# 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
# December 12, 2017

**Directors participating:** Mary Beaumont; Don Henson (DOBI); Sandi Kelly (Horizon); Ulysses Lee (United/Oxford); Colleen Picklo; Thomas Pownall (Aetna); Tony Taliaferro (AmeriHealth).

**Others participating:** Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; Christine Machnowsky, Deputy Executive Director; Rosaria Lenox, Managing Financial Officer; Eleanor Heck, Deputy Attorney General.

## I. Call to Order

E. DeRosa called the meeting of the IHC Board to order at 10:00 A.M. She announced that notice of the meeting had been posted at the Department of Banking and Insurance ("DOBI"), on the DOBI website, at the Office of the Secretary of State, submitted to the State House Press Corps, and published in three newspapers of general circulation in accordance with the Open Public Meetings Act. A quorum was present. She stated that voting would be by roll call because some directors were participating by phone.

## II. Review of Minutes – *November 14, 2017*

**T. Taliaferro made a motion, seconded by T. Pownall, to approve the minutes of the meeting of November 14, 2017, as amended. By roll call vote, the motion carried.**

## III. Report of Staff – *Expense Report*

R. Lenox presented the expense report for December, totaling $19,718.70, for salaries and fringe, to be paid to the SEH Program, meeting notices, Division of Law expenses, and to reimburse R. Lenox for continuing education and parking expenses. She explained that the Board would need to transfer $19,700 from its Money Market account to its checking account in order to pay the operating expenses if approved.

**S. Kelly made a motion, seconded by M. Beaumont, to approve payment of the expenses reported, and to transfer $19,700 from the Board's Wells Fargo Money Market account to its Wells Fargo checking account to pay the December operating expenses. By roll call vote, the motion carried.**

## IV. Report of the Operations & Audit Committee (OAC) and the Technical Advisory Committee (TAC) – *Final Assessments and Distribution of Funds related to Two-Year Loss Calculation Periods 1997/1998, 1999/2000 and 2001/2002, and Administrative Expense Periods 2000/2001 and 2002/2003*

R. Lenox explained that, now that all audits for all prior loss periods have been finalized, the purpose of the adjustments and reconciliations for the five periods in question is to assure: (1) payment is made for all as-yet unpaid audited losses; (2) the appropriate allocation of liabilities in each period; and (3) an appropriate allocation of interest not yet distributed that was earned on funds held by the Board related to reported losses and billed administrative expenses for these periods. She noted that, in addition, there are a few corrective actions being recommended.

She explained the summary spreadsheet and recommended methodology related to the allocation of interest:

- The Board's account includes $994,369.00 of interest to be allocated among the carriers to which interest is owed.
- Interest is owed to two classes of carriers:
  - Carriers that filed for losses in one loss period, but not in a subsequent two-year loss calculation period, in accordance with the Board's regulations in existence during the periods in question.[1] Interest is based on the final reimbursement amount for the carrier.
    - For 1997/1998, National Casualty and Washington National met the criteria for receipt of interest on reimbursable losses. All companies, including these two, were paid their audited reimbursable losses over time, with the final payment to National Casualty being $18,428.28, and the final payment to Washington National being $56,194.12. The requisite interest was not included with the final payments.
    - Five carriers (Celtic, AEGON, Manhattan Life, Trustmark, UICI) filed for losses in 1999/2000, but not in the subsequent two-year calculation period. Interest is based on the final reimbursement amount for each company. The total reimbursable losses subject to interest for this period is $2,085,829.66 (for a breakdown by company, see below).
    - Three carriers (Time, Metropolitan, Principal) filed for losses in 2001/2002, but not in the subsequent two-year calculation period. Interest is based on the final reimbursement amount for each company, totaling $3,360,887.21 (for a breakdown by company, see below).
  - Carriers that are owed refunds for overpayments made to the IHC Program for each of the calculation periods based upon the reconciliation of losses and administrative expenses after the final audits. Total refunds for each period are:
    - $67,219.70 for the 1999/2000 loss period
    - $198,961.60 for the 2001/2002 loss period
    - $616,750.83 for the 2000/2001 administrative expense period
    - $397,900.20 for the 2002/2003 administrative expense period
- The 1997/1998 final loss assessments performed in January considered interest on <u>refunds</u> to be made for that loss period. The total refund amount set forth on the spreadsheet ($4,063,244.77) still due to carriers for that period already includes the refund interest (totaling $241,015.98) to be paid on the refunds; accordingly, it is not included in the methodology for distribution of the $994,369.00.
- To allocate the $994,369.00 in interest, the OAC recommended, and the TAC concurred, that all amounts owed on which interest is due be recalculated using present value, and restated in 2017 dollars, and then proportions derived. In addition, the OAC recommended, and TAC concurred with the determination of an annual average interest rate over the period in question, which DOBI actuaries estimated should be about 2.35%, based on actual interest earned on funds held in Treasury over the period in question. The $994,369.00 will be distributed proportionately between

