



**DC Health Benefit  
Exchange Authority**

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

**Date:** Wednesday, May 8, 2019  
**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: 730 599 017

**Members Present:** Henry Aaron, Nathaniel Beers, Leighton Ku, Diane Lewis, Khalid Pitts, Tamara Watkins

**Members Absent:** LaQuandra Nesbitt, Stephen Taylor, 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 six voting members present (Dr. Aaron, Dr. Beers, Dr. Ku, Ms. Lewis, Mr. Pitts, Ms. Watkins).

Ms. Lewis announced that the next Board meeting would be Thursday, July 18, 2019.

**II. Approval of Agenda, *Diane Lewis, Chair***

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

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

It was moved and seconded to approve the minutes of March 13, 2019. The motion carried unanimously, with Dr. Aaron, Dr. Beers, Dr. Ku, Ms. Lewis, Mr. Pitts, and Ms. Watkins voting yes.

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

**HBX BUDGET:** The Health Committee considered and voted on agency budgets on May 2. There were no changes to the HBX proposed budget. The Committee of the Whole will consider the District's budget later this month (May 14 and 28).

Our Budget Hearing went well. Several employers with coverage through us, and several self-employed residents with coverage through us testified in support of HBX.

**1095A UPDATE:** We issued 18,510 Form 1095As at the end of January. To date, we have received and processed eight requests for corrections from customers and 68 carrier-initiated corrections.

**2020 HEALTH PLAN RATE AND FORM FILING:** Carriers must file forms and rates with DISB by May 27 for individual and small group policies. May 1 was the deadline for dental plan forms and rates. DISB also announced two public hearings – 1) Monday, June 20 at 5:30 PM at One Judiciary Square, Old Council Chambers (441 4<sup>th</sup> Street, NW) and 2) TBD in August. We will let our customers know about the hearing and their ability to testify.

#### **DC'S INDIVIDUAL RESPONSIBILITY REQUIREMENT:**

**HBX Published the Low-Income Exemption Threshold For 2019:** The DC's Individual Responsibility Requirement exempts low-income individuals from the requirement to be covered. Low-income is defined as adults (age 21 or above) in households with incomes at or below 222% of the federal poverty level, and children (below age 21) in households with incomes at or below 324% of the federal poverty level. District law requires HBX to annually publish the eligibility thresholds for the low-income exemption, as dollar amounts, in the District Register. Prior to publication HBX consulted with DHCF. HBX published the low-income exemption eligibility thresholds for tax year 2019 in the District Register on April 5, 2019. HBX also posted the [information](#) on DCHealthLink.

#### **FEDERAL ISSUES:**

**SBM Letter on HRA Proposed Rule:** SBMs (including HBX) sent a letter to Secretaries of Treasury, Labor, and HHS expressing concerns with the yet to be issued HRAs final rule. The letter noted that there is insufficient time to operationalize IT changes and develop a robust outreach strategy. The proposed rule if finalized would apply January 2020. The final rule has not been issued.

**DOL Guidance on Association Health Plans:** On April 29, DOL provided written information on implications of a federal district court ruling striking down the DOL rule on AHPs. DOL clarified that it was adopting a non-enforcement policy if an AHP was operating in good faith under the rule prior to the court ruling. DOL is also allowing AHPs to continue to operate and noncompliant coverage to continue until the plan year renews. DOL warns that an AHP must

continue to pay claims of current enrollees. New enrollment is not allowed. At the end of its plan year, an AHP would need to come into compliance with applicable law.

Dr. Ku asked if we could still enforce District requirements, which are different from the federal rule. Ms. Kofman confirmed that was correct. Dr. Ku noted that DOL was allowing noncompliant plans to continue.

**CMS Meeting on Section 1332 Waivers:** In April, CMS hosted a meeting for states and other stakeholders to promote 1332 waivers. HBX staff attended. CMS used the opportunity to promote ways for states to encourage sale of non-ACA plans. CMS is hosting several other events like this around the country. There were states including Maryland and Alaska that discussed how they have used 1332 waivers for reinsurance.

**CMS Request for Information on 1332 Waivers:** On May 3, CMS and Treasury published another request for information on 1332 waivers. The agencies are soliciting comments on “ideas for other innovative waiver concepts” to supplement ideas already included in their 1332 waiver paper. We are reviewing the request.

**CMS New FAQs on the Revised 2019 Blueprint Application:** These FAQs are for states looking to become state-based marketplaces. It does not appear to affect current SBMs.

