

FINAL
MINUTES OF THE MEETING OF THE
NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD
HELD TELEPHONICALLY PURSUANT TO EXECUTIVE ORDER 103 (MURPHY)
April 21, 2021

Members participating: Herb Ames; Robert Axelrod (Oscar); Robert Benkert (United); Natalie Bernardi (Cigna); Gary Cupo; Philip Gennace (DOBI); Laura Gunn; Taylor Kopelan (Horizon); Thomas Pownall (Aetna Health); Tony Taliaferro (AmeriHealth).

Others participating: Ellen DeRosa, Executive Director; Chanell McDevitt, Deputy Executive Director; Rosaria Lenox, Managing Financial Officer; Jeffrey Posta, Deputy Attorney General.

I. Call to Order

E. DeRosa called the meeting to order at 10:00 A.M. She announced that notice of the meeting was provided to three newspapers of general circulation and the State House Press Corps, and posted at the Department of Banking and Insurance (“DOBI”), on the DOBI website, and at the Office of the Secretary of State in accordance with the Open Public Meetings Act.

E. DeRosa noted that, pursuant to P.L. 2020, c. 2, as a result of the state of emergency and public health emergency declared by Governor Murphy on March 9, 2020 through Executive Order 103, as subsequently extended,¹ due to the COVID-19 pandemic, the SEH Board’s regularly scheduled meeting is being held entirely telephonically rather than at the Board’s offices in Trenton. She stated that, in accordance with P.L. 2020 c. 11, electronic notice of the change in the meeting and the means by which the public could attend the meeting telephonically was posted on the Board’s website, and issued electronically to all known interested parties.

Members of the public were asked to identify themselves, and are listed at the end of these minutes.

II. Public Comments

There were no public comments.

III. Review of Minutes of March 17, 2021

T. Pownall made a motion, seconded by H. Ames, to approve the minutes of the meeting of March 17, 2021, without amendment. By roll call vote, the motion carried.

IV. Report of Staff – Expense Report

R. Lenox presented the April expense report, totaling \$421.23, including the costs for public notices for the SEH Board’s proposed rule amendments (at \$119.95), and a charge from the IHC Board to the SEH Board for 1/3 of the expense related to the servicing of the Great Plains accounting software by Admiral Consulting (at \$301.28). She explained that the Admiral Consulting expense is actually paid by the IHC Board, and the SEH Board offsets the amount it

¹ Executive Order 103 (Murphy) has been continuously extended multiple times since originally issued, the most recent extension occurring on April 15, 2021 pursuant to Executive Order 235 (Murphy).

owes to the IHC Board against expenses the IHC Board owes to SEH for other activities; consequently, the amount that remains to be paid is \$119.95. She recommended that the Board authorize a transfer of \$120.00 from its Wells Fargo Money Market Account to its Checking Account to pay the reported expenses.

G. Cupo made a motion, seconded by H. Ames, to approve the payment of the expenses reported for April, and to authorize a transfer of \$120.00 from the SEH Board's Wells Fargo Money Market Account to its Wells Fargo Checking Account for the purpose of paying the expenses as reported. By roll call vote, the motion carried.

V. New Jersey Educator's Plan

E. DeRosa reminded the Board that it had wanted to have a better understanding of how large an issue the New Jersey Educator's Plan may be before proceeding further in trying to assess whether and how to address the law.² She explained that she sent emails to all of the carriers offering standard health benefits plans, and requested information about enrollment of school boards, and reported that she only received information from 2 carriers, neither of which indicated they had any enrollment. T. Taliaferro reported that AmeriHealth has enrollment, having 5 school boards with a total of 80 employees and 137 members. E. DeRosa asked the Board whether this level of enrollment warrants exploring the possibility of offering the New Jersey Educator's Plan. She reminded the Board that the required plan design features a closed formulary, mandatory generics, and some copays that exceed current minimum standards established by the DOBI, and noted that the law permitted these features to be included in a fully-insured New Jersey Educator's Plan. She explained that federal requirements for small employer coverage are more difficult hurdles to address. She noted that it is not clear that the New Jersey Educator's Plan can meet any of the actuarial levels required under federal law, or the rating requirements that apply pursuant to the federal law, and the impact the rating requirements would have.

