

**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  
MARCH 13, 2007**

**Directors participating:** Darrel Farkus (Oxford); Sandi Kelly (Horizon BCBSNJ); Ulysses Lee (Guardian); Gale Simon (DOBI); Christine Stearns; Mary Taylor (Aetna Health Inc.); Lisa Yourman (arrived at 9:45)

**Others present:** Ellen DeRosa, Executive Director; DAG Eleanor Heck (DLPS); Rosaria Lenox, Program Accountant; Chanell McDevitt, Deputy Executive Director.

**I. Call to Order**

E. DeRosa called the meeting to order at 9:35 A.M. She announced that notice of the meeting had been published in two 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.

**II. Minutes**

**S. Kelly made a motion to accept the Open Session minutes of February 13, 2007, with amendments. G. Simon seconded the motion, and the motion was approved unanimously by the Board.**

**III. Report of Staff**

*Expense Report*

R. Lenox provided a summary of the March 2007 Expense report.

**M. Taylor offered a motion to approve the payment of the expenses on the March 2007 expense report, and C. Stearns seconded the motion. The Board voted unanimously in favor of the motion.**

*Interim Reconciliations Collections Update*

R. Lenox reported that collections on the loss assessments are as follows: for the 1997/1998 interim reconciliation loss assessment, 100% of the amounts due (\$14,628,756.79) have been received; for the 1999/2000 interim reconciliation loss assessment, 100% of the amounts due (\$6,125,577.58) have been received; and, for the 2001/2002 loss assessment, 99.1% of the assessed amounts have been received (\$4,392,404.96). However, \$4081.85 remains outstanding. Staff has contacted the carriers that have not yet made payment. The Board agreed that it is appropriate for staff to transfer the funds collected (\$25,146,739.33) to interest-bearing accounts at Wachovia, less amounts, if any, that may need to be retained in segregated interest-bearing accounts in Treasury because of assessment appeals (to be discussed as part of the Legal Committee report). In addition, the Board requested that staff seek to have outstanding amounts transferred to Wachovia as soon as the amounts are collected.

*Enrollment reports (4Q06)*

E. DeRosa reported that the enrollment reports for the IHC are not yet available due to a reporting error one of the carriers is trying to correct.

*Fee Schedule/Reimbursement Issues (Review of N.J.A.C. 11:20-24.5)*

Staff distributed prepared packets of information to Board members, and C. McDevitt gave a brief overview of the packets' contents. As requested by Board members, C. McDevitt had compiled information about the Medicare RBRVS as well as the Ingenix PHCS (which carriers are currently required to work from pursuant to N.J.A.C. 11:20-24.5). C. McDevitt explained that she had included materials in the packet because she believed the material was more fact-oriented than persuasion-oriented. She also included recent news articles reporting criticisms of recent Department of Banking and Insurance (DOBI) rule proposals regarding amendments to the automobile PIP fee schedule and an amendment to N.J.A.C. 11:22-5, requiring carriers to reimburse out-of-network physicians at a rate comparable to at least 150% of the Medicare RBRVS.

Board members and staff discussed issues related to possible revisions to N.J.A.C. 11:20-24.5, which currently requires that carriers reimburse out-of-network medical expenses on a reasonable and customary basis, wherein reasonable and customary is based on the Prevailing Healthcare Charges System (PHCS) for New Jersey,

produced and published by Ingenix, a private company. There was some question as to whether the Board wanted to continue pursuing a possible change to the rule at this time. It was noted that DOBI's proposals have engendered significant comment (1600+ for the proposed amendment to N.J.A.C. 11:22-5), and multiple extensions of the comment period, which is now scheduled to close in the beginning of May. DOBI's proposed amendment to the PIP fee schedule has also been controversial. The Board members generally agreed that they want to continue exploring the issue, but recognized that the process may need to move at a deliberate pace, particularly in light of the introduction of A4075 by Neil Cohen on March 8, 2007. A4075 would require carriers to pay using a fee schedule essentially based on PHCS or a PHCS-like model, and would prohibit use of the valuations in the RBRVS. While the impact of A4075 is not clear, obviously the bill does not favor use of the Medicare RBRVS directly. It was noted that the bill requires use of a commercially-produced fee schedule developed using charges, but did not specify percentiles to be used. Horizon noted that it is working on some comparison data using a vendor, and anticipated having information available for the Board in the near future. In addition, there was discussion that the Board may want to hear a presentation from Concentra regarding hospital pricing/rates.

