

NH Vaccine Association – Teleconference

May 17, 2013

Presiding Officer: Susan Tenney, Chair

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

<u>Directors</u>	<u>DHHS</u>
David Sky	Kate Frey
Susan Tenney	
Jose Montero (T)	
Scott Beaudette	
Maria Proulx	
Marcella Bobinsky	
David Fredenburg	
	<u>Other</u>
<u>KidsVax.org™</u>	
Fred Potter	
Emily McKenna	

II. Summary of Actions Taken and/or Recommended

A. Actions Taken (votes adopted)

With respect to the if unreported United Healthcare catch up, that no back payment beyond three years would be requested. The board authorized, with payment, United sign the agreement by May 24, and remit payment by June 1. They agreed that the interest rate charged would be 50% of the amount as computed through May 15 by David Sky. If payment is deferred beyond June 1, then the interest rate from June 1 forward reverts to the 18% as stated in the Plan of Operations.

B. Follow up

Ms. McKenna will poll the Board and schedule another one hour Board teleconference.

III. Minutes

Ms. McKenna did a roll call. A quorum having been established the meeting began. The agenda was slightly rearranged to accommodate Kate Frey's schedule. Susan Tenney asked that an item be added to the agenda to address the matter of members of the public attending Board meetings. Marcella Bobinsky asked that Dr. John Modlin's resignation from the Board be added as an agenda item as well.

Kate Frey reviewed with the Board the recent activities surrounding HB 664. The Senate Commerce Committee voted to pass the bill with an amendment. The amendment was regarding more public representation and a report to the legislature. She suggested that some work will need to be done before the next vote on May 23, to make sure that positive information regarding the program is available. Ms. Frey said that she will be working on some bullet points to give the senators. If someone gets up and speaks about vaccines in a negative light there needs to be corrective information available. She will be approaching several senators with nursing and public health experience to help present this information.

Ms. Tenney said that it is important that people understand the meaning of the bill because if you look at the literature that was given to the committee, at its face value it makes it look like NHVA is adding a tax onto self-insured employers. Senator Bradley plans to take the bill to the floor, so Ms. Frey is putting together summary reference information for him. Ms. Tenney asked what role the original bill sponsors continue to have. Ms. Frey said that it would be a good idea to send them all an email that says "you are a sponsor of this bill and we are aware that you may have gotten some counter information, but here is exactly what the bill intent is." Need to make sure the bill sponsors have information and need to let them know that NHVA is ok with the amendments that were voted out of committee.

Ms. Frey let the Board know that there could be floor amendments added to the bill. There was further discussion regarding the information that was circulated that was against the bill. Ms. Frey said she would let the Board know when the next hearing is scheduled for, and had to leave the meeting for another meeting. Ms. Tenney asked the Board if they had any further comments on the legislative issue. Dr. Fredenburg had a few comments regarding the nature of the counter information that was published and sent to the committee.

Mr. Potter then gave a brief background on the past due United Healthcare assessments. He indicated that in the packet that was sent out was the original United Healthcare offer letter. This is a correction to supplement their directly insured lives with their stoploss coverage lives, which they had not been doing. And then at NHVA's request when they offered a lower number they recalculated and included the calculation based upon the Insurance Department's workplace rule which produced about a 40% increase in the proposed settlement, that totals roughly 2.1 million dollars. Mr. Potter said that David Sky calculated the interest in accordance with the Plan of Operation. United Healthcare is asking for three things. One is that the Board not look back prior to the three years that they have gone back and calculated, the legal theory for this is that that is the statute of limitations. Three years is the general amount applicable to contract matters. Mr. Potter said that the discovery rule may be used to counter that. So there are three questions, 1) application of the discovery rule 2) application of the interest or waiver which United has requested 3) waiver of any administrative fees. NHVA has never charged any administrative fees, but has collected interest for late payment. Mr. Potter said that he had originally recommended this settlement, but indicated that he is now reconsidering that recommendation after looking through the Plan of Operation again, because it appears to make interest mandatory. Attorney Pfundstein has confirmed that the Department of Insurance is okay with the settlement agreement as proposed.

