

**MINUTES OF THE MEETING OF
THE NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD
AT THE OFFICES OF THE NEW JERSEY DEPARTMENT
OF BANKING AND INSURANCE
TRENTON, NEW JERSEY
September 11, 2001**

Directors Participating: Loretta Curry (Horizon Blue Cross Blue Shield of New Jersey); Darrel Farkus (Oxford Health Insurance); Frank Giannattasio; Ulysses Lee (Guardian); Jane Majcher (Department of Banking and Insurance); Mary McClure (AUSHC); Eileen Shrem; Lisa Yourman.

Others Participating: Ellen DeRosa, Deputy Executive Director; DAG Eleanor Heck (DOL); Pearl Lechner, Program Accountant, Joanne Petto, Assistant Director; Ward Sanders, Executive Director.

I. Call to Order

W. Sanders called the Board meeting to order at 10:08 a.m. He announced that notice of the meeting had been sent to three New Jersey newspapers and posted at the Department of Banking and Insurance and the Office of the Secretary of State in accordance with the Open Public Meetings Act. A quorum was present. W. Sanders introduced Ulysses Lee who has been named as the alternate representative for Guardian.

Recognizing the tragic events that had just been announced on the news, the Board agreed to proceed with the agenda.

II. Comments

W. Sanders said some people had requested the opportunity to make presentations to the Board.

John Koehn of Amerigroup

Mr. Koehn said his company, Amerigroup is a Medicaid only carrier covering about 80,000 lives in New Jersey. He said his company supported a provision in A.3722 regarding the counting methodology to determine IHC Program membership. He noted that the IHC Board's regulations currently state that a carrier that is predominantly a Medicaid carrier (75% or more of premium or lives are Medicaid) is not a member of the IHC Program. He said the problem is that the expansion programs such as some parts of NJ KidCare and NJ FamilyCare are not Medicaid. He said enrollment in NJ FamilyCare was steadily growing. Thus, Amerigroup supports the provision in A. 3722 that would count enrollment or premium in the expansion programs as Medicaid enrollment or premium in the determination of IHC Program membership.

Eileen O'Donnell of Health Net of New Jersey, Inc.

Ms. O'Donnell said the Board declined to forgive an administrative error made by her company. She said that the failure of Health Net to file a request for an exemption

in response to the Board's June 23, 2000 notice was an administrative, clerical error, not a tactical decision. She explained that there had been a change in responsibilities following the merger of PHS and First Option. She said Tom Messer reviewed his files to determine if PHS had filed for an exemption and that he called Ellen DeRosa to see if PHS had filed for an exemption. Ms. O'Donnell reported that Tom Messer stated that E. DeRosa confirmed that PHS was exempt. Ms. O'Donnell said that in the interest of justice and fair play, the Board must grant the exemption.

Ms. O'Donnell alleged that the Board behaved as if Health Net were exempt. She further suggested that the Board could grant the exemption request based on the specific facts relative to Health Net's request and thus not set a precedent that would require the Board to accept late exemption requests in the future. She stated her belief that the Board has the authority to grant the exemption request.

Ms. O'Donnell said that if the Board were to refuse to grant the exemption request, Health Net would pursue action in the Office of Administrative Law and the Appellate Division.

W. Sanders noted that Health Net had submitted a lengthy document to the Board on September 4, 2001. He said the Legal Committee received it, but had not met to discuss it. He said he had spoken with Board members and learned that Board members were not prepared to discuss Health Net's appeal and petition for reconsideration at this meeting.

Joel Cantor of the Center for State Health Policy

Mr. Cantor said he hoped to survey IHC policyholders, conducting a survey similar to that done by Swartz and Garnick a number of years ago. He said the Center for State Health Policy had already begun a statewide survey. Due to the small number of IHC policyholders relative to all people insured in New Jersey, he said the survey would have to specifically reach out to IHC policyholders.

Mr. Cantor said the Center considered the federal privacy regulations and believes they allow the sharing of information in the instance of the study.

Mr. Cantor noted that participation in the survey would be entirely voluntary for the carriers and the policyholders. A letter would be sent to policyholders to advise them of the survey. The letter would include a toll free number they could call to decline participation. The letter could be sent on carrier letterhead or by the Center, as the carrier prefers.

Mr. Cantor said he that he would like for the IHC Board to send a letter to carriers to encourage carrier participation. A copy of a draft letter was included in Board materials.

M. McClure offered a motion for the Board to send the letter to encourage participation in the survey. L. Yourman seconded the motion. The Board voted in favor of the motion with L. Curry abstaining.

III. Minutes

July 31, 2001

W. Sanders reported that Health Net requested and received a copy of the draft minutes of the July 31, 2001 meeting.

J. Majcher offered a motion to approve the Open Session minutes from the July 31, 2001 Board meeting. F. Giannattasio seconded the motion. The Board voted in favor of the motion, with L. Curry and L. Yourman abstaining.

IV. Report of Staff

Expense Report

J. Majcher offered a motion to approve the payment of the expenses shown on the September 11, 2001 expense report. M. McClure seconded the motion. The Board voted in favor of the motion, with E. Shrem abstaining with respect to reimbursement to be paid to her.

Enrollment Data for 2Q2001

J. Petto noted the decrease in enrollment as experienced by both the IHC and the SEH Programs for second quarter 2001.

Legislative Update

W. Sanders said that S.1769 would exempt HMOs that were established under the UMDNJ Flex Act from the IHC assessment. Based on the Board's comments during the July meeting, W. Sanders drafted a letter that the Board could send to the Commissioner to express the Board's opposition to the "exemption" of HMO's established under the UMDNJ Flex Act. M. McClure suggested that the letter could be clearer to express support for the changes that would count all NJ Family Care enrollment and premium as Medicaid for purposes of determining IHC membership.

