

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
January 18, 1995**

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

Others present: Kevin O'Leary, Executive Director; Wardell Sanders, SEH Program Assistant Director; DAG Valerie Bollheimer (DOL).

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. Board Member Changes

M. Lopes welcomed Dutch Vanderhoof to the SEH Board of Directors. [Filling a seat created by the enactment of P.L.1994, c.97, as an insurance producer licensed to sell health insurance pursuant to N.J.S.A. 17:22A-1 et seq.] M. Lopes also announced that B. Manning would be leaving the DOH at the end of the day. B. Manning introduced Pam Dixon, an Assistant Commissioner at the Department of Health, and indicated that P. Dixon would be her replacement on the Board as the designee of the Commissioner of Health.

III. Final Agency Determinations

The Assistant Director summarized the optional benefit rider filings reviewed by the Policy Forms Committee.

** A. Mansue made a motion to accept the recommendations of the Policy Forms Committee with respect to the optional benefit rider filing submitted by Keystone Health Plan, as set forth in Exhibit 1 and attached hereto. M. Willoughby seconded the motion, and the motion was approved unanimously by voice vote.*

** D. Benbow made a motion to accept the recommendations of the Policy Forms Committee with respect to the optional benefit rider filings submitted by The Mutual Group, as set forth in Exhibit 1 and attached hereto. M. Willoughby seconded the motion, and the motion was approved unanimously by voice vote.*

** L. Moskowitz made a motion to accept the recommendations of the Policy Forms Committee with respect to the optional benefit rider filings submitted by Celtic Life, as set forth in Exhibit 1 and attached hereto, amending the recommendation with respect to Rider 2 to indicate that the filing was not accepted. D. Benbow seconded the motion, and the motion was approved by voice vote with D. Vanderhoof opposed.*

** D. Vanderhoof made a motion to accept the recommendations of the Policy Forms Committee with respect to the "Wraparound" plan submitted by Garden State Hospitalization Plan and US Life, as set forth in Exhibit 1. C. Furman seconded the motion, and the motion was approved unanimously by voice vote.*

IV. Rule Proposals and Adoptions

The Assistant Director submitted a draft rule proposal which would: (1) amend N.J.A.C. 11:21-17.3 to change the deadline for submission of Exhibit BB, Part 2, the Certification of Promotional and Marketing Material, to March 1 of each year, to conform it with the Market Share Report deadline; and (2) amend Exhibit BB, Part 1, the Certification of Compliance, to distinguish between standard riders and nonstandard riders (i.e. optional benefit riders), to change the reference to the "Health Statement" form to the "Preexisting condition Statement," and to change the certification regarding stop loss coverage to reflect recently adopted changes to the definition of "health benefits plans," "stop loss and excess risk insurance," and changes to N.J.A.C. 11:21-7.4. After some discussion, the Board made additional changes to clarify the participation requirement questions, the question regarding in-plan prescription drug coverage, and other minor clarifications to the existing text.

** L. Moskowitz made a motion to propose the draft rule proposal as amended. D. Benbow seconded the motion, and the motion was approved unanimously by voice vote.*

The Board discussed a draft rule proposal regarding N.J.A.C. 11:21-6.4 and Exhibit T regarding the Waiver Form. M. Lopes noted that the staff had received a number of complaints about the waiver form from employees who objected to completing the form, especially in circumstances where the employee was given a short time in which to complete the form. The draft rule proposal would have amended the rule to require that the form be offered to employees, but not required, and would have amended the form to provide an explanation of why the form was useful. After some discussion, the Board generally agreed that carriers need some protection in writing that employees had been offered coverage but chose to waive coverage, noting that the waiver form predated the small employer health insurance reform. The Board also noted that the form serves a consumer protection function by informing employees that by waiving coverage

Initially they may become subject to preexisting conditions limitations should they opt to be covered at a later time. The Board agreed to withdraw the proposal from consideration in order to consider the matter further.

M. Lopes discussed a draft rule adoption amending N.J.A.C. 11:21-3.2 which included technical changes upon adoption clarifying that the Board could not review rider filings which included a decrease in benefits. After some discussion, the Board amended the draft rule proposal to clarify that it could review rider filings with benefit decreases that had been approved by the Commissioner.

