

NH Vaccine Association – Board of Directors Meeting

September 3, 2013

Mount Washington Room, Harvard Pilgrim Health Care

Presiding Officer: Susan Tenney, Chair

I. Attendance. Participating in all or part of the meeting in person (P) or by telephone (T) were the following individuals:

Directors

Susan Tenney – Harvard Pilgrim (P)
Scott Beaudette – CIGNA Health Care (P)
Dr. Everett Lamm (P)
Dr. Jose T. Montero – DHHS (P)
David Sky – NHID (T)

DHHS

Marcella J. Bobinsky (P)

Outside Counsel

Mark McCue, Esq. (P)

KidsVax.org®

Fred L. Potter (P)
Claire M. Roberge (P)
Terry Mills (P)

Members of the Public

Connie Spence (P)
Kim Rietkerk (P)
Tobi Sheiker (P)
Max Power (P)
Anna Kaspanova (P)
Stephanie Mills (P)
Michael Goldstein (P)

II. Summary of Actions Taken and/or Recommended

A. Actions Taken (votes adopted)

1. To approve the minutes of the July 24, 2013 Board meeting as presented.
2. To ratify prior Board action by consensus to retain Mark S. McCue, Esquire regarding NHVA right to know guidance.
3. To accept the Audit Committee's recommendation to accept the final signed financial statements as contained in the Board packet and publish them to the website.
4. To retain other legal input concerning implementation of the new statute governing NHVA.
5. To form a Nominating Committee for nomination of the initial reconstituted Board under the new statute made up of the officers of the New Hampshire Vaccine Board.

B. Follow up Task/Action Items

1. KidsVax® will prepare improved guidelines concerning the Right to Know law for Board action at the November meeting.
2. Mrs. Mills will poll the Directors after the Board meeting regarding the scheduling of upcoming Board meetings.
3. KidsVax® was instructed to confer with the Department and propose rules for an interim election at the September 24 meeting. KidsVax® will come back with a specific proposal that uses a database that the Board finds is an acceptable proxy and the Commissioner will be prepared to approve for purposes of getting the next Board in place.
4. For the Special Meeting scheduled for September 24, KidsVax® will have input from retained outside counsel, a recommendation about the assessments, and a recommendation as to election proceedings with a slate of nominees that can be approved by the Board.
5. Based on the report entitled New Hampshire Insurance Department's Analysis of Child Vaccine Use in New Hampshire dated February 21, 2013, Mr. Potter was asked to give his best estimate as to what the assessment rate would be using the prior law's version of covered lives versus retroactive child covered lives for each carrier represented on the Board.
6. Mr. Potter will respond to payer inquiries concerning their assessment rate letting them know that the schedule for implementation will be set around October 1 and that they will be provided with the information so they do not need to be concerned about noncompliance penalties.
7. Mr. Potter was asked to post a list of FAQs to the website concerning the assessment and once the page is posted notify the Board that some FAQs on this topic have been published. Mr. Potter proposed giving the Board 72 hours for review once they are circulated prior to posting them to the website.

III. Minutes

Welcome and Introductions

At approximately 2:39 p.m., a quorum having been established, Chairperson Susan Tenney called the meeting to order. Ms. Tenney surveyed the Board for any additional items to be added to the agenda. Ms. Tenney indicated her desire to discuss the timing of the collection of covered live data so that at a future meeting the Board can set the actual assessment amount. Roll call was taken of individuals participating in the meeting both in person and via telephone. Dr. Montero indicated to the Board his need to leave the meeting for a brief period. He designated Ms. Bobinsky as his representative in his absence.

Further Enhanced Public Access

The NHVA Board requested that Attorney Mark McCue, a partner at the law firm of Hinckley, Allen & Snyder in Concord, look at whether the New Hampshire Right to Know law, RSA 91-A, applies to the NHVA. It clearly does not contemplate applying to a non-profit corporation such as NHVA. It is specifically applicable to public bodies defined in the statute as the legislature, the governor's executive council, state agencies and their commissions, and political subdivisions, which are typically municipalities, school districts, and school administrative units. If the NH Supreme Court had not issued any decisions, he would be comfortable in concluding that RSA 91-A does not apply to NHVA. It certainly does not apply by its express terms. However, over the course of the last 10 years, there have been cases brought to the NH Supreme Court in which the court has concluded that some entities are neither purely public nor entirely private. Even the court has stated it is difficult to determine whether the Right to Know law should apply to them. In at least four instances the court has determined deciding factors that must be met or not be met in order to be subject to the Right to Know law. The court determines the structure and function of an entity to assess the entity's relationship with government and determine whether the entity is conducting the public's business.

