

## 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 17, 1996**

**Members present:** Maureen Lopes, Chair; James Donnellan, Vice Chair (Prudential); Justin Fiedler (BCBSNJ); Stephen Fischl, M.D.; Charlotte Furman (Home Life); Eileen Gallagher (NYLife); Linda Ilkowitz (Guardian); Amy Mansue (HIP of New Jersey); Leon Moskowitz (DOI); Susan Martha (Aetna); Dutch Vanderhoof; M. Willoughby.

**Others present:** Kevin O'Leary, Executive Director; Wardell Sanders, SEH Program Assistant Director; Ellen DeRosa, IHC Program Assistant Director; DAG Maria Smyth (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 Hearing**

M. Lopes announced that the Board would hold a public hearing for the purpose of hearing comments from interested parties on a rule proposal creating a POS contract for HMOs in the small employer market. The Assistant Director asked the audience if there were any persons present to testify, but no one came forward. The Assistant Director noted that written comments on the proposal would be accepted until February 1, 1996.

*\* A. Mansue made a motion to close the public hearing. D. Vanderhoof seconded the motion, and the motion was approved unanimously by voice vote.*

### **III. Public Comment Session**

No comments were offered.

#### **IV. Election**

The Assistant Director announced that there would be an election for a person representing minority small employers, and made ballots available to carrier representatives on the Board and in the audience. He noted that carrier representatives could submit completed ballots to him and that the results of the election would be announced later in the meeting.

#### **V. Minutes**

*\* A. Mansue made a motion to approve the draft minutes of the November 15, 1995 minutes. E. Gallagher seconded the motion, and the motion was approved by voice vote with C. Furman and S. Martha abstaining.*

*\* L. Moskowitz made a motion to approve the draft minutes of the November 15, 1995 executive session minutes. J. Donnellan seconded the motion, and the motion was approved by voice vote with C. Furman and S. Martha abstaining.*

#### **VI. Legislative Report**

M. Lopes reported that both A-2662 (P.L.1995, c.298) and S-2380 (P.L.1995, c. 340) had been signed by the Governor. Copies of the final bills were included in the Board packets. She noted that while the bills did change significant portions of the Program, the bills delayed a final determination on the issues of community rating, one-life groups and the pooling of groups.

#### **VII. Marketing Committee Report**

The Executive Director introduced Jim Gorman from Wenzel and Company. The Executive Director reported that the *Premium Comparison Surveys* were complete and were being distributed with copies of the *Buyers' Guide*. He also reported that there was a press conference on December 13, 1995 announcing the publication of the *Premium Comparison Surveys* as well as the third quarter enrollment figures. J. Gorman noted that press kits were to sent to reporters who did not attend the press conference. The Executive Director reported that there would be a meeting of the Committee in early February to discuss distribution of the *Premium Comparison Surveys* and to discuss other matters.

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

The Executive Director reported that the Legal Committee had met via telephone conference and discussed two issues. First, he noted that the Committee considered the recent changes to the participation regulation under which credit is provided for persons covered under any health benefits plan provided by the employer. Staff had noted that this change had been the source of many comments from brokers, carriers, and small

employers. The Executive Director noted that the amendment would mean that carriers would be required to offer and issue multiple plans to a single small employer, and additionally could mean, for example, that a ten person group could obtain plans from ten separate carriers. L. Moskowitz noted that the scenarios described above were not the intended result of the rule change; he indicated that the rule should be flexible to enable to enable employers to purchase plans with different delivery systems. J. Donnellan noted that while the change could present administrative difficulties for carriers, the likelihood of small employers purchasing, for example, ten different plans was not great. The Board decided not to make any changes to its regulation as amended, but agreed to monitor the situation and to make changes swiftly if the change is abused.

