**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**
**May 11, 2004**

**Members participating:** Ulysses Lee (Guardian); Sandi Kelly (Horizon BCBSNJ); Vicki Mangiaracina (DOBI); Mary McClure (Aetna Health); Eileen Shrem.

**Others participating:** Ellen DeRosa, Deputy Executive Director; DAG Eleanor Heck (DOL); Rosaria Lenox, Program Accountant; Wardell Sanders, Executive Director.

## I. Call to Order

W. Sanders called the meeting to order at 10:00 a.m. He announced that notice of the meeting had been published in three newspapers and posted at the Department of Banking and Insurance ("DOBI"), the DOBI website, and the Office of the Secretary of State in accordance with the Open Public Meetings Act. A quorum was present.

Richard Hamilton of Riker Danzig, counsel for CIGNA, asked for the opportunity to address the Board. The Board agreed.

Mr. Hamilton said that in light of the Supreme Court Decision In the Matter of the New Jersey Individual Health Coverage Program's Readoption of N.J.A.C. 11:20-1.1 et seq., issued May 10, 2004, which upheld the Appellate Court's decision to invalidate the methodology used for the second tier assessment and reversed the Appellate Court's decision that the good faith marketing requirement was legal, CIGNA believes that CIGNA's 1996 assessment being held in dispute must be released immediately. He said he would send a written request to the Board for the release of the funds in the account. DAG E. Heck told Mr. Hamilton that the written request should be sent to her as counsel to the Board. Mr. Hamilton agreed.

## II. Minutes

*April 15, 2004*
**E. Shrem offered a motion to approve the Open Session minutes of the April 15, 2004 IHC Board meeting. V. Mangiaracina seconded the motion. The Board voted unanimously in favor of the motion.**

## III. Executive Session

W. Sanders stated that the Board had a need to hold an Executive Session to discuss the Supreme Court decision Mr. Hamilton referred to in his remarks, to discuss pending litigation, an

enforcement action and to review prior Executive Session minutes. He said the Board would continue with the Open Session agenda following the Executive Session.

M. McClure offered a motion to begin Executive Session for the reasons W. Sanders stated. S. Kelly seconded the motion. The Board voted unanimously in favor of beginning Executive Session.

*[Executive Session: 10:10 a.m. – 11:03 a.m.]*

## IV. Report of Staff

R. Lenox explained that there were no unusual expenses on the May Expense report, other than the salary and benefits expense.

**E. Shrem offered a motion to approve the payment of the expenses specified on the May 2004 Expense Report. M. McClure seconded the motion. The Board voted unanimously in favor of the motion.**

### *Administrative Assessment Collection*

R. Lenox reported that of the $1,259,300 administrative assessment that was billed, all but $5,148 has been collected. Seven carriers have not yet made payment.

### *Supreme Court Opinion*

W. Sanders said on May 10, 2004 the Supreme Court issued an opinion on In the Matter of the New Jersey Individual Health Coverage Program's Readoption of N.J.A.C. 11:20-1.1 et seq. He said Justice Albin wrote the opinion for a unanimous Court. The Court affirmed the judgement of the Appellate Division that invalidated the second-tier assessment regulation as presently written and reversed the judgement upholding the good-faith marketing regulation.

W. Sanders said the Board must file its proposal readoption of N.J.A.C. 11:20 within 270 days of the opinion, February 4, 2005.

### *Other*

W. Sanders said the Heartland Institute refused to publish his response to a Heartland Institute article. He said he had shared the Heartland Institute article and his response with Karen Politz of the Georgetown University Institute for Healthcare Research & Policy who published his response on the Georgetown website and in her newsletter.

Since the Board had not yet had an opportunity to review and discuss the Supreme Court decision, the Board determined that it would defer any discussion of the Good Faith Marketing Reports for the 2001/2002 period.

