



**Standing Advisory Board Meeting  
Minutes**

**Date:** Wednesday, April 25, 2018  
**Time:** 9:30 AM  
**Location:** 1225 Eye Street, NW, 4<sup>th</sup> Floor, Board Conference Room or by Conference Call  
**Call- in Number:** 1-650-479-3208; access code 731 692 681

**Members Present:** Chile Ahaghotu, Chris Gardiner, Laurie Kuiper, Billy MacArtee, Claire McAndrew, Dania Palanker

**Members Absent:** Dave Chandrasekaran, Kevin Dougherty, Jill Thorpe

I. **Welcome, Opening Remarks and Roll Call**, *Chris Gardiner, Chair*

Mr. Gardiner called the meeting to order at 9:35 a.m. A roll call of members present confirmed that there was a quorum with five members present: Mr. Gardiner, Ms. Kuiper, Mr. MacArtee, Ms. McAndrew and Ms. Palanker.

II. **Approval of Draft Agenda**, *Chris Gardiner, Chair*

It was moved and seconded to approve the agenda. The motion passed unanimously by voice vote.

III. **Approval of Minutes**, Meeting from November 3, 2017-- *Chris Gardiner, Chair*

It was moved and seconded to approve the November 3, 2017 minutes. The motion passed unanimously by voice vote.

IV. **Discussion Items**

- a. 2019 Open Enrollment Period Timeframe – *Debra Curtis, HBX staff*

Ms. Curtis said last year, the SAB reviewed final regulations from CCIIO that changes open enrollment from 12 to six weeks. States had flexibility to extend the six week open enrollment period. HBX staff recommended that the open enrollment period be extended beyond December 15 for a number of reasons: we have a significant number of employers renewing in December; open enrollment for

Congress ends in mid-December; and the population that is still uninsured is hard to reach and more time to find them and get them enrolled is better. The SAB recommended, and the Executive Board accepted, that open enrollment be extended to 12 weeks. From a staff perspective, the extended period worked well.

The states again have the ability to extend the open enrollment period to 12 weeks, from November 1, 2018 through January 31, 2019. Once again, HBX staff recommends extending the open enrollment period for plan year 2019 as it is in the best interest of constituents.

b. Proposed federal regulations to expand Short-Term Limited Duration Health Plans (STLD) – *Jenny Libster, HBX staff*

Ms. Libster reported that the Tri- Departments published a proposed regulation on short-term, limited-duration plans (STLDP) on February 21, 2018. Comments were Due April 23<sup>rd</sup>. Under current regulations, STLDPs may be in place for less than three months. Renewals of these policies are prohibited. The proposal allows an expiration date that is 364 days or less after the effective date. Automatic renewals are prohibited, but renewals at the option of the carrier are permitted.

With respect to disclosure, the proposal would require disclosures in 14-point font, in contract and application materials. Prior to January 1, 2019, the required disclosure contains the following:

- i. Coverage is not required to comply with federal health insurance requirement (including the ACA);
- ii. Check your policy to make sure you understand what is covered
- iii. If you lose this coverage you may have to wait until the next OE to get coverage
- iv. Coverage is not MEC
- v. If you don't have MEC, you may have to pay the Individual Responsibility Penalty

For January 1, 2019 forward, the required disclosure would remove disclosures about MEC and the requirement to pay to the individual responsibility penalty.

HBX did submit a comment letter. We worked with our contract actuaries at Oliver Wyman, who estimated that this proposal, if implemented, in combination with the removal of the individual mandate, would cause health insurance claims costs to increase for people with individual health insurance coverage in DC by as much as 21.4% and as many as 6,100 individuals would leave the individual market (approximately 35% of the current market). We also raised concerns regarding the lack of consumer protections that apply to these plans – no guaranteed availability, no EHB, and preexisting conditions can be excluded or coverage can be denied for that reason. We recommended that disclosures be required that clearly inform consumers what ACA consumer protections do not apply to these plans, and that inform consumers that they can be subject to medical underwriting and may not be eligible for these plans due to their health status. We recommended that CMS retain the disclosure around MEC, because this concept is still important to consumers even after the individual responsibility requirement penalty is zeroed out at the federal level.

V. **Analysis of the Proposed Rule and Ways States Can React**, *Dania Palanker, Center on Health Insurance Reforms, Georgetown*

Ms. Palanker presented a [PowerPoint](#) on STLD plans.

Ms. Curtis updated the SAB that the Mayor has included in her budget the individual responsibility requirement at the District level, modeled after the former federal requirement. There appears to be consensus in the Council and the likelihood is that it will pass.

Howard Liebers (Department of Insurance, Securities and Banking – DISB) said internally, DISB has discussed what Maryland passed legislatively. DISB does not think there is high enrollment in these plans in the District. DISB favors the present regulation, which is three months' duration and no renewal.