Second, the Executive Director reported that the Legal Committee had discussed appeals received from National Health Insurance Co. and Bankers Security Life Assurance Society from the Board's determination of nonmember status. He noted that both carriers were granted nonmembers status in 1993, but that it had come to Board's attention that these carriers did not meet one of the requirements of the nonmember status regulation, *i.e.* that the plans had not been issued in New Jersey. On the grounds that the association contracts were issued in Washington, DC and Illinois, respectively, were not in conformance with N.J.A.C. 11:21-8.3(b)(1), the Board had denied the two carriers nonmember status for 1994. He noted that both carriers appealed arguing that the regulatory requirement was not required by statute, and thus was *ultra vires*. The Executive Director said that the Committee found no issue of material fact, only issues of law. He indicated that the recommendation of the Legal Committee was to deny the appeals and that final orders be issue denying nonmember status and directing the carriers to submit market share reports. L. Moskowitz asked if a DAG had been involved in the Committee's discussions, and the Executive Director responded that a DAG had been involved both at the regulation drafting stage and in the context of the appeal.

*\* L. Moskowitz made a motion to deny the 1994 nonmember status appeals of National Health Insurance Co. and the Bankers Security Life Assurance Society on the grounds that the association contracts were issued in Washington, DC and Illinois, respectively, were not in conformance with N.J.A.C. 11:21-8.3(b)(1), to issue final orders, and to require the carriers to provide market share reports. A. Mansue seconded the motion, and the motion was approved by voice vote with S. Martha abstaining.*

The Executive Director noted that the statutory provision under which both carriers claimed nonmember status had been deleted in the recent amendments to the law.

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

The Assistant Director referred to SEH Bulletin 95-07 which provides guidance to carriers on incorporation of the 1996 policy form amendments. He noted that the bulletin permits carriers to use a compliance rider with newly issued plans until March 1, 1996, and with renewal plans until the Board provides further notice.

The Assistant Director reported that the Policy Forms Committee had met to discuss various optional benefit rider filings. Attached hereto as Exhibit 1 are the recommendations of the Committee and of the staff. He noted that the cancellation of the December 1995 meeting had resulted in the lapsing of the 45 day deemer period with respect to riders 2 through 7 under the "Recommendations of the SEH Policy Forms Committee" section of Exhibit 1; however, he noted that the recommendation of the Committee was to find all of those filings complete and in substantial compliance.

*\* J. Donnellan made a motion to accept the recommendation of the Policy Forms Committee with respect to the rider submitted by AmeriHealth (#1 on Exhibit 1) to forward the filing to the Department of Insurance pursuant to N.J.A.C. 11:21-12.8, because it believed that the rider is confusing. M. Willoughby seconded the motion, and the motion was approved by voice vote with S. Martha abstaining.*

*\* L. Moskowitz made a motion to accept the recommendation of the Policy Forms Committee with respect to the rider filing submitted by Colonial Life (# 2 on Exhibit 1) and find the filing complete and in substantial compliance. D. Vanderhoof seconded the motion, and the motion was approved by voice vote with S. Martha abstaining.*

*\* L. Moskowitz made a motion to accept the recommendation of the Policy Forms Committee with respect to the rider filing submitted by Connecticut General (#3 on Exhibit 1) and find the filing complete and in substantial compliance. Eileen Gallagher seconded the motion, and the motion was approved by voice vote with S. Martha abstaining.*

*\* L. Moskowitz made a motion to accept the recommendation of the Policy Forms Committee with respect to the rider filing submitted HIP of New Jersey (#4 on Exhibit 1) and find the filing complete and in substantial compliance. L. Ilkowitz seconded the motion, and the motion was approved by voice vote with A. Mansue and S. Martha abstaining.*

*\* J. Donnellan made a motion to accept the recommendation of the Policy Forms Committee with respect to the rider filing submitted by Home Life (#5 on Exhibit 1) and find the filing complete and in substantial compliance. L. Moskowitz seconded the motion, and the motion was approved by voice vote with C. Furman and S. Martha abstaining.*

*\* D. Vanderhoof made a motion to accept the recommendation of the Policy Forms Committee with respect to the rider filing submitted by Physician Healthcare Plan (#6 on Exhibit 1) and find the filing complete and in substantial compliance. A. Mansue seconded the motion, and the motion was approved by voice vote with S. Martha abstaining.*