E. Shrem offered a motion to send the letter, as amended. L. Yourman seconded the motion. The Board voted unanimously in favor of the motion.

W. Sanders said that P.L. 2001, c.130 terminated the subsidy for any remaining persons covered under IHC plans through Health Access and that such persons would be eligible for coverage under NJ FamilyCare. He said the effective date would be October 31, 2001.

W. Sanders said P.L. 2001, c.236 requires carriers to cover treatment for infertility. He said the law does not have any application to the IHC market.

Audit Update

W. Sanders said the Operations Committee would meet prior to the next Board meeting to discuss various audit issues.

CIGNA Hearing

W. Sanders said the Board might expect the opinion from the Administrative Law Judge (ALJ) on or about September 17, 2001. The ALJ may, however, request an extension. In the event the Board receives a request for an extension, he suggested that M. McClure, as Chair of the Board, could sign any order to grant the extension.

Bulletin from CMS

W. Sanders said HCFA has a new name, CMS. CMS stands for the Centers for Medicare and Medicaid Services. He said CMS recently issued a bulletin concerning the identification of persons who are federally defined eligible individuals. CMS

would like to see a question on the application that would allow such individuals to be easily identified.

Seminar

W. Sanders said he attended a Seminar sponsored by CMS. He noted that every state reported access or affordability problems in the individual market.

V. Report of the Technical Advisory Committee

E. DeRosa reported that TAC considered a number of rate filings. She said TAC recommended that the rate filings submitted by AmeriHealth, Metropolitan Life, Guardian and Health Net be found complete.

J. Majcher offered a motion to accept the recommendation of TAC and find the AmeriHealth, Metropolitan Life, Guardian and Health Net filings complete. F. Giannattasio seconded the motion. The Board voted in favor of the motion with U. Lee abstaining with respect to the Guardian and Health Net filings.

VI. Executive Session

W. Sanders said the Board would need to move into Executive Session to receive advice from counsel. He said the Board would not conduct further business after Executive Session.

F. Giannattasio offered a motion that the Board begin Executive Session. E. Shrem seconded the motion. The Board voted in favor of the motion.

[Executive Session: 11:20 a.m. – 11:30 a.m.]

VII. Close of Meeting

E. Shrem offered a motion to adjourn the Board meeting. F. Giannattasio seconded the motion. The Board voted unanimously in favor of accepting the motion. The meeting adjourned at 11:30 a.m.

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TRENTON, NEW JERSEY
October 11, 2001**

Directors Participating: Darrel Farkus (Oxford Health Insurance); Frank Giannattasio; Sandy Herman (Guardian); Sandi Kelly (Horizon Blue Cross Blue Shield of New Jersey); Jane Majcher (Department of Banking and Insurance); Mary McClure (AUSHC); Eileen Shrem; Charles Wowkanech, Lisa Yourman.

Others Participating: Ellen DeRosa, Deputy Executive Director; DAG Eleanor Heck (DOL); Pearl Lechner, Program Accountant, Joanne Petto, Assistant Director; Ward Sanders, Executive Director.

I. Call to Order

W. Sanders called the Board meeting to order at 10:00 a.m. He announced that notice of the meeting had been sent to three New Jersey newspapers and posted at the Department of Banking and Insurance and the Office of the Secretary of State in accordance with the Open Public Meetings Act. A quorum was present.

II. Report of Staff

Expense Report

S. Kelly offered a motion to approve the payment of the expenses noted on the October 11, 2001 expense report. J. Majcher seconded the motion. The Board voted unanimously in favor of the motion.

S. 1769/A. 3722

W. Sanders reminded the Board that this bill would remove HMOs established under UMDNJ's "Flex" Act from the IHC assessment, and amend the definition of an IHC "member" by excluding carriers whose combined Medicare, Medicaid, and FamilyCare enrollment or premium represents more than 75% of its business in any assessment cycle. He reported that floor amendments in the Senate were being discussed that would amend the bill to provide that the IHC Board would not have the power to "reduce" a pro rata exemption. W. Sanders said the proposed amendment to the bill's statement makes clear that the reference is to the IHC Board's good faith marketing requirements, and that the proposed amendments seek to require the recalculation of all assessments in which the IHC Board has denied a carrier a pro

rata exemption. He noted that the Senate did not vote on the proposed floor amendments.

CIGNA Hearing

W. Sanders said that the Administrative Law Judge requested that the time limit for the initial decision be extended until November 8, 2001. Since he was a witness in the hearing, he recommended that Mary McClure, as the Chair, should sign the letter granting the extension. The Board agreed.

CIGNA's Rule Readoption Appeal

W. Sanders reported that the Appellate Division scheduled oral argument on CIGNA's rule readoption appeal for Wednesday, November 14, 2001 in Morristown.

DOBI Rule on Specified Disease Coverage

W. Sanders said that effective 10/1/01, carriers will be permitted to issue specified disease or "dread disease" policies in New Jersey. He said the rule adoption makes a distinction between "expense incurred" plans and "non-expense incurred plans." The rule adoption notes that the expense incurred plans are not permitted for sale since they would be considered "health benefits plans" under the IHC Act. Non-expense incurred specified disease plans are permitted. He explained that an "expense incurred" benefit is a benefit that is based on the covered charges incurred, while a non-expense incurred benefit is not linked to the value of the benefits payable and is generally a flat dollar benefit.

DOHSS Sponsored Study on Affordability of Coverage for the Uninsured

W. Sanders said the Center for State Health Policy was commissioned to do a study for the DOHSS. He reported that the main finding was that moderate-income uninsured want health coverage, but found individual health coverage too expensive for their budgets.

