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
April 18, 2001

Members participating: Raymond Bascio (Horizon BCBSNJ); Gary Cupo; Sandy Herman (Guardian); John Kilgallin (CIGNA); Larry Glover; Jane Majcher (DOBI); Bryan Markowitz (arrived at 10:12 a.m.); Patricia Mastrangelo (Oxford); Mary McClure (Aetna USHealthcare); Kevin Monaco; Robert Shalongo (United); Tony Taliaferro (AmeriHealth); Vaughn Reale; Dutch Vanderhoof; Bonnie Wiseman (DOHSS).

Others present: Ellen DeRosa, Deputy Executive Director; DAG Prince Kessie (DOL); Pearl Lechner, Program Accountant; Joanne Petto, Assistant Director; 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 asked if any member of the public wished to address the Board.

Comments

Len Hadochuck, a licensed broker, said he would like to make the Board aware of an ethical concern he has encountered when selling SEH coverage.

Mr. Hadochuck said that the manner in which carriers rate SEH plans permits employers to "massage" premiums. For example, there may be a nine-employee group where one employee is a 60-year-old female and another is a 20-year-old male. If the carrier sets rates based on the enrolled census, the employer can keep the 60-year-old female covered under an alternate plan until the rates are set. Later, the alternate plan can be terminated, creating the opportunity for the 60-year-old to come onto the plan. The carrier does not re-rate the plan when the 60-year-old enrolls and thus the group gets the benefit of a rate that is lower than it would have been had the 60-year-old been included in the initial enrolled census.

W. Sanders said that rates are an issue handled by the DOBI. E. DeRosa said she had recently raised this question with Neil Vance, actuary at the DOBI. E. DeRosa said she understood from N. Vance that carriers may rate based on enrolled population or on entire census. As long as the carrier has a rate guarantee the carrier does not have the right to re-rate when new people come onto the plan. Re-rating could only occur at the end of the guarantee period.

W. Sanders invited Mr. Hadochuck to put his concerns in writing.

III. Minutes

Open Session March 21, 2001

M. McClure offered a motion to approve the minutes of the Open Session of the March 21, 2001 Board meeting, as amended. S. Herman seconded the motion. The Board voted in favor of the motion with V. Reale abstaining.

IV. Policy Forms Discussion

E. DeRosa asked if any Board members had any questions regarding the forms.

J. Kilgallin said he would like the employer application to note that the effective date will be prospective unless the employer requests and the carrier agrees to an earlier effective date. R. Bascio asked that such text be variable since some carriers might not want to allow an earlier effective date, given the requirements of the prompt pay laws.

M. McClure asked if the forms cover applied behavior analysis for the treatment of pervasive developmental disorder (PDD). E. DeRosa said such services would be covered as treatment for the biologically based mental illness. M. McClure said that there is debate over what treatments are and are not effective for the treatment of PDD and autism. E. DeRosa said that in the course of her research on PDD and autism she found there was controversy over what might be the most effective treatment. E. DeRosa said that the mandate for coverage for biologically based mental illness does not require carriers to cover care that is not medically necessary and appropriate. However, medical necessity and appropriateness are determined on a member by member basis, according to the member's condition.

G. Cupo said that carriers are not using the term "coinsured charge limit" in marketing materials or spreadsheets. He said software that generates rate quotes tends to use the term "stop loss." E. DeRosa said that carriers certify that their marketing materials are consistent with what is required by law. She said the Board has the authority to require carriers to provide copies of the materials. If errors are found the carrier would have to correct them. V. Reale asked why the plans do not specify the out-of-pocket amount. S. Herman explained that with managed care plans, out of network utilization would factor into the out-of-pocket calculation. Thus, the amount is not a constant that can be calculated, but rather depends on the health care the consumer uses. V. Reale suggested that maybe an out-of-pocket could be shown for network and another for non-network.

E. DeRosa said that when the standard forms were first introduced there were many questions on coinsured charge limit and coinsurance cap. She said she spoke with compliance people and actuaries from most of the carriers explaining how the calculation of each should be done. Since that time, she said she had not received many inquiries about either the coinsured charge limit or the coinsurance cap. W. Sanders reminded the Board that any change to either the coinsured charge limit or the coinsurance cap would be a substantive structure change that would require a great deal of further discussion. No change was proposed at this time.

S. Herman asked why the drafts for PPO and POS plans show benefits for prescription drugs being paid at the non-network level. E. DeRosa explained that the Policy Forms Committee understood that with doctors who are network or non-network and pharmacies that are network or non-network, it was often difficult to determine whether to cover prescription drugs based on whether the doctor or the pharmacy were in the network. To avoid confusion, it was thought that it would be easier to administer the prescription drug benefit using one level of benefits, regardless of whether the doctor or pharmacy are in the network. S. Herman suggested it might be good to have an option whereby a group could buy a richer plan, with prescription drugs paid as network. E. DeRosa explained that the way to accomplish that type of option would be for a carrier to file an optional benefit rider.

Regarding transplant benefits and the draft language concerning the donors, many members of the Board believed that the recipient's plan would always cover the donor's costs regardless of whether the donor has coverage.

Regarding pharmacy coverage and the three-tier structure, S. Herman asked if there were "safe harbor" copay amounts that would be sure to fall within the 30% differential range. E. DeRosa explained that the rate filing must include the actuarial support for whatever copays are used, so even if safe harbor amounts could be set, the actuary would still have to provide a demonstration in the rate filing.

