



**Public Hearing on
B23-0571, the “Health Benefit Exchange Authority Independent Procurement
Authority Amendment Act of 2019”**

**Testimony of
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Before the
Committee on Health
Council of the District of Columbia
The Honorable Vincent C. Gray, Chairperson

Wednesday, January 15, 2020
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John A. Wilson Building
1350 Pennsylvania Avenue N.W.
Room 412
Washington, DC 20004



Good morning, Chairman Gray and members of the Committee on Health. My name is Mila Kofman, Executive Director of the DC Health Benefit Exchange Authority (DCHBX), a public-private partnership established to create and operate DC's state-based online health insurance marketplace called DC Health Link. I thank you for the opportunity to testify before you in support of Bill B23-571, the "Health Benefit Exchange Authority Independent Procurement Authority Amendment Act of 2019."

Chairman Gray, I thank you and Councilmembers Cheh, Bonds, Grosso, and Nadeau for introducing this legislation and Councilmember Allen for cosponsoring it. We appreciate your support and commitment to health reform, ensuring the Affordable Care Act (ACA) remains strong in the District, protecting residents and businesses against never ending attacks on the ACA by the federal Administration, and your efforts to help residents and businesses gain affordable health coverage. I would also like to thank Mayor Bowser for her support, advocacy for the ACA, and commitment to ensuring that all residents have access to affordable health insurance coverage.

Since we opened for business on October 1, 2013, DCHBX has helped the District cut the uninsured rate by 50 percent, we are currently ranked number two in the nation for the lowest uninsured rate according to the last Census report, and we continue to receive national recognition for our successful outreach, enrollment, and IT system.

When establishing a state-based marketplace (SBM) through legislation, the Council considered carefully how to structure the District's health insurance marketplace and knew from expert advice that procurement independence would be critical to the District's state-based marketplace success. Before enacting the Health Benefit Exchange Authority Act of 2011 ("Establishment Act"), the Council reviewed a Report by the Mayor's Health Care Implementation Committee, which noted the need for "*exemptions from obstacles in the general procurement policies of the District code.*"¹ Relying on this Report, the Council shaped the Establishment Act to give the DCHBX governing Board "all the powers necessary to carry out the functions authorized by the [ACA]," including the powers to "enter into any agreements or contracts," "execute the instruments necessary to manage its affairs and carry out the purposes of [the Establishment Act]," and "adopt written policies and procedures governing all procurements of the Authority."²

In the Spring of 2013, the Council clarified DCHBX's independent procurement authority by amending the Establishment Act to exempt DCHBX from the PPRA, with an exception for Council review of contracts over one million dollars and for multiyear contracts. This was for 5 years sun-setting on September 30, 2018.³ In 2018, section 1012 of the Fiscal Year 2019 Budget

¹ See Committee Report, Health Benefit Exchange Act of 2011 (citing District of Columbia Mayor's Health Reform Implementation Committee Insurance Subcommittee Report and Recommendations on the Health Insurance Marketplace of the District of Columbia (April 12, 2012) ("Report"), at Appendix 2 (emphasis added).

² See D.C. Code § 31-3171 *et. seq.*

³ See Health Benefit Exchange Authority Establishment Emergency Amendment Act of 2013, effective April 15, 2013 (D.C. Act 20-49); Health Benefit Exchange Authority Establishment Temporary Amendment Act of 2013,

Support Act extended the sunset provision for DCHBX’s independent procurement authority to September 30, 2023.⁴

Since you established DCHBX, we have relied on our independent procurement authority to carry out our mission successfully. Although we were the last to start building the IT system, we opened for business on time on October 1, 2013 and stayed open — one of only four state exchanges to do so. In a short period of time and by using our independent procurement authority to procure IT services and expert support, we built an on-line health insurance marketplace for residents and District small businesses. The federal government designated DC Health Link as the source of coverage for Congress, including its district offices. And President Obama enrolled in coverage on DC Health Link.

Importantly, we have been able to build an online health insurance marketplace that is open source, cloud-based, and agile — so by definition it will never be a legacy system needing hundreds of millions of dollars to replace or maintain. We add new features and improvements frequently (sometimes multiple times per day). The system is never offline while we add new functionality and the next time customers log in they see the new features. Our current cloud-based, open source code, positions the District for long-term success.

DCHBX has become a model for other SBMs when it comes to transitioning to a commercially-hosted government cloud, an open source code, and an agile IT development process. In 2017, this technology enabled DCHBX to develop the first-in-the-nation SMB partnership with the Massachusetts Health Connector for Business to develop the IT and operate Massachusetts’ small business health insurance marketplace. We continue to consult with other states on our open source code and cloud solutions to replace failed systems that relied on costly, rigid out-of-the-box or proprietary hard-coded software. DCHBX is the only marketplace to be recognized by Amazon Web Services (AWS) City on a Cloud International Competition – this past December 2019, DCHBX won the Sustainability and Equity Award, and in both 2018 and 2016 won the Best Practices In Innovation awards. DCHBX was featured in AWS’s announcement for the Fall 2019 City on a Cloud International competition. We were also featured in an issue brief from the National Academy for State Health Policy (NASHP) for our use of open source code for long term sustainability.⁵ Additionally, in a national ranking of consumer decision support tools among all SBMs and the federal marketplace (FFM), DCHBX was ranked first in both 2018 and 2017 (no report was issued in 2019).⁶

effective May 15, 2013 (D.C. Act 20-69); Permanent Supportive Housing Applications Streamlining Amendment Act of 2013, effective March 14, 2014 (D.C. Law L20-0094).

