



Health Benefit Exchange Authority Executive Board Meeting

MINUTES

Date: Wednesday, November 8, 2017
Time: 5:30 PM
Location: 1225 Eye Street, NW, 4th Floor, Board Conference Room
Call- in Number: 1-650-479-3208; access code: 725 298 184

Members Present: Henry Aaron, Leighton Ku, Nathaniel Beers (via telephone), Kate Sullivan Hare (via telephone), Diane Lewis, Khalid Pitts (by telephone), Stephen Taylor, Tamara Watkins (by telephone)

Members Absent: LaQuandra Nesbitt, Laura Zeilinger, Wayne Turnage

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, Ms. Sullivan Hare, Dr. Ku, and Ms. Lewis).

Ms. Lewis proposed moving the December Board meeting to December 6th. There being no objection, the December meeting was moved to December 6th, and the update will be posted on the website.

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. Sullivan Hare, Dr. Ku, and Ms. Lewis voting yes.

III. Approval of Minutes, Approval of minutes, Diane Lewis, Chair

It was moved and seconded to approve the September 13, 2017 minutes. The motion passed unanimously, with Dr. Aaron, Dr. Beers, Ms. Sullivan Hare, Dr. Ku, and Ms. Lewis voting yes.

IV. Executive Director Report, Mila Kofman, Executive Director

OPEN ENROLLMENT UPDATE: Our fifth open enrollment period has begun. As a reminder, thanks to actions taken by our Standing Advisory Board and this Executive Board, our open enrollment period is extended until January 31, 2018. That is in contrast to the Federal Marketplace which has shortened its open enrollment period to only six weeks – ending on December 15, 2017.

Our Call Center is open longer hours for open enrollment: 8 am to 8 pm Monday-Friday, Saturdays 10-5. HBX outreach activities: November 1 - HBX joined Mayor Bowser for a press event to open this open enrollment period officially; November 4 - Mayor Bowser again joined HBX for our Kick Off Health Fair, at which between 300-400 were in attendance. Mayor Bowser proclaimed November 1, 2017 through January 31, 2018 as “Get Covered Stay Covered Months,” and emphasized the importance of affordable health coverage and to keep moving forward. Congresswoman Norton, Council Chairman Mendelson, Council Member Brandon Todd, and Deputy Mayor for Health and Human Services HyeSook Chung were also in attendance.

OTHER OPEN ENROLLMENT NEWS:

- **AUTORENEWALS:** We have auto-renewed 16,476 people. 367 customers actively shopped.
- **CONGRESS:** Congress’ open enrollment period is November 13 to December 11, 2017.
- **SHOP RENEWALS:** 29% of our SHOP employers renew on December 1 (1,266 small businesses covering 18,486 people).

FEDERAL UPDATES: New payment parameters rule: On October 30, 2017, CMS issued the 2019 Proposed Payment Notice. Comments on this proposed notice are due by November 27, 2017. It proposes numerous changes to SHOP rules, Navigator rules, eligibility requirements, and essential health benefits options. We are still reviewing it.

The Trump Administration stopped reimbursing health plans for cost-sharing reductions as of September 30, 2017.

FEDERAL LEGISLATION ON CSR PAYMENTS/MARKET STABILIZATION:

ALEXANDER/MURRAY BILL: Senate Bipartisan bill with 24 cosponsors. All Democrats support it and with the 12 Republicans as cosponsors, it has the 60 votes needed for passage. The bill would fund Cost Sharing Reduction Payments through 2019 (overturning Trump’s decision to halt those payments to carriers); would provide greater flexibility to states that want to pursue ACA 1332 waivers; and would reinstate funding for federal marketing and outreach efforts through 2019. The bill has not moved because the President has not said whether he would sign it.

HATCH/BRADY BILL: The bill funds Cost Sharing Reduction payments through 2019, stops the individual responsibility requirement for five years. Such a move would undermine the individual market as the individual mandate is critical to maintaining a stable health insurance marketplace.

EXECUTIVE ORDER:

Executive Order was issued on October 12. It has no immediate impact. It directs the Department of Labor (DOL) to provide guidance and regulatory changes that would broaden Association Health Plans to bypass ACA protections and state regulation; directs Health & Human Services (HHS) to expand the use of limited duration health insurance policies; and directs the Internal Revenue Service (IRS) to expand use of Health Reimbursement Arrangements (HRAs) by employers. The first two provisions – if implemented as outlined -- would have a crippling effect on the individual and small group markets in states and is a real threat to the District and other states' ability to provide quality, affordable coverage under the ACA. We are still waiting on DOL to issue guidance.

