

**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  
November 16, 1994**

**Members present:** Maureen Lopes, Chair; Dana Benbow (Prudential); Charlotte Furman (Home Life); Linda Ilkowitz (Guardian); Beatrice Manning (DOH); Leon Moskowitz (DOI); Charles Oliver (BCBSNJ); Paulette Ryan (NYLife); Fred Title/Amy Mansue (HIP of New Jersey); David Turner (Aetna).

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

**I. Call to Order**

M. Lopes called the meeting to order at approximately 9:40 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**

The Executive Director reported on a number of issues for the legal committee. First, he reported that the Legal Committee had reviewed the issue of the effect of what has come to be known as the "Any Willing Pharmacy Act" on the SEH Program. He reported that there is an SEH standard rider which permits insureds to obtain pharmaceutical products by mail order only; however, the Any Willing Pharmacy Act appears to prohibit mail order only policies. DAG Bollheimer said that further review of the Any Willing Pharmacy Act will be necessary by the Attorney General's Office.

The Executive Director reported that the second issue was how the statutory and regulatory provisions regarding continuation of coverage and disability applies in both the HMO context and in the indemnity context. One statutory provision indicates that a person on total disability leave is eligible for indefinite continuation upon termination of employment. He reported that, if a small employer changes carriers, the replacing carrier is obligated to provide continued coverage to the person on disability leave. He reported that the Board had extended this requirement to HMO covered persons in its regulations and had, in effect, created a level playing field for carriers. He further indicated that laws and regulations predating the SEH Program would not require HMOs to provide coverage. D.Benbow suggested that the Legal Committee develop a clear

recommendation, consistent with applicable law, that makes sense and to present the recommendation to the Board. The Executive Director said that the Legal Committee would revisit the issue and would make a recommendation to the Board.

The third issue on which the Executive Director reported was whether an association could change carriers and maintain a nonstandard plan. He reported that it was the Legal Committee's interpretation that the law prohibits an association from transferring a health benefits plan from one carrier to another. L. Moskowitz indicated that the Board should obtain an opinion on this issue from the Attorney General's Office. The Board agreed that upon resolution of this matter, the issue should be addressed in a bulletin. In a related matter, the Board also discussed the issue of whether an association's status as operating in-state or out-of-state impacted on its treatment under the SEH Act. The Board agreed that applicable statutory restrictions on the authority of the entity apply whether it is operating in-state or out-of-state.

The fourth issue reported on by the Executive Director was whether a carrier may rate plans offered through associations differently from other non-association business. He reported that it was the Legal Committee's interpretation that a carrier may not rate associations differently because the only permissible rate classification factors are age, gender, and geography. Consequently, the fact that small groups have grouped together should not provide a basis for a carrier's offering a discount to association members.

The fifth issue on which the Executive Director reported was whether associations are required to offer the five standard health benefits plans. He reported that the Legal Committee had not developed a recommendation on this issue. One plausible interpretation of the law was that associations are not required to offer all five plans and are treated differently under the SEH Act than MEWAs, which clearly must offer all five plans. M. Lopes expressed a concern that these small associations would be required to undertake much greater marketing requirements than they are capable of handling. D. Benbow indicated that the rationality of the Program would be destroyed if associations were not required to offer the five plans, and that the Legislature could not have intended that they be exempt from being required to offer the five plans. The Board agreed to table the issue until the next meeting and would seek approval of its final position from the Attorney General's Office.

DAG Bollheimer reported that the Board had received a Petition for Rulemaking from the New Jersey Acupuncture Association on November 3, 1994.