With respect to the rider filing from U.S. Healthcare which would provide coverage at no charge to an employee if he or she were terminated involuntarily by the

employer, L. Moskowitz had a concern about the whether the rating of the policy was consistent with the Department's rating requirements. He also asked what would happen under the rider if the employer went out of business: would the employees still be provided coverage at no cost with no employer contribution? D. Vanderhoof also expressed a concern about the rating of the policy. The Assistant Director noted that the rating issue was a matter for the Department to consider rather than the Board. The Board agreed that the rating issue should be considered more fully by the Department.

*\* L. Moskowitz made a motion to accept the recommendation of the Policy Forms Committee with respect to the rider filing submitted by U.S. Healthcare (#7 on Exhibit 1) and find the filing complete and in substantial compliance, but to call to the Department's attention the Board's concerns about the rating of the policy. J. Donnellan seconded the motion, and the motion was approved by voice vote with S. Martha abstaining.*

*\* L. Moskowitz made a motion to accept the recommendation of the staff with respect to the rider filing submitted by AmeriHealth (II(1) on Exhibit 1) and find the filing complete and in substantial compliance. D. Vanderhoof seconded the motion, and the motion was approved by voice vote with S. Martha abstaining.*

[S. Fischl arrived at the meeting]

*\* J. Donnellan made a motion to accept the recommendation of staff with respect to the rider filing submitted by Celtic Life (II, (2) on Exhibit 1) and find the filing complete and in substantial compliance. C. Furman seconded the motion, and the motion was approved by voice vote with S. Martha abstaining.*

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

The Executive Director directed the Board's attention to the submitted expense report. He noted that the expense for Wenzel & Co. represented payment for two months as well as the cost of printing *Premium Comparison Surveys*. In addition, he noted that there was an expense for the SEH Program for a bill from Dawn's Bookkeeping that was inadvertently paid by IHC Board. D. Vanderhoof asked if the Board was within its budget for communications services; the Executive Director responded that the Board was within its budget.

*\* A. Mansue made a motion to approve the submitted expense report attached hereto as Exhibit 2. M. Willoughby seconded the motion, and the motion was approved by voice vote with S. Martha abstaining.*

The Executive Director reported that the bookkeeper had nearly completed the SEH Program books. He noted that Deloit & Touche auditors had commitments to other clients in January, but would be back working on the IHC and SEH Program audits in early February.

The Executive Director referred to handouts on the SEH Program assessment. He noted that of the \$315,602 billed to carriers, \$314,823.88 had been received to date. He noted that the difference was due to nonpayment by Allstate Life Insurance Co., Gulf Insurance, and People's Security Life Insurance. The Executive Director reported that Allstate and Gulf had submitted appeals with appropriate nonmember status certifications; he recommended that both carriers be granted nonmember status and that the Board not reassess carriers for the small amounts involved. Lastly, he noted that Bankers Multiple Line Insurance Co., a carrier that had been denied nonmember status on the grounds that it did not meet all of the criteria for nonmember status under N.J.A.C. 11:21-8.3, did not appeal the Board's denial and had submitted an Exhibit CC, Market Share Report, for assessment purposes.

*\* L. Moskowitz made a motion to approve nonmember status to Allstate Life Insurance Co. and Gulf Insurance Co. D. Vanderhoof seconded the motion, and the motion was approved by voice vote with S. Martha abstaining. [Met 2/rds supermajority requirement]*

The Executive Director reported that he had experienced problems transferring funds from the Treasury to the Board's account. He indicated that Assistant Commissioner Ed Troy had asked for authorization from the Board to transfer the funds, and to have the vote reflected in the Board's minutes. The Executive Director said that the money primarily would go to paying reimbursements from the assessments to carriers, but that a sufficient amount would remain in the Treasury account to pay salaries, benefits and overhead expenses. M. Willoughby asked if there was a deadline for having the funds removed from Treasury, and whether there was a danger that the funds would become inaccessible to the Board. The Board asked the Executive Director to look into the matter.

