



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

Date: Thursday, July 18, 2019
Time: 5:30 PM
Location: By Conference Call Only
Call- in Number: 1-650-479-3208; access code: 730 599 017

Members Present: Henry Aaron, Leighton Ku, Diane Lewis, Khalid Pitts, Stephen Taylor (via telephone), Tamara Watkins (via telephone)

Members Absent: Nathaniel Beers, LaQuandra Nesbitt, 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 four voting members present (Dr. Aaron, Dr. Ku, Ms. Lewis, Mr. Pitts).

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. Ku, Ms. Lewis, and Mr. Pitts voting yes.

III. Approval of Minutes, Diane Lewis, Chair

It was moved and seconded to approve the minutes of May 8, 2019. The motion carried unanimously, with Dr. Aaron, Dr. Ku, Ms. Lewis, and Mr. Pitts voting yes.

IV. Executive Board Business

- a. Discussion and vote on Executive Board Committee Assignments – Diane Lewis, Chair*

With the loss of Kate Sullivan Hare as a board member, it is time to update the Executive Board Committee Assignments. The committee assignments proposed changes are on the screen and have also been posted on the HBX website.

- Nathaniel Beers is proposed to be added to the Executive Board Insurance Market Committee filling the open space left by Ms. Sullivan Hare.
- Tamara Watkins is proposed to be added to the Executive Board IT Infrastructure and Eligibility Committee filling the open space left by Ms. Sullivan Hare.
- Leighton Ku is proposed to be added to the Executive Board Marketing and Consumer Outreach Committee filling the open space left by Ms. Sullivan Hare.

It was moved and seconded to approve the Board committee assignments as set forth above. The motion carried unanimously, with Dr. Aaron, Dr. Ku, Ms. Lewis, and Mr. Pitts voting yes.

b. Executive Board Election Date – *Diane Lewis, Chair*

Pursuant to the Board's Bylaws, the Annual Executive Board Officer Elections are to be held in the third quarter of the year for the three positions of:

Chair

Vice-Chair

Secretary/Treasurer

A majority of board members must agree on a date. Based on the scheduled board meetings and the notice requirements, staff recommends the board elections be held at the regularly scheduled September meeting of the Executive Board, September 11, 2019.

If accepted, we will take nominations on September 11th. Voting and non-voting HBX board members may make such nominations.

A nomination must be accepted or rejected by the nominee at the September 11th meeting, either orally or in writing published through another Board member physically present at the meeting where the vote is to occur.

It was moved and seconded to have the HBX Board Officer Elections at the September monthly meeting scheduled for September 11, 2019. The motion carried unanimously, with Dr. Aaron, Dr. Ku, Ms. Lewis, and Mr. Pitts voting yes.

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

HBX BUDGET: Council passed the FY 20 budget with no changes to the HBX budget. Once Mayor Bowser signs the budget, it will go to Congress for review.

2020 RATES:

RATE AND FORM FILING: Carriers filed forms and rates with DISB for individual and small group health insurance policies and dental policies. Our external actuaries from Oliver Wyman are reviewing the filings and are providing feedback to DISB actuaries as appropriate. As in prior

years, we are working with the Executive Board Insurance Market Committee. The committee met and was briefed on proposed rates and our testimony for the hearing. We will make recommendations to DISB.

- This year, DISB issued a bulletin on April 3 that required carriers to file two sets of rates: the first rate filing to be consistent with prior years' filings and the second rate filing to consist of rates and supporting documentation that assumes the merger of the individual and small group experience in the risk adjustment calculation.
- DISB will hold a second rate hearing on Thursday, August 22nd at 5:30 PM at the Old Council Chambers, One Judiciary Square, 441 4th Street NW. As always, we will send email alerts to our customers so they are aware of the opportunity to testify and I will testify as well.

DISB RATE HEARING UPDATE: On June 20, Commissioner Taylor held his first public hearings on 2020 proposed premium increases for SHOP and individual coverage sold through DC Health Link.

- I testified highlighting that we support the goal of reducing premiums for people with individual health insurance but oppose doing that by increasing premiums for small businesses and non-profits in the District. I noted that it is not equitable to shift the entire burden to the small business and non-profit community.