Mr. MacCartee said where a group is in the District, the carriers have a strict policy. If an employer hires an employee, but does not get the employee enrolled in time for new hire eligibility (usually first day of the month following the date of hire), can the employee get some form of coverage in the interim?

Ms. Curtis said in SHOP we have a SEP for employer error and also broker error. For over 50 employees, she could not speak to it, other than the employer taking steps to get the employee off payroll and back on. She thought it might be appropriate in that circumstance for a person to get a STLD plan while the logistics were being worked out.

Mr. MacCartee said it is a question of protecting citizens in the District as best we can. His brokerage firm had 15 companies go from small group to large group this year. He is not a proponent of STLD plans, but we need to protect employees that are denied coverage because new hire coverage was not done in a timely manner. A person who was hired early in the employer's plan year might need a STLD plan for longer than three months.

Ms. Curtis clarified that current law is up to three months' coverage. If a person was expecting coverage through an employer, and the coverage does not occur, that person can now get a SEP and coverage in the individual market. However, a person cannot get a SEP if you were in a STLD plan.

Mr. MacCartee was pleased to hear that SEPs are available. He has seen that STLD plans are helpful for people in certain limited circumstances. If people are guaranteed availability in the individual market, that is good. But he has seen circumstances such as employer error. He has seen STLD plans that work under certain circumstances. As a broker, he does not market STLD plans generally. Ms. Curtis said you see more of that practice with web brokers.

Ms. McAndrew said she heard what Mr. MacCartee was saying, and that we might therefore want to keep the status quo. She does not want to let them exist for a year; we want to protect the strong market we have. She is very concerned about the benefits that these plans do not cover – benefits that are the core of health insurance. She is concerned about people buying these plans and not realizing how little

coverage they have. She is concerned about healthy people being carved out of the existing robust market.

Ms. Kuiper said what Mr. MacCartee said resonated, but there is a downside as Ms. McAndrew said. What Maryland did and Kaiser supported is the plan less than three months, it cannot be extended or renewed, and underwriting must be the same for all applicants. There also needs to be a strong disclosure requirement. Kaiser would support that.

Ms. Palanker agreed. She supported keeping a less than three month limit, and not allowing the stacking of these plans together to get a full year of coverage.

Mr. MacCartee wanted to be sure about the availability of a SEP when employer error occurs. He does not want people to be uninsured. It is catastrophic coverage for a short period of time. He does not want people to be harmed by employer error.

Ms. Curtis emphasized that the present law was up to three months' duration and the new federal proposal is to extend that period to up to 364 days, which could undermine the individual market by peeling away younger and healthier people. She said it seems there is a consensus that up to a three month limit is acceptable. She could not say across the board that if you cannot get employer coverage you can get into our individual market; it depends on the circumstances of the case.

Mr. Liebers said since the Obama Administration changed the rule to less than three months, there has not been an influx of complaints at DISB from consumers.

Ms. McAndrew said the problem she hears the most about is expense for people who are not eligible for subsidies, and an expansion of the duration for these plans makes that problem worse. She said a policy solution is not the Trump Administration proposal.

Ms. Palanker noted that employer error might give rise to employer liability under ERISA if the employer does not fix the problem. Mr. MacCartee said often the employee makes an error. Ms. Curtis clarified that in that circumstance, where the employee fails to enroll in coverage offered by their employer, that does not give rise to a SEP.

## **VI. Public Comment**

No public comment was proffered.

**VII. Votes**

a. 2019 Open Enrollment Period Timeframe

Ms. Curtis read the following:

“As the new payment parameters rule issued by CMS permits ongoing state flexibility with regard to the 2019 open enrollment period, the Standing Advisory Board recommends that HBX establish a Special Enrollment Period starting December 16, 2018 through January 31, 2019 to effectively extend the upcoming plan year 2019 open enrollment period.”

It was moved and seconded to recommend an expanded open enrollment period for calendar year 2019 as set forth above. The motion passed unanimously by voice vote.

b. Recommendation for District action on Short-Term Limited Duration Health Plans.

Ms. Curtis read the following:

To recommend that the District of Columbia act quickly to limit the expansion of short-term limited duration health plans in the District by enforcing the previous Administration’s limitation that these short-term policies have a time-period of less than three months; not be renewable; include prohibitions on the purchase of multiple short-term plans during a 12-month period; and that policies include prominent consumer disclaimers noting the policy does not constitute minimum essential coverage for purposes of satisfying the individual mandate.

It was moved and seconded to adopt the recommendation set forth above. However, Mr. MacCartee was opposed to the language, particularly the prohibition against reapplication after the short term plan ended. After further discussion, the motion was withdrawn with the permission of the second. Another meeting will be scheduled to consider the issue, taking into account the discussion today’s meeting.

**VIII. Closing Remarks and Adjourn, *Chris Gardiner, Chair***

The meeting was adjourned at 10:37 a.m.