

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 15, 1995

Members present: Maureen Lopes, Chair; Dana Benbow, Vice Chair/James Donnellan (Prudential); Debbie Cieslik (BCBSNJ); Stephen Fischl, M.D.; Linda Ilkowitz (Guardian); Jane Majcher (Home Life); Amy Mansue (HIP of New Jersey); Leon Moskowitz (DOI); Susan Peters (Aetna); Sherrie Price (New York Life); Dutch Vanderhoof, M. Willoughby; Bonnie Wiseman (DOH).

Others present: Kevin O'Leary, Executive Director; Wardell Sanders, SEH Program Assistant Director; Ellen DeRosa, IHC Program Assistant Director; DAG Josh Lichtblau (DOL).

I. Call to Order

M. Lopes called the meeting to order at approximately 9:45 AM 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. Public Comment Session

No comments were offered.

III. Marketing Report

The Executive Director reported that the Marketing Committee had met to discuss the premium comparison survey. Shirlee Wenzel of Wenzel & Co., the Board's public relations firm, outlined the changes to the draft survey from the last draft and noted that the format had been changed to a three panel piece.

[S. Fischl arrived]

S. Wenzel indicated that the Committee was planning to hold a press conference on December 12, 1995 to announce the publication of the premium comparison survey, and that her firm had contacted appropriate press about the press conference. The Executive Director reported that he had met with Bob Vehec and Peter Thexton of the Department who had made excellent suggestions concerning the draft survey. He further

reported that the Committee had determined it best to publish the group cost of the plans rather than trying to report costs for individuals. M. Willoughby noted that the survey was designed to be distributed both as an insert to the Buyers' Guide and as a stand-alone piece. D. Vanderhoof expressed a concern about the final draft of the survey going out without formal Board discussion and approval; other Board members expressed a concern about any delay in publication of the survey. It was determined that D. Vanderhoof should participate with the Marketing Committee in reviewing the draft survey before publication. M. Lopes noted that if the Committee could not agree on a final survey, the Board would hold a meeting before its next regularly scheduled meeting. The Executive Director noted that all Board members would receive a copy for comment prior to printing.

III. Minutes

** D. Benbow made a motion to approve the draft minutes of the October 18, 1995 meeting, as amended. L. Moskowitz seconded the motion, and the motion was approved by voice vote with A. Mansue, S. Peters and J. Majcher abstaining.*

** D. Benbow made a motion to approve the draft executive session minutes of the October 18, 1995 meeting. L. Moskowitz seconded the motion, and the motion was approved by voice vote with A. Mansue, S. Peters and J. Majcher abstaining.*

** A. Mansue made a motion to approve the draft minutes of the November 1, 1995 meeting, as amended. D. Cieslik seconded the motion, and the motion was approved by voice vote with J. Majcher and S. Peters abstaining.*

** D. Vanderhoof made a motion to approve the draft executive session minutes of the November 1, 1995 meeting. L. Moskowitz seconded the motion, and the motion was approved by voice vote with J. Majcher and S. Peters abstaining.*

IV. Report of the Policy Forms Committee

The Assistant Director reported that the Board had received a certification from New York Life certifying that it had filed rates for an optional benefit rider filing previously found incomplete for failure to certify that rates had been filed with the Department. He recommended that the filing be found complete and in substantial compliance.

** D. Vanderhoof made a motion to find the optional benefit rider filing submitted by New York Life (as described in Exhibit 1) complete and in substantial compliance. A. Mansue seconded the motion, and the motion was approved with S. Price abstaining.*

E. DeRosa reported that a working group met two times to develop a standard HMO/POS contract. She noted that representatives of the Department had been in

attendance. She reported that the working group had addressed a number of technical issues in the development of the draft, and she highlighted two key issues, one structural and one design, faced by the working group. At a previous Board meeting, the Board had discussed the preferred structure of the HMO/POS plan and recommended to the working group that the plan fully integrate in-network and out-of-network services and benefits. The working group reviewed a draft which accomplished such integration and concluded that since in-network services and supplies were not parallel to the out-of-network benefits, integration was confusing. E. DeRosa explained that the final draft HMO/POS plan before the Board, therefore, contained clearly distinct sections addressing in-network services and supplies and out-of-network benefits.

E. DeRosa reported that the benefit design issue that was most challenging to the working group was an anti-stacking mechanism for limited benefits. The working group attempted to create mechanisms which would prevent a member covered under the plan from obtaining full limited benefits using out-of-network providers. For any services which applied different types of limits for in-network vs. out-of-network services and benefits, the Committee offered three options: (1) allow stacking; (2) conform the limits to the in-network design; or (3) offset by the reasonable cash value. The working group recommended that the Board select the third option, and the Board concurred.

The Board then discussed the use of a document to describe how the benefits under an HMO/POS contract would be provided, a kind of roadmap for the reader. D. Cieslik said that she would attempt to provide the Board with the language as soon as possible. The Board briefly discussed the merits of including such a document as part of the contract or whether it should be part of the certificate or as part of both documents. A. Mansue asked whether the draft HMO/POS contract would meet federal qualification requirements. E. DeRosa said that it probably would not and recommend that the Board develop a standard rider to accomplish this. M. Lopes said that the Board would consider the rider at a later date.