AWARD: Ms. Kofman noted that HBX is a recipient of the 2019 PR News digital award. HBX was recognized for its digital activities for 2017 and 2018 PowerUp DC. She thanked Linda Wharton-Boyd and her staff for their hard work in bringing these projects to fruition.

DC HEALTH LINK UPGRADE FOR SMALL BUSINESS CUSTOMERS: Based on meetings with small business customers and their feedback, automatic bill pay was the number one feature employers wanted to simplify and make more efficient their bill pay. In June, we deployed automatic bill payment. Until now, employers who wanted to pay online, had to reenter their payment information every month. The new feature allows employers to enter their payment information once and each month there is automatic bill pay. More than 600 small business customers have already utilized this new feature and it is working smoothly. We worked with our IT developers, our premium aggregation vendor, and with WellsFargo (the District's bank) to develop and deploy the new functionality. In other words, this was more complicated functionality to deploy because it was not purely IT and involved a large financial institution and premium aggregation vendor. The great news is that it is deployed and working well. Ms. Kofman noted that Eliza Bangit (HBX Director of Marketplace Innovation, Policy, and Operations) pushed this through the finish line and made it happen.

NATIONWIDE HEALTH INSURANCE SCAM: The FTC is seeking to permanently shut down a nationwide operation that is Florida-based that misled people into thinking they were buying comprehensive health insurance when in fact they were being enrolled into a medical

discount program or extremely limited benefit plans that leave consumers liable for most medical expenses. In May a federal court issued a preliminary injunction prohibiting new sales of these products. The Florida-based entity used a variety of names including Simple Health LLC, Health Benefits One LLC, etc. According to court documents, the entity collected more than \$100 million in premiums leaving tens of thousands of people uninsured.(link [here](#) to FTC release for more details.)

CMS is allowing victims of the Florida-based scheme a special enrollment opportunity in states that use healthcare.gov to enroll in comprehensive coverage through healthcare.gov. We have been working with CMS and are also providing a special enrollment for victims. CMS identified 53 consumers in the District and sent a notice on July 1 to all impacted consumers nationwide. On July 2, we mailed a DC Health Link notice to each of the 53 DC residents and emailed them as well. We have also called each of them offering help enrolling in coverage through DC Health Link. We will do two more emails and another round of calls as well.

As of July 15th, we have five people who have requested a SEP to sign up for coverage through DC Health Link. They have until September 4th to enroll. I'll provide an updated number at the board meeting on the 18th.

We issued a press release letting residents know about the scam and the opportunity to enroll. DISB also issued a press release letting residents know about the scam and the opportunity to enroll.

Ms. Watkins entered the meeting.

ELEANOR HOLMES NORTON ROUNDTABLE: On June 14th, Congresswoman Eleanor Holmes Norton hosted an ACA Roundtable. We worked with her team to ensure that the Congresswoman would have an opportunity to talk with DC Health Link customers, assisters, and a broker. The ten participants spoke about what the ACA and DC Health Link mean to them. It was an excellent event. The Congresswoman opened the discussion, I gave an opening statement and then we went around the table with each individual providing their perspectives. We recorded the event and have posted it on our YouTube page.

SMART AUDIT COMPLETED: Each year, CMS requires SBMs to undergo what is called a SMART Audit which includes financial and programmatic audits of HBX. We use the annual CAFR audit to meet the financial audit requirements. Our programmatic audit was conducted by Bert Smith auditors. The programmatic audit was due on June 1. It was submitted and is under review by CMS.

NEW STATE-BASED MARKETPLACES: Pennsylvania and New Jersey have both enacted legislation to create State-Based Marketplaces and are planning to be operational starting 2021.

Dr. Ku asked if we were approaching those states to see if they are interested in our system. Ms. Kofman responded that our code is open source and available to anyone who wants it. If another state uses our code and makes improvements, those improvements are available to us for free.

NEW STATE ACTIONS ON ACA AFFORDABILITY:

CA: As part of its state budget, the legislature enacted improvements to the ACA to use state dollars to increase APTC payments for low income Californians (\$1.45 billion over three years). These improvements both increase APTC amounts for those currently eligible and expand it to people up to 600% of federal poverty level. California also enacted a state individual responsibility requirement modeled on the federal one.

RI: The legislature enacted a state individual responsibility requirement, provide funding for reinsurance (connected with a 1332 waiver they are now filing) and clarified that the Office of Health Insurance Commissioner has oversight of short term limited duration plans and that consumer protections applicable to insured health insurance plans apply to short term limited duration plans.

