

September 26, 2005

VIA E-MAIL AND US MAIL

Alessandro A. Iuppa, Superintendent
ATTN: Vanessa J. Leon, Docket No. INS-05-700
Bureau of Insurance
Maine Department of Professional & Financial Regulation
34 State House Station
Augusta, ME 04333-0034

RE: In Re: Review of Aggregate Measurable Cost Savings Determined by Dirigo Health for the First Assessment Year
Docket No. INS-05-700

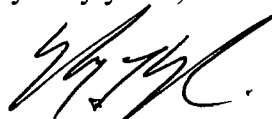
Dear Superintendent Iuppa:

Enclosed for filing in the above-referenced matter please find the original and one (1) copy of the following documents:

1. Filing Cover Sheet; and
2. Motion of Intervenors Maine Automobile Dealers Association Insurance Trust and Bankers Health Trust to Dismiss with Incorporated Memorandum of Law.

Thank you for your attention to this matter.

Very truly yours,



Roy T. Pierce

RTP:imm

cc: John Kelly (Via U.S. Mail & Email)
Thomas C. Sturtevant, Jr., Esq. (Via U.S. Mail & Email)
William H. Laubenstein, III, Esq. (Via U.S. Mail & Email)
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STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE: REVIEW OF AGGREGATE)
MEASURABLE COST SAVINGS)
DETERMINED BY DIRIGO)
HEALTH FOR THE FIRST) FILING COVER SHEET
ASSESSMENT YEAR)
DOCKET NO. INS-05-700)

TO: Alessandro Iuppa, Superintendent of Insurance
Attn: Vanessa J. Leon

Date Filed: September 26, 2005

Names of Parties: Maine Automobile Dealers Association Insurance Trust
and Bankers Health Trust

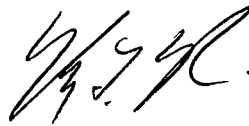
Document Title: Motion of Intervenors Maine Automobile Dealers Association Insurance
Trust and Bankers Health Trust to Dismiss With Incorporated
Memorandum of Law

Document Type: Motion

Confidential: No

Dated: September 26, 2005

Respectfully submitted,



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STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE: REVIEW OF AGGREGATE)	MOTION OF INTERVENORS
MEASURABLE COST SAVINGS)	MAINE AUTOMOBILE DEALERS
DETERMINED BY DIRIGO)	ASSOCIATION INSURANCE
HEALTH FOR THE FIRST)	TRUST AND BANKERS HEALTH
ASSESSMENT YEAR)	TRUST TO DISMISS WITH
)	INCORPORATED MEMORANDUM
DOCKET NO. INS-05-700)	OF LAW

NOW COME the Intervenors, the Maine Automobile Dealers Association Insurance Trust and the Bankers Health Trust (collectively, “the Trusts”), by and through their undersigned counsel, and, pursuant to Section VI of the Procedural Order dated September 19, 2005, move the Superintendent of Insurance (the “Superintendent”) for the entry of an order dismissing both the aggregate measurable cost savings determination filed by the Board of Directors of the Dirigo Health Agency (the “Board”) and this proceeding.

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I. ARGUMENT

Pursuant to the Dirigo Health Act, P.L. 2003, ch. 469, as amended by P.L. 2005, ch. 400 (the “Act”), the Board was directed by the Legislature to determine whether there were aggregate measurable cost savings in Maine attributable to the operation of the Dirigo Health Program (“Dirigo”). The Board has now concluded that \$136.8 million of savings are attributable to Dirigo and has filed its determination to that effect with the Superintendent as required by 24-A M.R.S.A. § 6913(1)(B) and P.L. 2005, ch. 400, § B-2(2)(A). The Board’s failure to comply with two express statutory requirements, however, is fatal to its filing and to this proceeding.

