

FINAL
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
June 17, 2009

Members present: Tom Collins; Gary Cupo; Darrel Farkus (United/Oxford); Joyce Gralha (Horizon); Sandy Herman (Health Net); Alan Maesaka (Aetna); Gale Simon (DOBI); Christine Stearns; Jim Stenger; James Sweeny (CIGNA); Tony Taliaferro (AmeriHealth); Joseph Tricarico (DHSS); Dutch Vanderhoof.

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

I. Call to Order

E. DeRosa called the meeting to order at 10:05 A.M. E. DeRosa 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 were no public comments.

III. Minutes – April 29, 2009

D. Farkus made a motion, seconded by S. Herman, to approve the open session minutes of the April 29, 2009 meeting, as amended. The motion carried, with C. Stearns and J. Tricarico abstaining.

IV. Staff Report

Expense Report – April

R. Lenox presented the expenses payable, totaling \$5,566.28, which was the final bill from Withum, Smith + Brown for the fiscal year 2006 through 2008 administrative audits.

G. Simon made a motion, seconded by C. Stearns, to approve payment of the expense. The motion carried by a unanimous vote of the Board.

Joint RFP for auditing services

C. McDevitt reminded the Board that it had agreed to consider a jointly-issued request for proposals (RFP) with the IHC Board for auditing services starting with fiscal year 2009 and running through 2013 in this draft of the RFP. She reported that the IHC Board had reviewed

and approved the draft RFP which had been sent to the SEH Board prior to the Board meeting. C. McDevitt noted that the SEH Board's Finance & Audit Committee had also reviewed the draft RFP, and recommended the SEH Board approve it. She noted that through the various levels of review, some changes had been made, and that the changes were reflected in the version of the draft presented to the SEH Board. C. McDevitt stated staff's intent is to release the RFP by June 19th, if the Board approves it.

D. Vanderhoof made a motion to approve issuance of the RFP with the IHC Board requesting professional services for auditing of the SEH Program's administrative expenses and operations, as well as the IHC Program's administrative expenses and operations and 2007/2008 reported losses. D. Farkus seconded the motion, which carried by unanimous vote of the Board.

Financial report

R. Lenox reported on the SEH Program's financial statements for 3Q09, including the Statement of Net Assets, Statement of Changes in Net Assets, Statement of Cash Flows, and the Comparison of Budget to Actual Expenditures. She stated that expenditures to date have totaled \$191,735.54, which leaves \$90,564 in the budget, with forecasted expenses to be \$68,700.

Final Administrative Expense Assessment for Fiscal Years 2006, 2007 and 2008

R. Lenox stated that, with completion of the audits for fiscal years 2006 through 2008, reconciliations of assessments for those periods will be issued, with collections occurring before any refunds are disbursed, to assure there is adequate cash to make the refunds. She explained that, in net total, carriers would be invoiced an additional amount of \$3,512.22 for FY 2006, but the SEH Program would distribute refunds of \$29,143.44 and \$17,214.02 for FYs 2007 and 2008, respectively.

Upon questioning, R. Lenox explained that offsets of refunds against amounts assessed will not be permitted among affiliated companies, but that the program will offset a refund owed to a carrier against an amount due from the same carrier.

S. Herman made a motion to approve the issuance of invoices for the final administrative expense assessments for fiscal years 2006, 2007 and 2008. The motion was seconded by T. Collins, and approved by a unanimous vote of the Board.

V. Finance & Audit Committee (FAC)

E. DeRosa noted that the FAC had reviewed and made recommendations on the Joint RFP, and the final administrative assessments, both of which had already been dealt with through the staff report.