TAX BILL: It may include a repeal of the individual responsibility requirement. It is not in the bill as introduced, but President Trump, Speaker Ryan and conservative members in the House and Senate have all been raising it.

CHIP REAUTHORIZATION UPDATE:

CHIP has still not been reauthorized. Alice Weiss (DHCF) provided an update. The legislation to extend CHIP funding is still under consideration, but no timetable has been set. On November 3rd, the House passed a partisan version, but the Senate is not likely to consider it because 60 votes are lacking. Bipartisan negotiations are apparently ongoing on offsets, but no further information is available. DHCF has been notified by HHS that \$10.2 million will be made available to DC out of a total of \$14.7 million; however, without more, DC will experience a shortfall by January 2018. The shortfall will be between \$9.8 and \$12.6 million for FY 2018.

2018 HEALTH INSURANCE RATES: DISB approved Plan Year 2018 rates on October 19, 2017. I want to note the leadership that Stephen Taylor provided in this process – holding the first ever public hearing in the District on health insurance rate proposals. We have worked closely together to keep rates lower in the District than in our neighboring states.

Stephen Taylor provided a further update. 177 plans have been approved; no change to small group plans, with 151 approved; individual plans increased from 20 to 26. The average premium increase was 15.64% for the individual market; overall there was a 7.26% increase for small groups. The District's increase was fairly modest as compared to other states. In the individual market, CareFirst was about 19.6% here, as opposed to Virginia at 54.5%. Maryland had an overall 43.8% increase in the individual market.

Dr. Ku asked about higher rates in other states, whether it had anything to do with CSRs, which do not affect the District as much? Commissioner Taylor noted that in Maryland, the

Commissioner allowed an extra 15%-20% due to the loss of CSR funds. Ms. Kofman noted that some states already had two sets of rates preapproved, or their regulators acted quickly. No mid-year adjustments are anticipated. Commissioner Taylor thanked Ms. Kofman for her assistance in the rate review process.

MASSACHUSETTE UPDATE: SHOP went live 11/6; it includes MA-specific functionality. The project is on budget.

PRESENTATION RE ENROLLMENT KICK-OFF EVENTS IN THE DISTRICT:

Dr. Linda Wharton-Boyd (HBX) presented videos about the November 1st and November 4th events. (Please click [here](#), open the Audio Recording of meeting for November 8, 2017, and the video begins at 24:00 minutes.)

ENROLLMENT DATA: Ms. Kofman gave the Board a few data points:

- November 1 through November 7, compared to all prior years, had the highest activity (except for the first year, 2013) across all measures of activity: website users; website sessions; call volume; and more average number and maximum numbers of users on the website

V. Finance Committee Report, Henry Aaron, Chair

Dr. Aaron reported that the Finance Committee met Thursday, November 2nd. Committee members Ms. Lewis, Ms. Watkins and I participated by telephone with HBX staff.

UPDATE TO HBX CONTRACTING & PROCUREMENT POLICIES & PROCEDURES:

HBX staff reviewed proposed contracting and procurement policy and procedure updates that would impact the role the Finance Committee plays in approving procurements. The decision was made not to make any changes to the current Finance Committee role. The updated policy is before the Board this evening and you will hear more about the proposed changes in that discussion.

FY 19 STAFF PROPOSED BUDGET REVIEW: The bulk of the meeting was spent reviewing the staff proposed FY 19 budget. Ms. Kofman led us through the development and recommendations for spending in FY 19. Ms. Kofman will be presenting this later in this evening's meeting so I do not want to repeat that all here. The Finance Committee approved the budget as proposed by staff.

FINANCIAL REVIEWS: The Finance Committee was provided the monthly expenditures report that included summary data for FY 17 which is still being closed out as well as preliminary spending information with regard to FY 18 which began October 1. Because the FY 17 is still in the process of being closed, we did not review the monthly tracking reports for HBX or Massachusetts. We will be back on track with that next month.

VI. Discussion Items

a. ACA Working Group Market Stability Recommendations –Leighton Ku, ACA Working Group Chair

Dr. Ku reported that the ACA Working Group was formed in the summer and met 10 times between August 2 and October 31. Most of our working groups meet half as many times at the most so this was a real commitment for Working Group members.

The Group was made up of a wide array of stakeholders that included:

An insurance broker agency
DC Health Link individual and SHOP customers and consumer advocates
DC Chamber of Commerce
CareFirst
Kaiser Permanente
America’s Health Insurance Plans
AARP
Whitman Walker Health
Mary’s Center
DC Primary Care Association
DC Hospital Association
Georgetown Center for Health Insurance Reforms
AmeriHealth Caritas
Other non-voting members
• An actuary
• UnitedHealthcare

There were 17 voting members all together.

