**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 15, 2008**

**Members participating:** Wilson Beebe; Tom Collins; Gary Cupo; Darrel Farkus (United); Ulysses Lee (Guardian); Margaret Koller; Bill Manning (Aetna); Gale Simon (DOBI); Christine Stearns; Jim Stenger; Tony Taliaferro (AmeriHealth); Joseph Tricarico (DHSS); Michael Torrese (Horizon); Dutch Vanderhoof.

**Others participating:** Ellen DeRosa, Executive Director; Rosaria Lenox, Program Accountant; DAG Vicki Mangiaracina (DLPS); Chanell McDevitt, Deputy Executive Director.

*Note: The board meeting followed a required training session provided by the New Jersey State Ethics Commission, which commenced at 10:00 A.M.*

## I. Call to Order

E. DeRosa called the meeting to order at 11:25 A.M. She announced that notice of the meeting had been published in two 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. A quorum was present.

## II. Public Comments

There was no public comment.

## III. Minutes – *February 20, 2008*

**C. Stearns offered a motion to approve the minutes of the Open Session of the February 20, 2008 Board meeting, with amendments. J. Tricarico seconded the motion. The Board voted in favor of the motion, with M. Torrese abstaining.**

## IV. Staff Report

*Expense Report – April 2008*
R. Lenox presented the expense report for April 2008; expenses totaled $12,435.

**D. Vanderhoof offered a motion to approve the payment of the expenses specified on the April 2008 expense report. W. Manning seconded the motion, and the Board voted unanimously in favor of the motion.**

*Optional Benefit Riders*
E. DeRosa reported two companies filed optional riders, which staff reviewed.

*T. Taliaferro recused himself from the discussion and vote regarding riders filed by AmeriHealth Insurance Company because of the interest his employer would have in the outcome.*

E. DeRosa reported AmeriHealth Insurance Company filed two riders, one of which could amend the company's POS Plans B and C, and the other of which could amend the company's PPO Plans B, C and D to allow access to a national network of providers. She stated staff recommended finding the filings complete. She noted, however, DOBI had already notified AmeriHealth that its selective contracting arrangement (SCA) would need to be amended to include AmeriHealth's use of the MultiPlan network.

**M. Torrese made a motion to approve both of AmeriHealth's optional riders, subject to DOBI's approval of AmeriHealth's amendment of its SCA. C. Stearns seconded the motion, and the Board unanimously approved the motion.**

*D. Farkus recused himself from the discussion and vote regarding a rider filed by Oxford Health Plans because of the interest his employer would have in the outcome.*

E. DeRosa reported Oxford Health Plans filed a rider that could amend its HMO and HMO-POS plans to add a 0% coinsurance option (where members pay 0% and Oxford pays 100%). She stated staff recommended finding the filing complete.

**D. Vanderhoof made a motion to approve Oxford's optional rider, which was seconded by C. Stearns. The Board voted unanimously to approve the motion.**

*Audit Reports for FYs 2000 through 2005*
R. Lenox reported that McEnerney Brady & Company (MBC) had issued its audit reports for each of the six fiscal years, without qualification of the auditor's opinion, meaning the auditor identified no exceptions. She explained the audit reports differed starting in FY2003 from the earlier reports because of Government Accounting Standards Board changes.

*Late fees*
*T. Taliaferro recused himself from the discussion and any Board action regarding the matter because of the direct interest of his employer in the outcome.*

E. DeRosa reported the Board needed to take formal action for staff to bill late fees to carriers whose payment for the 2008 assessment had been received late. There are a total of five companies that paid late, resulting in a total amount of $498.38 in late fees.

**M. Torrese made a motion to authorize staff to bill a late fee to companies that paid their potion of the 2008 administrative expense assessment untimely. D. Farkus seconded the motion, which the Board voted unanimously to approve.**

*Board Elections*

E. DeRosa reported that two of the Board seats are up for a vote, and that staff had mailed out notices on April 9, 2008 to solicit nominations, with the expectation for an actual vote at the June 18, 2008 Board meeting. She noted the following seats are up for a vote:

- Small business representative – the seat currently held by James Stenger
- An HMO representative – the seat currently held by CIGNA Healthcare

She stated nominations must be submitted by April 30, 2008.

## V. Marketing Committee Report

C. McDevitt reported the Marketing Committee had met to discuss an updated version of the SEH Buyer's Guide as well as multiple sets of frequently asked questions (FAQs), which had since been distributed to the SEH Board members, and had recommended the Board consider replacing the existing Buyer's Guide with the new one, along with the FAQs.