** D. Benbow made a motion to approve the draft rule adoption as amended. L. Moskowitz seconded the motion, and the motion was approved unanimously by voice vote.*

IV. Policy Forms Committee Recommendations: Petitions for Rulemaking

M. Lopes reported that the Policy Forms Committee reviewed the Petition for Rulemaking filed on behalf of the New Jersey Acupuncture Association which requests that the Board amend its policy forms to include coverage for acupuncture. M. Lopes reported that the Policy Forms Committee noted that carriers in the small employer health benefits market were permitted to file optional benefit riders, and that the current statutory and regulatory schemes permit flexibility in designing coverage. She further noted that the Board was not aware of any complaints from small groups regarding the acupuncture coverage under the standard plans. Lastly, she noted that the Policy Forms Committee was confident in the policy forms provide broad coverage and that the change requested was not necessary at this time. M. Lopes reported that the Policy Forms Committee recommendation was to deny the Petition.

** D. Benbow made a motion to deny the Petition for Rulemaking filed on behalf of the New Jersey Acupuncture Association. C. Furman seconded the motion, and the motion was approved unanimously by voice vote.*

M. Lopes reported that the Policy Forms Committee had also reviewed the Petition for Rulemaking filed on behalf of the New Jersey Optometric Association.

** D. Benbow made a motion to deny the Petition for Rulemaking filed on behalf of the New Jersey Optometric Association.*

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

[The Board was in executive session from approximately 11:25 a.m. until 11:35 a.m.]

D. Benbow withdrew his motion to deny the Petition for Rulemaking filed on behalf of the New Jersey Optometric Association.

V. HMOs Providing Out-of-Network Benefits

M. Lopes indicated that legal advice from the Attorney General's office regarding a number of issues relating to the ability of HMOs to provide out-of-network benefits had not yet been delivered to the Board and to the Department. She said that she expected the legal advice to be delivered before the next meeting and that the Board would attempt to address these issues at the next Board meeting. She noted that such advice was essential before the Board could take a position with respect to these related issues.

VI. SEH Board Election Results

The Assistant Director announced the results of the yearly election for open Board seats:

1. Carrier primarily in the small employer market: The Guardian.
2. Carrier primarily in the large employer market: The Prudential.
3. Health, hospital service corporation: Blue Cross and Blue Shield of New Jersey.
4. Person representing minority small employers: Lena Fulton.

M. Lopes indicated that the election would be effective February 15, 1995 for three years. M. Lopes noted that as a result of P.L.1994, c.97, five additional appointed positions remain to be filled.

VII. Report of the Executive Director

The Executive Director referred to a draft bulletin to address confusion over one-life groups and presented overhead slides of the various situations addressed in the bulletin. Several Board members suggested specific changes to the draft bulletin. The Executive Director indicated that the bulletin was essential to provide guidance to carriers, brokers, and consumers. The Board agreed that the Attorney General's office should review the memorandum to assure that it was consistent with applicable law and regulations, and that once approval was given by the Attorney General's office, the staff could send the bulletin requiring compliance within 30 days of mailing.

[D. Cieslik replaced C. Oliver as the representative for Blue Cross and Blue Shield of New Jersey.]

The Executive Director discussed a handout regarding assessments, collections, and reconciliation of assessments. He noted that he had not completed a budget for the Program because the reconciliation had not yet been finalized and because of the transition from the Interim Administrator to the Board staff.

** L. Moskowitz made a motion to approve the reconciliation pending review by the Finance Committee. L. Ilkowitz seconded the motion, and the motion was approved unanimously by voice vote.*

The Executive Director reported on the issue of the jurisdictional lines between the Board and the Department and referred to a handout on this issue. He asked for the Board's review and comments. The memorandum included a recommendation that the Department begin assuming the functions that it had traditionally been responsible for regarding consumer complaints and certain enforcement issues. On the issue of funding, D. Benbow said that that funding should not be based on an assessment of carriers, but rather should come from premium taxes. Paul DeAngelo, the Director of the Department's Enforcement and Consumer Affairs Division, noted that the Department was already handling a high volume of consumer complaints and that assuming responsibilities for issues relating to the SEH Program would be difficult with existing staff and funding. He also said that the Department's authority to enforce the SEH laws and regulations must be made known to the regulated community. The Board noted that a joint SEH/Department bulletin could be issued to address that concern. The Board also discussed outlining the Department's authority via a regulation. M. Lopes instructed the Executive Director to finalize the memorandum of understanding.

