



Health Benefit Exchange Authority Executive Board Meeting
FINAL MINUTES

Date: Wednesday, June 14, 2017
Time: 5:30 PM
Location: 1225 Eye Street, NW, 4th Floor, Board Conference Room
Call- in Number: 1-650-479-3208; access code: 735 605 019

Members Present: Henry Aaron, Nathaniel Beers (via telephone), Diane Lewis, Khalid Pitts (via telephone)

Members Absent: Kate Sullivan Hare, Leighton Ku, LaQuandra Nesbitt, Stephen Taylor, Tamara Watkins, Wayne Turnage, Laura Zeilinger

I. Welcome, Opening Remarks and Roll Call, Diane Lewis, Chair

A roll call of members confirmed that there was a quorum with four voting members present (Dr. Aaron, Dr. Beers, Ms. Lewis, Mr. Pitts).

II. Approval of Agenda, Diane Lewis, Chair

It was moved and seconded to approve the draft agenda. The motion passed unanimously, with Dr. Aaron, Dr. Beers, Ms. Lewis, and Mr. Pitts voting yes.

III. Approval of Minutes, Diane Lewis, Chair

It was moved and seconded to approve the April 12, 2017 minutes. The motion passed unanimously, with Dr. Aaron, Dr. Beers, Ms. Lewis, and Mr. Pitts voting yes.

IV. Discussion Items

A. HBX Implementation of the CMS Marketplace Stability Regulation – *Claire McAndrew, Vice Chair, HBX Standing Advisory Board*

Payment of Back Premiums

Debra Curtis, Senior Deputy Director, began the discussion in the absence of Ms. McAndrew, who was running late.

Ms. Curtis said that CMS released its Market Stabilization regulation in April. The regulation was permissive to the states in certain areas. The regulation was reviewed with the Standing Advisory Board (SAB), to seek its input to the Board with respect to policy decisions available to the states under the regulation. Out of that discussion came two recommendations that are before the Board tonight via the Board adoption of resolutions.

The first item is the ability of carriers to require back payment of premiums as a condition of individuals receiving coverage during an open enrollment period. CMS has re-interpreted the guaranteed availability law to permit such action by carriers. State law can override the new interpretation. However, according to the Department of Insurance, Securities and Banking (DISB), the District does not have a law prohibiting this practice. There may be a law that would limit carriers from requiring more than 60 days of back premiums. SAB members think the CMS reinterpretation, which could require back payment of hundreds of dollars, will have negative consequences for consumers and the District marketplace. The SAB recommendation is to ask DISB to prohibit carriers from making back premium payments a condition of receiving coverage during an open enrollment period.

Dr. Aaron asked if we had any indication from DISB on its thoughts. Ms. Kofman said it was her understanding that staff-level discussions indicated DISB's belief that it may not have authority to prohibit the practice. DISB has a law that may limit the collection of back premiums to 60 days.

Dr. Aaron said he could see how the practice could discourage enrollment, which HBX does not want to do. If DISB does not think it has the authority to prohibit the practice, he wondered, should HBX be going to Council instead? Ms. Kofman noted that the resolution could be amended to say either DISB or Council, but the SAB recommendation was with respect to DISB and the SAB had not considered the question of DISB's authority to prohibit, because it was not known at the time of the SAB meeting.

Ms. McAndrew entered the meeting. Dr. Aaron asked Ms. McAndrew if there was any doubt in her mind that SAB would expand the recommendation if given the opportunity

to do so. Ms. McAndrew said that the SAB was very concerned about the potential negative effects of the practice and that consumers should not be subject to it.

Dr. Beers thought that we should include language about Council. Mr. Pitts agreed.

Dr. Aaron asked if there were any minefields of which the Board should be aware. Ms. Kofman said that HBX had spoken with both carriers in the individual market and they do not employ this practice. It would be a new process they would have to adopt.

Ms. Kofman gave some more background. Many health policy analysts believe that what the Trump Administration has done through final rulemaking is reading a provision into the statute that does not exist. Dr. Aaron noted that the provision might be subject to litigation.

Ms. Kofman suggested that the resolution be amended to include both DISB and Council. The discussions so far are staff discussions; on further review, DISB may conclude that it does have the authority so in deference to a sister agency, let DISB come to a more formal conclusion. If it concludes it does not have authority, then HBX can approach Council.

Ms. Curtis suggested an amended recommendation clause as follows: “Recommend that DISB act, and if it does not have such authority, to encourage the District of Columbia Council to prohibit the ability of carriers to require back premium payments as a condition of enrollment during an open enrollment period.”

Open Enrollment Plan Year 2018

Ms. McAndrew said another provision in the Market Stability rule would have the effect of shortening open enrollment for plan year 2016 to six weeks (November 1 – December 15) from the scheduled three months (November 1 – January 31). Ms. McAndrew said no one and nothing is prepared for such a major change, not the IT system, the budget, the Call Center, assisters and navigators, nor consumers. Experience shows that the later period being extinguished – December 16 – January 31 – is one when major enrollment occurs. Other state-based marketplaces (SBMs) have expressed similar concerns. The rule does provide for state flexibility, by allowing states to add a SEP to make open enrollment and the SEP together coincide with the originally planned full three month period. The resolution before the Board is to create a SEP for December 16 – January 31.

