

**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
MAY 12, 2009**

Directors participating: Darrel Farkus (United); Sandi Kelly (Horizon); Gale Simon (DOBI); Mary Taylor (Aetna Health Inc.)

Others participating: Ellen DeRosa, Executive Director; Rosaria Lenox, Accountant; Chanell McDevitt, Deputy Executive Director; Vicki Mangiaracina, DAG

I. Call to Order

E. DeRosa called the meeting to order at 10:00 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. Election

E. DeRosa reminded Board members that Guardian Life Insurance Company of America’s current tenure on the Board had ended, and that a vote to fill the seat of an insurer authorized to write health insurance in New Jersey had been scheduled for the May 12th meeting. Upon tallying of all votes, it was determined that the Board vacancy would be filled by AmeriHealth Insurance Company.

III. Presentation – Resource-based Reimbursement

Andy Slater, of Horizon Blue Cross and Blue Shield New Jersey gave a presentation regarding an alternate reimbursement structure for facility and professional services delivered out-of-network.

IV. Minutes – *Open Session April 14, 2009*

S. Kelly made a motion to approve the open session minutes of the April 14, 2009 meeting, with amendments. D. Farkus seconded the motion, which was approved by unanimous vote.

V. Staff Report

Expense Report

R. Lenox presented the May Expense Report, with expenses totaling \$37,447.28.

D. Farkus made a motion to approve the payment of the expenses on the May 2009 expense report. M. Taylor seconded the motion. The Board voted unanimously in favor of the motion.

Good Faith Marketing Reports

E. DeRosa stated she had intended to present the Board with an evaluation of the good faith marketing reports submitted by carriers for action by the Board, but indicated she thought it best to wait until a subsequent meeting when additional Board members are in attendance, because the requirement for recusals would hamper effective action by the Board at today's meeting.

VI. Report of the Legal Committee

E. DeRosa reported that AEGON/PFL had decided to withdraw from the audit of its reported 2001-2002 losses following receipt from Withum, Smith+Brown (WSB) of the list of documents to which AEGON/PFL would need to provide access. She stated AEGON/PFL understood it would not be entitled to any reimbursement of losses. She noted that subsequently, WSB submitted a bill for its services on that audit, prompting the question of whether a carrier that withdraws from an audit is responsible for all, half or none of the audit expenses incurred. She said the Legal Committee considered N.J.A.C. 11:20-8.8(b), which requires the Board and carrier to equally share the audit costs for the first 18 months, after which any further costs become the sole responsibility of uncooperative carriers. The Legal Committee considered the planning stage to be a billable component of the audit process, and recommended that AEGON/PFL pay 50% of the billed charge. E. DeRosa noted that all carriers subject to audit for 2001-2002, 2003-2004 and 2005-2006 losses had been given notice of the award of the audit contract to WSB, and notice of the minimum documentation required for the audit prior to WSB contacting the carriers directly.

M. Taylor made a motion, seconded by D. Farkus, to accept the recommendation of the Legal Committee to bill AEGON/PFL for 50% of the charges submitted by WSB for the audit work incurred. The Board voted unanimously in favor of the motion.

VII. Operations and Audit Committee (OAC)

Budget for FY

R. Lenox discussed the proposed budget for fiscal years 2010 and 2011, which had been considered by the OAC. She explained that there was a net decrease of about \$31,000 in the FYs 2010-2011 budget compared to the FYs 2008-2009 budget, primarily because of a decrease in the forecast of the administrative audit expense, and no allocation of loss audit expenses beyond FY 2009, even while certain expenses are expected to rise, such as the costs for representation by the Attorney General's office. The total budget on which administrative assessments would be based is \$661,000 (\$329,000 for FY 2010 and \$331,700 for FY 2011), as recommended by the OAC.

G. Simon made a motion, seconded by M. Taylor, to approve the budget presented, totaling \$661,000 for the two fiscal years ending June 30, 2010 and June 30, 2011. The Board voted unanimously to approve the motion.

Financial statements

R. Lenox presented the financial statements for the program ending March 31, 2009 (3Q2009), including the Statement of Net Assets, the Statement of Changes in Net Assets, the Statement of Cash Flow, and the Comparison of Budget to Actual Expenditures.

Update on Loss Audits

Time

E. DeRosa reported that Time Insurance Company (Time) has sent requested premium and claims information in mid-April for D&T's review, following receipt of a letter that E. DeRosa sent to Time's counsel acknowledging that a signed management representation letter would not bar Time from filing suit against the Board regarding the calculation of net investment income.

Protective

E. DeRosa reported that an order had been drafted requiring Protective to return money advanced or credited, and is presently under review. She stated she expects the draft order to be reviewed and discussed by the Board's Legal Committee at its June meeting.

AEGON & UICI

E. DeRosa reported she had no updates with respect to audits for the 1997/1998 or 1999/2000 calculation period, but reminded Board members that AEGON was the company that had elected to withdraw from the audit for the 2001/2002 calculation period because it did not believe it could provide the information requested. She noted the OAC is skeptical that AEGON/UICI will be in a position to provide the information for the earlier periods either.

Assessment Reconciliations of Losses

E. DeRosa reported that final assessment reconciliations can be performed for the 1993 through 1996 periods, and that staff anticipates having the information available for OAC's review in June or July, after which, the information will come to the Board. She stated that final reconciliations cannot be performed after 1996 because of outstanding audits, and Celtic Insurance Company's filing for certification with the New Jersey Supreme Court following the Appellate Court's decision in favor of the Board.¹

VIII Executive Session Minutes – April 14, 2009

E. DeRosa noted that, if there were no substantive comments on the April 14, 2009 Executive Session minutes, the Board could take action to approve them while in open session. One technical amendment was offered.

¹ Celtic Insurance Company v. New Jersey Individual Health Coverage Program Board, et al. (unpublished opinion, decided April 3, 2009).

G. Simon made a motion, seconded by M. Taylor, to approve the April 14, 2009 Executive Session minutes, with amendments. The Board voted unanimously in favor of the motion.

G. Simon made a motion to close the meeting, seconded by D. Farkus. The Board voted unanimously in favor of the motion.

The meeting adjourned at 11:40 A.M.