A. The Board’s Filing Was Untimely Thereby Depriving The Superintendent of Jurisdiction.

Under the Act, the Board must determine annually prior to April 1, the “aggregate measurable cost savings” attributable to Dirigo. See 24-A M.R.S.A. § 6913(1). For the first assessment year, however, the Legislature altered the deadlines specified in Section 6913(1). See P.L. 2005, ch. 400 (“Chapter 400”). Specifically, Section B-2(2) of Chapter 400 provides in pertinent part:

Notwithstanding any deadlines specified in the Maine Revised Statutes, Title 24-A, section 6913, the Board of Directors of Dirigo Health shall comply with the following deadlines for the first assessment year:

A. *No later than the effective date of this Act*, the board shall file with the Superintendent of Insurance its determination as to the aggregate measurable cost savings in this State . . . as a result of the operation of Dirigo Health and any increased MaineCare enrollment due to an expansion in MaineCare eligibility occurring after June 30, 2004 as well as the supporting information for that determination.

P.L. 2005 ch. 400, § B-2(2) (emphasis added). Thus, under Chapter 400, the Board was required to make its filing *on or before* the Act’s effective date. See 1 M.R.S.A. § 71(9-A) (“‘Shall’ and

‘must’ are terms of equal weight that indicate a mandatory duty, action or requirement. ‘May’ indicates authorization or permission to act.”).

As with all other non-emergency legislation passed during the First Regular Session of the 122nd Legislature, Chapter 400 took effect on Saturday, September 17, 2005. The Board, however, did not file its determination until Monday, September 19, 2005, *i.e.*, two days after the express deadline set by the Legislature.¹ The failure of the Dirigo Board to timely file with the Superintendent its cost savings determination is a jurisdictional defect.

In Bradbury Memorial Nursing Home v. Tall Pines Manor Assocs., 485 A.2d 634, 640 (Me. 1984), the Law Court held that statutory time periods for which an act must be done are directory rather than mandatory or jurisdictional *unless a contrary intent is indicated*. In this case, and in contrast to the statute at issue in Bradbury Memorial, the statute contains negative language clearly restraining the doing of the act in question after the state deadline. P.L. 2005 ch. 400 § B-2(2)(A) specifically states that the Board “shall” file its cost savings determination with the Superintendent “no later than” Chapter 400’s effective date. Coupling the “no later than” prohibitory language with the mandatory “shall” evidences a clear legislative intent that the Board’s filing deadline is jurisdictional, rather than simply directory, particularly when the filing deadline is viewed against the backdrop of the tight six-week deadline for the Superintendent’s decision set forth in P.L. 2005, ch. 400, § B-2(2)(B).

¹ That Chapter 400’s effective date would be on a Saturday should have come as no surprise to anyone. The Governor signed the Act on June 17, 2005 and the Legislature’s First Regular Session adjourned that same day. By operation of Me. Const. art. IV, pt. 3, § 16, Chapter 400 took effect 90 days following adjournment, *i.e.*, September 17, 2005. In his Notice of Pending Proceeding and Hearing dated June 29, 2005, the Superintendent stated, “The Dirigo filing is a public record and is *required* to be filed with the Superintendent no later than September 17, 2005.” (Notice of Proceeding at 1) (emphasis added). In addition, Dirigo’s Executive Director, Karynlee Harrington reminded the Board of this fact at its July 11, 2004 meeting. (Minutes of July 11, 2005 Meeting at 2 (Exh. A hereto)). Therefore, the Board, the Superintendent, and the Attorney General’s office had three months to make arrangements for a potential Saturday filing

The Board's filing is not saved by 1 M.R.S.A. § 71(12), which makes the provisions of M.R.Civ.P. 6(a) applicable to certain statutory time periods.² That section provides:

The statutory time period for the performance or occurrence of any act, event or default which is a prerequisite to or is otherwise involved in or related to the commencement, prosecution or defense of any civil . . . action or other judicial proceeding or any action or proceeding of the Public Utilities Commission shall be governed by and computed under Rule 6(a) of the Maine Rules of Civil Procedure as amended from time to time, when the nature of such action or proceeding is civil

Id.

By its plain language Section 71(12) does not apply Rule 6(a) to *all* statutory time periods. Moreover, that fact is demonstrated by Section 71(12)'s legislative history. In the original bill introduced in 1973, Rule 6(a) would have applied to any statutory time period:

The running of statutory time periods shall be governed by and computed under Rule 6 of the Maine Rules of Civil Procedure, or other provisions governing time computations as shall be promulgated by the Maine Supreme Judicial Court.

