FINAL
MINUTES OF THE MEETING OF THE
NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD
AT THE OFFICES OF THE
NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE
TRENTON, NEW JERSEY
May 19, 2010

Members present: Charles Cerniglia (United/Oxford); Thomas Collins; Gary Cupo; Joyce Grahla (Horizon); Margaret Koller; Alan Maesaka (Aetna); Christine Stearns; James Stenger; Neil Sullivan (DOBI); Tony Taliaferro (AmeriHealth); Dutch Vanderhoof.

Others participating: Ellen DeRosa, Executive Director; Rosaria Lenox, Program Accountant; DAG Vicki Mangiaracina (DLPS); Chanell McDevitt, Deputy Executive Director.

I. Call to Order

J. Stenger called the meeting to order at 10:05 A.M. E. DeRosa 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 determined a quorum was present.

II. Public Comments

Terry Brophy, a broker, stated that while he believed there is a need to resolve the "slice" questions quickly, he did not believe the Board's adopted motion permitting carriers to limit employers to the purchase of one plan from a single carrier was equitable for employers, and weighted too heavily in favor of the interests of carriers, particularly because carriers had yet to submit data supporting the position that allowing employers to purchase multiple plans had really had a negative impact on the market.

Mr. Brophy also stated that he believed that Aetna's current practice of not providing compensation to general agents for groups with 4 or fewer employees violated the SEH rules, that it should be stopped, that Aetna should be fined at the very least.

Mr. Brophy stated that 20%-30% rate increases for the SEH market are unsustainable, and that there is not adequate competition in the market, with only four carriers having any significant level of enrollment. He urged the SEH Board to address the issue of competition.

III. Minutes – *March 17, 2010*

D. Vanderhoof made a motion to approve the open session minutes for March 17, 2010, with amendments. J. Grahla seconded the motion. The motion carried unanimously.

IV. Report of Staff

Expense Report

R. Lenox provided information about the expense report for May, which included expenses totaling $11,715.45 for legal services, staff continuing education requirements, Federal Express fees, and the professional services of Withum, Smith+Brown related to the fiscal year 2009 program audit.

T. Taliaferro made a motion, seconded by M. Koller, to approve the expenses on the May 2010 expense report. The motion carried unanimously.

Ethics Standards and Financial Disclosures
E. DeRosa handed out the Uniform and SEH Supplemental Ethics Rules to Board members, and explained that they needed to review the rules and submit a signed certification that they had received, read and understood the rules, and return the acknowledgment to her by the next meeting (in July), so that she could give it to DOBI's Ethics Officer.

E. DeRosa noted that Governor Christie had postponed the date for submission of financial disclosures until August 25, 2010 (via Executive Order 24). She stated that there was no prejudice to anyone who filed by the prior May 15, 2010 deadline.

V. Report of the Finance and Audit Committee (FAC)

Financial Statements and Reconciliations
R. Lenox reported that the FAC had reviewed the SEH Program's financial statements for the quarter ending March 31, 2010. She discussed the financial statements with the Board, including the Statement of Net Assets, the Statement of Changes in Net Assets, the Statement of Cash Flows and the Comparison of Budget and Actual Expenses.

Administrative Assessment Reconciliations
R. Lenox reported that the FAC had reviewed the reconciliation data and invoice following completion of the program audit for FY2009, and had recommended issuing the final administrative assessment for the fiscal year ended June 2009. She explained that the SEH Program was due about $38,000, but owed about $9,600, so that there was a net amount of $28,117.34 to be returned to the SEH members.

C. Stearns made a motion, seconded by A. Maesaka to accept the financial statements and issue the final administrative assessment for FY2009 for the net amount of $28,117.34. The motion carried.

Transfer of Money
R. Lenox stated that the Board needed to transfer funds from the DOBI account to the Board's checking account at Wachovia in order to pay for operating expenses, refund carriers for the FY2009 assessment reconciliation, and transfer into the Money Market Account for the purpose of earning interest. In order to stay within the FDIC limits, she suggested $240,000.

C. Stearns made a motion, seconded by M. Koller, to authorize staff to request a transfer of $240,000 from the Board's accounts in DOBI to the Board's checking account at Wachovia (Wells Fargo) for the purpose of paying operating expenses and making refunds to carriers in accordance with the FY2009 final administrative assessment reconciliation, and then

transfer $191,000 to the Board's Money Market Account through Wachovia's online banking system. The Board voted unanimously in favor of the motion.

VII. Report of the Ad Hoc Committee regarding Implementation of the Board's minimum participation underwriting guidelines

E. DeRosa reminded Board members that, at its prior meeting, the Board voted to require carriers to issue at least one health benefits plan to an eligible small employer group when the carrier is primary (i.e., issues to a small employer group satisfying the 75% participation requirement), and to allows carriers to choose whether or not to issue an additional plan or plans to the small employer when the carrier is secondary. She noted that the carriers were requested to submit the criteria they would use for issuing both as a primary and as a secondary carrier. She stated the Ad Hoc committee formed by the Board to make recommendations on implementation of the new policy recommended that:

- The operative date of the resolution and revised guidelines be put-off for several months (until at least September 1, 2010) to give everyone involved, including the brokers, plenty of lead time;
- Carriers submit underwriting guidelines for the new policy to the SEH Board for posting on the SEH Board's website so that the affected community has access to the guidelines for each carrier;
- Employers that currently do not have 75% of eligible employees covered by any single carrier be allowed to maintain each of the plans AS IS to assure the guaranteed renewability right of the employer is maintained; and
- Carriers be permitted to employ their secondary carrier guideline in the event a current employer for whom the carrier has less than 75% of the eligible employees enrolled elects to effect a change in an existing plan if the plan change still results in less than 75% of the enrollment with the carrier (but if the change is not effectuated, the employer may keep the existing plan).