**HHS Nondiscrimination Rule:** On May 2, HHS posted the final non-discrimination rule on its website. The rule is not yet published in the federal register (as of May 6 morning federal register postings). We are reviewing it. The HHS version is already subject to a legal challenge from the City and County of San Francisco, filing suit against HHS on May 2.

**Public Charge:** According to media reports, DOJ is working on its public charge companion rule to DHS’s proposed rule (proposed Fall 2018) to allow for deportation of people who receive public benefits such as Medicaid, and who have lawful permanent resident visa status. We will continue to monitor this issue. We weighed in on the proposed rule by submitting comments to DHS opposing the proposal to expand “public charge” standard. Also Mayor Bowser signed a strong letter of opposition.

**RFI on Grandfathered Group Health Plans:** CMS issued a request for information on what the agency could do to make it easier for health carriers to continue grandfathered small group plans. On March 21, HBX submitted comments opposing policies that continue plans without ACA consumer protections. Mayor Bowser sent a strong letter of opposition as well.

**RFI on Selling Health Insurance Across State Lines:** On March 11 CMS issued a request for information about actions that could further facilitate selling individual health insurance coverage across state lines. This is based on a provision in the ACA that enables states to enter into state compacts – which no states have entered into to date. NOTE: On April 29, Mayor Bowser sent a strong letter of opposition. On May 3, HBX submitted comments opposing effort to encourage selling health insurance across state lines.

**CMS 2020 Payment Parameters Notice:** On April 18 CMS finalized its 2020 Payment Parameters Notice. Auto renewal still allowed although CMS reserved the right to restrict/prohibit in the future. Dr. Ku and HBX commented to oppose restrictions/prohibitions. Silver loading is still allowed which we supported. CMS adopted a new SEP to allow people who become eligible for APTC because of an income drop to enroll in exchange coverage and we intend to implement that here. CMS changed APTC formula to increase out of pocket/premium costs to residents which we opposed this.

**CONGRESSIONAL:** The House will vote on several ACA bills during two “health weeks” in May. These include restricting the Administration’s interpretation of Section 1332 waivers to ensure protections for people with preexisting conditions, prohibiting the rule on short term limited duration plans, providing funding for and requiring federal outreach, and providing grants to states using healthcare.gov to become SBMs. There is also a question whether the following “affordability bills” will be voted on during these two health weeks or later in July around the time oral argument is scheduled in the Texas ACA law suit. The bills include: federal reinsurance, APTC increase for people under 400% FPL and expansion of APTC for people over 400% FPL (with income cap of 10%). Note that there are also prescription drug bills that will be combined with the ACA bills. On the Senate side there is no plan currently to revive Alexander/Murray market stabilization efforts. If the House passes prescription drug (Rx) reforms, it is expected that the Senate will pass a version of Rx reforms. The Senate HELP committee is working on “cost containment” package and Senate Finance committee is working on drug pricing legislation. We will continue to monitor and weigh-in as appropriate, and continue to work with the Mayor’s legislative team.

#### **LEGAL UPDATES:**

**Federal District Court DOL Rule on AHPs:** The United States District Court for the District of Columbia issued its decision striking down the AAHP rule in the State of NY v. United State Department of Labor (Civil Action No. 187-1747) on March 28, 2019. Twelve states, including the District of Columbia, challenged the new DOL association health plan (AHP) rule. In its decision, the Court struck down the rule. On April 26, 2019, the U.S. Department of Labor filed an appeal of the District Court’s decision to the United State Court of Appeals for the District of Columbia. We will continue to monitor this case and provide updates as it moves forward.

**SMART AUDIT UPDATE:** This is our annual programmatic audit for CMS. It is due June 1. HBX staff continues to work with the auditors.

**POWER UP DC:** Every year we sponsor “PowerUP DC.” We partner with the Chambers, district agencies, and others during small business week to provide “empowerment” information and expert resources focused on small businesses, start-ups, and non-profits. The information includes access to capital, advice from experts on how to grow a business, information on how to do business with the government, and expert advice for fundraising for non-profits. PowerUP DC is on May 7 at the Ronald Reagan Building and International Trade Center. There are

approximately 200 people registered for the free event and approximately 100 for lunch (fee \$40 for lunch). Mr. Pitts represented the Board. Many District agencies attended and set up information tables.

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

The Finance Committee met on April 3 and on May 2 via conference call with HBX Staff. Diane and myself attended the April meeting and Diane, Tamara and myself were all there for the May meeting.

**PROCUREMENT APPROVALS:** The Finance Committee approved two contract modifications that were at the level of \$100,000 or less.

