FINAL
MINUTES OF THE OPEN SESSION 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
July 17, 2013

Members present: Herbert Ames *(arrived at 10:20)*; Gary Cupo; Darrel Farkus (Oxford); Margaret Koller; Nick Peterson (Horizon); Thomas Pownall (Aetna Health Inc.); Christine Stearns; Neil Vance (DOBI); Dutch Vanderhoof.

Others participating: Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; William Puskas, Deputy Attorney General.

I. Call to Order

M. Koller called the meeting to order at 10:17 A.M. E. DeRosa announced that notice of the meeting was provided to three newspapers and the State House Press Corp, 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. Public Comments

There were no public comments.

III. Minutes – *June 19, 2013*

D. Vanderhoof made a motion, seconded by G. Cupo, to approve the minutes of June 19, 2013. The motion carried.

IV. Staff Report

Expense Report

E. DeRosa presented the expense report for July, with expenses totaling $6,584. She explained that the expenses are related to professional services provided by JTM Solutions for Business, which had upgraded the Great Plains accounting program following an upgrade in computers and software through the DOBI, as well as charges from the Division of Law. She requested that the Board approve the transfer of $6,600 from its Money Market account to its checking account in order to pay the expenses, in the event the Board approved the expenses.

G. Cupo made a motion, seconded by T. Pownall, to approve payment of the expenses totaling $6,584, and to approve the transfer of $6,600 from the Board's Wells Fargo Money Market account to the Board's Wells Fargo checking account for the purpose of paying the July expenses.

Optional benefits riders
E. DeRosa reported that no optional benefits riders were filed since the prior meeting.

Transition Communication
E. DeRosa reminded the Board that, at the June meeting, she presented a draft communication for carriers to send to small employers, and explained that she made revisions based on comments from the Board, and was presenting the revised communication.

V. SEH Loss Ratios – *New Jersey law*
Avnee Parekh presented the DOBI's SEH loss ratio and refund data for 2011, clarifying that this report is based on data gathered in accordance with state loss ratio and refund requirements, not federal law. She noted the following:

- Total premium for calendar year 2011 was $3.22 billion – a decline from the premium total (of $3.38 billion) in calendar year 2010
- Average enrollment in 2011 was 717,000 – a decrease from the average enrollment of 769,000 in 2010
- The average loss ratio (before refunds) for the standard plan market was 82.8% – a decrease from the average loss ratio in 2010, which was at 83.4%
- The average loss ratio for the nonstandard plan market for 2011 was 103%, up considerably over the 2010 loss ratio of 85.6%
- Total premium in the nonstandard plan market declined from $41 million to $18 million between calendar year 2010 and 2011
- For the standard plan market, carriers owe a total of about $16.8 million in refunds for 2011, which is less than the $20 million owed in 2010
- For the nonstandard plan market, carriers owe a total of $18 million in refunds in 2011, which is also less than the $41 million owed in 2010

She stated that the report would be posted on the SEH section of the DOBI website.

VI. Ad Hoc Committee – *Employer Application and Certification forms*
E. DeRosa presented the report of the Ad Hoc committee, which was formed to discuss possible amendments to the employer application and certification forms (Exhibits N and O, respectively, of the Appendix to the SEH regulations at N.J.A.C. 11:21). She explained that the committee reviewed whether certain questions were still relevant, and considered ways to make the forms more user-friendly. She noted the Committee is still considering form changes, but was currently recommending the following:

- Retention of information about replacement plan status and incapacitated dependents
- Removal of the retiree category from the employer certification, because retirees should not be included in a count of employees
- Revisions to the collection of enrollment and waiver data and possibly the way in which waivers are counted towards participation

VII. Legal Committee
E. DeRosa reported that the Legal Committee met to address the question of whether the SEH Board can require enrollees who elect not to become covered under the group plan when first eligible to wait until an annual open enrollment period to join (barring the occurrence of a special

enrollment triggering event before then). She explained that the Committee believes that the SEH Board has the authority to limit the timeframes during which late enrollees may enroll, including limiting them to an annual enrollment period. She said the Committee noted that limiting enrollment to an annual enrollment period would be more consistent with the SHOP rules.

E. DeRosa clarified that the Committee believes that the employer chooses the annual enrollment period for employees, and that there is no annual enrollment specified for employers generally – meaning that employers may purchase coverage at any time, assuming the employer can meet the participation standards. She noted that there is an annual open enrollment period specified for late fall for employers that cannot meet the participation requirements. It was also noted that covered employers that fall below the minimum participation requirement do not automatically become ineligible, because eligibility is only re-evaluated annually. It was further noted that if an employer group becomes ineligible, resulting in the group plan being non-renewed, it creates a triggering event for the employees, who then have a special enrollment period during which they may enroll in the individual market.

Board members discussed when an employee can obtain a subsidy in the individual market, and the impact it has on employers. It was noted that the employee is only eligible for subsidy if the Marketplace determines that the employer is not providing “minimum essential coverage” – meaning that the coverage has at least a 60% actuarial value <u>and</u> is affordable for the employee. It was acknowledged that there is a safe harbor for employers in terms of penalties (applicable to larger employers) if the employee contribution for self-only coverage does not exceed 9.5% of the employee’s wages, but there was some confusion as to whether the employee might still qualify for a subsidy based on the employee’s <u>household income</u>, which might encourage employees to enroll in individual coverage rather than group coverage, and make it more difficult for employers to meet participation requirements. It was noted that some employers may consider the tax penalty acceptable in lieu of providing minimum essential coverage.

There was some discussion as to whether employees who waive employer coverage in favor of enrollment through the individual Marketplace should be credited towards an employer’s participation requirement for purposes of non-SHOP enrollment, but it was noted that: such a credit would require a change in New Jersey’s law; the federal SHOP law does not provide for such a credit; and, there would be adverse selection with respect to non-SHOP offerings.

VIII. Out-of-Network Reimbursements

The Board revisited the question of whether and how it should move forward with respect to its standards for out-of-network reimbursements in terms of having stakeholder outreach. Most Board members agreed that stakeholder meetings should be deferred until 2014, and that the Board can return to the issue of logistics for such meetings later in the Fall of 2013.

IX. DOBI Bulletin 13-14

N. Vance advised Board members that the DOBI released Bulletin 13-14 on July 15, 2013. He explained that the bulletin essentially sets forth the rating requirements applicable for standard health benefits plans to be offered in 2014 in accordance with the SEH and the Individual Health

Coverage laws, and consistent with federal regulations. He noted the requirements will be included in a future rule proposal.

X. Public Comment

The public participated in the Board discussion regarding participation requirements, employee eligibility for subsidy and whether additional valid (creditable) waivers should be recognized. There was no additional public comment.

XI. Close of Meeting

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

[The meeting adjourned at 11:15 A.M.]