VI. Report of the Ad Hoc Committee

E. DeRosa reported that the ad hoc committee met on May 28th to discuss again the question of whether there is or should be a 12-month restriction on employers seeking to buy a plan of lower actuarial value than the one the employer currently owns (buy down). She reminded Board

members that the ad hoc committee had previously considered the question, and determined the Board's existing rules, along with explanatory bulletins issued by the SEH Board, expressed the Board's understanding that the statute restricts buying down. She stated the Board more recently asked the committee to consider whether the statutory language might be subject to an alternative interpretation. E. DeRosa explained that several members of the ad hoc committee believed the restrictions expressed in the Board's rules and bulletins are not practicably enforceable, and that several members of the committee believed the statute could be read as allowing a buy-down so long as the employer had not bought a plan of greater actuarial value within the prior twelve months. E. DeRosa reported the ad hoc committee recommended the SEH Board issue a bulletin indicating an intention to eventually propose to revise the rule to permit employers to buy plans of lesser actuarial value, so long as the employer had not bought a plan of greater actuarial value within the preceding twelve month period. She noted that not all members could stay for the entire meeting, and thus, the position of the committee that the language of the statute could be reinterpreted was not unanimous.

There was debate among Board members whether revising the rules would accomplish anything practical if the marketplace was already finding ways to bypass the technicalities of the rules. The Board also discussed recent drops in SEH market enrollment: in the past six months covered lives decreased by about 40,000, and there are 100,000 fewer lives in the SEH market now than there were three years ago. Some members stated that the unemployment rate had not increased at the rate the loss of lives would indicate, and it was noted the largest drop in coverage is with respect to dependents.

J. Stenger made a motion to move into executive session for the purpose of obtaining legal advice from counsel. D. Farkus seconded the motion, which carried by a unanimous vote of the Board.

[The Board was in executive session from 10:55 A.M. until 11:05 A.M.]

S. Herman made a motion to adopt the recommendation of the ad hoc committee to reinterpret the statute, and provide notice of the reinterpretation and the SEH Board's intention to amend rules consistent with the reinterpretation. D. Vanderhoof seconded the motion.

The Board engaged in further extended discussion. Board members raised the issue of acting without considering possible unintended consequences, and some expressed a desire to return to their companies for more advice before voting, suggesting that the motion be tabled. It was noted that even if the Board approves the change in interpretation, the amendment will not happen quickly. It was suggested that by the August Board meeting, carriers will have begun to see enrollments resulting from the federal American Recovery and Reinvestment Act (ARRA)¹ and may be able to provide a more in-depth picture of insurance in the small employer market in the current economic climate.

S. Herman withdrew the motion.

¹ Public Law 111-5.

VII. Other Regulatory Issues

Readoption of the SEH Rules

E. DeRosa reported that the Governor's office still had not given permission to adopt the proposed readoption of the rules, with amendments. She noted that the rules are scheduled to expire on August 18th. She stated she and DOBI personnel have been following-up with Governor's Counsel.

Federal Mental Health Parity and Autism

E. DeRosa stated that it appears the policy forms will need to be revised to address the revised federal mental health parity law. She noted that, although the federal law applies to employers with 50+ employees, because of the continuing difference in the way the federal law and the state law counts employees/eligible employees, there are employers that are considered small employers in New Jersey that are "large" employers under the federal law. She reminded the Board that it faced the same issue with the existing mental health parity law, and the Board had already determined that the easiest way to comply with federal mental health parity was to apply it to the all employers who fall into the New Jersey small employer market.

Board members expressed significant concern about the issue in light of New Jersey's autism bill, noting that if it is enacted, carriers will be unable to cap the benefits for services, notwithstanding the language of the New Jersey law, because autism is considered a biologically-based mental illness in New Jersey, and thus, subject to the federal mental health parity requirements. Board members were concerned about the impact on premiums for the small employer market, and there was general agreement that the SEH Program definition of small employer needs to be revised to bring it in line with the federal law.

VIII. Public Comments

Joan Fusco stated that, with respect to the issue of employers buying replacement coverage of greater or lesser actuarial value, carriers always have the responsibility to ask questions about the prior coverage, and to her knowledge, they generally do, at least when the employer is moving from PPO to HMO coverage.

IX. Close of Meeting

D. Farkus offered a motion to adjourn the Board meeting, which was seconded by C. Stearns. The Board voted unanimously by roll call in favor of the motion.

[The meeting adjourned at 11:30 A.M.]