

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
April 16, 1997**

Members present: Larry Glover, *Chair*; Gale Simon, *Vice Chair* (DOBI); James Donnellan (Prudential); Justin Fiedler (BCBSNJ); Eileen Gallagher (NYLCare); Linda Ilkowitz (Guardian); Amy Mansue (HIP of New Jersey); Bryan Markowitz; Leon Moskowitz, (DOHSS); Tom Pownall (Anthem Health and Life); Dutch Vanderhoof; and Eric Wilmer (Celtic).

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 Hearing

E. DeRosa, acting as the hearing officer, summarized the Board's recent rule proposal modifying the standard policy forms, explanation of brackets exhibits, enrollment forms, and application forms. She indicated that the proposal was intended to modify the standard forms to bring them into compliance primarily with State legislative changes, to clarify ambiguous provisions, and to add variable text to permit carriers to offer the HMO contract and the Plans C and D as dual contracts.

The hearing was held open until approximately 10:15 a.m. No persons came forward to provide oral testimony. The Assistant Director noted that written comments would be accepted until May 7, 1997.

III. Election of Chair and Vice Chair

The Assistant Director distributed ballots for the election of the Chair and the Vice Chair.

IV. Minutes

** A. Mansue made a motion to approve the draft minutes of the February 19, 1997 Board meeting, as amended. L. Ilkowitz seconded the motion, and the motion was approved by voice vote, with E. Gallagher, J. Fiedler, T. Pownall, and E. Wilmer abstaining.*

V. Report of the Policy Forms Committee

The Assistant Director reported that the Policy Forms Committee met on April 9, 1997 via telephone conference. He reported that Committee briefly discussed the annual Exhibit BB reports that carriers had filed pursuant to the Board's recently revised regulations. He indicated that he would provide the Board with a grid showing the carrier's forms options.

The Assistant Director reported that the Committee considered an optional benefit rider filing from USLife and USLife and Garden State Hospitalization Plan. As description of the rider and the Committee's recommendation are set forth below:

Rider I: Amends PPO Plans C and D by waiving the applicable network copayments. The rider to PPO Plan C lowers the policyholder coinsurance amount from 50% to 30% for services and supplies provided by a non-network provider, and from 30% to 10% for services and supplies provided by a network provider. The rider to PPO Plan D lowers the policyholder coinsurance amount from 45% to 40% for services and supplies provided by a non-network provider, and from 25% to 20% for services and supplies provided by a network provider.

Recommendation: Complete and in substantial compliance

** A. Mansue made a motion to accept the recommendation of the Committee with respect to the above-referenced rider. D. Vanderhoof seconded the motion, and the motion was approved unanimously by voice vote.*

The Assistant Director reported that the Committee received an informational filing of a rider of decreasing value from Anthem Health & Life. He reported that the rider was designed to create a high deductible plan for use with an MSA. He reported that no Board action was necessary. G. Simon reported that no new MSA riders had been approved.

The Assistant Director reported that the Committee considered a consumer complaint where an HMO had limited prescription coverage for a maintenance drug under the HMO/POS contract, issued without a rider, to a maximum 34-day supply. He reported, however, that the standard HMO and HMO/POS contract do not include a unit or day supply limit, but are limited by the amount prescribed by the prescribing physician. He reported that the Committee considered a draft letter to the carrier which would inform the carrier that it could not read into the contract a 34-day limit but that the Board would consider modifying its forms to include a unit or day limit. L. Moskowitz

asked if the complaint had involved an issue of medical necessity. The Assistant Director said that the complaint did not.

** D. Vanderhoof made a motion to support the recommendation of the Committee. J. Fiedler seconded the motion, and the motion was approved unanimously by voice vote.*

The Assistant Director reported that the Committee had considered a draft bulletin on plan modifications that would be necessary to bring the plans into compliance with State law, and that would set forth a timetable for compliance with these changes and changes that would be proposed to accommodate the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). He reported that staff had considered the issue of forms compliance after the Committee meeting and noted a practical problem with the intention of the Board to dovetail the recently proposed changes with those that will be required by HIPAA. The problem identified was that New Jersey legislative changes would be needed before the Board could publish changes to its standard contracts to bring them into compliance. The Executive Director noted that those changes could be months away, and that therefore it was unrealistic to expect to be able to dovetail the two sets of forms changes. The recommendation of the staff was to: (1) adopt the recently proposed changes; (2) permit carriers to issue the dual contracts, incorporating all of the proposed forms modifications, as of the publication date of the rule adoption; (3) set a later effective date, perhaps August 1, 1997, for all other policy form changes; (4) develop a compliance rider that carriers could use to accomplish the forms changes; (5) continue to work on the HIPAA changes in anticipation of New Jersey Legislative changes.

The Board discussed the issue of the HIPAA changes. DAG Lichtblau note that to the extent that HIPAA did not present any interpretive issues, the Board could probably make regulatory forms changes consistent with HIPAA. After some discussion, the Board agreed that there were some interpretive issues that would prevent the Board from making all the forms changes necessary by HIPAA. The Board discussed the idea of making some HIPAA changes now, and others later. However, after some discussion, the Board agreed that it would be better to make all of the HIPAA changes (except for the COBRA changes) at once. The Board agreed that it should proceed as suggested by the staff, but that the Board should also develop a bulletin providing carriers with guidance on what changes they should make to provide for administrative compliance with HIPAA. The Assistant Director indicated that he would begin work on such a bulletin and forward it to the Legal and Policy Forms Committee for review. L. Moskowitz indicated that the IHC Board should consider a similar bulletin.

