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 17, 1997

Members present: Larry Glover, *Chair*; Jane Majcher/Gale Simon, *Vice Chair* (DOBI); Frances Arricale (NYLCare); Justin Fiedler (BCBSNJ); Charlotte Furman (Anthem Health and Life); Linda Ilkowitz (Guardian); James Leonard; Amy Mansue/Karen Dickinson (HIP of New Jersey); Bryan Markowitz; Leon Moskowitz, (DOHSS); Lee Ann Specht (Prudential); Eric Wilmer (Celtic Life).

Others present: Wardell Sanders, *Interim Executive 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. 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.

The Interim Executive Director introduced Frances Arricale of NYLCare. He noted that E. Gallagher could not attend the meeting and that Sherrie Price, the former alternate, had advised him that she was leaving NYLCare; he indicated that S. Price extended her greetings and best wishes to the Board.

II. Public Comment

No public comments were offered.

III. Minutes

** L. Moskowitz made a motion to approve the draft minutes of the July 23, 1997 Board meeting, as amended. C. Furman seconded the motion, and the motion was approved by voice vote, with F. Arricale abstaining.*

** A. Mansue made a motion to approve the draft minutes of the July 23, 1997 executive session Board meeting. L. Specht seconded the motion, and the motion was approved by voice vote, with F. Arricale abstaining.*

** A. Mansue made a motion to approve the draft minutes of the August 19, 1997 Board meeting, as amended. L. Moskowitz seconded the motion, and the motion was approved by voice vote, with F. Arricale, C. Furman, and E. Wilmer abstaining.*

** A. Mansue made a motion to approve the draft minutes of the August 19, 1997 executive session Board meeting. L. Ilkowitz seconded the motion, and the motion was approved by voice vote, with F. Arricale, C. Furman, and E. Wilmer abstaining.*

III. Report of the Policy Forms Committee

E. DeRosa reported that the Committee met on September 8, 1997 to discuss optional benefit riders and other matters. She described the riders submitted and noted the Committee's recommendations.

A. Americaid

Withdrawn after meeting, no action required.

B. CIGNA

Rider: 1: Prescription drug rider to amend the HMO and HMO-POS forms to replace the in plan outpatient prescription drug coverage with a card/mail program. The filing, as reviewed by the committee, failed to include the required certification. Such certification was subsequently provided.
Staff Recommendation: Complete and in substantial compliance, PROVIDED the carrier revises the rider to include the required introductory text which clearly identifies the standard plan being amended, and issues separate riders for HMO and HMO-POS.

** A. Mansue made a motion to accept the recommendation of the Committee to find the filing complete and in substantial compliance, provided that the carrier provides the revised rider. C. Furman seconded the motion, and the motion was approved unanimously by voice vote.*

Rider 2: Replaces the coinsured charge limit in HMO-POS plan D with a $1,000 per person, $2,000 per family coinsured cap, or $2,000 per person, $4,000 per family coinsured cap. [Coinsured cap is defined as the member's share of non-network covered charges that must be paid before no coinsurance is required.]
Recommendation: Complete and in substantial compliance.

Rider 3: Replaces the coinsured charge limit in HMO-POS plan C with a $1,250 per person, $2,500 per family coinsured cap, or $ 2,500 per person, $5,000 per family coinsured cap. [Coinsured cap is defined as the member's share of non-network covered charges that must be paid before no coinsurance is required.]
Recommendation: Complete and in substantial compliance.

** C. Furman made a motion to accept the recommendation of the Committee to find riders 2 and 3 complete and in substantial compliance. B. Markowitz seconded the motion, and the motion was approved unanimously by voice vote.*

Rider 4: Amends the HMO and HMO-POS plans to waive the hospital confinement copay. Text extremely confusing.
Recommendation: Refer to Department of Banking and Insurance.

** A. Mansue made a motion to accept the recommendation of the Committee to refer the filing to the DOBI. J. Fiedler seconded the motion, and the motion was approved unanimously by voice vote.*

C. Physicians Health Services

Rider 1: Amends the prescription drug copay in $10, $15 or $20 copay HMO-POS plans to $5.
Recommendation: Complete and in substantial compliance

Rider 2: Amends the prescription drug copay in a $20 copay HMO-POS plan to $15.
Recommendation: Complete and in substantial compliance

** A. Mansue made a motion to accept the recommendation of the Committee to find the filing complete and in substantial compliance. C. Furman seconded the motion, and the motion was approved by voice vote with L. Ilkowitz abstaining.*

D. New York Life

Rider : Amends indemnity point of service plan to remove the requirement that a covered person receive a PCP referral to access the services of a network specialist or other network provider. Text extremely confusing.
Recommendation: Refer to Department of Banking and Insurance.

