

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

July 15, 2009

Conference Room 410 - No. 1 Capitol Building, Honolulu, HI

I. **CALL TO ORDER:** Chair Woods called the meeting to order at 10:30 a.m., with a quorum present.

MEMBERS PRESENT:

- Lynne Woods
- Charles Au
- Sharon L. Pang
- Dorvin Leis
- Donald Dymond
- Peter Yukimura
- Bruce Bucky
- David S. De Luz, Jr.

ABSENT MEMBERS:

- Michael Yee
- Richard Schnitzler

STAFF:	<u>DBEDT</u>	<u>Office of the Attorney General</u>
	Steve Bretschneider	Margaret Ahn
	Dori Palcovich	
	Naomi Chinen	

WORKING LUNCH AS THE MEETING PROGRESSED

II. **APPROVAL OF JUNE 17, 2009 MINUTES**

Mr. De Luz, Jr., recommended that the June 17, 2009 minutes be approved as presented, Mr. Yukimura seconded, and the Board members unanimously agreed.

III. **NEW AND OLD BUSINESS**

- A. Review and discussion of post public hearing statement of HAR Chapter 17-1711 to 17-1735, “Retroactive Medical” under Subtitle 12, Med-QUEST Division (DHS) – Ms. Aileen Befitel, Health Coverage Supervisor from the Med-QUEST Division at DHS, explained that the public hearing, held on May 26, 2009, elicited no written testimony and no testifiers. Ms. Pang indicated that although the proposed rules targeted a certain group that would benefit from these rules, she believed that this group was unaware of the rules; thus, they are unaware that these amended rules will take away their benefits. Ms. Pang recommended that the proposed rules proceed to the Governor for adoption, Mr. Yukimura seconded, and the Board members unanimously concurred.
- B. Review and discussion of amendments to HAR Chapter 17-1714 to 17-1732, “Pregnant Women and Immigrant Children” under Subtitle 12, Med-QUEST Division (DOH) – Ms. Aileen Befitel, Health Coverage Supervisor from the Med-QUEST Division at DHS, explained that recently the Children’s Health Insurance Program Reauthorization Act (CHIPRA) of 2009 was enacted to strengthen and extend the State Children’s Health Insurance Program over a four and one half year period (from April 2009 to September 2013). CHIPRA includes an option provision, which the State of Hawaii elected, to eliminate the five-year waiting period imposed on lawfully residing immigrant children and pregnant women that prevents them from receiving Federal medical assistance. Specifically, under CHIPRA, which was effective April 1, 2009, the State may claim Federal reimbursement for coverage of health care costs for lawfully residing immigrant children and pregnant women in Medicaid. The benefitted women and children must be legally residing in Hawaii; individuals do not need to be issued a permanent green card. The program will cost the State \$2 million in the year 2009. After several questions, Ms. Pang recommended that the proposed rules proceed to public hearing, Mr. Yukimura seconded, and the Board members unanimously agreed.

