MINUTES OF THE 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
February 21, 2001

Members participating: Gary Cupo; John Kilgallin (CIGNA); Darrel Farkus (Oxford); Larry Glover; Mary McClure (NYLCare); Jane Majcher (DOBI); Vaughn Reale; Tim Stover (United); Tony Taliaferro (AmeriHealth); Mike Torrese (Horizon BCBSNJ); Dutch Vanderhoof; Bonnie Wiseman (DOHSS).

Others present: Ellen DeRosa, Deputy Executive Director; DAG Prince Kessie (DOL); Pearl Lechner, Program Accountant; Wardell Sanders, Executive Director.

I. Call to Order

W. Sanders called the meeting to order at 10:05 a.m. W. Sanders announced that notice of the meeting had been published in three newspapers and posted at the Department of Banking and Insurance ("DOBI") and the Office of the Secretary of State in accordance with the Open Public Meetings Act. A quorum was present.

II. Public Comments

L. Glover noted that a number of persons from the public were in attendance. As it was the Board's understanding that a number of people came to the SEH Board meeting in order to hear discussion concerning a broker commission issue, L. Glover said the agenda would be slightly re-ordered such that the commission issue would be discussed first.

J. Majcher advised the Board that the DOBI had not yet had an opportunity to develop a position on the broker commission issue. She asked that the Board please table its consideration of the issue until such time as the DOBI would have had ample opportunity to evaluate the issue.

J. Majcher offered a motion that the Board's consideration of the broker commission issue be tabled to allow time for consideration of the issue by DOBI. B. Wiseman seconded the motion.

> *Discussion*:
> D. Vanderhoof opposed the motion. He said that a delay in a decision on the commission structure would present a timing concern in light of the April 1 implementation date for the new structure. He urged that the Board not sidestep the issue and address the issue during the current Board meeting.

D. Farkus said he would like to have the benefit of the advice from the DOBI concerning whether the schedule is compliant with law.

L. Glover said the intention in delaying consideration of the issue would be to later make a decision based on the most complete information available.

The Board voted in favor of the motion with two in opposition, D. Vanderhoof and G. Cupo.

In response to a question from V. Reale, J. Majcher said she did not know when the DOBI would have reached a decision on the issue.

Several Board members stated that the Board's consideration of the commission issue would be deferred until the March 21, 2001 meeting.

In order to give the DOBI and the Board the most complete information, L. Glover asked if any member of the public wished to provide information on the commission issue. W. Sanders suggested that if anyone would like to submit written information it would be welcomed. W. Sanders asked that each person limit the presentation to about 3 minutes and noted that it would not be necessary for the same point to be repeated by more than one person.

W. Sanders said the Board was not in the business of regulating producer commissions but noted that N.J.A.C. 11:21-17.5(b) limits the ability of a carrier to use compensation as a means of medical underwriting. He noted that a Bulletin, 98-01, from the Health Care Financing Administration (HCFA) had considered the issue of risk selection and producer compensation.

M. Torrese distributed a formal position statement from Horizon that discussed the commission structure.

Public Comments
Wade Byrum of the New Jersey Association of Health Underwriters (NJAHU) said it was the opinion of the NJAHU that a commission structure based on per employee enrollment would be a violation of HIPAA. He explained that a commission based on a percentage of premiums, which is the existing commission structure, provides a close correlation to the risk of the group. The higher the risk, the higher the commission. For the proposed per employee commission, there would be an inverse correlation between the commission and the risk. In fact, for higher risks, there would be a reduced commission. W. Byrum referred to section 3 of a 1998 Bulletin from HCFA. W. Byrum said the NJAHU requested advice from HCFA on the proposed commission structure. He said he had given a copy of the response to W. Sanders. W. Byrum stated that the Acting Director of HCFA said that commission structure for high-risk groups should be the same as for other groups.

W. Sanders said he would copy the letter from HCFA and provide copies to the Board.

D. Vanderhoof suggested that it would be good if Horizon would agree to delay implementation of the new commission structure until the Board votes on the issue. In the alternative, he suggested Horizon should be required to make retroactive adjustments to commissions if it is later determined that the new structure is inconsistent with law.

Jacqueline Coy of the National Association of Financial and Insurance Advisors said that compared to a commission based on percentage of premium, the new commission structure would produce a greater commission for groups with single coverage and a reduced commission for groups with dependent coverage. She said that her master broker had sent her an illustration of how existing groups would be affected by the commissions.

Jim Stenger, Immediate past president of the NJAHU said that in addition to the problem as described by Mr. Byrum, he would note that the problem would worsen over time. He explained that medical inflation will cause premiums to rise at about 155 per year. The flat fee scheme proposed by Horizon will rise at the cost of living, roughly 3% per year. As the denominator rises at a rate that is five times the rate of the numerator, the fee deteriorates as a percentage of premium. Mr. Stenger said that with the percent of family plans already much lower than for singles, the opportunity for selection against family plans increases dramatically. He said horizon is trying to steer the higher risk people away from Horizon and to other carriers in the market.

D. Vanderhoof said that he opposed a carrier being able to take action to provide an incentive for writing a type of group where the type is related to risk.

