

**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  
October 17, 2001**

**Members participating:** Raymond Bascio (Horizon BCBSNJ); Gary Cupo; Darrel Farkus (Oxford); Sandy Herman (Guardian); John Kilgallin (CIGNA); Jane Majcher (DOBI); Mary McClure (Aetna USHealthcare); Vaughn Reale; Tim Stover (United) (arrived at 10:13 a.m.); Tony Taliaferro (AmeriHealth); Dutch Vanderhoof (arrived at 10:32 a.m.); 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 10:03 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”), the DOBI website, and the Office of the Secretary of State in accordance with the Open Public Meetings Act. Roll call was taken. A quorum was present.

W. Sanders reported that Kevin Monaco sent a resignation letter to the Board’s Chair, Larry Glover. The resignation from the Board was effective September 27, 2001.

W. Sanders reported that Acting Governor DiFrancesco submitted nominations to the Senate for several Board seats. The nominations reappoint G. Cupo, D. Vanderhoof and V. Reale. The nominations appoint John Sullivan and Robert Rahl. W. Sanders explained that the Senate considers each person appointed or reappointed and that the nominations would be subject to the advice and consent of the Senate.

V. Reale said he received notice of the nomination for reappointment and already sent a letter to the Governor’s office stating he was not interested in being reappointed. V. Reale further stated that he was resigning from his Board seat and the October 17, 2001 meeting would be his final meeting. He explained that his position with his employer had changed and that he has been dealing primarily with the large group market.

W. Sanders reminded the Board and the public that the November meeting date had been changed from November 21, 2001 to November 28, 2001 in order to avoid conflicts with Thanksgiving travel plans.

## **II. Public Comments**

W. Sanders asked if any member of the public wished to address the Board. No comments were offered.

## **III. Minutes**

*Open Session September 24, 2001*

**J. Majcher offered a motion to approve the minutes of the Open Session of the September 24, 2001 Board meeting. S. Herman seconded the motion. The Board voted in favor of the motion with T. Taliaferro and V. Reale abstaining.**

*Executive Session September 24, 2001*

**B. Wiseman offered a motion to approve the minutes of the Executive Session of the September 24, 2001 Board meeting. J. Majcher seconded the motion. The Board voted in favor of the motion with T. Taliaferro and V. Reale abstaining.**

## **IV. Staff Report**

*Expense Report (see attached)*

**J. Majcher offered a motion to approve the payment of the expenses specified on the October 17, 2001 expense report. M. McClure seconded the motion. The Board voted unanimously in favor of approving the motion.**

*Current Population Report*

W. Sanders said that a copy of the US Census Bureau publication "Health Insurance Coverage: 2000" was included in Board materials. He noted that while the percentage of uninsured in New Jersey rose from 11.9% in 1999 to 12.5% in 2000, the percentage was below the national average of 14%.

## **V. Report of the Legal Committee**

W. Sanders said the Legal Committee met to discuss whether a carrier may accept applications that have been signed electronically by the employer or by the employee. He said the Committee considered The Uniform Electronic Transactions Act which provides that a signature may not be denied legal effect or enforceability solely because it is in electronic form and that if a law requires a signature, an electronic signature satisfies the law. He said the Committee noted that the Act was not health coverage-specific but that it did not exclude health insurance. Although the standard application and enrollment form contain spaces for actual signatures, W. Sanders reported that the Committee believed that an electronic signature could be taken using the standard forms.

## **VI. Report of the Ad Hoc Committee**

G. Cupo, V. Reale, D. Vanderhoof and R. Bascio were recused from the discussion of the Horizon producer compensation issue.

W. Sanders referred the Board to his memorandum of October 15, 2001 for background on the issue. He noted that the SEH Act provides that all small group health benefits plans must be issued on a guaranteed issue basis to all eligible groups, and the SEH Act provides that all plans are guaranteed renewable, except under certain limited circumstances. He said that although the SEH Act is silent on the issue of broker commissions, in 1994, concerned about the potential of carriers using the producer compensation arrangement as a vehicle to circumvent the guarantee issue and renewal requirements in the SEH Act, the SEH Board promulgated a regulation, set forth at N.J.A.C. 11:21-17.5(b), which prohibited carriers from varying producer compensation on account of the health status, claims experience, the industry, occupation or geographic location of a small employer.

