

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
Minutes of the Board of Trustees
Wednesday, March 28, 2007

TRUSTEES PRESENT

Mr. Mark Recktenwald, Chairperson
Mr. Nelson Befitel, Vice Chairperson
Ms. Elizabeth Ho
Mr. George Kahooahanohano

Mr. Gerald Machida
Mr. John Radcliffe
Mr. Stanley Shiraki
Ms. Katherine Thomason

TRUSTEES ABSENT

Ms. Marie Laderta

ATTORNEY

Mr. Brian Aburano, Deputy Attorney General

EUTF STAFF

Mr. James Williams, Administrator
Mr. Lawrence Nishihara
Ms. Maria Quartero
Ms. Kathleen Shiroma

Mr. John Garner, Consultant
Ms. Gerti Reagan-Garner, Consultant
Ms. Donna Tonaki

OTHERS PRESENT

Ms. Lynette Arakawa, HDS
Mr. Bryan Aycock, Aon
Ms. Sandra Benevides, Kaiser Permanente
Mr. Mike Clark, Health Net
Ms. Monica Engle, VSP
Mr. Jonathan Freidman, NMHC
Ms. Elaine Fujiwara, HDS
Ms. Venus Gabuyo, MBAH
Ms. Donna Higashi, HSTA-Retired
Mr. John Jacobs, HMSA
Mr. Jun Jao, HMA
Ms. Jeri Kakuno, MDX Hawaii
Mr. Eleu Kane, Summerlin
Mr. Keith Kaneshiro, Senator Hee's
Ms. Ruth Kim, HSRTA

Ms. Wanda Kimura, B&F
Mr. Davis Kobayashi, AIS
Mr. Paul Matsuo, HGEA-R
Ms. Mary Mitchell, NMHC
Ms. Sesnita Moepono, Senator Hee's
Mr. Maurice Morita, HSTA
Mr. Michael Moss, HMSA
Ms. Gertrude Nitta, HGEA-R
Ms. Sue Oguro, ORTA
Mr. Tony Saguibo, HMSA
Mr. Rod Tam, HMSA
Mr. William Tam, Alston Hunt Floyd & Ing
Ms. Sharon Urada, HSTA-MBC
Mr. George Yamamoto, HGEA-Retirees

I. CALL TO ORDER

The regular meeting of the Board of Trustees was called to order at 9:03 a.m. by Trustee Mark Recktenwald, Chairperson, in Conference Room 1935, City Financial Tower, 201 Merchant Street, Honolulu, Hawaii, on Wednesday, March 28, 2007.

Vice Chair Befitel announced that Chair Recktenwald has been appointed by Governor Lingle and unanimously confirmed by the Senate to serve as the Chief Justice of the Intermediate Court of Appeals. On behalf of the Board Vice Chair Befitel thanked Chair

Recktenwald for his time and committed service to the EUTF for the last four years, especially for his steady leadership as Chair.

Chair Recktenwald stated that serving on the EUTF Board was one of the best experiences he had in the four years of government service with the State. What the Board does is incredibly important and the Board and staff can be proud of what has been accomplished. He thanked the EUTF staff, deputy attorney general, and benefits consultant for working so hard to provide the benefits to the beneficiaries and also to his fellow Trustees who have been great to work with. Chair Recktenwald especially thanked the beneficiaries for consistently and constantly attending the Board meetings to watch, help, and give the Board guidance.

II. APPROVAL OF MINUTES

The Board reviewed the draft minutes for February 28, 2007.

Amendments to the draft minutes for February 28, 2007: (1) page 2, line 6, delete "in not being" and add "not been"; (2) page 7, line 41, delete "who is"; (3) page 7, line 42, delete "however"; (4) page 8, line 14, change "they" to "there"; (5) page 8, line 15, add "," after 2000 and delete "and"; and (6) page 8, line 16, add "," after acquisition, change "were" to "was".

There being no objections by the Trustees, the minutes for March 28, 2007 were approved as amended.

III. OTHER REPORTS

A. Administrator

1. March Update (see written report)

a. PeopleSoft Support

Overview by Ms. Shiroma regarding PeopleSoft support (see Administrator's report).

b. IT Support by Gartner, Inc.

Ms. Shiroma reported that the EUTF staff is working with the deputy attorney general in preparing the Memorandum of Agreement to engage Gartner for services offerings to assist with the RFP (see Administrator's report).

c. Claims Audit Contract

Mr. Williams stated that he had incorrectly reported at the last meeting that the final report would be presented at this meeting. The final report by Segal is due next week and the presentation is due at the May 2007 Board meeting. Mr. Williams reviewed the draft report that has some constructive information and observations, but nothing to warrant alarm.

d. EUTF Facilities – Renovation

Mr. Nishihara reported that Phase Two is done and the renovations should be completed in approximately seven weeks (see Administrator's report).