FEDERAL:

HBX COMMENTS SUBMITTED:

CMS Request for Information on 1332 Waivers: On May 3, CMS and Treasury published another request for information on 1332 waivers. They were soliciting comments on “ideas for other innovative waiver concepts” to supplement concepts already included in their 1332 waiver paper (e.g. account-based subsidies; state-specific premium assistance). HBX submitted comments raising concerns that this RFI was about encouraging the growth of junk plans and putting at risk quality health coverage for millions of Americans. The comments are posted on our website.

OMB Request for Comments on Poverty Index Rates: Part of this broader Request for Comment is a proposal to use a lower inflation measure to calculate annual adjustments to the federal poverty level. This would impact eligibility for certain programs such as Medicaid and APTC/CSR eligibility. Mayor Bowser submitted comments urging the Administration to reconsider this change, which as proposed would harm District residents. HBX submitted comments on June 21st opposing the change to the methodology, arguing that the proposed change would harm people by denying health coverage and other benefits to people living in poverty. We also noted that we believe such a change is beyond Executive authority and requires Congressional action. HBX comments are posted on our website.

PROPOSED FEDERAL REGULATIONS:

Non-Discrimination Rule: This proposed rule would amend existing regulations to remove protections for people. For example, the proposed rule would remove protections based on

sexual orientation and gender identity, limit the applicability of existing protections, remove notice requirements, remove the requirement that covered entities have an internal grievance process, and loosen language access requirements. Comments are due on August 1; HBX is reviewing.

DOJ Public Charge Proposed Rule: OMB received a proposed public charge rule from the Department of Justice on July 3rd. This proposed rule remains under review by OMB, but reports have indicated this rule could include similar provisions to the DHS public charge proposed rule, which was published in 2018, but has not been finalized. Mayor Bowser and HBX each submitted comments in opposition to the DHS public charge proposal that threatens to deter enrollment in health coverage for immigrants and their family members. The DHS rule is at OMB for review and issuance as a final rule.

Dr. Ku engaged in a discussion about the two different rules and which stage each was at. Ms. Kofman said she would follow up with staff and clarify where the rules are.

FINAL REGULATIONS:

HRA Final Rule: On June 20, 2019, the tri-agencies finalized a [rule](#) creating two types of health reimbursement arrangements (HRAs): 1) Individual Coverage HRAs and 2) Excepted Benefit HRAs.

1. Individual Coverage HRA: Starting January 1, 2020, employers will be able to offer employees an amount of money through an Individual Coverage HRA for the purchase of individual market health insurance. The employee would purchase the individual market coverage and then be able to get reimbursed for their premium up to the HRA amount. Only if the HRA is “unaffordable” would an employee be eligible for APTC (assuming all other criteria is met). The rule requires Exchanges to conduct this affordability calculation. This new eligibility requirement would have to be deployed for Nov 1, 2019. CMS has indicated that it will not have this affordability calculation fully functional by the start of Open Enrollment. It is a significant IT lift. The FAQs and the regulation make it clear that consumers (employees and employers) should seek help from Exchanges directly. Although all SBMs opposed the timeline given the significant IT lift, the Administration nonetheless is keeping the timeline and sending consumers to exchanges. We are working with other SBMs. Also, our staff is working with DHCF on the DCAS application (CURAM HCR) that will have to be updated to run the new eligibility determination for APTC. Note that if a District resident wrongfully takes APTC and their employer offers an Individual HRA that is affordable, the resident will be required to pay back to the federal government the APTC received. This amount could be thousands of dollars.
- The departments issued FAQs and a model notice and have invited feedback. HBX will be submitting feedback on the model notice to help improve it.

2. **Excepted Benefits HRA:** Employers can offer employees up to \$1,800 (for 2020) through an Excepted Benefits HRA to pay for excepted benefits like vision or dental insurance. The rule also allows Excepted Benefit HRAs to be used for short-term limited duration insurance. The rule is effective August 19, 2019, but applies to plan years starting January 1, 2020.

