

**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
June 17, 1998**

Members present: Justin Fiedler (BCBSNJ); Sonia Delgado (HIP of New Jersey); Nancy Fiorentino (DOHSS); Adeline Gallagher (Anthem Health & Life); Catherine Garcia (NYLCare) (arrived at 10:20 a.m.); Larry Glover, Chair; Linda Ilkowitz (Guardian); Jane Majcher (DOBI); Brian Markowitz (left at 10:20 a.m.); Catherine St. John (The Prudential); Eric Wilmer (Celtic); Dutch Vanderhoof.

Others present: Ellen DeRosa, Deputy Executive Director; Pearl Lechner, Program Accountant; DAG Josh Lichtblau (DOL); Wardell Sanders, Executive Director; Libby Swanke (arrived at 10:20 to sit of behalf of NJBIA, as an observer, without voting rights).

I. Call to Order

L. Glover called the meeting to order at approximately 9:45 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. L. Glover noted the presence of a new representative for HIP, Sonia Delgado, and the presence of Nan Fiorentino representing DOHSS.

II. Public Comments

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

III. Minutes

May 20, 1998

J. Fiedler offered a motion to approve the open session minutes of the May 20, 1998 Board meeting. J. Majcher seconded the motion and the Board voted in favor of approving the minutes, with three abstentions (A. Gallagher, L. Glover, D. Vanderhoof).

Adjustment to Agenda

L. Glover announced that there would be an adjustment to the order of the topics set forth on the working agenda such that the Executive Session would occur earlier during the meeting than noted on the working agenda, with open meeting business to continue following the Executive Session.

IV. Report of Staff

Expense Report (see attached)

W. Sanders explained that the unusually high charge for Wenzel was due to the fact that Wenzel arranged the printing of the Buyer's Guide and Get the Facts brochure. The invoice from Wenzel thus included such printing costs. D. Vanderhoof inquired as to whether the printing costs would have been less had the Board dealt directly with the printer. W. Sanders responded that he understood the cost passed along to the Board to be the actual cost, without any mark-up for services by Wenzel.

J. Fiedler offered a motion to approve the June 17, 1998 expense report. D. Vanderhoof seconded the motion and the Board voted unanimously in favor of approving the motion.

Legislative Activity

W. Sanders referred to the June 10, 1998 memorandum contained in Board materials. He noted that S. 468 and A. 142 would be significant to the IHC market.

B. Markowitz advised that the Senate Health Committee was scheduled to meet on June 22, 1998.

W. Sanders stated that amendments to the DOBI's Selective Contracting Arrangement regulation had just been adopted, and that a copy of the adoption was included in Board materials. He noted that the use of prescription drug formularies was addressed in the regulations, as amended.

Outreach

W. Sanders reported on the following activities:

May 21, 1998: Annual Convention of the New Jersey Association of Health Underwriters:

W. Sanders reported he spoke to approximately 250 producers during a segment of the Convention held in Atlantic City, and distributed copies of both the SEH and IHC Buyer's Guides

June 2, 1998: Commissioner's Life Health Advisory Council:

W. Sanders noted that the discussion concentrated primarily on IHC issues.

May 28, 1998: Letter to New Jersey Senate, Assembly and Congressional Delegation:

W. Sanders commented that the letter informed the legislative offices of the new SEH and IHC Buyer's Guides, included copies and offered to provide additional materials, upon request and also included rolodex cards with the toll-free numbers for both Boards.

W. Sanders reported that eight legislative offices had already contacted the Boards for materials and that Assemblyman Zisa wrote a very complimentary letter concerning the Guides. W. Sanders said he intended to make sure the Governor's office also receives the materials.

E. DeRosa reported on the following activity:

June 5, 1998: 5-Credit 3-Hour Continuing Education Course on the IHC Program:

E. DeRosa reported that approximately 60 producers attended this course, held in Monmouth Park, on the IHC Program.

V. Report of Marketing Committee

W. Sanders noted that the Wenzel activity report was included in the Board packets.

He called the Board's attention to a Press Release announcing the availability of the new Buyer's Guide and Get the Facts brochure. All necessary approvals had been granted by Winnie Comfort, J. Majcher and the Commissioner's Office. After making a minor clarification concerning the availability of the SEH Buyer's Guide, the Press Release would be distributed.