Dr. Aaron asked if the Administration had given any rationale for truncating the open enrollment period. Ms. Curtis said there was verbiage in the rule indicating that carriers have said it would be helpful, and that it would encourage people not to wait to sign up until the end of the year.

Ms. McAndrew said she believed some carriers were not pleased with the change. Dr. Aaron said it seldom helps increase business to shorten hours open for shopping. Ms. Kofman added that as does HBX, the individual carriers have a number of competing pressures for resources during November – December. Many small and large groups renew on January 1. Many commenters, such as consumer advocates and brokers, weighed in strongly opposing the proposal.

B. AWS Cloud Security Contract – *Mila Kofman, Executive Director*

Ms. Kofman stated HBX needed Board approval for a vendor to provide support for Amazon Web Services (AWS) Cloud Security Compliance and Ancillary Data Security, as part of our ongoing effort to achieve cost savings and efficiency. HBX issued a solicitation, and review of the solicitation responses is ongoing. HBX staff needs this approval to advance the procurement through the Council approval process expeditiously, prior to the Council’s summer recess.

The request is for approval to award the base and 4 option years, as needed, in amounts **not to exceed** the following:

Base year	\$1,391,577.60
Option year one	\$1,426,368.00
Option year two	\$1,462,041.60
Option year three	\$1,498,598.40
Option year four	\$1,536,057.60

The Finance Committee has approved this procurement. Staff will report back at the July meeting with details on the vendor selected.

V. Public Comment

No public comment was proffered.

VI. Votes

A. Resolution – CMS Market Stability Regulation, Past Due Premium Provision

Mary Beth Senkewicz, Associate General Counsel and Policy Advisor, noted that since the Board had amended the SAB proposal, a technical change should be made to the “Now, therefore, be it resolved clause” to indicate the resolution was amended.

B. Resolution – CMS Market Stability Regulation, Special Enrollment Period for the upcoming 2018 Plan Year Open Enrollment

It was moved and seconded to approve the two resolutions above regarding the CMS Market Stability Regulation, the first one as amended. The motion carried unanimously with Dr. Aaron, Dr. Beers, Ms. Lewis, and Mr. Pitts voting yes.

C. AWS Cloud Security Contract

It was moved and seconded to approve the AWS Cloud Security Contract with the amounts as set forth above. The motion carried unanimously with Dr. Aaron, Dr. Beers, Ms. Lewis, and Mr. Pitts voting yes.

VII. **Executive Director Report**, *Mila Kofman, Executive Director*

ACA UPDATE: CBO published its analysis of the House-passed American Health Care Act (AHCA). It shows 23 million people losing coverage by 2026; older people facing much higher premiums; and in many parts of the country a return to pre-ACA days when a person's ability to obtain health insurance could be stymied by underwriting. The CMS actuary released a report saying 14 million would lose coverage. In either case, AHCA does not look like a good public policy going forward.

The Senate continues to deliberate on advancing its version of ACA repeal. Senate leaders are not holding any hearings or mark ups – when Republican leadership has a bill ready, they will bring it directly to the floor. We are watching this process closely.

HBX ACA UPDATE: In order to be prepared, we are forming an ACA Advisory Working Group. The Working Group will be chaired by Board Member Leighton Ku (who had to miss this evening's meeting because he's teaching a summer class). Jodi Kwarciany, of DCFPI, has graciously agreed to join as Vice Chair. We are hoping to draw a diverse membership to the working group.

In the short term, the working group can make policy recommendations on local steps to protect gains made to date due to changes in federal regulations and enforcement, such as non-enforcement of the individual responsibility requirement and the non-commitment to cost-sharing reductions (CSRs). In the longer term, the group will need to review local law and recommend changes if there are major federal law changes to the ACA.

We will post a notice about the new ACA Advisory Working Group and will conduct outreach to ensure a broad base of participation in the Working Group. If you are interested in joining, please email Debra Curtis at debra.curtis@dc.gov. We will draft charges for the working group to provide clear direction.

2018 HEALTH PLANS RATE FILINGS: Proposed rates and forms were filed May 1. Our outside actuaries are reviewing the filings as is DISB.

Dr. Aaron said he had read that in some states, carriers submitted two sets of rates, one with and one without CSRs. Ms. Kofman shared what is public information: that the individual market carriers submitted a single set of rates that assumed full payment of CSRs; reserved the right to re-file if the CSRs are not funded fully. HBX staff supports DISB's flexibility in allowing carriers to use the best information available in revising rate filings.

