

**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**  
**March 15, 1995**

**Members present:** Maureen Lopes, Chair; Melanie Willoughby, Vice Chair; Dana Benbow (Prudential); Pamela Dickson (DOH); Stephen Fischl, M.D.; Charlotte Furman (Home Life); Linda Ilkowitz (Guardian); Leon Moskowitz (DOI); Charles Oliver (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; Ellen DeRosa, IHC Program Assistant Director; DAG Valerie Bollheimer (DOL); Paul Wolcott.

### **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. Introduction of New Board Members**

M. Lopes introduced Dr. Stephen Fischl who had been recently appointed to the Board. The Assistant Director announced that Lena Fulton, also recently appointed to the Board, was ill and could not be in attendance.

### **III. Minutes**

*\* A. Mansue made a motion to adopt the minutes of the February 17, 1995 meeting, as amended. P. Dickson seconded the motion, and the motion was approved by voice vote with C. Furman abstaining.*

C. Oliver expressed a concern regarding the draft minutes of the February 17, 1995 executive session meeting. The Board agreed to discuss the draft minutes at its next executive session meeting.

#### **IV. Report of the Chair**

M. Lopes distributed a draft plan for accepting public comments at the Board's meetings and asked for comments on the plan from the Board. D. Benbow said that the plan should include some time limitation, and asked whether the Board would require something in writing. L. Moskowitz agreed that questions should come in written form. P. Dickson said that the purpose of the original suggestion to provide the public with the opportunity to speak at meetings was to field factual questions. D. Benbow said that the Board should not be in a position of determining factual questions at Board meetings. M. Lopes said that she would amend the draft plan in light of the Board's discussion for the next Board meeting, and would develop a sign-in sheet. P. Dickson suggested that the Board permit questions from the public on a three month trial basis.

*\* L. Moskowitz made a motion to approve the draft plan. P. Ryan seconded the motion and the motion was approved unanimously by voice vote.*

The Board agreed to post the plan for public comment.

M. Lopes reported that the Board had received an Attorney General opinion on the issue of POS plans delivered by entities with only an HMO certificate of authority and asked for Board comments. L. Moskowitz said that the DOI was close to completion of a bulletin on the Department's position on the issue of HMOs offering POS products with respect to all markets, not just the small employer market. He indicated that he expected the bulletin to be finalized before the Board's next meeting. D. Benbow noted that the SEH Program should wait for the publication of the DOI bulletin before acting, as the bulletin would be articulating what entities could do with their license or certificate of authority. A. Mansue noted that the SEH Program was now reviewing its policy forms, and thus there was a need to resolve this issue as soon as possible. The Board agreed to table the discussion of this issue until its next meeting in order to consider the DOI's position.

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

M. Lopes reported that the Policy Forms Committee had met, in part, to consider amendments to the policy forms. She said that the Committee had reviewed prior petitions for rulemaking, letters to the Board, and other coverage issues raised by Board members and the public. M. Lopes indicated that approximately four key issues had been raised which she would capture in a memorandum for the Board to discuss at a future Board meeting. She said that the memorandum might include comments received from the public at the public comment session to be held on March 22, 1995. E. DeRosa reported that the Board had received two written comments for the public session to date.

The Assistant Director distributed copies of a draft rule adoption of N.J.A.C. 11:21-4.4 and Exhibit DD, a compliance and variability rider. He noted that the Board

had received a comment from the Prudential on the last day of the comment period which had been reviewed by the Policy Forms Committee. The commenter had indicated that while the proposed new rule was a "positive step" by allowing carriers the flexibility to make required or permitted changes to the policy forms without issuing entirely new forms, the twelve-month restriction on the use of a rider when used as a "compliance" rider was unduly burdensome and would increase printing costs for carriers. The Committee's recommendation was to remove the twelve-month restriction. D. Benbow noted that the comment also said that the Board should exercise some discretion over the continued use of "compliance" riders. The Executive Director noted that the IHC Board, after amending its policy forms, had instructed carriers that they should begin issuing the new forms as soon as January 1, but no later than March 1, and to replace the policies on renewal. S. Fischl noted that consumers are often confused by the use of a series of riders. C. Furman noted that employers and their employees might benefit from a letter outlining the key changes to the policy, to be used in addition to the actual rider. After some discussion, the Board agreed that it should retain some control over the duration of the use of compliance and variability riders. M. Lopes said that the draft rule should be referred back to the Committee in light of the Board's comments.

## **VI. Report of the Legal Committee**

The Executive Director reported that the Legal Committee had met to discuss a number of issues. He noted that Jim Brown, Chair of the Legal Committee, could not be in attendance at the Board meeting. He suggested that discussion of disability issues be postponed until the next Board meeting so that J. Brown, who had authored a memorandum on disability issues, could be in attendance to respond to any questions. He further suggested that a bulletin be developed on disability issues, outlining the law and providing examples. A. Mansue noted that the Board would have to face the issue of whether there was sufficient statutory authority for the Board to extend certain obligations regarding disability cases to HMOs. D. Benbow asked for an Attorney General opinion on this issue.