E. DeRosa noted that all carriers were required to file a marketing report relative to the marketing of the Basic and Essential Health Care Services (B&E) Plan no later than May 1, 2004. She reported that as of the Board meeting, only one carrier had made the required filing.

## V. Report of the Technical Advisory Committee

S. Kelly reported that the Committee reviewed three filings from Oxford. She said the Committee recommended that the filings for the SCA plans and for the HMO plans be found complete. She said the filing for the B&E Plan lacked some information and that TAC recommended that that filing be found incomplete.

**E. Shrem offered a motion to accept the recommendation of TAC and find the Oxford SCA and HMO rate filings complete and find the Oxford B&E rate filing incomplete. V. Mangiaracina seconded the motion. The Board voted unanimously in favor of the motion.**

## VI. Report of the Operations Committee

M. McClure said that Deloitte & Touche (D&T) advised the Committee that it cannot issue an audit report for the 1997/1998 and 1999/2000 losses for which Fortis has sought reimbursement because Fortis has not provided essential information. She said D&T would determine whether it would be appropriate to issue a letter, a scope limitation report or an agreed-upon procedures report.

With regard to the remaining carriers, M. McClure explained that part of the process for agreed upon procedures requires that the statutory financial statement must reconcile to Exhibit K. For three carriers, Manhattan National, National Casualty and Trustmark, the data on Exhibit K reconciles to the statutory financial statements. She said the Operations Committee believed the agreed upon procedures (AUP) reports provided sufficient basis for reimbursing these three carriers for losses, recalculated as stated in the AUP reports.

M. McClure said Protective Life provided no underlying accounting records for significant periods of the calculation period. M. McClure said the Operations Committee believes nothing further can be done with the agreed upon procedures for Protective Life since the carrier has stated it has no records available. Thus, M. McClure said the Operations Committee recommended that Protective Life should not be reimbursed for the losses it reported and must return money already paid, with interest.

M. McClure said two carriers, MEGA Life and PFL, provided underlying accounting records, but could not reconcile or explain the Exhibit Ks to the statutory financial statements. M. McClure said the Operations Committee suggested that MEGA Life and PFL be given the option to pay the entire cost to fund a full audit to attempt to support the Exhibit K data. Unless the

losses can be supported by a full audit, there would be no reimbursement and the carriers would be required to return the reimbursement already paid, with interest.

**V. Mangiaracina offered a motion to accept the recommendations of the Operations Committee, accepting the AUP reports for Manhattan National, National Casualty and Trustmark and providing reimbursement according to the restated losses, finding Protective Life ineligible for reimbursement and requiring repayment with interest of all amounts paid, and offering MEGA Life and PFL the opportunity to pay the cost for a full audit, or in the alternative, receiving no reimbursement. E. Shrem seconded the motion. The Board voted unanimously in favor of the motion.**

**VII. Close of Meeting**

**M. McClure offered a motion to adjourn the Board meeting. E. Shrem seconded the motion. The Board voted unanimously in favor of the motion.** [The meeting adjourned at 11:42 a.m.].

Attachments: Expense Report

**MINUTES OF THE MEETING OF THE**
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**AT THE OFFICES OF THE**
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**TRENTON, NEW JERSEY**
**June 8, 2004**

**Members present:** Darrel Farkus (Oxford); Ulysses Lee (Guardian); Sandi Kelly (Horizon BCBSNJ); Vicki Mangiaracina (DOBI); Mary McClure (Aetna Health); Eileen Shrem.

**Others present:** Ellen DeRosa, Deputy Executive Director; DAG Eleanor Heck (DOL); Rosaria Lenox, Program Accountant; Wardell Sanders, Executive Director; Neil Vance (DOBI).

## I. Call to Order

W. Sanders called the meeting to order at 10:05 a.m. He announced that notice of the meeting had been published in three newspapers and posted at the Department of Banking and Insurance ("DOBI"), the DOBI website, and the Office of the Secretary of State in accordance with the Open Public Meetings Act. A quorum was present.