⁴ See Fiscal Year 2019 Budget Support Act of 2018, § 1012, effective October 1, 2018 (D.C. Law 22-0168).

⁵ See Alberts, Corrine, “Building a More Efficient Marketplace: Lessons from DC Health Link’s Experience with Open Source Code” (March 21, 2016) (available at <http://www.nashp.org/building-a-more-efficient-marketplace-lessons-from-dc-health-links-experience-with-open-source-code/>).

⁶ Other examples of national recognition include a 2016 Kaiser Family Foundation ranking of states, DC ranked number one for sign-ups of eligible enrollees. Out2Enroll’s report called [“Key Lessons for LGBT Outreach and Enrollment Under the Affordable Care Act”](#) and Kaiser Family Foundation report [“Taking Stock and Taking Steps: A Report from the Field After the First Year of Marketplace Consumer Assistance Under the ACA”](#) recognized our outreach efforts. We also received PR News Awards in 2015, 2018 and 2019.

Our cost-effective, cutting-edge IT system means that we have to respond to procurement needs quickly, and our independent procurement authority allows us to do so.

Each of DCHBX’s activities — from hiring outside actuaries to help analyze proposed premiums to help us advocate for lower premiums for our customers, to having open enrollment events that draw attendance and enrollment, to having three months of open enrollment — relies on services and goods from vendors. Expediency and flexibility in procurements allows us to remain in compliance with ever changing federal laws, thereby supporting our continued certification as an SBM, and has allowed us to become self-sustaining after all federal grants that initially funded our entire operation ended. This allows us to implement successfully the District’s goals for having a state-based marketplace, including the flexibility in decision making that comes with having a state-based marketplace.

Independent procurement authority continues to be critical to our operations. Our procurement volume is as high as we had in the early years of operations. See Table 1 summarizing our procurement-related activity for FY2018 to the first quarter of FY2020 showing the high volume of our procurement activities.

Table 1: Summary of Procurements

	1st Quarter FY20	FY19	FY18
Council-approved HBX Contracts (all contracts over \$1 million)	3	3	4
HBX Board-approved Contracts (all contracts over \$100,000)	5	14	17
Contract Modifications*	10	34	40
Purchase Orders (includes task orders)	112	186	184
Purchase Order Modifications	31	206	109

*Includes Council and HBX Board-approved contracts.

Also when we look back at FY2014, our first full fiscal year operating, we had 154 purchase orders. In just the first quarter of FY2020 we already have 112. The volume reflects DCHBX’s short IT implementation timeframes, the need for specialized IT assistance, and the swift response necessary to changing federal law and local marketplace needs.

Numerous federal agencies regulate and oversee the ACA and issue guidance that requires quick actions or changes to the online marketplace. SBMs must comply or risk losing SBM designation. DCHBX relies on its procurement authority to comply.

Although quick timelines are problematic, in some cases the new federal requirements are helpful to make coverage affordable and DCHBX uses its procurement authority to leverage helpful federal initiatives. For example, in June of 2019, the federal Administration issued a rule establishing new individual coverage health reimbursement arrangements that enable employers

to set up an account for employees to be reimbursed tax-free for individual market health insurance premiums beginning in 2020. Because of the short notice provided by the final rule, no marketplace, including the federal marketplace, had time to change their eligibility rules within their online marketplaces by November 1. However, DCHBX has taken this as an opportunity and has already launched two new online tools to educate District employers and employees on taking advantage of this new option. Independent procurement authority provided DCHBX the flexibility to act quickly.

In addition to regulations, there are numerous court challenges to the ACA. While we have weathered the early attempts in the Trump Administration to repeal the ACA, that battle is now waging through the courts and, depending on court outcomes, operational and IT changes to DC Health Link may be necessary. SBMs like DCHBX can expect to continue to face changes in law and regulations for years to come and must be ready to respond swiftly. Effective response requires changes in our operational processes, education and outreach, and our supporting IT systems. These changes, in turn, require a rapid, nimble procurement response.

DCHBX's current procurement policies reflect a comprehensive approach that incorporates best practices from the federal government, DC Government, and other states, plus recommendations from OCP and other experts. DCHBX's formal *Contracting and Procurement Policies and Procedures* provide detailed rules for every aspect of the DCHBX procurement process, from pre-solicitation, procurement methods, contract approval, and contract requirements, to protests, claims, and contract disputes. DCHBX's Executive Board reviews these measures periodically and updates our procurement policies.⁷

The DCHBX procurement process is also subject to multiple annual audits from various entities, including the United States Department of Health and Human Services Office of Inspector General, the Office of the Chief Financial Officer (CAFR audits), and the Insurance Regulatory Trust Fund Bureau. Additionally, in 2015, DCHBX management started conducting annual self-audits of its contracts performed by its Office of the General Counsel. The review helps identify areas for improvement.

