



**Public Hearing on
Bill 24-0831, the “Reproductive Health Care Insurance Coverage Expansive Amendment
Act of 2022”**

**Testimony of Mila Kofman, J.D.
Executive Director, Health Benefit Exchange Authority**

**Before the
Committee on Business and Economic Development,
Council of the District of Columbia
Kenyan R. McDuffie, Chairperson**

**October 25, 2022
1:00 PM
Virtual Meeting Platform
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004**

Chairperson McDuffie and members of the Committee on Business and Economic Development. My name is Mila Kofman. I am the Executive Director of the DC Health Benefit Exchange Authority (HBX). I am here to testify today in support of Bill B24-0831, the “Reproductive Health Care Insurance Coverage Expansive Amendment Act of 2022.”

HBX was established by DC policymakers to implement the Affordable Care Act (ACA) and to build and operate DC’s state-based on-line health insurance marketplace called DC Health Link. Approximately 100,000 people get their health insurance through DC Health Link, including more than 5,300 District small businesses and nonprofits covering 85,000 people (including Congress) and 15,000 residents with individual and family marketplace health insurance. We are responsible for more than \$620 million in annual premiums. Since we opened for business on October 1, 2013 – one of four state-based marketplaces to open on time -- we have cut the uninsured rate by half and now more than 96% of District residents have health coverage.

We support B24-0831 because it will help many of our customers and builds on the ACA’s health insurance reforms.



Prior to the ACA, most states allowed the insurance industry to discriminate against women and their families. Insurers were allowed to charge women of childbearing years higher rates than men and denied coverage to women by citing pregnancy as a preexisting condition. Insurers were allowed to exclude birth control or cover it at higher copays than other medication and also exclude or charge high cost-sharing for preventive services like annual OB/GYN exams or mammography and elective abortion care and services.

The ACA put women's health care coverage on par with men's health care and made discrimination against women illegal. These ACA protections apply to ACA small group and individual health insurance plans. For example, the ACA made it illegal to charge women higher premiums than men, pregnancy is no longer a preexisting condition, and birth control must be covered as a preventive health care benefit with no cost sharing. And in DC, HBX, in partnership with DISB, adopted an essential health benefits benchmark plan that includes coverage for elective abortion.

Although the ACA was a game changer for health insurance coverage for women and their families, the ACA put in place new administrative requirements for health plans that cover abortion services and care. Under the ACA, when ACA plans cover elective abortion, they must ensure that federal dollars (advance premium tax credits or APTC) that lower monthly premiums for residents do not pay for a portion of the premium attributable to abortion services. Health plans are required to segregate those premiums for record keeping. Insurers are required to provide notice to consumers or premium invoices that reflect two separate premiums – one for abortion coverage and one for everything else.

Despite the burdensome federal administrative requirements – not required for other types of benefits -- all 27 individual and family health plans on DC Health Link cover elective abortion care and services. Most small group plans cover elective abortion care and services:

- 2022 plan year: Of 157 group health plans in the small group marketplace, 141 health plans cover elective abortion care and services while 16 do not.
- 2023 plan year: Of the 211 group health plans, 195 plans cover elective abortion care and services while 16 do not.

ACA does not require insurers to cover abortion. Employers have a right to opt-out of abortion coverage even when insurers cover it.

Importantly in 2023, 92 small group health plans that cover abortion care and services have nation-wide networks. Many District employers covered on DC Health Link have workers who live in other states. Our nationwide plans provide in-network care and make it easy for District employers to cover workers who live outside the District.

Since the Supreme Court struck down *Roe v. Wade* and states have passed civil and criminal laws making abortion illegal, we have been concerned about employees who live in such states and work for District employers with DC Health Link coverage. These include more than 1,500 currently covered employees and dependents in Texas and more than 1,700 in Florida – two states that have passed laws criminalizing abortion. We must ensure that employees and their dependents who have coverage for abortion services under their DC Health Link plans retain access to the services covered by their plan, even if they live outside of the District.

Although this bill is not looking to address all problems that women and their families now face, we strongly support the additional protections B24-0831 would provide by eliminating cost-sharing for abortion care and services. Looking at DC Health Link coverage, out-of-pocket costs to patients vary. Some plans require a patient to meet the plan's deductible first and then to pay co-insurance of up to 40%. Eliminating financial barriers to care will help women and their families afford these services. This is especially the case if patients are forced to incur significant new travel expenses because they have to travel out of state to get abortion services from physicians in other states.