The Executive Director reported that the Committee had reviewed the issue of what constitutes "coverage" with respect to optional benefit rider filings. The Committee had agreed to have members meet with the Policy Forms Committee to discuss this issue in further detail. M. Lopes said that she would invite J. Brown to participate in the next Policy Forms Committee meeting. The Executive Director noted that the Committee had concluded that changes to provider networks did not constitute "coverage" as contemplated by the statutory provision regarding optional benefit rider filings, and thus should not be reviewed as such.

The Executive Director reported that a carrier had written to the Board requesting permission to put a percentage cap increase on existing small groups coming into compliance with the statute's rating requirements. The letter noted that certain groups, such as groups with predominately younger, healthy male employees, often experienced

large rate increases. He reported that the Committee concluded that the Board did not have statutory authority to permit variances to the 3 to 1 rating ban, or to the statutory limits on permissible rate classification factors. He noted that the statute already builds in a transition period to community rating. Bob Vehec, of the Department of Insurance, agreed that the proposed cap would violate the rating requirements of the law. The Board accepted the Committee's recommendation.

The Executive Director reported that the Committee had been made aware of a carrier that was awarding agent bonuses for the sale of dental coverage. Based on the facts presented, the Committee concluded that this did not constitute a "tie-in" sale which would be a violation of N.J.A.C. 11:21-7.11. After some discussion, the Board concluded that there did not appear to be any violation of the SEH Act or its regulations, and noted that it had no regulatory authority over commissions paid to brokers.

The Executive Director reported that the Committee had addressed the issue of whether a carrier would be required or permitted to honor an incorrect quote. He said that the Committee concluded that a carrier should not honor an incorrect quote as that would be a violation of the carrier's rate filings. He noted that such cases were contractual disputes between the carriers and the small employers.

The Executive Director reported that a carrier had asked if small employer groups could group together to create a "large group" to purchase coverage in the large group market. The Committee concluded that this would be impermissible.

The Executive Director reported that the Committee had discussed the issue of whether employees who were participating in an employee welfare arrangement pursuant to a collective bargaining agreement could be considered "eligible employees." The Committee concluded that they could not.

M. Willoughby reported a A-2662, a bill of technical amendments to the SEH Act, was introduced in the Legislature. She reported that the bill would be considered by the Assembly Insurance Committee on March 23, 1995. She said that the bill addressed stop loss coverage, preexisting conditions limitations, liability of Board members, union employees, and continuation of coverage. The Board agreed that the Executive Director should testify on the bill, and D. Benbow and D. Turner said that representatives of Prudential and Aetna might be available to speak. M. Willoughby reported that another bill, A-2656, was introduced on March 13, 1995, would permit small employers that had health benefits plans in force prior to 1994 to amend the coverage of that plan. L. Moskowitz noted the effect of the bill might present severe technical difficulties due to the administration of the applicable rating bands.

## VII. Report of the Communications Committee

M. Willoughby reported that M. Lopes, A. Mansue, J. Majcher, the Executive Director, the Assistant Director, and she had met to review two responses to the RFP for communication services. She noted that, in reviewing the responses, they had concluded that the marketing objectives of the Board would need to be clarified, especially since there were new members on the Board and since the Program was no longer in its infancy. She further noted that originally the Board had determined that the original marketing objective of the Board was to publish a Buyers' Guide, and did not include an aggressive marketing of the standard plans.

M. Willoughby asked the Board to address the issue of whether the marketing objectives of the Board would include the marketing of the standard plans, and generally to discuss what the marketing objectives of the Board should be. M. Lopes said that the most powerful message to small employers would be to stabilize cost. A. Mansue noted that many people think that the purpose of standardization was to limit choice, and that the intended goal of creating products that could be easily compared should be communicated. L. Moskowitz said that the three reform statutes were a comprehensive rather than incrementalist approach to health care reform in the State. He noted that the goals of the statutes were to attack the problem of the uninsured population in the State and to provide access to coverage to those who previously could not obtain affordable health care. He concluded that it made sense for the three entities responsible for implementing the reforms to work together in crafting their message and executing their marketing objectives. S. Fischl indicated that from his experience as a small employer and as a doctor that he did not think that the message that health care reform in the State is working and that people have access to affordable health care had been communicated effectively. The Executive Director said that a distinction should be drawn between the message and the method: the message should be that access to coverage is now available with standardized plans easily compared, and the method is how that could be best accomplished whether through free or paid media. He noted further that currently there is an information deficit.

M. Willoughby then asked if the Board thought the Board should be more proactive in getting its message out and whether paid advertising should be used. The Executive Director said that he believed that the Board should be more proactive, but that the Board should first exhaust its access to free means of advertising through various publications and press releases and conferences before deciding whether paid advertising is necessary.