## VII. Minutes

*May 11, 2004*
**E. Shrem offered a motion to approve the Open Session minutes of the May 11, 2004 IHC Board meeting, as amended. V. Mangiaracina seconded the motion. The Board voted in favor of the motion, with D. Farkus abstaining.**

## III. Report of Staff

*Expense Report*
**M. McClure offered a motion to approve the payment of the expenses specified on the June 2004 Expense Report. E. Shrem seconded the motion. The Board voted unanimously in favor of the motion.**

*Legislative Report*
W. Sanders said several bills (S. 1530, S.862 and S. 1403) were introduced that would require carriers to cover mammograms for women under the age of 40 under certain circumstances.

W. Sanders said S. 556 would require coverage for prescription female contraceptives.

W. Sanders said A. 947 would require carriers to cover chiropractic care to the same extent as care by a physician. He noted this bill had been referred to the Mandated Benefits Advisory Commission for its review.

***Administrative Assessment Collection***

R. Lenox reported that of the $1,259,300 administrative assessment that was billed, all but $1,154 has been collected. One carrier has not yet made payment and R. Lenox explained that the carrier's legal department has been reviewing whether it believes it has any liability since the carrier is withdrawing.

R. Lenox recommended that the Board authorize the transfer of $1,250,000 of the assessment amount collected to an interest bearing investment account at Wachovia.

**M. McClure offered a motion that the Board authorize the transfer of $1,250,000 to an interest bearing account at Wachovia. E. Shrem seconded the motion. The Board voted unanimously in favor of the motion.**

***Basic and Essential Health Benefit Plan Marketing Reports***

E. DeRosa noted that all carriers were required to file a marketing report relative to the marketing of the Basic and Essential Health Care Services (B&E) Plan no later than May 1, 2004. She reported that five carriers have not yet made the required filing. She said she had written to all carriers that had not made the required filing and had subsequent phone and/or email communications with those carriers.

***Outreach***

E. DeRosa reported that she taught continuing education classes on the changes to the small employer plans to brokers at the NJAHU convention in Atlantic City.

***Legal Committee***

W. Sanders said the Legal Committee met to discuss the Supreme Court's recent decision and is continuing to review the opinion, its application to existing litigation, and applicable case law.

***Other***

W. Sanders said a copy of the DOBI Bulletin on coverage for domestic partners was included in the Board packets. He noted that the Bulletin clarifies that children of domestic partners are eligible for coverage.

## IV. Report of the Technical Advisory Committee

S. Kelly reported that the Committee reviewed two filings from Aetna Life and one filing from United Healthcare. She said the Committee recommended that the Aetna Life filing for Plans A/50-D be found complete. She said the Committee was going to recommend that the United Healthcare filing be found incomplete, but explained that the carrier supplied the necessary information subsequent to the TAC meeting, and TAC members reviewed it and believed the filing could be found complete. She said TAC recommended that the Aetna Life filing for the

Basic and Essential Healthcare Services plan be found incomplete because the filing did not provide an explanation as to the pricing relativity assumptions which are based on Plan D.

S. Kelly explained that TAC would be prepared to more fully discuss relativity assumptions for carriers in general at a subsequent Board meeting.

N. Vance briefly discussed the relativity concern TAC is examining. He noted that for most carriers, the difference in rates between a Plan D $500 deductible plan and a Plan D $1000 deductible plan exceeds $500 per month and for all carriers far exceeds $500 per year. He said there would never be a circumstance where the purchase of Plan D $500 deductible would be a better value. He noted that there are currently about 50 covered lives with a Plan D $500 deductible.

