

**FINAL**  
**MINUTES OF THE MEETING OF THE**  
**NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD**  
**HELD TELEPHONICALLY PURSUANT TO EXECUTIVE ORDER 103 (MURPHY)**  
**May 5, 2021**

**Members participating:** Herb Ames; Robert Axelrod (Oscar); Robert Benkert (United); Natalie Bernardi (Cigna); Gary Cupo; Philip Gennace (DOBI); Laura Gunn; Margaret Koller; Taylor Kopelan (Horizon); Thomas Pownall (Aetna Health); Tony Taliaferro (AmeriHealth).

**Others participating:** Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; Rosaria Lenox, Managing Financial Officer; Jeffrey Posta, Deputy Attorney General; Eleanor Heck, Deputy Attorney General.

**I. Call to Order**

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, as subsequently extended,<sup>1</sup> 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 this special 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.

Members 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. Draft Notice of Adoption**

E. DeRosa reminded Board members that upon the close of the comment period to the proposed adoption, one comment was received from the New Jersey Association of Health Plans seeking clarification regarding the proposed contraceptives provision in the policy forms. She explained that the commenter questioned whether P.L. 2019, c. 361 permits carriers to cover therapeutic equivalents at no cost, and whether the requested contraceptives (that are substituted by the therapeutic equivalents) must be covered subject to cost-sharing, or not covered. She further explained that New Jersey law requires coverage of all FDA-approved drugs to treat conditions covered under the standard plans, and federal law requires preventive services to be covered without cost-sharing, including contraceptives as specified by the Health Resources and Services Administration. E. DeRosa stated that while P.L. 2019, c. 361 allows carriers to cover a therapeutic equivalent rather than a requested contraceptive, the coverage of the requested contraceptive must nevertheless be provided, and in most instances, will be covered without cost sharing. As proposed, that coverage would not be under the Contraceptive provision, but rather a under the Prescription Drug provisions of the policy forms. She reminded the Board that, as

---

<sup>1</sup> Executive Order 103 (Murphy) has been continuously extended multiple times since originally issued, the most recent extension occurring on April 15, 2021 pursuant to Executive Order 235 (Murphy).

suggested during the April 21, 2021 meeting, a carrier may choose to cover all requested contraceptives under the Contraceptive provision and not substitute a therapeutic equivalent for a requested contraceptive. She explained that, to accommodate such a decision by a carrier, the draft text for the adoption addresses coverage of the requested contraceptive is enclosed within variable brackets.

In response to the question of whether there were any procedural concerns in terms of making changes to the policy forms upon adoption that would allow carriers to elect whether to use therapeutic substitutions, J. Posta stated that he thought it might be appropriate to go into Executive Session briefly before taking action.

**T. Taliaferro made a motion, seconded by T. Pownall, to move into Executive Session for the purpose of receiving legal advice from counsel, after which the Board would return to Open Session at which time the Board may take further action, and would address the remainder of its agenda. By roll call vote, the motion carried.**

After recommending the public attendees call back into the public meeting telephone number at 10:30 A.M., the Board temporarily ended the Open Session.

*[The Open Session ended at 10:23 A.M. for the purpose of moving into Executive Session.]*

*[The Board resumed the Open Session at 10:33 A.M. Note that Ross Honig did not return to the meeting.]*

**T. Taliaferro made a motion, seconded by G. Cupo, to approve the draft Notice of Adoption. By roll call vote, the motion carried.**

E. DeRosa stated that she could draft a Compliance & Variability Rider for carriers to use for inforce business for a period of time following the effective date of the change, but that the Board needed to determine what the operative date should be by which carriers must issue new policy forms (including all of the adopted amendments) to new and renewing business. After discussion, the Board determined that the operative date would be no later than the beginning of the month following the fourth month after the filing date of the Notice of Adoption.

*[B. Benkert, M. Koller, and P. Gennace left the meeting just before 11:00 A.M.]*

#### **IV. COBRA/State Continuation under the American Rescue Plan Act (ARPA)**

E. DeRosa stated that she continues to receive questions from brokers about how to administer the state continuation provisions under ARPA, although she was no longer receiving many questions about whether ARPA applies to state continuation. She explained that she is directing them to use the federal notices with some modifications to address New Jersey specific law.

The issue arose again as to whether carriers/employers should allow individuals who were eligible for state continuation the opportunity to elect state continuation when they had previously waived it (as ARPA specifies for individuals eligible for COBRA continuation), and E. DeRosa stated

that, in her personal opinion, she believed that if the state continuation eligible individual is still within the time period that would have applied had continuation been elected, the individual probably should be given notice of the right and permitted to make the election anew. It was noted that ARPA permits "second chance" COBRA eligible individuals to elect a retroactive effective date or an effective date of April 1, but it was doubted there was any necessity for such an option for "second chance" state continuation eligible individuals because few, if any, are likely to be able to afford the full cost of the continuation coverage to select a period earlier than April 1.

The question arose whether small employers are able to provide all of the prescribed notices, and there was some doubt about it. It was pointed out that smaller employers often do not know what type of continuation their employees are eligible for or covered through, only that a continuation right exists and may be exercised. E. DeRosa stated that there had been some misunderstanding among the federal government representatives that essentially all state continuation involved direct transactions between the carriers and the employer's continuees, but that they now understand that is not so, and reportedly are working on guidance for situations in which the employer remains part of the equation, and situations in which the employer does not. It was suggested that, because the required notices have to be disseminated no later than May 31, further guidance from the federal government and the State should be forthcoming soon.

#### **V. Public Comments**

Public attendees participated in the conversation concerning COBRA and State Continuation, but had no additional public comment.

#### **VI. Close of Meeting**

**G. Cupo made a motion, seconded by H. Ames, to close the meeting. By roll call vote, the motion carried.**

*[The meeting adjourned at 11:20 A.M.]*

Public known to be in attendance:

- Suzanne Fitzgerald, Savoy Associates
- Joan Fusco
- Ross Honig, OCA *[Ross Honig was not present when the Open Session meeting resumed at 10:33 A.M., and apparently did not rejoin]*