

**FLORIDA HEALTH INSURANCE ADVISORY BOARD**

**Board of Directors Meeting**

**June 11, 2009**

**9:30 A.M – 12:30 P.M.**

**Senate Office Building – Room 401**

**Tallahassee, Florida**

**APPROVED MINUTES**

**Board Members Present:**

Kevin McCarty

Rick Wallace

Joan Galletta

Tom Warring

Harry Spring

Leslie Foy

Walter Dartland

Mark LaBorde

Maria Wells

Adam Clatsoff

**Others Present:**

Mary Beth Senkewicz

Carol Ostapchuk

Audrey Brown

Claire Call

Rebecca McCarley

Eric Lingsweiler

**I. Call to Order**

Chairman Commissioner McCarty called the roll, welcomed the members, noted the presence of the quorum and called the meeting to order.

**II. Antitrust Statement**

Commissioner McCarty directed the members to the antitrust statement.

**III. Introduction of Members**

As requested by the Commissioner, the Board members and the Interim Executive Director introduced themselves and stated their affiliations.

**IV. Chairman's Report**

Commissioner McCarty thanked everyone for their attendance. He began his comments with an announcement that Senator Ted Kennedy had released the Affordable Health Choices Act yesterday, a 600 plus page document, which Ms. Senkewicz will review later in the meeting. The Commissioner also noted that the Governor signed Senate Bill 1122 as well as House Bill 675, "The Alonzo Mourning Access to Care Act", relating to Medicare Supplement Policies, which Ms. Senkewicz will also review.

## **V. Approval of Minutes: March 27, 2009**

Commissioner McCarty asked if there were any corrections or additions to the March 27, 2009 minutes. Ms. Foy noted that she did not participate in said meeting. Mr. Spring moved approval of the minutes as corrected and Mr. Warring seconded the motion. After duly noting the correction, the motion was approved. Mr. Dartland requested that we have a follow-up discussion on some of the matters discussed in the meeting of March 27<sup>th</sup>.

## **VI. Search & Selection – Permanent Executive Director**

Commissioner McCarty requested that Mr. Spring, Chair of the Selection Subcommittee report on the progress being made in the search and selection of a permanent Executive Director. Mr. Spring noted that roughly 50 applications had been received, reviewed, and the subcommittee came to a fairly quick reduction to four leading candidates. He stated that the subcommittee hopes to have a recommendation by the end of July. Mr. Dartland raised the question as to the rating criteria and its basis being fully disclosed to the applicants. Ms. Senkewicz explained that while the criteria was not published in advance, the candidates were made aware of the knowledge, skills and abilities required that were contained in the position description that was published along with the various advertisements.

## **VII. Final Assessment Action**

Ms. Ostapchuk reported that the 2008 assessments had been completed and collected in full. Pursuant to statutory requirements, the Board has determined that the 2008 interim administrative assessments, collected in 2008, for both the Individual Program and the Small Employer Program, represent a final administrative assessment for 2008 and the 2008 assessments did offset the 2008 expenses of the Programs and there were no excess funds remaining. Mr. Spring moved approval, and with a second by Mr. Clatsoff, the motion was approved.

## **VIII. Proposed 2009 Budget**

Ms. Ostapchuk presented a proposed Operating Budget for 2009, based primarily on previous years' operating budgets and actual expenses incurred for the past two years.

The Commissioner asked if there were any questions or comments. Hearing none, he asked for a motion to approve the proposed 2009 Operating Budget. Mr. Spring so moved, Ms. Foy seconded and the motion carried. Ms. Wells inquired as to the minimal advertising budget which is confined to advertising in the Florida Administrative Weekly.

## **IX. 2009 Proposed Interim Assessment**

Ms. Ostapchuk advised that based upon assessment history and the proposed Operating Budget for 2009, it is her recommendation that the Board consider an assessment of \$40,000 to the Small Employer Carriers and \$25,000 to the Individual Carriers for 2009.

The Commissioner asked for questions or comments. Hearing none, he asked for a motion to approve each of the proposed 2009 assessments. Mr. Spring suggested that we look at the market share that exists for each group to validate the split in future years and with that recommendation, Mr. Spring so moved, Ms. Wells seconded and the motion carried.

## **X. Executive Director's Report**

### **a. Monthly Financial Statements: April 30, 2009**

Ms. Ostapchuk briefly reviewed the year-to-date unaudited financial statements for each Program for the period ending April 30, 2009. No exceptions were noted.

### **b. Update on 2008 Audit**

Ms. Ostapchuk advised that the 2008 Audit has been completed and the draft Reports will be issued in the near future as soon as the peer review is complete. She noted that the draft Reports will be sent to the Audit Committee for their review and recommendations.

The Commissioner noted that we have only two current members of the Audit Committee since a member left the Board and he will address this later in the meeting.