Health Insurance Coverage 2000

W. Sanders said that the Board packets include a copy of the U.S. Census Bureau's report on health insurance coverage for 2000 which is based on the March 2001 Current Population Survey. He noted that the percentage of uninsured in the State in 2000 rose to 12.5% from 11.9% in 1999. The national average is 14%.

Exemption Requests for 2001/2002 Calculation Period

E. DeRosa reported that the Board received filings from eight carriers requesting conditional exemptions for the 2001/2002 calculation period. She said that the language carriers must use to request the exemption is set forth in the regulation. She stated that the eight carriers that submitted requests for conditional exemptions used language consistent with the language contained in N.J.A.C. 11:20-9.2(b).

E. DeRosa referred the Board to a list of carriers that submitted requests. She reminded the Board that the request applies to the carrier submitting the request as well as to all carriers affiliated with that carrier.

E. DeRosa said requests were received from:

1. Aetna U.S. Healthcare with seven affiliated companies named
2. AmeriHealth with two affiliated companies named
3. CIGNA with four affiliated companies named.
4. Guardian
5. HealthNet with the request stating that it included two companies
6. Horizon with two affiliated companies named
7. Oxford with two affiliated companies named
8. United with two affiliated companies named

E. DeRosa asked that the Board vote to accept the requests since the carriers used appropriate language in the requests, and submitted them on a timely basis in response to the August 16, 2001 Advisory Bulletin.

E. Shrem offered a motion to accept the requests for conditional exemption for the 2001/2002 calculation period from the named carriers. L. Yourman

seconded the motion. The Board voted in favor of the motion, with the following abstentions: S. Kelly abstained with respect to Horizon, D. Farkus abstained with respect to Oxford, M. McClure abstained with respect to Aetna, S. Herman abstained with respect to Guardian and HealthNet.

E. DeRosa said that as has been the Board's practice in prior years, she would send letters to the carriers that requested conditional exemptions to advise them that the Board had voted to accept the requests for conditional exemptions.

II. Executive Session

W. Sanders asked for a motion to enter Executive Session to allow the Board to receive advice from counsel on the issue of recusals and on a substantial issue relating to HealthNet's appeal.

F. Giannattasio offered a motion to begin executive Session. C. Wowkanech seconded the motion. The Board voted unanimously in favor of the motion.

[Executive Session: 10:18 a.m. – 11:45 a.m.]

VIII. Discussion of HealthNet Request for Exemption for 1999/2000 Calculation Period

M. McClure stated that effective August 6, 1999, Aetna U.S. Healthcare purchased Prudential Healthcare. Part of the purchase included an agreement to manage the indemnity health business of Prudential Insurance Company of America. The agreement specified that Aetna would pay any assessment liability for Prudential Insurance Company. M. McClure said she was not aware of the agreement to pay for

the assessment until HealthNet filed its appeal, and as a result, previously participated in discussions on the HealthNet request for an exemption for 1999/2000. She noted that the cost to Aetna for the Prudential liability if HealthNet were to be given an exemption would be close to \$1 million. M. McClure stated she would not participate in any further discussions or votes regarding the HealthNet request for an exemption for 1999/2000.

S. Kelly said that Horizon has a partnership with Atlantic Healthcare and included in the partnership is sharing for IHC assessment liability. She reported that for approximately two months of the two-year period in question, Horizon would share responsibility for the loss assessment to be paid by Atlantic Healthcare. S. Kelly said she was not aware of the agreement to pay part of the assessment until after HealthNet appealed, and as a result, previously participated in discussions on the HealthNet request for an exemption for 1999/2000. Although Horizon's potential liability is small in terms of dollars, it is a liability nonetheless. S. Kelly said she would not participate in any further discussions or votes regarding the HealthNet request for an exemption for 1999/2000.

S. Herman stated that since 1995, Guardian has had a joint venture with PHS. That joint venture extended to New Jersey business in 1997. He said that Guardian is responsible for 50% of the assessment liability for PHS, now calling itself HealthNet. Thus, he said he has not participated in any discussions on the HealthNet filing in the past, and would not participate in any future discussions.

Due to the prior participation of M. McClure and S. Kelly in the Board's discussions and decision regarding the HealthNet request, C. Wowkanech offered a motion that the Board vacate the order that was issued to HealthNet and consider the issue anew. E. Shrem seconded the motion. The Board voted in favor of the motion, with S. Herman abstaining.

S. Kelly, M. McClure and S. Herman left their seats around the Board table and went to sit in the audience with the general public.

W. Sanders asked the persons who were attending the meeting on behalf of HealthNet if they wanted to address the Board.

Eileen O'Donnell, counsel for HealthNet, came forward. Ms. O'Donnell stated that she came to ask the Board to recognize the exempt status of HealthNet for the 1999/2000 period.

Using a chart prepared by the Association of Healthplans, she identified laws with which carriers must comply. During the time requests for an exemptions for the 1999/2000 period were to have been filed, HealthNet was in the throes of a corporate transition. HealthNet failed to submit a timely request for an exemption. She explained that the proper checks and balances were not in place.

Ms. O'Donnell went on to allege that HealthNet, or its predecessors, had been exempt since 1994. She further alleged that HealthNet was the 4th largest insurer in

the IHC market. She continued, alleging that the Board treated HealthNet as exempt and HealthNet filed enrollment reports. She stated that as soon as HealthNet realized it had failed to file a request for an exemption, HealthNet immediately provided the necessary piece of paper. She argued that an exemption is earned by enrolling lives, not by filing a piece of paper. She did note that HealthNet checked the exempt carrier box when it filed its 1999/2000 Exhibit K, indicating HealthNet believed it was exempt.

