

APPROVED

MINUTES OF THE MEETING
OF THE NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD
AT THE OFFICES OF THE NEW JERSEY DEPARTMENT OF INSURANCE
TRENTON, NEW JERSEY
September 20, 1994

Directors present: Maureen Lopes, Chair (NJBIA); Melanie Willoughby, Vice Chair (NJRMA); Dana Benbow (Prudential); James Brown (Aetna); Linda Ilkowitz (Guardian); David Lasaracino (BCBSNJ); Jane Majcher (Home Life Financial); Beatrice Manning (DOH); Amy Mansue (HIP of New Jersey); Chanell McDevitt (DOI).

Others present: Kevin O'Leary, Executive Director; Wardell Sanders, SEH Program Assistant Director; DAG Valerie Bollheimer (DOL); Susan Church, IHC Program Assistant Director; Paul Wolcott, Wolcott/Thomas.

I. Call to Order

M. Lopes called the meeting to order at approximately 9:35 a.m. and announced that notice of the meeting had been published in three newspapers and posted at the Department of Insurance and the Office of the Secretary of State in accordance with the Open Public Meetings Act. A quorum was present.

II. Report of the Legal Committee/Policy Forms Committee

A. Rule Proposals

M. Lopes reported that as a result of P.L.1994, c.97 which expands the membership of the Board, certain provisions of the SEH Plan of Operation would need to be updated. She referred to a memorandum from DAG Bollheimer which had been distributed to the Board and which identified the affected provisions of the Plan. Specifically, the Board discussed making changes to N.J.A.C. 11:21-2.1(e) (Board composition), N.J.A.C. 11:21-2.5 (Board structure and meetings), and possibly to N.J.A.C. 11:21-2.6 (committees). The Board agreed that the necessary changes should be made but that committees should be kept at their present size. D. Benbow indicated that, in order for the Board to act efficiently and effectively, it would be essential that new public members have a facsimile machine and, further, that the Board should be prepared to provide the use of a machine if necessary.

* Dana Benbow made a motion to amend the Plan of Operation to conform it with P.L.1994, c.97, and to permit public Board members to receive reimbursement for reasonable travel expenses, and to provide a facsimile machine, if necessary, on a temporary basis to any public Board member. M. Willoughby seconded the

motion, and the motion was approved unanimously by voice vote. (Later, the Board agreed that this rule proposal should be promulgated pursuant to regular APA procedures).

J. Brown discussed regulatory and legislative changes to address stop loss and TPA issues. With respect to legislative changes, a copy of the proposed amendatory language, to be included in a package of suggested amendments, was distributed to the Board prior to the meeting and was amended by the Board. The amended version is attached hereto as Exhibit 1. J. Brown indicated that the amendments, if passed, would not act to prohibit small employers from obtaining TPA services.

* A. Mansue made a motion to add the proposed amendatory language to address stop loss and TPA issues to the package of proposed changes, D. Benbow seconded the motion, and the motion was approved unanimously by voice vote.

M. Lopes indicated that she would fax the legislative amendment package to Board members when it is completed.

With respect to the regulatory changes to address stop loss and TPA issues, a copy of a draft rule amendment to N.J.A.C. 11:21-7.4 and to the definition of "health benefits plan" in N.J.A.C. 11:21-1.2 was distributed to the Board. A copy of the amendments as changed by the Board is attached hereto as Exhibit 2. J. Brown noted that the language was taken from a New York law and after a review of the law in other states.

* D. Benbow made a motion to propose the draft amendments to N.J.A.C. 11:21-1.2 and -7.4, as amended by the Board, J. Majcher seconded the motion, and the motion was approved unanimously by voice vote. (Later, the Board agreed to propose this rule pursuant to the expedited rulemaking procedure.)

B. Final Agency Determinations

1. Informational Rider Filings

M. Lopes reported that the Policy Forms Committee had reviewed an informational rider filing submitted by Chubb pursuant to N.J.A.C. 11:21-3.2(d) and recommended to the Board that the filing be determined to be complete and in substantial compliance.

* D. Benbow made a motion to find the Chubb informational rider filing complete and in substantial compliance, C. McDevitt seconded the motion, and the motion was approved unanimously by voice vote.

M. Lopes reported that the Policy Forms Committee had reviewed an informational rider filing submitted by The New England, and recommended to the Board that the filing be determined to be incomplete and not in substantial compliance for

failure to include all of the information required by N.J.A.C. 11:21-3.2(d).

* D. Benbow made a motion to find the informational rider filing submitted by The New England incomplete and not in substantial compliance, M. Willoughby seconded the motion, and the motion was approved unanimously by voice vote.

D. Benbow recommended that, in the future and in addition to oral reports to the Board, the Policy Forms Committee submit a summary of the informational rider forms and its recommendations for the Board.

2. Alternative Utilization Review Filing

M. Lopes reported that the Policy Forms Committee had reviewed an alternative utilization review filing submitted by National Insurance and described the filing. She indicated that the Policy Forms Committee recommended approving the filing.

* D. Lasaracino made a motion that the Board approve the alternative utilization review filing by National Insurance, M. Willoughby seconded the motion, and the motion was approved unanimously by voice vote.

C. Non-Member Certification Rule Proposal

The Board discussed a prior draft of a proposal amending the non-member certification regulation which addresses determinations with respect to entities that claim to be exempt from the SEH Act under what has come to be called the "Farm Bureau" exemption. D. Benbow and L. Moskowitz, at a prior Board meeting, had a concern that the regulation as drafted might provide for an application not intended by the Legislature; however, the Board recognized that it was limited by the wording of the Legislation and noted the need to propose the rule as soon as possible.