Dr. Fredenburg asked if NHVA was aware that something odd was going on before UHC came forward. Mr. Potter said that controller Claire Roberge picked up irregularities in one of UHC's filings when she did the billing in November. Dr. Fredenburg expressed concern regarding precedent, he stated that he didn't want other companies becoming negligent because the precedent the Board set with waiving interest for UHC. Mr. Potter pointed out that the waiver is being granted because they came forward of their own accord. Mr. Potter said that he forwarded the Board's request for more background information on the numbers to Attorney Pfundstein, he called Mr. Potter and said that it's hard for them to pull that data. Mr. Potter told him that he should tell the Board that so that they can make a decision to pursue it or not. The reported difficulty in pulling these numbers is plausible since some of the lives are acquired business. Putting the systems together could be quite hard to accomplish.

Ms. Proulx asked what the Board's legal opinion is about Attorney Pfundstein's claim that interest can be waived based upon information he received from the Department of Insurance ("DOI"). Mr. Sky said that their reading of the statute is that one of the Commissioner's only powers is when he is notified by one of these associations that one of its members is not compliant with the Plan of Operation or not paying assessment, the Commissioner doesn't have any authority until he is notified by the Association. Ultimately, with the Commissioner's approval, the Association could amend or deviate from the Plan of Operation as they see fit. In the case of the New Hampshire Health Plan for example, the whole board voted and decided that they were going to settle on these terms. Recognizing that there might be a deviation from the Plan of Operation, the Commissioner recognized that they have that ability and feels that this deviation is reasonable. Mr. Sky pointed out that they Board's first enforcement step obligation is with the DOI and that before they brought this matter to court they would need to bring it to hearing at the DOI. The Commissioner then would have to make a ruling. Ms. Proulx said that that answers her questions, but Attorney Pfundstein seems to suggest that the Board has to waive the interest because the Commissioner has agreed with UHC's proposal. Mr. Sky said that he thinks Attorney Pfundstein seems to suggest that this other organization (NH Health Plan) and the Commissioner is ok with it, therefore NHVA shouldn't charge interest. In Mr. Sky's view, this doesn't mean that the Board can't come to a different conclusion and negotiate on that. He pointed out that the only place interest is required is in the Plan of Operations which the Board is fully in control of. Mr. Potter said that he thinks it is entirely up to the Board what to accept or not accept, and what to establish as a policy going forward. Mr. Sky said that if an agreement cannot be reached than the matter will go to the Commissioner. Mr. Beaudette said that he liked the idea of giving them a reasonable break on the interest, though we should be as consistent as possible with the Plan of Operation but given that they did self-disclose, 18% or .5 million on two-million dollars is quite high. Mr. Potter said that the interest rate in the Plan of Operations was created by CML Administrators to produce an 18% annual rate.

Ms. Tenney suggested that the Board make an offer that we are willing to waive the interest rate as stated in the Plan of Operation, if the Commissioner of Insurance agrees, but that we want an interest that is similar to the interest that we lost on the investment. Mr. Potter said that sounds fine, but there would need to be a fixed rate stated. Mr. Sky said that the Board should just put a number in. Mr. Potter said that it is not a bad idea to have some sort of interest in it to make sure that they get it done. Dr. Fredenburg asked what the Board will do for the next insurance company that under reports and doesn't want to pay interest, does the Board change the Plan of Operations again? Mr. Potter said "no." He suggested that the policy for self-reporting be (i) we would be inclined generally not to pursue amounts accrued prior statute of limitations period and (ii) will entertain some adjustments to interest rates for those who come forward. If you don't come forward and we have to pursue you then, all interest will be charged.

Discussion regarding the exact details of the offer ensued.

Upon motion duly made and seconded, it was unanimously


VOTED: With respect to the unreported United Healthcare catch up, that no back payment beyond three years would be requested. The board authorized, with payment, United sign the agreement by May 24, and remit payment by June 1. They agreed that the interest rate charged would be 50% of the amount as computed through May 15 by David Sky. If payment is deferred beyond June 1, then the interest rate from June 1 forward reverts to the 18% as stated in the Plan of Operations.

The Board authorized either Fred Potter (Executive Director) or Dr. David Fredenburg (Treasurer) to execute appropriate settlement documents in accordance with the above vote.

There were still several agenda items to discuss, but the previous items having taken up the whole scheduled meeting time the Board agreed to schedule another meeting at a later date to finish up the agenda items.

There being no further business, the meeting adjourned at approximately 9:05am

Attest,



Fred L. Potter
Secretary, Pro Tem