M. Lopes noted that the Board had developed a policy for distribution of the Buyers' Guide which had been set forth in a bulletin. She asked the Board whether free copies of the Buyers' Guide should be provided to persons speaking to groups of brokers

in an setting in which brokers may receive continuing education credit. The Board agreed that free copies should not be made available.

### **VIII. Report of the Executive Director**

The Executive Director reported that the memorandum on one life groups had been mailed to carriers and other interested persons in a recent Board mailing. He also reported that the DOI had taken over complaints as of March 1, 1995, and recommended that the DOI report to the Board at its monthly meetings on important issues. The Executive Director reported that he had written job descriptions for two new staff positions and provided them to the DOI to be forwarded to the Department of Personnel. He said that he was advised on March 1, 1995 of a hiring freeze effective on that date. After speaking with the Commissioner, L. Moskowitz, and Assistant Commissioner Troy, they agreed to proceed with the hiring process.

The Executive Director provided the Board with a rough draft of revenues and expenses. He noted that the Plan of Operation required the Board to review the financial results of the prior year and to determine if an assessment were necessary in April. The Executive Director indicated that he would submit a draft report on Program expenses, a budget, and recommendations for an assessment to either the Finance or Operations Committee for technical assistance and guidance.

The Executive Director reported that he had developed an RFP for an auditor. He said that, on the advice of Assistant Commissioner Troy, he had taken out the request for accounting functions, and had purchased a computer program for Program accounting. Also on the advice of Commissioner Troy, he substantially rewrote the RFP for the auditor to meet Treasury guidelines and submitted the RFP to Treasury. However, a representative of Treasury upon being informed that the Board had its own contracting authority and funding, told the Executive Director that the RFP need not go through the Treasury. The Executive Director said that he public notice of the RFP had been published with a return date of April 13, 1995.

*\* L. Moskowitz made a motion to approve the expense report attached hereto as Exhibit 1, with the understanding that a reimbursement for one-half of the cost of mailing charges from Trenton Printing for \$723.06 (not appearing on Exhibit 1) would be forthcoming from the IHC Program. D. Vanderhoof seconded the motion, and the motion was approved unanimously by voice vote.*

The Executive Director reported that while the Board had recommended he not meet with representatives of the Medical Society, he did meet with the representatives because when he attempted to contact them, they were already in transit to the meeting from out-of-state. He noted that he believed the meeting was fruitful, and he said that he would report on the meeting at the Board's next executive session meeting.

The Executive Director reported that with respect to outreach efforts that he had spoken at meetings of the Society of Group Contract Analysts, the NJAHU, the Local Advisory Board in Brick, a seminar held by "Health Care Reform Week," a seminar entitled "Insurance Market Reform, Can it Work?," and appeared on the Business Plan Show of NJN. He noted that the Local Advisory Board meeting was disappointing as it had a low turnout. He also indicated that he would be appearing on or meeting with WEB, a cable show - "It's Your Business," the Riverton Rotary Club, a League of Women's Voters forum, and at the Harvard School of Public Health.

M. Lopes indicated that the April Board meeting should include a vote on positions for Chair and Vice Chair. The SEH staff agreed to send a ballot form to Board members to solicit nominations.

### **IX. Report of the Assistant Director**

The Assistant Director reported that the Department of Insurance had held a public hearing earlier in the morning on an SEH rule proposal to amend N.J.A.C. 11:21-2.5 a provision in the Plan of Operation which would require the affirmative vote of at least two-thirds of the Directors present at a meeting to authorize assessments and the expenditure of Program funds. He noted that the Board had not received any comments on the rule proposal, and that it could be adopted, but would not become effective until approved by the Commissioner or deemed approved if not expressly disapproved by the Commissioner in writing within 90 days of receipt by the Commissioner.

*\* D. Benbow made a motion to adopt the draft rule adoption to amend the Plan of Operation to require a supermajority of two-thirds to approve assessments and expenditure of Program funds. A. Mansue seconded the motion, and the motion was approved unanimously by voice vote.*

The Assistant Director reported that the yearly enrollment report was due on March 15, 1995, and that many of the carriers which had reported had indicated that they were unable to report on the Standard Industrial Classification codes as required by N.J.A.C. 11:21-7.13(a). The Assistant Director also reported that a mistake had been made on the report forms provided to carriers, but that corrected forms had been sent to carriers. He indicated that he would provide a report to the Board when the figures had been compiled. It was recommended that the report forms be set forth in a regulation. The Executive Director said that the staff would work on developing a method for carriers to report enrollment figures on computer disk.

### **X. Close of Meeting**

*\* D. Vanderhoof made a motion to close the meeting. L. Moskowitz seconded the motion, and the motion was approved unanimously by voice vote.*