Additionally, national studies show that restricting access to abortion disproportionately impacts women of color.¹ Eliminating out of pocket costs will have a positive impact on women struggling to access care. We know from our work on health disparities that financial barriers is one factor that leads to health disparities. Our support for eliminating cost barriers for women of color is rooted in the work we've been doing on health equity and addressing health disparities. For example, in our standard health plans we've recently eliminated cost-sharing for Type 2 Diabetes care and services (including insulin) as Type 2 Diabetes disproportionately affects people of color. Eliminating the financial barrier to care is one important way to address health disparities.

In summary, since we opened in 2013, we have been advocating for greater consumer protections in health insurance and have opposed policies designed to take away or restrict the rights of health insurance consumers and especially civil rights of communities and people who have been discriminated against including women, people of color, and the LGBTQI+

¹ *E.g.*, “What are the Implications of the Overturning of *Roe v. Wade* for Racial Disparities?” S. Artiga, L. Hill, U. Ranji, I. Gomez, Kaiser Family Foundation (July 15, 2022), *available at* <https://www.kff.org/racial-equity-and-health-policy/issue-brief/what-are-the-implications-of-the-overturning-of-roe-v-wade-for-racial-disparities/> (“To obtain an abortion, women in states that prohibit abortions would likely have to travel out of state, which will result in disproportionate barriers to accessing abortions for people of color.”); “Women of color will be most impacted by the end of *Roe*, experts say,” A. Branigin, S. Chery, Washington Post (June 24, 2022), *available at* <https://www.washingtonpost.com/nation/2022/06/24/women-of-color-end-of-roe/>.

community.² For example, in our comments we opposed the prior federal administration's attempt to create new religious and moral objection exemptions that would eliminate the ACA's requirement for health plans to cover contraceptives as preventive care without cost-sharing.³ To help protect abortion services and care, we filed comments opposing a proposed regulation by the prior federal administration.⁴ The proposed regulation would have required health insurers to send two separate bills to policyholders and demand two separate payments for one health insurance policy when the policy covers abortion services. The double-billing scheme contradicted well-established industry practice – one bill for the entire premium – and would have resulted in people inadvertently losing their coverage and or insurers dropping coverage for abortion instead of creating expensive new duplicate billing and collections systems. We also provided an affidavit in support of the DC Attorney General multi-state lawsuit challenging this proposed rule.

Our support for B24-0831 is consistent with our history of advocacy to protect our customers' civil rights and access to medical care. The need for the protections proposed by B24-0831 is greater today with new civil and criminal laws being enacted around the country to deprive women of essential health care and civil rights.

HBX supports B24-0831. Thank you. I am happy to answer any questions.

² *E.g.*, D.C. Health Benefit Exchange Authority, Comment Letter on Proposed Rule, Nondiscrimination in Health Programs and Activities, RIN 0945-AA17, September 30, 2022, available at: https://hbx.dc.gov/sites/default/files/dc/sites/hbx/page_content/attachments/DC_HBX_Comment_OCR_0945-AA17%20%289-30-22%29.pdf; D.C. Health Benefit Exchange Authority, Comment Letter on Patient Protection and Affordable Care Act; Exchange Program Integrity Proposed Rule CMS-9922-P, January 8, 2019, available at: <https://hbx.dc.gov/sites/default/files/dc/sites/hbx/publication/attachments/CMS-9922-P%20Program%20Integrity%20Comments%20%28Final%201-7-19%29.pdf>; D.C. Health Benefit Exchange Authority, Comment Letter on Proposed Rule, Nondiscrimination in Health Programs and Activities – RIN 0945-AA02, November 9, 2015, available at: https://hbx.dc.gov/sites/default/files/dc/sites/hbx/publication/attachments/DC_HBX_Comment_OCR_%200945-AA02.pdf.

³ D.C. Health Benefit Exchange Authority, Comment Letter on Interim Final Rules, Religious and Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act – CMS-9940-IFC and CMS-9925-IFC, December 5, 2017, available at: https://hbx.dc.gov/sites/default/files/dc/sites/hbx/publication/attachments/DC_HBX_Comments_CMS_9940_and_CMS_9925.pdf.

⁴ Comment Letter on Proposed Rule CMS-9922-P, *supra* n. 2.