



**Health Benefit Exchange Authority Executive Board Meeting  
FINAL MINUTES**

**Date:** May 9, 2018  
**Time:** 5:30 PM  
**Location:** 1225 Eye Street NW, 4<sup>th</sup> Floor, Board Conference Room  
**Call- in Number:** 1-650-479-3208; access code: 736 683 744

**Members Present:** Henry Aaron, Nathaniel Beers (via telephone), Kate Sullivan Hare (via telephone), Leighton Ku, Diane Lewis, LaQuandra Nesbitt (via telephone), Khalid Pitts (via telephone), Stephen Taylor (via telephone)

**Members Absent:** Wayne Turnage, Tamara Watkins, Laura Zeilinger

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

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

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

It was moved and seconded to approve the April 11, 2018 minutes. The motion passed unanimously, with Dr. Aaron, Dr. Beers, Dr. Ku, Ms. Lewis and Mr. Pitts voting yes.

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

Ms. Sullivan Hare entered the call during Ms. Kofman's report.

**BUDGET SUPPORT ACT AND BUDGET: no changes to our proposed budget**

- The Health Committee marked up its part of the budget support act on May 3rd. That includes the individual responsibility requirement. Several Council Members spoke in support of the requirement. The vote was unanimous out of committee. Ms. Kofman noted that attorneys for the Council made technical changes, and we are working with Council staff to ensure that those technical changes do not result in a substantive change. Ms. Kofman also noted that the requirement was clarified without objection to address concerns raised by Christian Scientists. The clarification is similar to the approach in Massachusetts.
- The Committee of the Whole (COW) marked up its sections of the budget support act on May 4<sup>th</sup>, which included PPRA amendments. The section renewing our five year procurement exemption authority was assigned to COW. The Chairman of the Council changed PPRA amendments from five to three years, which includes other agencies with independent procurement authority expiring at the end of this fiscal year. We are working with the Mayor's team, Council staff and Members to achieve a five year renewal. The Committee of the Whole meets on May 15<sup>th</sup> on the overall budget and BSA.

**BUDGET HEARING: The HBX budget oversight hearing** was April 19<sup>th</sup>. Ms. Lewis and Ms. Kofman both testified. DC Health Link customers, navigators, and stakeholders testify in support of our budget and HBX. The hearing went very well.

**RATE FILING DEADLINE:** DISB changed the rate filing deadline from May 1 to June 1, 2018. We do not therefore have any information for the District, but DISB normally makes proposed rates public shortly after they are filed. Virginia and Maryland rates have been filed and made public. For Maryland, on the individual side, CareFirst's HMO average increase request is 18.5%, and the PPO side is over 90%. Kaiser's increase request is 37.4%. These requests do not take into account the recently enacted Maryland law for local reinsurance. In Virginia, CareFirst is requesting a 64% increase on the individual side.

On the small group side, in Maryland, the carriers are asking from 1.7% - 13.8% average increase. In Virginia, the carriers are proposing a range from a decrease 1.34% to a 25.4% increase.

**CCIIO SITE VISIT:** CCIIO Director Randy Pate and 11 of his CCIIO colleagues visited HBX on Monday, May 7<sup>th</sup>. Other CCIIO staff in attendance included Jeff Wu, who is the highest career staffer at CCIIO, Jennifer Stolbach who runs the State Marketplace Office, and Julie Clement who is our State Officer. They were introduced to our senior team, toured HBX offices, viewed a demonstration of our new SHOP Plan Finder tool (which you will see during tonight's executive board meeting as well); met with a group of brokers; and then went to L'Enfant to tour the contact center. It was an excellent meeting.

**PRODUCER ADVISORY COMMITTEE:** This committee is one of the three standing advisory committees established by the Executive Board in 2012. (The other two are the Plan Management Committee and the Consumer Assistance and Outreach Committee). The Producer Advisory Committee has not been active and we are looking to reengage its members. There are some vacancies and some members will need to be reappointed. The announcement should be posted on the HBX website next week. When the application period closes, staff will present candidates' information to the Standing Advisory Board (SAB); SAB members will vote; and that recommendation will come to this Executive Board for consideration. The Committee's next meeting will be held soon after its membership is updated. The meeting's agenda will include policy items from the Broker IT Working Group. Some examples of past discussions of the Committee related to standards for how we do business with brokers, and certification standards for brokers who do business through DC Health Link.

