

**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  
April 29, 2009**

**Members present in Trenton:** Alan Maesaka (Aetna); Gale Simon (DOBI)

**Members present by phone:** Tom Collins; Gary Cupo; Darrel Farkus (United/Oxford); Joyce Gralha (Horizon); Sandy Herman (Health Net); Margaret Koller; Ulysses Lee (Guardian); Christine Stearns (*joined at 10:10*); Jim Stenger; James Sweeny (CIGNA); Tony Taliaferro (AmeriHealth); Dutch Vanderhoof.

**Others participating:** Ellen DeRosa, Executive Director; Rosaria Lenox, Program Accountant; DAG Vicki Mangiaracina (DLPS); Chanell McDevitt, Deputy Executive Director.

**I. Call to Order**

E. DeRosa called the meeting to order at 10:05 A.M. E. DeRosa announced that notice of the meeting had been published in two newspapers and posted at the Department of Banking and Insurance (“DOBI”), the DOBI website, and the Office of the Secretary of State in accordance with the Open Public Meetings Act. A quorum was present. E. DeRosa stated that votes would be by roll call because a majority of the Board members were participating by telephone.

**II. Public Comments**

There were no public comments.

**III. Minutes – February 18, 2009**

**D. Vanderhoof made a motion, seconded by T. Collins, to approve the open session minutes of the February 18, 2009 meeting, as amended. By roll call vote, the motion carried unanimously.**

**G. Cupo made a motion, seconded by M. Koller, to approve the executive session minutes of the February 18, 2009 meeting, as amended. The motion carried unanimously by roll call vote.**

**IV. Staff Report**

*Expense Report – April*

R. Lenox presented the expenses payable, totaling \$34,202.31. She noted the majority of the expenses were for payment of auditing costs to Withum, Smith + Brown for the fiscal year 2006 through 2008 administrative audits and the Division of Law.

**T. Taliaferro made a motion, seconded by T. Collins, to approve payment of the expenses. The motion carried by a unanimous roll call vote of the Board.**

*Transfer of Funds*

E. DeRosa reminded Board members that staff had requested and the Board had approved transfer of \$30,000 from DOBI to Wachovia at the February meeting, and then explained what had occurred shortly thereafter: she was contacted by a collection agency under contract with the U.S. Treasury Department to collect debts on behalf of the Centers for Medicare and Medicaid Services (CMS); the collection agency stated the SEH Program owed approximately \$40,000 towards the costs of medical care paid by Medicare (for a specific enrollee), when Medicare should have been the secondary payer; and, the collection agency stated it could take action to remove the funds from the SEH Board's account. E. DeRosa explained that, until the issue could be straightened out, all but \$100 had been removed from the Wachovia account and returned to DOBI's account with the New Jersey Treasury where it should be safer. She stated that, after several weeks, the situation was resolved in the SEH Board's favor, and she believed all relevant parties understood the SEH Board was not in the business of paying claims, so she believed it to be safe to transfer money to the Wachovia account once again. R. Lenox stated that she believed a transfer of \$50,000 would be appropriate to pay all of the expenses now approved by the Board, and anticipated until the end of the fiscal year.

**D. Vanderhoof made a motion, seconded by S. Herman, to authorize the transfer of \$50,000 from SEH Board money held in DOBI accounts to the SEH Board's Wachovia (Wells Fargo) checking account. The motion carried by unanimous roll call vote.**

Upon request, E. DeRosa stated she would put together the correspondence related to the CMS collections issue and distribute to the Board members. Discussion among Board members indicates CMS may have become more aggressive in trying to collect on payments it made when it should have been a secondary payer.