*\* A. Mansue made a motion to transfer from the SEH Treasury account to the Board's checking account all funds in excess of \$135,000 which will cover salary, benefits and overhead expenses through the end of fiscal year 1996. M. Willoughby seconded the motion, and the motion was approved by voice vote with S. Martha abstaining.*

The Executive Director noted that the 1994 reconciliation payments had not been made. M. Lopes noted that the Board had agreed to withhold payment to carriers until the auditors had completed their review of the SEH Program finances.

The Executive Director reported that three compliance agreements had been negotiated and were ready for Board approval. The carriers involved were AmeriHealth HMO, MegaLife and PFL Life Insurance Co. He noted that the agreements had been examined and negotiated by the Department and that the Attorney General's Office had reviewed the agreements. He further noted that the agreements provided that all fines would go to the Treasury, and that the agreements with MegaLife and PFL provided for

the payment of the cost of the investigations. The Executive Director indicated that Paul DeAngelo and Tom Smith had done an excellent job in investigating these matters and negotiating with the carriers. A. Mansue added that the success of the reforms in the individual and small employer markets depends on the active enforcement of the law, and she commended the Department for its hard work. The Executive Director recommended that the Board approve the agreements and appoint M. Lopes to sign the agreements on behalf of the Board.

*\* A. Mansue made a motion to approve the AmeriHealth HMO compliance agreement. L. Ilkowitz seconded the motion, and the motion was approved by voice vote with S. Martha abstaining.*

*\* D. Vanderhoof made a motion to approve the MegaLife compliance agreement. M. Willoughby seconded the motion, and the motion was approved by voice vote with S. Martha abstaining.*

*\* M. Willoughby made a motion to approve the PFL compliance agreement. D. Vanderhoof seconded the motion, and the motion was approved by voice vote with S. Martha abstaining.*

The Executive Director referred to a draft bulletin outlining the changes to the small employer health benefits market as the result of the passage of S-2380 (P.L.1995, c. 340) and A-2662 (P.L.1995, c.298). The Executive Director then walked the Board through the draft bulletin. L. Moskowitz noted that the changes in the law require the Department to promulgate rules, and indicated that the communication of the changes in the law should come from both the Department and the Board. The Executive Director agreed and added that it was important for the communication to be sent as soon as possible.

[C. McDevitt replaced L. Moskowitz as the DOI representative]

In its review, the Board made specific drafting suggestions to the Executive Director. With respect to the new requirement that employers provide notice to employees of their right to continue coverage, the Executive Director asked about how the provision could be enforced. While no suggestions were made regarding the enforcement of this issue, J. Fiedler suggested that, as an informational matter, the Q&A section of *the Buyers' Guide* include a reference to an employer's obligations.

When noting that the amendments change the composition of the Board, the Executive Director recommended that the upcoming elections previously scheduled for February be consolidated with the new elections required by the amendments and held at the March 1996 meeting. The Board agreed with the Executive Director's suggestion.

The Board identified an issue unclear in the legislation: if a nonstandard plan is continued, but not amended, must the standard plan be of greater actuarial value than Plan

A? The Board agreed to consider the issue with the Department and the Attorney General's Office. M. Lopes suggested dividing the bulletin by entities, *i.e.* a section on carriers, a section on associations, and a section on out-of-State trusts. M. Willoughby suggested that such a division of entities, and their rights and responsibilities be in addition to the draft's outline of the changes.

[L. Moskowitz replaced C. McDevitt as the DOI representative]

M. Lopes noted that the Board would develop a work plan for the studies that the Board was required to undertake as a result of the passage of the new amendments to the law. The Board then briefly discussed the amendment's requirement that the Board study the effect of making individuals eligible for small group insurance; the Board noted that the study should not be read to imply that the individual would have to be self-employed. The Board also agreed that staff should send a memorandum to carriers as soon as possible noting that amendments to the law had been passed, and that the Board and Department would be communicating to the carriers in greater detail about the changes in the near future. The Board suggested inclusion of the table of contents of the draft bulletin in the memorandum. The Executive Director asked Board members to provide him with comments on the bulletin. He also noted that the Marketing Committee would be meeting in early February to discuss what action would be required as a result of the passage of the amendments to the law.