**SHORT-TERM, LIMITED DURATION PROPOSED REGULATIONS:** HBX submitted comments on April 19, 2018 and are available at: [https://hbx.dc.gov/sites/default/files/dc/sites/hbx/publication/attachments/DC\\_HBX\\_Comment\\_CMS\\_9924-P.PDF](https://hbx.dc.gov/sites/default/files/dc/sites/hbx/publication/attachments/DC_HBX_Comment_CMS_9924-P.PDF). There were more than 6,000 comments received. Several other marketplaces commented including California and Nevada.

**UPDATE ON 1095As CORRECTIONS:** There have been 21 total consumer-requested corrections and 182 carrier-initiated corrections.

**AHP REGULATION:** The AHP regulation is at OMB for review. Press reports have indicated that the final regulation will be out by the end of May.

**OTHER FEDERAL ACTIONS:** On May 4<sup>th</sup>, CMS published a proposal to update the Exchange Blueprint for states applying to become SBMs or SBM-FPs for coverage years starting on or after January 1, 2019. This applies to any state currently on the FFM that seeks to become an SBM or SBM-FP. Comments are due on June 4, 2018.

**AUDITS:** Our annual SMART Audit with CMS is in process and due to CMS June 1, 2018. We also had the kick off meeting on Monday, May 7<sup>th</sup> with the auditors for the annual Insurance Regulatory Trust Fund Bureau audit.

**POWER UP DC SMALL BUSINESS CONFERENCE:** It took place on May 1, 2018 during National Small Business week. As a reminder it was a small business conference hosted in collaboration with our business partners (DC Chamber, GWHCC, and RAMW) and the Washington Business Journal. The conference was successful and we have several leads for small businesses to join SHOP.

**NEW GALLUP POLL:** DC is not included, but Gallup reported that the uninsured rate climbed nationwide from 10.9% in the last quarter of 2016 to 12.2% in the last quarter of 2017.

**ENROLLMENT DATA:** Data is available [here](#).

**V. Finance Committee Report, Henry Aaron, Chair**

The Finance Committee met on Tuesday, May 1st. Committee members Ms. Lewis, Ms. Watkins and myself participated by telephone with HBX staff.

**CAPITAL RESERVE ACCOUNT INVESTMENT ALTERNATIVES:** As you will recall, we recently voted to fund our Capital Reserve. Kara Onorato, CFO for HBX, informed us that she had been investigating the options for how the Capital Reserve can be invested. Ms. Onorato walked us through the basics of what she had learned:

- All District agencies use OCFO (Office of the Chief Financial Officer) and the Office of the Treasury (OT)
- The agency will inform OCFO on how much money it has to invest and for how long it may be invested
- OT considers 1) the safety of the principal, 2) maintenance and balance of the funds, and 3) maximizing returns
- OT exercises its judgment and makes recommendations to the agency

The Committee had a wide-ranging discussion of the operating reserve, the capital reserve, account fees associated with different various options, and account yields. Right now, the operating reserve is in our regular account and yields 0.9%. Ms. Kofman is low risk and prefers to keep some of the operating reserve liquid, and we do not disagree.

On the capital reserve, we discussed exploring different options for the capital reserve for six month and 12 month investment options. This discussion included understanding account fees, yield, and early withdrawal penalties. Generally, we are looking for the highest prudent yield on a longer term investment.

On the operating reserve, we discussed exploring options of investing some of it into a higher yield option.

The actual investment decisions are not decided at this time, and we will follow up on that front soon.

However, the first step is the need to amend our reserve policy. Currently, it refers to reserves being kept solely in a bank account. That language is too limiting to provide investment opportunities.

Amendment language was approved by the Finance Committee and has been circulated to you in advance of this meeting and is posted on the HBX website. I will be addressing that issue separately later this evening.

**FY 18 FINANCE REVIEW:** We reviewed spending against the budget to date in FY 18 and noted nothing appears out of the ordinary.

## **VI. Discussion Items**

- a. Standing Advisory Board Recommendation for Open Enrollment for Plan Year 2019 – *Chris Gardiner, Chair, Standing Advisory Board*

Mr. Gardiner reminded the Board that last year the Standing Advisory Board (SAB) reviewed final regulations from CMS that changed open enrollment from 12 to six weeks. States had flexibility to extend the six week open enrollment period using their existing authority to define exceptional circumstances. Last year, SAB unanimously recommended that the DC Health Link open enrollment be extended to 12 weeks. The Executive Board passed a resolution to that effect on June 14, 2017.