Because of these judicial decisions, Attorney McCue indicated that it is impossible to say whether or not, if presented with a case, a court would hold that NHVA is within the auspices of RSA 91-A. The court would be expected to take a look at a number of factors—how the Association is organized, how it conducts itself, and the purpose for the organization and then draw on those facts to make a subjective determination of whether the Right to Know law applies. Since it is impossible to know whether or not the organization is subject to the Right to Know, it is essentially a business decision by the Board to follow 91-A. The hesitancy Mr. McCue has with that is that, again, by its express terms, 91-A does not apply to this type of organization and so, therefore, even though the NH Supreme Court has extended its reach to certain non-governmental agencies, that statute really is not designed to fit the governance structure of an organization such as the NHVA. Some other organizations have embraced the spirit, intention, and functionality of the Right to Know law, but allowed good corporate governance practices to override the more technical requirements of RSA 91-A when good corporate governance practices would benefit the organization and its functions and purposes more than the strict terms of RSA 91-A, which was designed for public agencies and government departments. Mr. Potter offered, in light of this advice from counsel, to prepare a menu of guidelines for the Board's consideration and action.

Consent Calendar Items

Upon motion duly made by Dr. Montero and seconded by Mr. Beaudette, with the abstention of Dr. Lamm, it was unanimously

VOTED: To approve the minutes of the July 24, 2013 Board meeting as presented.

Upon motion duly made by Mr. Beaudette and seconded by Dr. Montero, it was unanimously

VOTED: To ratify prior Board action by consensus to retain Mark S. McCue, Esquire regarding NHVA Right to Know guidance.

Executive Director Updates

Mr. Potter gave a brief overview of his Executive Director Report. Key data was received that will be helpful in informing some assessment setting in the future. The Board indicated earlier that it desired to hold off on the assessment setting, which is the largest financial decision of the year until the new Board constituted under HB664 is in place. Board members who are appointees will persist through the process, but some of the payer representatives may be changing. The total covered lives is up, which from the data seems to be a function of the State remaining in the system. Mr. Potter indicated that it is his understanding that Local Government Center (LGC) is required by a judicial order to maintain stop loss coverage for at least a year. Accordingly, the market's largest stop loss carrier is up meaningfully in its covered lives. Under the new statute, the mission of the NHVA will be to increase participation further so the assessment is more equitably shared.

The UnitedHealthCare settlement has been collected. NHVA is going into the next year with a considerable cash balance due to this collection. The remittances to the state were up slightly last year over the preceding year, but the requested number also is up meaningfully. This is due to the fact that there was not an overpayment by NHVA last year, leaving only \$250,000 of carry forward where in some prior years NHVA had been credited with \$2-3 million. Additionally, there are a host of issues surrounding how the federal government is restricting use of §317 funds, so there is less flexibility. The good news is that there has generally been an uptake in terms of compliance and that, on top of the fact that vaccines are more expensive, has caused the request to go up. The §317 funds, which are discretionary funds, have been severely restricted by the federal government. This is new information that all the states are contending with. New Hampshire's DHHS has done an admirable way of doing that.

The 2012/2013 financial statements and the Auditor's Report were discussed. The Audit Committee met with the Auditor's earlier today and had the customary executive session. Ms. Tenney reported that the Audit Committee recommends to the full Board that the financial statements contained in the Board packet be adopted as final statements and published to the website. Upon the Board's instruction, KidsVax® will work with the auditors to get a final signed Auditor's Report and once signed, it will be published.

Upon motion duly made by Mr. Sky and seconded by Dr. Montero, it was unanimously

VOTED: To accept the Audit Committee's recommendation to accept the final signed financial statements as contained in the Board packet and publish them to the website.

Implementation of HB664 Changes

With the new statute and the new assessment system, a great deal of progress was made over the summer. The updated NHVA website was completed at the end of August. The build-out of the assessment tool has begun. The test version will be available to KidsVax® on September 20 and should be on track to have that up by the end of the month.

Mr. Potter outlined the suggested schedule of steps for moving forward with the implementation of HB664 at length. Mr. Potter indicated that the assessment will be previewed with the Assessment Task Force prior to offering training sessions and the governance documents will be previewed by the Governance Drafting Task Force before bringing them back to the full Board as well. Mr. Potter reviewed his memorandum with suggestions for allowing the payers to elect their representatives and otherwise the Board remains the same. The top five carriers have not changed, except that based on New Hampshire Health Plan (NHHP) data, Symetra has become number three. This is primarily due to the stop loss purchases that have occurred over the summer. Ms. Tenney raised the question of the covered lives now being based on the carrier who covers the medical expense, as opposed to the reinsurer. The report of the NHHP shows Symetra as being the largest carrier. Mr. Potter indicated that Ms. Tenney was correct in pointing out that the NHVA guidelines may be different for New Hampshire Health Plan's process. Accordingly, covered lives should be reported at the level of the claims paying entity, in which case the Board distribution may not be affected at all. Ms. Tenney's understanding is that the children are counted at the claims paying level and that those organizations that are solely reinsurers will no longer be part of this process. In that case, those numbers would be redistributed among the ASO carriers or the TPAs.