V. Reale said that the spread between compensation and premium drastically increases using the new structure.

There were no public comments on issues other than the commission issue.

D. Vanderhoof asked if there was any assurance that the Board would be in a position to vote on the issue during the March meeting. L. Glover said he believed the DOBI was aware of the urgency of the issue. V. Reale suggested that everyone read the HCFA Bulletin and letter soon to understand if there was a compliance with federal law issue.

III. Minutes

Open Session January 17, 2001

J. Majcher offered a motion to approve the minutes of the Open Session of the January 17, 2001 Board meeting. D. Vanderhoof seconded the motion. The Board voted unanimously in favor of the motion.

IV. Staff Report

Expense Report (see attached)

J. Majcher offered a motion to approve the payment of the expenses specified on the February 21, 2001 expense report. D. Vanderhoof seconded the motion. The Board voted unanimously in favor of approving the motion.

Enrollment Data

D. Vanderhoof asked whether the 40,000-life discrepancy in SEH enrollment reporting had been resolved. W. Sanders said the Board received the information, but that the summary report was not yet prepared. Upon the return of J. Petto from disability leave, J. Petto would be working on compiling data for the summary reports.

Other

W. Sanders noted that a copy of a news clipping on legislation affecting the IURO process was included in the packets. The article explained that IURO appeal decisions are now binding on the carrier where previously they were advisory.

W. Sanders said a copy of an article on self-funded MEWAs was also included in the Board materials.

W. Sanders said he received a request from one Board member for information relative to participation credit for coverage under NJ FamilyCare. He said he was doing some research.

W. Sanders said he participated on a NJBIA panel on February 16, 2001.

W. Sanders reminded carriers that Exhibit CC was due March 1, 2001.

V. Reale asked for information on MEWAs. W. Sanders said that if the plan is fully insured, and covers a small employer, the plan must comply with SEH rules. If the MEWA is self-funded, he said the filing requirements are not as clear.

W. Sanders said that nominations for 5 Board seats that are up for election in 2001 were mailed to member carriers and nominations were received. He said ballots would be mailed to carriers and the election would be held during the March meeting.

V. Report of the Legal Committee

W. Sanders said the Legal Committee met and discussed a number of issues. He provided a summary of the issues and the recommendations.

Issue 01-01: A Wisconsin employer provided coverage to employees in WI and a few in NJ. The NJ employees were becoming a new employer, not affiliated with the original group. The Legal Committee considered a question regarding whether a person working at the NJ location who became disabled while working for the WI employer could become part of the new group in NJ or would the person remain the liability of the WI employer. The Legal Committee believed that since the qualifying event, disability, occurred while working for the WI employer that the liability for COBRA continuation remained with the WI employer.

Issue 01-02: Is the NJ SEH regulation which requires an independent contractor to work exclusively for the employer in conflict with State labor law that seems to suggest that a person working exclusively for one employer is not an independent contractor? The Legal Committee believed that the definition used by the SEH program did not need to be the same as the definition in labor law.

Issue 01-03: The Committee considered whether the Americans with Disabilities Act would require carriers in the SEH market to cover invitro fertilization. The Committee believed that since the fertility coverage exclusion applies to all persons, regardless of the reason the persons are infertile, that there was no violation. The Committee noted that the standard plans provide coverage for some treatments of infertility.

Issue 01-04: W. Sanders said this issue concerned commissions. As previously agreed, consideration of the issue would be deferred until the March meeting.

Issue 01-05: The Committee considered whether carriers could include text in the standard plans that addresses coverage certain carriers agreed to provide extra-contractually, under a Consensus Document. The Committee believed the language could be variable, and included by those carriers that believed it should be included in the forms, and not included by those carriers that either did not participate in the Consensus Document or believed coverage should be provided administratively.

Issue 01-06: The Committee discussed an issue that had been referred by the Policy Forms Committee concerning effective dates of coverage for a late enrollee. E. DeRosa explained that the existing forms state that coverage takes effect on the date the enrollment form is signed. However, she said some carriers were concerned that the enrollment form might not be forwarded to the home office promptly for administration to be able to add the person to the plan. The Policy Forms Committee wanted to know whether it would be acceptable to use the date of receipt by the carrier as the effective date, recognizing that the date the agent receives the form would be the date of receipt by the carrier. The Legal Committee agreed this would be an acceptable solution. Some members of the Board suggested that the form should specifically refer to receipt by the carrier or its authorized agent.

Issue 01-07: The Committee considered coverage for biologically-based mental illness, specifically autism and pervasive developmental disability (PDD) . E. DeRosa explained that she received complaints from consumers whose children were being denied certain therapy services for autism and PDD. Carriers were denying coverage since the therapy services were not restorative. The Legal Committee believed that the law regarding biologically-based mental illness may not require that coverage be added, but only that the condition be treated as any other illness. As a matter of public policy, however, therapy services should not be limited only to those which treat a physical disability and only to those which are restorative.

The Board asked that staff get some information on autism and PDD to determine the standard course of treatment.

VI. Close of Meeting

V. Reale offered a motion to adjourn the Board meeting. M. McClure seconded the motion. The Board voted unanimously in favor of the motion. [The meeting adjourned at 11:40 a.m.]

Attachments: Expense Report