L.D. 241 (106th Legis. 1973). Further, the Statement of Fact accompanying the original bill stated:

The purpose of this Act is to insure that any statute in which there is a running of time period is governed as to the method of computing that time by Rule 6, or other provisions which may be promulgated in the future. Rule 6 extends the time period when a Saturday, Sunday or legal holiday falls at the end of the statutory time period. The Act would insure uniformity of computation of all time.

L.D. 241, Statement of Fact (106th Legis. 1973).

² Rule 6(a) provides in pertinent part:

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event, the period runs until the end of the next day which is not a Saturday, a Sunday, or a holiday.

The Judiciary Committee rejected the original bill and proposed an amendment, ultimately enacted, that limited the application of Rule 6(a):

The statutory time period for the performance or occurrence of any act, event or default which is a prerequisite to or is otherwise involved in or related to the commencement, prosecution or default of any civil or criminal action or other judicial proceeding shall be governed by and computed under Rule 6(a) of the Maine Rules of Civil Procedure. . . .

Comm. Amend. “A” to L.D. 241, No. S-21 (106th Legis. 1973). The Statement of Fact accompanying the Committee Amendment reads “The purpose of this Amendment is to limit the scope of the bill being amended to civil or criminal actions or other judicial proceedings . . .”

Comm. Amend. “A” to L.D. 241, No. S-21, Statement of Fact, 106th Legis. 1973). As the Law Court has noted, “The legislative intent to limit the application of Rule 6(a) to statutory time periods related to the commencement, pursuit, or enforcement of civil actions is evident.” State Farm Mut. Automobile Ins. Co. v. Libby, 655 A.2d 890, 883 (Me. 1995).³

In short, because the Board’s filing is related neither to the commencement, pursuit, or enforcement of a civil or other judicial proceeding nor to a proceeding before the Public Utilities Commission, the provisions of Section 71(12) have no application here.

Nor is the Board’s filing saved by 1 M.R.S.A. § 71(13), which contains a time computation provision similar to that found in Section 71(12). Section 71(13) provides:

If legislation or another legislative instrument requires a report to be filed by a date certain, and the date certain falls on a Saturday, Sunday or a legal holiday, the report is due by close of business on the next day that is not a Saturday, Sunday or legal holiday.

1 M.R.S.A. § 71(13). By its express terms, therefore, Section 71(13) applies only to legislative reports. See also Comm. Amend. “A” to L.D. 30, Summary (120th Legis. 2001) (stating that

³ The reference to Public Utilities Commission proceedings in Section 71(12) was added in 1983. See P.L. 1983, ch. 606, § 12.

Section 71(13) is meant to apply to the “[r]eporting dates for studies and other commissions.”). The Board’s cost savings determination, however, is not such a “report.”

A report, as commonly understood, is a dissemination of information based on observation and/or inquiry, in contrast to a determination, which is a decision. See Black’s Law Dictionary at 460 and 1303 (7th ed. 1999). Rather than as a legislative commission simply studying cost savings, the Board was created as “an independent executive agency,” 24-A M.R.S.A. § 6902, charged, *inter alia*, with making a decision as to the amount of those savings—a decision, which as noted below, was to have followed the opportunity for an *adjudicatory hearing*.

More importantly, the Legislature has itself drawn a distinction in the Act between the Board’s cost savings “determination” required by Section 6913(1), and its quarterly “reports” of such things as total enrollment in Dirigo required by Section 6913(8)(A).

B. The Board Did Not Provide Interested Parties With The Opportunity For An Adjudicatory Hearing As Required By The Express Language Of The Act.

Section 6913(1)(A) requires the Board to make its determination of cost savings, “After an opportunity for a hearing conducted pursuant to Title 5, chapter 375, subchapter 4.” Title 5, chapter 375, subchapter 4, 5 M.R.S.A. §§ 9051-9064, is the portion of the Administrative Procedures Act (“APA”) setting forth the standards and requirements for adjudicatory proceedings. Therefore, by virtue of the clear and unambiguous language of the Act, the Board was required to provide interested parties, at a minimum, with an opportunity to request an adjudicatory hearing.