I would note that we also had strong technical assistance from sister agencies in the District including: DISB, DHCF, and OCFO.

As a reminder the charges were:

1. Identify local policy options to strengthen the ACA protections assuming that the ACA is not repealed (or replaced). The ongoing Administration actions are jeopardizing the stability of our health insurance marketplace, e.g. not enforcing the individual responsibility requirement, no commitment to reimburse cost sharing reductions. The focus here is affordability, consumer protections, and market stability.

2. If the ACA is repealed: identify local policy options. The focus primarily is private health insurance (small group and individual marketplace) – affordability, consumer protections, and market stability.

The second charge was not addressed, since repeal and replace is off the table for the time being. If there is action at the federal level, we have told the working group that we may need to reconvene.

The recommendations have been posted on the website and circulated to Board members last week after the vote. Briefly, they are as follows:

- **Establish a local reinsurance program.** This will help make premiums more affordable for approximately 18,000 residents with private individual health insurance. This will help people who qualify for premium reductions and those who do not (most DC residents do not qualify for federal premium reductions).
- **Establish a local APTC subsidy wrap to increase affordability of health insurance premiums.** This will help make private individual health insurance more affordable for people who qualify for federal premium reductions known as APTC. There are approximately 1000 residents covered now. This will also help people who qualify for APTC but chose not to enroll because without additional premium reductions coverage is not affordable.
- **Establish a fallback individual responsibility requirement through the District tax code if the federal government fails to enforce the individual responsibility requirement.** The goal is not to make money but to keep insurance pools stable by ensuring that healthy people get and stay insured. Otherwise premiums would increase if healthy people drop out.
- **Reimburse health plans for Cost Sharing Reductions (CSR).** Federal government announced that it will end payments effective immediately in October 2017.

These four recommendations work together to ensure a stable market and more affordable private individual health insurance coverage. I would emphasize the importance of them being a package of recommendations. Some working group members feel more strongly about some recommendations than others, but we achieved a unanimous vote because of them being combined together into an overall package of steps that working group members all agreed would protect and enhance the individual health insurance marketplace in the District while increasing affordability to enrollees.

The working group was clear that its role was to recommend policies – it was not to cost out or propose specified spending levels for these policies. What the working group did agree to

though – and it was spelled out in the wording of the recommendations – is that a sustained and substantial commitment to these policies over multiple years can best achieve predictable premiums and consistent affordability. Such commitment is also critical to support the operational investment necessary to implement these policies.

So, what is before the HBX Executive Board today is to vote on these recommendations that were approved unanimously by the ACA Working Group. This vote is in the form of a resolution. If passed, then HBX staff would work with District policymakers to move forward these recommendations through the legislative process. There would be local funds needed to achieve these reforms.

During one of the two months of deliberations, my co-chair Jodi Kwarcianny led the group while I was away. I would like to provide Ms. Kwarcianny the opportunity to add anything to these comments if she wishes.

Ms. Kwarcianny provided the following: What was really apparent in the working group was that conversations evolved from mitigation to continued sustained action in the District. Some recommendations will take time, but our concern was what can we do to strengthen the individual market?

Dr. Ku added that tax changes, for instance, will take some time. The timing for some depends upon later action. We should aim for some action in the next year; and other action in the years thereafter.

Ms. Kofman added that, if Board approves these recommendations, we at HBX will work with the Mayor and Council to implement the recommendations. To have an impact on 2019 rates would require emergency legislation and budget negotiations. Local funding would be pursued on a parallel track. Other efforts include cleanup of District code provisions regarding ACA additions. As a reminder, in June the Board passed a resolution prohibiting carriers from requiring payment of back premiums before effectuating open enrollment coverage. These would also be included.

Dr. Aaron congratulated everyone and the entire working group for its work and the endorsement of an overall package. Ms. Kofman stated that if this package is enacted, the District will be the first jurisdiction to move forward in a comprehensive manner like this to protect, strengthen, and improve its health insurance marketplace.

Dr. Aaron recommended that the work of the Committee be publicized.

Dr. Ku asked what the Federally-facilitated state marketplace would be able to do? Ms. Kofman replied that those states could still do something like this because they still have regulatory authority over insurance; they could also do local reinsurance, cost sharing reductions wrap and local affordability. They could implement the entire package.

b. FY 19 Proposed Budget – *Mila Kofman, Executive Director*

Ms. Kofman presented the staff-proposed [budget](#) for fiscal year 2019.