* D. Benbow made a motion to propose the amendments to N.J.A.C. 11:21-8.3, A. Mansue seconded the motion, and the motion was approved unanimously by voice vote. (The Board later agreed to propose this rule pursuant to its expedited rulemaking procedure).

III. Nomination of a Third Small Business Representative

M. Lopes reported that, as a result of P.L.1994, c.97, the Board would need to send a Board nomination form for a third small business representative who represents minority small employers to all Program Members. The Board agreed that it would issue a press release on the addition of a person to the Board representing minority small employers.

IV. Proposed Legislation

M. Lopes reported that DAG Bollheimer had reviewed and provided a memorandum on A-1997 and A-175 which bills address specific mandated benefits. The Board noted that bills mandating benefits, many of which benefits the Board have already addressed in its policy forms, are not the most effective manner in which to address coverage concerns. M. Lopes indicated that she would be willing to speak with the sponsors of the bills and to testify on the bills.

V. Issues Resolutions

M. Lopes reported that a number of issues had come to her attention which would need Board review and resolution. She presented the Board with five "Issues Resolution" forms.

Issue #94-02: How should a carrier treat the geographic costs for a portion of a small employer group which is out-of-state? **Disposition:** Referred to the Finance Committee for review.

Issue #94-03: How can one reconcile the SEH Act, which requires carriers to cancel one life groups upon their renewal, and another statute which requires permanent extension of coverage for individuals who become totally disabled? **Disposition:** Referred to the Legal Committee for review.

Issue #94-04: Continuation of Coverage cannot trigger between 25 and 30 hours since those individuals are still eligible for plan coverage. **Disposition:** There needs to be a statutory change which addresses this issue which should be included in the recommended legislative changes.

Issue #94-05: Is there a conflict between P.L.1993, c.378 regarding pharmacy benefits and the SEH rider? **Disposition:** Referred to Legal Committee for review.

Issue #94-06: Does the SEH Act or the IHC Act prohibit carriers from selling individual policies to two or more partners if they are applying as individuals and are paying the premium from personal funds? **Disposition:** The Board agreed that these persons could apply for either group or individual coverage.

VI. Communications Report

P. Wolcott reported that he had completed a draft of the SEH Buyers' Guide. He instructed Board members to provide comments on this draft to the SEH staff by September 28, 1994. P. Wolcott also reported that the Board had received approximately 45 responses to its mailing to associations.

VII. Medical Savings Accounts

M. Lopes reminded the Board that it must report to the Legislature about medical savings accounts by December 31, 1994. M. Lopes asked A. Mansue to chair a working group to prepare this report for the Board's review. B. Manning indicated that the Department of Health would provide a volunteer to assist in this working group and DAG Bollheimer volunteered to assist as well.

VIII. Report of the Executive Director

The Executive Director reported that he has attempted to set up an escrow account for both the SEH and IHC Programs in Treasury but has had some difficulty establishing such accounts. He indicated that he would establish such accounts directly with a bank if necessary. He also distributed a copy of a spreadsheet which indicated assessments due, assessments received to date, and whether an assessment was being disputed. The report indicated that of the \$588,935 being assessed, the Program had received \$154,634.

The Executive Director reported that the Legal Committee had reviewed 23 carrier appeals. Of that number, 20 claimed that they were not members of the Program, two filed late Exhibit CCs, and one claimed to be in the process of withdrawing from the New Jersey small employer market. The Executive Director reported that the Legal Committee recommended the following: (1) that the Board ask carriers claiming to be non-members to submit a certification of non-member status if their appeal letter did not include one, and upon receipt of an unambiguous certification, grant non-member status and rescind their assessments; (2) that the Board accept late Exhibit CCs and adjust the assessments accordingly; and (3) that the Board deny the appeal of the carrier withdrawing from the market. J. Brown noted that he had not taken part in the Legal Committee's discussions or recommendations because Aetna had appealed its assessment.

* D. Benbow recommended that the Board accept the recommendation of the Legal Committee regarding assessment appeals (as set forth above), A. Mansue seconded the motion, and the motion was approved by voice vote with J. Brown abstaining.

* M. Lopes made a motion to approve the expense report submitted by the Executive Director, D. Benbow seconded the motion, and the motion was approved unanimously.

The Executive Director reported that the staff had been receiving such a high volume of inquiries from consumers, small employers, brokers, attorneys, and carriers that the inquiries were backing-up. He noted that the Board would need some mechanism to deal with the volume of inquiries received and noted that the Board had provided for a Dispute Resolution Committee which was charged, inter alia, with responding to inquiries. M. Lopes noted that the volume of inquiries from consumers should

decrease with the distribution of the Buyers' Guide. D. Benbow stated that broker calls should be directed to carriers. After some discussion, the Board agreed to create a Dispute Resolution Committee composed of A. Mansue, a representative from the Department of Health, Tom Smith (DOI), and D. Benbow. The Committee or a portion thereof was instructed to meet with the staff and to develop a system for addressing inquiries.

The Executive Director reported that there were a number of enforcement issues regarding non-approved products in New Jersey, but suggested that the Board go into executive session for a discussion of these enforcement issues.

IX. Minutes

* A. Mansue made a motion to approve the draft minutes of the August 24, 1994 meeting, L. Ilkowitz seconded the motion, and the motion was approved with D. Benbow, D. Lasaracino, J. Majcher, B. Manning, and M. Willoughby abstaining.

X. Executive Session

* D. Benbow made a motion for the Board to resolve to close the meeting to the public for the purpose of discussing anticipated litigation, A. Mansue seconded the motion, and the motion was approved unanimously by voice vote.

XI. Close of Meeting

* A. Mansue made a motion to close the meeting, D. Benbow seconded the motion, and the motion was approved unanimously.