[M. Willoughby left the meeting]

The Executive Director reported that the New England and Time Insurance had provided timetables for compliance with the Board's regulations concerning the payment of benefits; both carriers had been using an alternate fee profile in paying benefits rather than the HIAA profile. Time indicated that it could come into compliance by February 2, 1996, and the New England indicated that it could come into compliance no later than April 1, 1996. The Board agreed that the timetables were acceptable.

The Executive Director also reported that he had met with representatives from the Department and the Attorney General's Office regarding the Board's draft Ethics manual. He indicated that the Attorney General's Office indicated that it would be getting back to the Board in the near future.

With respect to outreach, the Executive Director indicated that he had been invited by the HIAA to speak at an April meeting in Washington and by the ABA to speak at a June conference in New York at the expense of the inviting entities.

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

The Assistant Director reported that Ellen DeRosa had completed drafts of the HMO/POS certificate and of the short, descriptive piece explaining how the benefits are delivered. He indicated that he would send copies of these documents to the Board. He



also indicated that staff was working on amendments to the application and enrollment forms necessary to enable an HMO to offer POS contracts.

The Assistant Director also reported that he had received an Exhibit BB from Blue Cross and Blue Shield of New Jersey ("BCBSNJ") recently. He noted that the Exhibit BB listed an "IPN rider" under the Exhibit's inquiry regarding the riders being offered by the carrier. He explained that the IPN rider alters the provider network. He noted that the rider had been filed with the Board, but that BCBSNJ had withdrawn the filing at the February 17, 1995 meeting (see 2/17/95 minutes at page 4). He further noted that the withdraw had occurred in the context of a Board discussion regarding whether a change in network of providers constituted a change in "coverage" as contemplated by N.J.S.A. 17B:27A-19i. The Assistant Director indicated that it was the staff's understanding that the effect of the withdraw was that the rider may not be sold, and further, that the changes to the optional benefit rider regulation (N.J.A.C. 11:21-3.2(d)) to list "provider networks" as an item which was not "coverage" meant that carriers would not be permitted to change networks via optional benefit rider filing. The Board agreed that it intended that the withdrawn rider filing not be sold as an optional benefit rider filing, and instructed the Assistant Director to contact BCBSNJ to that effect. M. Lopes noted that withdrawn optional benefit rider filings in general mean that the rider may not be offered after they are withdrawn, and further noted that the Board's correspondence has been clarified so that the effect of a withdrawn filing is clear. The Board further noted that network issues were a matter for the Department of Insurance and Department of Health to consider.

### **IX. Executive Session**

*\* L. Ilkowitz made a motion to move into executive session for the purpose of discussing enforcement issues. J. Donnellan seconded the motion, and the motion was approved unanimously by voice vote.*

[J. Fiedler and A. Mansue left the meeting during executive session.]

### **IX. Open Session**

*\* L. Ilkowitz made a motion to disapprove Medigroup/HMO Blue's Exhibit BB filing dated May 15, 1995, noting that the disapproval came after the Board fully considered the filing and brief filed in support of its filing, and after finding no issue of material fact requiring a contested case hearing. The motion also asked the Executive Director to draft a final order for review by the Board. D. Vanderhoof seconded the motion, and the motion was approved by voice vote with S. Martha abstaining.*

The Assistant Director announced that Larry Glover had won the election for the Board seat for a representative of minority small employers. The Assistant Director indicated that he would notify Mr. Glover and provide him with background materials.

M. Lopes noted that she and L. Moskowitz intended to speak to the Commissioner about the vacant appointed seats on the Board. M. Lopes indicated that the purpose of the discussions was to have the Commissioner contact the Governor's Office about the appointments.

### **XIII. 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.*