Dr. Ku asked about the reduction in the assessment from 1% to 0.9%, and whether we should keep it at 1% for the time being. Ms. Kofman replied that we expect after FY 17 books being closed, we will come back with a recommendation for putting more money into the operating reserve. We expect that the recommendation will result in nine months' operating expenses being in the reserve, consistent with Board-approved policy. Also, our assessment is based on premium volume, and that grows every year. We estimate the 0.9% assessment will generate \$30,330,000, which is just slightly above the \$29.5 million we will need.

c. Updates to HBX Contracting and Procurement Policies and Procedures – *Diane Lewis, Executive Board Operations Committee Chair and Alan Miller, HBX Staff*

Alan Miller (HBX Attorney Adviser) made the presentation, noting that the draft update had been circulated before the meeting. Mr. Miller noted that many of the changes were grammatical and contextual, but highlighted some of the substantive changes as follows:

- Pilot Procurements: We propose deleting the requirement for prior public notice—doing this to be consistent with DC regulations, which has no such requirement, and because we found this year it caused confusion in the contractor community. Contractors think anyone can submit a proposal; in fact, it is a unique situation with limited contractor response. We will continue to post the award after it is completed.

Dr. Aaron asked what is a pilot procurement?

Mr. Miller said it is a procurement that is for new technology or for new and unique HBX requirements.

Dr. Ku asked how is it different from sole source?

Mr. Miller replied that a sole source procurement is one for which only one contractor is capable of meeting the requirement, but is not necessarily new or unique.

Mr. Taylor asked why couldn't you still use sole source?

Mr. Miller replied a pilot procurement might end up being a sole source, but the reverse is not necessarily true.

Dr. Ku commented that, by name, “pilot” means if you use pilot once, it doesn’t get used again for that contract mechanism, right?

Mr. Miller replied that generally that is true.

Mr. Taylor asked why not have competition then?

Mr. Miller replied without pilot procurement authority, for a new or unique requirement, to limit competition would be inappropriate.

Dr. Aaron asked for an example – how would he know one if he saw one? Mr. Miller replied this year we developed a pilot procurement for IT consultation help to assist with the implementing the MA partnership; that was a pilot procurement and that is the only one we have had.

Purvee Kempf (General Counsel & Chief Policy Advisor) indicated that these should be rare and few and far between. This is an opportunity that exists in DC Code and we adopted it for HBX as well.

Mr. Miller concurred saying, it is consistent with District policy, has been in our policy for years; we are just cleaning up the prior public notice because of confusion.

- Contract Modifications: We reorganized this section to make it read more logically; the substance has not changed.
- Conflict of Interest Sections: Prior provision stated that any contractor who helps us develop requirements for a future procurement would ordinarily be precluded from participating in that future procurement. We have refined this provision to be clear that we will preclude that contractor from future competition for that contract. This eliminates potential unfair competition and conflict of interest.
- Award Pending Protest: In a bid protest situation, we are clarifying procedures concerning the award of a contract in pre-award bid protests and post-award bid protests. In a pre-award protest, the Business Operation Committee may vote to permit an award before the protest is decided; otherwise, no award shall be made. In a post-award protest, unless the Committee votes to suspend performance, performance may proceed.

Dr. Aaron asked if that does not moot the protest? Mr. Miller replied no, because, if the protester prevails, the Executive Director may still take remedial action to ameliorate.

- Contractor Claims section: Added two requirements for a signature by the appropriate person in the company with authority to bind the contractor; and for

claims exceeding \$100,000 we will require a certification; and it brings claim within the DC False Claims Act. This brings us in line with federal agencies in this regard. And, we've had a couple of claims this year about which we had questions and we want to be sure a responsible official of the contractor certifies the claim.

VII. Public Comment

No public comment was proffered.

VIII. Votes

a. Resolution -- ACA Working Group Market Stability Recommendations

It was moved and seconded to approve the ACA Working Group Market Stability Recommendations via Resolution. The motion passed, with Dr. Aaron, Ms. Sullivan Hare, Dr. Ku, Ms. Lewis, Mr. Pitts and Ms. Watkins voting yes.

b. FY 19 Proposed Budget

It was moved and seconded to approve the FY 19 Proposed Budget. The motion passed, with Dr. Aaron, Ms. Sullivan Hare, Dr. Ku, Ms. Lewis, Mr. Pitts and Ms. Watkins voting yes.

c. Updates to HBX Contracting and Procurement Policies and Procedures

It was moved and seconded to approve the Updates to HBX Contracting and Procurement Policies and Procedures. The motion passed, with Dr. Aaron, Ms. Sullivan Hare, Dr. Ku, Ms. Lewis, Mr. Pitts and Ms. Watkins voting yes.

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

Pursuant to DC Codes Sections 2-575(b)(2) and 3171.11 the Board moved to a closed session to discuss contracting and obtaining legal advice.

The public portion of the meeting adjourned at 7:06 p.m.