Protecting Statutory Conscience Rights in Health Care Final Rule: CMS published the final conscience rule on May 21, 2019. This rule would allow providers (and other staff at covered entities) to refuse to provide assistance related to certain services, including abortion and assisted suicide, based on moral or religious objections. In other words, if implemented, it could result in people, in particular women and members of the LGBTQ+ communities, being denied needed medical care. Over two dozen states and cities have challenged this rule in court (including DC), and litigation is ongoing. As part of an agreement, HHS has announced a delay in implementing of this rule from the planned July 22 effective date to at least November 22, 2019. We will continue to monitor and provide updates.

LEGAL UPDATES:

DOL Rule on AHPs Update: The US Department of Labor issued a final rule on association health plans in June 2018, which would have promoted the proliferation of AHPs. A Coalition of 12 states, including the District of Columbia, challenged the rule and prevailed in federal District Court. Note that we and DISB provided a declaration when the case was before the District Court. DOL appealed that decision to the US Court of Appeals, DC Circuit, seeking to have the District court decision overturned. The court has not set a date for oral arguments, but HBX will continue to monitor this case.

ACA CASE: On July 9, the U.S. Court of Appeal for the 5th Circuit held oral argument in the case of *Texas v. United States*. This case was brought by a coalition of anti-ACA states as well as two individual plaintiffs who live in Texas. The plaintiffs want to overturn the entire ACA on the grounds that the individual mandate is now unconstitutional because, when the penalty was zeroed out as of 2019, it no longer raises revenue and is therefore not permitted under Congress' taxing authority. The Department of Justice is not defending the law and is supporting the anti-ACA plaintiffs. A coalition of pro-ACA states (including DC) and the U.S. House of Representatives have intervened and presented arguments to uphold the law. The Court of Appeals panel includes one judge appointed by President Jimmy Carter, one appointed by President George W. Bush, and one appointed by President Donald Trump. The two Republican-appointed judges asked all the questions. Given the number of parties and issues, there are many different possible outcomes, including sending certain questions back to the trial court. However, ultimately some or several questions will be appealed to the U.S. Supreme Court for resolution. Given the impact on health insurance markets, all sides would ask for a stay of any decision pending appeal. HBX will continue to monitor this case. Note that we provided a declaration when the case was before the District Court.

CONGRESSIONAL:

Surprise Medical Billing: Legislation to curtail surprise billing is in the House and in the Senate but there is not consensus on how to determine how much providers get paid for out-of-network care. This is a major sticking point.

ACA bills in the House: On May 16 the House passed an omnibus bill (HR 987) to bolster the ACA and lower prescription drug costs. The bill includes the following: restricting federal 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. It also included provisions to increase transparency and public reporting about ACA-related activities. The bill also includes a "sense of Congress" that HHS should not prohibit or otherwise restrict silver loading and included an amendment that would prohibit the Secretary of HHS from implementing any process that would terminate a current consumer's marketplace coverage solely because they did not actively re-enroll during the open enrollment provision. It notably did not include a provision to reinstate federal reinsurance. (note: The Ways and Means Committee is continuing to work on an affordability package separately). On prescription drugs, it included provisions to increase access to generic medications. Some observers believe that this is DOA in the Senate.

LOOSENING RESTRICTIONS ON 1332 WAIVERS: On July 15, the GAO informed Congress that they have the option to overturn recent Trump administration guidance loosening restrictions on 1332 waivers that would permit states to pursue proposals that undermined ACA coverage. House Energy & Commerce Chair Frank Pallone and Senate Finance Committee Ranking Member Wyden have said that a resolution will be introduced soon to unwind the Trump Administration guidance, but it is unclear if it will be able to move in the Senate.

CADILLAC TAX: Just yesterday the House voted to repeal the Cadillac tax on certain health plans.

VI. Finance Committee Report, Henry Aaron, Chair

The Finance Committee met on June 20 and on July 15th via conference call with HBX staff. Ms. Lewis, Ms. Watkins and myself participated in both meetings.

PROCUREMENTS: At the July 15th meeting, the Finance Committee reviewed and approved the three procurements pending before the Executive Board this evening. Those three procurements are: the FY 20 Metro Ads, FY 20 Assister Grants, and FY 20 Business Partner Agreements. Mr. Pitts will speak in more detail as the chair of the Marketing and Outreach Committee about these three items.