*\*D. Benbow made a motion to refer the Petition to the Policy Forms Committee which should make a recommendation to the Board in January for action by the Board by March. L. Moskowitz seconded the motion and the motion was approved unanimously by voice vote.*

### **III. Report of the Finance Committee**

D. Benbow reported that the Finance Committee had met and addressed two issues regarding rating territories. He reported that the first issue was how SEH regulations should address rating of small employers with multiple locations. On behalf of the Finance Committee, he recommended that carriers should be permitted to use a weighted average of rate per employee by work location which would recognize work locations as proxies for geographic costs. The second issue reported by D. Benbow was how out-of-state work locations should be rated. He recommended that carriers should be permitted to either designate specific rating areas for non-New Jersey employer locations, or align existing rating areas with non-New Jersey territories. D. Benbow also said that there is unclear authority as to what the Board can require carriers to do with out-of-state employees. C. Furman said that Home Life applies the methodology of the state where the employer group is located. D. Benbow responded that the Board may not be able to require carriers to file such area factors as there may be no statutory authority. L. Moskowitz said the DOI might have the authority to develop these factors.

### **IV. Final Agency Determinations**

The Assistant Director reported that the Policy Forms Committee had met to review a number of optional benefit rider filings and submitted a synopsis of the Committee's recommendations (Attached hereto as Exhibit 1). With respect to the filing submitted by First Option which filing was to permit an HMO to offer the standard plans through a POS arrangement, the Board altered the recommendation from "no recommendation" to "incomplete and not in substantial compliance."

*\*D. Benbow mad a motion to accept the recommendations of the Policy Forms Committee as set forth in Exhibit 1 as amended. L. Moskowitz seconded the motion, and the motion was approved unanimously by voice vote.*

(A. Mansue for F. Title)

### **V. Report of the Policy Forms Committee**

M. Lopes reported that the Policy Forms Committee had touched upon the issue of whether an entity, which only holds only an HMO certificate of authority in New Jersey, can establish a POS product, having out-of-network benefits paid on an indemnity basis in the small group market. In the large group market, the DOI has approved arrangements by which HMOs may establish out-of-network benefits but has not approved a similar mechanism in the small group market. L. Moskowitz indicated that the DOI is not prepared at this time to permit such arrangements in the small employer market and that the DOI was awaiting legal advice on this matter from the Attorney General's Office. D. Benbow stated that the manner in which indemnity benefits are delivered to groups is a critical issue, and that there must be mechanisms to ensure that there is proper reserving from properly capitalized entities. L. Moskowitz noted that

licensed insurers are protected by a state guarantee fund if an insurance company goes under, but such a fund does not exist for HMOs. The Board agreed that the issue should be on the January agenda, and DAG Bollheimer said that the Attorney General's office should be able to issue its advice on this issue by that time. M. Lopes indicated that if advice was not ready at that time, the Board, nevertheless, would have to consider its options under the law without the advice.

M. Lopes also reported that the Board had received calls inquiring about the use of the waiver form, application, certification, and pre-x form with the nonstandard health benefits plans. The Board agreed that carriers should be permitted, but not required, to use the forms with the nonstandard plans and that this should be included in a bulletin .

## **VI. Rule Proposal**

The Assistant Director reported that DAG Bollheimer, Jim Donnellan, and Ellen DeRosa had developed a draft rule proposal for an "open face rider." He reported that the purpose of the rider is to permit carriers to make changes to the policy forms consistent with the variability already permitted in the policy forms and to bring an inforce plan into compliance with Board adopted changes to the standard plans.

*\*D. Benbow made a motion to approve the draft rule proposal providing for "open faced riders." L. Ilkowitz seconded the motion, and the motion was approved unanimously by voice vote.*

## **VII. Communications Report**

P. Wolcott reported that the Buyers' Guide is in its 4th and final draft. He said that Jim Donnellan had drafted the HMO chart and that comments were due on November 16, 1994. S. Church said that a bid had been received by Trenton Printing, which had printed the IHC Buyers' Guide, for 50,000 copies at approximately 11 cents per copy. She indicated that copies should be available in about two or three weeks.

