

FINAL
MINUTES OF THE OPEN SESSION 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
May 25, 2016

Members participating: Herbert Ames; Mary Beaumont; Gary Cupo; Patrick Gillespie (Cigna); Margaret Koller; Lisa Levine (United/Oxford); Brendan Peppard (DOBI); Nicholas Peterson (Horizon); Thomas Pownall (Aetna Inc.); Tony Taliaferro (AmeriHealth); Dutch Vanderhoof.

Others participating: Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; Rosaria Lenox, Program Accountant; Eleanor Heck and Ryan Schaffer, Deputy Attorneys General.

I. Call to Order

E. DeRosa called the meeting to order at 4:07 P.M. She announced that notice of the meeting was provided to three newspapers of general circulation and the State House Press Corps, and posted at the Department of Banking and Insurance (“DOBI”), on the DOBI website, and at the Office of the Secretary of State in accordance with the Open Public Meetings Act. Following a roll call, she determined there was a quorum present, and stated that all votes would be by roll call because some of the Board members were participating by phone.

II. Public Comments

There were no public comments.

III. Action on the Readoption of N.J.A.C. 11:21

E. DeRosa stated that a question arose during the May 18, 2016 meeting regarding how to count employees for purposes of determining employer size.

The Board agreed that the federal law does not specify a particular counting method that carriers must use to count employees to determine employer size for purposes of issuing small employer coverage outside of the SHOP. Several Board members suggested there is little utility for either the carrier or the employer in having an employer classification that differs from the federally derived employer classification, particularly when the federally derived employer classification is the one that is used to determine compliance with various laws. Several Board members noted that any counting method the Board chooses for purposes of determining employer size will result in some employers being classified differently from how they are currently classified.

One Board member recommended what was described as a “simpler” approach that requires counting an employer’s employees on each of the employer’s business days in the preceding calendar year, regardless of the number of hours each employee worked each day, then the number of employees for all days is added, and then that sum is divided by the number of business days the employer had in that preceding calendar year. The result is the average number of employees who worked for the employer in the preceding calendar year.

Other Board members recommended the 4980H counting method (the method currently specified in Part 2 of the small employer definition) which is prescribed for determining employer size for a variety of purposes, including eligibility for SHOP coverage, but is not specifically required to be used to count employees outside of SHOP. A number of Board members expressed support for using the same method both in the SHOP and outside the SHOP. Several Board members suggested that using the 4980H counting method limited the number of calculations that would have to be performed.

It was noted that the federal law neither requires nor prohibits employers from offering coverage to employees that work less than 30 hours/week and unlike New Jersey's statutes, federal law does not couple the method for determining employer size with the determination of employee eligibility for coverage under an employer's health benefits plan. Several Board members suggested that the draft rules be revised to rely on the federal definition of small employer, counting employees using the 4980H process, while retaining a full-time definition based on employees working 25 hours/week.

Some Board members commented that many small employers do not want to cover employees working only 25 hours/week. Other Board members noted that employers could choose to limit the offer of coverage to employees working some number of hours over 25 hours per week provided the employer is able to satisfy the SEH participation requirements.

P. Gillespie made a motion, seconded by T. Taliaferro, to require carriers to count employees for purposes of defining which employers are small employers by adding all employees employed by an employer on each business days during the preceding calendar year and dividing that sum by the business days of the employer in the preceding calendar year. By roll call vote, the motion failed 9 to 1, with M. Beaumont abstaining.

T. Taliaferro made a motion, seconded by D. Vanderhoof, to require carriers to count employees for purposes of defining which employers are small employers by using the method specified in 4980H. By roll call vote, the motion carried, 10 to 1.

D. Vanderhoof made a motion, seconded by M. Koller, to propose readoption of N.J.A.C. 11:21 and its various appendix exhibits, with proposed amendments, and proposed repealed rules and Exhibits, in accordance with the draft discussed on May 25, but revised to define full-time as 25 hours per week. By roll call vote, the motion carried, 10 to 1.

E. DeRosa reminded the Board that the readoption will be proposed using the Board's expedited rulemaking authority, but that the Board had earlier discussed using a 60-day comment period, during which a hearing will be held regarding amendments to the policy forms. She noted that the comment period would begin on the date the notice of proposed readoption is filed with the Office of Administrative Law. She also stated that when the proposal is filed, it will be posted on the Board's website, along with notice of the hearing, which would be *after* the date the proposal is published in the *New Jersey Register*.

V. Public Comments

There were no public comments.

VII. Close of Meeting

D. Vanderhoof made a motion, seconded by M. Koller, to adjourn the meeting. By roll call vote, the motion carried.

[The meeting adjourned at 5:19 P.M.]