W. Sanders reported that Wenzel developed a 10-second public service announcement on the Buyer's Guide and Get the Facts brochure. The announcement had been sent to 31 radio stations, with no replies to date.

W. Sanders reported that the Marketing Committee met following the May 20, 1998 Board meeting. The contract with Wenzel is scheduled to expire on June 30, 1998. He said the Committee recognized that the Board would be required to develop and release a Request for Proposal (RFP) in order to continue services with Wenzel or to hire another firm. After evaluating the marketing needs of the SEH Board and concluding that such needs have largely been sporadic, the Committee concluded it would be prudent to thoroughly reassess the marketing needs of the SEH Program prior to the development of an RFP. The key functions performed by Wenzel have been work on the Buyer's Guide and the annual rate comparison data. However, the text of the Guide was written by staff, and staff produced the 1998 rate comparison data. W. Sanders said that staff would produce a draft report on suggested marketing efforts for the consideration of the Marketing Committee.

D. Vanderhoof stated that the Board may need the services of a publicist rather than a marketing firm. J. Fiedler suggested that the Marketing Committee should develop a business plan.

W. Sanders reported that the DOBI has a complete and up-to-date information network upon which the SEH Board may rely.

VI. Report of the Operations Committee

W. Sanders reported that the Committee met on June 15, 1998 to discuss several issues. He directed the Board to the Board packets which included a memorandum dated June 10, 1998 to the Operations Committee which outlined the issues the Committee considered.

Financial Reporting to the Commissioner

W. Sanders explained that the Commissioner requested annual financial reports from the SEH Board and Quarterly and annual financial reports from the IHC Board. He said that while a quarterly SEH report had not been requested, P. Lechner had provided a quarterly

statement to the Commissioner. P. Lechner noted that the report she prepared included the general ledger as well as a profit and loss balance sheet. She noted that annual financial reporting for the SEH report would be done on a GAAP basis but that the quarterly report had been prepared on a cash basis since a cash basis was the more appropriate accounting method for a quarterly financial report.

1994 and 1995 Audit Statements

W. Sanders explained that the Board had approved draft audited statements of the SEH Program's 1994 and 1995 books. In preparing the final reports, S. Sanders from Deloitte & Touche (D&T) discovered the need to include a footnote concerning the Board's investment account and investment policy. DAG Josh Lichtblau advised that there are requirements imposed on depository institutions that have public funds on deposit. W. Sanders noted that P. Lechner contacted the bank which holds the SEH Program accounts, First Union, which advised the Board of compliance with the requirements. She requested written confirmation of such compliance.

Reconciliation of Accounts Between the IHC and SEH Programs for Fiscal Years 1994 through 1997 and Payment to DOBI for Certain Expenses for Fiscal Years 1994 through 1997

W. Sanders explained that while both the IHC and SEH Board have accounts with Treasury to cover expenses such as salaries, fringe benefits, stockroom charges, equipment, furniture and other types of expenses which are not directly paid by the IHC and SEH Programs, the DOBI does not have the ability to divide these expenses between the two Programs and thus to debit each Program's account. As a result, the DOBI has debited the SEH Program account to cover most of these expenses for both Programs. It was thus necessary to appropriately allocate the expenses to each Program. In addition, both the IHC and SEH Boards owe the DOBI for indirect costs, telephone charges and salary adjustments that were billed to the Programs for Fiscal Years 1994 through 1997.

P. Lechner explained her analysis of the allocation and manner of reconciliation. Such analysis has been reviewed by S. Sanders at D&T, and found appropriate. In terms of actual amounts due or owed by the SEH Program, the IHC Program owes the SEH Program \$160,531.20 for salaries, fringe benefits and miscellaneous charges which were paid solely by the SEH Program account. With respect to expenses not yet paid, the Programs owe the DOBI a total of \$115,271.96, with \$57,636.00 the responsibility of the IHC Board and that same amount the responsibility of the SEH Board. Since the DOBI again will debit only one account, it will debit the full \$115,271.96 from the SEH Program account. The IHC Program will reimburse the SEH Program for the IHC Program share of \$57,636.00. P. Lechner reported that the IHC Board had voted to approve the payment of \$160,531.20 plus \$57,636.00 to the SEH Program account.