E. DeRosa announced that the carrier had withdrawn the rider after the Committee meeting. Therefore, no action was required by the Board.

The Interim Executive Director reported that there was a need to add an HMO voice to the Policy Forms Committee. He noted that Karen Dickinson of HIP had expressed an interest in joining the Committee; he also noted that E. Wilmer indicated that he would be willing to leave the Committee since he was unable to attend the most of the meetings in person due to the fact that his office is in Chicago.

** C. Furman made a motion to appoint K. Dickinson to the Policy Forms Committee and to have E. Wilmer removed from the Committee for the reasons explained by the Interim Executive Director. L. Moskowitz seconded the motion, and the motion was approved by voice vote with F. Arricale abstaining.*

The Interim Executive Director reported that he had received a letter from NYLCare thanking E. DeRosa for her assistance in making its most recent rider filing. The Interim Executive Director also reported that the Board packets included an update of riders of decreasing value approved by the DOBI which includes a new MSA/high deductible plan from Anthem Health and Life.

E. DeRosa reported that the Policy Forms Committee members had provided comments to her first draft of modifications to the standard health benefits plans needed to conform the plans with HIPAA and P.L.1997, c.146. She reported that she incorporated most of the Committee member's comments, and where she believed that changes were not appropriate, she outlined her concerns in a memorandum. She noted that due to the short time periods for review, the Committee members did not receive her memorandum outlining the changes until the Monday before the Board meeting.

E. DeRosa reported that there was one area where the Committee had not reached a consensus: the active work requirement. The active work requirement requires an employee to be actively at work on the date coverage is to take effect in order for coverage to take effect. HIPAA contains nondiscrimination provisions which prohibits carriers from discrimination based on a health status-related factor. E. DeRosa reported that her approach was to retain the active work requirement, but to make health status-related factors an exception to this rule. She further noted that in the Discontinuance and Replacement text, she discussed the liability of the prior and succeeding carriers for the limited 12-month extended benefits period.

A. Mansue expressed a concern that it did not seem appropriate for an employee to have to wait for coverage just because the employee was not actively at work. L. Ilkowitz noted that the federal government had not provided further guidance as to what the federal law required; she said that federal regulations addressing this matter had been delayed. She asked J. Majcher to pursue this issue at the NAIC meeting. C. Furman suggested that the Board develop variable text that would permit the carrier flexibility to interpret the federal law; many Board members agreed with this approach. L. Moskowitz expressed some concern with this approach noting that the Board should make a good faith effort to interpret the federal law.

After some further discussion, the Board agreed to delay the proposal of the amendments to the policy forms so that the Policy Forms Committee, and if possible, the Legal Committee, could consider this issue more completely. The Board agreed to have a telephone conference meeting on Wednesday, September 24, 1997 at 9:30 a.m. to discuss the issue further and vote to propose the changes to the forms.

IV. Report of the Marketing Committee

The Interim Executive Director noted that the Board had asked Wenzel & Company to provide the Board with periodic updates of its activities. B. Kapulsky then reviewed the work done by Wenzel & Company during July and August. She noted that

they had worked with the Interim Executive Director on a number of press releases and had distributed the releases on behalf of the Board to the media. The press releases were: (1) $13.5 million in refunds on loss/enrollment exceeds 1 million persons; and (2) NJ Reforms lead Federal Reforms. She further noted that she drafted a story on the SEH Program which was published in Mercer Business, a publication of the Mercer Chamber of Commerce, a magazine with a circulation of nearly 8,000. She indicated that she would shop the same story to the other local Chambers.

C. Furman expressed some concern about the manner in which some of the articles regarding the refund of $13.5 million to small employers was portrayed by the press; some of the press cast the refunds in terms of a penalty. The Executive Director noted that the press release was not drafted to cast the refunds in terms of a penalty and that it was hard to control what the press did with the press release. He indicated that he would take remedial action to correct the misperception, including writing letters to the editor.

V. Report of the Interim Executive Director

The Interim Executive Director presented an expense report attached hereto as Exhibit 1. He noted that the only unusual expense was for additional printing of the SEH Buyer's Guide.