Ms. O'Donnell asked that the Board not "punish" HealthNet. She then read some of the 1999/2000 assessment liabilities of selected carriers from the preliminary notice of assessment spreadsheet. She stated that if the Board were to deny HealthNet's exempt status, it would amount to about a \$2.5 million penalty for what she characterized as a mere clerical error.

Ms. O'Donnell contended she believed that case law shows that the Board has the authority to waive the requirement that carriers request an exemption. She then clarified and stated she believed the Board has the responsibility to waive the filing requirement.

Ms. O'Donnell said that other carriers would reap a windfall, at HealthNet's expense, if the Board were to refuse to recognize HealthNet's exempt status. She advised the Board that HealthNet would be certain to make all future filings on a timely basis.

Ms. O'Donnell concluded by stating that the preliminary notice of assessment advised carriers that the information was subject to change. She asked the Board to change the assessment by considering HealthNet as exempt.

Next, Dale Florio of Princeton Public Affairs addressed the Board on HealthNet's behalf.

Mr. Florio pointed to the chart of laws and stated that there are a lot of laws with which carriers must comply. He stated that it was his understanding that HealthNet did not file a piece of paper it should have filed.

Mr. Florio asked if any of the Board members heard the Legislative hearings when the IHC Act was being discussed in the early 1990s. Two Board members indicated they heard the discussion. For the benefit of those Board members who did not hear the discussions Mr. Florio explained that New Jersey was facing a healthcare crisis. Mr. Florio indicated that there was one carrier selling individual coverage, Blue Cross Blue Shield of New Jersey. The IHC Program was established to ensure there would be carriers to provide coverage to residents of New Jersey.

Mr. Florio said he understood HealthNet was committed to making future filings on a timely basis. He said he likes to try to help people figure out how they can say "yes" to requests. He said he hopes the Board will say "yes" to HealthNet's request that it be considered as exempt.

On behalf of the Board, W. Sanders thanked Ms. O'Donnell and Mr. Florio for addressing the Board.

W. Sanders explained that the Board was considering the issue anew. Before the Board began to discuss the request he said he wanted to address some of the information provided during Ms. O'Donnell's presentation since there appeared to be some dispute as to the facts.

W. Sanders said that checking a box on Exhibit K is not a process to request an exemption but rather is used to identify carriers as "exempt" or "non-exempt" for administrative convenience. He said Board records do not support the allegation that HealthNet or its predecessors have consistently requested exemptions since 1994. He noted that with respect to enrollment, he suggested that it would be important to identify the point in time for which HealthNet alleged it was 4th in enrollment. W. Sanders said that as of the most recent enrollment reports, HealthNet was 6th in enrollment, with a little under 1% of the plans issued in the IHC market.

W. Sanders said the 1999/2000 assessment cycle was the 7th assessment cycle. Heretofore, the Board has not faced a case in which a carrier has challenged the Board on the denial of an exemption for failure to file in a timely fashion. This is a case of first impression. He said he would briefly review the facts.

Because the data upon the assignment of targets was provided late by some carriers, and because those filings shifted, W. Sanders said the Board actually issued three bulletins providing notice of non-group targets for the 1999/2000 assessment cycle to each member carrier. The second bulletin voided prior requests filed pursuant to the original bulletin, and the third notice voided all prior requests. Carriers were either advised that they had 30 days, or provided with a date certain, by which to respond to the Bulletin. Each notice was sent certified mail, return receipt requested, and the IHC Board had received duly signed delivery receipts for each of the three notices sent to HealthNet. W. Sanders said the Board has no

record of receiving a request for an exemption from HealthNet in response to any of these three bulletins, no staff member has a recollection of receiving a request, and the Board did not vote to grant HealthNet an exemption when it considered the requests from other carriers for the 1999/2000 cycle.

W. Sanders said HealthNet filed its 1999/2000 Exhibit K on March 7, 2001, in which HealthNet reported that it was filing as an "exempt carrier." Since that did not conform with the Board's records, W. Sanders said he questioned that status and asked that HealthNet provide a copy of its request for an exemption or any documentation in support filing in response to any of the three bulletins. W. Sanders said HealthNet could not produce a copy of any written requests, but did produce a document purporting to be a copy of an email dated June 21, 2000 from Tom Messer to Liz Guerin, both of HealthNet, which provided the following "Liz, Spoke with Ellen [DeRosa] We are exempt. However, some new info has come to the IHC Board about other carriers. This info will change the targets. Therefore, Ellen expects carriers to have to file again. A notice should be coming soon, but soon was not defined. Now I can sleep soundly. Thanks Tom." W. Sanders noted that E. DeRosa has no recollection of this conversation.

W. Sanders said the Legal Committee met to consider the HealthNet request. Due to recusals by the Aetna and Horizon representatives on the Committee, only a representative from Oxford and a representative from DOBI participated on the call. With only two Committee members participating, the Committee made no formal recommendations. W. Sanders offered comments on the discussion of the two members who participated on the call.

Appeal/Petition for Reconsideration

W. Sanders said the DOBI representative noted that N.J.S.A. 17B:27A-12d(1) provides that a "carrier may *apply* to the Board, by a date established by the Board, for an exemption...." He said she further noted that the Board's regulations provide that a carrier seeking an exemption must affirmatively apply to the Board for an exemption. W. Sanders reported that the DOBI representative said that the facts of the case were clear that HealthNet did not apply to the Board for an exemption within the timeframe set forth by the Board and the DOBI representative indicated that she did not believe that the Board had the authority to waive a substantive statutory requirement. W. Sanders said that as a result, the DOBI representative indicated that she did not believe the Board had a choice in the matter.

