

**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**  
**February 21, 2018**

**Members participating:** Herb Ames; Mary Beaumont; Gary Cupo; Don Henson (DOBI); Margaret Koller; Ulysses Lee (Oxford); Joseph Pandolfo (Cigna); Nicholas Peterson (Horizon); Thomas Pownall (Aetna); Tony Taliaferro (AmeriHealth).

**Others participating:** Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; Christine Machnowsky, Deputy Executive Director; Jeff Posta, Deputy Attorney General.

**I. Call to Order**

E. DeRosa called the meeting to order at 10:00 A.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 was no public comment.

**III. Minutes of January 17, 2018**

**M. Koller made a motion, seconded by M. Beaumont, to approve the minutes of the January 17, 2018 meeting. By roll call vote, the motion carried.**

**IV. Staff Report – Expenses; Policy Form changes**

*Expense Report*

E. DeRosa presented the January expense report, totaling \$40.50, which includes half of the cost of R. Lenox’s CPA license, and parking.

**T. Pownall made a motion, seconded by D. Henson, to approve payment of the January expenses. By roll call vote, the motion carried.**

*Policy Form Amendments*

E. DeRosa reminded the Board members that multiple bills were signed by Governor Chris Christie prior to his last day in office that require some amendments be made to the standard policy forms. She discussed the amendments, highlighting the following:

- Newborn coverage (P.L. 2017, c. 361), effective January 16, 2018 for policies issued or renewed on or after that date. Essentially, the law extends newborn coverage from 31 to 60 days following birth without payment of a separate premium (so long as at least one parent has been covered under the policy). E. DeRosa noted that the extension of coverage – like the original law – is for treatment of illness, injury and congenital defect, not routine well-child care or immunizations. The question arose as to what happens if there is already dependent coverage, but additional premium is not paid, and E. DeRosa explained that it will depend on whether and how many children are already covered under the policy.
- Human breast milk donation coverage (P.L. 2017, c. 309), effective January 1, 2019 for policies issued or renewed on or after that date, or following the licensing of at least one facility able to store and process the donations in New Jersey, whichever comes later. E. DeRosa noted that the Department of Health will have the licensing duty, but the language is available for carriers to use when needed on or after January 1, 2019. She noted that the coverage is also contingent on the use of donated milk being prescribed by a physician for certain conditions.
- Contraceptive coverage mandate (P.L. 2017, c. 241), effective February 15, 2018 for policies issued or renewed on or after that date. E. DeRosa explained that the mandate requires coverage of a broader array of prescribed contraceptives, not just oral contraceptives, warranting movement of the coverage out of the prescription drug benefit and to its own provision, particularly because of very specific coverage standards: initial coverage is for a three-month period, and additional coverage is for six-months, unless the plan year ends in less than six months, in which case, the coverage can be limited to the end of the plan year. She noted that, generally, the coverage is considered preventive, and so not subject to cost-sharing, but that cost-sharing would apply if the prescription is used for reasons other than birth control. She explained that the text is variable, because of the possible exemption by an employer for religious objection.
- Mammography performed with digital tomosynthesis (P.L. 2017, c. 305), effective August 1, 2018 for policies issued or renewed on or after that date. E. DeRosa explained that this is sometimes referred to as 3D mammography, and like other mammography, is used both as a screening tool and diagnostic tool primarily for imaging dense breast tissue, but under the mandate can be used without regard to the density of tissue involved. She noted that when used as a screening tool, no cost-sharing should apply, while cost-sharing would apply when used as a diagnostic tool. E. DeRosa pointed out that the legislation is gender-specific, but that the draft language in the policy forms is not.

E. DeRosa discussed an additional change requested by a carrier that is intended to help explain the accumulation of costs towards the deductible and MOOP for tiered high deductible health plans (HDHPs). She noted that the language is rather lengthy because of the differing permutations between tiers, and single and other-than-single coverage.

E. DeRosa explained that, if the Board votes to propose the amendments to the plans, the proposal will be put into the rulemaking format for the Office of Administrative Law (OAL), and go through the usual review processes, before going to OAL. She stated that a hearing is required for policy form changes, and would be scheduled prior to the end of the comment period. She noted that where benefits are in effect, carriers should comply with the new laws as they become effective, regardless of the policy form changes, because of the compliance with law provision within the

policy form, but that carriers would not be able to use the proposed tiering language for HDHPs until adopted.

**G. Cupo made a motion, seconded by D. Henson, to propose the amendments to the policy forms, subject to additional revisions necessitated by the internal review process. By roll call vote, the motion carried.**

E. DeRosa stated that she thinks there may be time to use the normal rulemaking process (in accordance with the Administrative Procedures Act), and have the forms amendments adopted prior to 2019, but that using the expedited process would assure that the forms are adopted and ready for use in time for carriers to use them in 2019. The Board agreed to use the expedited process.

#### **V. Update on Spine Society**

J. Posta stated that the Superior Court ruled in favor of the Board and its use of the expedited rulemaking procedure at N.J.S.A. 17B:27A-51 in a rather lengthy and strongly worded, published opinion (Spine Society v. NJ SEH Program Board). He explained that February 20<sup>th</sup> was the deadline for the Spine Society to file an appeal with the New Jersey Supreme Court, and thus far, he has heard nothing on it.

#### **VI. Public Comment**

Joan Fusco asked whether the Board should permit the sale of multi-tiered HDHPs if they are acknowledged to be complex.

A member of the Board responded that, while complexity may be a consideration for the Board, it is not really a criterion for whether a design should be permitted, so long as the design is otherwise legal. The Board works to make a design as comprehensible as possible, even when complex. E. DeRosa commented that carriers selling the product would need to have well-trained brokers and a good marketing program to explain the plans to employers and employees.

Board members agreed that J. Fusco raised a good question, and that the Board must be considerate of the needs of multiple levels of consumers, and while it is good for the Board to promote innovative designs, good marketing and communications are needed to avoid misunderstandings. The Board suggested its Marketing Committee meet to consider whether there are questions or tips that could be added to the SEH Buyer's Guide, or an additional educational piece to help employers and employees consider the products available and what may be the best products for their situations.

#### **VII. Close of Meeting**

**M. Beaumont made a motion, seconded by T. Pownall, to close the meeting. By roll call vote, the motion carried.**

*[The meeting adjourned at 10:52 A.M.]*