

## APPROVED

**MINUTES OF THE MEETING OF THE  
NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD  
AT THE OFFICES OF THE  
NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE  
TRENTON, NEW JERSEY  
September 18, 1996**

**Members present:** Larry Glover, *Chair*; Leon Moskowitz, *Vice Chair* (DOBI); Pam Dickson/Nan Fiorentino (DOHSS); James Donnellan (Prudential); Justin Fiedler (BCBSNJ); Charlotte Furman (Anthem Health and Life); 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; Ellen DeRosa, IHC Program Assistant Director; DAG Josh Lichtblau (DOL).

### **I. Call to Order**

L. Glover 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 Banking and Insurance ("DOBI") and the Office of the Secretary of State in accordance with the Open Public Meetings Act. A quorum was present.

### **II. Public Comments**

No public comments were offered.

### **III. Minutes**

*\* J. Fiedler made a motion to approve the draft minutes of the July 17, 1996 Board meeting, as amended. D. Vanderhoof seconded the motion, and the motion was approved by voice vote, with L. Moskowitz and F. Title abstaining.*

*\* E. Gallagher made a motion to approve the draft executive session minutes of the July 17, 1996 meeting, as amended. L. Ilkowitz seconded the motion, and the motion was approved by voice vote, with L. Moskowitz and F. Title abstaining.*

*\* J. Fiedler made a motion to approve the draft minutes of the July 30, 1996 Board meeting, as amended. D. Vanderhoof seconded the motion, and the motion was approved by voice vote, with P. Dickson, L. Moskowitz, and F. Title abstaining.*

*\* J. Donnellan made a motion to approve the draft executive session minutes of the July 30, 1996, as amended. E. Gallagher seconded the motion, and the motion was approved by voice vote, with P. Dickson, L. Moskowitz, and F. Title abstaining.*

#### **IV. Report of the Marketing Committee**

The Assistant Director reported that 50,000 revised Buyer's Guide had been printed, with 43,000 going directly to small employer carriers. He informed the Board that the Guides were delivered to carriers by the printer. He noted that the 800 number was mailing approximately 250 per month, or 3000 per year.

L. Moskowitz commented that the Guide was technically good, but that he had concerns about its readability. The Assistant Director noted brokers seemed to be relying on the Guide. The Executive Director cautioned brokers that the Guide should not be used to replace the rules or the law, and that complex questions would require reference to applicable law or regulations.

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

The Assistant Director reported that the Policy Forms Committee had met on September 6, 1996 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.

*\* L. Moskowitz made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **Chubb**, listed on Exhibit 1, to find the filing complete and in substantial compliance. J. Donnellan seconded the motion, and the motion was approved unanimously by voice vote.*

*\* L. Moskowitz made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **Colonial Life**, 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.*

*\* L. Moskowitz made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **John Alden**, listed on Exhibit 1 as Rider 1, to find the filing complete and in substantial compliance. J. Fiedler seconded the motion, and the motion was approved unanimously by voice vote.*

*\* L. Moskowitz made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **John Alden**, listed on Exhibit 1 as Rider 2, to find the filing complete and in substantial compliance. J. Donnellan seconded the motion, and the motion was approved unanimously by voice vote.*

*\* L. Moskowitz made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **John Alden**, listed on Exhibit 1 as Rider 3, to find the filing complete and in substantial compliance. J. Fiedler seconded the motion, and the motion was approved unanimously by voice vote.*

*\* L. Moskowitz made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **John Alden**, listed on Exhibit 1 as Rider 4, to find the filing complete and in substantial compliance. F. Title seconded the motion, and the motion was approved unanimously by voice vote.*

*\* L. Moskowitz made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **Liberty Health Plans**, listed on Exhibit 1, to find the filing complete and in substantial compliance. J. Donnellan seconded the motion, and the motion was approved unanimously by voice vote.*

L. Moskowitz expressed a concern about the New England riders which expanded dependent eligibility to include unmarried dependents enrolled in an accredited school regardless of their age. Staff noted that there had not been any other such riders. L. Moskowitz asked if the rider limited student dependents by requiring financial dependence. Staff noted that neither the rider nor the underlying standard forms explicitly required financial dependence.

*\* D. Vanderhoof made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **The New England**, listed on Exhibit 1 as Rider 1, to find the filing complete and in substantial compliance. In addition, the motion included an instruction to staff to ask the carrier to provide guidance on how the benefit will be administered. P. Dickson added an amendment to the motion, to request that the DOBI review the rider and the carrier's response to the inquiry, to determine if the rider conflicts with public policy. L. Moskowitz seconded the motion, and the motion was approved unanimously by voice vote.*

*\* C. Furman made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **The New England**, listed on Exhibit 1 as Rider 2, to find the filing complete and in substantial compliance. D. Vanderhoof seconded the motion, and the motion was approved unanimously by voice vote.*

D. Vanderhoof asked if The New England rider, labeled rider 3, violated the Board's choice on family deductibles. E. DeRosa noted that the Committee considered that issue and noted that the statute permits riders which amend the benefits in any way.

