DISTRICT OF COLUMBIA
HEALTH BENEFIT EXCHANGE AUTHORITY

DRAFT NOTICE OF PROPOSED RULEMAKING

The Executive Board of the District of Columbia Health Benefit Exchange Authority ("Authority"), pursuant to the authority set forth in §18 of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 4, 2012 (D.C. Law 19-94; D.C. Official Code §31-3171.01 *et seq.*) ("Act"), hereby gives notice of the intent to adopt the following rule, which will establish a new Subtitle D (Health Benefit Exchange) of Title 26 (Insurance, Securities, and Banking) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

This rulemaking is related to the assessment levied pursuant to the Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015 (L21-0013). This would establish a process by which an assessed entity may request an amendment to the Notice of Assessment issued by the Health Benefit Exchange Authority and establish a process by which an assessed entity may contest an assessment.

A new Subtitle D, Health Benefit Exchange, is added to Title 26, District of Columbia Municipal Regulations, as follows:

A new Chapter 1, titled "Health Carrier Assessment," is added to read as follows:

110 Health Carrier Assessment General Provisions

110.1 Pursuant to D.C. Official Code §31-3171.03(f), the Health Benefit Exchange Authority (HBX) shall annually assess each health carrier defined in §31-3171.01(6).

110.2 For purposes of this Chapter and under D.C. Official Code §31-3171.01(6), an accident and sickness insurance company includes companies offering certain insurance products, including but not limited to:

(a) Major medical; and

(b) Excepted benefits as set forth in 45 C.F.R. §146.145 and 45 C.F.R. §148.220 unless otherwise specified in section 110.3.

110.3 For purposes of this Chapter and under D.C. Official Code §31-3171.01(3A), health insurance carrier risks do not include each of the following:

(a) Coverage for on-site medical clinics;

(b) Coverage issued as a supplement to liability insurance;

(c) Credit-only insurance (including mortgage insurance);

(d) Federal Employees Dental and Vision Insurance Program, as set forth at 5. C.F.R. §894.101 *et seq.*;

(e) Federal Employees Health Benefits Program, as set forth at 5 C.F.R §890.101 *et seq.*;

(f) Liability insurance, including general liability and auto liability insurance;

(g) Medicare Part D, as set forth at 42 U.S.C. §1395w-101 *et seq.*;

(h) Stop-loss insurance; and

(i) Workers' compensation or similar insurance.

120 Health Carrier Assessment Administrative Appeal

120.1 An entity assessed pursuant to D.C. Official Code § 31-3171.03(f) may file a request for reconsideration under this section to contest the assessment in the Notice of Assessment. An entity is limited to contesting its classification under §31-3171.01(6), a processing error, the incorrect application of relevant methodology, or mathematical error with respect to the assessment.

120.2 An entity must file a request for reconsideration within 45 calendar days after the date of the Notice of Assessment. Submission of a request for reconsideration does not toll the due date for submitting payment of the assessment.

120.3 A contesting entity must specify the basis for the reconsideration in the request, as specified in section 120.1. Such entity may provide, only at the time the reconsideration is requested or to rebut additional information provided to the entity by the Executive Director of the Authority or his or her designee consistent with section 120.4, additional documentation supporting the request for reconsideration by the Authority. An entity may not submit documentation or data that was previously submitted to the Department of Insurance, Securities and Banking, but may provide evidence of timely submission.

120.4 The Executive Director of the Authority or his or her designee will review evidence and findings upon which the assessment was based and any additional documentation provided by the contesting entity. The Executive Director or

designee may review any additional information believed to be relevant to the request for reconsideration. The Executive Director or designee will provide any additional information used in the review to the contesting entity and provide such entity with a reasonable time to review and rebut the additional information. The contesting entity must prove its case by a preponderance of the evidence with respect to the issues of fact.

120.5 The Executive Director or designee will inform the contesting entity of their decision in writing within 45 calendar days of receipt of the request for reconsideration. The Executive Director's or designee's decision on the request for reconsideration is final and binding. Nothing in this section limits a contesting entity's right to judicial review.

A new Chapter 99, "Definitions", is added to read as follows:

9900 DEFINITIONS

9900.1 When used in this chapter, the following terms shall have the meanings ascribed:

"Authority" means the District of Columbia Health Benefit Exchange Authority established pursuant to D.C. Official Code § 31-3171.02.

"Health carrier" has the same meaning as provided in D.C. Official Code § 31-3171.01(6).