W. Sanders reported that the Oxford representative indicated that she was sympathetic with HealthNet's position. He said the Oxford representative indicated that she had not had the opportunity to read the case law cited in HealthNet's papers. W. Sanders agreed to send copies of the cases to her. W. Sanders stated that subsequent to the meeting, the Oxford representative advised that she had

considered the case law and stated that "Oxford is sympathetic with PHS' failure to make a timely filing due to the circumstances surrounding their merger. Having said that based on the facts of the cases and the additional facts presented by the Board, it is not certain that PHS would prevail on the merits.

Request for a Stay

W. Sanders said that the committee members noted that in reviewing a request for a stay, the Board would need to consider the following four-pronged test: (1) would failure to grant the stay result in irreparable harm; (2) is the moving party's likelihood of success on the merits strong; (3) are there no issues of material fact; and (4) is the impact on the interested parties of granting the request for relief minimal?

W. Sanders reported that the Committee noted that a stay would prevent the Board from collecting loss assessment funds from the other carriers, and that as a result payment of loss assessment funds to carriers with reimbursable losses would be delayed potentially for years. He said the Committee members agreed that to grant a stay would be improvident based on this fact alone. He said the DOBI representative noted that the Board's regulations require the Board to put disputed funds into an interest bearing account and that the successful party in a dispute would be entitled to interested earned thereon. As a result, the DOBI representative indicated that she believed that HealthNet could not demonstrate irreparable harm. For these reasons, the two Legal Committee members concurred that the Board should not grant the request for a stay.

W. Sanders commented that the issue the Board needs to consider is whether the filing of a request for an exemption is merely a procedural element of the law or a substantive key element of the law. He noted that if the Board were to determine that it wanted to grant the exemption request it would be waiving a statutory requirement.

C. Wowkanech stated that he understands HealthNet missed three opportunities to file a request for an exemption. He asked if there was any mechanism to issue a fine or a penalty for failure to file the request. He noted that HealthNet has been a participant in the IHC Program for a number of years. W. Sanders said that the IHC Act does not include a provision for a penalty for failure to file.

L. Yourman offered a motion to deny HealthNet’s exemption request for the 1999/2000 calculation period based on the information, as presented. F. Giannattasio seconded the motion.

D. Farkus noted that the “pay or play” structure is important and that HealthNet has in fact written a significant number of individual subscribers. He also acknowledged the risk the Board runs if it fails to enforce its own filing requirements. Finally, he commented that the amount of liability does seem disproportionate in light of HealthNet’s particular oversight and he expressed regret that the regulations do not allow for carriers to apply for an exemption after the designated period with some form of penalty.

By roll call vote, the Board voted in favor of the motion:

- J. Majcher: Yes**
- C. Wowkanech: Yes**
- L. Yourman: Yes**
- D. Farkus: Yes**
- F. Giannattasio: Yes**

E. Shrem: Yes

On the issue of whether to stay the assessment, F. Giannattasio asked what would happen if the Board were to agree to a stay. W. Sanders explained that there would be no money collected at all until the dispute were resolved, meaning that over \$7.5 million in reimbursable losses could not be paid to the carriers due reimbursement for 1999/2000 until the stay were lifted.

E. Shrem offered a motion to deny the request to stay the assessment. L. Yourman seconded the motion.

By roll call vote, the Board voted in favor of the motion:

J. Majcher: Yes

C. Wowkanech: Yes

L. Yourman: Yes

D. Farkus: No

F. Giannattasio: Yes

E. Shrem: Yes

[F. Giannattasio and C. Wowkanech left the meeting at 12:35 p.m.]

IV. Minutes

L. Yourman offered a motion to approve the Open Session minutes from the September 11, 2001 Board meeting. M. McClure seconded the motion. The Board voted unanimously in favor of the motion.

E. Shrem asked about the status of the rule proposal that would expand the deductible options to include \$5,000 and \$10,000 deductible options. W. Sanders said that Governor's Counsel had not yet authorized the release of the proposal. E. Shrem suggested that the Board should write to Acting Commissioner Bryan to ask if he can intercede on behalf of the Board to get the draft proposal reviewed so it can be proposed. The Board agreed that a letter should be sent.

V. Report of the Operations Committee

M. McClure reported that the Committee met and discussed a number of issues.

Status of Loss Audits

M. McClure said the Committee discussed Deloitte and Touche's (D&T's) finding that four carriers were charging rates that were lower than the filed rates. Staff had advised D&T to proceed using the filed rates. The Committee agreed with that direction. The Committee suggested that the action of the four carriers should be referred to the DOBI for investigation, remediation and possible enforcement action.

M. McClure said D&T reported that one carrier included network fees in the claims calculation. The Committee believed the carrier included such fees, contrary to guidance set forth on the NAIC Statement blanks. W. Sanders said he advised the carrier it could submit information to argue its position.

M. McClure said that the agreed-upon-procedures work done at MEGA Life uncovered the failure to include net investment income in the calculation of losses. By including net investment income, the losses for 1997/1998 would increase above \$1 million. Additionally, MEGA wrote business in 1997/1998 which may have a bearing on the losses claimed for 1999/2000. M. McClure said the Committee recommended that a full audit be conducted for 1997/1998.

E. Shrem offered a motion to instruct D&T to conduct a full audit of 1997/1998 losses for MEGA Life. J. Majcher seconded the motion. The Board voted in favor of the motion, with L. Yourman abstaining.

Budget

P. Lechner discussed the draft budget for Fiscal Year 2002/2003. She noted that adjustments were made to some items based on actual expenses during the prior year. E. Shrem asked why no money was budgeted for advertisements. For example, she asked for money to promote the \$5,000/\$10,000 deductible options. The Board agreed to include \$10,000 in the budget for marketing efforts.

S. Herman offered a motion to approve the draft budget, amended to include \$10,000 for marketing expenses. L. Yourman seconded the motion. The Board voted unanimously in favor of the motion.