**A&T SYSTEMS CONTRACT MODIFICATION:** A&T provides cloud hosting services for HBX and MA on this contract. The billing is based on service usage and we are utilizing cloud services at a higher rate than anticipated when the Board first approved this contract last year. To cover the cost for the increased usage, the Finance Committee approved increasing the approved contract ceiling by \$80,000 so it is increased from \$550,000 to \$630,000 in FY2019. This change is being made to the current contract year and each remaining option year.

**NFP:** NFP is our premium aggregation contractor. This contract covers both HBX and MA. When approved by the Board, HBX staff did not include space in the contract ceiling to take into account customization work that may be needed. Fiscal year to date we have two customization projects – one for MA and one for HBX. As these are likely to occur each year, staff asked to increase the current contract ceiling, and the ceiling for each option year, by \$100,000 to account for any needed customization work. That means the contract ceiling annually is now \$842,980 rather than \$742,980.

**INVESTMENT REVIEW:** Our CFO reviewed current HBX investments for the operational and capital reserve funds and noted that we have accrued \$230,000 in interest this fiscal year on the operating reserve and \$70,000 on capital reserve. The interest was reinvested in money market accounts for each reserve. She noted that our next investment vehicle matures in August 2019 and so the Finance Committee will review that at our July meeting.

**IT BUDGET REVIEW:** We did our monthly reviews with HBX staff and all appears to be in order.

**FINANCIAL REVIEW:** The Finance Committee reviewed the monthly budget and spending report, and the purchase order report and addendum to the purchase order report each month and found nothing of concern.

## **VI. Ad Hoc Committee on Legislation Report, Tamara Watkins, Chair**

In December of 2018, the HBX Executive Board established the Ad Hoc Executive Board Committee on HBX Legislation, comprised of myself as chair and Dr. Aaron and Mr. Pitts as the other members. The Committee reviewed the HBX enabling legislation and discussed three areas of needed updates. At the March board meeting, the Committee asked the Standing Advisory Board (SAB) to review these areas and provide input to the Committee. These areas for clean-up legislation are:

1. Edits needed to ensure that if the ACA were significantly altered or repealed, the references to the Affordable Care Act in the HBX enabling legislation wouldn't result in a loss of consumer protections or market rules and would ensure that the Health Benefit Exchange Authority continues as the District's exchange marketplace.
2. Second, the committee discussed edits to provide for permanent independent procurement authority. HBX currently has independent procurement authority, but it sunsets after five years.
3. Third, the committee discussed updating the conflict of interest and ethics provisions applicable to HBX Board members and staff. When the Health Benefit Exchange Authority Establishment Act of 2011 was being developed, debated, and passed, it was prior to the current DC Ethics Act being in place.

The SAB has met four times. The members have discussed all of the areas above. General agreement exists on cleaning up references to the ACA and in providing for permanent independent procurement authority. The majority of the discussion has focused on the conflict of interest provisions. The SAB needs more time to continue to discuss and consider changes to these provisions.

The discussion has centered on the need to retain specific conflict of interest protections balanced with having appropriate expertise on the board and among staff and overall having workable and effective conflict of interest protections for HBX. We look forward to SAB's further input and recommendations.

## **VII. Discussion Items**

- a. Standing Advisory Board Recommendation for Future Open Enrollment Periods -  
- *Chris Gardiner, Chair, Standing Advisory Board*

Claire McAndrew, Vice-Chair, presented on behalf of SAB. She discussed the SAB recommendation for maintaining an annual three-month open enrollment period for DC Health Link. The SAB unanimously supported this recommendation at our last meeting on May 2, 2019.

As you will recall, an early act of the Trump Administration was to shorten the open enrollment period for the federal marketplace from the traditional three-month window of November 1 – January 31 to a six-week period of November 1 through December 15.

Because the District had the foresight upon passage of the ACA to create a State-Based Marketplace model, we had the opportunity to vary from the federal marketplace deadlines. In that first year, for plan year 2018, we chose to maintain the three month open enrollment window for three main reasons:

- 1) We knew from experience that the three month period worked well for District residents.
- 2) There is a tremendous amount of activity in November and December. That is the time period for Congressional open enrollment and December also has the largest number of Small Business renewals. Operationally, it would be difficult to box individual market open enrollment into that same time frame.
- 3) Finally, with 96% of our residents covered, we know that the remaining uninsured are difficult to reach. That extended open enrollment period provides more opportunities for DC Health Link, our navigators, and other community partners to reach those who remain uninsured and get them covered.

Because of the success of the 2018 open enrollment experience, we again voted to maintain the longer open enrollment period for this last year. Looking at enrollments for the 2019 plan year, 60% of DC Health Link's new customers signed up by December 15<sup>th</sup>, but that means 40% enrolled during the extended period. That is evidence that the longer window continues to well serve our community.