He reminded the Board that the federal Health Insurance Portability and Accountability Act of 1996 was enacted and required all states to provide for guaranteed issuance and renewability of all small group plans. He said HIPAA also contained non-discrimination provisions prohibiting carriers from considering "health status-related factors" in issuing coverage. W. Sanders said that in 1998, after the enactment of HIPAA, the SEH Board modified N.J.A.C. 11:21-17.5(b) to substitute the federal term "health status-related factors" for the previously undefined "health status and claims history." In 2000, in response to market conditions, the Board modified the regulation again to add that carriers could not vary commission based on the number of eligible employees or the number of enrollees. He said that the SEH Board explained in its rule proposal that it made this change because of a concern that size of group could be used as a proxy for health status.

W. Sanders continued by explaining that the federal Department of Health and Human Services issued Bulletin 98-01 in 1998 that addressed attempts to discourage the offering of small group plans to groups with high-risk individuals by withholding or reducing commissions from agents for sales to such groups. He said the bulletin noted that many states had taken action against such practices under state Unfair Trade Practices Acts or rating laws.

With this background, W. Sanders then proceeded to invite the Board to discuss what the Board could do. He noted that the Board is empowered only to the extent the Legislature gave it authority. In matters of broad interpretation of a statute, he said the Board should act by means of a regulation. In the case of commissions, the statute does not address compensation. He said the statute clearly addresses guaranteed issue as essential to the health reform. If the Board were to believe that the commission structure the Board has been reviewing was impeding access to coverage then it would be incumbent upon the Board to gather sufficient evidence to demonstrate that the commission structure was acting to impede access to coverage. With that information, the Board would need to proceed to amend its regulations to state that carriers may not use a certain type of commission structure that had been determined to impede access to coverage.

W. Sanders referred the Board to his October 12, 2001 memorandum to the Ad Hoc committee. He briefly discussed spreadsheets describing Horizon's experience, with one providing the number of renewed cases with higher and lower commissions during April and May 2001, and the other illustrating the number of plans issued by contract type. He said the Committee believed that the information available to them was not sufficient to enable them to draw any conclusions regarding whether the commission structure was acting to impede access to coverage. Further, he said the Committee noted that there was no industry benchmark against which to compare the data they collected. He said the Committee noted that they would need data collected over a period of time in order to attempt to draw a conclusion regarding whether the commission structure was acting to impede access to coverage. W. Sanders said the Committee believed it might be necessary to contract with a professional firm that would be in a position to evaluate data.

M. McClure asked whether it was a fact that single coverage is a better risk than family coverage. S. Herman said it was not necessarily the case that single lives are better risks than family lives.

J. Kilgallin asked whether the broker representatives could participate in a discussion that addresses the regulation in general and not specifically the Horizon issue. W. Sanders said the recusals addressed matters of specific application. For matters of general application, he said the brokers could participate.

D. Farkus asked if the Board could ask Horizon to provide ongoing data, perhaps updating it on a quarterly basis. T. Taliaferro suggested that the Board needed to consider the process. First the Board would gather data, then hire a statistician or someone who could evaluate the data, and then, if a problem is uncovered, proceed to propose a regulation. M. McClure agreed with the suggestion of collecting quarterly data.

**M. McClure offered a motion that the Board find that there is insufficient evidence for the Board to conclude at the present time that Horizon has violated the law by changing the commission structure. T. Taliaferro seconded the motion. The Board voted in favor of the motion. (recused from the vote: V. Reale, R. Bascio, G. Cupo, D Vanderhoof)**

S. Herman offered a motion that was amended by J. Kilgallin, T. Taliaferro and by S. Herman concerning the gathering of data. The motion, with amendments included, follows.