E. DeRosa noted that the draft changes to the application address PEOs. In response to a question from a Board member, W. Sanders explained that the Senate bill on PEOs, S. 1466 specifically deems the PEO the employer for the purposes of worker's compensation coverage; he noted that some people have noted that bill may have an impact on the health coverage markets.

The Board was supportive of the draft changes and asked that a proposal be prepared.

B. Markowitz offered a motion to prepare forms changes for proposal. J. Majcher seconded the motions. The Board voted unanimously in favor of the motion.

[Break 12:00 – 12:10]

V. Staff Report

W. Sanders said the SEH Board requested advice from counsel on the issue of producer compensation. In order to receive that advice, he asked for a motion to enter Executive Session. He said the Board would continue the Board meeting after Executive Session.

B. Markowitz offered a motion to begin Executive session. J. Majcher seconded the motion. The Board voted unanimously in favor of beginning Executive Session.

[Executive Session: 12:12 p.m. – 1:40 p.m.]

W. Sanders asked for volunteers to serve on an ad hoc committee to review and evaluate the Horizon commission structure to determine whether it is acting to limit access to coverage. J. Kilgallin, S. Herman, T. Taliaferro and the DOBI volunteered to participate on the committee.

W. Sanders noted that the advice the Board received from counsel regarding the Horizon producer compensation issue was privileged.

D. Vanderhoof asked what additional information the ad hoc committee might need in order to make a recommendation. He said someone is "ducking the issue entirely." He said carriers other than Horizon had told him that they would follow Horizon's lead if Horizon were permitted to use the new structure. D. Vanderhoof said that if all carriers move to the same commission structure that there will be rewards to brokers that write cases with young single people and penalties for those that write older groups with dependents.

S. Herman said he looked at the scorecard that Horizon prepared. He said that as an actuary he looks at case size. Two and three life groups are more expensive to administer and tend to have higher risks than 10+ groups. He said the scorecard did not demonstrate that Horizon was trying to discourage agents from selling to the smaller sized groups.

D. Vanderhoof offered a motion that Horizon not be permitted to implement the new commission structure until the ad hoc committee reaches a conclusion and makes a recommendation. B. Markowitz seconded the motion.

R. Bascio urged the Board not to take action that would preclude Horizon from implementing the commission structure. He said he had not heard anything to suggest that the Board has evidence that demonstrates the commission structure violates any law.

L. Glover asked whether the Board has a mechanism that could be used if the Board were to vote to order Horizon not to implement the commission structure. D. Vanderhoof noted that the Board has express authority to regulate the market.

The Board next discussed which Board members should be permitted to vote. Parties with a direct or indirect interest should be recused, meaning Horizon, G. Cupo, V. Reale

and D. Vanderhoof. D. Vanderhoof objected. He explained that the broker community has an interest in the issue, but he does not. He noted that every carrier sitting on the Board has an interest, yet it does not appear other carriers are being asked to recuse themselves from the vote.

W. Sanders noted that the SEH Board's Code of Ethics recognizes that Board members may have an interest in all matters before it. He noted that the Code draws a distinction between matters of general application and matters of specific application, and that a Board member could participate and vote on matters of general application, but that a Board member should not participate and vote on matters if the matter before them specifically affects the member. He also noted that if there were even the appearance of a conflict of interest, in the interest of caution, recusal would be appropriate.

D. Vanderhoof noted that when Senator Matheussen amended the SEH Act to add broker representatives he did so because the Board was previously carrier-driven.

G. Cupo asked what would happen if the Board did not vote to stop Horizon and then it is later found the commission structure decreases access to coverage. What would happen to commissions that were paid using the structure? W. Sanders said that the question could not be answered at that time.

Vote on motion:

Yes:	P. Mastrangelo, B. Markowitz
No:	S. Herman, K. Monaco, J. Kilgallin, T. Taliaferro, R. Shalongo, M. McClure, L. Glover
Abstain:	J. Majcher, B. Wiseman

J. Kilgallin offered a motion to request that Horizon delay implementation of the new commission structure until the ad hoc committee makes a recommendation. D. Vanderhoof seconded the motion.

R. Bascio said Horizon would conduct business as it thinks appropriate until such time as it is demonstrated that the new commission structure is in violation of the law.

Vote on motion:

Yes:	P. Mastrangelo, B. Markowitz, J. Kilgallin, K. Monaco
No:	S. Herman, T. Taliaferro, R. Shalongo, M. McClure, L. Glover
Abstain:	J. Majcher, B. Wiseman

S. Herman offered a motion to establish the ad hoc committee, with members as previously volunteered. J. Kilgallin seconded the motion. The Board voted in favor of the motion, with D. Vanderhoof opposed.

Expense Report (see attached)

B. Markowitz offered a motion to approve the payment of the expenses specified on the April 18, 2001 expense report. M. McClure seconded the motion. The Board voted unanimously in favor of approving the motion.

NJBIA Survey
B. Markowitz distributed copies of the *2000 Health Benefits Survey Report*.

Other
W. Sanders said there were some news clippings in the Board packets.

W. Sanders said Travel and Tourism was recently criticized for using the Department of Corrections as a teleresponse unit. He noted the SEH Board also uses the services of the Department of Corrections for the Board's toll free number.

The designation of Committee membership would be discussed during the May Board meeting.

VI. Close of Meeting

T. Taliaferro 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 2:30 p.m.]

Attachments: Expense Report