

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
November 20, 1996**

Members present: Larry Glover, *Chair*; Leon Moskowitz, *Vice Chair* (DOBI); James Donnellan (Prudential); Justin Fiedler (BCBSNJ); Charlotte Furman (Anthem Health and Life); Eileen Gallagher (NYLCare); Linda Ilkowitz (Guardian); Amy Mansue (HIP of New Jersey); Dutch Vanderhoof; Melanie Willoughby; Eric Wilmer (Celtic Life); Bonnie Wiseman (DOHSS).

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 9:45 a.m. K. O'Leary 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

** C. Furman made a motion to approve the draft minutes of the October 16, 1996 meeting. L. Ilkowitz seconded the motion, and the motion was approved unanimously by voice vote.*

** E. Gallagher made a motion to approve the draft executive session minutes of the October 16, 1996 Board meeting. J. Fiedler seconded the motion, and the motion was approved unanimously by voice vote.*

IV. Marketing of MSA Plans

The Assistant Director reported that J. Fiedler had discussed the need for the Board to provide some guidance to consumers in the small employer market on the availability of health benefits plans that could be issued in conjunction with Medical Savings Accounts ("MSAs"). The Assistant Director noted that one possibility discussed was the inclusion of an insert to the SEH Buyer's Guide. A. Mansue expressed a concern that the inclusion of an insert may be premature since the federal government had not yet issued regulations regarding MSA plans. L. Ilkowitz said that she believed it should be an individual carrier's responsibility to market the availability of MSA plans. L. Moskowitz noted that the NAIC would be conducting a seminar on the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") which would include a discussion of MSA plans; he recommended that a proposal for an insert be developed after the seminar and provided to the Board at its December meeting. E. Gallagher recommended that the insert be very general, and suggested that a mechanism be in place to remove the insert if the 750,000 maximum number of plans had been issued.

[D. Vanderhoof arrived]

The Executive Director reported that he would prepare a draft of an insert to the Buyer's Guide to address MSA plans for the Marketing Committee to consider.

V. First Executive Session

** A. Mansue made a motion to move into executive session for the purpose of receiving legal advice from counsel and to discuss personnel issues. L. Moskowitz seconded the motion, and the motion was approved unanimously by voice vote.*

VI. Report of the Executive Director

The Executive Director presented an expense report attached hereto as Exhibit 1.

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

The Executive Director reported that Deloitte and Touche, the SEH Board's auditors, had been in discussion with DOBI regarding the Board's accounts. The Executive Director reported that the audit process had been completed, and he recommended that the draft audit report be submitted to the Operations Committee for review. He noted that he anticipated that the Committee would be able to make a recommendation to the Board at its December 1996 meeting.

The Executive Director provided the Board members with a proposed budget of \$441,966 for fiscal year 1997. He noted that the Board had budgeted for \$445,200 in fiscal year 1996, but had spent only \$383,365. The Executive Director cited his decision not to hire two additional staff members as one reason for the surplus; the other reason was that the cost of printing the Buyer's Guide was not billed until fiscal year 1997. He noted that the expense for salaries set forth in the proposed budget provided funds for the hiring of an accountant jointly by the IHC and SEH Boards at a salary of up to \$50,000 plus cost of living increases for current staff whose salaries have been constant for over two and a half years. The Executive Director noted that the budget served as an authorization of funds, not an appropriation for specific funds.

** L. Moskowitz made a motion to approve the draft budget. J. Fiedler seconded the motion, and the motion was approved unanimously by voice vote.*

The Executive Director provided the Board with a draft assessment. He reported that at the time of the meeting the Board had \$231,000 in its account, but the DOBI had had requested funds for salary and benefit expenses. He reported that reconciliation for 1994 and 1995 would not be completed until the audit report was completed. He noted that the challenge for the auditors had been determining how the DOBI had allocated certain funds. A. Mansue asked if the draft assessment accounted for carriers that exited the market. The Executive Director reported that there was a reconciliation that would account for carriers exiting the market. J. Fiedler noted that the premium amounts set forth in the draft assessment were numbers reported by carriers that had not been audited. The Executive Director noted that Independence Blue Cross did not appear on the assessment because it had been experiencing difficulties in segregating out small group New Jersey premium amounts. He noted that Independence Blue Cross would be assessed. The Executive Director reported that he hoped to send out assessments to carriers in the next week.

