

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 22, 1997**

Members present: Gale Simon, *Vice Chair*(DOBI); and Dutch Vanderhoof.

Members participating by telephone: Larry Glover, *Chair*; James Donnellan (Prudential); Justin Fiedler (BCBSNJ); Charlotte Furman/Tom Pownall (Anthem Health and Life); Eileen Gallagher (NYLCare); Linda Ilkowitz (Guardian); Leon Moskowitz, (DOHSS); Fred Title (HIP of New Jersey).

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 1:00 p.m. 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.

Some members of the Board were participating by telephone conference. A speaker phone was used so that members of the public could hear the Board members participating by telephone. By virtue of telephone participation, the Board had a quorum.

II. Legislative Matters

The Executive Director indicated that the primary purpose of the meeting was to determine if the Board wished to provide the Commissioner with input on the issue of whether the SEH Board should be merged with the IHC Board, as had been proposed in various draft bills to modify the individual and small employer markets. L. Ilkowitz asked if, for purposes of the Board's discussion, the issue of the merger should be considered in the context of a bill that would also merge the individual and small employer markets. Based on recent versions of bills modifying the individual and small employer markets, the Executive Director indicated that it appeared that a new draft bill would not include a provision to merge the markets.

L. Moskowitz spoke first, articulating the reasons in support of a proposal to merge the SEH and IHC Boards. First, he indicated that appointments to the IHC Board have not been made in a timely fashion, both under the current and prior administrations. As a result, because of the small size of the IHC Board, the failure to fill appointed positions had impeded the smooth operation of the IHC Board. Second, he indicated that the IHC Board had evolved in such a manner that there had developed factions with different views on many issues. Third, it was noted that an argument could be made that a merger of the Boards could result in administrative efficiencies.

F. Title asked why those problems would be eliminated or ameliorated with a merger of the IHC and SEH Boards. L. Moskowitz indicated that she did not believe that a merger would help to solve problems, and further indicated that she believed that the SEH Board appeared to be functioning well. In addition, L. Moskowitz indicated that there would be practical difficulties with a merger. L. Moskowitz indicated that the composition of a merged Board could be open for further discussion.

[D. Vanderhoof arrived.]

G. Simon indicated that while the IHC Board members may not come to shared conclusions as easily as the SEH Board and that sometimes there were Board disagreements, that did not mean that the two Boards were not functioning well. J. Fiedler indicated that as a member who sat on both Boards, he also believed that the Boards were functioning well. F. Title stated his support for how the SEH Board had been functioning, and voiced his opposition to a merger of the two Boards.

L. Moskowitz indicated that the issue of a merger of the Board's was not a "make or break" issue for the bill. The Executive Director reminded the Board that the issue of the merger of the Boards came about with A800, a bill which would have vested the Board with the authority and responsibility for reviewing mandated benefits proposals and which proposed, in that context, to merge the two Boards.

D. Vanderhoof commented that it may make sense to merge the Boards. He noted that many consumers find themselves moving from one market to the other, and that a merged Board could provide for better transition for these consumers. He indicated that the two markets were related, and that oversight by one Board would be a good idea.

After some discussion, the Board made a resolution set forth as Exhibit 1.

** C. Furman made a motion to approve the resolution set forth as Exhibit 1. F. Title seconded the motion, and the motion was approved. The vote was as follows:*

Larry Glover, *Chair* - Yes
Gale Simon, *Vice Chair*(DOBI) - Abstain
James Donnellan (Prudential) - Yes
Justin Fiedler (BCBSNJ) - Yes

Charlotte Furman/Tom Pownall (Anthem Health and Life) - Yes
Eileen Gallagher (NYLCare) - Yes
Linda Ilkowitz (Guardian) - Yes
Leon Moskowitz, (DOHSS) - Abstain
Fred Title (HIP of New Jersey) - Yes
Dutch Vanderhoof - No

III. Report of the Executive Director

The Executive Director presented an expense report attached hereto as Exhibit 2. He noted that the Board had experienced problems in receiving bills from Federal Express. The expense report included Federal Express charges for a number of months. He further noted that all of the bills had been checked against the Board's records.

** J. Donnellan 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.]*

IV. Domestic Employees

The Executive Director asked the Board if it wished to discuss the issue of domestic employees, and whether they could constitute eligible employees of a small employer. DAG Lichtblau noted that this was an interpretive issue for the Board, and that it was a defensible position to conclude that domestic employees could constitute eligible employees. He further noted that if the Board decided that an employer could not cover domestic employees under a small group plan, that the Board should develop some way of distinguishing such a conclusion with the Board's previous conclusion that churches and non-profits (with from two to 49 eligible employees) must be considered small employers despite the fact that they were not in operation for profit. D. Vanderhoof and L. Moskowitz noted that domestic employees look to their employer in much the same fashion as any other employee. They noted that while there was not profit goal or revenue stream, the relationship between domestic employees and their employer seemed to have all the other attributes of a small business.

Some members of the Board were concerned about interpreting the definition of "small employer" in a manner to include employers of domestic employees, noting that the definition refers to entities "actively engaged in business." Some noted that they were concerned about the possibility of persons gaming the system. It was noted that carriers, could take reasonable steps, including a requirement that the employer provide information about wage taxes, to ensure that the group was a *bona fide* small group, and that domestic employees would have to work 25 hours per week or more on a regular and permanent basis to be eligible for coverage.

The Board was reminded that the issue was raised by Blue Cross and Blue Shield of New Jersey where an employer had asked them whether he could cover domestic employees working 25 hours per week or more under a small group health benefits plan.

** G. Simon made a motion that the Board provide advice on the question presented, that the carrier be advised that, under circumstances provided, this employer would qualify as a small employer under the law. D. Vanderhoof seconded the motion, and the motion was approved with J. Fiedler abstaining.*

The Board asked the staff to develop a draft bulletin on the issue of domestic employees for consideration by the Legal Committee.

The Board was reminded that there was a joint meeting of the SEH and IHC Boards scheduled for May 1, 1997 for the purpose of discussing staffing issues.

IV. Close of Meeting

** L. Moskowitz made a motion to adjourn the meeting. G. Simon seconded the motion, and the motion was approved unanimously by voice vote.*