** D. Benbow made a motion to approve proposal of the draft HMO POS contract, subject to technical corrections of the Department, and that the summary include a statement that the HMO POS contract may not be sold until regulations by the Department of Health outlining the contractual bases necessary for HMOs to offer POS products was approved. A. Mansue seconded the motion, and the motion was approved unanimously by voice vote.*

** D. Cieslik made a motion to move into Executive Session to receive legal advice concerning the relationship between the Board's proposed HMO POS contract regulations and the Department of Health regulations. D. Vanderhoof seconded the motion, and the motion was approved unanimously by voice vote.*

[EXECUTIVE SESSION]

OPEN SESSION

** D. Benbow made a motion to amended his prior motion to move adoption of the HMO POS contract with a statement that the forms may not be used prior to Board adoption of its regulation, with no mention of the Department of Health's regulation relating to an HMO's ability to offer out-of-network benefits. L. Moskowitz seconded the motion, and the motion was approved unanimously by voice vote.*

M. Lopes noted that the Board had to develop a standard Evidence of Coverage form, revise the standard application form and enrollment form to accommodate the new HMO/POS contract, and to develop a rider to make the contract consistent with federal qualification requirements. She also noted that E. DeRosa should be commended for her efforts in drafting the HMO/POS contract, especially in light of the Board's aggressive timeframes.

V. Report of the Legal Committee

The Executive Director reported that the Legal Committee had discussed a compliance issue regarding Time Insurance Co.'s use of the Medical Data Research ("MDR") database in paying claims rather than the HIAA database as required by N.J.A.C. 11:21-7.14. He noted that Time had filed to use the alternate fee profile with the IHC Board, as permitted under IHC regulations. He noted that Time's use of an alternate fee profile raised two issues: (1) what action, if any, should be taken against Time for its violation of N.J.A.C. 11:21-7.14, and (2) did the SEH Board want to amend its regulations to permit carriers to file to use an alternate fee profile as permitted in the individual market. D. Benbow noted that a determination of actuarial equivalency of fee profiles had proven to be a difficult task for the IHC Board. The Executive Director noted that the IHC regulations permitting carriers to use an alternate fee profile was initially intended as an interim measure. After some discussion, the Board agreed that Time would have to come into compliance with SEH regulations, and that amendments to N.J.A.C. 11:21-7.14 would not be considered.

** A. Mansue made a motion to send a letter to Time requiring it to come into compliance with N.J.A.C. 11:21-7.14 and to ask it to submit a timetable for compliance. D. Vanderhoof seconded the motion, and the motion was approved unanimously by voice vote.*

[J. Donnellan replaced D. Benbow as the Prudential representative]

The Executive Director reported that the Legal Committee had discussed the issue of whether seasonal employees should be treated as "eligible employees" under the law. The Assistant Director noted that staff had received many inquiries regarding this issue. He reported that the Legal Committee had recommended looking at other states' treatment of the issue, as well as ERISA and workmen's compensation law, for guidance on developing a bright line rule. The Assistant Director indicated that after the Legal Committee meeting he had concerns about the development of a bright line rule and its

effects on existing employer plans. He suggested the use of a test for employers which would ask: (1) whether the employee worked in a prior year or years for the employer, (2) if the employee was expected by the employer to return in later years, (3) whether the employee was working a normal work week of 25 hours or more during the season or period in which he or she worked, and (4) whether the employee was working on a substitute basis. L. Moskowitz noted that as a matter of as a public policy the goal of the Board should be to use a test which provided for coverage for the greatest number of employees. L. Moskowitz expressed a concern about the use of the test outlined by the Assistant Director, and suggested the use of alternative tests for determining whether a seasonal employee would be considered an eligible employee. The Board agreed to refer the matter back to the Legal Committee for further consideration.

[M. Willoughby left the meeting]

VI. Report of the Executive Director

The Executive Director presented an expense report to the Board and noted that the expenses for legal services should have indicated services for 1996.

** D. Cieslik made a motion to approve the expense report attached hereto as Exhibit 2 as amended. J. Donnellan seconded the motion, and the motion was approved unanimously by voice vote. [Met 2/3rds supermajority requirement.]*

The Executive Director reported that the bookkeeper was currently working on the SEH books. He reported that a completed audit would be forwarded immediately to the Operations Committee for review.

With respect to outreach, the Executive Director reported that he met with officials from Kentucky, at the sponsor's expense, to discuss New Jersey's experience with reform. He also reported that he participated in a seminar sponsored by the Camden County Medical Society.

The Executive Director reported that he had drafted a bulletin on association business, based primarily on a prior bulletin, and indicated that he was awaiting comments from the Attorney General's Office. He asked for Board comments by November 17, 1995. He also reported that he received a response from the Governor's Office regarding the letter on the Kennedy/Kassebaum Bill which would affect rating in the small employer market. He also reported that a meeting had been scheduled with Assistant Attorney General Al Ramey and others to discuss the Board's draft Ethics Manual.

The Assistant Director reported that the Board packets included a Ballot for the Board seat for a representative of minority small business.

** L. Moskowitz made a motion to move into executive session to discuss enforcement actions. J. Donnellan seconded the motion, and the motion was approved unanimously by voice vote.*

It was noted that the Board might take some action after executive session on the document describing how the HMO/POS contract works.

[EXECUTIVE SESSION]

OPEN SESSION

After some discussion, the Board agreed that the HMO/POS contract proposal would not include the document providing a roadmap of how the contract works. The Board agreed to include the document in the certificate and possibly in the application form and Buyers' Guide. It was further agreed that the Policy Forms Committee would develop the document.

** A. Mansue made a motion to approve the draft consent agreement with Independence Blue Cross, subject to technical corrections by the Attorney General's Office. D. Vanderhoof seconded the motion, and the motion was approved with D. Cieslik abstaining.*

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