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
September 18, 2002

Members participating: Gary Cupo; Darrel Farkus (Oxford) (arrived at 10:15 a.m.); Larry Glover, Chair; John Kilgallin (CIGNA); Sandy Herman (Guardian); Vicki Mangiaracina (DOBI); Mary McClure (Aetna Health); Bob Shalongo (United); Jim Stenger; Tony Taliaferro (AmeriHealth); Michael Torrese (Horizon BCBSNJ); Dutch Vanderhoof; Bonnie Wiseman (DOHSS).

Others present: Ellen DeRosa, Deputy Executive Director; DAG Prince Kessie (DOL); Wardell Sanders, Executive Director; Neil Vance, Managing Actuary (DOBI).

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"), 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.

II. Public Comments

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

III. Comments from Neil Vance

W. Sanders said that Board staff has received numerous calls from brokers and carriers regarding a practice that may be described as "bait and switch." Since the SEH Act places authority for the review of rates with the DOBI, W. Sanders said he asked Neil Vance, Managing Actuary for the DOBI to come to the Board meeting to address the issue.

N. Vance briefly described the issue. He explained that a small employer may have two plans, where all of the high risk (based on age and gender) employees are in one plan and all of the low risk employees are in the other plan. After the two plans are in place, the employer may drop the plan that was covering the high risk employees. The question then becomes what happens if there was a rate guarantee associated with the remaining plan? Must that guarantee be honored even though the rate was based on a population that has now dramatically changed? May the rate guarantee be overridden?

N. Vance said the DOBI has been looking for a solution to these questions that does not raise additional questions. N. Vance explained that there are a couple of basic things that it is important to understand.

1. No carrier is required to have a rate guarantee. While a guarantee may be desirable in terms of predictability and stability, carriers have the option to provide a rate guarantee or not provide a rate guarantee.
2. There are no explicit standards for a rate guarantee. Thus, if a carrier wants to provide for a rate guarantee the carrier can be very specific as to what the guarantee applies to. Further, the carrier may articulate the specific conditions under which the carrier would want to be able to change the rates and find the guarantee to not be applicable.

N. Vance noted that the existence of a rate guarantee appears in the rate filing. There is nothing in the SEH contract that specifies the duration or the nature of a rate guarantee. Thus, if a carrier wishes to have a rate guarantee that would not apply under certain circumstances, the rate guarantee and the exceptions must be spelled out in the rate filing.

W. Sanders commented that consumers should be informed of the nature of the rate guarantee, if any. D. Vanderhoof noted that at least one carrier has stated that it reserves the right to raise rates. D. Vanderhoof said he believed the carrier should also have an obligation to decrease rates.

N. Vance said there are three principles that apply to a rate change.

1. It is fair
2. It is objectively spelled out
3. It is uniformly applied

S. Herman commented that when there is a material change in the risk composition the carrier would need a way to modify the rates.

N. Vance said he had just completed his review of the 2001 loss ratio reports. He reported that total premium for 2001 was about $2.2 billion, up by about 10% from 2000. As a whole, he said the loss ratio was about 82%, with most of the major carriers having loss ratios of about 82%. N. Vance noted that less than $100 million of the total premium was attributable to non-standard plans. Of about $2.7 million in refunds that would be paid, about $2.5 million would be paid to employers with non-standard plans. N. Vance noted that the average loss ratio for non-standard plans was about 78%.

IV. Minutes

July 17, 2002

V. Mangiaracina offered a motion to approve the minutes of the Open Session of the July 17, 2002 Board meeting, as amended. G. Cupo seconded the motion. The Board voted in favor of the motion, with L. Glover abstaining.

V. Staff Report

Expense Report (see attached)

M. McClure offered a motion to approve the payment of the expenses specified on the September 18, 2002 expense report. T. Taliaferro seconded the motion. The Board voted unanimously in favor of approving the motion.

Legislative Update

W. Sanders reported that the Federal Trade Assistance Act includes some insurance and tax provisions. Persons who lose their jobs as a result of a trade bill are eligible for a tax credit of up to 65% of the cost of health coverage under COBRA, state continuation and some individual plans. He said the Act provides seed money for high risk pools and also grant money for states to provide reimbursement for losses in qualified high risk pools.