*Board Elections*

E. DeRosa reported that no one came to the SEH offices on April 22, 2009 to cast votes for the Board seats up for election, so all voting had been by absentee ballot. She stated each Board member had been re-elected to his existing seat, thus, for the next three years:

- ♦ Thomas Collins will continue on the Board as a representative of small businesses;
- ♦ Health Net will continue on the Board as a representative of carriers primarily in the small employer market;
- ♦ AmeriHealth will continue on the Board as a representative of carriers primarily in the small employer market; and
- ♦ UnitedHealthCare will continue on the Board as a representative of carriers primarily in the large employer market.

*American Recovery and Reinvestment Act (ARRA)*

E. DeRosa stated all carriers should have received correspondence from her regarding New Jersey's small group continuation as it relates to the temporary premium subsidy established by the ARRA. She noted that, for employers subject to New Jersey state continuation (but not

COBRA), it is the carrier's responsibility to send the notice(s) to the employees, and the carrier's responsibility to front 65% of the premium. She indicated she has received confirmation from SEH participants that they have sent required notices to employees known to have been terminated on or after September 1, 2008. She stated she is receiving phone calls now complaining that some carriers are saying their systems are not equipped to accept only 35% of premium, and such carriers are inappropriately advising individuals to send the full premium amount at this time. She stated carriers should be performing this function manually if that is what is necessary to assure the payments are processed. E. DeRosa said she would contact the carriers directly with these issues.

The question arose as to how the situation is being handled when a small employer is reportedly part of a PEO (professional employer organization). E. DeRosa stated she believes that the PEO is responsible to pay 65% of the premium for assistance eligible individuals, because the PEO – if it truly is the employer – would be considered an employer subject to COBRA. She suggested questions about the matter should be taken to the U.S. Department of Labor.

## **V. Finance & Audit Committee (FAC)**

### *Audits*

R. Lenox reported that Withum, Smith + Brown (WSB) had completed its audits for fiscal years 2006 through 2008. In its meeting with the FAC, WSB stated it found no significant deficiencies and no material weaknesses. R. Lenox acknowledged that staff had already addressed some of the issues raised by WSB in its audit of the Individual Health Coverage (IHC) Program, which reduced the likelihood of similar deficiencies or weaknesses being found for the SEH Program. She stated the final reports should be issued shortly.

### *Jointly-issued RFP*

R. Lenox reminded Board members that the FAC had previously agreed to the idea of a joint bid with the IHC Program for audit services, but had requested a written procedure be put in place. She reported that the FAC reviewed a procedure drafted by staff for joint bidding and evaluation, which had previously been reviewed by the IHC Operations & Audit Committee as well as the IHC Board. She stated the FAC had determined the procedures were reasonable.

### *Budget for Fiscal Year 2010*

R. Lenox reported that the FAC had considered a budget for fiscal year 2010, projected based on the fiscal year 2009 budget, actual expenditures for the first half of fiscal 2009 and forecast expenditures for the remainder of the 2009 fiscal year. She stated the FAC recommended acceptance of a budget totaling about \$262,900.00, which is almost \$20,000 less than the 2009 fiscal year budget, based on anticipated reductions primarily in expenses for the Division of Law, printing and miscellaneous professional services.

**D. Vanderhoof made a motion, seconded by S. Herman, to approve a budget of \$262,900.00 for the fiscal year ending June 30, 2010. The motion carried by unanimous roll call vote.**

### *Administrative Assessment for FY 2010*

R. Lenox stated that, now that the Board approved the budget, it would be necessary to assess carriers for funds commensurate with the budgeted amount. She explained that, because the administrative audits are now complete and up-to-date, and reconciliations for prior years have been made, the FAC recommended funds for FY 2010 be collected prior to or immediately following the beginning of the 2010 fiscal year (July 1st) to ensure operating expenses can be paid. Board members had received a breakdown of the administrative assessment by carrier prior to the Board meeting.