#### **IV. Litigation Update**

E. Heck reported that both cases (Seven-carrier appeal of the interim loss assessments; Horizon waiver of 1993 losses) scheduled for oral arguments on March 14, 2007 have been postponed until May 2, 2007. Oral arguments will still be in Morristown for anyone interested in attending.

#### **V. Report of the Technical Advisory Committee**

##### *B&E 4Q06 Reports*

S. Kelly reported that TAC reviewed the 4Q06 enrollment reports filed by AmeriHealth, and Oxford, and saw no adverse selection impact issues with the information provided. S. Kelly stated that TAC will continue to monitor the situation.

E. DeRosa reported that TAC considered the Horizon 4Q06 enrollment report, and similarly determined to continue monitoring the data.

#### **VI. Report of the Legal Committee**

*Exhibit K – calculation of target lives – group Medicare contracts*

E. DeRosa reported that the question has arisen whether carriers should be reporting the number of lives covered under employer-sponsored group Medicare contracts on the Exhibit K. The Legal Committee discussed the issue and could not reach an agreement at that time. The Legal Committee requested that staff seek more information regarding the real or perceived status of Medicaid managed care contracts and lives covered.

Board members asked whether the Legal Committee was likely to meet to reconsider the question prior to the due date for the Exhibit K filings (April 1). It was decided that regardless of when the Legal Committee met, carriers should continue to complete the Exhibit K as they have been until further notice.

*Exhibit K – calculation of premium – Medicare Part D*

E. DeRosa reported that the question had arisen whether premium from Medicare Part D contracts (prescription drug only) is to be included or excluded from premium-reporting. The Legal Committee had recommended that, consistent with reporting of other premium that may be wholly or partially paid from federal funds, carriers should not report the federally-funded portion of the premium. E. DeRosa was preparing a bulletin advising carriers to exclude the Medicare Part D premium (that includes federal money) on the Medicare Advantage worksheet for the time being. The rules will need to be revised.

## **VII. Executive Session**

E. DeRosa said the Board would need to go into Executive Session to consider draft Executive Session minutes, receive legal advice from counsel following recommendations of the Legal Committee, discuss current or pending litigation, and personnel issues. She said the Board may conduct additional business following Executive Session.

**S. Kelly offered a motion to begin Executive Session for the stated reasons. L. Yourman seconded the motion. The Board voted unanimously in favor of the motion.**

*[Executive Session: 10:15 A.M. – 11:00 A.M.]*

## **V. Final Business and Close of Meeting**

*Report of the Legal Committee (continued)*

*U. Lee recused himself from any action of the matter that follows because it involves activities of his employer, Guardian Life Insurance Company.*

*Guardian Request for ad interim relief – March 6, 2007*

G. Simon reported that, following the Board's February 13, 2007 order to Guardian (07-IHC-01), denying Guardian's request to put the monies the company had paid pursuant to the December 18, 2006 interim assessment notices into a segregated interest-bearing account (SIBA), Guardian had filed an appeal of the order with the Appellate Division and made a request for *ad interim* relief, again requesting that the funds remitted be placed in a SIBA. The Legal Committee reviewed the contentions of Guardian in support of the appeal and request for relief, which essentially was that the Board had failed to adequately understand the argument as set forth in Guardian's January 9 or January 11, 2007 letters. Essentially, Guardian's contention is that the Board inappropriately changed course when it failed to apply the same loss assessment methodology that had been used from 1993 through 1996, and thus, because Guardian is challenging the methodology and amount assessed to it for the 1997/1998 and 1999/2000 reporting periods (but specifically not the 2001/2002 reporting periods), it is entitled to have the funds it remitted for 1997/1998 and 1999/2000 put into a SIBA until the matter is resolved, in accordance with N.J.A.C. 11:20-2.17(f). The Legal Committee reviewed Guardian's contentions and recommended issuing an order approving Guardian's request to have the disputed amounts (\$1,468,216.33 for the 1997/1998 assessment period, and \$313,057.21 for the 1999/2000 assessment period) put into a SIBA. The Legal Committee recommended no further administrative action, since the matter is currently before the Appellate Division.

**G. Simon made a motion to accept the recommendation of the Legal Committee, and to authorize staff to draft an order in consultation with E. Heck consistent with the Legal Committee's recommendation, and issue it to Guardian. L. Yourman seconded the motion. The Board unanimously approved it.**

**L. Yourman offered a motion to close the meeting. M. Taylor seconded the motion. The Board voted unanimously in favor of the motion.**

*The meeting adjourned at 11:05 A.M.*