Regulatory Update

W. Sanders said the DOBI regulation on purchasing alliances was expected to be released soon.

Executive Order No. 26

W. Sanders said that the Governor issued Executive Order No. 26 addressing the Open Public Records Act. He explained that the Order may require some modifications to the rule proposal that was proposed by the DOBI, SEH Board, IHC Board, and Real Estate Commission.

Informational Materials

W. Sanders noted that there were a number of informational materials included in the Board packets.

2003 Meeting Schedule

W. Sanders asked Board members to review the draft 2003 meeting schedule and provide any comments to Francine Smith no later than September 30, 2002.

Outreach

W. Sanders said he spoke to a broker group in Florham Park. He said much of the discussion focused on a self-funded plan that is being specifically sold to employer groups of 5 – 45 employees. He noted that plan is being marketed as a plan for healthy risks and that the unhealthy risks should purchase SEH coverage. The marketing information provided to brokers has provided advice that states that there is participation credit given for coverage under the self-funded plan. W. Sanders said that advice was incorrect. He said he spoke with counsel for the carrier offering the plan and informed the counsel that no participation credit would be applied for coverage under a self-funded plan. D. Vanderhoof said he had information regarding the stop loss provisions. He explained that the employer funds maximum liability on a month by month basis, so it was questionable whether the minimum $20,000 annual limit was satisfied. He said the plan has no post termination liability provisions.

E. DeRosa commented that she has received numerous calls regarding this plan. She said that some brokers had advised her that during the presentations being given on the plan the presenter has stated that the plan administrators have spoken with Board staff and that Board staff had considered the program and determined it could be marketed or that it had been "approved" by the Board staff. E. DeRosa said neither she nor W. Sanders had made such a determination. She said she continues to gather information on the plan and how it is being marketed.

V. Report of the Legal Committee

W. Sanders reported that the Legal Committee met via teleconference to discuss modifications to the participation requirements section of the SEH regulations in light of P.L. 2001, c. 346. This law expanded participation credit to include coverage under another group health benefits plan and Medicare.

W. Sanders said the Committee noted that the law seemed to have used the defined term "health benefits plan," and added an adjective, "group," thus limiting health benefit plans only to those that are issued on a group basis. The term health benefits plan means only plans that are insured plans. W. Sanders said the Committee contrasted use of the term health benefits plan to the term the existing law used to address spousal coverage which is "spouse's health benefits coverage." He said the Committee believed spousal coverage could be either insured or self-funded, and that participation credit would be given in either case.

W. Sanders said that since 1994 the Board has interpreted participation credit for multiple plans offered by the same employer in different manners. Initially, the Board regulations allowed for one indemnity plan and one HMO plan. That regulation was amended to allow for one indemnity plan and any number of HMO plans. The regulation was again amended and then allowed for any number of indemnity plans and any number of HMO plans. He said he believed the Board was responding to marketplace dynamics. W. Sanders said the Legal Committee believed the language in the law allowed room for the Board to amend the participation credit regulations and thus address market dynamics.

D. Vanderhoof said he believed employers were selecting multiple plans in order to accommodate network needs of employees. G. Cupo said that there might be an interest in having a plan with rich prescription benefits if one or more employees needs rich coverage.

W. Sanders asked Board members to try to offer some quantification of the costs associated with issuing multiple plans.

The Board briefly discussed the premium collection issue it had considered during the July and prior meetings. The Board concluded that it is acceptable for a carrier to bill groups using a practice that charges the group for persons who enroll before the 15th of the month for the entire month and does not charge for persons who enroll after the 15th

of the month. The Board noted that there was an expectation that the employer was only charging the employee for period coverage was actually in force.

VII. Final Business and Close of Meeting

L. Glover announced that due to his business responsibilities he was resigning as Chair of the Board effective with the close of the September meeting and that he would resign his Board seat as of the October meeting. Board members and Board staff thanked L. Glover for his leadership as Chair and his many contributions the Board.

D. Vanderhoof 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 12:00 p.m.

Attachments: Expense Report