P. Lechner noted that the Department of Treasury OMB establishes the determination of the indirect cost rate and that the rate is based on salary. In response to a concern raised by J. Fiedler, P. Lechner explained that while the payments would be made in 1998, there was a true-up to account for the fact that costs were actually incurred during fiscal years 1994 through 1997.

D. Vanderhoof offered a motion to approve the payment to the DOBI of \$115,271 on or about July 1, 1998, the timing as requested by the DOBI. C. St. John seconded the motion. The Board voted unanimously in favor of approving the motion.

VII. Report of the Policy Forms Committee

E. DeRosa explained that the Committee met on June 8, 1998 to discuss optional benefit riders, alternate utilization review text as well as proposed changes to the policy forms. She referred the Board to the Minutes of the Policy Forms Committee contained in the Board packets.

Optional Benefit Riders

E. DeRosa reported that Oxford submitted three riders which were essentially the same as riders previously submitted and found complete, the difference being that the newly submitted riders were intended for use with plans C and D and the prior riders were for use with Plans B and E. She noted that two of the new riders provide limited dental coverage and the third rider provides vision coverage, subject to stated limits. She reported that the Committee recommendation is to find the three riders complete and in substantial compliance.

D. Vanderhoof offered a motion that the Board accept the Committee recommendation and find the three Oxford riders complete and in substantial compliance. B. Markowitz seconded the motion. The Board voted unanimously in favor of approving the motion.

E. DeRosa reported that United HealthCare submitted three riders which were essentially the same, differing only in terms of the plan each rider would amend. She reminded the Board that United HealthCare offers coverage as pure HMO, as a single contract HMO-POS and as dual contract POS. Thus, the carrier submitted riders which would appropriately modify all of these forms. The riders provide prescription drug coverage with various copay options for generic and brand name drugs, with optional text for a mail order component. She reported that the Committee recommendation is to find the three riders complete and in substantial compliance. She further noted that the additional material the Committee requested, as noted in the minutes of the Committee meeting, had been received and was acceptable.

J. Fiedler offered a motion that the Board accept the Committee recommendation and find the three United Healthcare riders complete and in substantial compliance. B. Markowitz seconded the motion. The Board voted unanimously in favor of approving the motion.

[M. Garcia arrived at 10:20 a.m.; B. Markowitz left the meeting at about that same time. L. Swanke sat for B. Markowitz, as a non-voting attendee.]

Alternate Utilization Review

E. DeRosa reported that Nippon Life filed text for an Alternate Utilization Review Provision. She reminded the Board that the standard for review was essentially whether the alternate provision would be at least as favorable to the covered person as the standard provision. She explained that the Committee was concerned with several of the features of the provision and recommended that she contact Nippon for clarification. The analyst at Nippon faxed a letter explaining the protocols. E. DeRosa reviewed the response and determined it to be acceptable. However, Nippon had not provided policy and certificate text to support the explanations offered in the letter. She reported having spoken with the General Counsel for Nippon since the analyst was out of the office for a few days. The Counsel gave his assurance that the text would be modified, in a manner consistent with the explanations set forth in the letter as soon as the analyst returned. Therefore, E. DeRosa recommended that the Board approve the filing of the alternate utilization review text, subject to receipt of policy and certificate pages which reflect the protocols as explained in the letter from Nippon. L. Glover questioned whether the Board had previously taken action to find a filing complete, or to approve alternate text prior to receipt of actual text. E. DeRosa explained that the Board has done so in the past. Certainly, if the text that is provided would not be consistent with the Board's conditional action, the text could not be used. The letter to Nippon, as similar letters sent in connection with prior filings clearly state that the action is subject to receipt of the specified material. She noted that this practice has not been subject to any abuse and that carriers have typically responded within several days to the request for the additional information or text.

