



RESOLUTION

EXECUTIVE BOARD OF THE DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY

To extend the annual Small Business Health Options Program (SHOP) Open Enrollment Period for Calendar Year 2020 for small businesses as they learn about employees that are subject to the District's individual responsibility requirement and may be paying a penalty.

WHEREAS, the Health Benefit Exchange Authority Establishment Act of 2011, effective March 4, 2012 (D.C. Law 19-94; D.C. Official Code § 31-3171.01 *et seq.*) ("Act") created the District of Columbia Health Benefit Exchange Authority ("Authority"), an independent authority of the Government of the District of Columbia, and its governing Executive Board;

WHEREAS, §5 of the Act (D.C. Official Code §31-3171.04(a)(1) & (9)) requires the Authority to establish an American Health Benefit Exchange through which qualified employers can access coverage for qualified employees, including the establishment of enrollment periods, and §7 of the Act (D.C. Official Code §31-3171.06(a) & (b)) authorizes the Executive Board to take necessary lawful action to implement provisions of the Affordable Care Act of 2010 ("ACA") (P.L. 111-148 & P.L. 111-152);

WHEREAS, 45 C.F.R. §147.104(b)(1)(i) permits the application of minimum participation and minimum contribution requirements in the small group market provided small groups are offered an annual enrollment period where eligibility is not conditioned on meeting the minimum participation or minimum contribution requirements.

WHEREAS, the April 8, 2013 Executive Board Resolution established a requirement that small businesses offer at least a 50% minimum contribution towards the employee's individual reference plan premium (minimum contribution) and have at least 2/3 of qualified SHOP employees either participate in SHOP coverage or submit a waiver due to having other qualifying coverage (minimum participation) as a condition to offer coverage through the SHOP Exchange outside of the annual employer open enrollment period.

WHEREAS, the SHOP Exchange annual employer open enrollment period, where minimum participation and minimum contribution requirements do not apply, is for plan years that begin on January 1 of each calendar year.

WHEREAS, On December 22, 2017, the Federal Government enacted the Tax Cuts and Jobs Act of 2017 which effectively terminated the ACA's individual responsibility requirement (also

referred to as the individual mandate) by reducing the tax penalty to \$0, effective January 1, 2019;

WHEREAS, On January 10, 2018, Mayor Bowser charged the DC Health Benefit Exchange Authority ACA Working Group to reconvene to “*consider whether there are actions the District of Columbia should take in light of the repeal of the individual mandate.*”;

WHEREAS, On February 14, 2018, the ACA Working Group unanimously voted to recommend that the District fill the void left by the federal government by enacting an individual responsibility provision requiring District residents to maintain qualifying coverage or pay a penalty on their District taxes, unless they qualify for an exemption;

WHEREAS, On February 21, 2018, the Health Benefit Exchange Authority Executive Board unanimously voted to recommend a District individual responsibility requirement as developed by the ACA Working Group;

WHEREAS, On September 5, 2018, the Fiscal Year 2019 Budget Support Act of 2018 was enacted, which included a new District of Columbia individual health insurance responsibility requirement effective January 1, 2019;

WHEREAS, DC residents without healthcare coverage or an exemption will be paying a penalty for the 2019 tax year as they file their taxes in 2020;

WHEREAS, on December 13, 2019, the Standing Advisory Board considered the staff recommendation to extend the annual SHOP open enrollment period, as small businesses learn about the requirement to have coverage or pay a penalty from their tax accountants, permitting small businesses the opportunity to offer coverage to their employees without a minimum contribution or participation requirement; and

WHEREAS, on December 13, 2019, the Standing Advisory Board composed on varied stakeholders such as DC Health Link consumers, insurers, brokers, consumer advocates, and others deliberated on the topic, took public comment, and unanimously approved the recommendation;

NOW, THEREFORE, BE IT RESOLVED that the Executive Board hereby adopts the following:

Extended SHOP Employer Open Enrollment Period:

Extending the annual SHOP employer open enrollment, during which the 50% minimum contribution and 2/3 minimum participation eligibility requirements will not apply to small businesses newly applying to offer SHOP coverage for calendar year 2020.

Once operationalized, HXB will provide outreach and education that this extended employer open enrollment period is time limited and will apply for small employers submitting a new application to offer SHOP coverage going into effect during calendar year 2020.

This extended open enrollment period will begin no earlier than for employers applying to offer coverage with a March 2020 effective date.

Any small business that wants to continue with a plan that does not require a 50% contribution or 2/3 participation would need to transition to a January 1st start date beginning 2021. Any small business that elects to maintain a plan year starting during any month other than January, would have to meet the minimum contribution and minimum participation requirements that otherwise apply.

I HEREBY CERTIFY that the foregoing Resolution was adopted on this 8th day January, 2020, by the Executive Board of the District of Columbia Health Benefit Exchange Authority in an open meeting.

/s/ Khalid Pitts, Secretary/Treasurer
District of Columbia Health Benefits Exchange Authority

1/8/2020
Date