Some Board members indicated they did not understand some of the carriers' guidelines, and did not understand all of the reported recommendations of the Ad Hoc Committee, and significant discussion ensued. Noting that some of the Board members were seeing the underwriting guidelines for the first time, the Board members agreed to take a break to read the guidelines and try to digest them, but not to discuss them amongst themselves or with anyone from the public.

[Break from 10:50 A.M. until approximately 11:05 A.M.]

The question came up as to whether Oxford had filed a complete set of underwriting guidelines, and C. Cerniglia stated it appeared that the third page of a fax may not have transmitted. He explained that Oxford was suggesting a pre-set grid of multiple plan options if Oxford was able to enroll at least 25% of the eligible employees, regardless of the group's actual size.

The question arose as to when and how carriers may change their underwriting guidelines. E. DeRosa explained that the carriers had included detail on how they intended to provide notice, but because method and timing of notice was not an underwriting guideline, she had not included the information in the summary of guidelines she had given the Board members. She noted all of the carriers indicated they would give notice to brokers and general agents through the normal communication channels, with AmeriHealth indicating a 90-days notice, and no one suggested less than 60-days notice as appropriate.

E. DeRosa reminded the Board that it had not expressed an intention to "approve" any carrier's guidelines, but rather, was gathering information from the carriers so that ultimately, the Board could issue a bulletin setting parameters for permissible underwriting options. She noted that all of the underwriting guidelines submitted from the carriers were merely drafts, and that the carriers may want to further refine them based on questions being asked by Board members.

It was noted that, in the current set of guidelines submitted, only AmeriHealth apparently would allow itself to be a secondary carrier for new business. It was also noted that some guidelines established variable standards based on the size of the group (not percentage of enrollees), and that it was not clear this was a permissible underwriting factor.

C. Stearns made a motion, seconded by G. Cupo for the Board to move into Executive Session for the purpose of receiving advice from Counsel as to whether it is permissible under the SEH Program statutes for carriers to treat small employers differently based on the size of the small employer, and other questions previously asked. The motion carried.

[The Board was in Executive Session from 11:35 A.M. until 12:10 P.M.]

E. DeRosa questioned if the Board wanted to issue the bulletin explaining the Board's reinterpretation of the interaction of the guaranteed issue and participation requirements, and if so, when?

The Board briefly discussed how to provide adequate lead time following issuance of the bulletin and publication of the guidelines.

C. Stearns made a motion, seconded by G. Cupo to issue the advisory bulletin on June 1, 2010 setting forth a September 1, 2010 operative date for the Board's reinterpretation permitting primary and secondary carriers to limit the number of plans that a small employer may purchase for the group only if all carriers have submitted their underwriting guidelines to E. DeRosa by June 1, 2010 for purposes of publication of the guidelines on the SEH Board's web pages.

There was brief discussion about what happens if a carrier has not submitted its underwriting guidelines by June 1, whether the carrier should be permitted to move to the Board's new position, or whether the issuance of the bulletin and operative date of the new interpretation should be delayed so that there is a consistent interval of at least 90 days between issuance of the bulletin and the operative date.

G. Cupo made a motion to amend the motion on the floor to delay the operative date of the Board's reinterpretation until October 1, 2010 if all carriers have not submitted their underwriting guidelines by June 1, 2010 to E. DeRosa.

Additional brief discussion followed in which it was suggested the carrier whose underwriting guidelines have not been submitted will not be eligible to implement any change in underwriting unless and until it submits underwriting guidelines for publication on the SEH Board's web page, but that there is no need to further delay the ability of other carriers to implement the change.

J. Stenger made a motion to amend the motion on the floor to issue the advisory bulletin on June 1, 2010 specifying an operative date of September 1, 2010 of the Board's reinterpretation, regardless of whether all carriers have submitted their underwriting guidelines by June 1, 2010.

C. Stearns rejected the amendment of her motion offered by G. Cupo, and accepted the amendment of her motion offered by J. Stenger.

The motion, as amended, carried by a unanimous vote.

IX. Public Comments

Ralph Borzillo, from Aetna, stated that Aetna will unwind its "slice" commission policy no later than September 1, 2010, and that the policy will be reversed for renewal business effective at the time of first renewal following the September 1, 2010 date. He stated that this information would be disseminated with other agent information through the normal communication channels. He also stated that Aetna has withdrawn most of its plan options from the SEH market as of August 1, 2010, so most Aetna plans will not be guaranteed renewable, and many employers for which Aetna will now be considered a secondary carrier will not be able to retain the existing Aetna plan.

X. Close of Meeting

D. Vanderhoof made a motion, seconded by T. Collins, to adjourn the meeting. The motion carried.

[The meeting adjourned at 12:40 P.M.]