



**Standing Advisory Board Meeting
Final Minutes**

Date: Monday, April 1, 2019
Time: 4:00 PM
Location: 1225 “Eye” Street NW, 4th Floor, Board Conference Room or by Conference Call
Call- in Number: 1-650-479-3208 access code: 738 080 168

Members Present: Dave Chandrasekaran, Jill DeGraff, Kevin Dougherty, Chris Gardiner, Laurie Kuiper, Billy MacCartee, Claire McAndrew, Dania Palanker
Members Absent: Chile Ahaghotu

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

Mr. Gardiner called the meeting to order at 4:03 p.m. A roll call of members present confirmed that there was a quorum with seven members present:

Mr. Gardiner stated that this meeting is our second to review and consider changes needed to the HBX enabling legislation. As a reminder, the HBX Executive Board Ad Hoc Committee on Legislation asked for our input on this proposal.

Last week, HBX staff walked us through the three main components of the proposal:

- 1) HBX statutory clean up to prevent changes in federal law (through legislation, executive action or the courts) from impacting the District’s ability to continue with the Health Insurance Exchange and maintain the protections of the ACA in the District;
- 2) Permanent Independent Procurement Authority; and
- 3) Updates to the Conflict of Interest Provisions

While I had to miss last week's meeting, I have reviewed the minutes and it appears that the outcome of that meeting was that Standing Advisory Board (SAB) members understood and agreed with the first two components, but that more discussion is needed on the conflict of interest provisions. Today's meeting will specifically focus on this section.

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

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

III. Approval of Minutes, March 25, 2019 meeting – *Chris Gardiner, Chair*

It was moved and seconded to approve the minutes of the March 25, 2019 meeting with one correction. The motion passed unanimously by voice vote.

IV. Discussion Item

- a. Clean Up of the DC Health Benefit Exchange Authority Legislation, Conflict of Interest Provisions -- *Purvee Kempf, General Counsel & Chief Policy Advisor*

Ms. Kempf said she had sent out the [conflict of interest statute](#) to the members of the SAB. The first section (in green), subsection (a) sets forth specific entities with which Executive Board members and HBX staff are prohibited from having a relationship. The second section (in yellow), subsection (b) is about post-employment restrictions. The third section (in orange), subsection (c) is about financial conflicts, and applies only to the Executive Board.

Subsection (a)(1) prohibits affiliations of any kind with five types of entities: an insurer, an agent or broker, a health professional, a health care facility, or a health clinic. So, an Executive Board member or HBX staff cannot have any of the listed affiliations in order to serve. Subsection (a)(2) prohibits affiliations with a trade association of health carriers, health facilities, health clinics, or health professionals. Subsection (a)(3) says an exception to the (a)(1) prohibition against a health professional is unless the person receives no compensation for rendering health care services as a health professional (such as a doctor who volunteers at a clinic).

Ms. Kempf then talked about other state exchanges and how they handled conflicts of interest. Three to four states have the exchange within an existing government agency, with no specific language for the exchange. For those states that have specific language, all have the prohibition regarding insurers. All except MA have the prohibition regarding agents and brokers. In MA, a representative of the National Association of Health Underwriters (NAHU), a trade association for agents, is required to be on the Executive Board. MD and MA allow health professionals,

health care facilities, and health care clinics. So it is those three where the states are split, and it is in those areas that questions have arisen for HBX.

Other state prohibitions that we lack: MD has a prohibition against third-party administrators (TPAs); and MD and MA has specific language around persons contracting with the exchange, but Ms. Kempf noted that the District's general laws may apply in this regard.

The SAB members had asked for real life example of issues HBX has had in the past. Ms. Kempf reviewed the history some of the members of the Executive Board. Our first chair was an inactive doctor, Muhamed Ahkter. Dr. Nathaniel Beers is presently on the Executive Board, but does not receive compensation for providing health services. The other types of positions we have had were ex-officio nonvoting members who were heads of agencies, such as the Department of Health, who were on the Executive Board by virtue of their positions and were doctors. Recently, Kate Sullivan Hare had to step down from the Executive Board because she accepted a position at the American Association of Endocrinologists.

Ms. Kempf noted that our Executive Board members are not paid and most have full-time day jobs. The question is around the additional expertise people who have affiliations with a health professional, a health care facility, or a health clinic could bring to the Executive Board.

Ms. DeGraff said she remembered sitting on one of the groups Ms. Sullivan Hare led, on quality reporting, where you needed the perspective of health care providers. She thought there are many circumstances where the expertise of health professionals could add a lot to the discussion and policymaking of the Executive Board. Effective disclosure and recusal are tools that can be used to avoid conflicts in those situations. Ms. Kempf said that there was a process in place that applied to those situations and had been used by Board members and staff in the past.

Mr. MacArtee said he understood.

Ms. Palanker asked about another situation, where someone (a provider) was appointed to the Board by the Mayor, but changed jobs, and what happens in that situation? The appointment may have been made with the original job specifically in mind. Ms. Kempf said if the new job created a conflict, either under our statute or the general code of conduct, then appropriate steps would need to be taken, which could differ depending on the specific situation. Ms. Kempf said there is not a mechanism to remove someone due to a job change unless the new job required the person to step down due to a conflict.