Regarding pricing relativity included in the Aetna Life filing for the Basic and Essential Health Care Services Plan, N. Vance said Aetna Life used a very high relativity, and offered no explanation. He said that TAC believed that an unexplained actuarial assumption was basis for finding a filing incomplete. *[Note: M.McClure was recused from the discussion of the Aetna Life filing.]*

**E. Shrem offered a motion to accept the recommendation of TAC and find the Aetna Life filing for Plans A/50-D as complete, and the Aetna Life filing for the Basic and Essential Health Care Services Plan as incomplete. V. Mangiaracina seconded the motion. The Board voted in favor of the motion, with M. McClure abstaining.**

**S. Kelly offered a motion to accept the recommendation of TAC and find the United Healthcare HMO filing complete. V. Mangiaracina seconded the motion. The Board voted in favor of the motion, with D. Farkus abstaining.**

## V. Report of the Operations Committee

M. McClure said the Operations Committee met to discuss possible methods to calculate the loss assessment.

W. Sanders briefly explained the methodology that was proposed by United States Life in the briefs it filed in the matter that the New Jersey Supreme Court recently decided. This methodology would calculate loss assessment liability by applying the exemption percentage to a carrier's reported net earned premium. Thus the carrier's net earned premium is adjusted based on the percentage of exemption the carrier satisfied. For example, if a carrier that filed for an exemption reported $200 in net earned premium, and satisfied 40% of it's target of non-group person lives, the $200 premium would be reduced by 40%, to $120. The adjusted net earned premium would then be used to calculate each carrier's market share and loss assessment liability.

Several Board members noted that the proposed methodology does not provide the same type of financial incentive to carriers that are selling coverage in the individual market as the Board's prior methodology provided. S. Kelly suggested that the Board should examine how non-group

person enrollment targets are set. She noted that Medicare and Medicaid enrollment have significantly increased causing dramatic increases in the targets. Several Board members noted that changes to the method for non-group person targets or satisfaction would require statutory changes.

*[Break: 11:10 a.m.– 11:20 a.m.]*

## VI. Plan Changes

E. DeRosa reviewed her June 1, 2004 memorandum that discussed the changes the SEH Board made to the small employer forms. She noted that to the extent a law that required a change to the small employer plans also applies to individual plans, the individual plans would have to be similarly modified. The Board asked whether changes made to the standard individual plans to comply with law would likewise have to be made to the Basic and Essential Healthcare Services Plan. That answer to that question will require research.

E. DeRosa noted that the SEH Board adopted some significant changes to the small employer plans which were not required by law. She explained that it would be important for the IHC Board to advise her of Board-initiated changes it would like to propose so they could be included in drafts. The IHC Board considered the changes the SEH Board adopted and agreed similar changes should be proposed in the IHC plans. The Board agreed to study whether the individual plans should provide as much flexibility as small employer plans in terms of deductible and copayment amounts.

E. DeRosa asked Board members to offer any suggestions as to Board initiated changes to the standard plans by the end of June.

## VII. Executive Session

W. Sanders stated that the Board had a need to hold an Executive Session to receive legal advice and to consider Executive Session minutes. He said the Board would not conduct further business following the Executive Session.

M. McClure offered a motion to begin Executive Session for the reasons W. Sanders stated. V.

Mangiaracina seconded the motion. The Board voted unanimously in favor of beginning

Executive Session.

*[Executive Session: 12:25 p.m. – 12:45 pm.]*

## VIII. Close of Meeting

**E. Shrem offered a motion to adjourn the Board meeting. V. Mangiaracina seconded the motion. The Board voted unanimously in favor of the motion.** [The meeting adjourned at 12:45 p.m.].

Attachments: Expense Report

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**TRENTON, NEW JERSEY**
**July 29, 2004**

**Members present:** Darrel Farkus (Oxford); Ulysses Lee (Guardian) (arrived at 10:15 a.m.); Sandi Kelly (Horizon BCBSNJ); Vicki Mangiaracina (DOBI); Mary McClure (Aetna Health); Lisa Yourman.

**Others present:** Ellen DeRosa, Deputy Executive Director; DAG Eleanor Heck (DOL); Rosaria Lenox, Program Accountant; Wardell Sanders, Executive Director.