Mr. Williams stated that the CSR staff is located temporarily in the EUTF conference room.

e. 2007 Legislative Session

Overview by Mr. Williams regarding updates on the House and Senate bills (see Administrator's report and Updates on House and Senate Bills).

There being no objections by the Trustees, the position of the Trustees regarding HB 1746 will remain the same.

Discussion held by the Trustees, staff, and public regarding SB 1380 that provides for an appropriate cost-neutral adjustment of the base monthly contributions for retiree health benefit plans.

Overview by Mr. Williams regarding HB 1290 SD1 relating to the EUTF (see letters to Representative Caldwell and Senator Hee and Memorandum to BOT). The Administrator recommends that the Board take a position opposing Sections 2, 3, 4, and 5 of HB 1290 SD 1 and further recommends that the Board support a position opposing any amendments not related to the specific intent of the original bill and preferring that the bill not be passed at all, rather than be approved with any such amendments.

MOTION was made for the Board to take a position opposing Sections 2, 3, 4, and 5 of HB 1290 SD 1 and oppose any amendments not related to the specific intent of the original bill and preferring that the bill not be passed at all, rather than be approved with any such amendments.

(Shiraki/Kahoochanohano) After discussion held by the Trustees, the motion passed unanimously. (Employer Trustees-4, Employee-beneficiary Trustees-4)

Mr. George Yamamoto expressed concerns about actions taken recently by the Trustees, particularly with SHOPO, if it is consistent with Act 88 and Act 89. Discussion held by the Trustees, staff, deputy attorney general, and public regarding concerns about the Board's recent approval of separate rates for SHOPO members, if that violated any law, and does the deputy attorney general have any problems with this motion. Mr. Aburano stated that he did not believe that the Board's approval of separate rates for SHOPO violated the law. It has always been understood that the EUTF Board has very broad discretion to establish health plans and there is nothing in the EUTF statute that says the Board cannot offer different plans or rates to different segments of the EUTF population. Whether as a policy matter that is a good or bad

thing is something that can be debated. That was why the EUTF was formed - to debate and share different views and to have the flexibility to try different types of plans to see if there would be some savings of money as well as providing better benefits. Mr. Aburano said that his view was reinforced by the fact that the VEBA law allows employee organizations to establish different plans and rates from the EUTF, and that nothing prevented SHOPO from establishing a VEBA and pulling out of the EUTF. In fact, this possibility was mentioned in the discussions over whether SHOPO should be rated separately. Regarding HB 1290, Mr. Aburano said he thinks that this bill as modified does have a number of ambiguities that will create legal problems. The part of the bill dealing with procurement is not clear as to whether they are saying that the EUTF should follow Chapter 103D or do something else. The EUTF is already required to follow Chapter 103D. If that's all this part of the bill means, it is repetitive and meaningless. To the extent it adds requirements that are not in Chapter 103D such as verification of bids by an independent auditor, the bill may cause the EUTF problems by limiting competition and slowing or impeding the procurement process. The bill also imposes liabilities on the Trustees as fiduciaries which conflict with their qualified immunity under State statutes and laws. The bill uses the term "fundees" which is not defined at all in bill and may create issues. There are a lot of problems in this bill and it does not appear to have been thought through very carefully. Mr. George Yamamoto stated that he reserves his comments and that the intent of legislation and the interpretation by the deputy attorney general seems to be in conflict with the operations as well as the intent of the law. The intent of the law was to bring everyone back into the EUTF.

Ms. Sesnita Moepono distributed a letter from Senator Hee regarding concerns about NMHC and the RFP process to the Trustees.

Recessed at 9:45 a.m. and reconvened at 9:58 a.m.

Chair Recktenwald stated that the Board has had the opportunity to review the letter from Senator Hee that addresses concerns that he has relating to the procurement that the EUTF conducted, in particular the selection of NMHC to administer the pharmacy benefits for the Trust Fund including the history of this issue.

