



**Statement of Mila Kofman, J.D.
Executive Director of the Health Benefit Exchange Authority
Before the
COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HEALTH AND HUMAN SERVICES**

**Hearing
On Bill 21-8 the “Health Benefit Exchange Authority
Financial Sustainability Amendment Act of 2015”**

**Thursday, January 29, 2015 – 11:00 AM
John A. Wilson Building, Room 412
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004**

Chairperson Alexander and members of the Committee, my name is Mila Kofman. I am the Executive Director of the DC Health Benefit Exchange Authority (HBX) and it is an honor to be here today. I am here to testify in strong support of Bill 21-8, the “Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015.” This legislation will help ensure a District-based, not federal, health insurance marketplace for our residents and businesses and will help continue our successful implementation of the Affordable Care Act.

Information about DC Health Benefit Exchange Authority (HBX)

The Health Benefit Exchange Authority (HBX) is an independent instrumentality (private-public partnership) created by the Council to help implement the federal health coverage reform law, the Affordable Care Act (ACA). HBX is governed by an Executive Board with seven voting members who are District residents and recognized experts in the area of health insurance coverage. Four government agency directors also serve on the Board as non-voting members. Due to the strong political leadership of the Council, the District was among the first jurisdictions in the nation to move forward with its effort to establish a state-based health insurance marketplace.

HBX is responsible for implementing a state-based on-line health insurance marketplace under the ACA. The marketplace, called DC Health Link (DCHealthLink.com), enables individuals and small businesses to compare health insurance prices and benefits and to purchase affordable,

quality health insurance. For the first time, individual and small business consumers have the purchasing power of large employers and have choices of coverage from multiple insurance companies.

In January 2013, the District, through the Office of Contracts and Procurement, entered into an IT services contract to build an on-line marketplace. Although we were the last state to start the IT build, DC Health Link opened for business on time on October 1, 2013 for individual and small business customers. Bloomberg News reported that the District was one of only four states that opened on time and stayed open.

In October 2013, the federal government designated the District's small business marketplace as the source of coverage for Members of Congress and their designated staff. And in December 2013, President Obama enrolled in coverage through DC Health Link and December 2014 renewed coverage.

From October 1, 2013 to January 27, 2015, DC Health Link has served 76,996 people: 19,987 people enrolled in a private qualified health plan, 41,347 people have been determined eligible for Medicaid, and 15,662 people enrolled through the DC Health Link small business marketplace (includes Congressional enrollment).

In 2015, DC Health Link offers a choice of four health insurers (Aetna, CareFirst, Kaiser and United) and 193 different coverage options for small businesses. There are 31 coverage options for individuals and their families offered by Aetna, CareFirst and Kaiser in the individual marketplace. Individual and small business plans vary from high deductible health plans to zero deductible options, and include HMO, PPO, and Point of Service plans.

The District is a national leader in protecting and improving the health of our residents. Even before DC Health Link opened for business on October 1, 2013, the District had one of the lowest uninsured rates in the nation. This success is directly due to the significant investments in the City's health care delivery and coverage initiatives and the hard work of all sister agencies, especially Department of Health Care Finance (DHCF), Department of Human Services (DHS), Department of Insurance Securities and Banking (DISB), and Department of Health (DOH). Your strategic policy decisions make the District a national leader.

The Affordable Care Act (ACA) created an unprecedented opportunity here in the District to achieve near universal coverage. When the District began implementation, there were 42,000 residents without any health coverage – either public or private health insurance. And, thousands of people were underinsured. [Preliminary analysis](#) of DC Health Link's enrollment shows that the District's uninsured rate dropped by as much as 43% in the first year of DC Health Link's operations, with more than 18,000 previously uninsured people gaining coverage.

DC Health Link was built through a community-based approach. Our success to date is in large part a reflection of the efforts and the investments made by our communities and your strong support. Strong political support for HBX and strong efforts by community leaders, our business partners, and consumer advocates resulted in people gaining coverage in every ward

<http://hbx.dc.gov/sites/default/files/dc/sites/hbx/publication/attachments/EffectsofDCHealthLinkonDCUninsuredFinal.pdf>).

HBX is proud of our accomplishments to date. Importantly, our goal is to ensure that every person who lives or works in the District, and every small business based in the District, has affordable, quality health coverage. That is why the Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015 is so important. Only through its enactment will HBX be able to continue to build on our initial success.