## I. Call to Order

W. Sanders called the meeting to order at 10:10 a.m. He announced that notice of the meeting had been published in three newspapers and posted at the Department of Banking and Insurance ("DOBI"), the DOBI website, and the Office of the Secretary of State in accordance with the Open Public Meetings Act. A quorum was present.

## VIII. Minutes

*June 8, 2004*
**V. Mangiaracina offered a motion to approve the Open Session minutes of the June 8, 2004 IHC Board meeting, as amended. D. Farkus seconded the motion. The Board voted in favor of the motion, with L. Yourman abstaining.**

## III. Report of Staff

*Expense Report*
**M. McClure offered a motion to approve the payment of the expenses specified on the July 2004 Expense Report. L. Yourman seconded the motion. The Board voted unanimously in favor of the motion.**

*Legislative Report*
W. Sanders said A. 1776, which is being referred to as "Grace's Law," passed in the Assembly and would require plans to cover hearing aids for children age 15 and younger. Benefits may be limited to $1,000 per hearing aid, per ear, every 24 months.

W. Sanders said P.L. 2004, c. 86 requires carriers to cover mammograms for a woman under age 40 if the woman's physician determines a mammogram is medically necessary.

W. Sanders said P.L. 2004, c. 49 imposes an assessment on HMO carriers of 1% of written premium for the purpose of providing charity care payments.

W. Sanders reported that the United States Department of Treasury issued a Bulletin on Health Savings Accounts. The Bulletin provides transitional relief in instances where a State law would preclude a high deductible plan design. The transitional relief would remain in place until January 2006, by which time a State would have had ample time to amend the State law so plans issued in the State could conform to the requirements for a high deductible plan.

*Information Only Materials*
W. Sanders said Board materials include a Health Affairs article, briefing from the Office of Administrative Law case with Horizon and 4Q03 enrollment data.

***Basic and Essential Health Benefit Plan Marketing Reports***

E. DeRosa noted that all carriers except Celtic had filed the marketing report that was due May 1, 2004. She said she expected the Marketing Committee would consider the reports and be prepared to make a recommendation during the September Board meeting.

***Legal Committee***

W. Sanders said the Legal Committee met and discussed the request for reimbursement submitted by Trustmark for 2001/2002. W. Sanders explained that the Exhibit K Trustmark filed for 2001/2002 shows no premium. The enrollment reports Trustmark submitted specify zero enrollment for all quarters in 2001 and 2002. W. Sanders said he wrote to Trustmark to ask them to demonstrate how it was issuing coverage in 2001/2002. He said Trustmark was unable to produce a copy of an application used in 2001/2002, but claimed it had been prepared to issue coverage if a consumer requested it. He said Trustmark also noted its rates were included on the monthly rate sheets.

W. Sanders said he and E. DeRosa placed separate calls to the Trustmark toll free number and requested information on individual plans in New Jersey. He said that in each instance, Trustmark representatives advised them that Trustmark discontinued making individual coverage available in New Jersey in December 2001. W. Sanders noted that calls placed in 2004 do not indicate whether callers in 2001 and 2002 were given the opportunity to buy coverage, but he noted that the mentioning of December 2001 by several Trustmark representatives suggests that a script prompts them to know coverage has not been available as of that time.

W. Sanders said the Legal Committee recommended that the Board issue an order to deny reimbursement since Trustmark has been unable to demonstrate that it was "issuing" coverage in 2001/2002.

**D. Farkus offered a motion that the Board issue an Order to Trustmark to deny reimbursement for 2001/2002. L. Yourman seconded the motion. The Board voted unanimously in favor of the motion.**

***Outreach***

E. DeRosa reported that she taught a continuing education class in Cranbury on what happens with health coverage when an employee is disabled. W. Sanders said he participated on a panel on limited benefit plans at a conference sponsored by the Robert Wood Johnson Foundation State Coverage Initiatives program in Chicago.

## IX. Report of the Technical Advisory Committee

S. Kelly reported that the Committee reviewed two filings from Guardian and one filing from Oxford. She said the Committee recommended that the filings be found complete.