Ms. Kempf noted that she had heard in the discussion, and wanted to put on the table, whether the size of an entity mattered, such as a large hospital versus a smaller provider.

Ms. McAndrew agreed with Ms. DeGraff on the importance of provider input to Executive Board discussions. She noted a difference between input and voting, and further noted that the exchange is required to have provider input due to the types of persons required to be on the SAB. What she is not comfortable with is Executive Board voting authority, and used quality rating as an example where insurers and providers are often at odds. At this point she is not in favor of changing the conflict rules at this time.

Ms. DeGraff thought that the value of having the input of a provider on the Executive Board was significant and that Board members could take into account the point of view of that person, and that person's background and job position, when voting on any particular matter. And it would only be one vote, not a majority.

Mr. Chandrasekaran said he worked with a lot of states on conflict issues in setting up state exchanges when he was in his prior position. He said it was pretty clear that entities such as insurers and agents and brokers, who had explicit financial interests at stake, should be excluded. There was a big debate about providers and health care entities, and many states came down as we did by allowing those without an explicit financial interest (e.g. volunteer doctor at a clinic) to participate. It was recognized at the time that there was a line that should not be crossed. Also, at the beginning, it was thought that exclusion from the beginning was easier than trying to undo it later if that became necessary. Mr. Chandrasekaran said he had spent a lot of time thinking about where the line should be, and he was comfortable with where the line was drawn and was uncomfortable about relaxing it. He said the way we have accommodated the input issue, from any conflicted entity, was by this very body, and the various working groups convened on various topics. The decision-making element is important. His experience at self-policing in the form of recusal when conflicts are present is, he said, unfortunately not very good. A bright line such as the one we have avoids the unfortunate experience he has seen in other areas.

Ms. Kempf reminded the group that the reason we are doing this is because the conflict provisions of our statute were debated, and she agreed that the restrictive nature was deliberate as was the recognition that it could be revisited down the line. Also, the comprehensive code of conduct did not exist when the HBX legislation passed.

Ms. Kempf asked if the group would like to see some concrete ideas for changes and how the SAB members react to those. She said the SAB discussions would help guide the staff in creating those. She asked if job title was important – did it matter if the person was an executive with decision-making power at the entity versus a person who provided advice to the entity.

Ms. McAndrew said it did make a difference. However, she was concerned with how to create criteria to ferret out those with true conflicts. She was still struggling with the if/then question – was it we cannot find people to fill positions on the Executive Board. She understood that we get

excellent input from non-practicing physicians, and she was fine with it, and it is allowed under our present rules. What are we lacking because certain categories of persons with the prohibited affiliations are not allowed to serve? Mr. Chandrasekaran said he agreed with Ms. Kempf that the policy can be revisited, but how are we being impeded? Is there a lack of a candidate pool for the Executive Board? Even if that is the case, he did not think relaxing conflict standards was the solution.

Ms. Kempf said there is no explicit problem we are trying to solve. We are pointing out what would be allowed for with changes to the statute. We have been fortunate to have had active voting Board members who were physicians who fell within the exemption; they have contributed to robust debate and their particular expertise was valuable to the discussion. We are only pointing out what could be. The conflict of interest provisions, with their broad prohibition on affiliations, by definition narrows the pool. Debbie Curtis, Senior Deputy Director, pointed out that we are doing clean-up legislation, and if changes are to be recommended, it needs to be part of the package.

Ms. DeGraff said we are trying to reduce the cost of care and the cost of coverage, and that requires a change from a fee-based system to a value-based one. When trying to talk about it, having a retired physician from a fee-based model might not be the best. The Executive Board needs to help figure out what we can do to reduce costly drivers of care and coverage, and help provide more progressive models for health care plans, rather than business as usual.

Ms. Kempf moved on to subsection (b) of the conflict statute, and provided a [chart](#) to help guide the discussion. Staff compared what is in our statute (left side of chart) on post-employment with what is in the comprehensive code of conduct (right side of chart). At the time our statute was enacted there were not any post-employment restrictions in District law. Our statute is written in such a way that it can be read to prohibit employment with a carrier working for any exchange, not just the District's exchange. Ms. Kempf walked through the chart. The main difference is that our statute bars specific employment, while the comprehensive code of conduct regulates specific activities.

Mr. Gardiner asked about the definition of staff – does that go as far down as a receptionist? Ms. Kempf said yes. It applies to all employees of HBX. It is not role-based. She related the various types of work done by HBX employees (legal, IT, case managers, electronic data interchange (EDI), etc.). She also reminded the SAB that we have been advised that our statute's ban on particular employment is of questionable enforcement, although there have been no court challenges. She noted only one other state has the one year ban on working for a carrier (CT), although the wording of the CT statute is in the singular exchange versus the plural exchanges that we have, so can be read to ban employment only on carriers with CT's exchange.

Ms. Palanker said getting away from activity based analysis, as our statute does, creates barriers to people for work experiences, which she did not favor. Ms. DeGraff noted that certain hard-to-fill positions such as IT are filled by more-expensive contractors, who are not subject to same conflict of interest positions, creating a fairness question. She asked what harm comes from someone leaving our staff to go work for the Blues carrier in Illinois, for example. No one expressed any concern with that possibility.

V. Public Comment

No public comment was proffered.

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

The meeting was adjourned at 5:37 p.m.