DC Health Benefit Exchange Authority

MEMORANDUM

TO: **HBX Executive Board**

FROM: **HBX Staff**

DATE: **07/01/2015**

RE: **Updates to Assessment Appeal Regulations**

On June 11, 2014, the DC Health Benefit Exchange Executive Board voted to approve emergency regulations creating an administrative appeals process for health carriers subject to an assessment pursuant to Health Benefit Exchange Authority Financial Sustainability Emergency Amendment Act of 2014 (B20-0873). Interested parties were invited to submit informal comments on these regulations. These comments serve to inform the DRAFT Assessment Emergency Rule for 2015 that are being proposed pursuant to Health Benefit Exchange Authority Financial Sustainability Emergency Amendment Act of 2015 (A21-0017) and the Health Benefit Exchange Authority Financial Sustainability Temporary Act of 2015 (L21-0005).

Two health carriers submitted comments, which have been addressed in the updated DRAFT Emergency Rule currently before the Executive Board for consideration.

1) CareFirst BlueCross Blue Shield (CareFirst) requested that carriers be permitted to file a request for reconsideration for any error, regardless of the dollar amount at issue. They expressed concern that the 2014 appeals process limited appeals to disputes that are equal to or exceed one percent of the assessment. CareFirst expressed concern that the one percent rule could bar appeals where significant amounts were in dispute where the amount failed to meet the one percent threshold.

   To address this concern the proposed DRAFT was modified to allow appeals in cases where the amount in dispute is either one percent of the total assessment or a minimum of $10,000. This revision is intended to address the concern that carriers might be barred from appealing errors that may have a significant financial impact on a carrier, while also preventing appeals for de minimis errors. During the 2014 administrative appeals process no requests for reconsideration were rejected based on this provision of the regulations.

2) CareFirst also commented that the 30 day timeline to file a request for reconsideration was too short and requested 60 days to file a request for reconsideration. The proposed DRAFT was modified to provide carriers with an additional 15 days to file a request for

reconsideration. This timeline is intended to provide carriers with additional time to review the Notice of Assessment and file a request for reconsideration.

3) During the appeals process, carriers requested that filing a request for reconsideration toll payment of the assessment. This is not permissible under the Health Benefit Authority Financial Sustainability Amendment Act of 2015, emergency, temporary, and permanent acts. Specifically, the law requires that health carriers pay the assessment within 30 business days after receipt of the Notice of Assessment.

4) CareFirst asserted that the appeals regulations do not provide entities with the right to appeal Final Orders to a court with jurisdiction. The DRAFT regulation does not interfere with other legal remedies which might be available. These regulations do not act a bar to seeking a remedy through the judicial process, therefore no changes are necessary.

5) UnitedHealthcare recommended that HBX adopt the appeals processes available to carriers under the Insurance Regulatory Trust Fund assessment process. The appeals process applicable to carriers subject to the Insurance Regulatory Trust Fund assessment is the process that is generally applicable to contested matters before the Department of Insurance, Securities and Banking (DISB).[1] This process is limited to matters under DISB's jurisdiction and does not apply to contested matters under HBX's jurisdiction. In addition, this process is applicable to licensure matters and other matters within DISB's jurisdiction, not just matters related to the assessment. Consequently, the DISB process is designed to address complex administrative matters beyond determining whether an entity was correctly assessed. This recommendation is not well suited to the HBX assessment process for the above stated reasons.

HBX made additional changes based on experience from the 2014 assessment process. The emergency regulations include a new section delineating what insurance products are considered to be an accident and sickness insurance company for purposes of the assessment. These regulations also clarify what lines of business are not considered "health insurance carrier risk" for purposes of the assessment, and are therefore not subject to the assessment. Finally, 26-D DCMR §120.4 (formerly §110.4) was amended to clarify that an assessed entity that submits a request for reconsideration may provide additional information in support of its request to HBX not only at the time of filing the request but also to rebut any additional information they receive from HBX.

[1] See 26-A DCMR §3800 *et seq*.