- C. Review and discussion of adoption of new HAR Chapter 16-185, "Annual Audited Financial Reporting" (DCCA) – Mr. Paul Yuen, Supervising Attorney at DCCA's Insurance Division, explained that currently all insurers only (not insurance agents) must submit annual audited financial reports to the State. The proposed new chapter adopts the National Association of Insurance Commissioners (NAIC) model Act which is currently only referenced in the Hawaii Revised Statutes. Mr. Yuen further explained that the NAIC made a determination that, as part of a State's fulfillment of its accreditation obligations, it must now have annual audited financial reporting in either statutory or rule form. He noted that after review by this Board, the proposed amendments must be reviewed by Budget and Finance, DBEDT, and then on to public hearing. Vice Chair Au recommended that the proposed rule amendments proceed to public hearing, Mr. Leis seconded, and the Board members unanimously agreed.
- D. Review and discussion of proposed Subchapter 8, "Life Settlements," under HAR Chapter 16-171, "Miscellaneous Insurance Rules" (DCCA) – Mr. Paul Yuen, Supervising Attorney at DCCA's Insurance Division, explained that Chapter 431, Article 431E, HRS, Life Settlements Act, regulates the business of life settlements and requires the Insurance Commissioner to adopt rules pertaining to the submission of annual statements and the reporting of fraudulent acts. The proposed rules affect life insurance settlement providers, brokers and continuing education course providers; life insurance policy owners will benefit from the rules. The proposed rules clarify the protections listed in the Hawaii Revised Statutes, which detail the Insurance Commissioner's expectations in regards to providers, brokers, and insurance course providers. The business impact will be on the individual insurers and brokers involved in these transactions. It was noted that DCCA needs to proceed to Budget and Finance, DBEDT, and then to public hearing. Upon discussion, Vice Chair Au recommended that the proposed rules proceed to public hearing, Ms. Pang seconded, and the Board members unanimously agreed.
- E. Review and discussion of amendments to HAR Chapter 16-12, "Medicare Supplement Insurance Minimum Standard" (DCCA) – Mr. Mark Morita, Staff Attorney from DCCA's Insurance Division, explained that the proposed amendments are required by the Federal government to implement the provisions of the Genetic Information Nondiscrimination Act of 2008. The amendments will also implement, by September 2009, the revisions to Medicare supplement plans, mandated by Medicare Improvements for Patients and Providers Act of 2008. The current Hawaii state regulations of the Medicare supplement program can continue only if Hawaii adopts the amendments that implement the two mandates by the deadline prescribed by the federal government. It is not anticipated that there will be any increase in direct costs to small businesses nor it is anticipated that there will be any discernible impact on small business. Ms. Pang stated that the insurance division reviews and interprets the rules for the community who receives the benefits, thereby resulting in an indirect impact on small business. Ms. Pang recommended that the proposed amended rules proceed to public hearing and that the agency, although required to provide this Board with a post public hearing statement, does not have to personally attend a Board meeting to present the post hearing statement, Mr. Leis seconded, and the Board members unanimously agreed.
- F. Follow-up of June 23, 2009, correspondence to Mr. Ikuo Nakano, IOND University – Chair Woods reiterated Mr. Nakano's concerns to the members. Although this Board repeatedly requested information from Mr. Nakano regarding the State's Office of Consumer Protection, there has been no receipt of such information, and because Mr. Nakano's case is currently in litigation, there is nothing this Board is statutorily able to do at this point in time. If, however, information was received, there may have been an opportunity to pursue any concerns in regards to the Small Business Bill of Rights; thus, it is not necessary for any further communication between this Board and Mr. Nakano. Mr. De Luz, Jr., recommended that a letter be sent to Mr. Nakano stating that no further action will be taken and that the file will be closed, Vice Chair Au seconded, and the Board members unanimously agreed.
- G. Legislative Update: 1) HB200 HD1 SD 1 CD1, "Relating to the State Budget," 2) SB387 SD1 HD1 CD2, "Relating to the State Budget," 3) HB952 HD1 SD2 CD1 "Relating to Labor" - Chair Woods explained that HB200 was signed into law and SB387, which statutorily transfers this Board to DCCA, was vetoed by the Governor. The resulting outcome of the two bills is currently unknown as to the future of DBEDT staff and this Board.
- H. Follow-up on Counties' permitting processes – Chair Woods explained that this agenda item is in regards to Mr. De Luz's suggestion from last month's meeting that the Board members become acquainted with Hawaii Counties' permitting processes. Chair Woods stated that Maui's Planning Department has a

published set process that entails a list of required items to perform and/or submit back to the Planning Department. Maui Planning Department introduced a new computer software system whereby a person requesting a permit may follow-up online with each division that is required to sign off in regards to specific required listed items. Overall, Chair Woods explained that Maui Counties' permitting procedures, which have a major small business impact, are mired with issues relating to labor, equipment problems and the receipt of incomplete information.

- I. Follow-up on "review of May 20, 2009 memorandum from Dr. Kenny Fink, Department of Human Services' Med-QUEST Division regarding the status of QUEST Expanded Access Program" – Chair Woods read the June minutes' section that pertains to this agenda item: "Vice Chair Pang stated that because funds have been cut on specific QUEST programs due to the economy, there is a 'hold' on the QUEST Expanded Access (QExA) program. Ms. Aileen Befitel, Health Coverage Supervisor at DHS's Med-QUEST Division, confirmed that benefits will be cut for adults, however, pregnant women and children will continue to receive QUEST benefits. Chair Woods stated that it appears that the issues this Board had were addressed in Dr. Fink's May 20, 2009 correspondence. Mr. De Luz, Jr., concurred, and indicated that it was also important for DHS to understand the quality control aspects of the QExA program from the perspective of the clients and the patients, and suggested that DHS perform a cost benefit analysis. Specifically, he noted that DHS should be aware of the quality of care given by the providers, if the providers perceive the program to be delivered as intended, and whether or not the patients perceive that they are receiving quality care."

Chair Woods explained that the issue discussed is a "consumer advocate" issue and not a "business" impact issue. She noted that it would take a huge amount of time on the Med-QUEST Division's part to gather information that is not pertinent to this Board's purview; the members concurred. Thus, Mr. De Luz, Jr., recommended that the motion of last month stated above be retracted and that the file be closed, Mr. Leis seconded, and the Board members unanimously concurred.

