

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
March 18, 1997**

Members present: Leon Moskowitz, *Vice Chair* (DOBI); Debbie Cieslik (BCBSNJ); Marilyn Dahl (DOHSS); James Donnellan (Prudential); Charlotte Furman (Anthem Health and Life); Linda Ilkowitz (Guardian); Jim Leonard; Bryan Markowitz; Michele O'Doherty (Celtic); Sherrie Price (NYLCare); Fred Title (HIP of New Jersey); and 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

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 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. Seating of New Board Members

The Executive Director introduced Jim Leonard, Vice President of Government Relations of the New Jersey State Chamber of Commerce, to the Board and audience. J. Leonard was seated as a person representing New Jersey small employers, having won an election at the previous Board meeting. The Executive Director also introduced Marilyn Dahl, Director for the Office of Policy and Research of the New Jersey Department of Health and Senior Services. M. Dahl was seated as the new DOHSS representative.

IV. New Committee Assignments

The Assistant Director referred to a copy of N.J.A.C. 11:21-2.6, a rule regarding the appointment of Board committees, and noted that the Board had in the past made new

appointments to the Committees as the membership of the Board changed. The Board reviewed the current membership of each of the Committees. The Board members agreed to keep the current appointments, and to appoint J. Leonard as an additional member of the Marketing Committee.

V. Minutes

** J. Donnellan made a motion to approve the draft minutes of the February 19, 1997 Board meeting, as amended. D. Vanderhoof seconded the motion, and the motion was approved by voice vote, with J. Leonard, M. O'Doherty, S. Price, and F. Title abstaining.*

** C. Furman made a motion to approve the draft minutes of the February 19, 1997 executive session meeting. J. Donnellan seconded the motion, and the motion was approved by voice vote, with J. Leonard, M. O'Doherty, S. Price, and F. Title abstaining.*

VI. Report of the Marketing Committee

The Executive Director introduced Betsy Link Kapulskey from Wenzel & Company. He reported that Jim Gorman had left Wenzel and that B. Kapulskey would be replacing J. Gorman as Wenzel & Company's account representative for the Board. He noted that her resume was in the Board packets.

The Executive Director reported that Wenzel & Company had developed a draft premium comparison survey which was provided to the Board. He noted that, contrary to what had been previously understood, at least one HMO, QualMed Plans for Health, was not licensed in Bergen County. As a result, the draft included a statement that the carrier did not have rates for Bergen County. The Board discussed the language describing the sample small employer group and suggested that the language be modified to make it clearer that the rates were for a sample group located in Bergen County and that the relative pricing could differ depending on the location of the group. L. Moskowitz noted that the DOBI should review the draft to check to see that all carriers that had filed rates appeared on the survey.

** L. Moskowitz made a motion to publish just one premium comparison survey, with rates for Bergen County, and to publish the survey with no rates for HMOs not licensed in Bergen, noting that such carriers were not licensed in that county. J. Donnellan seconded the motion, and the motion was approved unanimously by voice vote.*

The Executive Director said that staff would revise the language in the draft survey to reflect the Board's comments and would fax the revised draft to Board members that afternoon. He asked for Board comments by the end of the week.

VI. Report of the Policy Forms Committee

The Assistant Director reported that the Committee met on March 12, 1997. He noted that the Committee did not receive any optional benefit rider filings. He reported that staff submitted the rule proposal containing the recent forms changes and dual contract language to the Office of Administrative Law on March 7, 1997, and that the proposal was scheduled to appear in the April 7, 1997 *New Jersey Register*.

The Assistant Director reported that the Committee discussed form changes that would be required as a result of the passage of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). He noted that the effective date of the changes was July 1, 1997, except for the COBRA changes which were effective January 1, 1997. He reported that the COBRA changes were already incorporated into the Board's proposal noted above. He reported that the Committee discussed, in general terms, the areas of the forms that would need modification as a result of the enactment of HIPAA. The Committee found that the forms would need substantial revision.