Federal Funding for State-Based Marketplaces & Sustainability Requirement

The ACA provided an opportunity for states to receive funding to plan for and to establish state-based health insurance marketplaces. The District was awarded grants to build the on-line marketplace. While federal financial support has been essential for building DC Health Link, those funds are not permanent. The ACA requires that state-based marketplaces be financially self-sustaining by January 1, 2015. In addition, the District's enabling legislation for HBX, requires a sustainability plan.

To this end, the Council unanimously passed emergency and temporary financial sustainability legislation in 2014. Permanent legislation is necessary if HBX is to receive final certification as a state-based marketplace.

The bill before you will make the financial sustainability legislation permanent and is based on a local, transparent, and DC-based community stakeholder process.

ACHIEVING FINANCIAL SUSTAINABILITY FOR HBX

Health Benefit Exchange Authority Financial Sustainability Emergency and Temporary Amendment Act of 2014

In Spring 2014, the Council unanimously passed the emergency and temporary financial sustainability legislation. The bill before you today would make this legislation permanent and is identical to the Emergency and Temporary financial sustainability legislation. The bill reflects the local stakeholder-driven process and policies developed by people who live and work here.

The legislation allowed for a broad-based assessment on health carriers in the District to fund HBX, similar to the assessment funding the DC Healthcare Ombudsman program. In addition to carriers offering major medical coverage and supplemental benefits, the assessment includes Medicaid managed care organizations (not currently assessed for the Ombudsman program). The broad-based assessment assures minimal impact on premiums and sustainable funding of the District's Affordable Care Act Health Insurance Marketplace.

The approach is fair and equitable. It allows for assessment of health carriers that benefit directly or indirectly from DC Health Link. Health carriers that offer coverage through DC

Health Link are assessed, as well as carriers that directly or indirectly benefit from DC Health Link. Health carriers that do not sell through DC Health Link benefit from the new marketplace.

For example, most supplemental products are sold as an add-on product for people who already have a major medical policy. By expanding the number of insured residents in the District through DC Health Link, this law will help create a broad customer base for supplemental products. And, newly insured small businesses may also begin offering products like disability income – typically only offered if a business is offering health insurance.

Additionally, the ACA requires health insurance to be comprehensive. Because most supplemental plans are triggered by a medical condition, a person with comprehensive coverage is less likely to have a triggering event. When there is an insurance claim, a person can recover quicker than a person without comprehensive coverage. For example, a hospital stay may be shorter, and therefore less payout by a supplemental plan that pays per day for each day in the hospital. Another example is disability income insurance. When a disabled person has comprehensive health insurance, he or she is more likely to recover fully or move from a total to a partial disability. This means less payout for disability income carriers.

The assessment is not open ended. The assessment has a cap. The cap is the annual Council approved budget for HBX. The budget is developed by HBX staff with public input through our Standing Advisory Board and members of the public. The draft budget also goes through the HBX Executive Board process. First, the Executive Board's Finance Committee reviews and provides input. Once approved by the Finance Committee, the full board reviews it in public session after public input. The proposed budget goes to the Mayor's office for review and is submitted to the Council as part of the Mayor's budget. This Committee and the Council reviews and approves the budget before submission to the full Council. The Committee's review includes a hearing similar to hearings for traditional agencies, and markup with recommendations for changes, if any. And, as recommended by the Committee and approved by the Council last year, the draft budget is presented to the Insurance Regulatory Trust Fund Bureau that also reviews the budget of the Department of Insurance, Securities and Banking. The Bureau is also given the authority to audit the HBX, as it audits DISB.

2014 Assessment

Pursuant to the enactment of the Health Benefit Exchange Authority Financial Sustainability Emergency Amendment Act of 2014 (D.C. Act No. A20-0329) and Health Benefit Exchange Authority Temporary Amendment Act of 2014 (D.C. Law No. L20-1033), HBX entered into a Memorandum of Agreement with the Department of Insurance Securities and Banking (DISB) to implement the assessment. DISB implements its own assessment and the assessment for the DC Ombudsman program. DISB on behalf of HBX identified health carriers, determined the assessment amount, and issued initial assessment notices in August 2014.

The 2014 assessment was 1% on premiums for health carriers doing business in the District that have direct gross receipts of \$50,000 or greater. Premiums are based on what is reported by the carrier to DISB for insurance sold in the preceding calendar year. The assessment percent was based on the Council approved budget for HBX. HBX received \$26,333,382 from the assessment.

