Health Benefit Exchange Authority Executive Board Meeting
MINUTES

Date:	**Wednesday, September 23, 2020**
Time:	3:03 PM
Location:	Via Web Ex/By Conference Call Only
Call- in Number:	1-650-479-3208; access code: 172 328 0486

Members Present: Henry Aaron, Leighton Ku, Diane Lewis, LaQuandra Nesbitt, Khalid Pitts, Tamara Watkins, Karima Woods
Members Absent: Wayne Turnage, Laura Zeilinger

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

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

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, Mr. Pitts, and Ms. Watkins and voting yes.

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

It was moved and seconded to approve the minutes of the September 9th, 2020 meeting. The motion carried unanimously, with Dr. Aaron, Dr. Ku, Ms. Lewis, Mr. Pitts, and Ms. Watkins, voting yes.

IV. Discussion Item

a. Extension of SHOP Open Enrollment for 2021 and 2022 – *Leighton Ku, Chair, HBX Executive Board Research Committee*

Dr. Ku summarized that at the September 9, 2020 Executive Board meeting, there was proposal to extend SHOP Open Enrollment through calendar year 2022. At that meeting, some board members raised questions about the proposal so the matter was deferred to the Research and

Data Analysis Committee (Research Committee) for further consideration. The Research Committee, composed of Dr. Ku, Ms. Watkins, and Dr. Aaron, met briefly on September 16, 2020 to discuss the matter.

Dr. Ku stated that this proposal originally came from Standing Advisory Board (SAB) with unanimous support. Dr. Ku proceeded to summarize the discussion at the Research Committee regarding the proposal. He noted that right now, per federal regulation, SHOP open enrollment is for plans that have a January 1 start date. Under open enrollment, the plans are excused from the two-thirds minimum participation and the 50% minimum contribution requirements established by HBX. The extension of these open enrollment exceptions for the entirety of the 2020 plan year was approved by the Executive Board in January 2020. The issue before the Board today is whether the open enrollment rules should be extended to calendar years 2021 and 2022 as well.

Dr. Ku said that at the September 16, 2020 Research Committee meeting, members walked through the data provided by HBX regarding compliance with minimum participation and contribution requirements by existing DC SHOP employers, including those added in 2020 under the existing temporary extension. According to his read of the data, there has not been substantial use of these exceptions provided by the Board for calendar year 2020. Overall, less than 1% of all employers pay less than 50% of the premiums; in fact, nearly half of them pay 100% of the premiums. Dr. Ku also stated that the majority of SHOP employers meet the two-thirds minimum participation requirement.

Dr. Ku stated that the issue that came up during the September 9, 2020 Executive Board meeting was the concern that the Board wants to be appreciative of special challenges businesses face during this time by reducing their contribution and participation requirements. Dr. Ku stated that his and Dr. Aaron's concern was there is a possibility that if employers contribute less than 50% of the premium, then employees' share has to be greater than 50%, making it harder for employees to afford enrolling in coverage. Although the temporary extended open enrollment for SHOP has not been used very much so far, Dr. Ku and Dr. Aaron were concerned that extending this policy opens the door so that there could be a substantial increase in the number of employers contributing less than 50% of the premium, in turn shifting the burden to employees.

Dr. Ku noted that the Research Committee requested more information from HBX staff, and HBX staff agreed to provide more information on an ongoing basis. That arrangement ultimately led the Research Committee to agree to go along with extending the proposal for two more years with the condition that we have a monitoring plan to see if this arrangement substantially alters the type of plans and contribution rates offered by SHOP employers. Dr. Ku noted that at the Research Committee, two voted yes for the proposal (Ms. Watkins and himself), and Dr. Aaron abstained. The draft resolution was revised to add the requirement for data monitoring and that is the proposal under consideration by the Executive Board today.

Dr. Ku turned the discussion to Purvee Kempf, HBX staff, to go over the general background leading up to today's discussion. Ms. Kempf reiterated that open enrollment was extended through 2020 by a unanimous Executive Board vote in January 2020. At that time, the proposal was done without consideration of COVID-19 because the public health impact of the virus was not known at that time. Instead, the 2020 extension was related to the implementation of the

District's individual responsibility requirement (IRR), in case businesses want to be able to offer coverage to their employees who were being penalized in 2020 for not having coverage in 2019. After the 2020 implementation, the SAB met on August 26, 2020 to review proposal to extend SHOP Open Enrollment through 2021 and 2022. This time the policy rationale is related to COVID-19.