** L. Moskowitz made a motion to authorize an assessment for administrative and operating expenses of \$500,000. A. Mansue seconded the motion, and the motion was approved unanimously by voice vote.*

The Executive Director reported on S-1523, a bill sponsored by Senator Cardinale, which was coming up for a hearing in the Senate Commerce Committee. The Executive Director reported that it was his understanding that the bill would: merge the IHC and SEH Boards, permit nonstandard plans in individual market on a guaranteed issue basis, reduce the loss ratio requirements to 65% for certain managed care plans, remove the assessment mechanism, and phase out pure community rating in the individual market (permitting underwriting based on age and geography). A. Mansue said that the Executive Director should be in attendance for the purpose of providing information to the Committee. The Executive Director noted that it was the DOBI that was responsible for providing comments on legislation as the voice of the Executive branch agency. J. Donnellan suggested that the Executive Director approach the DOBI

about his attendance at the hearing since the bill appeared to be on a fast track. A. Mansue asked the Executive Director to attend, at a minimum, to provide factual information to the Committee should it request such information. L. Moskowitz noted that the DOBI planned to have a representative at the hearing.

The Executive Director reported that he had received feedback on the Board's report to the Legislature regarding the effect of permitting individuals to purchase small group insurance. He indicated that the report had been dismissed by some as a one-sided report based on carrier information only.

The Executive Director indicated that he wanted the Assistant Director attend an NAIC seminar for government officials on the impact of HIPAA on state legislation. He noted that the Assistant Director was working on a task force to revise the individual and small employer statutes to conform with the federal legislation. He noted that there was a \$200 attendance fee for government employees and train fare expenses. The DOBI noted that it was sending three employees to the seminar.

** J. Donnellan made a motion to approve funds for the Assistant Director's attendance at the NAIC seminar. C. Furman seconded the motion, and the motion was approved unanimously by voice vote. [Met 2/3rds supermajority requirement]*

With respect to outreach, the Executive Director reported that he had appeared on a radio show broadcast from Atlantic City. He also referred to letters to the editor which he had written in response to an Associated Press article on the increase in the number of New Jersey residents without health coverage.

VII. SEH Rule Proposal

The Assistant Director reported that the comment period for the Board's large rule proposal to conform its regulations with P.L.1995, c.298 and P.L.1995, c.340 had recently expired and he provided the Board with draft responses. The Board agreed to wait for the Legal Committee to review the draft before taking action.

VIII. Report of the Policy Forms Committee

The Assistant Director reported that the Policy Forms Committee had met on November 7, 1996 to review optional benefit rider filings and other matters. He referred to the document attached hereto as Exhibit 2 regarding the recommendations of the Policy Forms Committee, and described the riders submitted.

** D. Vanderhoof made a motion to accept the recommendation of the Policy Forms Committee with respect to the optional benefit rider filing from Colonial Life Insurance, listed on Exhibit 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 stated that the DOBI was in favor of open access managed care products in general, but was worried that the optional benefit rider submitted by Physicians Health Services was unclear. He further noted that the DOBI was in favor of the development of standard language for incorporation in the standard forms which would permit an HMO to offer a product with open access to a variable list of specialist services. Lastly, L. Moskowitz noted that the DOBI had a responsibility to ensure that all riders, including open access riders, were consistent with law and were not unclear, misleading, or otherwise contrary to public policy.