[1] Staff Note: N.J.A.C. 11:20-2.7(c)2ii was amended in 2011 to remove certain language, but for the periods at issue, stated: All investment income earned on loss assessment funds shall be credited to the IHC Program and shall be applied to reduce future loss assessments of members of the IHC Program, except as provided in N.J.A.C. 11:20-2.17(h), and except that interest earned on loss assessment funds due to a carrier shall be paid to that carrier to the extent that the investment income is earned during a subsequent loss assessment cycle in which the carrier is no longer seeking reimbursement. N.J.A.C. 11:20-2.17(h) – now 2.17(a) – addresses proportional distribution of funds.

periods, and then allocated proportionally to each carrier based on the amount of refund each carrier is owed within a period, or proportionally based on the reimbursement owed to carriers when the reimbursement is subject to an interest payment.

- In addition, reimbursements of audited losses, are owed currently to eight carriers for two periods (with and without interest being owed):
    - For 1999/2000 – Celtic ($967.54), AEGON ($386,775.50), Manhattan Life ($4,258.35), Trustmark ($2,315.12), UICI ($1,695,771.50), Time ($767,435.71), Metropolitan ($3,211.44), and Principal ($2,234.53) for 1999/2000; partial payments had been made in earlier periods to six of the eight carriers. R. Lenox confirmed that five companies did not file for losses in the subsequent period, so are due interest on the losses as yet unpaid, per the Board's regulations, while reimbursements to the other three companies are due without interest.
    - For 2001/2002 – Time ($585,132.80), Metropolitan ($749,001.07), and Principal ($2,026,753.34). No previous payments had been made to these companies; no partial payments were previously made. R. Lenox confirmed that these companies did not file for losses in the subsequent period, so interest is also due to them on the losses as yet unpaid, per the Board's regulations.

R. Lenox went on to explain the additional actions being shown on the individual spreadsheets, noting the following:

1. The Board performed the final loss assessment for 1997/1998 following the completion of the Time audit. Based upon the reconciliation, the Board billed eight carriers (for a total of $181,415.23) in January 2017, and collections occurred, but refunds were not issued. All reimbursable losses were paid. Subsequently, staff realized the calculations for the final assessment did not account for refunds previously paid to Protective Life Insurance in 2011, following litigation with that company.[2] The final assessment has now been updated to reflect that previous payment ($73,745.32) among all carriers (reducing liabilities). For the 1997/1998 Final Assessment, as Updated, the Board would be: (a) paying interest to National Casualty and Washington National; (b) paying refunds, with interest already accounted for, totaling $4,063,244.72.
2. The Board's initial assessment for the 1999/2000 losses occurred in 2002, with another assessment occurring in December 2006 to address the change in the second tier methodology.[3] Partial payments of reimbursable losses had been made to six carriers, but two carriers have received no reimbursement. Carriers determined in 2006 to have paid excessive assessments using the older methodology received some refunds in 2007, but not all. For the 1999/2000 Final Loss Assessment, the Board would be: (a) collecting $112,277.90; (b) completing refunds totaling $67,219.70; (c) completing reimbursement payments totaling $2,862,969.69; (d) paying interest relative to the refund amounts; (e) paying interest to the five carriers that received reimbursement during this period, but that did not file for losses in a subsequent period.
3. The Board's initial assessment for the 2001/2002 losses occurred in December 2006, collecting $4,396,486.87 (as billed). No reimbursements for losses have been paid. Upon completion of the audits, refunds are due, but have not been paid yet. For the 2001/2002 Final Loss Assessment, the Board would be: (a) refunding certain carriers a total of $198,961.60; (b) reimbursing certain carriers a total of $3,360,887.21; (c) paying interest relative to the refund amounts; (d) paying interest to the three carriers that are to receive reimbursement during this period that did not file for losses in a subsequent period.

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[2] Staff note: Review the case at http://www.state.nj.us/dobi/division_insurance/ihcseh/ihccourtdecisions.htm.
[3] Staff note: Review the 2004 case at http://www.state.nj.us/dobi/division_insurance/ihcseh/ihccourtdecisions.htm.