The view of the Board and the Attorney General’s office is that an adjudicatory hearing before the Board was unnecessary given the fact that the Superintendent had scheduled an adjudicatory hearing for late October; six weeks after the Board’s filing was due. In fact,

Assistant Attorney Laubenstein advised the Board of the adjudicatory hearing process as early as June 27, 2005, and informed the Board at that time that the adjudicatory hearing in this matter would be held by the Superintendent after the Board filed its cost savings determination. (Minutes of June 27, 2005 Meeting at 1 (Exh. B hereto)).⁴ That position, however, is flatly inconsistent with the Act.

The Act specifically calls for the opportunity for adjudicatory hearing *before* the Board makes its cost savings determination; it does not call for an adjudicatory hearing by the Superintendent after the Board has filed its determination. Although Section 6913(1)(B) calls for a “public hearing” by the Superintendent in accordance with the APA following the Board’s filing, it is by no means clear that such a public hearing must be an adjudicatory hearing. See also P.L. 2005, ch. 400, § B-2(2)(B) (referring to the Superintendent’s public hearing as one “held in accordance with the Maine Administrative Procedures Act.”).⁵ By contrast, Section 6913(1)(A) expressly states that the Board is to provide an opportunity for a hearing conducted pursuant to the portion of the APA applicable only to adjudicatory proceedings.⁶

Where, as here, a statute mandates an opportunity for an adjudicatory hearing, the APA requires that the agency provide notice to the persons whose legal rights, duties or privileges are at issue and to afford them the opportunity to request a hearing, if so desired. See

⁴ Members of the public objected to this position to the Board and Mr. Laubenstein at that meeting. Indeed, the importance of an adjudicatory hearing by the Board was emphasized at that time.

⁵ The fact that the Superintendent will conduct an adjudicatory hearing, of course, is no excuse for the Board to ignore its statutory mandate. As discussed *infra*, the hearing before the Superintendent appears not to be a true adjudicatory hearing in any event.

⁶ As noted by one member of the Board at the Board’s September 13, 2005 meeting, Section 6913(1) was amended by unallocated portions of Chapter 400. However, no part of Chapter 400 altered Section 6913(1)’s requirement that the Board provide an opportunity for an adjudicatory hearing; rather, only the date by which the Board’s cost savings determination was required to be made for the first assessment year was modified. Compare P.L. 2005, ch. 400, § A-10 with P.L. 2003, ch. 469, § A-8; see also P.L. 2005, ch. 400, § B-2(2)(A).

5 M.R.S.A. § 9052(1)(A). The APA is quite specific as to what constitutes adequate notice. The notice must be given sufficiently in advance of the anticipated time of the decision to afford an opportunity to prepare and submit evidence and argument, and it must consist of:

- A. A statement of the legal authority and jurisdiction under which the proceeding is being conducted;
- B. A reference to the particular substantive statutory and rule provisions involved;
- C. A short and plain statement of the nature and purpose of the proceeding and of the matters asserted;
- D. A statement of the time and place of the hearing, or the time within which a hearing may be requested;
- E. A statement of the manner and time within which evidence and argument may be submitted to the agency for consideration, whether or not a hearing has been set; and
- F. When a hearing has been set, a statement of the manner and time within which applications for intervention under section 9054 may be filed.

See 5 M.R.S.A. §§ 9052(1)(A) and 9052(4).