## **XI. Report on 2009 Legislative Session**

Ms. Senkewicz reviewed House Bill 675, entitled "The Alonzo Mourning Access to Care Act" dealing with the extension of the Medicare Supplement open enrollment right which now covers persons enrolled in Part B and age 65 or over. There will now be an open enrollment period for those people enrolled in Part B due to being disabled and under age 65 as well as those enrolled in Part B and suffering from End Stage Renal Disease (ESRD). Ms. Senkewicz noted that while the disabled under age 65 are less expensive in terms of claims cost than the Medicare recipients over age 65, the ESRD population costs roughly four to five times more in ultimate claims costs; consequently, the experience of the pool is improved somewhat by the inclusion of the disabled participants under age 65. In terms of transition, there are currently a handful of companies that are currently issuing to these people. As a result of the change companies will have an opportunity to redefine their age bands and there will be a transition period until 2015, before the pooling requirement across all classes of business will be required. She also noted that Governor Crist signed the bill on March 26.

Ms. Senkewicz also discussed Senate Bill 1122, dealing with payment of health insurance benefits and claim forms. This bill expands the pool of eligible providers to include payment to out-of-network providers directly and requires the insurer to make claim payments to essentially any provider. If the Office of Program Policy Analysis and Government Accountability (OPPAGA) finds that the Third Party Administrator of the State Employee plan realizes an increase in costs due to this change, they are required to conduct a study and report the results to the Legislature by March 1, 2012. Mr. Dartland raised the point that all emergency room services are considered out-of-network and pointed out the need for increased consumer knowledge and education. In addition, he pointed out that this raises concerns regarding incurring of large charges to the consumer for balance billing when utilizing the out-of-network providers. Ms. Senkewicz noted that Florida law differs for insurance companies and health maintenance organizations with regard to balance billing and the Board may want to look further at this issue.

Ms. Senkewicz also highlighted House Bill 285, which altered the membership of the Low Income Pool Council by increasing the membership of the Council from 17 to 24 members; House Bill 5129 which strengthened the provisions for child support enforcement as they relate to health obligations under child support requirements and Senate Bill 1840 which added a \$1.00 surcharge to a pack of cigarettes and a \$.60 surcharge on all other tobacco products to fund Medicaid, with 5% of the revenue generated dedicated to researching health issues related to tobacco usage. An increase in the Board representation of Florida Healthy Kids was also mentioned with new members to be nominated by the Florida Dental Association and the Secretary of the Department of Children and Families. She also pointed out that the Department of Health is directed to create an automated system to monitor the use of certain drugs. The cost estimate range from \$100,000 to \$4,000,000 but the funding must be achieved to accomplish this.

Ms. Senkewicz then discussed the Federal Stimulus Package funding that will be used to create the Florida Electronic Health Records Exchange dealing with the creation of systems and health information technology to be administered by the Center for Health Statistics.

Ms. Senkewicz also advised that although she worked with the Governor's staff in an attempt to expand Florida law for mini-COBRA to mirror the federal bill that expanded COBRA and granted a second election to persons who lost their jobs between September 30, 2008 and February 17, 2009, and want to continue their coverage under COBRA, those efforts were not successful.

Mr. Dartland inquired as to the proposed increase in the capital and surplus requirements for prepaid limited health plans. Ms. Senkewicz reported that while there was language circulating during session to accomplish that, it was not successful.

## **XII. Update on 2009 Federal Legislation**

The Commissioner opened this discussion with a summary of some of the financial issues facing our nation and advised that he met with the Honorable Barney Frank, Chair, U.S. House of Representatives Committee on Financial Services, last week regarding the regulation of the financial services industry as a whole and the possible systemic regulator that might emerge as a result of federal actions currently undergoing review. He also met with the Honorable Kathleen Sebelius, Secretary, U.S. Department of Health and Human Services (HHS), in anticipation of the changes to the health insurance industry as well. He reported that Washington is looking at a wholesale change in the regulatory structure of all financial institutions, perhaps falling under a systemic regulator under the Secretary of the Treasury while other factions are discussing a more collegial approach to regulation by sector under a council of sorts.

Ms. Senkewicz then addressed the general climate in Washington evidencing a movement to a series of free-flowing roundtable discussions at which many representatives of the various interested and affected parties have participated. The two big issues in the health care reform discussion are will there be a public plan in addition to the private plans, and how will reform be funded. She advised that with President Obama wanting a bill on his desk by November, the various committees are trying to make this happen.

She then went directly into the bill released yesterday by the Honorable Edward Kennedy, Chair, U.S. Senate Committee on Health, Education, Labor and Pensions, The Affordable Health Choices Act. She noted that the breadth of the bill is astounding. Ms. Senkewicz briefly went through each of the Titles contained in the bill, highlighting major provisions as they arose, including but not limited to the creation of the Affordable Health Coverage Gateway which would require that states (1) establish such a gateway; (2) become a participating state and request that the Secretary of HHS establish the gateway; or (3) be a non-conforming state and defer to the Secretary of HHS to operate the gateway for six years. In order to conform, Florida would have to amend its laws on rating and benefit plan structure and in addition, in her opinion, the Florida Health Choices Corporation would not qualify as a gateway without legislative changes as well. Licensed health insurers would be allowed to continue to sell plans outside of the gateway. The Department of HHS will oversee the financial integrity of gateways by conducting annual audits of the gateways with the Comptroller General conducting ongoing reviews. In order to become an eligible plan for the gateway, the plans must be certified by the National Committee for Quality Assurance (NCQA).

