

**DRAFT**  
**FOR EXECUTIVE BOARD CONSIDERATION**  
**RESOLUTION OF THE EXECUTIVE BOARD**  
**DISTRICT OF COLUMBIA**  
**HEALTH BENEFIT EXCHANGE AUTHORITY**

**To prohibit tobacco use as a rating factor.**

**WHEREAS**, 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”) created the District of Columbia Health Benefit Exchange Authority (“Authority”), an independent authority of the Government of the District of Columbia, and its governing Executive Board;

**WHEREAS**, §7 of the Act (D.C. Official Code §31-3171.06(a) & (b)) authorizes the Executive Board to take necessary lawful action to implement provisions of the Affordable Care Act of 2010 (“ACA”) (P.L. 111-148 & P.L. 111-152).

**WHEREAS**, §1201 of the ACA prescribed permissible rating factors in the small group and individual marketplaces (§2701 of the Public Health Service Act, 42 U.S.C. 300gg(a)(1)), and specifically limited rating variations based on tobacco use to no more than a ratio of 1.5:1;

**WHEREAS**, the U.S. Department of Health and Human Services has determined that the federal statute, and its own regulation, does not prevent states from prescribing a narrower ratio or from prohibiting the variation of rates based on tobacco use, or from having requirements for health insurance issuers that are more consumer protective than those under federal law (78 Fed. Reg. 13406, 13414 (Feb. 27, 2013) (interpreting the preemption and state flexibility rules at §2724 of the Public Health Service Act, 42 U.S.C. 300gg-23(a)(1));

**WHEREAS**, the Standing Advisory Board was asked for a recommendation on allowing use of tobacco rating factors in the individual and small group health insurance markets, as well as if allowed what permissible limits should be. After receiving public input and reviewing written reports, the Standing Advisory Board recommended to prohibit tobacco use as a rating factor in a vote of 6 to 2, with one abstention;

**WHEREAS**, current market practice in the District of Columbia is not to vary rates in the small group and individual marketplaces based on tobacco use;

**WHEREAS**, on April 4, 2013, the Insurance Working Committee deliberated on the topic of tobacco use as a rating factor, at a meeting open to the public, and approved a recommendation for Board consideration in a two to one vote to prohibit tobacco use as a rating factor; and

**NOW, THEREFORE, BE IT RESOLVED** that the Executive Board hereby approves the following recommendation presented by the majority of the Insurance Working Committee:

Rate Variations Based on Tobacco Use: Issuers may not vary rates based on tobacco use.

**I HEREBY CERTIFY** that the foregoing Resolution was adopted on this \_\_\_\_\_ day of

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**FOR EXECUTIVE BOARD CONSIDERATION**

\_\_\_\_\_, 2013, by the Executive Board of the District of Columbia Health Benefit Exchange Authority in an open meeting.

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Khalid Pitts, Secretary/Treasurer  
District of Columbia Health Benefits Exchange Authority