Ms. Kempf noted that during the August SAB Meeting, a Kaiser representative raised the need to review claims data to see if adverse selection would be an issue and Kaiser agreed to provide claims data on the condition that all carriers provide the data and that it is reviewed to assess whether adverse selection was apparent. At the time, HBX staff did note that HBX does not have claims data and to gather and analyze this data, HBX would need to engage outside actuaries. Ms. Kempf said that, at the SAB meeting, CareFirst indicated an openness to considering voluntarily providing claims data. She stated that SAB members voted unanimously to move forward with the proposal, with members noting first, that the data they did have before them did not present adverse selection concerns and second, that it is critical to act in response to COVID-19 now and third, that the proposal was time-limited to two calendar years. Ms. Kempf also noted that of the carriers, CareFirst voted for the policy as a member of the SAB, Aetna supported the proposal, United did not oppose the proposal and Kaiser did oppose it.

Ms. Kempf turned the discussion back to the chair, Ms. Lewis, who asked Dr. Aaron if he would like to comment further. Dr. Aaron stated that he wrote out his reasons and circulated them to all members of HBX, both voting and non-voting. Dr. Aaron stated that he believes that the policy proposal originated with HBX staff and was then submitted to the SAB rather than the proposal originating with the SAB. Dr. Aaron added that it is incorrect that last year was the first year that District resident would have faced the IRR, noting that the federal IRR existed for several years prior to the District's. Dr. Aaron indicated his view that it is hard to tease from the data an unambiguous argument one way or the other. He stated that his concern was and still is that he would be upset if the waiver of requirements work and would be worried if it did not work. He said that if it does not work, the policy is pointless, and the effect would be negligible. On the other hand, if it does work, it amounts to an effective repeal of longstanding requirements in the insurance industry of minimum contribution and minimum participation. In his view, these requirements are important to maintain. If a small employer set up a plan, it is for their workers, not just for the employer and a few high-wage workers in the company. If many companies were to use this provision for the two-year suspension, then we would have had the exception in place for three years and a significant number of employers might have availed themselves of it. At that point, pulling back the policy would be politically impossible. Dr. Aaron stated that since he would like to see these provisions retained, he is unhappy with the two-year suspension. He noted that if the proposal is for one year, with a clear expression by HBX if the emergency ends by 2021, then the waiver would not continue, it might be a compromise to achieve the SAB's goal and would ameliorate his concern over the permanence of the extension.

Mr. Pitts indicated he supported the proposal at the September 9, 2020 Board meeting and remains supportive. He stated that, as a business owner, he believes such flexibility is necessary for small businesses. He asked Ms. Kempf to explain why this is a two-year proposal.

Ms. Kempf responded that Dr. Aaron is correct in that the proposal did not originate from the SAB, but came from HBX staff because staff heard from brokers that there was a need in the community. One of the things that the brokers talked about at the SAB is the timing of this proposal and why two years is critical. Ms. Kempf noted that one of the brokers at the SAB has an employer group where the one year is ending, but it is not even a full year policy in the group's mind because it is coming upon a September 2021 enrollment as the only option it has. The brokers would have to advise that group to re-enroll as a January group, and effectively lose the amount of money employees have paid towards their deductibles for September, October, November, and December of 2020. So the group is not making the decision to re-enroll at this time because the group does not necessarily want to do that in January and may end up foregoing offering coverage for the next four months. The same concern would hold if HBX continued with a one-year extension.

Ms. Kempf noted that it is not to say that there would not be the exact scenario at the end of the two-year period, but wanted to see a clean full year during the economic upheaval. This way, it would be at the end of 2022 when groups have to really make those decisions about ending and restarting as a January group, or if at that time, the economic situation for businesses has changed, they may be able to go ahead and increase the contribution level and stay as a September group.