COUNCIL BUDGET HEARING UPDATE: The HBX Budget Oversight hearing took place at Wednesday, May 10th at 11:00 AM. Ms. Lewis and I both provided testimony. The budget has passed Council and is awaiting Congressional review. There were no changes to the HBX budget.

SMART AUDIT SUBMISSION: Each year, SBMs are required to complete a SMART Audit for CMS. It includes both a financial and a programmatic audit. We are able to re-use the CAFRA audit for the financial component. The Programmatic Audit was conducted by Bert Smith. The SMART was filed with CMS on June 1st as required. Both audits are on our website.

INSURANCE REGULATORY TRUST FUND BUREAU AUDIT: The Insurance Regulatory Trust Bureau is permitted to audit HBX as part of our assessment legislation. The Bureau initiated another this month. Ms. Kofman stated she would update the Board when the audit is completed.

MCCASKILL/LOEBSACK BILL: Sen. Claire McCaskill (D-MO) and Rep. Dave Loebsack (D-IA) have introduced a bill in Congress that would allow anyone in bare counties across the country to purchase coverage through DC Health Link's small business marketplace just like Members of Congress do. We are honored to be considered part of the solution. However, the Trump Administration could have taken measures to prevent bare counties and did not take any action.

MASSACHUSETTE UPDATE: We are on schedule for launch of the pilot phase of the project on August 1.

DCAS UPDATE: The City Administrator moved the management of DCAS from OCTO to DHCF. For HBX, this significance of this is that the Operations and Maintenance Team will now be managed by DCAS. Of other significance is the fact that the entire DCAS team is now moving into our L'Enfant IT office space. This change happened, the DCAS team moved within a week into our space at L'Enfant, and we moved some of our IT contractors into the I Street space. All the moves happened June 12 and things have gone very smoothly.

COMMITTEE UPDATES: The Producer Advisory Committee met on June 7th to see a demonstration of the new broker quoting tool. We have received great feedback from brokers on the tool. There was a presentation on the small business mobile app, which helps brokers track their clients through the system.

One thing that came up was that CareFirst has made a decision to cease paying commissions in the individual market in all three jurisdictions. HBX is looking into this issue further as we would like brokers to continue providing support to our customers.

The Consumer Assistance and Outreach Advisory Committee also met. The ACA requires many notices, and we are trying to make the notices more understandable by being written in plain English. The Advisory Committee provided valuable input into the process.

ENROLLMENT DATA: Enrollment data is available [here](#).

Dr. Aaron suggested adding Medicaid current enrollment. Ms. Kofman said we do not have that data. HBX has data on how many people got a determination of eligibility for Medicaid coverage, but we do not know how many people actually enrolled in Medicaid.

VIII. Finance Committee Report, Henry Aaron, Chair

Dr. Aaron reported that the Finance Committee met Thursday, June 2nd, and that all committee members – Ms. Lewis, Ms. Watkins, and himself participated by phone with HBX staff.

MASSACHUSETTS PROJECT UPDATE: Committee members reviewed the Massachusetts budget update and learned that the project remains under budget and all is on track.

HBX BUDGET UPDATE: Committee members were updated by Ms. Kofman that the HBX budget had passed Council with no changes, and that it moves forward through the rest of the process, including Congressional review, with the full budget.

FINANCIAL REVIEWS: The Committee reviewed both the monthly budget report and the monthly expenditures report and noted nothing out of the ordinary.

PROCUREMENTS: The Committee members were updated that there are two major pending procurements.

CONTACT CENTER: In September, our original contact center contract (which had four option years) expires. HBX issued an RFP and four vendors submitted qualifying bids. We anticipate reviewing that procurement soon at the Finance Committee and it will be on the agenda for our July Board meeting. It will exceed \$1 million and will therefore need Council approval. The staff plans to ensure that the procurement is submitted to Council so that it will be completed before the current contract year expires.

SECURITY WORK IN THE CLOUD: HBX also issued an RFP, in a secure manner, for resources needed to complete security work in the cloud environment, which is where much of DC Health Link now resides. HBX staff followed up with us via email after the

meeting, and Finance Committee members reviewed and approved the proposed contract. That was already before the Board today – as we changed up the agenda for today’s meeting. So, no more needs to be said on that.

HBX ANNUAL CARRIER ASSESSMENT: The Committee was updated that DISB is preparing to conduct the annual assessment. The projection for this year’s assessment is \$32.6 million. The goal for this year is to conduct the assessment earlier in the summer so that all appeals can be completed before the fiscal year ends on September 30th.

TRANSFER OF DCAS OPERATIONS & MAINTENANCE MANAGEMENT: Finally, Ms. Kofman updated the Committee on the transfer of control of Operations and Maintenance for the underlying DCAS system, as she reported to us earlier.

IX. Closing Remarks and Move to Executive Session, *Diane Lewis, Chair*

Pursuant to DC Code §§2-575(b)(4) and (b)(10) and 3171.11, the Board will move to closed session for legal advice and personnel.

The public portion of the meeting adjourned at 6:29 p.m.