

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
November 15, 2017

Members participating: Herb Ames; Gary Cupo; Margaret Koller; Lauren Lalicon; Ulysses Lee (Oxford); Jennifer Macauley (Horizon); Brenda Peppard (DOBI); Thomas Pownall (Aetna); Tony Taliaferro (AmeriHealth); Susan Tully Abdo (Cigna).

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

I. Call to Order

E. DeRosa called the meeting to order at 10:00 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 in attendance.

III. Minutes of the October 18, 2017 Meeting (Open Session)

M. Koller made a motion, seconded by S. Abdo Tully, to approve the open session minutes of the October 18, 2017 meeting. By roll call vote, the motion carried, with H. Ames and L. Lalicon abstaining.

IV. Staff Report – *Annual Open Enrollment Period*

E. DeRosa stated that numerous calls have been received from both employers and brokers believing that any business can purchase a small employer health benefits plan during the annual open enrollment period (this year, from November 15 through December 15), even if the business does not otherwise qualify as a small employer, requiring a lengthy explanation regarding ERISA standards, which the federal ACA incorporates by reference, as well as the ACA’s limited “waiver” standard. She noted that, although New Jersey’s SEH Act would permit owners and their employed family members, as well as partners in a partnership, to count as employees for purposes of determining that a small employer plan exists, federal law does just the opposite, and federal law controls in this instance; accordingly, there must be at least one employee of the business who is not an owner/partner/family member in order for the business to be considered a small employer. She further noted that during the annual open enrollment

period, the ACA requires carriers to waive the contribution and participation requirements that otherwise apply with respect to the purchase of a small employer plan, but that no other requirements are waived; consequently, the definition of small employer is not waived during the annual open enrollment period.

One Board member explained that at least one carrier – not necessarily in New Jersey – had interpreted the law differently, then reconsidered, and suggested this may have been through source of some confusion. E. DeRosa cautioned Board members that if a carrier offers a small employer plan to a business that does not meet the definition of small employer and is eligible for individual coverage instead, there's a risk the carrier will be required to offer the same plan to all individuals.

E. DeRosa stated that further clarifications regarding eligibility for small employer coverage and the operation of the open enrollment period would be made to the SEH Buyer's Guide.

V. Minutes of October 18, 2017 (Executive Session)

T. Pownall made a motion, seconded by M. Koller, to approve the executive session minutes of the October 18, 2017 meeting. By roll call vote, the motion carried, with H. Ames, and L. Lalicon abstaining.

VI. Public Comment

Julie Meyers, Counsel for Oscar Insurance, asked whether husband/wife groups (family businesses) that try to enroll in group coverage should be offered individual coverage instead, or referred for the purchase of individual coverage. The Board agreed that it would be appropriate to let the group know that it is not eligible for group coverage but can buy coverage in the individual market. Ms. Meyers then asked about sole proprietors. E. DeRosa explained that the sole proprietor would be the business owner, and as such, not an employee, and so typically, would be covered in the individual market. She noted that it is possible for a sole proprietor to have employees and qualify as a small employer, but explained that at least one employee must be covered under the plan.

VII. 2018 Schedule

It was confirmed that the 2018 schedule had been set, with all of the dates being the third Wednesday of each month, with the exception of September, when the meeting date is the Thursday immediately following the third Wednesday.

VIII. Close of Meeting

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

[The meeting adjourned at 10:25 A.M.]