

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 24, 1997**

Members present by telephone: Larry Glover, *Chair*; Jane Majcher, *Vice Chair* (DOBI); Justin Fiedler (BCBSNJ); Charlotte Furman (Anthem Health and Life); Linda Ilkowitz (Guardian); Amy Mansue/Karen Dickinson (HIP of New Jersey); Leon Moskowitz, (DOHSS); Lee Ann Specht (Prudential).

Others present: Wardell Sanders, *Interim Executive Director*; Ellen DeRosa, *IHC Program Assistant Director*; DAG Josh Lichtblau (DOL); Gale Simon (DOBI).

I. Call to Order

The Interim Executive Director called the meeting to order at approximately 9:30 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

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

The Interim Executive Director reported that the purpose of the meeting was to consider issues relating to the Board's draft proposal of amendments to the standard health benefits plans.

II. Public Comments

L. Glover asked if any person attending the meeting wished to offer any comments. No comments were offered.

III. Report of the Legal Committee

The Interim Executive Director reported that the Legal Committee met via telephone conference on September 22, 1997 and considered five issues.

The first issue was whether the standard policy forms should contain a provision indicating that the maximum participation under the plans is 50 employees. He reported that one Committee member believed that a participation requirement based on the actual number of persons covered was permitted under HIPAA and P.L.1997, c.146, and that its inclusion in the forms was important to provide a clear, articulated basis for nonrenewal if the size of the group exceeds 50 employees. Other Committee members noted that the SEH Act prior to the enactment of HIPAA and P.L.1997, c.146 permitted nonrenewal if the entity no longer met the definition of a "small employer," and that the recent amendments to the law did not change this. The Interim Executive Director reported that the Committee's recommendation was that the forms should not contain a provision indicating that the maximum participation under the plans is 50 persons. The Committee agreed that an employer must certify annually that it still meets the definition of a small employer to be able to renew the plan. The Committee further noted that group size is but one circumstance for non-renewal and did not believe it appropriate to single out this one circumstance for special attention.

** L. Moskowitz made a motion to accept the recommendation of the Legal Committee with respect to the first issue presented. A. Mansue seconded the motion, and the motion was approved with J. Fiedler voting against the motion. The motion passed.*

The second issue considered by the Legal Committee was whether the standard policy forms should contain a reference to a "plan year" or is such a reference unnecessary because for all small groups the plan year will be a calendar year? The Interim Executive Director noted that the Committee noted that it was conceivable that a small group plan could have a plan year that was not a calendar year. As a result, the Committee recommended that language should be included in the forms proposal that would provide that if there is a plan document, then the plan year would be as defined in the plan document, otherwise, the plan year shall be a calendar year.

** L. Moskowitz made a motion to accept the recommendation of the Legal Committee with respect to the second issue presented. L. Moskowitz seconded the motion, and the motion was approved unanimously.*

The third issue considered by the Legal Committee was whether the exception for guaranteed renewability for persons who no longer "live, reside, or work" in the HMO's service area should or could be extended to indemnity based plans issued as a PPO or POS plan? The Interim Executive Director reported that the Committee recommended that while HIPAA specifically permits a "network based plan" to nonrenew a plan if an employee no longer lives, resides or works in the service area, the SEH Act does not

permit an indemnity carrier or service corporation to nonrenew in this instance, and therefore no change should be made to the draft of the forms.

** L. Moskowitz made a motion to accept the recommendation of the Legal Committee with respect to the third issue presented. C. Furman seconded the motion, and the motion was approved with J. Fiedler voting against the motion. The motion passed.*

The fourth issue considered by the Legal Committee was whether the draft text in the continuity section of the forms should be removed. The section advises a covered person that he or she may request a certificate of creditable coverage from the carrier. The Interim Executive Director noted that the Committee did not have the HIPAA language before them at the time of the meeting, and therefore could not develop a recommendation. As a result, the Committee asked that staff fax to the Legal Committee the draft minutes with a copy of the relevant language from HIPAA. The Interim Executive Director reported that he provided the HIPAA language, but due to time constraints did not receive any comments from Legal Committee members prior to the Board meeting.