No Board member expressed an interest in pursuing the New Jersey Educator's Plan for small employers.

T. Taliaferro stated that he would reach out to E. DeRosa to discuss further how AmeriHealth will proceed with its current customers in light of the various laws.

VI. Finance and Audit Committee (FAC) Report – FY2022 Budget; Administrative Assessments for FY2022; Final Assessments for FY2020; Financial Statements for the period ending December 31, 2020

FY2022 Budget and Administrative Assessments

R. Lenox discussed the proposed FY2022 Budget, totaling \$293,950.00, which had been reviewed and recommended by the FAC. She noted that the total is substantially comparable, but a little higher than last year's budget (at \$291,030.00), based on an anticipated increase in legal fees due to rulemaking, office expenses, and depreciation, while maintaining salaries and fringe – fringe being budgeted at 55% for the fiscal year.

² Collectively, P.L. 2020, c. 44 and P.L. 2020, c. 137. These statutes were enacted on July 1, 2020 and December 18, 2020, respectively.

Interim Administrative Assessment for FY2022 and Final Administrative Assessment for FY2020

R. Lenox presented the Interim Administrative Assessment for FY2022 to support the FY2022 Budget, showing the allocation of the projected expenses among carriers operating in the small employer market based on net earned premium for CY2020, as well as the Final Administrative Assessment for FY2020, which reconciles carriers' shares of program expenses for FY2020 based on each carrier's net earned premium for CY2019 relative to one another, as opposed to the earlier interim assessment for FY2020 based on net earned premium for CY2018. R. Lenox explained the recommendation is to offset the FY2022 Interim Assessment by refunds that are due to carriers with respect to the Final Administrative Assessment for FY2020 in order to minimize the number of transactions that will need to occur. She noted that a total of \$14,920.09 is due to be refunded to carriers for FY2020, taking into consideration allocation of interest earned, and amounts owed to the SEH for that year, some of which cannot be offset, because the carriers are not liable for any of the FY2022 assessment for the FY2022 budget.

H. Ames made a motion, seconded by T. Taliaferro, to approve the Final Administrative Assessment for FY2020, the FY2022 Budget, and the Interim Administrative Assessment for FY2022, including the offset of refunds for the Final Administrative Assessment for FY2020 against amounts due for the Interim Administrative Assessment for FY2022 as shown, and authorized invoicing of the assessment and payment of refunds. By roll call vote, the motion carried.

Financial Statements for 2QFY2021

R. Lenox presented and discussed the financial statements for the period ending December 31, 2020, including the:

- Statement of Net Assets
- Statement of Changes in Net Assets
- Statement of Cash Flows
- Comparison of Budget to Actual Expenditures

She noted that the SEH Board saw a decrease in cash of \$41,000 over the 2 quarters, and continues to hold \$101,333.30 for the benefit of the Medicare Supplement Under Age 50 Program. She also pointed out that the Board's FY2021 Budget was set at \$291,030; that the Board had incurred expenditures of \$142,047.85, and is expected to end the fiscal year very close to budget, but favorably so.