Ms. Sesnita Moepono commented on the issue regarding SHOPO and comments that the Administrator said at hearings that SHOPO would not be able to touch the EUTF reserve funds. Mr. Williams stated that in regard to the decision on SHOPO he did say that all the reserves of EUTF are available to cover losses from any plan and that would include SHOPO. He also said that the Board had discussed very clearly that if the SHOPO unit claims experience is bad that the rates would be increased for that unit. The intent

that he understood the Board has expressed is that over time SHOPO would pay for their own experience. Chair Recktenwald asked to clarify, although the reserves are there and potentially there to cover losses for anyone including SHOPO, if it was the Board's intent when the SHOPO arrangement was approved that SHOPO would have to take the good years with the bad years. Mr. Williams stated yes in anticipation of a bad year the rates would go up. Ms. Moepono stated when there is a bad year, it would definitely be taken out of the reserve fund but the rates would be raised to return the monies taken out of the reserve fund. Chair Recktenwald stated that he does not think that is what the Administrator was conveying. Mr. Garner explained that the intent is not to have separate reserves for SHOPO and the rest of the EUTF. It is one pool of reserves. If SHOPO were not rated separately and SHOPO had bad experience, the money to cover that would come out of the reserves. With SHOPO rated separately it is no different; the money would still come out of the same reserves. There is no net change there. The increase in SHOPO rates if SHOPO were to have a bad year would be to cover the anticipated cost in the future. Budgets are typically set based on recent experience. So if recent experience is bad, the projection is that future experience would be similar. The Board has options in terms of setting the rates in the future. This Board cannot do anything to obligate any future Board in that regard. If SHOPO has a bad year, whether they have separately budgeted rates or not, the money will come out of the same reserves. Chair Recktenwald stated that it is two different issues: (1) the issue of what happens in a particular year if SHOPO or anyone else has a bad year; and (2) what would happen to their rates going forward. Trustee Kahoohanohano asked Ms. Moepono if any research was done whether SHOPO was rated separately or not, whether reserves would come out of a bad year. Trustee Kahoohanohano is concerned that the wording in the bill indicates that no one did any research and just put it together. Ms. Moepono said as stated that it was represented to Senator Hee in a hearing from Mr. Williams that SHOPO would not be able to touch the overall EUTF reserve fund which is different than what Mr. Garner said. Trustee Kahoohanohano stated that he was at the hearing and heard that although SHOPO was rated separately they were still in the same fund. On top of that you got Mr. Williams testimony in writing. Ms. Moepono stated that the additional amendments were based on the statements received. Chair Recktenwald stated that there was a different perspective. Mr. Williams may have been talking about future rates when the speaker may have been talking about reserves or vice versa. Mr. Williams stated that he believes what he was saying was consistent with what Mr. Garner said today and he has not changed his message.

f. Biennium Budget 2007 - 2009

Ms. Tonaki reported that HB 500 HD 1 relating to the biennium budget was approved by the House and forwarded to the Senate. There were no amendments to the EUTF budget (see Administrator's report).

g. Implementation of FY 08 Benefit Plans

Overview by Mr. Nishihara regarding the implementation of FY 08 benefit plans (see Administrator's report).

Overview by Mr. Williams regarding NMHC contract terms and NMHC response regarding the participation of Longs in it network (see Administrator's report). A copy of NMHC and Longs recent agreement were distributed to the Trustees.

Chair Recktenwald asked Mr. Jonathan Friedman, Chief Legal Officer for NMHC to provide the current status of where NMHC is with the EUTF and NMHC's current contractual status of Longs. Mr. Friedman stated that NMHC was asked to provide an agreement that existed between Longs Drugs and NMHC - which agreement between PCN and Longs had been in existence since 1987. NMHC was operating under that agreement subsequent to NMHC's acquisition of PCN which took place March 2005. At all times, NMHC was under contract with Longs. With respect to the EUTF's business, as he stated last month, Longs and NMHC had agreed to work out specific incentives and business points. Those contemplated amendments with respect to the February 22, 2007 letter were executed by Longs and NMHC recently. Through the process of negotiating two addendums (for actives and retirees) to its pending contract with the EUTF, NMHC decided in conjunction with Longs to: (1) update their general agreement; and (2) enter into an addendum specifically for the EUTF business. In the letter agreement, dated February 22, 2007, both parties agreed to do this. NMHC was taken aback when a Longs vice-president stated that their agreement did not apply to residents of Hawaii. NMHC went into their claims adjudication system and did a residential line inquiry. A report listing 20 to 30 pages of residents of Hawaii who filled claims at Longs Drugs stores who were members of NMHC were attached to NMHC's letter to Senator Hee. Mr. Friedman believes that the Longs vice-president made an incorrect statement. NMHC never got an explanation why he made that statement or a response from Senator Hee.

Mr. Friedman stated that they have final documents that are ready to be executed and all other documentation required.

Discussion held by Trustees, staff, Mr. Friedman, benefits consultant, and public regarding a list of employers for the State of Hawaii, PCN contract pertaining to Longs in other states, NMHC networks, and NMHC 10Q filing.