After some discussion, the Board decided that notice to the applicant may be required under HIPAA and that the best place to include the notice would be the enrollment form.

** C. Furman made a motion to remove the draft text in the continuity section of the forms, which advises a covered person that he or she may request a certificate of creditable coverage from the carrier, and include it on the signature page of the enrollment form. L. Moskowitz seconded the motion, and the motion was approved unanimously.*

The fifth issue considered by the Legal Committee was whether the Health Insurance and Portability Act of 1996 ("HIPAA") and P.L.1997, c.146 prevent the application of an actively at work requirement in the standard plans if a person is not actively at work due to a health status-related factor. The Interim Executive Director reported that the Committee, with one member disagreeing, concluded that HIPAA and P.L.1997, c.146 do prevent the application of an actively at work requirement for a person who is not actively at work due to a health-status related factor. Further, the Committee recommended that the Board consider, as a policy issue, whether the forms should contain any actively at work requirement for the remaining instances where an employee would not be actively at work (e.g., vacation, family leave, sabbatical, etc.) since these reasons for not being at work have not traditionally presented adverse selection concerns.

IV. Report of the Policy Forms Committee

E. DeRosa reported that the Policy Forms Committee met on September 22, 1997 and also considered a number of issues relating to the draft amendments to the standard policy forms.

With respect to the fifth issue considered by the Legal Committee, she reported that the Policy Forms Committee recommended that the Board propose variable text such that a carrier may entirely waive the actively at work requirement, or may modify it such that it would not apply when the employee is not actively at work due to a health status-related factor. A. Mansue noted that when the actively at work requirement is prohibited for health status-related factors, there are such few circumstances in which the actively at work requirement applies that it would be more appropriate to remove references to actively at work altogether. She further commented that permitting an actively at work requirement was not good public policy. Other Board members commented that carriers should be provided with the flexibility of including an actively at work requirement if they wanted to. L. Moskowitz noted that carriers should be required to make a selection as to whether they would waive the actively at work requirement or use modified text which limits the application of the requirement, and that carriers should not be permitted to make a selection on a case-by-case basis. The Interim Executive Director noted that if the Board included variable text for an actively at work requirement, the Exhibit BB, Part 1 Certification of Forms Compliance, should be amended to include information about a carrier's selection with respect to variable text for an actively at work requirement.

** C. Furman made a motion to put in the rule proposal variable text to permit a carrier to use an actively at work requirement for reasons other than a health status-related factor, or to remove the requirement altogether. L. Moskowitz seconded the motion, and the motion was approved, with A. Mansue voting against the motion. The motion passed.*

E. DeRosa reported that the Committee also recommended a change to the standard HMO plan and the standard HMO/POS plan to include a dispensing limit applicable to in-network prescription drugs which were subject to a copay. She noted that the standard prescription drug riders and standard individual HMO plan included dispensing limits, but that the standard HMO and HMO/POS plans did not include a dispensing limit. She noted that this change would represent a benefit decrease.

** L. Moskowitz made a motion to accept the recommendation of the Policy Forms Committee to include this change to the HMO and HMO/POS in-plan prescription drug coverage. C. Furman seconded the motion, and the motion was approved unanimously.*

E. DeRosa referred to a memorandum outlining some other recommendations of the Policy Forms Committee regarding the proposal. She asked if there were any

questions or concerns about the recommendations of the Policy Forms Committee. There were no additional comments.

** L. Moskowitz made a motion to accept the remaining recommendations of the Policy Forms Committee regarding modifications to the draft rule proposal to modify the standard health benefits plans. L. Ilkowitz seconded the motion, and the motion was approved, with A. Mansue voting against the motion. The motion passed.*

** L. Moskowitz made a motion to propose amendments to the standard health benefits plans, riders, and explanation of brackets, incorporating the changes resulting from the Board's actions on the recommendations of the Legal and Policy Forms Committee. L. Ilkowitz seconded the motion, and the motion was approved, with A. Mansue voting against the motion. The motion passed.*

V. Close of Meeting

** L. Moskowitz made a motion to adjourn the meeting. C. Furman seconded the motion. The Board voted unanimously in favor of adjourning the meeting.*