P. Wolcott also reported that a briefing on the current status of the Program for legislative staffers, OLS staff, and others had been scheduled for December 14, 1994. A. Mansue suggested that a carrier should attend and volunteered to attend. D. Benbow also volunteered Jim Donnellan to attend the meeting.

*\*A. Mansue made a motion to accept the bid from Trenton Printing, L. Ilkowitz seconded the motion, and the motion was approved unanimously by voice.*

## **VIII. Medical Savings Account**

A. Mansue indicated that the Legislature had asked the Board for a report on a Medical Savings Accounts by January 1, 1995. She distributed a draft report on Medical Savings Accounts for the Board and asked the Board to provide her with comments. She reported that the a medical savings account would permit an employer to establish an account, from which an employee could draw in order to meet his or her deductible. The employer's administrator or the carrier would hold the account.

D. Benbow said that there would be little or no tax advantage to such an account. A. Mansue indicated that a bill had been introduced which would give a tax deduction. A. Mansue said that the argument is that consumers will lower the cost of office visits because the consumer will want to bargain for inexpensive care. D. Benbow said that the account would likely encourage people to buy high deductible policies. A. Mansue suggested that this could have an adverse impact on community rating, because it would skew the risk pool. C. Furman said that some states and some large employers have set up similar accounts, but that she was unaware of any such similar accounts in the small employer market. L. Moskowitz suggested having another entity or an academic group do the report. D. Benbow suggested that the Employee Benefit Research Organization located in Washington, and the International Foundation of Employee Benefit Plans in Brookfield, Wisconsin might be appropriate entities from which to obtain input, but that it may not be appropriate to have the carriers pay for a large study. The Board agreed that its members should determine if there are existing studies from groups such as EBRI, Rand, Robert Wood Johnson, and others.

## **IX. Executive Director's Report**

The Executive Director distributed a memorandum regarding Program staffing. He also distributed a spreadsheet on assessment collection.

*\*D. Benbow made a motion to move into executive session for the purpose of receiving legal advice. Charles Oliver seconded the motion, and the motion was approved unanimously by voice vote.*

Persons attending the Board meeting were informed that the Board would be entering executive session and that the meeting would be closed immediately after the executive session meeting.

## **X. Motions and Matters after Executive Session**

*\*L. Moskowitz made a motion to approve the expenditure of up to \$50,000 as the SEH Board's share of the cost of 2 additional staff members to be shared equally with IHC. C. Oliver seconded the motion, and the motion was approved unanimously by voice vote.*

*\*A. Mansue made a motion to approve the expense report (attached hereto as Exhibit 2) with adjustments to the Attorney General's bill lowering the amount charged. L. Moskowitz seconded the motion, and the motion was approved unanimously by voice vote.*

M. Lopes indicated that the nomination form incorrectly included the HMO seat as one of the seats up for election. She said that the matter would be corrected.

S. Church reported that she visited the Department of Corrections to examine their phone bank and said that they have a fairly sophisticated system. She said that the cost per call would be approximately \$1.01. K. O'Leary indicated that another benefit of choosing Department of Corrections for the Buyers' Guide phone bank would be that an RFP would not be required.

*\*A. Mansue made a motion to accept the Department of Correction's bid and to authorize payment for a phone bank for the SEH Buyers' Guide. C. Oliver seconded the motion, and the motion was approved unanimously.*

The Executive Director reported that an escrow account was opened for assessment disputes. He said that the Attorney General's Office had sent a letter to Treasury indicating that Treasury should not retain the interest accrued on disputed SEH assessments.

*\*L. Ilkowitz made a motion to refer the Petition for Rulemaking received from the New Jersey Optometric Association to the Policy Forms Committee for a recommendation to the Board due by the January meeting, and for the Board to respond within 90 days thereafter. L. Moskowitz seconded the motion, and the motion was approved unanimously by voice vote.*

## **XII. Close of Meeting**

*\*A. Mansue made a motion to close the meeting. C. Oliver seconded the motion, and the motion was approved unanimously by voice vote.*