Reconciliation of Accounts

P. Lechner referred the Board to her memo of September 28, 2001, copy attached, that discusses the reconciliation of IHC and SEH accounts. She noted that since the inception of the IHC and SEH Programs, the DOBI has used funds to cover certain expenses such as salaries, stockroom charges, furniture and similar overhead. However, DOBI cannot allocate such expenses to each Board, and usually uses SEH funds to pay such expenses. This requires staff to analyze the charges and appropriately allocate the expenses.

M. McClure offered a motion to approve the actions outlined in the September 28, 2001 memo as regards payment to be made by the IHC Program. E. Shrem seconded the motion. The Board voted unanimously in favor of the motion.

Assessment for 1999/2000

The Board reviewed the draft assessment spreadsheet. W. Sanders noted that all non-exempt carriers pay the same percentage of net earned premium. The Board noted that the administrative assessment amount needs to be increased by \$10,000 to cover the marketing expenses included in the budget. W. Sanders noted that the only changes to the assessment as compared to the preliminary notice of assessment were : 1) the inclusion of the administrative assessment; and 2) a correction to transposed numbers for the Mutual of Omaha net earned premium.

S. Kelly offered a motion to approve the release of the assessment, amended to increase the administrative expenses by \$10,000. E. Shrem seconded the motion. The Board voted unanimously in favor of the motion.

W. Sanders said the assessment would be released as soon as the order to HealthNet is issued.

VI. Report of the Technical Advisory Committee

Rate Filings

E. DeRosa reported that TAC considered three rate filings from Horizon. She said the filings were effective November 1, 2001. She said one filing was for plans A/50 – D, another for HMO plans and the third for pre-reform plans. She said the Committee recommended that the filings be found complete.

M. McClure offered a motion to accept the recommendation of TAC and find the three Horizon filings complete. J. Majcher seconded the motion. The Board voted in favor of the motion, with S. Kelly abstaining.

S. Kelly said the Committee reviewed a rate filing from CIGNA with rates for January 1, 2002. She said the filing was missing significant pieces of information. She said the Committee recommended that the filing be found incomplete. She noted that rates cannot be used once the Board determines the filing is incomplete. CIGNA will have to revise the filing before it can adjust rates for January 1, 2002.

L. Yourman offered a motion to accept the recommendation of TAC and find the CIGNA filing incomplete. M. McClure seconded the motion. The Board voted unanimously in favor of the motion.

2000 Loss Ratio Reports - Refunds

S. Kelly said TAC reviewed loss ratio data from carriers and recommended that the Board approve the refund plans submitted by three carriers, CIGNA, Continental Casualty and MEGA Life/Mid-West. The total refund thus far is over \$1.1 million. She said carriers must send refunds within 45 days after the Board approves the refund plan.

L. Yourman offered a motion to accept the TAC recommendation and approve the refund plans submitted by CIGNA, Continental Casualty and MEGA Life/Mid-West. D. Farkus seconded the motion. The Board voted unanimously in favor of the motion.

VII. Executive Session Minutes

The Board voted on the Executive Session minutes during Open Session since the only amendments Board members requested were corrections to a couple of typographical errors. The comments did not reference the substance of the Executive Session.

D. Farkus offered a motion to approve the Executive Session minutes from the September 11, 2001 meeting, as amended. M. McClure seconded the motion. The Board voted unanimously in favor of the motion.

VIII. Close of Meeting

M. McClure offered a motion to adjourn the Board meeting. J. Majcher seconded the motion. The Board voted unanimously in favor of accepting the motion. The meeting adjourned at 1:30 p.m.

Attachments:

- Report of TAC
- September 28, 2001 memorandum

**MINUTES OF THE MEETING OF
THE NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD
AT THE OFFICES OF THE NEW JERSEY DEPARTMENT
OF BANKING AND INSURANCE
TRENTON, NEW JERSEY
November 13, 2001**

Directors Participating: Darrel Farkus (Oxford Health Insurance); Frank Giannattasio; Claudine Harper (AUSHC); Sandy Herman (Guardian); Sandi Kelly (Horizon Blue Cross Blue Shield of New Jersey); Jane Majcher (Department of Banking and Insurance); Eileen Shrem.

Others Participating: Ellen DeRosa, Deputy Executive Director; DAG Eleanor Heck (DOL); Pearl Lechner, Program Accountant; Ward Sanders, Executive Director.

I. Call to Order

W. Sanders called the Board meeting to order at 10:07 a.m. He announced that notice of the meeting had been sent to three New Jersey newspapers and posted at the Department of Banking and Insurance and the Office of the Secretary of State in accordance with the Open Public Meetings Act. A quorum was present.

III. Minutes

The Board reviewed the draft minutes from the October 11, 2001 meeting and decided to defer voting on the minutes until later in the meeting.

IV. Report of Staff

Expense Report

S. Kelly offered a motion to approve the payment of the expenses noted on the November 13, 2001 expense report. E. Shrem seconded the motion. The Board voted unanimously in favor of the motion.

Board Election

W. Sanders said that a copy of the Absentee Ballot sent to all member carriers was included in the Board materials. The Board sought nominations for two seats: one foreign health insurance company authorized to do business in the state and one health service corporation. Oxford Health Insurance Company was the only company nominated to fill the seat for a foreign health insurer and Horizon was the only company nominated to fill the seat for the health service corporation. The election will be held on December 20, 2001 and absentee ballots must be received before noon on December 17, 2001.