** A. Mansue made a motion to find the optional benefit rider filing from Physicians Health Services set forth in Exhibit 2 as complete and in substantial compliance, and to advise the carrier that the DOBI may have concerns about the clarity of the rider. D. Vanderhoof seconded the motion, and the motion was approved with L. Moskowitz abstaining.*

The Assistant Director reported that the Board had received a compliance and variability rider filing from Blue Cross and Blue Shield of New Jersey. The rider was designed to amend the standard plans in order to implement the lead poisoning and immunization mandates required by the passage of P.L.1995, c.288 and P.L.1995, c.316. He reported that the Committee considered the filing and noted that N.J.A.C. 11:21-4.4, the regulation permitting compliance and variability riders, permits such riders only to implement regulatory changes adopted by the Board, not statutory changes. The Committee concluded that the carrier should be advised that the rider may not be issued, but that the mandated benefits must be provided administratively. The Assistant Director noted that the Board would proceed with necessary amendments to its standard plans, including the changes required by P.L.1995, c.288 and P.L.1995, c.316.

The Assistant Director reported that the Committee considered whether a DOBI regulation regarding standards for selective contracting arrangements ("SCAs"), N.J.A.C. 11:4-37.3, applied to plans issued in the small employer market through an SCA. The Committee, in consultation with the DOBI, concluded that the regulation did apply. The one requirement of the regulation not reflected in the standard plan states: [i]f a covered person is in need of emergency care as defined [in the regulation], the health benefits plan utilizing a selective contracting arrangement shall include a mechanism which reimburses emergency care as if the covered person had been treated by a preferred provider." The Committee recommended that the Board publish a bulletin advising carriers that the DOBI regulation applies to all SEH plans issued through an SCA and that benefits should be administered accordingly, and recommended any necessary modifications to the forms be done in conjunction with the Board's next review of the standard plans.

Ellen DeRosa referred to a handout entitled "Policy Forms Committee Project List & Strategy Recommendations," which list the Committee had asked E. DeRosa to prepare for the Board. The main projects listed were: (1) to revise the standard plans and

riders primarily to conform with state and federal legislative changes, (2) to create dual contract HMO/POS forms as permitted by the passage of P.L.1995, c.298 in December of 1995, and (3) to create variable text to permit open access to specialists in the HMO and HMO/POS forms. The handout also provided a list of the changes to the forms required to conform the plans with applicable law and to clarify existing benefits. She asked the Board for guidance on developing priorities for the lengthy list of required changes and other forms drafting. A. Mansue expressed a concern about waiting too long to develop a dual contract product, especially since one carrier had expressed an interest in such a product over two years ago. J. Donnellan asked if there was any way that the Board could accommodate the carrier by asking E. DeRosa to work on the dual contract first. It was noted, however, that it would make more sense to modify the existing standard plans prior to manipulating those plans for use with other plan designs. E. DeRosa indicated that it may be possible to present the Board with a dual contract proposal at the January 1997 meeting.

The Assistant Director referred to a draft bulletin which included a model rider for a plan to be issued with an MSA. He asked the Board to provide any comments to him by November 27, 1996. He also referred to a draft meeting schedule for 1997, and asked the Board to provide him comments by November 27, 1996. The Assistant Director asked Board members to complete and return the Conflict of Interest Questionnaire if they had not already done so.

The Assistant Director reminded Board members of an election in February 1997 for the seats currently held by Anthem Health and Life and Celtic Life (two carriers primarily in the small employer market), and Melanie Willoughby (a representative of small employers). Lastly, he reported that carriers were required to submit premium comparison survey information required by November 1, 1996. He indicated that he would share the results of the filings with the Marketing Committee and Wenzel and Company as soon as it became available.

D. Vanderhoof asked if Board members had any information on hospital surcharges being assessed in New York as of January 1, 1997 as a result of the New York Healthcare Reform Act of 1996; L. Ilkowitz noted that the impact on New Jersey may be minimal. The Board agreed to discuss the issue at a later date.

IX Second Executive Session

** A. Mansue made a motion to move into executive session for the purpose of receiving legal advice from counsel. M. Willoughby seconded the motion, and the motion was approved unanimously by voice vote.*

[M. Willoughby left the meeting.]

X. Close of Meeting

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