Staff reported to the SAB that the extended open enrollment period worked well. Staff did note that there was a change in customer behavior from previous years. In the past, about half of enrollments took place after December 15<sup>th</sup>. In contrast, more than 70% of 2018 enrollments took place last year before December 15<sup>th</sup>. However, that longer time period meant we still got additional people signed up for coverage who may well have missed their opportunity otherwise.

As CMS did not take away existing regulatory authority to extend the open enrollment period for the upcoming 2019 plan year, HBX staff recommended to the SAB that the time period again be extended through January 31, 2019. The rationale for the longer time period is again the confluence of multiple activities in December: Congressional open enrollment and a high number of small business renewals, and a low number of uninsured residents who are difficult to reach. In addition, the new 2019 CMS Payment Notice puts additional operational commitments on HBX.

Given these facts, the SAB unanimously voted to effectively extend the upcoming 2019 open enrollment period through January 31, 2019. The extended period is achieved by having the DC Health Benefit Exchange Authority consider that an “exceptional circumstance” exists for all qualified individuals seeking enrollment

in the individual market from December 16, 2018 through January 31, 2019, permitting a special enrollment period (SEP). The regular open enrollment period and the special open enrollment period together provide for a three month period.

*b. Standing Advisory Board Recommendation for District Regulation of Short Term Limited Duration Health Plans – Chris Gardiner, Chair, Standing Advisory Board*

Mr. Gardiner reported that the background on this resolution is that the Trump Administration has issued new proposed regulations changing existing regulations that limit short-term, limited-duration health plans to less than three months. Instead, the proposed regulation would allow these plans to be sold for coverage periods of up to 364 days. These health plans are not required to meet the ACA consumer protection standards or benefit requirements. They are intended to serve as stop-gap coverage for short periods.

This new proposal from the federal government has potential negative consequences in two major ways.

First, people could end up buying policies that they think cover all their medical needs, but only learn after the fact – and too late – that short term, limited duration plans actually don't cover most pre-existing conditions, maternity benefits, mental health benefits or even prescription drugs.

Second, it could have a highly negative impact on the District's individual health insurance marketplace by attracting the young and healthy out of the ACA individual market, resulting in premium increases for those that remain.

Thankfully, the new proposed federal regulation does not preempt state flexibility. So, the District can prevent these negative consequences here by changing its local insurance laws to maintain a requirement that STLD plans remain limited to less than three months of coverage and enact additional consumer protections.

The SAB had a robust discussion on this topic over the course of two meetings. The recommendation is modeled on legislation recently enacted in Maryland.

It was important to a member of our SAB, who is a health insurance broker with decades of experience, that the recommendation not go too far in limiting options for people who miss the annual open enrollment period or fail to enroll in their employer sponsored health insurance during its annual open enrollment. For these people, STLD plans may be their only option for coverage until the next open enrollment period either in DC Health Link or their employer coverage. The language we agreed to would not prevent a person from purchasing multiple STLD policies throughout the year if they needed additional short term coverage

before the next open enrollment period. But it does not permit a single short-term, limited duration policy to be extended or renewed. The recommendation was unanimously adopted by the SAB.

This action would require a change in District law with regard to the regulation of insurance. Therefore, this resolution is an advisory recommendation to the District. Mr. Gardiner read the resolution:

The District of Columbia act quickly to limit the expansion of short-term limited duration health plans in the District by enacting legislation, modeled on the new Maryland law, that modifies the definition of “short-term limited duration insurance” to mean health insurance coverage provided under a policy or contract with a carrier that: (1) has a policy term that is less than three months after the original effective date of the policy or contract; (2) may not be extended or renewed; (3) applies the same underwriting standards to all applicants regardless of whether they have previously been covered by short-term limited duration insurance; and (4) provides a prominent consumer disclaimer in the contract and any application materials, in at least 14-point font, stating that the coverage does not constitute minimum essential coverage for purposes of satisfying the individual responsibility requirement and other disclosures as the Commissioner may require regarding the scope of short-term, limited-duration coverage, including the types of benefits and consumer protections that are and are not included.

Dr. Aaron noted that the rate increase requests filed in Maryland and Virginia were astounding in the individual market, and the differences between the individual market and the small group market were also notable. He underscored the importance of the Council imposing the individual responsibility requirement at the local level, and wondered what else might be done to attenuate any potential consequences.

Ms. Kofman agreed, noting that the individual market has always been more problematic than the small group market. The Trump Administration actions on the two items brought by the SAB, and Congressional action to repeal the individual responsibility requirement do not help. In both Maryland and Virginia, the filings assume no individual responsibility requirement and in some cases attribute 10% of the increase to that being the case. So yes, enacting the individual responsibility requirement at the local level is important.