J. Fiedler offered a motion to approve the alternative utilization review text submitted by Nippon Life, subject to receipt of appropriate text clarifications. J. Majcher seconded the motion. The Board voted unanimously in favor of approving the motion.

Standard Policy Text

E. DeRosa explained that in connection with the proposal readoption of N.J.A.C. 11:21, the appendix exhibits would be part of the readoption. A review of recently enacted legislation revealed that the forms required revision to comply with the requirements of P.L. 1997, c. 338. The law requires coverage for food and food supplements for inherited metabolic diseases. She reported that the Committee had reviewed the text she drafted and recommended that it be included in the proposal readoption. J. Fiedler questioned the use of the term "Practitioner" in the benefit. E. DeRosa explained that while this law, as most laws, refer to a physician recommending or prescribing some service or supply, the standard plans consciously defined the term "Practitioner." This term encompasses any practitioner who is licensed or certified and acts within the scope of his or her license or certification, providing a service that is covered under the terms of the plan. The Committee believed it unwise to introduce an undefined term, "physician," to the standard policy forms. Further, since this benefit would only be available in the event of an inherited metabolic disease, the Committee believed there would be no chance for abuse. The Committee researched which other providers would be able to prescribe the food or food supplements, which are delivered enterally, and determined that a Registered Dietitian is authorized to prescribe such food products. The Committee

believed, however, that such a practitioner would always be working in conjunction with the child's physician. Thus, the Committee recommended that the forms use the defined term "Practitioner." E. DeRosa further noted that the IHC Board had voted on the proposal re-adoption of N.J.A.C. 11:20 and Appendix Exhibits during the IHC Board meeting the prior week and had used the term Practitioner, for the same reasons as the Committee recommends using it in the SEH forms. J. Fiedler expressed an interest in the opportunity to further study any additional exposure the use of the term "Practitioner" may present. W. Sanders explained that the Board needed to act on the proposal re-adoption during this meeting. There would be opportunity to present any new information during the comment period. N. Fiorentino volunteered to research the volume of inherited metabolic diseases per year to give the Board some idea as to the potential exposure for this benefit.

D. Vanderhoof offered a motion to accept the Committee recommendation concerning the text of the provision to comply with P.L. 1997, c. 338. J. Majcher seconded the motion. The Board voted in favor of the motion, with one vote in opposition, J. Fiedler.

E. DeRosa explained that P.L. 1997, c. 419 requires the SEH Board to consider adding coverage for speech therapy and audiology. She said the Committee recognized that the standard plans already contain an express benefit for speech therapy: it is covered subject to an internal limit. The forms are silent as to coverage for audiology, although they do expressly exclude coverage for hearing aids. The Board asked if staff has received complaints from consumers concerning coverage for audiology. Staff reported it did not recall any such complaints. E. DeRosa reported that the Committee believes that medically necessary and appropriate audiology treatment is already covered under the plans and that no change is therefore necessary. E. DeRosa reported that the Committee recommended that no change be made to the standard plans.

J. Majcher offered a motion that the Board accept the Committee recommendation concerning P.L. 1997, c. 419. D. Vanderhoof seconded the motion and the Board voted unanimously in favor of approving the motion.

Health Care Quality Act

E. DeRosa reported that the Committee considered whether to make any forms changes based on draft proposed regulations. The Committee believed it best to delay any forms changes until after the regulations have been proposed and adopted. The Board agreed this would be appropriate.

VIII. Executive Session

J. Fiedler offered a motion to move into Executive Session to discuss litigation issues and to receive advice from counsel. C. St. John seconded the motion and the Board voted unanimously in favor of moving into Executive Session. W. Sanders advised that the Board would return to Open Session to discuss various Legal Committee matters and to discuss and vote on the proposed re-adoption, with amendments, of N.J.A.C. 11:21.

[Break: 10:50 a.m.- 11:20 a.m.]
[Executive Session: 11:20 a.m. -12:05 a.m.]