INVESTMENT REVIEW: At the July 15th meeting, HBX CFO Marjorie Edmonds briefed us on the pending August 15th maturity date for one of our Treasury investments within our

operating reserve. As these investments come to maturity, we on the Finance Committee are reviewing the Office of the Treasurer recommendation for reinvestment. Right now, it turns out that the Government money market funds are earning higher interest than Treasury Bills or Notes. Currently, the yield on Government Money Market Funds ranges from 2.28% to 2.35% versus 1.886% for a two-year Treasury Note. Thus, the Finance Committee chose to reinvest these funds (approximately \$6.5 million) in the money market. The District Office of the Treasurer monitors investments, and Marjorie Edmonds, HBX CFO, will keep in close touch with that office, and the Finance Committee will reconsider investing these funds in a longer-term vehicle when the rates make that beneficial to HBX.

ASSESSMENT UPDATE: Each year, HBX assesses health insurers that do business in the District as the means of financing the bulk of the HBX budget. DISB conducts the annual assessment for us. This year's assessments were mailed on July 8, 2019. The amount assessed this year is \$30,485,384.60. Payment is due August 19, 2019. The deadline for carriers to file appeals is August 22, 2019. We will provide an update on collections at our September Board meeting.

IT BUDGET REVIEW: As a reminder, we were able to complete most of the originally planned IT development work for 2019 more quickly than anticipated. Because of that, we chose to speed up delivery of work on what had been planned for FY 20 development. To facilitate that work, our CFO transferred \$4,672,800 from our unassigned fund balance and assigned it to ongoing IT development. That work is proceeding.

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.

VII. Marketing and Consumer Outreach Committee Report, *Khalid Pitts, Chair*

Mr. Pitts reported on the various communications and outreach efforts undertaken by HBX over the last several months, including community update meetings, the open enrollment 7 strategic planning summit, the health insurance literacy project, HBX' participation in the Mayor's maternal and child health summit, and grant awards.

VIII. Discussion Items

a. FY 20 Assister Grants – *Mila Kofman, Executive Director*

Ms. Kofman said that HBX staff recommends that all five current key target population-focused Assister grantee organizations – Community of Hope, Mary's Center, Whitman-Walker Health, La Clínica del Pueblo, and Leadership Council for Healthy Communities – receive funding to continue Assister outreach and enrollment services during fiscal year

2020. This funding will allow the DC Health Benefit Exchange Authority to continue our partnership with these organizations, and will provide multilingual and culturally and linguistically appropriate assistance to DC Health Link consumers.

The total cost of funding five Assister grantees is \$650,000. A grant and organizational breakdown is below.

Community of Hope: \$145,000

La Clínica del Pueblo: \$25,000

Leadership Council for Healthy Communities: \$150,000

Mary's Center: \$80,000

Whitman-Walker Health: \$250,000

b. FY 20 Business Partner Grants – Mila Kofman, Executive Director

Ms. Kofman said that HBX staff recommends that all of our business partner grants be approved as follows:

Restaurant Association Metropolitan Washington: \$15,000

DC Chamber of Commerce: \$130,000

Greater Washington Hispanic Chamber of Commerce: \$155,000

c. FY 20 Metro ads – Mila Kofman, Executive Director

Ms. Kofman said that HBX staff recommends that Metro ads be approved for up to a total of up to \$355,000 to promote individual open enrollment, SHOP enrollment, and a dental campaign.

Ms. Kofman noted that these proposals had been reviewed and approved by the Marketing and Consumer Outreach Committee, and the Finance Committee.

IX. Public Comment

No public comment was proffered.

X. Votes

a. FY 20 Assister Grants

It was moved and seconded to approve the FY 20 Assister Grants as set forth above. The motion carried unanimously, with Dr. Aaron, Dr. Ku, Ms. Lewis, Mr. Pitts, and Ms. Watkins voting yes.

b. FY 20 Business Partner Grants

It was moved and seconded to approve the FY 20 Business Partner Grants as set forth above. The motion carried unanimously, with Dr. Aaron, Dr. Ku, Ms. Lewis, and Mr. Pitts voting yes.

c. FY 20 Metro ads

It was moved and seconded to approve the FY 20 Metro ads. The motion carried unanimously, with Dr. Aaron, Dr. Ku, Ms. Lewis, and Mr. Pitts voting yes.

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

Pursuant to DC Code Section 31-3171.11 the Board moved to closed session to discuss rates. The public portion of the meeting ended at 6:38 p.m.