FINAL
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
April 17, 2007

Directors participating: Darrel Farkus (Oxford); Sandi Kelly (Horizon BCBSNJ – *by phone*); Ulysses Lee (Guardian); Steve Lenox; Gale Simon (DOBI); Mary Taylor (Aetna Health Inc.)

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

I. Call to Order

E. DeRosa called the meeting to order at 1:10 P.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. She noted that the meeting had been noticed again in accordance with the Open Public Meetings Act because of the change in time from 9:30 A.M. to 1:00 P.M. A quorum was present.

II. Minutes

March 13, 2007

D. Farkus made a motion to accept the Open Session minutes of March 13, 2007, with amendments. G. Simon seconded the motion, and the motion was approved by the Board, with S. Lenox abstaining.

III. Report of Staff

Expense Report

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

S. Kelly offered a motion to approve the payment of the expenses on the April 2007 expense report, and S. Lenox seconded the motion. The Board voted unanimously in favor of the motion.

Authorizations for Transfers of Funds

E. DeRosa explained to the Board that, pursuant to conversations with DOBI financial staff, following the advice of auditors, Treasury is requesting greater levels of detail and specificity prior to any transfer money out of Treasury accounts. Discussions of the Board at prior meetings indicating that the Board would like for IHC staff to address most of these administrative tasks without waiting for Board action does not satisfy the Treasury standards at this time. Consequently, staff will be bringing these matters to the Board on a routine basis, and recording the activity in the minutes.

IV. Report of the Operations & Audit Committee (OAC)

Invoices for Late Fees

R. Lenox reported that the OAC met on April 16, 2007 by teleconference. The OAC reviewed a list of late fees that had accumulated for the interim reconciliations for 1997/1998 (totaling $71,822.07) and 1999/2000 (totaling $20,872.89), and for the assessment for 2001/2002 (totaling $26,628.91). The OAC noted that four carriers had accumulated late fees of less than $2.00, and that the Board has not issued invoices in the past for amounts less than $2.00. The OAC recommended issuing invoices to the carriers owing a late fee, excluding the four carriers having late fees of less than $2.00.

M. Taylor made a motion to accept the OAC's recommendation to issue invoices for the late fees for the 1997/1998 and 1999/2000 interim reconciliations and the 2001/2002 assessment. G. Simon seconded the motion. The Board adopted the motion unanimously.

Distribution of Funds for 1997/1998 and 1999/2000 Losses and Refunds for ANEP

R. Lenox reported that the OAC had considered the amount of funds available for distribution for loss reimbursements for and assessment refunds for the 1997/1998 and 1999/2000 reporting periods. She noted that staff had suggested and the OAC had agreed that loss reimbursements would not be paid to carriers for which audits are not yet complete, and to whom it appeared that possible overpayments had already been made. In addition, to the extent that it was clear an overpayment had been made, and the carrier was due an assessment refund because of the change to the adjusted net earned premium (ANEP) methodology for the same two-year calculation period, the proposal was to reduce a carrier's assessment refund by the existing overpaid loss reimbursement. E. DeRosa reminded Board members that in prior years carriers had received payments towards their losses as monies were collected, subject to an agreement from the carriers that monies would be returned if the audit failed to support net paid losses as reported on the Exhibit K.

R. Lenox reported that the amount available for distribution for the 1997/1998 calculation period is $13,431,823.67, after transferring $1,468,216.33 into a segregated interest-bearing account (SIBA) pursuant to an appeal raised by Guardian. The amount available equals 85.2618% of the known loss reimbursements and refunds due to carriers, and the

OAC recommends that carriers receive 85.2618% towards their reimbursable losses or assessment refunds, except as follows:

- Fortis/Time would not receive any additional loss reimbursement because the audit of its reported losses is not complete.
- Protective and UICI would not receive any additional loss reimbursement because of probable prior overpayment, and incomplete audits/AUPs.
- Metropolitan's assessment refund would first be reduced by the overpayment in the company's loss reimbursement. (The audit resulted in a decrease in Metropolitan's net paid loss amount.)

R. Lenox reported that the amount available for distribution for the 1999/2000 calculation period is $6,339,497.61, after transferring $313,057.21 to a SIBA pursuant to an appeal by Guardian. The amount available equals 99.5317% of the known loss reimbursements and refunds due to carriers, and the OAC recommends that carriers receive 99.5317% towards their reimbursable losses or assessment refunds, except with respect to Fortis/Time, AEGON and UICI, because audits for these companies are not complete.

G. Simon made a motion to accept the recommendations of the OAC to distribute loss reimbursements and assessment refunds for the 1997/1998 calculation period at 85.2618% of the amount due each carrier, totaling $12,256,776.86, and for the 1999/2000 calculation period at 99.5317% due each carrier, totaling $3,549,852.90, except those carriers for which audits remain incomplete, and following reduction of any refund amount by prior overpayments. M. Taylor seconded the motion. The Board approved the motion, with U. Lee abstaining.

It was noted that the Board was approving remittance to Celtic of $423,965.15 for 1997/1998 and $205,638.86 for 1999/2000. Celtic has been in litigation with the Board regarding, among other things, whether the Board is obligated to make full payment to Celtic of the acknowledged loss amounts, regardless of the availability of funds.

Distribution of Funds for 2001/2002 Losses

E. DeRosa reported that: 100% of the assessments for the 2001/2002 calculation period had been collected; no challenges had been submitted, and thus, no amounts would be set aside in a SIBA; pursuant to submission of the Exhibit Ks, five carriers reported reimbursable losses; and, no audits regarding these reported losses had begun. Because the audit process has presented challenges – some carriers have not been cooperative, audit results indicate that some carriers have been overpaid, and at least one carrier has been ordered to return funds to the IHC Program, but has not complied – staff recommended no payments, not even partial payments, be made for losses until audits are completed. The OAC agreed with the staff recommendation.

