

**DISTRICT OF COLUMBIA
HEALTH BENEFIT EXCHANGE AUTHORITY**

NOTICE OF FINAL RULEMAKING

The Executive Board of the District of Columbia Health Benefit Exchange Authority (“Authority”), pursuant to the authority set forth in Section 18 of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-94; D.C. Official Code §§ 31-3171.01 *et seq.* (2013 Repl. & 2016 Supp.)) (“Act”), hereby gives notice of the adoption of the following rule, which will establish a new Subtitle D (Health Benefit Exchange) of Title 26 (Insurance, Securities, and Banking) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking is related to the assessment pursuant to the Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015, effective June 23, 2015 (D.C. Law 21-0013; 62 DCR 5946 (May 15, 2015)). This rulemaking clarifies entities subject to the health carrier assessment and establishes a process by which an assessed entity may contest an assessment.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on December 18, 2015 at 62 DCR 016124. No comments were received and no substantive changes were made to the proposed rulemaking. Pursuant to Section 18 of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-94; D.C. Official Code §§ 31-3171.01 *et seq.* (2013 Repl. & 2016 Supp.)), this rulemaking was submitted to the Council of the District of Columbia (Council) for a review period of thirty (30) days. The Proposed Resolution of Approval for the Notice of Proposed Rulemaking was introduced on May 6, 2016, and was deemed passively approved on June 30, 2016.

These rules were adopted as final on July 12, 2016 and will become effective upon publication of this notice in the *D.C. Register*.

A new Title 26-D DCMR, HEALTH BENEFIT EXCHANGE, is added as follows:

A new Chapter 1, HEALTH CARRIER ASSESSMENT, is added to read as follows:

CHAPTER 1 HEALTH CARRIER ASSESSMENT

110 HEALTH CARRIER ASSESSMENT GENERAL PROVISIONS

110.1 Pursuant to Section 4(f) of the Act (D.C. Official Code § 31-3171.03(f)), the Health Benefit Exchange Authority (HBX) shall annually assess each health carrier defined in Section 2(6) of the Act (D.C. Official Code § 31-3171.01(6)).

110.2 For purposes of this chapter and under D.C. Official Code § 31-3171.01(6), an accident and sickness insurance company includes companies offering certain insurance products, including but not limited to:

- (a) Major medical; and
- (b) Excepted benefits as set forth in 45 C.F.R. § 146.145 and 45 C.F.R. § 148.220 unless otherwise specified in Subsection 110.3.

110.3 For purposes of this chapter and under D.C. Official Code § 31-3171.01(3A), health insurance carrier risks do not include each of the following:

- (a) Coverage for on-site medical clinics;
- (b) Coverage issued as a supplement to liability insurance;
- (c) Credit-only insurance (including mortgage insurance);
- (d) Federal Employees Dental and Vision Insurance Program, as set forth at 5 C.F.R. §§ 894.101 *et seq.*;
- (e) Federal Employees Health Benefits Program, as set forth at 5 C.F.R §§ 890.101 *et seq.*;
- (f) Fraternal benefit societies, as set forth in Section 1202 of the Fraternal Benefit Societies Act of 1998, effective April 29, 1998 (D.C. Law 12-86; D.C. Official Code § 31-5301);
- (g) Liability insurance, including general liability and auto liability insurance;
- (h) Medicare Part D, as set forth at 42 U.S.C. §§ 1395w-101 *et seq.*;
- (i) Stop-loss insurance; and
- (j) Workers' compensation or similar insurance.

120 HEALTH CARRIER ASSESSMENT ADMINISTRATIVE APPEAL

120.1 An entity assessed pursuant to D.C. Official Code § 31-3171.03(f) may file a request for reconsideration under this section to contest the assessment in the Notice of Assessment. An entity may request reconsideration of its classification under section 2(6) of the Act (D.C. Official Code § 31-3171.01(6)), a processing error, the incorrect application of relevant methodology, mathematical error with respect to the assessment, or the amount of the assessment.

120.2 An entity must file a request for reconsideration within forty-five (45) calendar days after the date of the Notice of Assessment. Submission of a request for reconsideration does not toll the due date for submitting payment of the assessment.

- 120.3 A contesting entity must specify the basis for the reconsideration in the request, as specified in Subsection 120.1. Such entity may provide, only at the time the reconsideration is requested or to rebut additional information provided to the entity by the Executive Director of the Authority or his or her designee consistent with Subsection 120.4, additional documentation supporting the request for reconsideration by the Authority. An entity may not submit documentation or data that was previously submitted to the Department of Insurance, Securities and Banking, but may provide evidence of timely submission.
- 120.4 The Executive Director of the Authority or his or her designee will review evidence and findings upon which the assessment was based and any additional documentation provided by the contesting entity. The Executive Director or designee may review any additional information believed to be relevant to the request for reconsideration. The Executive Director or designee will provide any additional information used in the review to the contesting entity and provide such entity with a reasonable time to review and rebut the additional information. The contesting entity must prove its case by a preponderance of the evidence with respect to the issues of fact.
- 120.5 The Executive Director or designee will inform the contesting entity of their decision in writing within forty-five (45) calendar days of receipt of the request for reconsideration. The Executive Director's or designee's decision on the request for reconsideration is final and binding. Nothing in this section limits a contesting entity's right to judicial review.

A new Chapter 99, DEFINITIONS, is added to read as follows:

9900 DEFINITIONS

9900.1 When used in this chapter, the following terms shall have the meanings ascribed:

“**Authority**” means the District of Columbia Health Benefit Exchange Authority established pursuant to Section 3 of the Act (D.C. Official Code § 31-3171.02).

“**Health carrier**” has the same meaning as provided in Section 2(6) of the Act (D.C. Official Code § 31-3171.01(6)).