- J. Discussion and follow-up on RegAlert for proposed HAR Chapter 11-453, "Hawaii Emergency Plan – Community Right-to-Know" (DOH) – Chair Woods refreshed the memories of the members regarding these rules, indicating that last month the Board recommended that the rules proceed to public hearing, and that these rules be submitted as a RegAlert. Subsequently, this Board was notified by the Agency that the rules were in draft form and not ready to be publicly circulated; it was requested that the rules not yet go out as a RegAlert. Ms. Ahn, however, stated that once the rules came to this Board, the rules lost their confidentiality. She also stated that the agency asked that the rules not be distributed because changes to the rules will be made. If it is determined that the changes are substantive, the rules will then have to come back to this Board before the rules go out to public hearing. In any case, Chair Woods requested that the rules do come back to this Board if and after more changes have been made and that the motion from last month will stand as is. Vice Chair Au stated that this Board should rely on the Agency to do with the rules as they see fit; otherwise the Board will publish the rules as they currently are.
- K. Review and discussion of Agency responses to 201M-7 Periodic Evaluation Report – The members reviewed the agency list that responded to this Board's 201M-7 periodic evaluation report request regarding the submission of the agency's top ten rules that have solicited the most complaints, concerns or citations. Mr. De Luz, Jr., commented that DCCA's response was based on statutes and not on administrative rules. Therefore, this Board would need a better understanding of how to proceed; Ms. Ahn responded that some statutes are so detailed that rules are unnecessary and this Board's jurisdiction is to review rules, not statutes. In regards to the Public Utilities Commission's response, Mr. De Luz, Jr., questioned the June 30th correspondence that referred to "perceived violations," as there is either a violation or there is not a violation; Chair Woods will look into this. Finally, Mr. De Luz, Jr., referred to the response from the Department of Land and Natural Resources regarding the Land Division's HAR Chapter 13-221, "Business Operations Permit," stating that community members voiced concerns over this rule but that only a few citations were issued. Mr. De Luz, Jr., noted, however, that there are actually numerous zoning and encroachment problems in regards to land leases with multiple owners. Chair Woods explained that the purpose of the 201M-7 request was to bring forth these types of complaints and so this Board will look into such issues when all of the agency's responses have been reviewed. Therefore, this item will be placed on a future agenda for further discussion.

IV. PLANNING SESSION

A. Review of Fiscal 2009 Goals: 1) RegAlert; 2) Public Outreach, and 3) Bill of Rights and Impact Statement - Deferred.

B. Discussion and recommendation on rule review in light of HB200 HD1 SD1 CD1 and SB 387 SD1 HD1 CDs, both "Relating to the State Budget" – Chair Woods explained that there will be no planning session today because it is unclear whether or not this Board will be able to meet as there appears to be no budget and no indication as to whether this Board will have administrative assistance. There is an opportunity to hold meetings via video-conferencing however it takes a tremendous amount of work to schedule such meetings. She explained that she spoke with the President of the Kauai Chamber of Commerce who indicated that the Chamber invested in video-conferencing equipment in order to keep the County of Kauai involved. If this Board chose to participate in video-conferencing using the Kauai Chamber's equipment, it would need to be coordinated with the State. Chair Woods will check with the Island of Maui to see if there are compatible and available video-conferencing centers; Mr. De Luz, Jr., indicated that there are several available video-conferencing centers on the Island of Hawaii.

Chair Woods voiced her concern that if this Board stops meeting, the Agencies would continue to perform their rule drafting, thereby reverting back to the old process by directly submitting the rules to the Governor's office. Because of this, the issue of establishing task forces, which requires more than two members but less than a quorum, was discussed. Ms. Ahn stated that voting is the full action of a Board so it was highly unlikely that such an action can be done outside of a full Board meeting; task forces are also subject to the Sunshine Law; for an informal meeting, no more than two members are allowed. While much discussion ensued regarding this topic, it was agreed that this Board would not meet in August due to the uncertainly and unknown outcome of SB 387, "Relating to the State Budget," and until specific information can be ascertained.

C. Develop Strategic Goals for Fiscal 2010 – Deferred.

V. ANNOUNCEMENTS - Mr. Bretschneider announced that it was rumored that the legislature does not have enough votes to over-ride the Governor's veto on SB 387. Thus, even if the lack of an over-ride of this bill automatically transfers this Board back to DBEDT, it is still unclear as to the status of the Board's staff assistance.

IX. NEXT MEETING – The next meeting date and place are to be determined.

X. ADJOURNMENT – Vice Chair Au recommended to adjourn the meeting at 12:50 p.m., Mr. De Luz, Jr., seconded and the Board members unanimously agreed.