DCHBX procurement rules require an even more stringent and public process for oversight and approval of contracts than the District requires for contracts awarded by OCP. Under District

⁷ DCHBX has also used external reviews to improve its procurement practices. We implemented our first procurement policies on October 3, 2012, just months after the DCHBX Executive Board took office. In 2013, we retained a private law firm to audit our procurements and ensure that we were using best practices appropriate to our needs and mission. DCHBX management also asked auditing and legal experts at OCP to help review the policies and suggest revisions. These external reviews produced revised policies and procedures that were approved by the DCHBX Executive Board on September 10, 2014. The DCHBX contracting policies and procedures were further revised and approved by the DCHBX Executive Board on September 21, 2015. While those policies largely retained the 2014 policies in substance and form, amendments further strengthened the integrity of DCHBX's procurement process and reflect the agency's experience with hundreds of procurements over four years. The amendments included new limits on small purchases, additional clarity on competitive solicitations and awards processes, and use of government processes for bid protests and contract claims. The most recent revision of DCHBX contracting policies was completed in November 2017 and is available at https://hbx.dc.gov/sites/default/files/dc/sites/hbx/publication/attachments/Updated%20Contracting%20%26%20Procurement%20Policies%20and%20Procedures%2011_8_17.pdf. All current and previous versions of the DCHBX *Contracting and Procurement Policies and Procedures* can be accessed via the DCHBX website.

law and OCP rules, the Chief Procurement Officer and Contracting Officers are authorized to award contracts up to \$1 million without additional approval. In contrast, DCHBX contracting officers only have authority to award contracts that do not exceed \$100,000. Any contract over \$100,000 must be reviewed and approved by the DCHBX Executive Board Finance Committee and then the full DCHBX Executive Board.⁸

Importantly, like other agencies with independent authority, DCHBX is subject to the PPRA provision that requires Council approval for multiyear contracts or contracts exceeding one million dollars within a 12-month period. To date, the Council has approved every proposed contract submitted by DCHBX.

In selecting vendors, DCHBX has always prioritized CBEs. For example, although using a single, large national IT vendor would be quicker or easier, DCHBX uses several CBEs to staff the work with local IT talent. DCHBX's commitment to CBEs has led it to use multiple CBEs to supply services. And, DCHBX is proud that when external resources are needed to support the DCHBX partnership with the *Massachusetts Health Connector*, it is local CBE companies that are performing that work for Massachusetts, as well. Since executing that partnership in 2017, DCHBX has paid District CBEs more than \$8.3 million for work relating to the Massachusetts Health Connector for Business Partnership.

DCHBX has consistently exceeded the goals established by DSLBD for mandatory CBE spending. For example, as of the third quarter of FY2019, DCHBX had already spent \$12,556,075 with SBE/CBEs, which exceeds our FY2019 required spending goal of \$10,562,405.

The procedures enabled by DCHBX's independent procurement authority help us fulfill our CBE commitments with an efficiency that benefits both DCHBX and the vendors. For example, in 2019, DCHBX conducted a competitive procurement for CBEs in a 6 month time period -- issued a complex solicitation for multiple types of information technology services, evaluated initial proposals, conducted discussions with vendors, evaluated final proposals, proposing three CBE vendors for award, and obtained Board and Council approval.

Independent procurement authority has enabled DCHBX to achieve cost savings by working with other SBMs. For example, in 2016 DCHBX leveraged its existing contract with a District-based firm for consumer support tools to help make the tools available to other SBMs, and keep costs down. The tools include a doctor directory, health plan match tool, and prescription drug formulary tool to help consumers estimate potential out-of-pocket costs of plans and available in-network doctors and coverage for prescriptions before they enroll. As DCHBX exercised a new option year, it negotiated a package of discounted rates that would apply if other SBMs also obtained the consumer support tools from the District-based company, which lowered costs for

⁸ The DCHBX Executive Board Finance Committee is comprised of three members of the DCHBX Executive Board. The DCHBX Executive Board is comprised of seven voting members who are District business owners and residents with expertise in the health insurance and health care field, complemented by four non-voting agency heads including Directors of DHS, DHCF, and DC Health and the Commissioner of DISB. The DCHBX Executive Finance Committee meets as needed and at least on a monthly basis to discuss contracts and other matters. The DCHBX Executive Board holds regular public board meetings.

both DCHBX and other states. And in this past year alone, three states have approached DCHBX to collaborate on procurements in an effort to achieve better prices on marketplace services.

In closing, DCHBX's procurement process has worked because it combines the best government contracting practices with strong transparency and accountability measures. DCHBX procurement policies have been specially developed to support DCHBX's numerous low- and high-dollar, time-sensitive procurements, and ensure accountability to the DCHBX Executive Board and the Council. The focused, efficient procurement practices under DCHBX's independent authority have been vital to supporting its mission from the start. That is why we strongly support Bill 23-571.

I'm happy to answer any questions you may have.