

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
January 18, 2017

Members participating: Herbert Ames; Mary Beaumont; Gary Cupo; Margaret Koller; Lauren Lalicon; Lisa Levine (United/Oxford); Nicholas Peterson (Horizon); Thomas Pownall (Aetna Inc.); Brendan Peppard (DOBI); Tony Taliaferro (AmeriHealth); Dutch Vanderhoof.

Others participating: Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; Rosaria Lenox, Managing Financial Officer; Jeffrey Posta, Deputy Attorney General; Eleanor Heck, Deputy Attorney General.

I. Call to Order

E. DeRosa called the meeting to order at 10:10 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

Melinda Martinson, representing the Medical Society of New Jersey (MSNJ), spoke in support of the Motion for a Stay of Adoption of Readoption with Amendments of N.J.A.C. 11:21 submitted by the New Jersey Spine Society (Spine Society). M. Martinson also distributed copies of a letter she sent via email to the Executive Director the prior evening.

Keith Roberts, from Brach Eichler, representing The Spine Society of New Jersey, spoke in support of the Motion for a Stay of Adoption of the Readoption with Amendments of N.J.A.C. 11:21 (motion). K. Roberts provided a summary of some of the points included in the motion.

Duncan Carpenter, M.D., speaking as a small employer, stated that he has always believed in purchasing coverage with out-of-network benefits for himself and his staff, and expressed his concern with reduced reimbursement for out of network providers.

James Dwyer, M.D., speaking as a consumer, shared experiences his wife had with using out of network providers and his concern that plans with reduced out of network reimbursement might not allow a similar experience.

Paul Vessa, M.D., speaking as a small employer, spoke of his experience with increasing premiums while the coverage was reduced.

Melinda Martinson spoke again, stating that under Federal law reimbursements under Medicare will be flat for the foreseeable future.

III. Minutes – December 21, 2016

M. Koller made a motion, seconded by T. Pownall, to approve the minutes of the meeting of December 21, 2016. By roll call vote, the motion carried.

IV. Staff Report

Expense Report

R. Lenox presented the expense report for December, totaling \$83.96, attributable to costs for legal notices of the Board's 2017 meeting dates, as well as for staff training. R. Lenox noted no transfer would be necessary to pay the expenses.

B. Peppard made a motion, seconded by H. Ames, to approve payment of the January expense report. By roll call vote, the motion carried.

V. Report of the Legal Committee – Guaranteed Renewability

E. DeRosa reminded the Board that it previously considered guaranteed renewability in situations when employers grow above and shrink below the upper limits of the small employer definition, and that, upon the recommendation of the Legal Committee, the Board had taken the following positions: (1) when small employers grow into large employers, the employer has the right to renew its small employer health benefits plan, recognizing that the plan must be amended to comply with New Jersey's infertility treatment mandate, and that carriers may charge large group rates for the plan; and, (2) when an employer shrinks into small employer status, the large employer plan cannot be renewed, because the small employer may only purchase or renew a plan that complies with the small group market provisions of the ACA.

E. DeRosa explained that the Board then asked the Legal Committee to consider the situation in which an employer was classified as a small employer in 2016, but is classified as a large employer in 2017, despite no change in the employer's workforce, noting that this will happen for some employers due to the alignment of New Jersey's definition of small employer with the federal law, which counts all employees when determining employer size, thus including employees participating in a collectively bargained employee welfare plan. She stated that the Legal Committee recommended against permitting the re-defined employers to renew the small employer health benefits plan, explaining that, under federal law, these employers were not small employers when they bought the small employer plan. The Legal Committee reasoned that the renewal of a small employer plan purchased by an employer that did not qualify as a small employer when the plan was issued should be prohibited.

It was suggested that carriers may not be able to detect re-defined employers, because of administrative differences in how the employer deals with the union plan and the insurance contract, but it was noted by some Board members that carriers should be able to detect re-defined employers through the revised employer certification form.

The Board reviewed a draft document setting forth the recommendations of the Legal Committee to the three questions it had addressed regarding guaranteed issue and change in employer status. The Board agreed with the Committee's recommendation.

B. Peppard made a motion, seconded by N. Peterson, to accept the recommendation of the Legal Committee, and to disseminate guidance to carriers consistent with the draft documenting the recommendations of the Legal Committee regarding the issues of guaranteed renewal. By roll call vote, the motion carried.

VI. Executive Session

D. Vanderhoof made a motion, seconded by N. Peterson, to move the meeting into Executive Session for the purpose of the Board obtaining legal advice from its counsel, with the intent of returning to Open Session and taking further action at that time. By roll call vote, the motion carried.

The Board was in Executive Session from 11:04 A.M. until 11:45 A.M., after which the Board took a brief break, and returned to Open Session at 11:50 A.M. M. Beaumont left the meeting at 11:30 A.M., and did not return.

VII. Motion for Stay of Adoption of the Readoption with Amendments of 11:21

T. Taliaferro stated that during Executive Session the Board considered The Spine Society of New Jersey's Motion for a Stay of the Board's adoption of its readoption of its regulations at N.J.A.C. 11:21, with amendments, new rules and some repeals, specifically the repeal of N.J.A.C. 11:21-7.13, filed by Brach Eichler on behalf of the Spine Society. T. Taliaferro stated that the Board did not find the movant had demonstrated a likelihood of success on the merits of its case; the Board did not find the movant demonstrated that, on balance, any benefit in granting the stay outweighed the harm the requested relief would cause to other parties; and the Board did not find the movant demonstrated that irreparable harm would result to the movant if the stay were denied.

N. Peterson made a motion, seconded by B. Peppard, to issue an order to deny the Motion for a Stay. By roll call vote, the motion carried.

IX. Public Comments

There were no public comments.

X. Close of Meeting

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

[The meeting adjourned at 11:55 A.M.]