4. The Board's initial assessment for the 2000/2001 administrative expenses occurred in November 1999 based on the 1997/1998 net earned premium; $1,561,428 was budgeted, billed and collected. Upon audit, the total amount for the two-year period was $1,053,262.34, which was further reduced because audit fees came in less than expected; the actual expenses used for the reconciliation of assessments for the period is $961,858.16. The reconciliation was based on 1999/2000 net earned premium. Refunds are owed to carriers. However, staff recommends, and the OAC and TAC agreed, adding back $17,104.59 to account for an amount owed to the Board for the final 1996 losses and 1993 through 1999 final administrative assessments by Physicians Healthcare Plan of New Jersey (PHP), a now-liquidated carrier.[4] The periods for which the amount is owed are now closed. Notably, PHP was due a large refund for the 1997/1998 final loss assessment, but having no successor carrier, its refund was distributed among other members of the IHC Program via the January 2017 Final Assessment for 1997/1998. Staff believes that, because the member carriers across these periods are similar, it is reasonable to address the bad debt through the 2000/2001 final administrative assessment. For the 2000/2001 Final Administrative Assessment, the Board would be: (a) billing certain carriers $17,181.15; (b) refunding certain carriers $616,750.83; and (c) paying interest relative to the refunds owed.
5. The Board initially assessed for the 2002/2003 administrative expenses in March 2002. $1,279,000 was budgeted, billed and collected. Audited expenses for the period were $1,014,192.32, which were further reduced because the audit fees came in less than expected; the actual expenses used for the reconciliation of assessments for the period is $893,009.86. For the Final Administrative Assessment for 2002/2003, the Board would be: (a) billing certain carriers $11,909.23; (b) refunding carriers $397,900.20; and (c) paying interest relative to the refunds owed.

R. Lenox explained that the total amount of losses and refunds to be paid are about $11,426,566, which the Board has in its accounts, plus the nearly $1,000,000 in interest to distribute. When all reimbursement, refunds and interest are paid, all five periods will be closed. She noted that the actual dollar amounts for each carrier might change marginally as further refinements are made if one or more carriers cannot be located.

E. DeRosa recommended netting amounts owed and amounts due so that carriers are only billed once, and/or only receive one check. She also noted that she does not think the Board should try to figure out which amount belongs to which subsidiary of an entity, but rather, should pay based on how an entity appears to be structured now. She suggested that the work of determining which subsidiary should be booking the billing or refund should be left to each corporate entity.

E. DeRosa recommended not billing carriers for net amounts of less than $5, and asking carriers to which a net refund of less than $5 is owed whether they will accept and deposit a check of such nominal amount. She stated that the Board has an obligation to try to return funds, but cannot force a carrier to accept them, and indicated that if a carrier voluntarily forfeits payment, the Board would retain the minimal amount.

**S. Kelly made a motion, seconded by C. Picklo, approving and authorizing: the methodology recommended by the OAC and the TAC for allocation of the interest; inclusion with the final assessment of the 2000/2001 administrative expenses of the liability of Physicians Healthcare Plan of New Jersey incurred in prior closed periods that are no longer collectible from that carrier due to its liquidation; the net invoicing of carriers for all five periods based upon the spreadsheets as presented subject to minor adjustments for accuracy and to address the reallocation of de minimus liabilities; the payment of all reimbursable amounts and refunds plus requisite interest subject to prior affirmation by carriers to which amounts less than five dollars are owed; and, the transfer from the Board's Treasury account to the Board's Wells Fargo checking account of all funds necessary to pay**

[4] Staff note: PHP's lives were allocated, but not its liabilities.

**all reimbursements and refunds due for each period plus the requisite interest. By roll call vote, the motion carried.**

E. DeRosa explained that invoices would be issued with an explanatory summary, which would include a link to the spreadsheets on the Board's website. She stated that the summary is still in progress, and that the process of netting amounts owed to the IHC Program against amounts owed to carriers over the five periods will have to be completed, but that she expects invoices and notices to carriers due nominal amounts to be issued in January, with final checks being issued shortly thereafter.

## V. Appointment

E. DeRosa stated that she received notice from the Governor's Appointments Office that the Senate confirmed the appointment of Joseph Camargo to fill a consumer representative seat on the IHC Board. She said that Mr. Camargo is an active broker with Coastal Financial Group in Montville, and that she has had frequent contact with him over the years. She said that he intends to participate starting in January.

## VI. Close of meeting

**T. Pownall made a motion, seconded by C. Picklo, to adjourn the meeting. By roll call vote, the motion carried.**

*[The meeting ended at 11:17 A.M.]*