

**MINUTES OF THE SPECIAL MEETING OF THE
NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD
HELD TELEPHONICALLY PURSUANT TO EXECUTIVE ORDER 103 (MURPHY)
December 29, 2022**

Members participating: Herbert Ames; Robert Benkert (United); Alison Birzon (Cigna); Jess Bowker (Oscar Garden State); Margaret Koller; Thomas Pownall (Aetna Health); Jason Premus (Horizon); Gale Simon (DOBI); Adam Young (AmeriHealth).

Others participating: Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; Jeffrey Posta, Deputy Attorney General.

I. Call to Order

E. DeRosa called the special meeting to order at 11:00 A.M. She announced that notice of the meeting was posted at the Department of Banking and Insurance (“DOBI”), on the DOBI website, and distributed to the Board’s interested parties list.

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,¹ 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 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 that a quorum was present, and that voting would be by roll call.

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

II. Purpose of the Meeting

E. DeRosa confirmed the purpose of the meeting was to consider the comments received in response to the Board’s proposed amendments, draft agency-initiated changes previously discussed at the regular December meeting, and decide whether to take action to adopt the proposal.

III. Policy Form Amendments

E. DeRosa reported that a public hearing was held via Microsoft Teams on December 15 at 2:00 P.M. regarding the Board’s proposed amendments to the standard plan policy forms, and had two commenters in attendance. She stated that the commenters submitted written testimony as well,

¹ Pursuant to N.J.S.A. 26:13-3(b), a Public Health Emergency lasts for 30 days unless extended, while States of Emergency declared in accordance with N.J.S.A. App A:9-33 et seq. remain in effect until declared ended by a subsequent executive order. The Public Health Emergency was continuously extended through multiple executive orders until E.O. 244 (Murphy), issued June 4, 2021, declared the Public Health Emergency ended. However, Governor Murphy has not yet ended the State of Emergency established by E.O. 103 (Murphy). Thus, the Board continues to meet remotely, and public access is limited to telephonic means. (Notably, E.O. 280, issued January 11, 2022, resulted in another Public Health Emergency due to COVID-19, which was extended by E.O. 288 on February 10, 2022, then lifted by E.O. 292 on March 4, 2022.)

which had been incorporated into the written comments received. She noted the comment period closed at the end-of-business on December 23, 2022. E. DeRosa reported that the Board received written statements from hundreds of different commenters, and noted that all the comments were solely related to coverage of abortion. She stated the comments broke down into two basic categories – those in support of and those opposed to the Board’s proposal to specify coverage of abortion services, and remove the option under the Exclusion section to exclude coverage of abortions except those for pregnancies resulting from rape or incest, or which pose a threat to the life of the mother, unless the employer receives a “religious employer” exemption.

She indicated the comments and responses could be summarized substantially as follows:

- Those opposing the amendments to the coverage of abortion raised varying arguments, with some indicating abortion is not healthcare, that abortion coverage violates the consciences of the commenters, that employers should have a choice whether to buy policies with the coverage, some suggesting it would raise premiums, and others concerned the action was being fast-tracked, and that the religious employer exemption is too narrow. The drafted responses are essentially that the Board’s proposal was consistent with the legislation enacted in January of 2022 and the Department’s recently issued report. The Department’s report includes a determination that there would be a *de minimis* increase in premium related to coverage of abortion services.
- Those supporting the amendments to the coverage of abortion stated varying reasons, including that access to abortion services should be a right, that it improves transparency and health outcomes, and breaks down health care barriers, with most approving of the change being effective in PY2023, but with some expressing a desire to have coverage of such services without application of cost-sharing. The drafted responses acknowledge the commenters’ support, and note that the legislation enacted in January 2022 did not require no cost-sharing with respect to abortion services.

E. DeRosa discussed the drafted agency-initiated changes, which she noted were the same as those discussed at the December 21, 2022 meeting, including:

- Updating the policy forms to comply with P.L. 2021, c. 376, enacted in January 2022, altering the contraceptive coverage requirement to cover a 12-month prescription for contraceptives rather than a 6-month prescription.
- Additional variable brackets regarding facilities and practitioners within the proposed variable text regarding coverage for gene, cellular and other innovative therapies.

G. Simon made a motion, seconded by M. Koller, to adopt the proposed amendments with the agency-initiated changes. By roll call vote, the motion carried unanimously.

E. DeRosa stated the Board needs to consider whether to include an operative date by which carriers must be issuing complying policy language. She noted the Board could allow carriers to either issue new forms or Compliance & Variability riders to amend previously issued policy forms for 2023. After some discussion, the Board agreed that carriers must either send out complying forms or riders no later than April 1, 2023. E. DeRosa noted that carriers would need to administer the policies consistent with the adopted policy forms as of January 1, 2023.

IV. Close of Meeting

H. Ames made a motion, seconded by A. Young, to adjourn the meeting. By roll call vote, the motion carried unanimously.

[The meeting adjourned at 11:30 A.M.]

Public known to be in attendance:

- Suzanne Fitzgerald, Savoy Associates
- Kaitlyn Wojtowicz, Planned Parenthood Action Fund NJ
- Marie Tasy, New Jersey Right to Life
- Daniel Han, Politico