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 June 19, 1996

Members present: Larry Glover, Chair; Leon Moskowitz, Vice Chair (DOI); James Donnellan (Prudential); Pam Dickson/Nan Fiorentino (DOH); Justin Fiedler (BCBSNJ); Charlotte Furman (Anthem Health); Eileen Gallagher (NYLCare); Linda Ilkowitz (Guardian); Fred Title (HIP of New Jersey); Eric Wilmer (Celtic Life); Dutch Vanderhoof.

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

I. Call to Order

The Executive Director 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. Election of Chair

The Assistant Director distributed ballot forms for the Chair seat, and the Board voted. The Assistant Director announced that L. Glover was unanimously elected Chair. L. Glover thanked the Board and was seated as Chair.

III. Public Comments

No public comments were offered.

IV. Minutes

* *C. Furman made a motion to approve the draft minutes of the May 15, 1996 Board meeting, as amended. L. Ilkowitz seconded the motion, and the motion was approved by voice vote, with E. Wilmer abstaining.*

V. Report of the Marketing Committee

The Executive Director reported that the Marketing Committee met to discuss the second edition of the SEH Buyer's Guide. He reported that the Committee recommended that language be added to the Guide describing the standard plans A through E when sold through a selective contracting arrangement ("SCA"), since many employers were choosing that option. The Board agreed and asked that final language for the Guide be faxed to the Board for approval. For purposes of determining quantities of the Guide to print, the Executive Director polled the carriers on the Board to determine their expected needs.

VI. Report of the Policy Forms Committee

The Assistant Director reported that the Policy Forms Committee had met to review optional benefit rider filings and other matters. The Assistant Director referred to the document attached hereto as Exhibit 1 regarding the recommendations of the Policy Forms Committee, and described the riders submitted.

** E. Gallagher made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **Blue Cross and Blue Shield**, listed on Exhibit 1, to find the filing complete and in substantial compliance. J. Donnellan seconded the motion, and the motion was approved by voice vote, with J. Fielder abstaining.*

** C. Furman made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **Medigroup, Inc.**, listed on Exhibit 1, to find the filing complete and in substantial compliance. L. Ilkowitz seconded the motion, and the motion was approved by voice vote, with J. Fielder abstaining.*

** F. Title made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filings from **The Guardian**, listed on Exhibit 1, to find the filings complete and in substantial compliance. J. Donnellan seconded the motion, and the motion was approved by voice vote, with L. Ilkowitz abstaining.*

** E. Gallagher made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filings from **HIP Health Plan of New Jersey**, listed on Exhibit 1, to find the filings complete and in substantial compliance. L. Ilkowitz seconded the motion, and the motion was approved by voice vote, with F. Title abstaining.*

** C. Furman made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing **from Physician Healthcare Plan of New Jersey**, listed on Exhibit 1, to find the filing complete and in substantial*

compliance. E. Gallagher seconded the motion, and the motion was approved unanimously by voice vote.

D. Vanderhoof expressed a concern about "Rider 6" from U.S. Healthcare which amended the "Continuation Rights" section of the HMO/POS contract by permitting covered persons to continue coverage without payment of additional premium under certain conditions. He asked whether the rider could be sold consistent with the rating requirements of the law. The Assistant Director noted that all of the riders submitted by U.S. Healthcare, including Rider 6, had been previously filed (for use with the standard HMO contract) with the Board and found complete. After some discussion, the Board voted on all of the riders from U.S. Healthcare.

** C. Furman made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filings from **U.S. Healthcare**, listed on Exhibit 1, to find the filing complete and in substantial compliance. F. Title seconded the motion, and the motion was approved by voice vote, with D. Vanderhoof abstaining.*

The Assistant Director referred to a memorandum from him to the Board concerning the Board's standard claim form regulation, N.J.A.C. 11:21-5.1. He reported that the Board had received a letter from a carrier which noted that the hospital claim form "UB-82" had been replaced by "UB-92," and inquired whether the rule was intended to preclude the use of electronic billing systems. The Assistant Director indicated that the memorandum included draft amendments to the regulation to refer to "UB-92" and to clarify that the rule did not preclude the use of electronic billing systems.

