



**Public Hearing on**  
**B23-584, the “Pregnancy as a Qualifying Event Act of 2019”**

**Testimony of**  
**Diane C. Lewis**  
**Executive Board Chair**  
**Health Benefit Exchange Authority**

Before the  
Committee on Health  
Council of the District of Columbia  
The Honorable Vincent C. Gray, Chairperson

Monday, January 27, 2020  
10:00 am  
Room 412  
John A. Wilson Building  
1350 Pennsylvania Avenue N.W.  
Washington, DC 20004



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Good morning, Chairman Gray and members of the Committee on Health. My name is Diane Lewis. I am the Chair of the DC Health Benefit Exchange Authority (HBX) Executive Board, a public-private partnership established to create and operate DC's state-based online health insurance marketplace, DC Health Link. Thank you for the opportunity to testify before you in support of B23-584, the "Pregnancy as a Qualifying Event Act of 2019." Thank you also, Chairman Gray, for your support and commitment to health reform, ensuring the Affordable Care Act (ACA) remains strong in the District, protecting residents and businesses against never ending attacks on the ACA by the federal Administration, and your efforts to help residents and businesses gain affordable health coverage. I would also like to thank Mayor Bowser for her support, advocacy for the ACA, and commitment to ensuring that all residents have access to affordable health insurance coverage.

Since we opened for business on October 1, 2013, HBX has helped the District cut the uninsured rate by 50 percent, we are currently ranked number two in the nation for the lowest uninsured rate according to the last Census report, and we continue to receive national recognition for our successful outreach, enrollment, and IT system. We cover nearly 100,000 people – both individual and small group private health insurance, and over 5,100 District small businesses.

We support the legislation because it builds on the ACA and creates new coverage opportunities for pregnant women and their families. If enacted, the legislation would require insurers to recognize pregnancy as a qualifying life event, which will enable a pregnant woman to enroll in health insurance coverage outside of open enrollment. Having health insurance during a pregnancy is important for the health of both the mother and the baby. Without the new protections in the bill, pregnant women will continue to be shut out of the large group private health insurance market.

First, I would like to share with you the recent actions taken by HBX's Executive Board to address this problem in the individual and small group insurance market on DC Health Link. The ACA allows state-based marketplaces to have special enrollment period (SEP) opportunities beyond what federal law has. Meaning, in addition to defined special enrollment triggering

events, federal law allows states to add additional triggering events.<sup>1</sup> Special enrollment is the only way to enroll in coverage outside of the open enrollment period. Because our actions do not apply to the large group market, passage of this bill is necessary.

To date, the HBX Executive Board has adopted 30 special enrollment triggering events in addition to protections that exist under federal law. Our process for creating a SEP is:

1. Staff identify a need based on either (1) denied requests for enrollment or (2) other state actions adopting new enrollment opportunities.
2. The Standing Advisory Board then reviews SEP requests and makes recommendations to the Executive Board. The Standing Advisory Board is a statutorily created board that advises the HBX Executive Board. The Standing Advisory Board membership includes diverse stakeholders including one DC Health Link health insurance carrier, a medical provider (usually a physician), a health insurance broker, and consumer and patient advocates.<sup>2</sup> Part of the Standing Advisory Board's review involves receiving input from the public at public meetings.
3. If the Standing Advisory Board approves a proposed SEP, the recommendation then goes to the HBX Executive Board for consideration. To date, the Executive Board has adopted through resolutions all SEPs recommended by the Standing Advisory Board.
4. If approved by the Executive Board, HBX staff then implements the SEP for the individual and/or small group coverage on DC Health Link.

At the HBX Executive Board meeting on January 8, 2020, the HBX Executive Board unanimously adopted the recommendations from the Standing Advisory Board to create a SEP triggered by pregnancy (Attachment A: "To define an additional 'Exceptional Circumstance' for a Special Enrollment Period related to individuals who are pregnant.")). Here is the way our new special enrollment works:

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<sup>1</sup> See 45 C.F.R. 155.420(d)(9). Permits an exchange marketplace to define "exceptional circumstances" qualifying for a special enrollment period.

<sup>2</sup> In the early years of HBX operations, working groups also discussed and recommended SEPs.

- A pregnant woman and her dependents can enroll in individual or small group coverage through DC Health Link.
- If a pregnant woman or her dependents are already enrolled, then both can change the plan they are enrolled in.
- The triggering event for this new right is the date a health care practitioner confirms the pregnancy. So an over-the-counter pregnancy test would not trigger the SEP. Confirmation by a health care practitioner would.
- A pregnant woman has a choice to enroll retroactively to the first of the month a pregnancy is confirmed or to start coverage at a future date. For individual market coverage, the woman has up to 60 days to enroll after confirmation of pregnancy by health care practitioner. Coverage becomes effective first of the month following plan selection. If she is enrolling in small group coverage—meaning she or her spouse/domestic partner works for an employer enrolled in small group coverage on DC Health Link—the employee and dependents have up to 30 days to enroll after confirmation of pregnancy by a health care practitioner. Coverage becomes effective first of the month following plan selection.

Although we are very proud of this new opportunity to enroll in coverage, our protections only apply to the individual and small group coverage on DC Health Link. Our HBX SEP does not apply to large group health insurance coverage. The Pregnancy as a Qualifying Event Act of 2019 is necessary to recognize pregnancy as a qualifying event to enroll in large group health insurance.<sup>3</sup>

Historically, health insurance plans treated women differently than men and were allowed to engage in many discriminatory practices. Women of child-bearing years were charged higher premiums than men of the same age – actuaries assumed that all women of child bearing years would get pregnant. In most states, pregnancy was not covered by individual health insurance at all—pregnancy had predictable costs and thus not covering such costs was one way to protect

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<sup>3</sup> Note that ERISA preempts states from regulating self-insured group health plans. In other words, if an employer self-insures health benefits, B23-584 will not apply. To address this in self-insured group health plans, Congress would have to pass legislation to apply to self-insured ERISA plans.

insurers from paying claims. And when women signed up for coverage, if a woman was pregnant, insurers considered pregnancy a medical condition and as such excluded it from coverage as a pre-existing condition. These discriminatory practices prevailed in nearly all state individual health insurance markets, many practices -- including gender rating -- were allowed in individual, small group, and large group markets, and preexisting condition exclusions were common in all markets including the large group market.

The ACA addressed nearly all of these discriminatory practices. The ACA prohibits insurers from charging women higher premiums than men in the individual and small group market, from treating pregnancy as a preexisting condition and from excluding pregnancy from coverage. However, the federal health reform law did not fully address the historical view that pregnancy is a medical condition instead of a life event like other qualifying life events including birth of a child, getting married, or moving which qualify under federal law for a special enrollment period. By recognizing pregnancy as a life event, this legislation is an important additional necessary step toward ending discrimination against women in health insurance.

In conclusion, we strongly support passage of B23-584. Thank you for the opportunity to testify. I am happy to answer any questions you may have.