Here, the Board provided no opportunity for an adjudicatory hearing despite requests for such a hearing made by interested parties. Instead, the Board, came up with a “procedure” for its meetings, which was no procedure at all. Those who “testified” before the Board were not sworn, nor were interested parties provided the opportunity to cross-examine, no deadlines were set, and the manner in which the Board would accept evidence was never clearly specified. Indeed, as late as the Board’s September 6, 2005 meeting (minutes of which are not yet available), members of the Board were not clear why the Attorney General’s Office was advising them that the proceeding was not adjudicatory, while at the same time advising them not to have *ex parte* contact with interested parties as if it were an adjudicatory proceeding. See 5 M.R.S.A. § 9055(1) (prohibition of *ex parte* contact in adjudicatory proceedings). The statutory

requirement that an opportunity for adjudicatory hearing be provided was to avoid the situation here—a “seat of the pants” process leading up to a cost savings determination with tens of millions of dollars at stake.

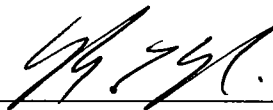
Moreover, that the Superintendent, rather than the Board, will hold an adjudicatory hearing defies common sense. Under Chapter 400, the Superintendent is to approve the Board’s cost savings determination if he determines that “the aggregate measurable cost savings filed by the board are reasonably supported by evidence in the record.” P.L. 2005, ch. 400, § B-2(2)(B). That standard, which is the standard that the Superintendent has announced he will apply (Notice of Pending Proceeding and Hearing at 1), is an *appellate* standard for reviewing the sufficiency of factual findings. See e.g., Uliano v. Board of Env’tl. Protection, 2005 ME 88, ¶ 6, 876 A.2d 16, 18 (review under M.R.Civ.P. 80C); White v. Fleet Bank of Maine, 2005 ME 72, ¶ 11, 875 A.2d 680, 682 (stating the clear error standard of review); Tarason v. Town of South Berwick, 2005 ME 30, ¶ 6, 868 A.2d 230, 232 (review under M.R.Civ.P. 80B). The Superintendent, therefore, does not intend to conduct a *de novo* proceeding--his determination will give deference to the Board’s “decision.” However, due to the Board’s failure to hold an adjudicatory hearing, it did not receive any “evidence” and there is no “record” for the Superintendent to review. The result, therefore, is a bastardized process in which the Superintendent plans to determine whether the *Board’s* cost savings determination is reasonably supported by the evidence that *he* receives, including information that was not before the Board. Statutes are to be construed to avoid such absurd results, not create them. See Estate of Chartier, 2005 ME 17, ¶ 6, 866 A.2d 125, 127.

II. CONCLUSION

For all of the foregoing reasons, the September 19, 2005 filing by the Dirigo Health Agency’s Board of Directors and this proceeding should be dismissed.

Dated: September 26, 2005

Respectfully submitted,



Bruce C. Gerrity, Bar No. 2047
Roy T. Pierce, Bar No. 7541

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CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing document was served on all counsel of record via first class mail and electronic mail as follows:

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Counsel for Dirigo Health Agency

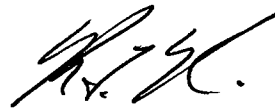
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Dated: September 26, 2005



Roy T. Pierce, Bar No. 7541

**Dirigo Health Agency
Board of Directors
Minutes of Meeting - APPROVED
July 11, 2005**

The Dirigo Health Agency Board of Directors held a meeting on Monday, July 11, 2005. Dr. Robert McAfee, Chair convened the meeting at approximately 1:00PM in the Dirigo Health Agency Board Room, located at 211 Water Street in Augusta. Other Board members in attendance: Dana Connors, Carl Leinonen, and Trish Riley. Charlene Rydell, Mary Henderson, and Christine Bruenn joined via teleconference. Also in attendance: Karynlee Harrington, Executive Director of the Dirigo Health Agency and Kirsten Figueroa, Director of Budget and Fiscal Operations of the Dirigo Health Agency.

Dr. McAfee opened the meeting.

Meeting minutes from June 27, 2005 were approved by the Board.

Ms. Harrington clarified to Interested Parties that the agendas, meeting minutes and meeting handouts are located on the Dirigo Health website under the heading "News and Information". This material is no longer posted on the GOHPF website.