*\* L. Moskowitz made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **The New England**, listed on Exhibit 1 as Rider 3, to find the filing complete and in substantial compliance. F. Title seconded the motion, and the motion was approved unanimously by voice vote.*

*\* D. Vanderhoof made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **The New England**, listed on Exhibit 1 as Rider 4, to find the filing complete and in substantial compliance. F. Title seconded the motion, and the motion was approved unanimously by voice vote.*

*\* D. Vanderhoof made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **The New England**, listed on Exhibit 1 as Rider 5, to find the filing complete and in substantial compliance. J. Fiedler seconded the motion, and the motion was approved unanimously by voice vote.*

*\* L. Moskowitz made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **Physicians Health Services**, listed on Exhibit 1 as Rider 1, to find the filing complete and in substantial compliance. F. Title seconded the motion, and the motion was approved by voice vote with L. Ilkowitz abstaining.*

The Assistant Director reported that the Policy Forms Committee reviewed a rider from Physicians Health Services listed on Exhibit 1 as Rider 2 which would amend the standard HMO and HMO/POS contracts by eliminating the requirement that a member obtain a referral or certification from her PCP prior to receiving services from a network specialist. He noted that the Board had never received an optional benefit rider similar to this filing and noted that the Committee had a difficult time reviewing the rider. The Assistant Director noted that there was some concern that the rider did not amend "benefits" in the plan but rather the access to those benefits, and as a result may not be accomplished by rider. After some discussion, the Board agreed to discuss the legal issues regarding the filing in executive session.

*\* D. Vanderhoof made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **United States Life**, listed on Exhibit 1 as Rider 1, to find the filing complete and in substantial compliance. L. Moskowitz seconded the motion, and the motion was approved unanimously by voice vote.*

*\* L. Moskowitz made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **United States Life**, listed on Exhibit 1 as Rider 2, to find the filing complete and in substantial compliance. C. Furman seconded the motion, and the motion was approved unanimously by voice vote.*

*\* D. Vanderhoof made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **United States Life**, listed on Exhibit 1 as Rider 3, to find the filing complete and in substantial compliance. C. Furman seconded the motion, and the motion was approved unanimously by voice vote.*

*\* D. Vanderhoof made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from **United States Life**, listed on Exhibit 1 as Rider 4, to find the filing complete and in substantial compliance. F. Title seconded the motion, and the motion was approved unanimously by voice vote .*

E Gallagher noted that ERISA's definition of "dependent" may require that eligible dependents include only those whose support and maintenance is provided primarily by the person's parent or parents.

[The Board took a brief break.]

E. DeRosa reported that the Policy Forms Committee was considering various amendments to the standard Plans A through E. She noted that the standard mail order rider conflicts with the Any Willing Pharmacy Law which prohibits health benefits plans from providing prescription drug coverage solely through mail order programs. She noted that the Legal Committee had approved a bulletin providing guidance to carriers on how to administer benefits under the standard rider and any optional riders which conflict with the Any Willing Pharmacy Law. She noted the Committee had proposed modifying the rider to provide pharmacy benefits subject to the underlying plan's deductible and coinsurance or copays, as applicable, in addition to providing coverage through a mail order program. The second change was required by the passage of P.L.1995, c.316, a law requiring certain lead screening benefits. In addition, E. DeRosa noted that she had become aware that the standard plans' Medicare Alternate Deductible provisions did not conform with DOBI regulations governing the coordination of benefits.

E. DeRosa asked the Board for guidance on the timing of the forms changes. She recommended a July 1, 1997 effective date. The Board discussed the changes briefly and suggested that the changes be proposed as soon as possible. The Board also briefly discussed the need to consider development of a plan to be used in conjunction with a medical savings account.

E. DeRosa also reported that the Committee considered an inquiry regarding the standard plan's preventive care benefit for newborn children. She indicated that some consumers apparently believed that routine nursery charges could be credited toward the preventive care benefit. E. DeRosa reported that the Committee agreed that the nursery charges could not be used toward the preventive care coverage.

E. DeRosa reported that the Board had received a filing from United States Life and Garden State Hospitalization Plan, submitted pursuant to statute (N.J.S.A. 17B:27A-19e) and regulation (N.J.A.C. 11:21-4.2(g)) to permit the two carriers to offer combined PPO forms. She noted that the carriers had previously filed combined indemnity forms with the Board which the Board had approved. She noted that she had worked with the carriers in addressing areas of concern prior to the meeting. She also noted that she had reviewed the forms in consultation with the Department. Based on the standards of review in the Board's regulations (N.J.A.C. 11:21-4.3), she recommended that the Board approve the forms. G. Simon confirmed that the DOBI concurred in the recommendation.