**L. Yourman offered a motion to accept the recommendation of TAC and find the Guardian filings complete. V. Mangiaracina seconded the motion. The Board voted in favor of the motion, with U. Lee abstaining.**

**L. Yourman offered a motion to accept the recommendation of TAC and find the Oxford filing complete. V. Mangiaracina seconded the motion. The Board voted in favor of the motion, with D. Farkus abstaining.**

S. Kelly said TAC considered loss ratio data and refund plans and recommended that the Board accept the refund plans from Aetna, Oxford and National Health. She explained that refunds would be paid within 45 days.

**S. Kelly offered a motion that the Board accept the TAC recommendation and approve the Aetna refund plan. L. Yourman seconded the motion. The Board voted in favor of the motion, with M. McClure abstaining.**

**V. Mangiaracina offered a motion that the Board accept the TAC recommendation and approve the National Health refund plan. L. Yourman seconded the motion. The Board voted unanimously in favor of the motion.**

**V. Mangiaracina offered a motion that the Board accept the TAC recommendation and approve the Oxford refund plan. L. Yourman seconded the motion. The Board voted in favor of the motion, with D. Farkus abstaining.**

## X. Report of the Operations Committee

R. Lenox discussed an analysis of reimbursements for the 1997/1998 and 1999/2000 two-year calculation periods that could be made to those carriers whose audits or agreed upon procedures have been completed. She presented two possible methods to use where one would make an additional payment based on the final audited number and another would make additional payment based on the lesser of the final audited number or the amount reported on Exhibit K. Since the Board assessed based on what was reported on Exhibit K, the Board agreed to use the lesser of the amount on Exhibit K or the final audited number.

**U. Lee offered a motion to make payments to those carriers whose 1997/1998 audits or agreed upon procedures were complete. L. Yourman seconded the motion. The Board voted unanimously in favor of the motion.**

**V. Mangiaracina offered a motion to make payments to those carriers whose 1999/2000 audits or agreed upon procedures were complete. D. Farkus seconded the motion. The Board voted unanimously in favor of the motion.**

Since Trustmark owed money back to the Board for the 1997/1998 period but was due money for the 1999/2000 period, the Board suggested that R. Lenox net the amount.

M. McClure said a draft audit report for Metropolitan for 1997/1998 was included in the Board materials. Since the Board made what it believed to have been partial payment to Metropolitan in an amount that the audit reveals exceeds the final audited number, the Board would issue a letter to recover the excess.

**M. McClure offered a motion to accept the draft audit report for Metropolitan for 1997/1998. V. Mangiaracina seconded the motion. The Board unanimously voted in favor of the motion.**

M. McClure said the Operations Committee considered what targets would look like without Medicare and Medicaid enrollment being included to set the targets. She said the Committee recognized that a statutory change would be required to remove Medicare and Medicaid lives from the setting of targets.

## XI. Executive Session

W. Sanders stated that the Board had a need to hold an Executive Session to receive legal advice, to discuss pending litigation, and to consider Executive Session minutes. He said the Board may conduct further business following the Executive Session and that he would advise audience members when Open Session would resume.

S. Kelly offered a motion to begin Executive Session for the reasons W. Sanders stated. D.

Farkus seconded the motion. The Board voted unanimously in favor of beginning Executive

Session.

*Break: 11:25 a.m. – 11:35 a.m.]*

*[Executive Session: 11:35 a.m.. – 1:30 p.m.]*

## VII. Close of Meeting

M. McClure said the Board was continuing to consider the Supreme Court decision in the CIGNA and United States Life cases and was working hard to reach conclusions as to necessary and appropriate Board action.

**D. Farkus offered a motion to adjourn the Board meeting. U. Lee seconded the motion. The Board voted unanimously in favor of the motion.** [The meeting adjourned at 1:33 p.m.].

Attachments: Expense Report