**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**
**December 17, 1997**

**Members present:** Jane Majcher, Vice Chair (DOBI); Karen Dickinson (HIP of New Jersey); Justin Fiedler (BCBSNJ); Charlotte Furman (Anthem Health and Life); Eileen Gallagher (NYLCare); Linda Ilkowitz (Guardian); Channel McDevitt (DOHSS); Catherine St. John (Prudential); Dutch Vanderhoof; Eric Wilmer (Celtic).

**Others present:** Ellen DeRosa, Deputy Executive Director; DAG Josh Lichtblau (DOL); Joanne Petto, Assistant Director; Wardell Sanders, Executive Director

## I. Call to Order

J. Majcher called the meeting to order at approximately 9:40 a.m. W. Sanders 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

W. Sanders asked if any person attending the meeting wished to offer any comments. No comments were offered.

## III. Introduction Of New Staff

W. Sanders introduced Joanne Petto who began as a new staff member of the IHC and SEH Programs. He stated that J. Petto came to the Programs from Prudential, and before that she was employed by Birch and Davis working on the Health Access Program, and had an impressive background in health care, insurance, and hospital administration.

## IV. Minutes

November 19, 1997
**K. Dickinson offered a motion to approve the minutes of the Open Session of the November 19, 1997 Board meeting. L. Ilkowitz seconded the motion and the Board voted in favor of approving the minutes, with one abstention (C. St. John).**

## V. Report of the Policy Forms Committee

E. DeRosa stated the Committee met at the offices of Department of Banking and Insurance at 10:00 a.m. on December 15, 1997 to consider the following:

### Optional Benefit Riders

**A. New York Life**

Rider 1: Amends POS Plan D to waive the in-network hospital confinement copayment; add a $600/per person, $1200/family copayment maximum; and replace the coinsured charge limit with a $1500/person, $3000/family out of pocket maximum.
***Recommendation***: Complete and in substantial compliance.

Rider 2: Amends POS Plan D to waive the in-network hospital confinement copayment; add a $600/per person, $1200/family copayment maximum; replace the coinsured charge limit with a $1500/person, $3000/family out of pocket maximum; and allow for direct access to network providers.
***Recommendation***: Complete and in substantial compliance.

**C. Furman offered a motion to approve the riders. J. Fiedler seconded the motion and the Board voted in favor of approving the riders, with one abstention (E. Gallagher).**

**B. United HealthCare**

Rider 1: Amends the HMO plan to allow direct access to network providers.
***Recommendation:*** Complete and in substantial compliance.

Rider 2: Amends the HMO-POS plan to allow direct access to network providers.
***Recommendation:*** Complete and in substantial compliance.
**E. Gallagher offered a motion to approve the riders. C. Furman seconded the motion and the Board unanimously voted in favor of approving the riders.**

## Meeting Schedule

E. DeRosa reported the Committee established the 1998 meeting schedule. She stated that staff would prepare a Bulletin to advise carriers of the dates for the Committee meetings which would state that filings must be received no later than one week prior to the scheduled committee meeting in order to be included on the agenda for the Committee meeting.

## Direct Access

E. DeRosa stated the Committee discussed the fact that a number of carriers have filed optional benefit riders to allow for direct access to network providers in connection with the HMO plan as well as the HMO-POS plan. Since the text of optional benefit riders may not be incorporated into the text of the standard plans, carriers must issue the evidence of coverage along with the rider, which in many instances is a very lengthy rider. The Committee discussed the probability that the volume of paper may create a less than easy document to read and understand.

E. DeRosa reported that the Committee recommended that the standard HMO and HMO-POS text be revised to create variable text which would accommodate a direct access mechanism. The Committee asked DAG Lichtblau to investigate whether it may be possible to establish a mechanism similar to that which exists with respect to Utilization Review Provisions whereby a carrier could elect to use the direct access text, as included in the forms, or may file alternative direct access text, to be approved by the Board.

E. DeRosa reported that the Committee believed it would be helpful to seek preliminary comments from the carriers that have filed optional benefit riders for direct access before proposing the changes.

## 50+ Group Size Issue

E. DeRosa noted that the federal mental health parity law applies to groups of over 50 employees. Due to the manner in which a small employer group size is determined, there is a possibility that standard plans are issued to groups which will be subject to the law. The Committee discussed two possible methods to address the necessary level of coverage:

- create a rider that carriers may issue to cases which are subject to the law;
- amend the standard indemnity plans to replace the existing $5,000/$25,000 limits with limits based on days, as currently exists in the HMO plans.