Ms. Kofman also said that once rates are filed here, we will brainstorm ideas. She noted that the local reinsurance and APTC wrap proposals did not make it into the Mayor’s Budget Support Act. Maryland will be proposing a section 1332 waiver for reinsurance, so we will watch it closely. Since the District has such low APTC

numbers, a 1332 waiver does not make sense here. Also, we have our actuaries work closely with the Department of Insurance, Securities and Banking (DISB) to ensure rates are justified. Ms. Kofman noted that in the past, Commissioner Taylor has approved rates that are lower than requested when the request is not supported.

Dr. Aaron noted that the STLD plan proposed federal regulation was not likely to be good for our marketplace. He asked if the SAB recommendation required Council action. Ms. Kofman replied yes.

*c. Amendment to HBX Reserve Policy – Kara Onorato, HBX CFO*

Ms. Onorato reported that at the Finance Committee Meeting on May 2<sup>nd</sup> we discussed potential investment opportunities for the reserve funds.

Our current reserve policy states that monies held in either Operating or Capital Reserve must be held in a bank account. That limits us to only bank deposits in a regular checking or savings or a money market checking or savings account. Interest that is currently being earned now on these funds is .09%.

In the District, all investments are handled through OCFO's Department of Treasury. They invest for all agencies, even independent agencies like HBX. They have an array of investment options available to them. However, in order for HBX to take advantage of these additional investment opportunities, it will require a change in our reserves policy.

The Finance Committee recommends amending the reserve policy to reflect the changes outlined on [page three](#) of the reserve policy document (distributed to Board members and posted online) so that we can take advantage of other investment options that could result in a higher return than currently allowed under the existing reserve policy. The proposed amendment is in Section 0000000.70 1.c. and is as follows:

~~Operating reserves will be maintained in the same interest bearing account that is the general operating bank account. Operating reserves and Capital reserves will be maintained in a segregated interest bearing bank accounts, each of which is separate from the general operating bank account. Each shall be invested consistent with OCFO policies.~~

Moving forward, the Finance Committee will continue to work with Treasury to determine the best investment strategy that will maximize return and we will report back to the Board as that process moves forward.

Dr. Ku asked who would decide how to invest the funds. Ms. Onorato said that the Finance Committee would review the recommendations from OT. Ms. Kofman said OT makes the decision, and we weigh in with our thoughts after we review the options. Dr. Aaron said we could recommend X, but OT could decide Y. But all the options are all relatively low risk.

## **VII. Public Comment**

No public comment was proffered.

## **VIII. Votes**

- a. Resolution – Special Enrollment Period for the Upcoming 2019 Plan Year Open Enrollment

It was moved and seconded to approve the Resolution titled, “To establish a Special Enrollment Period starting December 16, 2018 through January 31, 2019 that effectively expands the upcoming plan year 2019 open enrollment period.” The motion passed unanimously, with Dr. Aaron, Dr. Beers, Ms. Sullivan Hare, Dr. Ku, Ms. Lewis and Mr. Pitts voting yes.

- b. Resolution – Recommendation for District Regulation of Short Term Limited Duration Health Plans

It was moved and seconded to approve the Resolution titled, “To recommend local policy interventions for the District to regulate short-term, limited-duration health plans to protect and enhance market stability in the District’s individual health insurance market.” The motion passed unanimously, with Dr. Aaron, Dr. Beers, Ms. Sullivan Hare, Dr. Ku, Ms. Lewis and Mr. Pitts voting yes.

- c. Amendment to HBX Reserve Policy

It was moved and seconded to approve the [amendments](#) to the Reserve Policy as outlined above. The motion passed unanimously, with Dr. Aaron, Dr. Beers, Ms. Sullivan Hare, Dr. Ku, Ms. Lewis and Mr. Pitts voting yes.

## **Return to Discussion Items (VI)**

- d. DC Health Link Website Demonstration of Plan Match for SHOP – *Hannah Turner, HBX Staff*

The demo is available [here](#) (“Audio Recording of meeting,” beginning at 52:30 of the recording).

- e. DC Health Link Website Demonstration of Health Literacy Glossary – *Linda Wharton-Boyd, HBX Staff*

The demo is available [here](#) (“Audio Recording of meeting,” beginning at 1:14.20 of the recording).

**IX. Closing Remarks and Adjourn, *Diane Lewis, Chair***

The meeting was adjourned at 6:59 p.m.