**S. Herman made a motion, seconded by T. Collins, to issue invoices and collect assessments totaling \$262,900.02 to fund the budget for fiscal year 2010. The motion carried by unanimous roll call vote.**

*Investment Policy*

R. Lenox reminded the Board that the FAC had previously requested that staff draft an investment policy for the SEH Program. She reported she had drafted a policy that the FAC reviewed and recommended for the Board's approval. She noted the draft policy, which had been provided to the Board prior to its meeting, requires investments to be made at the lowest level of risk, provide liquidity since all funds are dedicated to operating expenses, and thus, should earn maximum interest consistent with the low risk and liquidity requirements.

**G. Simon made a motion, seconded by M. Koller, to approve the written investment policy recommended by the FAC. The motion carried by unanimous roll call vote.**

**VI. Report of the Ad Hoc Committee**

E. DeRosa reported that the ad hoc committee met on March 9th to discuss two issues raised by the Centers of Medicare and Medicaid Services (CMS) in its periodic review of the SEH Program's compliance with the federal Health Insurance Portability and Accountability Act (HIPAA).

*Preexisting Condition Provision*

She explained that CMS had taken the position that the SEH Act's language establishing a preexisting condition limitation period only for very small groups violates HIPAA's guaranteed issue requirements by essentially segmenting the small employer market, an issue addressed by a federal memorandum issued in 2000. She stated that the ad hoc committee had agreed with CMS' interpretation, and recommended a change to the statute. She explained that, because HIPAA does not preclude the use of a preexisting condition provision, only the application of such a provision to some employers and not others, it was a matter of policy as to whether the statute should be revised to apply a preexisting condition limitation to all employers or to none, and noted that CMS had indicated it would be patient in the meantime, so long as it was clear that a legislative resolution was being sought.

There was discussion as to what language change the Board might want to endorse. It was suggested that, given creditable coverage requirements, it would not be unreasonable to apply the existing six month preexisting condition limitation period to all small employer groups. G. Simon stated, however, that she did not think DOBI would want to endorse such a policy.

*Definition of Small Employer/Eligible Employee*

E. DeRosa explained that CMS had taken the position that the SEH Act's definition of small employer is inconsistent with the federal definition, because the SEH Act's definition only includes employers with 2 to 50 eligible employees, and then defines eligible employees to be those that routinely work 25 hours/week or more, while the federal law considers an employer to be a small employer if it has 2 to 50 employees regardless of hours worked. She reported that the ad hoc committee agreed with CMS' analysis, and recommended a change in the SEH Act. There was general discussion about how such a change would result in some current small employers no longer qualifying under the law, while other employers that are currently placed in the individual market will be permitted to buy in the small employer market, resulting in some potentially significant shifts in market dynamics. E. DeRosa noted that with the change in the rates on the IHC market, allowing 3.5:1 rate bands, the shift among the markets may not be as dramatic as previously assumed.

**VII. Other Business – Restrictions on Buying Plans of Lesser Actuarial Value/New Ad Hoc Committee**

E. DeRosa reminded the Board that J. Stenger had requested at the prior meeting to have the Board issue a notice waiving the restrictions on the ability of small employers to buy down within a twelve month period, but that it was unclear whether the Board could take such an action, and V. Mangiaracina had suggested she look at the matter before the Board did anything. E. DeRosa reported that, because the provision in question is written in statute, V. Mangiaracina believed the Board lacked flexibility to waive the requirement.

The question arose as to whether the Board could alter its interpretation of the statute in the Board's rules, given that some consider the language of the law to be unclear or ambiguous. There was a separate suggestion that the matter be given to another ad hoc committee, and general agreement to proceed in this manner, with the expectation of a recommendation at the June Board meeting. The new ad hoc committee includes the following participants: Aetna, AmeriHealth, DOBI, Horizon, C. Stearns and D. Vanderhoof.

**VIII. Public Comments**

There were no public comments.

**IX. Close of Meeting**

**D. Vanderhoof offered a motion to adjourn the Board meeting, which was seconded by T. Collins. The Board voted unanimously by roll call in favor of the motion.**

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