



RESOLUTION

EXECUTIVE BOARD OF THE DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY

To make recommendations to the District for local policy interventions to protect and enhance market stability in the District’s health insurance marketplace.

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 (“HBX”), an independent authority of the Government of the District of Columbia, and its governing Executive Board;

WHEREAS, Section 5 of the Act (D.C. Official Code § 31-3171.04(a)(1) and (2)) requires the Authority to establish an exchange for the individual and small group markets;

WHEREAS, on January 20, 2017, the President issued an Executive Order telling executive branch agencies to grant “relief” from the Affordable Care Act (“ACA”);

WHEREAS, the Internal Revenue Service has changed position at least twice on the treatment of tax filings where the filer has not completed the line item related to the individual responsibility requirement;

WHEREAS, on October 12, 2017, the federal government announced it was ending reimbursement for cost sharing reduction (“CSR”) payments under the ACA to health insurance carriers;

WHEREAS, on June 14, 2017, the HBX Executive Board established an Affordable Care Act Advisory Working Group (ACA Working Group) composed of insurance carriers, small businesses, brokers, health care providers, and consumer advocates, with technical assistance from the District’s Department of Insurance Securities and Banking, Department of Health Care Finance, and Office of the Chief Financial Officer, to identify local policy options to keep DC’s health insurance market stable and improve affordability of private health insurance;

WHEREAS, the ACA Working Group met on 10 separate occasions in public meetings available in-person and by phone to discuss the individual responsibility requirement, CSR payments by the federal government to insurance carriers, cuts in federal outreach and enrollment efforts and opportunities, the end of the federal reinsurance program, and affordability of health insurance in the individual market;

WHEREAS, the ACA Working Group developed recommendations to the District related to fallback enforcement of the federal individual responsibility requirement, fallback CSR payments by the District to health insurance carriers when the federal government does not make payments, development of a local reinsurance program in the District's individual health insurance market to keep markets stable and lower premiums, and creation of a local subsidy program that would be in addition to federal tax credits to make health insurance more affordable for those who qualify for federal advance premium tax credits;

WHEREAS, the ACA Working Group did not establish a specific level of funding for this package of policies, but support a sustained commitment to these policies over multiple years;

WHEREAS, on October 11, 2017, the ACA Working Group Vice-Chair briefed the HBX Executive Board on progress toward consensus recommendations at the HBX regular monthly executive board meeting;

WHEREAS, on October 31, 2017, the ACA Working Group voted unanimously to adopt recommendations as reflected in the ACA Working Group Report ([hyperlink](#));

WHEREAS, these recommendations will maintain and improve the District's leadership position as one of three states in the country with the lowest uninsured rate despite federal uncertainty related to the ACA;

WHEREAS, these recommendations do not substitute for committed federal support to cover all Americans;

NOW, THEREFORE, BE IT RESOLVED that the Executive Board hereby adopts the consensus recommendations from the ACA Working Group:

These recommendations are for the District of Columbia to enact the following package of four market stability and affordability policies. The Executive Board is not recommending a particular funding level, but notes that a sustained and substantial commitment to these policies over multiple years can best achieve predictable premiums and consistent affordability. Such commitment is also critical to support the operational investment necessary to implement these policies.

DISTRICT INDIVIDUAL RESPONSIBILITY FALLBACK POLICY

The District of Columbia will implement and collect an individual responsibility requirement penalty for taxpayers beginning for 2019 where the federal government fails to enforce the federal Affordable Care Act individual responsibility requirement and the taxpayer owes a federal penalty under the ACA. If the ACA penalty is paid at the federal level, no penalty is assessed on District taxes.

Any funds received through the local individual responsibility requirement will be placed in a new HBX managed fund to be used for the sole purpose of insurance market stabilization.

This policy should be implemented in a time and manner that minimizes the operational costs for carriers and the District government.

This is not implementing an individual mandate in the District, this is a fallback to the extent there is a federal individual responsibility requirement and it's not enforced.

DISTRICT FALLBACK POLICY TO PAY COST-SHARING REDUCTION PAYMENTS TO THE CARRIERS IF THE FEDERAL GOVERNMENT FAILS TO MAKE SUCH PAYMENTS

The District of Columbia will pay carriers the equivalent of the Cost Sharing Reduction (CSR) payments due to carriers by the Federal Government under the Affordable Care Act where the Federal Government fails to make such payments.

This policy should be implemented in a time and manner that minimizes the operational costs for carriers and the District government.

LOCAL REINSURANCE PROGRAM

The District of Columbia will implement a local reinsurance program beginning in the 2019 plan year based on carriers' claim costs. The program will take into account the availability of federal reinsurance. This policy should be implemented in a time and manner that minimizes the operational costs for carriers and the District government.

LOCAL DISTRICT SUBSIDY IN ADDITION TO FEDERAL APTC PAYMENTS.

The District of Columbia will implement an annual local subsidy beginning for plan year 2019, or if not practicable, as soon as possible thereafter, that would be in addition to federal Advance Premium Tax Credits for those under 400% of the federal poverty level. The subsidy would make premiums more affordable for those at or below 400% of the federal poverty level (FPL), providing greater assistance to those just above Medicaid levels phasing out as income increases up to 400% FPL by reducing the contribution percentage of individuals using local funds.

A substantial multi-year commitment to the funding of the local subsidy is required to justify the administrative cost to operationalize the program, and to properly inform consumers who will rely on the additional subsidy. The subsidy would have the same eligibility rules and calculation method as Advance Premium Tax Credits, would not require an additional application for the subsidy, would not require reconciliation at the end of the year, would be provided directly to carriers, and should be implemented in a time and manner that minimizes the operational costs for carriers and the District government. This provision will not be implemented if it will lower APTC or constitute additional taxable income to the eligible consumer.

I HEREBY CERTIFY that the foregoing Resolution was adopted on this 8th day of November, 2017, by the Executive Board of the District of Columbia Health Benefit Exchange Authority in an open meeting.

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

Date