

**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**  
**January 20, 2010**

**Members present in Trenton:** Darrel Farkus (United/Oxford); Alan Maesaka (Aetna); Gale Simon (DOBI)

**Members participating by phone:** Thomas Collins; Margaret Koller; Christine Stearns; James Stenger; Tony Taliaferro (AmeriHealth); Michael Torrese (Horizon); 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 10:00 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. She noted that votes would be by roll call, because so many members of the Board were participating by telephone off-site. Following a roll call, she determined a quorum was present.

**II. Public Comments**

E. DeRosa informed Board members that there were public members present and that the open session of the meeting was being taped by one public participant (Nadine Banks from the New Jersey Hospital Association).

D. Farkus requested the opportunity to raise the issue of producer compensation, and whether there are requirements that address compensation in the small employer market. He noted that Oxford believes some carriers have begun stratifying commissions based on whether the carrier has enrolled 75% of a small employer’s employees, with apparent variations in how the carriers count participation (for purposes of the commissions), creating potential selection issues. D. Farkus stated Oxford will tighten its underwriting procedures by routinely requesting WR30s (employer payroll forms) to verify information about groups. While not automatically declining groups that fail to submit the WR30, Oxford will reserve the right to investigate each case further. D. Farkus suggested the SEH program’s employer certification forms be revised to require employers to itemize the carriers whose plans are being offered to employees, and the allocation of employees among the carriers, with a countersignature by the agent/producer. There was agreement this could be done.

There was discussion about how some carriers are counting participation for purposes of commissions. Some Board members expressed concern about the potential for selection against

certain carriers, and the potential reduction in services that employers may receive from various producers. However, there was also concern about whether the SEH Board has the authority to regulate the practice. It was noted that the SEH Program has some rudimentary rules regarding commissions, but that these were designed primarily to prevent noncompliance with the guaranteed issue requirements.

The Board decided that the Legal Committee should review the question in light of the statutes and the Board's rules, and provide the Board with advice concerning what the law supports with respect to small employers buying multiple plans and various producer compensation arrangements.

### **III. Minutes – December 16, 2009**

**J. Stenger made a motion to approve the open session minutes for December 16, 2009. M. Koller seconded the motion. The Board voted in favor of the motion by a roll call vote, with G. Simon and M. Torrese abstaining.**

### **IV. Report of Staff**

#### *Expense Report*

E. DeRosa discussed the current expenses of the SEH Board, totaling \$219 for services rendered by Withum Smtih + Brown.

**D. Farkus made a motion, seconded by G. Simon, to approve payment of the reported expenses. The motion passed by a unanimous roll call vote.**

#### *Adoption of N.J.A.C. 11:21-7.13*

E. DeRosa reminded Board members that the adoption of N.J.A.C. 11:21-7.13 (addressing reimbursement of out-of-network providers) had occurred, and that the amended rule was effective as of the date of its publication, which had been on December 21, 2009.

#### *Rider filings*

*D. Farkus recused himself from discussion and all action taken on the matter related to rider filings by Oxford Health Insurance and Oxford Health Plan because of the interest of his employer in the outcome of the matter.*

E. DeRosa stated that Oxford Health Plan and Oxford Health Insurance filed an optional benefit rider to provide coverage for mental illness and substance abuse consistent with the requirements of the federal Mental Health Parity and Addiction Equity Act (MHPAEA). She noted such riders are required to be offered to all small employers seeking to buy small employer plans. E. DeRosa stated that it was recommended that each rider be found complete by the Board.

**J. Stenger made a motion, seconded by D. Vanderhoof, to find the Oxford Health Insurance and Oxford Health Plan MHPAEA-compliant rider complete. The motion carried by a unanimous roll call vote.**

*Additional amendments, February meeting and postponement of April 1 contract reissues*

E. DeRosa reported she believed the Board should schedule a meeting in early February to consider form modifications required by the new State autism and other developmental disability mandate (P.L. 2009, c. 115), Michelle's law ( a federal law maintaining coverage for certain college-age students), and MHPAEA. She referenced the DOBI bulletin regarding P.L. 2009, c. 115. E. DeRosa stated she believed she would be able to get proposed revisions to Board members for review next week , and requested that the Board consider a meeting as early as February 3<sup>rd</sup>. Following discussion, the Board agreed there should be a quorum available to meet in person at 10:00 A.M. on February 3<sup>rd</sup> to consider a rule proposal involving substantive changes to the policy forms.

E. DeRosa noted that not all of the forms changes can be accomplished by a rider. She suggested that, because substantive changes to the policy forms are needed, the Board should consider postponing the operative date of the most recent form amendments adopted on August 18, 2009, and not require carriers to begin reissuing contracts as of April 1, 2010. While acknowledging that carriers must administer contracts in compliance with the law, the Board agreed to issue a public notice postponing the operative date for contract reissues until October 1, 2010. The Board expects this will allow carriers time to revise forms in compliance with the August 18<sup>th</sup> SEH amendments, the yet-to-be-proposed SEH amendments, and changes that may be required as a result of DOBI's amendments to its health benefits plans rules adopted July 31, 2009.

**VII. Public Comments**

A commenter asked for clarification of the date that N.J.A.C. 11:21-7.13 was effective, which was December 21, 2009.

**VIII. Close of Meeting**

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

*[The meeting adjourned at 10:50 A.M.]*