** D. Vanderhoof made a motion to proceed with the final draft of the memorandum of understanding. P. Ryan seconded the motion, and the motion was approved unanimously by voice vote.*

On the issue of staffing, the Executive Director announced that Susan Church, the Assistant Director of the IHC Program had resigned to accept another position. The Board agreed that he could fill the position without formal Board approval. The Executive Director reported that he had been advised by the Commissioner that he should seek to obtain two positions from the Office of Management and Budget rather than through the Department. A. Mansue volunteered to represent the Board in seeking to expedite the process of securing authorization to create two positions for the Board. The Executive Director noted that the two positions would be unclassified positions and thus employment at will.

DAG Bollheimer noted that the proposed reimbursement to Diane Rustay, the Board's Administrative Assistant, for purchase of a computer should comply with state bidding and purchasing requirements.

** D. Benbow made a motion to approve the expense report (attached hereto as Exhibit 2) submitted by the Executive Director which included a reimbursement to Diane Rustay for purchase of a computer. L. Ilkowitz seconded the motion, and the motion was approved unanimously by voice vote.*

With respect to outreach, the Executive Director reported that the Legislative Briefing on the Programs was successful. He reported that he had spoken to the Medical

Society on December 29, 1994. He further reported that the IHC Board had recommended that he attend the New Jersey Chamber of Commerce's annual train ride to Washington. M. Willoughby noted that the train ride normally does not provide an ideal environment for outreach. The Executive Director said that he would raise the issue with the IHC Board. He reported that he had been invited to speak at a forum sponsored by Health Care Reform Week, providing the pro position on the issue. "Insurance market reform: Can it work?" Lastly, he reported that he had been invited to speak at the Harvard Center for Public Health and that he had recommended to the sponsors that Judy Hale of the Access Program be invited to speak on New Jersey's subsidy program.

VIII. Report of the Communications Committee

M. Willoughby distributed final copies of the SEH Buyers' Guide. She announced that Trenton Printing had indicated that the initial printing order would be completed by the end of the day. The Executive Director informed the Board that consumers could receive a copy by calling 800/263-5912. M. Willoughby reported that there was a bid in to Trenton Printing to see if it could do rapid shipping of large quantity requests. L. Moskowitz expressed a concern about the cost of large quantity requests for copies of the Guide. M. Willoughby said that the Board had addressed this issue and agreed that the Board would provide free copies, but that the mailing costs would be the responsibility of the person or entity requesting the Guide. C. Furman inquired about carrier obligations to disseminate the Guide. The Board indicated that carriers could obtain a disk to reprint the Guide or could order copies, but that in any event they would not be permitted to alter the text. M. Willoughby said that a press release would be issued about the Guide, but that there would be no press conference. She further indicated that Legislators, the Governor's office, the Department of Insurance, the Office of Legislative Services would be provided copies. L. Moskowitz suggested sending the Guide to all Life/Health agents licensed by the State. D. Vanderhoof had a concern about the language of page five of the Guide with respect to employer contribution and minimum participation requirements. The Board agreed that the language could be clarified but agreed that the ambiguities did not warrant withholding distribution of the Guide.

IX. Report on Legislative Issues

M. Lopes distributed copies of bills before the Assembly's Insurance Committee and copies of some of the bills. She reported that the Committee had requested a report on Medical Savings Accounts. A. Mansue volunteered to provide testimony and suggested that the comments be brief and outline the pros and cons of MSAs in the context of the small employer market. She noted that, as a representative of an HMO, she might be seen as biased, and therefore suggested that other representatives from the Board attend. The Board agreed that M. Lopes should also be present. With respect to A-2500, which would establish a Mandated Health Benefits Advisory Board, the Board agreed that it need not testify. The Board briefly discussed some of the other bills before the Committee.

X. Minutes of December 7, 1994

** A. Mansue made a motion to approve the minutes from the December 7, 1994 meeting as amended. L. Moskowitz seconded the motion, and the motion was approved by voice vote with D. Vanderhoof abstaining.*

** M. Willoughby made a motion to into executive session for the purpose of discussing possible litigation and to receive legal advice. L. Moskowitz seconded the motion, and the motion was approved unanimously by voice vote.*

XI. Close of Meeting