E. DeRosa reported that the Committee believed that it would be administratively easier to simply amend the standard plans to eliminate the dollar based internal limits since carriers would not need to be concerned with group sizes increasing/decreasing. She noted that the Committee sought guidance from the Board since this would represent a significant change in plan benefits. E. Gallagher stated that she would prefer to see this issued as a rider, with the onus for compliance on the employer. C. Furman asked if there might be any cost implications. The Board agreed to consider the issue further.

**HMO Regulations**

E. DeRosa reported that K. Dickinson highlighted elements of the regulation which she believed warranted Committee consideration. The Committee agreed that the following elements of the regulation should be incorporated into the standard HMO and HMO-POS plans:

- emergency definition (extreme life or death circumstances)
- continued coverage after a network provider is terminated
- medical screening examination
- specialist as PCP

L. Ilkowitz asked if there were any other issues of concern. J. Fiedler stated that BCBSNJ previously requested clarification of the penalty for non-authorized emergency room visits. E. DeRosa stated that the carriers could administratively opt to pay the full benefit under extraordinary circumstances. W. Sanders stated that program staff would respond to BCBSNJ in writing. D. Vanderhoof stated that the language (may/will) could mislead consumers. The Board does not feel that the language should be changed. The Committee also believes the Health Care Quality Act contains appeal procedures which must be included in the forms.

**Implementation**

E. DeRosa reported that the Committee suggested that the HMO regulation changes be accomplished via rider since the standard plans were significantly amended effective January 1, 1998 and it would be extremely burdensome to expect carriers to revise issue systems so soon after January 1, 1998. She noted that if the Board agrees to the direct access suggestion, it is likely that the variable text could be proposed at the same time as the other text changes. Any carrier desiring to accomplish direct access using this new approach would have to use the new forms, and could not use the rider approach. The Board agreed that the changes should be permitted via a compliance rider.

## VI. Report of the Marketing Committee

W. Sanders reported the Committee met on December 8, 1997 via telephone conference and discussed the issues set forth below. This meeting was a follow-up to a Committee meeting held on November 25, 1997.

### SEH Premium Comparison Survey

W. Sanders reported that the Committee agreed that the premium comparison survey was of limited value for a number of reasons, and may serve as a disservice to some consumers. The Committee noted that the standardized plans may be offered as PPO or POS plans with different copay options and coinsurance differentials, making comparison less meaningful. In addition, the Committee noted that the relative pricing position of carriers for the sample group for one county may be very different in another county or for a group with a different characteristics.

W. Sanders noted that the SEH Act requires DOBI to publish annually a premium comparison of small group rates. D. Vanderhoof asked if the DOBI could meet its obligations solely by publishing the rates on the DOBI's Web site. W. Sanders commented that since many people don't have access to the Web, this form of "publication" might not meet the requirements of the law.

W. Sanders reported that the Committee recommended that the Board should compile the information for the premium surveys but should not publish the survey in large quantities, should not print the surveys on expensive paper, and should not include the rate survey automatically as an insert to the Buyer's Guide distributed through the Board's toll free number. Rather, the DOBI and the Board should put the rates on the WEB page, and provide them to consumers on request. The Board agreed to this recommendation.

### SEH Buyer's Guide

W. Sanders noted that he sent a memo to carriers asking how many copies of the Buyer's Guide they would like to request. He noted that the Board's current regulations require carriers to distribute the Guide within three days of a request from a consumer.

W. Sanders reported that the Committee reviewed the staff's draft of changes to the Guide to reflect recent changes in the law and benefit changes. The Committee noted that the Guide was too technical and lengthy for the needs of most small employers, and that four years into the Program the need for a guide of such complexity had diminished.

W. Sanders reported that the Committee agreed: (1) to fax wording changes to the Guide to W. Sanders by the end of the week; (2) to recommend that the Revised Buyer's Guide be used as a secondary piece, for brokers and for consumers who request more detailed information; (3) to limit the amount of time spent on changes to the existing Guide; (4) to develop a front-line piece providing small employers with a more condensed and easier to read guide to obtaining small group coverage that would include a list of carriers (based loosely on a marketing piece developed by the IHC Board; and (5) instruct Wenzel & Co. to provide the Board with estimated printing costs for the Revised Buyer's Guide. W. Sanders noted that the draft of the revised Buyer's Guide and the new front-line piece would be presented to the Board for review and comments. E. Gallagher suggested adding the SEH Web site information to the cover of the Buyer's Guide. D Vanderhoof asked if the Buyer's Guide information could be placed on the Web; staff agreed to follow-up on these requests.