** C. Furman made a motion to propose the draft changes to N.J.A.C. 11:21-5.1. L. Ilkowitz seconded the motion, and the motion was approved unanimously by voice vote.*

VII. Report of the Department of Insurance

Bob Vehec of the DOI indicated that he had become aware of three different carrier rating practices in the small employer market: (1) a method whereby the carrier bases the premium on the average of all eligible employees and dependents; (2) a method whereby the carrier bases the rate on the average of all enrolled employees and dependents for use during the entire policy year; and (3) a method whereby the carrier bases the rate on the average of all enrolled employees and dependents, modified by any changes on a monthly basis.

B. Vehec noted that the DOI's recommendation would be that carriers use method 3 above, but he asked the Board for its input. C. Furman noted that she wanted to check with people from Anthem Health on this issue before providing input. J. Fiedler suggested that a survey be taken of the entire market. D. Vanderhoof suggested that all three methods may be acceptable so long as the carrier uses only one method and consumers know which method will be used by the carrier. After some discussion, the

Board agreed that the issue should be referred to the Legal Committee to determine whether the statute provides any guidance.

[N. Fiorentino replaced P. Dickson as the DOH representative.]

The Board took a recess from 10:45 a.m. until 11:00 a.m.

VIII. Report of the Legal Committee

The Executive Director reported that the Legal Committee had met on June 10, 1996 via telephone conference to discuss amendments to the Board's regulations. The first issue discussed was the definition of "non-standard plans." He reported that the Committee noted that the definition would permit the issuance of a plan that had been dormant for some time. The Committee determined, however, that in light of the fact that the statute permits the amendment of non-standard plans, there was no special harm resulting from the reinstatement of a dormant plan by a carrier.

The second issue discussed was the draft's deletion of a provision in the Board's regulations that provided that all information from a audit of a carrier would be privileged. The Committee noted that the entire provision for carrier audits was removed, as it was a vestige of the reinsurance mechanism.

The third issue discussed concerned an amendment that would articulate the required offerings by carriers with approved SCAs. The proposed rule would be based on the following rules: (1) With respect to carriers with statewide approval of their SCA, the carriers would be required to offer the standard indemnity plans, or the plans sold through an SCA, or may offer both in all areas of the State; and (2) With respect to carriers with geographically limited SCAs, the carriers would be required (a) to offer the standard indemnity plans in all areas outside of their approved SCA, and (b) to offer the standard indemnity plans, or the plans sold through an SCA, or both in all areas within its approved service area. C. Furman noted that carriers often choose to market only some of the five plans through an SCA, and ask how that fit in the proposed rule. The Board agreed that the principles above would be applicable by plan.

The fourth issue discussed by the Committee was the eligibility of newly formed small employers. The Committee recommended a rule which would consider newly formed employers "small employers," but permits carriers to request appropriate documentation from the group to verify that the group is a *bona fide* small employer and not a group formed to obtain guaranteed issued group health coverage.

The Assistant Director noted that the SEH statute provides rules governing the replacement of health benefits plans. He noted that the Legal Committee recommended that the existing rule, which largely mirrors the statutory language, be modified to remove references to "standard" health benefits plans so that the rules would apply to non-standard health benefits plans as well.

The sixth issue considered by the Legal Committee was the participation rule's credit for coverage under a spouse's health benefit plan. The Executive Director noted that the rule should provide credit for coverage under any type of coverage through a spouse except for an individual coverage. J. Fiedler asked about the rationale for excluding credit for coverage under a spouse's individual health benefits plan. The Executive Director noted that the individual statute provided for penalties for coverage under an individual plan where a person was eligible for group coverage, and he noted the bias in the statute in favor of having persons eligible for group coverage be covered by group coverage. After some discussion, the Board agreed to use the definition of "qualifying previous coverage," modified to exclude individual coverage, for use in participation regulation.

The seventh issue discussed by the Legal Committee was the appropriate method for accommodating the use of different networks for the same health benefits plan. The Assistant Director noted that N.J.A.C. 11:21-3.2(d) prohibited a carrier from making network modifications via an optional benefit rider filing. He reported that, based on conversations with the DOI, the recommendation was that carriers utilize different networks by using different forms, with separate rates filed for the different forms

The eighth issue considered by the Committee was the responsibilities of a carrier that receives approval of additional geographic areas to its approved SCA. The Committee recommended that carriers be required to *renew* existing indemnity plans in such areas, but not be required to *issue* new indemnity plans in such areas, consistent with the principles regarding SCAs set forth above.