*\* D. Vanderhoof made a motion to approve the combined PPO forms submitted by United States Life and Garden State Hospitalization Plan. L. Ilkowitz seconded the motion, and the motion was approved unanimously by voice vote.*

The Executive Director and Chair thanked E. DeRosa for her hard work in reviewing the forms in such a short amount of time.

The Board clarified that the approval of the combined forms did not speak to the adequacy of the rate filings for the plans.

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

The Executive Director reported that the Legal Committee met, via telephone conference, on September 9, 1996. The first issue discussed was whether newly merged HMOs may have different rates for the same plan. The Executive Director reported that the DOBI believed that affiliated HMOs with different networks may have two different rates for the same plan. He also indicated that the Committee agreed that rate filings and loss ratio filings were under the jurisdiction of the DOBI, and the DOBI indicated that it would communicate with HMOs regarding these issues.

The second issue discussed was whether the SEH Act provides any guidance on how carriers should be determining premium (e.g., based on eligible employees or enrolling employees). The Executive Director reported that the Committee concluded that the statute did not appear to provide any specific guidance on this matter. The Committee concluded that the law did not prohibit the use of various methods of determining rates, but concluded that each carrier should apply its chosen method consistently. He indicated that the DOBI indicated that it would consider modifications

to its regulations to require carriers to indicate in their rate filings what method the carrier intended to use.

The Executive Director reported that the third issue discussed was whether any steps could be taken to require carriers to collect tax information of employees. He noted that while the Board had announced via Bulletin 96-01 that employees must be paid in order to be considered "eligible employees," carriers have complained that this requirement is not being enforced by all carriers creating an unlevel playing field. He reported that the Committee revisited the issue of whether State law would prohibit the SEH Board from requiring carriers to collect tax information to verify employment. He indicated that the Committee believed that the Board could require carriers to collect this information, but believed that the issue of whether it should be required was a policy decision for the entire Board. L. Ilkowitz noted that in most other states with small group reform statutes carriers are required to collect tax information from employers. L. Moskowitz expressed a concern about the enforcement of a requirement to collect tax information. E. Gallagher noted that a mandatory collection of tax information would better address issues of unfair competition and would help to protect the individual market from adverse selection. J. Fiedler suggested that the Board consider this issue again at its next meeting.

The Executive Director reported that the fourth matter discussed by the Committee was a review of the Assistant Director's draft bulletin on mail order only riders. He reported that the Committee approved the bulletin subject to some minor changes.

The Executive Director reported that the Committee considered an inquiry from a broker regarding employer eligibility periods. The issue was whether an employer may remove an employee waiting period under a nonstandard plan prior to the policy's anniversary date. The carrier in question was refusing to permit the employer to make this change prior to anniversary. The Executive Director reported that the Committee concluded that while there were serious adverse selection issues, nothing in the statute or regulations would prohibit a small employer from removing an employee waiting period at any time. The Committee further recommended that the Board consider promulgating a regulation which would limit an employer's freedom to institute and remove employer waiting periods at the sole discretion of the employer. L. Moskowitz asked that the Legal Committee look at the issue of whether contractual provisions would have an impact on the issue.

Lastly, the Executive Director noted that the staff was wrestling with the impact of the Health Insurance Portability and Accountability Act of 1996 on New Jersey's small employer market. The Committee agreed to provide guidance to the staff regarding the impact of the passage of the Act and to share summaries of the Act. C. Furman noted that the Act's provisions on preexisting conditions limitations might preclude the use of a prudent person standard in the small employer market.

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

The Assistant Director reported that the enrollment report for the second quarter of 1996 had required extensive follow up and as a result enrollment numbers had not been completed.

The Assistant Director provided the Board with a revised copy of the SEH Act with all amendments to date. He noted that the published version of the statute cited an individual attachment point limit for stop loss coverage of \$25,000 as contained in P.L.1995, c.298, rather than the \$20,000 limit found in P.L.1995, c.340. The Board asked DAG Lichtblau to investigate what the law requires. The Assistant Director also provided the Board with copies of its rule proposal. He noted that it was scheduled to appear in the October 7th issue of the *New Jersey Register*. The Executive Director noted that DOBI regulations regarding the small employer market would also be published in the same *Register*.

The Assistant Director also provided the SEH Board with a copy of the signed Code of Ethics and asked Board members and alternates to complete the Conflict of Interest Questionnaire, attached at the end of the Code, and provide it to him by October 1, 1996.