Discussion arose as to who the audience for the Buyer's Guide is – agents or employers. E. DeRosa stated that both employers and agents are a target audience, but that agents are the parties most likely to ask for the explanation of an issue to be put into writing, and most likely to use the Buyer's Guide in explaining issues to employers. Some Board members were concerned that the new draft, while perhaps providing much-needed technical information, would be more complex than what many employers want or need, and maybe two separate guides might be more appropriate. The Board requested the Marketing Committee consider development of a significantly scaled down version – for instance, a six-panel pamphlet – of the current draft Buyer's Guide with a focus on getting employers started in the search for information and directing employers on how to obtain more information.

## VI. Legal Committee Report

*Prosthetics & Orthotics rule proposal*

E. DeRosa reported the Legal Committee considered the rule proposal implementing the prosthetics and orthotics mandate set forth in recently enacted legislation (P.L. 2007, c. 345). The legislation is not clear on several issues, and the Legal Committee discussed a number of questions, including whether reimbursement must be based on the Medicare rate to the exclusion of all other options, and what the scope of the application of the Medicare rate might be, as well as whether it is necessary to amend N.J.A.C. 11:21-7.13 regarding use of the Ingenix fee schedule. She stated the Legal Committee recommended the rules be drafted to require reimbursement using Medicare rates regardless of whether another rate had previously been negotiated, but limit the requirement to charges for the actual supplies, not health care provider services. She noted the rationale was that, although interference with existing contracts could result in legal challenges, the apparent legislative intent appears to support such interference. E. DeRosa reported the Legal Committee agreed it was necessary to amend N.J.A.C. 11:21-7.13, to create an exception to the requirement to use the Ingenix fee schedule.

E. DeRosa explained she had drafted the rules for an expedited rulemaking procedure, but was not certain it was necessary. Upon further discussion, it was determined standard rulemaking procedures would be adequate for this proposal.

**D. Vanderhoof made a motion to authorize staff to propose the rules implementing the prosthetics and orthotics mandate consistent with P.L. 2007, c. 345. W. Beebe seconded the motion and the Board unanimously approved it.**

The question arose as to whether the Board would be readopting the SEH regulations soon, and if so, would there be an opportunity to revisit some of the policies. E. DeRosa explained that the Director of Regulatory Affairs for DOBI, Bob Melillo, suggested not engaging in substantive changes upon readoption if possible because of problems that might arise if there are significant comments. She explained the Board is permitted to propose amendments to the rules and standard plans at any time, so substantive changes, if any, could be addressed in a separate proposal.

*Civil Union Adoption*
E. DeRosa explained that, subsequent to the close of the comment period, Horizon had suggested some changes be made to the rules to address the federal rules regarding Medicare-As-Secondary-Payer (which will not apply in civil union situations as it does in marriage situations), and the Legal Committee considered whether to make the suggested changes upon adoption of the rules as Board-initiated changes. She stated that Legal Committee members noted the compliance with law provision in the forms would ensure proper administration of the coverage and recommended adopting the proposal without change at this time.

In response to a question as to whether carriers might have to amend their contracts to address the civil union law, E. DeRosa explained that carriers would make the change as part of the SEH compliance and variability rider.

**G. Cupo made a motion to adopt the civil union proposal without change, which was seconded by W. Manning. The Board voted unanimously to approve the motion.**

*Termination*
*M. Torrese recused himself from the discussion of, and any action that might be taken by, the Board regarding the following issue, because of the involvement of this employer in the matter.*

E. DeRosa explained the Legal Committee considered a complaint from a small employer (school) with three policies issued by one carrier. She stated the school wanted to terminate the "richest" policy, and have employees enroll under another of the existing policies, but that the carrier refused to permit it stating the most recent change to the policies had been less than 12 months previous. She stated the carrier also said that should the employer fail to pay required premiums on the richer policy, the carrier would consider all policies to have lapsed. E. DeRosa stated the Legal Committee members found no basis to limit the right of employers to terminate a plan at will, or prevent eligible employees from enrolling under an existing plan. She said the Legal Committee noted there is nothing that requires or permits termination of an SEH standard health benefits plan solely because an employer terminates another standard health benefits plan.

Following some discussion, Board members agreed they have not considered a termination of a plan to be the equivalent of a plan change, and that this information should be communicated to the carrier.

## IX. Public Comments

There were no public comments.

## X. Additional Business

There was no new business; however, Board members discussed ethics training, and how they might obtain further advice.

## XI. Close of Meeting

**D. Vanderhoof offered a motion to adjourn the Board meeting. T. Collins seconded the motion, and the Board voted unanimously in favor of the motion.**

*[The meeting adjourned at 12:45 P.M.]*