The Assistant Director reported that the Committee discussed various implementation strategies, noting that the Board had two sets of forms changes: (1) the recently proposed changes, which included the dual contract language and which also provided for a number of clarifications and conformed the plans with State law, and (2) the HIPAA required changes. The Committee identified its implementation goals as (1) enacting the linking language for use with dual contracts as soon as possible; (2) ensuring that small employer health benefits plans be administered consistent with all State and federal legislation; and (3) reducing the cost and administrative burden of requiring two different amendments to the forms. The Assistant Director reported that the Committee recommended that the Board issue a bulletin outlining the changes required by law and their effective dates, instructing carriers to administer the plans consistent with State and federal laws, and setting a realistic date for forms compliance, perhaps January 1, 1998. He further noted that he was investigating with the Office of Administrative Law how this could be accomplished so that the carriers interested in offering dual contracts could do so as soon as possible.

L. Moskowitz noted that the Health Care Quality Act had been reported out of both the Assembly and Senate Insurance Committees. He noted that the Board should monitor progress of that bill to determine what impact it would have on the SEH forms and the small employer market in general.

VII. Report of the Assistant Director

The Assistant Director reported that the Board's Plan of Operation provides that the election of the Chair and Vice Chair shall take place on an annual basis. He noted that the packets contained a ballot form for the election. He asked Board members to provide him with completed ballots, and noted that the Board would hold an election for the Chair and Vice Chair at the next meeting.

The Assistant Director reported that the Board packets included a list of riders of decreasing value approved by the DOBI. He indicated that he would include this report in all future Board packets.

The Assistant Director reported that the preliminary 4th quarter 1996 enrollment figures showed a very small decrease in enrollment from the last quarter. He noted that the Board had adopted amendments to its enrollment reporting regulation and that the amended regulation requires carriers to provide the new information beginning in the 1st quarter of 1997. He reported that the rule changes would require carriers to break out reporting between their indemnity plans and their plans issued through or in conjunction with a selective contracting arrangement, and would require HMO carriers to distinguish between HMO and HMO/POS plans.

L. Moskowitz noted that he had seen an article in the *New York Times* that had indicated that the movement by large employers to plans with some level of managed care features was being mirrored in the small employer market. He also mentioned that the article also noted the federal government's increasing involvement in insurance coverage matters.

VIII. Report of the Executive Director

[F. Title left the meeting.]

The Executive Director presented an expense report attached hereto as Exhibit 1. The Board asked about the copy service expense for "Copies of NAIC Appendix AA." The Assistant Director noted that the expense was incorrectly described; he noted that the charge was for copies of the forms proposal.

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

The Executive Director reported that he attended a marketing association awards banquet at the request of Shirlee Wenzel. He noted that Wenzel & Company had won an award for its work with the SEH Board. He further noted that he had received approval to attend from the DOBI ethics officer, and that other State regulatory employees were at the event. He noted that Shirlee Wenzel had indicated that press would be present at the banquet, and that the banquet would provide the Board with an opportunity for some press coverage. He noted that the timing of the invitation and event did not permit him to seek prior approval to receive reimbursement for attending the event. He asked if he could be reimbursed for the cost of attending the banquet, and the Board agreed to reimburse him.

The Executive Director reported that Deloitte & Touche had asked for additional information from the DOBI and that the DOBI had not yet provided the additional

information. He reported that receipt of the information was necessary before the auditors could complete their report.

The Executive Director reported that he had sent out notices to all health carriers that carriers had reported \$39,000,000 in reimbursable losses for the individual market. He noted that while this was about a 50 percent decline from the previous year, carriers would not see a great difference in their assessments largely due to the fact that Blue Cross Blue Shield of New Jersey, a carrier with a very large market share, had chosen an exemption. L. Ilkowitz asked if there would be an audit of the reimbursable losses, and the Executive Director indicated that there would be audits.