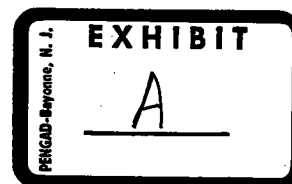
Status of 05 Enrollment Cap:

Ms. Harrington provided the Board with a copy of a June 28, 2005 correspondence from Anthem Blue Cross Blue Shield regarding the 2005 Enrollment Cap. Ms. Harrington summarized as follows:

- o Contractually we do not have an enrollment cap in 2006.
- o There are currently over 2,700 members on the individual/self-employed of one waiting list.
- o Staff proposed to Anthem Blue Cross and Blue Shield an enrollment cap in 2006 in order to open enrollment in 2005. The proposal was to double the cap in 2005 to 8,800 and impose a 20,000 individual/self-employed of one cap in 2006. Under this proposal total membership in this segment at the end of 2006 could be as high as 28,800.
- o Anthem Blue Cross and Blue Shield responded with a proposal that would cap membership in this segment at the end of our two year contract to a total of 15,000 members. Additionally, Anthem Blue Cross and Blue Shield proposed increasing the current limit that restricts rates to 20% above the community rate including all factors to increase to 30% for all new and renewing business effective October 1, 2005.

The proposal of an enrollment cap in 2006 was to provide Anthem with some comfort for opening the cap in the last quarter of 2005. Ms. Harrington recommended to the Board that they end 2005 with the existing cap in order to move into 2006 without an enrollment cap imposed by Anthem. Ms. Harrington indicated that staff may make a recommendation in 2006 to cap enrollment but that the Agency should keep that flexibility.

Ms. Riley expressed that it is hard to have people on a waiting list but acknowledged that it may be better to wait, not have a cap for 2006, and keep the people on the waiting list engaged. She also suggested that if they do go with the cap, Anthem needs to come to the next meeting and let us know what they are doing to build the small group market. Several Board members expressed the same concern and desire. Several Board members felt the need to directly talk to Anthem specific to their position regarding the cap. Ms. Harrington will formally follow up with Anthem and request their presence at the 8/1 Board Meeting to review with the Board their position.



Ms Harrington reported that Anthem met with the top 10 producers who are selling DirigoChoice; Anthem is in the process of putting together a report highlighting the feedback.

Ms. Harrington also reported receiving feedback from key producers in Farmington specific to dual offering. An employer can only offer one of the DirigoChoice options on a stand alone basis. When buying other Anthem small group products they indicated that the employer can offer more than one option. From the producers perspective many employers are not buying DirigoChoice because of the higher out-of-pocket expense at the group F level. Staff will follow up with Anthem.

Work Group Update:

The first meeting was held on June 30, 2005. Ann Gosline is the facilitator and John Benoit has been added as a member of the workgroup.

Ms. Harrington stated that the minutes are still a draft and when the group approves she will distribute to the Board. Workgroup sessions will be broadcast over the Internet.

Ms. Harrington reminded the Board that the recommendation from the Board is due to the Superintendent of Insurance by September 17, 2005. The Superintendent will then hold an adjudicatory hearing on October 27, 2005 and a decision will be made by October 29, 2005.

Ms. Harrington suggested that the Board receive the recommendations from the workgroup no later than Monday, August 29, 2005. Members agreed with this date and a tentative board meeting has been scheduled for August 29, 2005.

Ms. Harrington will share the request and timing with the workgroup.

Agency Updates:

43% of DirigoChoice membership is enrolled in Group B and the average community adjustment factor is approximately 10.6%. Given the experience to date, staff is looking at the current discount structure and modeling other potential options for the Board's consideration.

Membership for the month of July is just under 300 members. This is significantly lower than in previous months but does not include sole proprietors and individuals. There are over 2,700 individuals and self employed of one on the waiting list.

Ms. Figueroa stated that Fiscal Year 2005 is closed; however, there may some final adjustments to the year end financials. The Agency's general administrative expenses (including MQF) are 49% of the FY05 budget. Ms. Figueroa also reviewed the funds flow for SFY05 end.

Ms. Harrington stated that the Agency will begin SFY06 with 7,500 members. These members will carry forward each month and be added to with new monthly membership. Re-forecasting the SFY06 budget is underway.