VI. Report of the Marketing Committee

The Executive Director reported that the Board packets included the finished Premium Comparison Survey. Betsy Kapulsky of Wenzel & Company reported that she had drafted a press release that was being reviewed by staff. The Executive Director distributed copies of a quick comparison of the 1996 and 1997 rates. L. Moskowitz

indicated that the Board should be very careful in drafting the press release for the survey. After some discussion, the Board agreed that the Executive Director should send the draft press release to the Marketing Committee members before release. He also suggested that the Executive Director check the survey numbers with the key carriers in the market. The Board also agreed that the rates could be modified at any time, and indicated that the press release should emphasize that the rates are for a snapshot in time.

The Assistant Director noted that he had contacted the one HMO that was not located in Bergen County to discuss the treatment of that carrier in the survey. He indicated that the HMO had agreed that the treatment was appropriate. In addition, he indicated that a Board member had expressed a concern that there appeared to be carriers with approved selective contracting arrangements that had rates for their indemnity products in the survey. He indicated that he had sent a memorandum to all carriers indicating the purpose of the DOBI's survey and urging them to provide rates for their most popular plans. He further indicated that he went back to the carrier's original filings, and where carriers had provided rates for plans issued as indemnity plans and through an SCA, he had made sure that the SCA rates were the ones used in the Premium Comparison Survey.

VII. Report of the Assistant Director

The Assistant Director reported that one carrier had filed revised fourth quarter enrollment figures. He distributed a copy of the revised totals which reveal an increase of a couple of hundred covered persons from the their quarter. L. Moskowitz indicated that the numbers for dependent coverage were surprisingly low compared to the employee levels, which he would have expected to find closer to a two-to-one dependent to employee ratio. The Assistant Director noted that most carriers had informed him that they could only provide estimated numbers of dependents. D. Vanderhoof indicated that an explanation might be by the fact that an increasing number of families were composed of two working spouses, and that employees were not electing double coverage.

The Assistant Director reported that the Board packets included the DOBI's list of approved riders of decreasing value.

The Assistant Director reported that Board packets included a draft bulletin on two issues regarding State continuation. He asked Board members to provide any comments by March 31, 1997.

The Assistant Director indicated that the Board packets included an updated Board member and Committee list. He asked Board members to review the information to ensure its accuracy.

The Assistant Director reported that the federal government had published the HIPAA regulations. He asked Board members to contact him if they would like a copy

of the regulations. He also reported that the federal government had published a booklet on HIPAA which could be received free of charge by dialing 1-800-998-7542.

VIII. Report of the Executive Director

The Executive Director introduced Pearl Lechner, the new Assistant Director for Finances, to the Board. He indicated that Pearl had an MBA, had operated a family restaurant, and had worked for the New Jersey Department of Treasury as an accountant for over 10 years.

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

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

The Executive Director reported that he was still attempting to finalize the fiscal year 1994 and 1995 audit report. He indicated that there was still information that the Board had to obtain from Treasury. He indicated that completion of the audits was P. Lechner's first assignment and priority.

The Executive Director reported that reimbursable losses in the individual market amounted to approximately 43 million.

The Executive Director reported that there was a discussions among interested parties hosted by Assemblyman Garrett regarding A-2261. He reported that the Office of Legislative Services was putting together a new draft. He indicated that he had not seen a copy of the new draft. The Executive Director indicated that one element of the bill in its many permutations has been to keep the IHC and SEH Programs distinct, but to merge the Boards. He indicated that the Commissioner had asked for the Boards' input on this issue prior to the May 5, 1997 Assembly Insurance Committee hearing at which A-2261 would be discussed.

A. Mansue expressed a concern about developing a Board position on the issue of the merger of the Boards at the meeting. L. Moskowitz indicated that a position on the merger of the Boards could not be developed in the absence of more concrete information about the proposed modifications to the Programs. E. Gallagher, L. Ilkowitz, and G. Simon indicated that, while it would be helpful to have information about modifications to the Program, it was their belief that it was not premature for the Board to take a position at the meeting.

** D. Vanderhoof made a motion to table the issue on the merger of the Boards. J. Fiedler offered an amendment to schedule another Board meeting, prior to May 5th, for the purpose of discussing this issue to develop a Board position, if possible. A. Mansue*

seconded the motion, and the amended motion was approved by voice vote, with G. Simon abstaining.

The Executive Director reported that the Assistant Director had written, and the Governor had signed, the application for an alternative mechanism for New Jersey's individual market pursuant to HIPAA, and the application was filed prior to the April 1, 1997 deadline.

With respect to outreach, the Executive Director reported that he spoke to members of the Union County Medical Society. The Executive Director noted that the New Jersey Business and Industry Association's magazine had recently published an article on New Jersey's health insurance reforms.

The Executive Director reminded the Board that the Legislature had required the Board to develop a report on community rating by July 1, 1997.

IX. Report of the Legal Committee

L. Glover noted that since some Board members had to leave early that the Legal Committee report would have to wait until the May meeting. DAG Lichtblau reported that he had legal advice to provide to the Board on the issue of domestic workers in executive session.

X. Executive Session

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

L. Glover announced that the Board would not be taking any actions after executive session.

The Assistant Director announced that L. Glover had been reelected as the Chair of the Board and the DOBI had been reelected as the Vice Chair.

[A. Mansue left the meeting.]

XI. Close of Meeting