The Assistant Director reported on the results of a survey of carriers which inquired about the advisability of requiring dependent participation. He reported that, of the 15 carriers responding, six carriers indicated that there should be dependent participation requirements, five said that there should not, and four were indifferent. He also reported that two carriers reported that they were currently requiring 75 percent dependent participation. L. Moskowitz asked whether dependent participation levels should be based on all eligible dependents, or all eligible dependents of employees enrolling. DAG Lichtblau noted that he had some comments on this issue for executive session.

The Assistant Director noted that the Board's current enrollment regulation did not ask carriers to distinguish between indemnity plans and plans sold through an SCA, and asked whether the rule should be amended to do so. The Board agreed that the regulation should be amended to capture this information.

IX. Report of the Assistant Director

The Assistant Director referred to a handout of draft enrollment figures for the first quarter of 1996. He noted that he was still awaiting clarifications from four carriers

regarding their reports. He noted that one carrier had reported a precipitous drop in dependent coverage without corresponding drops in employer or employee coverage. He noted that assuming that one carrier's report was in error, in force plans and covered persons had remained at approximately the same levels from the previous quarter.

The Assistant Director referred to an advisory memorandum to small employers on their obligations with respect to State continuation of coverage to be provided to small employers and employees who contact the Board. He asked the Board to fax him any comments on the memorandum.

X. Report of the Executive Director

The Executive Director presented an expense report attached hereto as Exhibit 2. He noted that the expense for Peter Van Riper was for research services for the Board's study of the effects of permitting individuals to purchase group coverage. He noted that he did not anticipate further expenses for research services. He further noted that Peter had done an excellent job.

** L. Moskowitz made a motion to accept the attached expense report. F. Title seconded the motion, and the motion was approved unanimously by voice vote. [Met 2/3rds supermajority requirement]*

The Executive Director reported that he had mistakenly asked carriers to provide data for the study noted above by June 31 instead of May 31. As a result, he indicated that he anticipated completing the report by August 1, 1996. He reported that he would provide a draft to the Board as soon as possible. He also reported that he would contact the appropriate individuals in the Legislature of the short delay.

The Executive Director reported that Commissioner Randall had called a summit for input on changes to the individual market to address concerns about affordability. He also reported that the DOI's rule proposal regarding non-standard plans was being redrafted.

With respect to outreach, the Executive Director reported that he spoke at an American Bar Association forum in New York, and that, in conjunction with his presentation, he and the Assistant Director had written a law review article on New Jersey's small group reform that was published by the ABA. The Executive Director reported that he spoke at the annual conference of the New Jersey Association of Health Underwriters in Atlantic City. He also reported that a press conference was held to announce the release of the "Progress Report" on New Jersey's health coverage reforms.

XI. Ethics Manual

The Executive Director referred to a revised draft ethics manual which incorporated comments from the Attorney General's Office. C. Furman noted that the

certification for persons serving on SEH committees who were not also members of the Board did not bind the carrier to the terms of the ethics manual. The Board agreed that the certification should be modified to require the signature of an officer of the carrier to bind the carrier to the terms of the ethics manual.

** J. Donnellan made a motion to approve the draft ethics manual and to provide the revised version to the Attorney General's Office for formal submission to the Executive Commission on Ethical Standards. L. Ilkowitz seconded the motion, and the motion was approved unanimously by voice vote.*

XII. Executive Session

** C. Furman made a motion to move into executive session for the purpose of receiving advice from counsel. J. Donnellan seconded the motion, and the motion was approved unanimously by voice vote.*

XIII. Open Session

** J. Donnellan made a motion to propose the draft amendments to the SEH regulations as set forth in the Assistant Directors May 24, 1996 memorandum, as amended by the Legal Committee's recommendations noted above. F. Title seconded the motion, and the motion was approved unanimously by voice vote.*

XIV. Close of Meeting

** J. Donnellan made a motion to close the meeting. F. Title seconded the motion, and the motion was approved unanimously by voice vote.*