

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
May 20, 2020

Members participating: Herb Ames; Robert Benkert (Oxford); Natalie Bernardi (Cigna); Chrissy Buteas; Gary Cupo; Philip Gennace (DOBI); Margaret Koller; Taylor Kopelan (Horizon); Thomas Pownall (Aetna); Tony Taliaferro (AmeriHealth).

Others participating: Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; Rosaria Lenox, Financial Manager; Eleanor Heck, Deputy Attorney General.

I. Call to Order

E. DeRosa called the meeting to order at 10:05 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.

E. DeRosa noted that, pursuant to P.L. 2020, c. 2, as a result of the state of emergency and public health emergency declared by Governor Murphy on March 9, 2020 through Executive Order 103 (subsequently extended by Executive Order 119 on April 7, 2020) due to the COVID-19 pandemic, the SEH Board’s regularly scheduled meeting is being held entirely telephonically rather than at the Board’s offices in Trenton. She stated that, in accordance with P.L. 2020 c. 11, electronic notice of the change in the meeting and the means by which the public could attend the meeting telephonically was posted on the Board’s website, and issued electronically to all known interested parties.

E. DeRosa determined a quorum was present. She stated that voting would be by roll call.

Member of the public were asked to identify themselves, and are listed at the end of these minutes.

II. Public Comments

There were no public comments.

III. Review of Minutes of April 15, 2020

M. Koller made a motion, seconded by N. Bernardi, to approve the minutes of the meeting of April 15, 2020, without amendment. By roll call vote, the motion carried.

IV. Policy Form Amendments – *draft*

E. DeRosa stated that three statutes were enacted early in 2020 requiring amendments to the SEH standard health benefits plan policy forms and certificates. She briefly described: P.L. 2019, c. 343 (Chapter 343), which specifies coverage of breastfeeding support services; P.L. 2019, c. 361

(Chapter 361), which expands the definition of contraceptive services and supplies that must be covered; and P.L. 2019, c. 472 (Chapter 472), which requires carriers to limit monthly cost-sharing with respect to 25% of their plans. She reminded SEH Board members that the Board voted to propose amendments to the standard health benefits plans in the Fall of 2019, addressing changes to both State and Federal laws, but that she had not obtained approval to send the proposal to the Office of Administrative Law, so she was adding draft amendments to the same document, rather than creating an entirely new proposal.

E, DeRosa then explained in additional detail the requirements of each law, and the amendments she recommended for the policy forms highlighting the following:

- Chapter 343 necessitates an amendment to the definition of practitioner because the new law requires coverage of lactation consultants and counselors, neither being categories of practitioners that are licensed in New Jersey currently. In this respect, the law is similar to the situation some years ago when carriers were required to cover Applied Behavior Analysis services in the treatment of autism, when practitioners could receive certifications from a certain organization, but were not licensed by New Jersey.
- Chapter 361 requires expanded coverage of contraceptive medications, supplies and devices in-network, regardless of gender, including sterilization services, counseling services, and treatment of complications, subject to prescription, and over-the-counter (OTC). Consequently, the New Jersey statutory requirement for coverage of contraceptives is broader than the federal regulations implementing the Affordable Care Act (ACA), which requires coverage of contraceptives as part of a package of preventive benefits based upon the recommendations of the United States Preventive Services Task Force (USPSTF) and HRSA. Consequently, a number of amendments are necessary to accommodate the description of the benefits for all plans, especially HDHPs.
- Chapter 361 further specifies that, with respect to HDHPs, the lowest deductible allowable for HDHPs is to be applied to male sterilization and male contraceptives (set at \$1,400 for self-only coverage and \$2,800 for family coverage for plan year 2021 by the IRS).
- Additionally, Chapter 361 removed the previously existing religious employer exemption from the contraceptive benefits mandate.
- Chapter 472 requires carriers to offer at least 25% of their plans (no less than 1 plan) subject to a monthly cost-sharing cap for prescriptions, with the cap varying by the metal level of the plan: \$150 for Silver, Gold and Platinum level plans; and, \$250 for Bronze plans.
- Chapter 472 does not apply to Catastrophic plans. However, Chapter 472 applies to HDHPs, specifying that the limitation on the monthly cost-sharing need not be applicable until after satisfaction of the lowest IRS-permissible HDHP deductible .
- There is interaction between Chapter 361 and Chapter 472 in terms of benefit design and administration, and sample language to address this was presented. However, E. DeRosa noted that a sample HDHP had never been produced for the SEH standard plans because of the number of variables possible, so she presented a mark-up of the sample for the IHC Program for the SEH Board's consideration.

Board discussion followed. Board members noted:

- That, although federal regulations maintain a religious exemption for employers from the coverage of contraceptives, state contraceptive mandates can exceed the federal requirement.
- That reimbursement models for most pharmacies and pharmacy benefits managers do not address OTC purchases, which will make it difficult for carriers to comply with requirements to cover certain OTC purchases without cost-sharing. Carriers will need to determine methods to operationalize the requirement.
- Although the standard policy forms contain a Conformity with Law Provision, it may be appropriate to add language providing carriers the discretion to alter terms of the policy to comply with waivers and extensions that may be required under emergency situations, as has occurred with respect to the State Public Health Emergency as a result of the COVID-19 pandemic.

E. DeRosa asked the Board members to provide comments to her as soon as possible, because she would like to circulate a second draft prior to the June Board meeting, for a fuller discussion of issues and the draft amendments.

V. Other business

E. DeRosa noted that the Board originally intended to continue the discussion during this May Board meeting of whether and how small employers are providing coverage of health services for their employees. She reported that some, but not all, Board members had provided the information the Board requested at its March meeting; however, given the circumstances during the past couple of months, she understood that gathering information for the Board would not have been a carrier priority. The Board agreed the discussion continues to be worthwhile, but will postpone discussions for now.

VI. Public Comment: Joan Fusco stated that 4 states have added male contraceptives as preventive for all but HDHPs, in order to accommodate certain contraceptive requirements.

VII. Close of Meeting

M. Koller made a motion, seconded by G. Cupo, to close the meeting. By roll call vote, the motion carried.

[The meeting adjourned at 11:00 A.M.]

Public known to be in attendance:

- Joan Fusco
- Suzanne Fitzgerald, Savoy Associates
- Jeff Connelly, Members Health Plan