Mr. Friedman stated that there is no geographic limitation for the PCN contract with Longs.

Mr. Williams stated that the Board did not take a position in this procurement, whether medical, dental, vision, or drug, that 100% of providers must be represented because there are cost issues. Some providers are high cost providers and the EUTF does not want to necessarily pay the highest cost. He does not want to give the impression that the Board's direction was 100% of providers for everything.

Mr. Garner stated that NMHC will provide a list of network pharmacies at open enrollment sessions.

Mr. Friedman stated that NMHC filed the 10Q statement for the first quarter and the second 10Q statement was filed on March 7, 2007 and NMHC is now in compliance with its filings. Chair Recktenwald asked if there is any doubt that NMHC would be able to perform in this contract. Mr. Friedman responded that there is no doubt in his mind that NMHC would be able to perform in this contract.

Mr. Williams directed attention to a memorandum to the Board dated March 22, 2007 regarding Times that includes a March 15, 2007 letter from Sue Ann Yasuoka of Times. The letter clarifies and reassures the Board that NMHC has a contract with Times.

- h. 2007 Open Enrollment
Overview by Mr. Nishihara regarding 2007 open enrollment (see Administrator's report). Mr. Williams stated that CDs and copies of carrier's materials will be distributed to the Board at the next meeting.
- I. Auditor Fees for FY 2008 -2009
Overview by Ms. Tonaki regarding auditor fees for FY 2008-2009 (see Administrator's report).
- j. GASB 43/45 Valuation
Overview by Mr. Williams regarding the GASB 43/45 report. Mr. Williams stated that the report will be delayed until mid-April. He requested to have a briefing prior to the public release of the GASB report. Discussion held by Trustees and staff regarding the informational briefing of the GASB report for Trustees (see Administrator's report).

- k. Benefits Consultant RFP No. 07-003
Mr. Williams reported that RFP No. 07-003 was issued and Evaluation Committee meeting will be scheduled. This item will be discussed in Executive Session.

B. DEPUTY ATTORNEY GENERAL

1. Everson Lawsuit

Mr. Aburano reported that the Court granted the State's Motion to Dismiss the Everson lawsuit. A dispute developed on the form of the order; the State wants the case dismissed and plaintiffs want a stay. As of yesterday, the Court has not made a ruling.

2. Awakuni Lawsuit

Mr. Aburano reported that an order from the Supreme Court was issued saying they did not think an oral argument was necessary and gave the parties ten days to ask for an oral argument. The State did request oral argument. A notice also was received from Justice Levinson notifying them that one of the plaintiffs' attorneys had been working in his chambers since January and that the attorney had nothing to do with the appeal.

3. Status of Contracts for FY 08 Benefit Plans

Mr. Aburano reported that Royal State signed their contract and his office is in the process of forwarding the contract documents to Mr. Williams for his signature. VSP is close to executing their contract. There are a couple of items to discuss with Mr. Friedman regarding the NMHC contract. Drafts of contracts were sent to the other carriers/administrator two weeks ago and Mr. Aburano is still waiting for their comments.

C. BENEFITS CONSULTANT

March Report

1. Prescription Drug Formulary

Overview by Mr. Garner regarding the comparison of the NMHC formulary to the HMSA formulary as described on their website. (See Consultant's report)

Ms. Reagan-Garner verified that NMHC filed the 10Q statement and is not on any negative list.

2. Implementation and Open Enrollment

No action required (see Consultant's report).

3. Garner Consulting Bulletin – February 2007

Overview by Mr. Garner regarding the bulletin. No action required (see Consultant's report).

- D. Financial Report as of January 31, 2007
Overview by Ms. Tonaki regarding the financial report as of January 31, 2007 (see written reports).
- E. Carrier's Reports
 - 1. HDS
Written report submitted. Ms. Arakawa reported that she included a tabloid on oral health.
 - 2. HMSA
Written report submitted.
 - 3. Kaiser Permanente
Written report submitted. Ms. Benevides reported that Kaiser is encouraging members to use mail order for maintenance prescription drugs. The Big Island and Kauai will not be affected by some changes to pharmacy services.
 - 4. MBAH
No report submitted.
 - 5. Royal State Insurance
Written report submitted.
 - 6. VSP
Written report submitted.