Bill 21-8 -- The Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015

The temporary sustainability legislation expires on March 21, 2015. We strongly urge the Council to pass Bill 21-8, the “Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015” that will make permanent the broad-based assessment to ensure a state-based health insurance marketplace in the District of Columbia. It is fair and equitable.

By making the financial sustainability legislation permanent, you will help ensure that the District continues to implement the Affordable Care Act successfully through a state-based health insurance marketplace.

DC Health Link has been built from the ground up by District residents to provide our community with guaranteed, quality, affordable health coverage. HBX is proud that in a short time period the District successfully implemented individual and SHOP marketplaces under the Affordable Care Act. In just one year of operation, we have reduced the number of uninsured residents by nearly one half. Many of our customers – businesses and individuals alike -- have told us that their premiums are lower and they have better coverage because of what HBX has done. The District must continue to build on our successes to date.

BACKGROUND: Development of a Financial Sustainability Plan - Spring 2013 HBX Working Group on Sustainability

HBX policy decisions are made through a stakeholder-driven process. In 2013 and 2014, HBX had many working groups and continues to have standing advisory committees in addition to a Standing Advisory Board. The HBX Board has adopted consensus recommendations from stakeholder working groups and committees. All policies adopted through resolutions are available at <http://hbx.dc.gov/page/adopted-resolutions>.

Consistent with the process for other policy decisions, the HBX Executive Board established a stakeholder Working Group on Financial Sustainability in April 2013. HBX Executive Board Member Leighton Ku chaired this group. Standing Advisory Board Member (a small business owner) Jill Thorpe served as vice-chair. Working group membership consisted of people representing consumers, insurance carriers, brokers and other stakeholders. A full list of working group members and the report to the Executive Board is available on the HBX website.

The stakeholder working group considered a variety of funding mechanisms including: a user fee or surcharge on premiums administered through the Exchange Marketplace; a broad assessment on all health insurance premiums; an assessment on self-insured plans and benefits; provider and hospital fees; and public funding sources such as general revenue taxes, tobacco tax, and soda tax.

Key considerations for the stakeholder working group were the potential impact on people's health insurance premiums through the Exchange Marketplace and feasibility. Members of the group considered existing revenue sources, including the 2% premium tax and the existing .3% DISB operating assessment, which would require taking these funding sources away from programs they currently support. Provider taxes were considered not feasible.

The stakeholder working group concluded that a broad-based assessment on health carriers is preferable. Spreading costs broadly would mean the lowest assessment rate, and a minimum impact on premiums. Larger states that have hundreds of thousands of people or even millions purchasing through their marketplaces can fund their operations through fees only on the insurers selling through their marketplaces. Due to our small size, the District cannot fund the marketplace solely through fees on participating carriers. The stakeholder working group's modeling showed that an assessment only on products sold through DC Health Link would result in a premium assessment of 15.91%. A broad-based assessment across all health carriers minimizes the effect on health insurance premiums.

After reviewing and discussing potential revenue sources, the stakeholder working group made a consensus recommendation to the HBX Executive Board supporting a broad-based assessment on all health carriers with direct gross receipts of \$50,000 or greater. After an opportunity for additional public input, the HBX Executive Board unanimously adopted the stakeholder working group's recommendations on June 6, 2013.

HBX enabling legislation, self-sustainability report, and implementing regulations

The District's enabling legislation for the HBX requires that the Executive Board of the Authority "prepare a plan that identifies how the Authority will be financially self-sustaining by January 1, 2015," and further requires that the plan "be certified by an independent actuary as actuarially sound and shall be submitted to the Mayor and Council not later than December 15, 2013." HBX submitted the sustainability report on December 13, 2013. Prior to finalizing the report, HBX accepted public comments for a thirty-day period to ensure input from the public and impacted stakeholders. The report reflects the sustainability approach recommended by the stakeholder working group on sustainability and adopted by the Executive Board six months earlier.

HBX followed a similar transparent and inclusive process for proposed rules to administer the broad-based assessment. HBX staff drafted a proposed rule and sought public comments. The Executive Board reviewed the comments and incorporated a date change that was requested by carriers. The Board also accepted public testimony on the draft rule. After consideration of written and oral comments, the HBX Executive Board adopted the proposed rule. The proposed rule was submitted to the DC Register on February 28, 2014. The formal comment period closed on March 31, 2014.