**S. Herman said that given the Board's concern that different compensation arrangements can cause disruption in the market and impede guaranteed access, he offered a motion to request that any carrier adopting a commission structure other than a level percentage or a decremental percentage of premium, or [adopting] an increasing percentage by case size structure, to provide the Board with quarterly data on compensation and lapse rates. D. Vanderhoof seconded the motion.**

J. Kilgallin noted that the motion seems to be trying to anticipate what the Board might want to request in the event of some unknown future events. He suggested that the Board should request from Horizon the information it knows it needs. If some other carrier adopts a commission structure at a later date that the Board would want to investigate, the Board could ask that carrier to provide data at that time. T. Taliaferro noted that the Board can always request information it may need. R. Bascio commented that the Board would still need comparative data. D. Farkus suggested the Board could request data from all carriers that adopt a change in the commission arrangement. R. Bascio again commented that the Board would still need comparative data. S. Herman said the Board could contract with a consultant to review the data if the data “looks strange” to the Board. D. Vanderhoof said that if a group leaves Horizon the group would likely show up as a new group with another carrier. S. Herman said that the intent of his motion was to let carriers know the Board would be reviewing their actions and confirm that the review of commission arrangements such as those described in the motion would be the Board’s standard procedure.

**M. McClure asked that the question be called. By roll call vote, the Board voted in favor of the motion, with 7 in favor and 5 opposed.**

V. Reale:	No
R. Bascio:	No
M. McClure:	Yes
B. Wiseman:	Yes
T. Taliaferro:	Yes
D. Farkus:	Yes
G. Cupo:	No
D. Vanderhoof:	Yes
J. Majcher:	Yes
T. Stover:	No
J. Kilgallin:	No
S. Herman:	Yes

D. Vanderhoof asked whether the Board had the power to vote to allow a recused member to participate. W. Sanders said no.

**R. Bascio offered a motion that the Board issue a Bulletin addressing its findings on the capitated commission arrangement.**

S. Herman asked if the concern was that there was a cloud over Horizon’s head. He suggested that Horizon could communicate the Board’s findings to its own agents. S. Herman said he would be uncomfortable with the Board issuing a pronouncement.

**R. Bascio clarified his motion by stating he was suggesting that there should be a Bulletin or a letter to advise carriers of the Board’s decision to request information from any carrier that begins to use a commission schedule as described in the**

**Board's earlier motion. M. McClure seconded the motion. The Board voted in favor of the motion with J. Kilgallin opposing.**

D. Vanderhoof suggested that the Bulletin or letter should be included on the website.

#### **V. Report of the Operations Committee**

P. Lechner discussed the draft budget for FY 2002, copy attached. She noted that she reduced the amount budgeted for some expense items based on actual expenses for those items. For example, the Deptcor budgeted expense for 2001 was \$8,000 and the actual expense was only \$3,365.26. As a result, for the 2002 budget she reduced the Deptcor budgeted expense to \$5,000.

**D. Vanderhoof offered a motion to accept the draft budget, as presented. S. Herman seconded the motion. The Board voted unanimously in favor of the motion.**

P. Lechner discussed her October 12, 2001 memorandum, copy attached, regarding the Reconciliation of accounts between IHC and SEH Boards and DOBI.

**V. Reale offered a motion to approve the recommended payments as outlined in the October 12, 2001 memorandum. J. Majcher seconded the motion. The Board voted unanimously in favor of the motion.**

W. Sanders reported that the SEH account already had sufficient funds to meet the expenses shown in the 2002 budget. He suggested that the Board not bill an assessment this year. Rather, after Deloitte & Touche has completed the Program audit, the Board could reconcile the assessment years based on audited expenses. The Board agreed with the recommendation.

#### **VI. Other**

D. Vanderhoof raised an issue concerning a small employer with 30 employees. The employees are 'employed' by a Professional Employer Organization called EPICS. The employer actually employs 5 management employees and has coverage for them under an SEH plan. He said the employer wants to make COBRA available to the 5 employees and their dependents. D Vanderhoof said that EPICS does not exercise control over the employees. He noted that COBRA is an employer law, not a carrier law. S. Herman suggested that the issue should be forwarded to the Department of Labor since that agency addresses COBRA issues. D. Vanderhoof said it was his hope that the DOBI would act on the PEO issue.

#### **IX. Close of Meeting**

**T. Taliaferro offered a motion to adjourn the Board meeting. D. Vanderhoof seconded the motion. The Board voted unanimously in favor of the motion.**

[The meeting adjourned at 12:00 noon.]

Attachments: Expense Report; Draft Budget; October 12, 2001 memorandum