Dr. Aaron responded that if there was a one-year renewal, groups would be able to renew in September and carry through next September. Ms. Kempf said that employers want to take the policy through 2022 so that they have more consistency and are able to delay decisions until the economic situation improves; that way they can make a strong decision about updating their contribution limits with their new economic forecasts. Dr. Aaron responded that small businesses are not optimally situated to know when the crisis will end.

Dr. Ku noted there is a distinction between when the public health emergency ends and when the economic crisis ends. He noted that historically, there are provisions about how you declare a public health emergency and it is presumably linked to some of the actual public health data. The issues differ when we think of the economic issues, and all the data so far shows that there will be a period when the public health emergency is over but the economic issues continue.

Mr. Pitts added that we are suffering permanent closures of bars and restaurants and are not expecting sense of normalcy to come back well into year 2022.

Ms. Kofman noted that Dr. Nesbitt has joined via video. Dr. Nesbitt commented that the DC Department of Health is using public health indicators to support a phased re-opening approach. We are currently in phase 2 in anticipation moving into phase 3. She noted that many people see the moving through different phases synonymously with generating more economic activity, but , a presentation at one of Mayor Bowser's meetings last week on the six-month lookback does not support that view. The trend shows that there is not a one-to-one or direct correlation between reopening and economic improvement. She stated that there is an economic lag after the public health indicators show improvement. As we move into this unpredictable Fall and Winter season, where the natural behavior is people move toward more indoor activities, transmission risk increases. With that in mind, even if we are starting to see some rebound in

consumer spending and rebound in employment numbers, it is unclear how those trends will be sustained.
Ms. Watkins noted that as a member of the Research Committee, she looked at the situation as a risk-benefit analysis, recognizing the pressure that small businesses are under. She noted that ultimately, we have a risk mitigation plan with the requirement placed on HBX staff of bringing data back to the Committee on an ongoing basis that will help us continue to look at the impact of the proposal.

Dr. Ku further highlighted Dr. Aaron's concerns, but also agreed that we have a risk mitigation plan to go along with the proposed extension. He stated that he is willing to proceed with the two-year time frame with constant monitoring. He commented that his position is that the provision has not done much damage, such as businesses dramatically reducing their premium contributions. He noted that if the monitoring shows trend the other way, then the Research Committee can reassess and can come back to the Executive Board with a proposal to end the open enrollment policy earlier than calendar year 2022.

V. <u>Public Comment</u>

Bill Wehrle (Kaiser Permanente) stated that Kaiser is willing to share its data as long as other carriers do the same and as long as the data would be analyzed by an independent actuary. He stated that a number of Executive Board members have raised the concern about the possibility of employers dropping contribution levels. The other worry is around adverse selection, and countering adverse selection is the reason that these contribution and participation requirements exist. So if groups are allowed to enroll when only a few employees enroll, we run the risk of a group enrolling just because one person is having significant health care needs. He noted that the policy being proposed here is a significant one and he appreciates that there is going to be an effort to monitor it and to look at the data. He noted that looking at age data is not a substitute for actual claims experience. He further added that we need to ensure that the policy response matches the problem that is articulated. He expressed that when firms say that they cannot make the 50% contribution level, he worries that as being used as a justification to eliminate the requirement entirely. He stated that there are a host of actions that can be taken that is more closely tied to the problem as identified such as lowering the contribution rate to a percentage lower than 50%, but not eliminating it. He also agreed with Dr. Aaron that a better alternative is to extend open enrollment only for 2021. Mr. Wehrle urged caution in proceeding.

VI. <u>Vote</u>

a. Resolution - Extension of SHOP Open Enrollment for 2021 and 2022

It was moved and seconded to approve the proposal for Extension of SHOP Open Enrollment for 2021 and 2022. The motion carried, with Mr. Ku, Ms. Lewis, Mr. Pitts, and Ms. Watkins voting yes, and Dr. Aaron voting no.

VII. <u>Closing Remarks and Adjourn</u>, *Diane Lewis, Chair*

Ms. Lewis thanked everyone for their participation and indicated the Executive Board would continue to monitor the issue of minimum contribution and minimum participation in the SHOP marketplace.

The meeting adjourned at 3:46 p.m. on Wednesday, September 23, 2020.