Rule Proposal

W. Sanders reported that he was advised by Governor's Counsel that the Board could proceed with the rule proposal that would add \$5,000 and \$10,000 deductible options to Plan A/50. He said the proposal will appear in the December 3, 2001 edition of the *New Jersey Register*. He explained that since the Board did not publish a calendar of anticipated rulemaking, the proposal provides for a 60-day comment period. He said that the comment period will close February 2, 2001 and that the Board would consider any comments received at the public hearing to be held on

January 8, 2002 and vote to adopt the proposal, if appropriate, at the Board meeting scheduled for February 14, 2002. The adopted change would be effective upon publication of the adoption in the March 18, 2002 *New Jersey Register*. He cautioned the Board that if the Board were to receive significant comments it could take time to properly address the comments, and thus any adoption of the proposed changes would be delayed.

S. 1769/A. 3722

W. Sanders reminded the Board that this bill would remove HMOs established under UMDNJ's "Flex" Act from the IHC assessment, and amend the definition of an IHC "member" by excluding carriers whose combined Medicare, Medicaid, and FamilyCare enrollment or premium represents more than 75% of its business in any assessment cycle. He reported that floor amendments in the Senate were being discussed that would amend the bill to provide that the IHC Board would not have the power to "reduce" a pro rata exemption. W. Sanders said the proposed amendment to the bill's statement makes clear that the reference is to the IHC Board's good faith marketing requirements, and that the proposed amendments seek to require the recalculation of all assessments in which the IHC Board has denied a carrier a pro rata exemption. He noted that the Senate did not vote on the proposed floor amendments.

CIGNA Hearing

W. Sanders said that the Administrative Law Judge requested that the time limit for the initial decision be extended until December 24, 2001.

CIGNA's Rule Readoption Appeal and Horizon's Loss Audit Appeal

W. Sanders reported that the Appellate Division scheduled oral argument on CIGNA's rule readoption appeal, Wednesday, November 14, 2001, in Morristown. He said that the Horizon loss audit appeal was also scheduled to be heard on November 14, 2001.

Rosson v. Aetna U.S. Healthcare

W. Sanders said that the Rosson v. Aetna U.S. Healthcare complaint was filed in Superior Court in Monmouth on September 17, 2001. One of the counts in the complaint seeks injunctive relief from the IHC Board. The complaint alleges that Mr. Rosson was covered under an Aetna IHC plan, became incapacitated, and coverage was terminated for nonpayment of premium. One of the counts provides that if Aetna acted within the scope of its authority and consistent with the Board's regulations, then the regulations are without force and effect of law and are void from the beginning and contrary to state policy.

DOHSS HMO Report Card

W. Sanders said that a copy of the 2002 HMO Report card was included in the Board materials.

Outreach

W. Sanders reported that he spoke to a group of brokers in Florham Park NJ. He said he mainly addressed SEH issues. W. Sanders said he spoke as a guest lecturer at Rutgers in a graduate class on health care policy.

IHC Policy Forms Changes

E. DeRosa reported that she completed work on an extensive proposal to amend the SEH policy forms. She said that many of the changes in the SEH forms would be appropriate to make in the IHC forms. For example, many changes were made to comply with law. She invited Board members to send her any suggestions that might be unique to the IHC forms.

E. Shrem suggested that if the application were going to be revised that it would be helpful to provide notice of the change in the *Insurance Reporter*.

HIAA Press Release

W. Sanders said that the Board materials included a copy of a press release that reports that Linda Ilkowitz was posthumously awarded the Lifetime Achievement Award by the HIAA.

V. Report of the Technical Advisory Committee

S. Kelly reported that TAC considered rate filings from three carriers and recommended that the filings be found complete. She advised the Board that the CIGNA filing was a revised filing. The Board found the initial filing incomplete during

the October Board meeting. She noted that staff began to receive calls complaining about the CIGNA rate increase before the Board met in November to consider the revised filing. Thus, CIGNA appeared to have used rates from a rate filing that was found incomplete in renewal notices. S. Kelly reported the matter of using rates from an incomplete filing was being forwarded to DOBI's Enforcement section for appropriate action.

J. Majcher offered a motion to accept the recommendation of TAC and find the Aetna U.S. Healthcare rate filing complete. S. Herman seconded the motion. The Board voted in favor of the motion, with C. Harper abstaining.

J. Majcher offered a motion to accept the recommendation of TAC and find the Celtic rate filing complete. S. Kelly seconded the motion. The Board voted unanimously in favor of the motion.

D. Farkus offered a motion to accept the recommendation of TAC and find the CIGNA rate filing complete. S. Kelly seconded the motion. The Board voted unanimously in favor of the motion.

S. Kelly reported that some carriers had not yet provided the requested information to enable TAC to complete its review of the 2000 loss ratio filings.

VI. Report of the Legal Committee

W. Sanders reported that the Legal Committee met to discuss whether the "war" exclusion contained in the IHC plans is clear and meets the needs of the market. The text of the exclusion reads: "war, declared or undeclared; police actions; service in the armed forces or units auxiliary thereto; or riots or insurrection." W. Sanders said the Committee wants to research what other states allow in terms of "war" exclusions in health insurance plans. He said the Committee also wants to research whether reinsurance arrangements would be affected if the exclusion were to be amended.

W. Sanders reported that the Committee agreed that the "riots or insurrection" text in the exclusion was overly broad and recommended that it be deleted. A person participating in a riot or insurrection would be denied coverage for injuries sustained from such participation under the exclusion for engaging, or trying to engage in illegal occupation or committing or trying to commit a felony.

F. Giannattasio shared some of the discussions concerning war exclusions in property and casualty business. For that line of business, he said the exclusion could be applied for engaging in war or participating in war. Civilian injuries should be covered.

Ulysses Lee from Guardian said he had done some research on war exclusions and said he could provide case law. S. Herman said Guardian had seen increasing drug costs over the prior month as a result of increased use of Cipro which is one of the drugs used to treat anthrax.