VII. Draft Adoption of the Proposed Rule Amendments, with Changes

E. DeRosa stated that there were no attendees at the public hearing required for policy form amendments, but that a written comment was received concerning the contraceptive coverage. She explained that the commenter asked for clarification of whether the Board was interpreting P.L. 2019, c. 361 as essentially allowing for a closed formulary through coverage of therapeutic equivalent drugs, devices and products, or whether coverage of the requested drugs is required but subject to a cost share. E. DeRosa explained that the draft response noted that P.L. 2019, c. 361 requires coverage of either the requested contraceptive drug, device or product, or the therapeutic equivalent, and further, that the law requires coverage of such without cost-sharing, and thus, the statute permits a closed formulary, but that New Jersey also has rules at N.J.A.C. 11:22-5 that prohibit closed formularies. She said that the draft response consequently states both the requested

drugs, devices and products and their therapeutic equivalents must be covered, but that those required to be covered pursuant to P.L. 2019, c. 361 must be covered with no cost-sharing, while all other drugs, devices and products would still be covered under the terms of the prescription drug benefit.³ She noted that, although the commenter specifically asked about cost-share for items not included in the formulary for contraceptives, it is not necessarily accurate that all other contraceptives would be subject to cost-share, but that it would depend.

E. DeRosa further explained that the Board had some years ago elected to move the coverage of contraceptives to its own provision in the policy forms, out of the Prescription Drug provision, because the coverage for contraceptives was significantly different (at that time), but that the draft adoption now includes contraceptives back under the Prescription Drug provision to the extent they are not covered under the contraceptives benefit. She stated that the same question was presented to the IHC Board, but because the comment period on the IHC Board's rules had ended only a day or so prior to the IHC Board's meeting, the Board had not really had time to digest the comment, and elected to postpone taking action on the adoption as drafted. There was some consensus among the SEH Board members that they were not inclined to take action today either, but were willing to discuss further.

It was suggested that the law does not require a carrier to have a closed formulary, so a carrier could decide to cover all contraceptives and not substitute a therapeutic equivalent to simplify administration of the benefit.

The Board agreed to schedule an additional meeting on May 5 at 10:00 A.M., to again consider the comment, response, and possible changes to the policy form before taking action on the adoption.

VIII. COBRA/State Continuation under the ARPA

E. DeRosa stated that she continues to get questions regarding the application of COBRA/State continuation under the ARPA. She noted that there are not as many questions about whether state continuation is subject to the ARPA standards generally, but more about how to implement various aspects of the ARPA. There was acknowledgment among Board members and the public attendee, Suzanne Fitzgerald, that guidance from the federal government, including a set of Frequently Asked Questions issued on April 7, 2021, left many open questions.

It was noted that, while there is general agreement that people covered under the State Continuation law can elect to become a continuee, because there are no direct changes to the state law, and no specific directive in the federal law, there are a number of temporary rights available to COBRA-eligible individuals that are not clearly available to state continuation individuals, including: the right to make an election after previously waiving the right to continue coverage; and, the right to switch to another plan that the employer is offering. While it was noted that nothing in the FAQ precludes individuals eligible for state continuation from exercising these ARPA rights, it was suggested that each State having a state continuation right needs to clarify if they want their constituencies to be able to exercise the right notwithstanding aspects of the State's continuation law that might otherwise prevent it.

³ 42 U.S.C. 300gg-13(a)(4), addressing preventive services at no cost share, remains applicable.

P. Gennace stated that the DOBI and other state insurance regulators will be in discussions with federal regulators shortly, and all recognize that guidance from the states is needed to further clarify how each state's continuation laws will work with the ARPA.

The question arose regarding the federal model notices, and how employers should tailor them to take into consideration New Jersey's laws. E. DeRosa noted that New Jersey's 30-day election requirement is another issue that will need to be addressed by the State, and because employers are supposed to distribute the requisite notices no later than May 31, 2021, guidance will be needed soon.

Board members agreed that the State continuation issues should also be included on the agenda of the May 5, 2021 meeting.

IX. Public Comments

There was no additional public comment.

X. Close of Meeting

G. Cupo made a motion, seconded by N. Bernardi, to close the meeting. By roll call vote, the motion carried.

[The meeting adjourned at 11:30 A.M.]

Public known to be in attendance:

- Paige Chan, NJBIA
- Suzanne Fitzgerald, Savoy Associates