The Assistant Director also provided the Board members with a list of carriers that had filed with the DOBI to withdraw from the small employer market. L. Moskowitz asked the Assistant Director to provide a copy of all carriers in the market at the October meeting.

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

The Executive Director presented an expense report attached hereto as Exhibit 2.

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

The Executive Director reported that Deloitte & Touche had reported that its audit was complete except for one discrepancy of an account listing between the DOBI records and the Board's records. The Executive Director reported that he expected that he would be able to present the Board with an audit, a budget and an assessment proposal at the next meeting. He noted that the Board had sufficient funds available, and that any assessment would be modest.



L. Moskowitz reported that the Commissioner's summit on the issue of the affordability of coverage in the individual market had resulted a proposed list of recommended regulatory and statutory changes. He indicated that the proposal had not been finalized but that the DOBI hoped to be able to make recommendations in the near future.

The Executive Director reported that on A-2261, a bill sponsored by Assemblymen Bateman & Garrett, that would substantially modify the individual and small employer markets in New Jersey. He distributed copies of a draft synopsis of the bill. J. Fiedler noted that representatives of Blue Cross and Blue Shield of New Jersey had met with Assemblyman Bateman and found that he was interested in other ideas to modify the markets. L. Glover reminded the Board that A. Mansue had noted at the July 1996 meeting that the Board may want to take a position on the bill. D. Vanderhoof asked if this was an appropriate action for the Board to take based on its understanding with the DOBI. The Executive Director noted that the Board had agreed not to go to the Legislature with a position on legislation, but that it could register its sentiment with the Commissioner. L. Ilkowitz noted that as the entity that had been responsible for implementing the laws governing small group market, and as the agency that had overseen the transition to a more rational market providing guaranteed access and renewability of coverage, that the Board should register its opinion on a bill that would drastically change the market. Other Board members agreed with this position. C. Furman added that it appeared that the bill would not meet the requirements of the Health Insurance Portability and Accountability Act of 1996. E. Wilmer suggested that any resolution adopted by the Board should speak only to the law's success of providing guaranteed access to health coverage.

*\* D. Vanderhoof made a motion to ask the Executive Director to draft a resolution which would stating that (1) Whereas, the current SEH Program has met the goals of the Legislature in ensuring that New Jersey small employers are provided with guaranteed access and renewability of health benefits coverage, and portability of that coverage, and (2) Whereas A-2261, as drafted, in many respects appeared to be in conflict with the Health Insurance Portability and Accountability Act of 1996, and (3) Whereas the law governing small group health benefits coverage had been amended six times since the enactment of P.L. 1992, c.162 to include the interests of many interested parties, that the SEH Board resolved to voice its position against enactment of A-2261 to the Commissioner of Banking and Insurance. J. Fiedler seconded the motion, and the motion was approved unanimously by voice vote.*

The Executive Director reported that the new federal legislation permits Medical Savings Account plans as of January 1, 1997. He noted that to offer such plans in the small employer market, carriers could file optional benefit riders with the Department of Banking and Insurance, or the Board could develop a standard rider for all carriers to use. He noted that the IHC Board was currently considering how carriers could accomplish MSA plans in the individual market and noted that the IHC Act did not permit carriers to

file to issue optional benefit riders. After much discussion, the Board agreed that the Executive Director should provide carriers with a bulletin indicating (1) that carriers were permitted to submit an optional benefit rider filing of decreasing value with the DOBI pursuant to N.J.S.A. 17B:27A-19i in order to offer a plan in conjunction with an MSA, and (2) that the SEH Board, in consultation with the IHC Board and the DOBI, would begin development of a standard rider, to permit carriers to issue a plan in conjunction with an MSA.

The Executive Director reported that he had completed a draft of the One Life Group Study and provided it to the Board three weeks prior to the meeting.

*\* J. Donnellan made a motion to notify the DOBI and DOHSS of the completion of the report and to submit the report to the Legislature. C. Furman seconded the motion, and the motion was approved by voice vote with D. Vanderhoof abstaining.*

With respect to outreach, the Executive Director reported that he was interviewed on WWFM radio "Portfolio" program on August 15, 1996. He reported that he was scheduled to speak to an NAHU meeting on September 24, 1996. Lastly, he reported that he had been invited to speak at a conference about disease prevention in Washington sponsored by the Center for Disease Control and the "Partnership for Prevention."

D. Vanderhoof noted that the passage of the Kennedy/Kassebaum bill might have an impact on the recently completed Buyer's Guide. He suggested that the Guide be reviewed in light of the passage of the federal legislation.

## **IX. EXECUTIVE SESSION**

*\* F. Title made a motion to move into executive session for the purpose of discussing enforcement matters. D. Vanderhoof seconded the motion, and the motion was approved unanimously by voice vote.*

## **X. Close of Meeting**

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