The process used to develop the policy and the rule was transparent and based on extensive discussions and consensus recommendations by people who live or work here in the District.

The approach adopted in the proposed rule is based on how the District funds another initiative. The District has a broad-based assessment to fund the Ombudsman Program. Most of these same insurers, with the exception of the Medicaid managed care plans which are statutorily excluded, pay that assessment. When considering this option, HBX looked at the Ombudsman program as a model. However, HBX included Medicaid managed care plans, working closely with DHCF Director Wayne Turnage on this approach.

Threats of a Lawsuit

During the rulemaking process, HBX received comments from the American Council of Life Insurers (ACLI) and its member companies. In its comments ACLI indicated in part:

If the proposed rule is not withdrawn and amended to comply with District of Columbia and federal law, carriers of excepted benefits and other coverage that is offered on the DC Exchange have cause to mount a legal challenge to the law on both procedural and substantive grounds. (Page 6 ACLI Comments Regarding the DC Health Benefit Exchange Proposed Health Carrier Assessment, March 31, 2014)

Given the threat of litigation, HBX believed that the most prudent action is to have its authority to assess broadly clarified through legislation. Incorporating the standards in the rule into the DC Code, would help avoid costly litigation challenging HBX authority. To mitigate the risk of a lawsuit, HBX sought legislative action.

ACLI Federal Court Lawsuit

After the District Council unanimously passed emergency and temporary versions of the Sustainability Act, the American Council of Life Insurers (ACLI), nonetheless, filed a lawsuit challenging the District's law in U.S. District Court for the District of Columbia. The District of Columbia Office of the Attorney General defended the District's law.

ACLI argued that the ACA preempts the District from assessing or requiring user fees on the sale of products that are not sold on the Exchange, and that the assessment was unconstitutional.

The Court, in a 60-page decision, disagreed with ACLI's arguments and dismissed the lawsuit in its entirety in November 2014. The Court ruled that the District's funding mechanism for the Exchange was not unconstitutional or preempted by the Affordable Care Act, but that the ACA gave "*the States broad flexibility to operate State Exchanges without limiting the States' authority to employ alternative funding sources.*" Memorandum Opinion, Case No. 1:14-cv-01138-BAH, at 22 (November 11, 2014). The Court further opined that the District's assessment "*reflects a considered, not arbitrary choice by the District that is rationally related to, and intended to further the goals of, the ACA and the Establishment Act to facilitate access to affordable health insurance for underserved District residents and small businesses.*" Opinion, at 52.

The Court indicated that its decision was supported by the following additional findings:

- The assessment has only a minimal economic impact on ACLI’s members;
- The assessment advances a legitimate public purpose – extending health insurance to the uninsured in the District;
- The assessment was enacted after review in the normal, legislative process;
- The assessment contains sufficient guidance for the Authority’s exercise of discretion in funding the operations of the Exchange.

On December 15, 2014, ACLI appealed this decision to the U.S. Court of Appeals for the District of Columbia Circuit. The Court has not yet heard the issues and the case is still pending.

CONCLUSION

DC Health Link has been built from the ground up by District residents and businesses to ensure that our communities have quality, affordable health coverage. The District has a history of investing in our communities by expanding access to medical care and coverage. Building on past successes here, DC Health Link — in just one year of operations — has cut the uninsured by as much as 43 percent, and has helped increase competition to keep premiums as low as possible. Our success in a very short time period is strong evidence that the District made the right decision – to implement the Affordable Care Act by building a state-based marketplace.

By moving forward with a state-based marketplace, the District has achieved a better outcome than states relying on the federal marketplace. We are not subject to the uncertainty of a Supreme Court case that may result in millions of people in other states losing tax credits that keep their premiums affordable.

In the District, we have built a new health insurance marketplace that is responsive to the needs of our community.

To continue our record of success, our sustainability legislation must be made permanent. I urge you to pass the “Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015.”

We are committed to continue to pursue our mission to reduce the number of uninsured residents in the District and to provide affordable choices for those in the individual and small group marketplace. But we can do so only with your continued strong support and with the funding mechanism that this law will provide. With your support, we will continue to have a successful District-based marketplace -- DC Health Link -- the District’s health insurance marketplace offering quality affordable health coverage to our residents and businesses.