted throughout the rules. An amended definition of the term “allowed charge” is included in the policy forms.

The definition of “dependent” is amended to clarify that spouse includes civil union partners solely for purposes of dependent eligibility.

The definition of “employee” is amended to follow the federal definition which includes employed individuals working an average of 30 hours/week.

The definition of “employer open enrollment period” is amended to explain the significance of the period.

The definition of “small employer” is amended to use the federal definition and to include an explanation regarding how seasonal employees are to be considered. It was noted that these amendments would make the determination of small employer the same both inside and outside of the SHOP. Several Board members suggested that uniformity in the definition and/or the employee-counting-process is not required, and questioned its value. Those favoring uniformity noted that it simplifies the administrative process for everyone involved in determining small employer status for multiple issues, is consistent with the concept of a single risk pool, and avoids the potential for adverse selection between SHOP and outside SHOP plans. Those not favoring a uniform definition expressed support for maintaining the existing two-part definition, while others preferred using a single definition that relies on what was described as a “simpler” counting process. The Board requested information regarding the simpler process. One member expressed concern about the coverage gaps that may occur when small employers grow and large employers shrink, but other Board members noted that this is not an issue specific to the suggested amendments.

The Board discussed the participation requirement at N.J.A.C. 11:21-7.5. The suggestion is to calculate participation counting employees working 30 hours/week since full-time is drafted to be defined as 30 hours per week.

The Board discussed whether Exhibit D of the Appendix to the rules, setting forth the Overage Dependent Rider (to cover children to age 31), should be amended or repealed. E. DeRosa noted that the rider needs to be amended if it is being used, but because no carriers had previously requested any updates to it, she questioned whether any carriers were using it. Carriers were asked to check whether the rider is currently being issued.

The Board discussed the draft amendment to the definition of “allowed charge” in the policy forms. Carriers would be directed to explain how the allowed charge would be determined, including any reimbursement gap-filling method(s), and how consumers could obtain information about reimbursement for specific services.

Although the Board hoped to be in a position to vote to propose the amendments during the May meeting the Board recognized that more time would be needed to properly consider how to count employees for purposes of defining small employer. The Board agreed to schedule an additional meeting before the already scheduled June 22nd meeting.

[D. Vanderhoof and P. Gillespie disconnected from the call.]

The Board asked how the delay in proposal might impact the proposal calendar. E. DeRosa explained that using the regular Administrative Procedure Act proposal process that relies on dates established by a publication calendar and 60-day comment period would make it very tight and perhaps impossible for the amendments to be adopted with any reasonable lead time prior to the November 15 open enrollment period. She suggested using the Board's statutory expedited rulemaking authority, but allowing for 60 days rather than the required minimum 20-day comment period, which she believed would provide interested parties adequate notice and opportunity to be heard while allowing the Board the opportunity to adopt changes possibly as early as September. It was agreed that carriers will need to reissue plans in 2017, so carriers will need as much lead time as possible.

V. Public Comments

Joan Fusco commented regarding the issue of how to define a small employer, and potential gaps that result. She stated that 4980H¹ applies only for purposes of determining group size, and need not be used in determining employee eligibility for coverage under a particular plan, so New Jersey could retain its 25-hour standard for determining which employees should be offered coverage. She noted that New York uses the 4980H count process, but Pennsylvania uses a basic head count for their small employer markets outside of the SHOP.

She stated that when independent contractors were removed from the definition of eligible employee, they were not eligible for COBRA (because they were not employees under Federal law), but they were eligible for individual coverage.

She stated that employees covered under collective bargaining arrangements are counted under federal law, and New Jersey's loss of that exclusion is not unique to New Jersey (thus, some New Jersey small employers are large employers under federal law).

VII. Close of Meeting

T. Pownall made a motion, seconded by B. Peppard, to adjourn the meeting. By roll call vote, the motion carried.

[The meeting adjourned at 12:15 P.M.]

¹ 26 U.S.C. 4980H, and rules promulgated at 26 C.F.R. 54.4980H set forth a definition and counting method for determining which employers are "large" and which are "small" for purposes of whether an employer is subject to the "Employer Responsibility Requirement." The process is also used to determine which employers are eligible to purchase from the SHOP and be considered for a tax credit.