E. DeRosa explained that the IHC Program rules do not require that partial payments be made. Instead, the Board had previously elected to make partial payments as monies were collected, believing it to be in the best interests of the carriers that had incurred losses.

The Board discussed whether the carriers who report reimbursable losses for the 2001/2002 calculation period should be sent letters putting them on notice that they will not receive payment until audits are complete, and determined this would be appropriate because carriers may expect to receive funds much sooner, even if not payment in full. There was also discussion about whether carriers should be expected to return overpaid funds with interest. The Board traditionally expects payment of interest on monies that are due to the Board and not paid timely. The Board does not pay interest when it disburses money for reimbursable losses and refunds, although carriers may recover it if they seek reimbursement during subsequent calculation periods if they report net investment income losses.

S. Kelly made a motion to retain the funds collected pursuant to the 2001/2002 in the IHC Program's accounts with Wachovia until such time as the audits are completed, and to send the carriers reporting reimbursable losses letters advising them that the funds will not be issued until completion of the audits. M. Taylor seconded the motion. The Board passed the motion unanimously.

Status of Loss Audits

E. DeRosa reported that Deloitte & Touche (D&T) had stated that the audit on Metropolitan is virtually done – all that remained was formal publication – and they expected to send copies of it to staff shortly.

E. DeRosa recapped the audit history with Protective (13 months of information was missing; Protective suggested the Board rely on Protective's own audit report for the period and the Board refused; D&T audited the records that were available, and prepared a management representation letter, which Protective ultimately signed but to which it appended significant amounts of information; D&T reviewed the appended information), and reported that D&T has stated they completed their review and are able to issue a report with the signed management representation letter. D&T expects to send a draft report for the Agreed Upon Procedures (AUP) to the OAC shortly for consideration.

E. DeRosa recapped the audit history for AEGON and UICI (reported losses were less than $1,000,000, so the Board required that the carriers submit to an AUP; subsequent review determined that the financial information reported on the Exhibit Ks did not match financial information reported to DOBI in annual statements, and the companies could not substantiate the basis for the differences, so the Board offered the companies the option of submitting to a full audit at the companies' expense; the companies agreed and while not cooperative, have been more so lately), and then E. DeRosa reported that D&T believes that, for at least one calculation period, the cost of the audit may exceed the amount of reported losses. D&T is talking to the companies to determine whether they wish to proceed.

E. DeRosa recapped the audit history for Time/Fortis (which has disputed the Board's method for calculating net investment income, and has not been cooperative in providing D&T with substantive materials as requested, but recently produced more documents, which D&T reviewed to determine whether there was any new or additional information that would support the audit process) and reported that D&T has determined that the additional materials are substantially the same as what Time has submitted previously and do not provide D&T with what it needs for the audit.

V. 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 contract negotiations. She said the Board may conduct additional business following Executive Session.

M. Taylor offered a motion to begin Executive Session for the stated reasons. U. Lee seconded the motion. The Board voted unanimously in favor of the motion.

[Executive Session: 1:55 P.M. to 2:10 P.M.]

V. Report of the OAC continued

Audit contract

E. DeRosa reported that, because it appears that D&T and the IHC Program are not in agreement on the terms of a contract for audits from 2000 through 2004, staff and DAGs Heck and Mangiaracina met with a representative from the Department of Treasury's Division of Purchase and Property (Treasury), Chris Weiland, to discuss options for obtaining another auditing firm. At that meeting, C. Weiland explained that Treasury has existing contracts with 10 audit firms with which any State agency may choose to solicit for a specified scope of work without having to go through the usual State contracting process. Agencies may email a proposed scope of work to the firms, the firms can submit notice of their interest and qualifications, and the agency can determine which of the interested parties to award the work to. (Prices have already been determined as part of the audit companies' contracts with Treasury.) In the situation of the IHC Program, the OAC would review the responses to decide which company may be appropriate. E. DeRosa noted that one of the companies is currently doing audit work with the SEH Program.

E. DeRosa stated that it may be best if the IHC Program issues two separate scopes of work – one for the audit of the Program administration, and the other for audits of losses. E. DeRosa also noted that staff would like to revise the scope of work for the program audits so as to bring the program audits current (through FY07).

S. Kelly indicated a concern with awarding a contract to an auditor for such a long auditing period when the quality of the work is not yet known, and suggested issuing a scope of work for an audit of four years, with an option to renew the contract for auditing up to an additional three years. There was a question as to whether staff had any sense of what the bids were likely to be, but staff was unable to respond definitively, noting that the bid from the auditor performing the SEH Program audits had seemed a bit lower than expected, and D&T's bid for the IHC Program audit had seemed a bit higher than expected.

There was discussion as to reasons why more companies had not previously bid on the IHC Program's last audit RFP, and staff reported that the reasons had been mixed – some companies indicated they had no NAIC experience, some indicated a lack of staff, some indicated they were gearing up for compliance with Sarbanes-Oxley.

E. DeRosa indicated that staff would put together a scope of work based on the scope of work in the prior RFP, and would disseminate it to the OAC for review before taking any further action.

V. Final Business and Close of Meeting

G. Simon offered a motion to close the meeting. S. Lenox seconded the motion. The Board voted unanimously in favor of the motion.

The meeting adjourned at 2:25 P.M.