Public Questions and Comments:

A member of the public asked if notices are being sent to interested parties and if those notices are being posted on the website. Ms. Harrington responded affirmatively that notices are being emailed and the information is on the Dirigo Health Agency website.

Dr. McAfee stated that the next meetings for the Board are going to be for August 1, August 29, September 6, and September 26.

Dr. McAfee adjourned the meeting at approximately 2:30.

**Dirigo Health Agency
Board of Directors
Minutes of Meeting - FINAL
June 27, 2005**

The Dirigo Health Agency Board of Directors held a meeting on Monday, June 27, 2005. Dr. Robert McAfee, Chair convened the meeting at approximately 1:00 PM in the Dirigo Health Agency Board Room, located at 211 Water Street in Augusta. Other Board members in attendance: Dana Connors (left meeting at 2:10 for other obligation), Trish Riley, Mary Henderson, Christine Bruenn and Rebecca Wyke. Charlene Rydell joined via teleconference. Also in attendance: Karynlee Harrington, Executive Director of Dirigo Health Agency; Kirsten Figueroa, Director of Budget and Fiscal Operations; and Dr. Dennis Shubert, Director of the Maine Quality Forum.

Dr. McAfee opened the meeting.

Meeting minutes for May 9, May 16, May 20, May 24 and May 25, 2005 were approved by the Board.

Maine Quality Forum:

Dr. Shubert discussed the attached PowerPoint slides with the Board. He outlined the Maine Quality Forum Safety Star Program. He discussed the underlying safety practices and the principle of recognizing leaders and innovators as a technique for promoting change. He discussed the use of a survey tool to establish the culture of safety within a healthcare organization. He pointed out the excellent evidence of how an organization's culture impacts patient safety. MQF supports a survey on the web for use by all Maine providers. Dr. Shubert outlined the efforts to share cost with private Maine organizations and seek foundation funding. He pointed out that the project fit within the MQF budget if the effort to share costs failed.

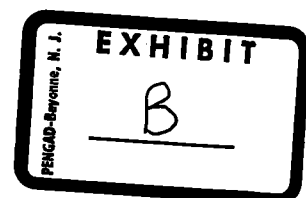
Dr. Shubert updated the Board on ongoing MQF projects.

- o The proposals to analyze the paid claims database are due the end of June.
- o The effort to create activated healthcare consumers is proceeding in collaboration with the Maine Health Management Coalition and MQF collaborative community health coalitions.
- o July 1st start collecting data on acute MI, congestive heart failure, pneumonia and surgical infection prevention. Actual reports not due out until the first of next year.
- o Nurse sensitive indicator micro-specifications, having a meeting Wednesday, June 29 with Chief Nursing Officers.

Overview of an Adjudicatory Hearing:

Bill Laubenstein of the Attorney General's office described to the Board the process of an adjudicatory hearing. Below are highlights of the overview:

- o The Superintendent of Insurance will hold an adjudicatory hearing on the issue of whether or not the Board's determination of savings is reasonable.
- o Once in front of the Superintendent of Insurance it will proceed like a courtroom proceeding. Dirigo Health Agency will go first to present evidence that has already been filed with the Superintendent of Insurance.
- o Then other parties are allowed to present their case.
- o At the end of the process the Superintendent makes his decision.



The process can be found on the Secretary of State website, Chapter 31.

Ms. Harrington reviewed the continuation of the current contract with Mercer specific to the Savings Offset Payment. The contract amendment is a three-phase approach with a low and high end cost projection. The high end is based on the expectation that the adjudicatory prep work and hearing testimonial phase of hearing will be time intensive.

LD 1577:

Ms. Riley summarized LD 1577. Board members were provided copies of the new legislation (PL 2005, Chapter 400).

The law creates more transparencies; there is a workgroup comprised of business leaders and Dirigo leaders, appointed by the Bureau of Insurance. The working group will work on a number of issues and will provide the Board with recommendations.

There is clear oversight of the program. The IFS Committee has asked for regular work group meeting reports, agendas, board minutes, meeting lists and two annual reports.

There is a delay of the first savings offset payment to April. There is a requirement that the Savings Offset Payment not be used to fund general administrative.

