

**State of Idaho**  
**Small Employer Health Reinsurance Program &**  
**Individual High-Risk Reinsurance Pool**

**Board of Directors Minutes**  
Department of Insurance  
May 26, 2022

**Board Members Present**

Hyatt Erstad, Chairman, Erstad & Company  
Norm Varin, Vice Chairman, PacificSource Health Plans  
Senator Jim Guthrie, Idaho State Senate  
David Pankey, Regence BlueShield of Idaho  
Dean Cameron, Director, Idaho Department of Insurance-late  
Representative Rod Furniss, Idaho House Representative  
Janice Fulkerson, Board Secretary, Consumer Representative  
Dr. Chris Pickford, Consumer Representative  
Trent Nate, Select Health

**Board Members Not Present**

Mike Reynoldson, BlueCross of Idaho

**Others In Attendance**

Diane Kopecky, River 9  
Bret Busacker, Holland & Hart  
Kathy McGill, Department of Insurance  
Wes Trexler, Department of Insurance  
Shannon Hohl, Department of Insurance  
Robert Schmidt, Milliman  
Riccardo Palagi, Regence Blue Shield of Idaho  
Bret Rumbeck, BlueCross of Idaho  
Dave Johnstone, BlueCross of Idaho  
Shawn Smith, BlueCross of Idaho  
Karl Klein, Idaho Attorney General's Office

- 1. The meeting was called to order by Hyatt Erstad at 12:05 pm.**
- 2. A roll call was conducted, a quorum established.**
- 3. The meeting agenda was reviewed; no changes to the agenda were made.**
- 4. Minutes of the Previous Meeting**

*A motion was made to approve the minutes of the April 27, 2022, meeting of the Board of the Idaho Small Employer Reinsurance Program ("Program") and Idaho Individual High-Risk Reinsurance Pool ("Pool"). The motion was seconded, and carried.*

- 5. Legal Representation**

At the Board meeting held on April 27, 2022, Bret Busacker from Holland & Hart requested an increase in the legal fees paid by the Board. The current contracted rate is \$325 per hour. Bret Busacker and Holland & Hart charge \$640 an hour and are offering services to the Board at \$520 per hour. Both the Director and the Chairman received a letter from Bret Busacker addressing the rate increase to be effective 5/1/22 according to the terms of the executed engagement letter from Holland & Hart.

Hyatt Erstad engaged the Department of Insurance to evaluate options for legal representation for the Board and the business of the Pool and the Program. Wes Trexler reported the Department consulted State of Idaho subject matter experts and determined the Board may engage legal counsel without conducting a full RFP process. Legal representation may be established through the Idaho Attorney General's office, or through an outside firm.

Karl Klein from the Idaho Attorney General's office was asked to present how their office would manage the Board's request for legal representation. Karl Klein reported their office currently bills at \$85 hourly rate. He stated their office would be reviewing the hourly rate in the coming months, and they are expecting an increase. Mr. Klein indicated their office would likely assign Stephanie Guyon to the business of the Board. He then reviewed her experience and background with the board. Mr. Klein confirmed that the Board was free to seek legal representation from other private attorneys.

Bret Busacker from Holland & Hart explained the reasons for the increase. The prior legal counsel had a historically low rate, Bret maintains a different fee schedule than his predecessor, it's been more than 3 years since the initial rate was established, and the \$520 an hour is a fair market rate for their firm, and for his area of expertise.

The discussion ensued, reviewing potential contract items, termination requirements, legislative views, the average number of hours required annually, and the related costs. The Board discussed the options to use the Attorney General's office as well as maintain a relationship with Holland & Hart.

*A motion was made to move legal representation from Holland & Hart to the Idaho Attorney General's office, granting the Board's Executive Committee the authority to execute appropriate agreements with the Idaho Attorney General's office, and providing appropriate notices to Holland & Hart. The motion was seconded, and carried.*

## **6. Communication Notice Regarding Small Employer Deferred Assessment**

It was decided at the April 27, 2022 Board meeting that an assessment would be made to cover estimated final expenses for the Program. In follow-up to that decision, it was determined that there are carriers who may be carrying an assessment balance on their books between \$10.01 and \$99.99. Per the Board decision at the last meeting, those carriers didn't have lives ceded in the program and the balances will be waived. The recommendation is to authorize River 9 to send letters on behalf of the Board to document the decision for those carriers.

*A motion was made to authorize River 9 to send a notice to on behalf of the Board to those carriers that the assessment has been dismissed. The motion was seconded, and carried.*

River 9 will work with the Department to develop the notice on behalf of the Board.

## **7. Blue Cross Request for Board approval to cede.**

Dave Johnstone from BlueCross of Idaho presented the case to cede member 3c02 with an ICD10 of K56.600 with an inpatient claim from a continuous facility stay 11/6/21-2/25/22, (known as cross over claim). BlueCross reports they received the claim on 5/11/22. Mr. Johnstone provided a timeline for this claim, showing the dates of service, and how the received date occurred after the March 31<sup>st</sup> deadline to cede risk in the prior year, 2021.

Mr. Johnstone reviewed the revenue and costs based on what they have received to date. Premium would be paid to the Pool of \$11,280 and in turn claims would be reimbursed of \$78,386.35 (after deductible/co-ins). There may be additional claims for the 2021 year that would also be submitted at a later date.

Discussion ensued referencing 9.1.7 of the Plan of Operations addressing Claims Incurred Previous Calendar Yr. A carrier must receive and pay the claims prior to March 31<sup>st</sup> to cede the individual into the prior year. The discussion continued regarding this claim, and the precedent it may set on other claims like this going forward.

The Board took no action on this request during this meeting. The recommendation is to review the case and the related impact this and other claims may have on the Pool with new legal representation. It will be added to the agenda at the next board meeting on August 16<sup>th</sup>. River 9 will work with the Blue Cross, the Department, and with the Attorney Generals office before the next meeting.

### **Next Meeting**

The next regular Board meeting is scheduled for August 16, at 12:00, at the Department of Insurance Conference Room 3.

There being no further business, on motion duly made, seconded, and carried, the meeting was adjourned at 1:25 PM MDT.

Respectfully Submitted,

River 9 Consulting, Inc.