IX. Report of the Legal Committee

Attorney General Fiscal Year 1999 Agreement

W. Sanders explained that this agreement was the same as the agreements in prior years. The Legal Committee recommended approval.

D. Vanderhoof offered a motion to accept the Legal Committee recommendation and approve the Attorney General Fiscal Year 1999 Agreement. E. Wilmer seconded the motion and the Board voted unanimously in favor of approving the motion.

Proposal Readoption with Amendments of N.J.A.C. 11:21

W. Sanders outlined the general nature of the amendments that would be included in the proposal readoption of N.J.A.C. 11:21. The changes include: removal of regulations that are no longer applicable; clarifications to existing regulations based on comments from interested parties; non-substantive, technical and grammatical changes; and changes to bring the regulations into compliance with P.L. 1997, c. 146. He noted that P.L. 1997, c. 146 had brought New Jersey law into compliance with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), and had removed the transition to full community rating in the small employer market.

In addition, the forms change to address coverage for food and food products, as discussed during the Report of the Policy Forms Committee, would be part of the proposal readoption, with amendments.

W. Sanders further described the recommendations of the Legal Committee with regard to the proposed readoption with amendments.

- 1) Definitions should be contained in the definitions section of the regulation and not repeated in specific subchapters.
- 2) The Committee agreed with recommended changes from DAG J. Lichtblau concerning confidentiality and the protection of attorney-client communications.
- 3) The Committee considered whether a carrier may distinguish commission rates based on the group size and concluded it would be permissible. Commissions determined based on health-status related factors, however, would be prohibited.
- 4) The Committee discussed whether the regulations should require a carrier to disclose the reasonable and customary allowance for a specified procedure within 7 days and determined it should not be required.
- 5) The Committee considered the definition of "Affiliated Carriers" at N.J.A.C 11:21-1.2 and agreed to use a definition consistent with DOBI regulations.

W. Sanders explained the timetable for the proposed readoption, with amendments, which he noted would use the expedited rulemaking process:

6/26/98: File with the Office of Administrative Law, mail to carriers, give notice to newspapers, and interested parties list
7/22/98 Hearing on Forms
8/3/98 Publication in New Jersey Register
8/15/98 Comment Deadline
9/16/98 SEH Board meeting to consider comments and approve adoption
10/13/98 Rules Expiration date

J. Majcher offered a motion to propose the readoption of N.J.A.C. 11:21, with amendments. E Wilmer seconded the motion. The Board voted unanimously in favor of the motion.

Composition of Legal Committee

W. Sanders explained that 7 Board members have expressed an interest in serving on the Legal Committee. If 7 Board members were to participate, the Open Public Meetings Act would require the meetings of the Legal Committee to be open to the public since 7 members would represent a quorum of the Board. He noted that the Committee has been chaired by Jim Brown of Aetna US HealthCare. Since Aetna USHealthCare is not a Board member, participation of J. Brown would not trigger an Open Public Meeting. W. Sanders read the names of those interested in serving and asked each Board member to take out a piece of paper and vote for 6 participants on the Committee. Those members who expressed an interest were as follows:

DOBI: G. Simon
Guardian: L. Ilkowitz
HIP F. Title
Prudential D. Christianson
NYLCare M. Garcia
BCBSNJ D. Cieslik
Broker D. Vanderhoof

The members receiving the majority of the votes were:

DOBI: G. Simon
Guardian: L. Ilkowitz
HIP F. Title
Prudential D. Christianson
NYLCare M. Garcia
BCBSNJ D. Cieslik

W. Sanders asked that the Board vote to retain J. Brown on the Committee.

J. Fiedler offered a motion to constitute the Legal Committee with the Board members who received the majority of the votes, plus J. Brown from Aetna US HealthCare. L. Ilkowitz seconded the motion and the Board voted unanimously in favor of the composition of the Legal Committee.

X. Close of Meeting

J. Majcher offered a motion to close the meeting. L. Ilkowitz seconded the motion and the Board voted unanimously in favor of closing the meeting. The meeting adjourned at 12:42 p.m.

Attachments:

Exhibit 1 June 17, 1998 Expense Report