IV. UNFINISHED BUSINESS: None.

V. NEW BUSINESS

MOTION was made for the Board to approve to amend agenda to add election of new Chairperson. (Shiraki/Ho) The motion passed unanimously. (Employer Trustees-4/Employee-Beneficiary Trustees-4)

Election of New Chairperson

Trustee Marie Laderta was nominated as Chairperson to June 30, 2007. (Shiraki/Ho)

MOTION was made to close nomination. (Ho/Radcliffe) The motion passed unanimously. (Employer Trustees-4/Employee-Beneficiary Trustees-4)

Trustee Marie Laderta was elected Chairperson to June 30, 2007 by virtue of being the only trustee nominated for that position.

- A. EUTF Position(s) on Proposed Legislation
This item was addressed during the Administrator's report.
- B. Benefits Consult RFP No. 07-003
This item will be addressed in Executive Session.

- C. Contract Terms for FY08 Benefit Plans
This item will be addressed in Executive Session.
- D. Self-Funded Benefit Management Contract Awards and Terms and Conditions-
Revisions-Consultant and Administrator Recommendations
This item will be addressed in Executive Session.

VII. COMMUNICATIONS FROM THE PUBLIC AND INPUT FROM ATTENDEES
Mr. George Yamamoto stated on behalf of the retirees, he would like to thank Chair Recktenwald for treating the retirees very fairly and wished him well.

Trustee Radcliffe disclosed that about two weeks ago NMHC hired Red Morris to advise them on governmental relations or problems they may have in the State of Hawaii. He has business arrangements with Mr. Morris. They both have their own separate businesses and a business together. Trustee Radcliffe is not associated with him in this particular matter. As a result of this, he was approached by a legislator asking if he had violated his fiduciary responsibility as a member of the EUTF Board because he is associated with Mr. Morris on representing other clients. Trustee Radcliffe is asking for the Board's advice if he should write to the Ethics Commission asking for a ruling or make a disclosure like he just did. Chair Recktenwald thanked Trustee Radcliffe for making that disclosure and asked if the Board had thoughts on this issue. Chair Recktenwald stated based on the silence of the Board; it is a matter of his own good judgment. Trustee Radcliffe stated he will write directly to the Ethics Commission. Chair Recktenwald stated that the disclosure has been made and it is Trustee Radcliffe's intention to seek the Ethics Commission guidance.

VIII. FUTURE AGENDA ITEMS AND NEXT MEETING DATE
Board meeting is scheduled for Wednesday, May 9, 2007, 9:00 a.m., CFT-room 1935.

IX. EXECUTIVE SESSION

MOTION was made to go into Executive Session at 11:24 a.m. for the reasons stated on the agenda. (Befitel/Radcliffe) The motion passed unanimously. (Employer Trustees-4/Employee-Beneficiary Trustees-4)

There being no objections by the Trustees, the Executive Session adjourned at 12:12 p.m.

The Chair reported that the Board has taken the following actions in Executive Session:

1. Approval of February 28, 2007 Executive Session minutes as amended.
2. Trustees did a full review regarding the various issues involving NMHC.

X. ADJOURNMENT

There being no objections by the Trustees, the meeting adjourned at 12:14 p.m.

Respectfully submitted,

/s/

George Kahooanohano, Secretary-Treasurer

APPROVED on May 17, 2007.

Documents Distributed:

1. Draft Minutes for February 28, 2007. (17 pages)
2. Memorandum to BOT from Administrator regarding March Administrator Report dated 3/20/07. (4 pages)
3. Proposed Legislation Affecting EUTF, Update on House Bills Reviewed by BOT dated 3/20/07. (2 pages)
4. Proposed Legislation Affecting EUTF, Update on Senate Bills Reviewed by BOT dated 3/20/07. (2 pages)
5. Letter from Senator Clayton Hee regarding NMHC and the RFP process dated 3/28/07. (25 pages)
6. Memorandum to BOT from Administrator regarding Times Pharmacies Participation in NMHC Network dated 3/22/07. (5 pages)
7. Letter to Senator Hee from EUTF Administrator regarding HB 1290 HD1 dated 3/22/07. (2 pages)
8. Letter to BOT from Garner Consulting regarding March Benefit Consultant Report dated 3/20/07. (4 pages)
9. Garner Consulting Bulletin for February 2007. (3 pages)
10. EUTF Statement of Net Assets (Unaudited) dated 3/19/07. (1 page)
11. EUTF Combined Statement of Revenues and Expenses-Budget & Actual Comparison 7 Months Ended 1/31/06 (Unaudited) dated 3/19/07. (1 page)
12. EUTF Statement of Cash Flows 7 Months Ended 1/31/07 (Unaudited) dated 3/19/07. (1 page)
13. Approved Minutes for January 24, 2007. (21 pages)
14. Approved Minutes for February 5, 2007. (8 pages)