VII. Executive Session

W. Sanders asked for a motion to enter Executive Session to allow the Board to receive advice from counsel relating to HealthNet's appeal and to consider a personnel issue.

F. Giannattasio offered a motion to begin Executive Session. D. Farkus seconded the motion. The Board voted unanimously in favor of the motion.

[Break: 11:10 a.m. – 11:22 a.m.]

[Executive Session: 11:22 a.m. – 12:50 p.m..]

VIII. Final Business and Close of Meeting

W. Sanders reported that the Board received advice from counsel during Executive Session regarding a draft order to deny HealthNet's request for an exemption for the 1999/2000 period and to deny HealthNet's request for a stay of the 1999/2000 assessment.

F. Giannattasio offered a motion to issue the order denying HealthNet's exemption request for 1999/2000 and the request for a stay of the assessment for 1999/2000. J. Majcher seconded the motion. The Board voted in favor of the motion. [C. Harper, S. Kelly and S. Herman were recused from the discussion and vote.]

E. Shrem offered a motion to approve the open session minutes of the October 11, 2001 Board meeting, as amended. D. Farkus seconded the motion. The Board voted unanimously in favor of the motion.

DAG E. Heck advised the Board that only four eligible Board members were present for the vote on the HealthNet order, which is less than the quorum of five Board members that the Board's regulations require for the Board to transact business. The Board agreed to meet at a later time to vote on the order.

S. Kelly offered a motion to adjourn the Board meeting. E. Shrem seconded the motion. The Board voted unanimously in favor of accepting the motion. The meeting adjourned at 1:05 p.m.

Attachments:
Report of TAC

**MINUTES OF THE MEETING OF
THE NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD
AT THE OFFICES OF THE NEW JERSEY DEPARTMENT
OF BANKING AND INSURANCE
TRENTON, NEW JERSEY
November 28, 2001**

Directors Participating in Trenton: Darrel Farkus (Oxford Health Insurance); Frank Giannattasio; Jane Majcher (Department of Banking and Insurance).

Directors Participating by Phone: Eileen Shrem; Lisa Yourman.

Others Participating: Ellen DeRosa, Deputy Executive Director; DAG Eleanor Heck (DOL); Pearl Lechner, Program Accountant; Ward Sanders, Executive Director.

I. Call to Order

W. Sanders called the Board meeting to order at 1:05 p.m. He announced that notice of the meeting had been sent to three New Jersey newspapers and posted at the Department of Banking and Insurance and the Office of the Secretary of State in accordance with the Open Public Meetings Act. Roll call was taken. A quorum was present. W. Sanders asked all persons to identify themselves when speaking since two Directors were participating by phone.

W. Sanders said the purpose of the meeting was to consider a draft order concerning Health Net's request for an exemption for the 1999/2000 calculation period. He said the Board would need to receive advice from counsel concerning the draft order during Executive Session.

II. Executive Session A

E. Shrem offered a motion to begin Executive Session. F. Giannattasio seconded the motion. By roll call vote, the Board voted in favor of the motion.

[Executive Session: 1:10 p.m. – 1:18 p.m.]

III. Consideration of Draft Order

W. Sanders said that during its meeting on October 11, 2001, the IHC Board voted on the Health Net request for an exemption for the 1999/2000 calculation period. W. Sanders said the Board had before it a draft order that formalized the Board's decision.

Flavio L. Komuves, Esq., of Buchanan Ingersoll, outside counsel for Health Net, requested the opportunity to address the Board. The Board agreed to allow him to address the Board.

Mr. Komuves began by stating that Health Net reiterates all the points previously made. He urged the Board to allow Health Net to be granted an exemption.

Mr. Komuves asked about the status of the request for information Health Net filed on September 13, 2001. He also asked whether the Board believed the vote of

October 11, 2001 or the Board action taken on November 28, 2001 would toll the time for appeal. He said he would posit the Board vote of October 11, 2001 would toll the time for appeal. He said that if the order merely memorializes the Board decision then Health Net would stand on the appeal it filed on October 31, 2001. If the order being considered adds anything then Health Net would like to be able to amend its appeal.

DAG E. Heck responded to the status of the document request by stating that she has been reviewing large volumes of documents and expected to have documents ready for inspection shortly. She explained that as she had advised Ivan J. Punchatz, Esq., of Buchanan Ingersoll earlier that week, the request asserted rights under common law and under a statutory basis. She said because the request failed to identify a particularized interest, she had been unable to conduct the balancing test required for disclosure of documents under the common-law right to know. Therefore, her review thus far had involved only the analysis required under the Right to Know statute.

W. Sanders said the Board would need to return to Executive Session to receive advice from counsel concerning the date from which appeal rights would toll.

IV. Executive Session B

J. Majcher offered a motion to begin Executive Session. F. Giannattasio seconded the motion. By roll call vote, the Board voted in favor of the motion.

[Executive Session: 1:28 p.m. – 1:40 p.m.]

V. Final Business and Close of Meeting

W. Sanders said that the Board recognized that Health Net has not had the opportunity to review the order the Board considered. The Board believed Health Net should have the opportunity to appeal based on the order. He said Health Net could amend the October 31, 2001 appeal, or withdraw the appeal for the purpose of sending a new appeal.

F. Giannattasio offered a motion that the Board issue the order vacating IHC Order No. 01-02, denying Health Net's request for an exemption from the 1999/2000 loss assessment, and denying Health Net's request for a stay of the issuance of the 1999/2000 assessment. L. Yourman seconded the motion. By roll call vote, the Board voted unanimously in favor of the motion.

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E. Shrem offered a motion to adjourn the Board meeting. D. Farkus seconded the motion. The Board voted unanimously in favor of accepting the motion. The meeting adjourned at 1:45 p.m.