With regard to benefit design, Ms. Senkewicz advised that plans will be designed by an outside group to be determined. Various public options will be considered qualifying coverage, among them Medicare, Medicaid, Tri-Care, Indian Health Services. The bill also contains provisions for various subsidy structures including credits to defer premium costs for low and moderate income groups as well as small business credits. Individuals will be required to have minimum coverage and employers who do not provide coverage

will be required to contribute to the cost of the individuals' coverage. The bill also contains various provisions addressing the overall health of Americans, fraud and abuse detection and prevention, guaranteed issue, and financial incentives for high quality care by providers. In addition, the bill includes the creation of Navigators which, upon questioning, Ms. Senkewicz likened to our current agent structure. Various members requested a copy of the bill and Ms. Senkewicz will forward the summary to the Executive Director to disseminate to the members.

Ms. Senkewicz also addressed developments in Washington relative to state-based versus federal regulation of insurance. Mr. Dartland commented that he had met with the Maryland Insurance Commissioner to discuss the move to federal regulation of insurance which he commented was largely a result of the fall of AIG, which was not an insurance failure but rather a failure of a financial institution that issued derivative swaps, regulated by the Office of Thrift Supervision (OTS). Commissioner McCarty explored the various forms of regulatory reform being presented, discussed and considered in Washington and expressed his firm belief that the state-based system of collegial cooperation among the state regulators goes very far in terms of consumer protections and solvency oversight. Mr. Clatsoff commented that the various state insurance departments are very much "hands-on" regulators and this is not something we have seen at the federal level.

### **XIII. Report on Cover Florida Implementation**

Mr. Warring reported that the Cover Florida Plan went live on January 1, 2009 with enrollment for coverage beginning February 1, 2009. The program is subject to joint oversight by the Agency for Health Care Administration and the Office of Insurance Regulation. He stated that two basic products must be offered under the Plan; (1) preventative services and (2) catastrophic services, which includes emergency room services, inpatient treatment and outpatient treatment. The eligibility criteria includes ages 19 through 64, not covered under any public program, not currently covered by private insurance, and the applicant must have been uninsured for six months prior to enrollment, subject to some exceptions. The product is guaranteed issue and guaranteed renewable but there are some pre-existing condition restrictions for a six-month treatment look-back period. Some type of prescription coverage must be provided as well either through a prescription drug benefit or a discount plan.

Since its inception, approximately 2,400 individuals have enrolled as of April 30, 2009. Mr. Warring stated that given the short time the program has been operating, the Agency for Health Care Administration is very pleased with the results thus far.

Commissioner McCarty commented that in addition to providing affordable coverage alternatives for the uninsured, the interest in the program has also generated sales of other types of health coverage. Mr. Clatsoff agreed that his experience has reflected that as well. One of the possible legislative changes that the group should possibly discuss going forward is language that would allow Cover Florida to accept those people whose employer has cancelled their plan in view of the economic situation.

Mr. Clatsoff pointed out that given the state of the economy, the incidence of employers cancelling health plans is occurring more frequently and Cover Florida should be amended to accept enrollees in those cases by waiving the current six month uninsured requirement. Mr. Dartland would like to survey enrollees as to their experience in various plans. Mr. Warring explained that one of the key philosophical premises of the oversight of Cover Florida was to keep the regulatory oversight to a minimum in order to minimize the cost of the programs and provide temporary coverage for those individuals who are currently uninsured without intrusion into the experience of the plan participants so as to keep the administrative costs low for Cover Florida.

#### **XIV. Other Business**

The Commissioner noted there is a vacancy on the Audit Committee and as a result, the Commissioner has asked Mark LaBorde to serve as a member of the Committee.

Mr. Dartland raised an issue about increased concern by the public and the media relative to medical discount plans and inquired as to the regulation of these plans. The Commissioner responded that legislation was passed in the past few years that established minimum standards for both pricing and operation of discount plans. Ms. Senkewicz added that the principals of these plans are subject to background checks as well. Mr. Clatsoff noted that these plans do provide a valuable service in the event that a person has no health insurance and there are good discount plans. The Commissioner noted that Florida is one of the only states that currently has rate regulation of discount plans.

Mr. Spring raised the possibility of the Board meeting more often during this period of health care reform and Commissioner McCarty agreed that more time may have to be spent in the coming months to review and digest the various plans coming out of Washington and their effect on Florida. Additionally, Mr. Spring would also like the group to explore various other issues including licensure laws for hospitals, cost disclosures for benefits provided in and out of network and disclosure of pricing for providers to determine reasonableness of fees for various treatments and procedures. Mr. Dartland also raised the issue of disclosure of fees and the determination of reasonable fees for both in and out of network charges.

#### **XV. Adjournment**

There being no further business before the Board, the meeting was adjourned.

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Kevin M. McCarty, Chairman

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Date