Further discussion ensued regarding the definition of a covered live, calculating covered lives, and surveying all of the insurance carriers in the state and explaining the difference and how they might now have covered lives. NHVA will now be building out the assessment reporting system for child covered lives so that it will be available as a tool. Ms. Tenney asked Mr. Potter to prepare a document to carriers explaining what they need to provide to NHVA, how it might be different from what they've provided in the past, and perhaps prepare a document that would give them FAQs so that they have a full understanding of what has changed to determine covered lives. Mr. Sky raised extensive discussion with respect to the steps necessary for election of a new Board, the basis for calculating child covered lives, and the timing for setting the assessment rate based on the language in the new statute under RSA 126-Q:3, Section V(e). It was the sense of the Board that an in-person Board meeting be scheduled within a few weeks to discuss this matter further since the points raised by Mr. Sky may change prior expectations as to the effective date of HB664 changes.

Upon motion duly made by Dr. Lamm and seconded by Mr. Beaudette, it was unanimously

VOTED: To retain other legal input concerning implementation of the new statute governing NHVA.

Mr. McCue was asked if his firm would consider this engagement and get a proposal to the Board. A tentative date was set for Tuesday, September 24, 2013, at 1:30 p.m. at a public meeting room at the New Hampshire Insurance Department (NHID) in Concord.

For purposes of the election process, Mr. Potter proposed having a Nominating Committee to nominate carrier representatives and the Annual Meeting could be held in connection with the election of the new Board. It was Mr. Potter's sense that the new Board should be in place prior to recommending a Plan of Operation to the Commissioner incorporating all of the changes and let that new Board recommend the changes to the Plan of Operation. It could then be given to the Commissioners for review and approval. KidsVax[®] was instructed to confer with the Department and propose rules for an interim election at the September 24 meeting. KidsVax[®] will come back with a specific proposal that uses a database that the Board finds is an acceptable proxy and the Commissioner will be prepared to approve for purposes of getting the interim Board in place.

Upon motion duly made by Mr. Beaudette and seconded by Dr. Lamm, it was unanimously

VOTED: To form a Nominating Committee for nomination of the initial reconstituted Board under the new statute made up of the officers of the New Hampshire Vaccine Board.

Mr. Potter indicated to the Board that KidsVax[®] will have at the Special Meeting scheduled for September 24th some input from retained outside counsel, a recommendation about the assessments, and a recommendation as to election proceedings with a slate of nominees that can be approved by the Board.

Meanwhile, KidsVax[®] will continue to build the assessment and will be ready to begin the assessment work at the October meeting. Mr. Sky requested that Based on the report entitled New Hampshire Insurance Department's Analysis of Child Vaccine Use in New Hampshire dated February 21, 2013, Mr. Potter give his best estimate as to what the assessment rate would be using the prior law's version of covered lives versus retroactive child covered lives for each carrier represented on the Board. Mr. Potter will respond to payer inquiries concerning their assessment rate letting them know that the schedule will be set around October 1 and that they will be provided with the information so they do not need to be concerned about noncompliance penalties. Mr. Sky requested that a list of FAQs concerning the assessment be put on the KidsVax[®] website and once the page is posted notify the Board that some FAQs on this topic have been published. Mr. Potter proposed giving the Board 72 hours for review once they are circulated prior to posting them to the website.

Old Business

Ms. Tenney reported to the full Board that the KidsVax[®] contract has been finalized by the Contract Task Force. NHVA now has a five-year contract with KidsVax[®], a copy of which is included in the Board packet.

The Nationwide refund request was deferred until the next meeting. Before acting on Nationwide the Board had asked for an explanation as to why they over reported the lives for which they are asking for refunds. That material has not yet been received to present to the Board.

Public Comment

Ms. Kaspanova inquired as to who confirmed the KidsVax[®] contract. Mr. Potter explained that at the last Board meeting there was a committee delegated with the authority to negotiate and finalize the agreement. As stated in the minutes which already had been distributed, the committee consisted of Dr. Fredenburg, Mr. Beaudette, and Ms. Tenney.

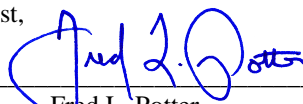
Upon motion duly made by Dr. Montero and seconded by Mr. Beaudette, it was unanimously

VOTED: To adjourn.

There being no further business, the meeting adjourned at approximately 4:30 p.m.

At true record.

Attest,



Fred L. Potter
Secretary, Pro Tem