## VII. Report of the Executive Director

**Expense report**

**D. Vanderhoof offered a motion to approve the expense report attached hereto as Exhibit 1. J. Fiedler seconded the motion, and the Board unanimously voted in favor of approving the expense report.**

**Board Member Elections**

W. Sanders stated the Board seats currently held by Larry Glover, Guardian Life, Prudential, NYLCare, and Blue Cross were up for election. W. Sanders prepared a spreadsheet showing the composition of elected and appointed positions to date. W. Sanders noted that a nomination form would be mailed out on December 18, 1997.

**Assessment Collection**

W. Sanders announced the assessment was sent out via certified mail in November. The net amount due is $215,198. To date, the SEH Board had collected $198,167, or 92%. He noted that the Board was waiting for responses from 12 carriers.

**Legislative Update**

W. Sanders reported that A-3253 (Felice) and its companion bill S.2330 (Sinagra) would modify the IHC Act by changing the initial two-year calculation period to a period beginning on January 1, 1998, rather than beginning on January 1, 1997. The Senate Health Committee heard the bill on December 11, 1997 and the bill was held in Committee.

**3rd Quarter 1997 Enrollment Data**

W. Sanders reported that J. Petto was in the process of completing and analyzing the enrollment reports.

**1998 Board Meeting Schedules**
W. Sanders said the IHC and SEH Board meeting schedules were included in the Board packets.

**Outreach**
W. Sanders addressed the Commissioner's Agent advisory committee on December 2, 1997. He indicated that he was scheduled to speak at a NJBIA seminar on January 14,1998 regarding the HIPAA changes.

**Carrier Withdrawal**
W. Sanders received a copy of a list of carriers that have filed to withdraw from the SEH market from the DOBI and distributed it to the Board. He noted that most of the recent filings have been from indemnity carriers which have indicated that they are withdrawing from a number of States.

**DOBI Draft Standards for Formularies**
W. Sanders reported that a rule proposal was scheduled to be published shortly.

## VIII. Report of the Legal Committee

W. Sanders reported that the Committee met on December 16, 1997 via telephone conference at 3:00 p.m. and discussed the following issues.

**Issue 97-29: Does HIPAA or State law require that a plan issued to a small employer be renewed if the small employer no longer meets the definition of a "small employer" due to a growth in the size of the group?**

W. Sanders reported that the Committee noted that the exceptions to the guaranteed renewability provisions of both State and Federal law did not specifically include an exception for employers that no longer met the definition of a "small employer." He reported however that D. Cieslik noted that the law did provide an exception for employers that did not meet participation requirements; she further noted that N.J.S.A. 17B:27A-23c discusses a participation requirement in terms of both a number and a percentage. He reported that all Committee members noted that both HIPAA and State law generally provide for important distinctions between markets of insurance. Lastly, the Committee noted that this issue has an impact on all markets of health insurance. W. Sanders reported that the Committee recommended that the issue be referred to the Attorney General's Office. The Board agreed to the recommendation.

**Issue 97-30: What is meant by the regulatory definition of an "eligible employee" when it uses the term "paid" employee?**

W. Sanders noted that the Board had asked the Committee to revisit this issue. He reported that J. Brown noted that the word "paid" acts to limit coverage to persons that may indeed be working 25 hours per week or more. J. Brown further noted that removal of the term "paid" would enable full-time employees, who may not be able to produce tax records evidencing their employment, to obtain coverage. The removal of the word paid would also provide carriers with a greater ability to offer coverage while still permitting the carrier to undertake a reasonable inquiry as to whether a person is truly a full-time employee. W. Sanders reported that F. Title suggested that this approach be taken and that the definition of "small employer" be modified to insert the term "*bona fide*."
W. Sanders reported that the Committee recommended that the Board modify the regulatory definition of eligible employee to indicate that the employee must be a bona fide employee. The Board agreed to address this issue as part of the Board's comprehensive changes to its regulations to comply with HIPAA and P.L.1997, c.146.

## IX. Executive Session

**There being no business to discuss, the Board did not go into Executive Session.**

## X. Close of the Meeting

**L. Ilkowitz offered a motion to close the meeting. J. Fiedler seconded the motion, and the Board voted unanimously in favor of approving the motion.**

**Attachments:**

**Exhibit 1 December 17, 1997 Expenses**