The workgroup has 4 primary tasks:

- What is a paid claim? Should prescriptions claims, retirees costs and people out of state be included in paid claims was part of the discussion.
- What does subsidy cover?
- Methodology to create savings.
- Funding strategy to determine how to deal with administrative costs if the SOP cannot pay for it.

Based on the law, the deadline is no later than September 20, 2005 that the Board has to submit its recommendation to the Bureau of Insurance in order for the Superintendent to make a final determination to plea the adjudicatory hearing and make a final decision no later than November 1, 2005.

There are 3 issues in the minority report (a written summary of the report was provided to the Board) that were not addressed in the bill and were not agreed upon:

- Experience Modification Program
- Asset test to limit eligibility
- Delay the timetable of the SOP payment to November 06

The BOI has convened the first meeting of the workgroup to be held June 30, 2005. The 5 Dirigo appointees are Beth Kilbreth, of USM Muskie School, Patrick Ende an attorney in the Governor's Office, Karynlee Harrington of Dirigo Health Agency, Joe Ditre of Consumers for Affordable Healthcare and Trish Riley of GOHPF. The nominees from the Business sector are Dan Roet of Bath Iron Works, Frank McGinty of MaineHealth, Jim Reid of AETNA, Sharon Roberts of Anthem and a fifth appointee that is not yet been identified. Ann Gosline has been hired by the BOI as the independent facilitator.

Program Update:

As of June 1, 2005, Ms. Harrington stated, there are approximately 7,300 members. Over 1,800 are employers that are enrolled in the program. The wait list for individuals and sole proprietors of one has approximately 2,000 members on it. Dirigo Health Agency is currently in discussion with Anthem to double the cap in 2005. This would increase the cap from 4,400 to 8,800 in 2005.

Anthem's position is that they are concerned around the volatility of the group. A suggestion from Anthem was to commit to an EMP in 2007 and to increase the firm size load for the individual and sole proprietor of one groups. Ms. Harrington suggested to Anthem that because the current contract ends 12/31/06 the Agency could not commit to an EMP in 2007. The Agency did propose an enrollment cap in 2006 of 20,000 new individual/sole prop of one members. By the end of 2006 the total number of individuals and sole props of one that could be enrolled would be 28, 800. Anthem is in the process of responding to the cap and detailing what the increase in the firm size load would be.

Ms. Riley stated that people are discouraged by wait lists and there is an urgency to resolve this issue as quickly as possible.

Ms. Harrington will follow up with the Board as soon as Anthem responds with the details.

The Muskie survey for Q1 membership should be available within the next few weeks. Muskie was able to reach 76% of members. Of the 24% they were unable reach, only 9% were unwilling to answer the questions and the other 15% were wrong numbers or addresses.

Agency Financials:

Ms. Harrington stated that Part II of the budget has authorized Dirigo Health Agency to keep the 13 positions that are filled; these positions will remain limited period. The Legislature authorized 2 project positions. The request to move to an Enterprise Fund was granted. This provides the appropriate financial reporting for this type of agency.

Ms. Harrington explained the agency's funding pool and what was budgeted and the actual expenditures (refer to financial reporting handouts).

There has been much discussion of Dirigo Health Agency's funding and the savings offset payment.

Ms. Harrington stated that the agency has reforecasted ending SFY05 with 7,500 members and carrying over into SFY 2006 a balance of about \$39 million.

LD 1691 requires a contribution to the general fund in fiscal year 2006 and 2007 of \$1.125 million.

Assuming 1,000 new participants a month with the same demographics to date, the agency will run out of dollars in March 2006. The first SOP, assuming there is a SOP, is April 1, 2006. At some point staff may need to recommend to the Board that enrollment close.

Now that the Agency has more data, discussions about possibly restructuring the discount program will start; the Board may need to consider capping the enrollment, as well as, restructuring the discount program.

The Board discussed times for the next meetings and tentatively scheduled Monday, July 11 and Monday, August 1 (would also like to schedule another meeting for mid-August) and Tuesday, September 6.

Dr. McAfee adjourned the meeting at approximately 3:45.