

**RESOLUTION OF THE EXECUTIVE BOARD  
OF THE DISTRICT OF COLUMBIA  
HEALTH BENEFIT EXCHANGE AUTHORITY**

**To adopt a recommendation from Standing Advisory Board for clean-up of the HBX enabling legislation to protect the ACA from federal repeal efforts, make the HBX post-employment and financial conflict of interest provisions consistent with the District’s Comprehensive Code of Conduct, and provide for permanent independent procurement authority.**

**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**, in December 2018, the HBX Executive Board established the Ad Hoc Executive Board Committee on HBX Legislation, comprised of Tamara Watkins, Henry Aaron and Khalid Pitts to review and develop recommendations to update the Act.

**WHEREAS**, the Ad Hoc Executive Board Committee reviewed the HBX enabling legislation and discussed three areas of needed updates: 1) updating references to the Affordable Care Act (ACA) to protect, where possible, against a federal repeal efforts of the ACA, 2) providing for permanent independent procurement authority, and 3) making the HBX conflict of interest provision applicable to HBX Board members and staff consistent with the HBX Comprehensive Code of Conduct;

**WHEREAS**, the Ad Hoc Executive Board Committee requested input from the HBX Standing Advisory Board on these three areas;

**WHEREAS**, the SAB met five times for review and discussion;

**WHEREAS**, on June 18, 2019, the SAB voted unanimously on recommendations for updates to the HBX enabling legislation on the three areas where the Ad Hoc Executive Board Committee sought input;

**NOW, THEREFORE, BE IT RESOLVED** that the Executive Board hereby approves the following recommendations from the Standard Plans Advisory Working Group:

1. Revising the HBX enabling legislation to ensure that if the Affordable Care Act were repealed, the references to the ACA wouldn’t result in a loss of consumer protections or market rules and would ensure that the Health Benefit Exchange Authority continues as the District’s exchange marketplace.

Background:

There are numerous legislative and administrative proposals and lawsuits to repeal or invalidate parts or all of the ACA. The DC Department of Insurance, Securities and Banking has completed some technical edits in parts of the insurance code. These changes would not be able to preserve critical federal provisions such as the federal tax credits or Medicaid expansion that rely on federal actions and funding.

2. Revising the conflict of interest provision applicable to HBX Board members and staff, specifically:
  - Adding a provision to state that the District’s ethics laws, as implemented and enforced by the Board of Ethics and Government Accountability (BEGA), apply to HBX Executive Board members and HBX staff.
  - Having post-employment conflict of interest restrictions and financial conflict of interest restrictions governed by the District’s ethics laws as implemented and enforced by BEGA. Thus, striking the conflicting and additional post-employment restrictions and financial conflict of interest provisions (striking current subsections (b) and (c)).
  - Retaining specific prohibitions in subsection (a), but adding that conflicts of interest arising from affiliations with an entity are for purposes of financial affiliation as opposed to any other affiliations.
  - Adding a prohibition for “third party administrators” to subsection (a).
  - Clarifying that only holding a senior leadership position in a professional trade association creates a conflict of interest, thus allowing professionals to retain their non-leadership membership in a professional trade association.

Background:

- The Health Benefit Exchange Authority Establishment Act of 2011 became effective March 2, 2012, prior to enactment of the Comprehensive Code of Conduct of the District of Columbia Establishment and BEGA Amendment Act of 2015 (Ethics Act).
- The current, more comprehensive Ethics Act and related ethics statutes and implementing regulations established a higher standard for financial conflicts of interest prohibitions (section (c)) than was included in the HBX enabling legislation.
- The current, more comprehensive Ethics Act and related ethics statutes and implementing regulations established detailed post-employment restrictions and prohibitions similar to those in place for the federal government employees different from the specific restrictions in subsection (b).

3. Provide HBX permanent independent procurement authority.

Background:

- HBX was granted independent procurement authority in the Permanent Supportive Housing Applications Streamlining Amendment Act of 2013 which sunset September 30, 2018.
- HBX’s independent procurement authority was extended to September 30, 2023 in the Fiscal Year 2019 Budget Support Act of 2018.
- Council continues to maintain review of multi-year contracts and contracts over \$1 million as is currently the law (this is not being proposed for revision).

**I HEREBY CERTIFY** that the foregoing Resolution was adopted on this 11th day of September, 2019, by the Executive Board of the District of Columbia Health Benefit Exchange Authority in an open meeting.

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

September 11, 2019  
Date