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

The Interim Executive Director reported that the Board packets included a memorandum on DOBI's WEB site which contains information about the IHC and SEH Programs including: meeting dates; bulletins, press releases; rate information; and excerpts from the Buyer's Guide. He reported that there is no cost for the site and that he has received compliments and many press calls based on the site. The addresses for the site are "www.naic.org/nj/NJHOMEPG.HTML" and "www.state.nj.us".

The Interim Executive Director reported that the Governor signed the Healthcare Quality Act, P.L.1997, c.192. He noted that the law applies to both HMOs and other managed care plans, and is intended to provide consumer and provider safeguards. He reported that the law would be effective 180 days after enactment, or February 3, 1998. He noted two key areas that would affect the SEH Market. First, a carrier must provide certain information to covered persons, including information regarding the procedure to initiate an appeal through the "Independent Health Care Appeals Program," an entity established pursuant to the Act under contract with the DOHSS. The program provides an independent medical necessity review of final decisions by carriers. He noted that the Board may have to amend its forms to provide guidance on this right. Second, the law provides that a carrier offering a managed care plan must offer a "point of service" plan. He noted that the Board already has standard plans developed to enable HMOs to offer

such plans. He noted that there are exemptions for Medicaid HMOs, federally qualified nonprofit HMOs, and HMOs that have an affiliate indemnity carrier offering a plan through a selective contracting arrangement. He noted that this requirement does not appear to apply to the individual market. The Interim Executive Director reported that he was nearly finished with a draft bulletin on the impact the HCQA and P.L.1997, c.146 on the small employer and individual markets.

The Interim Executive Director reported that the DOBI is working on three rule proposals: (1) Amendments to the withdrawal regulations to conform with HIPAA; (2) Amendments to the Premium Comparison Survey regulation to reflect the availability of HMO/POS plans; and (3) amendments to the nonstandard plan loss ratio and rating regulations. He reported that Channel McDevitt had left the DOBI to take a position with the DOHSS, and noted that the draft proposals were being reassigned within the DOBI.

The Interim Executive Director reported that the DOBI had received two notices of market withdrawal. The first was from Continental Casualty, a carrier covering about 564 employers, and 1000 lives in the small employer market. The second was Connecticut General, whose marketshare is unclear since its withdrawal letter and recent enrollment reports had significantly different numbers.

The Interim Executive Director reported that he had received a letter from a New Jersey small employer asking if its carrier, or any small employer carrier, would permit coverage for domestic partners. He noted that the employer had asked because of a San Franciso ordinance which seeks to prohibit discrimination of domestic partners. He reported that he had responded to the employer that coverage for domestic partners was not permitted in the small group market.

The Interim Executive Director reported that Deloitte & Touche had finished drafts of the 1994 and 1995 Program audits. He also reported that P. Lechner had completed a draft assessment. He indicated that he wanted to forward both the draft audits and assessments to the Operations Committee for review, but due to scheduling difficulties could not obtain a quorum prior to the September Board meeting. He further noted that discussions with the DOBI had revealed that the loss ratio reports filed with the DOBI and the market share reports filed with the Board reflected some significant differences in net earned premium for a number of carriers. He indicated that he would like the Operations Committee to consider the manner in which these differences in net earned premium should impact the assessment, if at all.

The Interim Executive Director reported that he had received a letter and a number of calls from Medicode, an entity that offers a fee profile database to determine the reasonable and customary allowance for services and supplies covered under the standard health benefits plans.. Medicode had asked that its fee profile be permitted in connection with the New Jersey standard plans. The Interim Executive Director indicated that he would forward the letter to the Operations Committee for consideration. C.

Furman said that the letter noted that Medicode had contracted for a study to be done comparing the Medicode database with the HIAA database. The Board agreed that the Operations Committee should consider the letter and any studies.

With respect to outreach, the Interim Executive Director reported that he would be speaking at a meeting of the South Jersey Health Underwriters on September 23, 1997, to the Commissioner's Advisory Council for Brokers on September 30, 1997, and at a New Jersey Business and Industry Association seminar in Jamesburg on October 1, 1997.

VI. Executive Session

* *J. Leonard made a motion to move into executive session to receive an update on an enforcement matter and to discuss staffing issues. C. Furman seconded the motion, and the motion was approved unanimously by voice vote.*

VII. Close of Meeting

* *C. Furman made a motion to close the meeting. L. Specht seconded the motion, and the motion was approved unanimously by voice vote.*