Given this experience, and the fact that the federal regulations continue to permit state based marketplaces to extend our open enrollment periods, the Standing Advisory Board adopted a recommendation that HBX permanently maintain a three-month open enrollment period that will run November 1 – January 31 each year.

That is the resolution before you this evening. As I noted at the beginning, it is a unanimous recommendation from the SAB and I am happy to answer any questions Board members may have.

- b. Update to Bronze Copay Standard Plan for 2020 to Comply with Final CMS Payment Parameters Rule – Dania Palanker, Chair, Standard Plans Working Group*

Mary Beth Senkewicz, HBX staff, gave the report in Ms. Palanker's absence. She reminded the Board that it had adopted the prior recommendations of the Standard Plans Advisory Working Group for 2020 standard plans on February 13. CMS thereafter issued the final payment parameters rule. The final rule deviated from the earlier draft rule in one material respect: the

maximum out-of-pocket spending limit (MOOP) was set for 2020 at \$8,150. (The MOOP was \$8,200 in the draft rule.)

The 2020 Standard Plans were run again through the actuarial value calculator to test compliance with the federally-required actuarial value (AV). The previously-adopted bronze copay plan was no longer in compliance with the AV as it came in .04% above the limit. Also, the MOOP of the previously-adopted bronze copay plan had been set at \$8,200 and was above the limit set in the final rule.

The working group met on April 30, 2019 to review the bronze copay options that had been developed by HBX contract actuaries through the course of the working group's meetings that resulted in the Report dated February 13, 2019.

The working group discussed the major considerations from its previous discussions on the bronze copay plan:

- 1) Keep as many services as possible not subject to the deductible.
- 2) Keep doctor and office visits copays as low as possible within the constraints of the AV.
- 3) Keep the Rx deductible as low as possible within the constraints of the AV.

The working group discussed that people with chronic conditions generally manage those conditions through doctor and office visits, and prescription drugs. In all likelihood more people will use prescription drugs and hit the Rx deductible than will need other high cost services, such as hospitalization, so keeping the Rx deductible was important to the working group members. Various AV compliant options raised the coinsurance for high cost services above the 2019 standard bronze copay plan, but kept doctor and office visits, and the Rx deductible, lower than they could be if the coinsurance for high cost services remained the same or was raised less. Working group members noted that with such a high overall deductible in the bronze copay plan, \$8,000, and coinsurance applying to fewer and less utilized services, it made sense to try to keep costs as low as possible for the more frequently used services.

The working group reached consensus on an alternative bronze copay plan that differs from the previously-adopted bronze copay plan as follows:

- The MOOP is \$8,000 rather than \$8,200.
- Coinsurance for high cost services, such as hospitalization, is raised to 40% from 30%.
- Rx deductible is raised to \$750 from \$650.

This approach allows doctor and office visits to remain the same. This plan results in an AV of 64.96%, the same as the previously-adopted plan.

Dr. Aaron asked how much it cost to lower the MOOP regarding the AV. Ms. Senkewicz said she did not have that precise information.



Dr. Ku engaged in a series of questions regarding what people choose which plans and whether they are better off with another choice, particularly those who are eligible for cost-sharing deductions (CSRs). Ms. Kofman said that a few years back, the Health Link display was changed so that people who are eligible for CSRs see the silver plans first. Some back and forth ensued among Board members, but they understood that the AV choices are limited with respect to silver and bronze plans. Dr. Aaron thought that next year, the working group should consider knocking down generic drug copays as low as possible, to \$10 or \$15, and see what tradeoffs are required.

#### **VIII. Public Comment**

No public comment was proffered.

#### **IX. Votes**

##### a. Resolution – Special Enrollment Period for Future Open Enrollment Periods

It was moved and seconded to approve the Resolution, “Special Enrollment Period for Future Open Enrollment Periods.” The motion passed unanimously, with Dr. Aaron, Dr. Beers, Dr. Ku, Ms. Lewis, Mr. Pitts, and Ms. Watkins voting yes.

##### b. Resolution – Update to Bronze Copay Standard Plan for 2020

It was moved and seconded to approve the Resolution, “Update to Bronze Copay Standard Plan for 2020.” The motion passed unanimously, with Dr. Aaron, Dr. Beers, Dr. Ku, Ms. Lewis, Mr. Pitts, and Ms. Watkins voting yes.

#### **X. Closing Remarks and Adjourn, *Diane Lewis, Chair***

The meeting adjourned at 6:24 p.m.