The Executive Director provided the Board with a summary of A-2261, a bill amending the laws governing the individual and small group markets. He indicated that the Office of Legislative Services was working on another draft of the bill, and that he would keep the Board apprised of any developments.

The Executive Director reported that staff had interviewed applicants for the accountant position. He indicated that he was close to making an offer. He suggested that any specific questions be handled in executive session.

With respect to outreach, the Executive Director reported that he had met with a Life Underwriters group in Vineland, with medical specialists in Middlesex, and with the Union County Medical Society.

IX. Report of the Legal Committee

The Executive Director reported that the Legal Committee met via telephone conference on March 17, 1997 and discussed a number of issues.

The first issue was whether state continuation could be exercised where there were no longer any employees covered under the plan. For example, this could arise with an employer with three eligible employees, two of the employees not covered under the plan but covered under their spouse's health benefits plan, and one employee covered under the plan that then goes on part-time status or quits her job. The Committee, based on the language of N.J.S.A. 17B:27A-27, concluded that a person could not go on State continuation if there were no longer any eligible employees covered under the plan.

Some members of the Board were concerned with the harshness of the conclusion reached by the Committee. L. Moskowitz indicated that he thought that the language of the law could be read to require carriers to offer State continuation where there were no longer any employees covered under the plan. He noted that plans covering a single employee, that contained information about State continuation, did not really provide such employees with the option of State continuation. He further noted that since an employer may choose to offer employees multiple plans, there was greater likelihood of the plans covering only a single employee, thus exacerbating this problem. D. Cieslik

noted that the Committee also considered the language of the law indicating that the rates to be charged to a continuee were to be based on a employee covered under the plan, and that with no employees covered there was no basis for comparison. L. Moskowitz indicated that rates for a continuee could easily be based on rates as if the continuee were still an eligible employee.

** L. Moskowitz made a motion to have the staff draft a bulletin for the Board's consideration advising carriers that in the event that a former eligible employee elects continuation and there are no longer any eligible employees covered under the plan, and the small employer chooses to continue the plan, a carrier must provide State continuation to the former employee or part-time employee. D. Vanderhoof seconded the motion, and the motion was approved with D. Cieslik opposing the motion.*

The Executive Director reported that the second issue considered by the Committee was whether, under the standard health benefits plans, a new dependent may be added to a State continuee's coverage after the qualifying event. He noted that the standard forms include language stating, "[a]t the Employee's option, he or she may elect to continue health coverage for any of his or her *then insured Dependents* whose coverage would otherwise end at this time." He reported that the Committee's conclusion was that the standard policy forms prohibit the addition of a new dependent; however, the SEH Act is silent on the issue. Thus, the standard forms could be modified to permit the addition of a newly acquired dependent.

** L. Moskowitz made a motion that the Board amend its forms, as part of the HIPAA required changes, to permit a continuee to cover a newly acquired dependent so that the newly acquired dependent could be covered to the end of the continuee's coverage, and to do a bulletin regarding its intended action, noting that carriers currently may offer continuation to newly acquired dependents. L. Moskowitz seconded the motion, and the motion was approved unanimously by voice vote.*

The Executive Director reported that the third issue considered by the Committee was whether domestic employees could be considered "eligible employees" of a small employer. He reported that the Committee looked to the definition of "small employer" which describes entities "actively engaged in business." The Committee found that households were not actively engaged in a business, and therefore recommended that a household with domestic employees not be considered a "small employer." L. Moskowitz disagreed with the conclusion reached by the Committee. He asked why domestics should not be considered a business. He noted that such employees are working for a common purpose, and that there was a *bona fide* employer/employee relationship, and that each employee was paid by the same employer. After some discussion, the Board agreed to table the issue for further consideration.

XI. Committee Appointment

DAG Lichtblau noted that appointments to Committees of the Board requires a Board vote.

** C. Furman made a motion to add J. Leonard to the Marketing Committee. J. Donnellan seconded the motion, and the motion was approved unanimously by voice vote.*

XII. Close of Meeting

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