



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

To make further 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, in the summer of 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 the District’s health insurance market stable and improve affordability of private health insurance;

WHEREAS, on October 31, 2017, the ACA Working Group voted unanimously and on November 8, 2017, the HBX Executive Board voted unanimously to adopt a recommendation including four local policy interventions to protect affordability and market stability in the District’s health insurance marketplace;

WHEREAS, on October 12, 2017, President issued an Executive Order to expand access to association health plans (AHPs) and short term limited duration insurance and on January 5, 2018 the Department of Labor issued proposed regulations to loosen the rules regarding AHPs that could undermine the District’s private health insurance market;

WHEREAS, enacted on December 22, 2017, the Tax Cuts and Jobs Act of 2017 repealed the Affordable Care Act (“ACA”) individual responsibility requirement effective January 1, 2019;

WHEREAS, the previous recommendations from the ACA Working Group occurred before repeal of the federal individual responsibility requirement;

WHEREAS, in January 2018, Mayor Bowser responded: “*The repeal of the Affordable Care Act (ACA) individual mandate will lead to an increase in premiums and loss of coverage for millions*”

across the country and thousands here in the District. While I continue to call on the federal government to expand access to health care coverage, it is clear that the current Congress and administration refuse to show leadership on this issue. I ask that the Health Benefit Exchange Authority Board reconvene the Affordable Care Act (ACA) Working Group, with the charge of recommending actions the District government should take to protect coverage gains and ensure affordable health care coverage for individuals and small businesses. I am requesting that the Working Group consider whether there are actions the District of Columbia should take in light of the repeal of the individual mandate;”

WHEREAS, in January 2018, the HBX Executive Board reconvened the ACA Working Group in response to the Mayor’s charge and added staff from the Department of Health and the Executive Office of the Mayor as non-voting members for technical assistance;

WHEREAS, through January and February of 2018, the ACA Working Group met eight times over thirteen hours in public meetings available in-person and by phone to discuss the federal government repeal of the federal individual responsibility requirement, and the risks to private and public health care coverage specifically focused on the District’s individual and small group insurance markets, District patients, health care providers, and the District economy;

WHEREAS, the ACA Working Group received presentations from outside experts including an expert who is a former official at the U.S. Department of Treasury who assisted in the implementation of the federal individual responsibility requirement, staff from the Massachusetts (MA) Health Connector with expertise on the MA individual mandate that predates the ACA, and from experts working with Maryland (MD) legislators in the development of a MD response to the repeal of the federal penalty;

WHEREAS, the ACA Working Group discussed the evidence of the effects of the ACA’s individual responsibility requirement, including that the uninsured rate fell from 7.2% in 2009 to 4% in 2016 and the level of hospital uncompensated care expenses in the District (including charity care and bad debt) fell by 60% between 2010 and 2015, falling from \$250.7 million in 2010 to \$101.2 million in 2015;

WHEREAS, the ACA Working Group received an assessment by expert actuaries that the repeal of the federal individual responsibility requirement would decrease the District’s 2019 individual ACA market enrollment (excluding Medicaid or employer sponsored insurance) by approximately 15% or 2,500 people and increase insurance costs by approximately 7%;

WHEREAS, the federal government created a void and its actions have a destabilizing effect on private health insurance markets;

WHEREAS, the ACA Working Group discussed the pros and cons of implementing a local individual responsibility requirement, and if a local requirement were implemented, whether the District should build on the existing federal structure or create its own unique mandate;

WHEREAS, the ACA Working Group discussed using the federal structure for a local individual responsibility requirement and what changes would be necessary to enhance protections for District residents and promote District values;

WHEREAS, the ACA Working Group developed a policy recommendation to enact an individual responsibility requirement for District residents to have qualifying health coverage or pay a penalty on their District taxes, unless they qualify for an exemption;

WHEREAS, on February 14, 2018, the ACA Working Group voted unanimously to adopt the policy recommendation;

WHEREAS, this recommendation amends the ACA Working Group recommendation from October 31, 2017 and specifically amends the October 2017 recommendation to establish a fallback in case the federal government stopped enforcing the federal individual responsibility requirement, with a recommendation to have a DC based individual responsibility requirement; and

WHEREAS, for the 96% of District residents who are insured today, the individual responsibility requirement presents no change if they remain covered.

NOW, THEREFORE, BE IT RESOLVED that the Executive Board hereby adopts the consensus recommendation from the ACA Working Group. The recommendation is as follows:

The federal government repealed the federal individual responsibility payment, effective January 1, 2019, in the Tax Cuts and Jobs Act of 2017. That action puts affordable private and public health care coverage at risk including coverage through state individual and small group insurance markets. It also poses risks to District patients, health care providers, and to the District economy. In response, Mayor Bowser asked the DC Health Benefit Exchange Authority to: *“reconvene the ACA Working Group to recommend actions the District government should take to protect coverage gains and ensure affordable health coverage for individuals and small businesses.”*

The ACA Working Group recommends that the District of Columbia fill the void left by the federal government by enacting an individual responsibility provision requiring District residents to maintain qualifying health coverage or pay a penalty on their District taxes, unless they qualify for an exemption. The ACA Working Group intends that District taxpayers pay no more, and in some cases less, than they would under federal law that applies in 2018. For the 96% of District residents who are insured today, this recommendation presents no change if they remain covered.

The ACA Working Group recommends the District’s individual mandate mirror the federal mandate as of December 15, 2017 with changes to enhance protections for District residents and promote District values. These changes include: ensuring that the DC Healthcare Alliance enrollees are exempt from the mandate; clarifying that the Immigrant Children’s

Program meets coverage requirements; protecting against future association health plans that could undermine coverage in the District; exempting low-income individuals and families from the penalty; conducting outreach and education to connect uninsured residents with health coverage options; and preventing District residents from ever facing a double penalty.

Coverage Changes

District residents and businesses will be further protected by clarifying the Immigrant Children's Program meets the individual mandate and exempting the DC Healthcare Alliance enrollees from the individual mandate.

There is a pending federal regulation to loosen the rules regarding association health plans that could undermine the District's private health insurance market. The District's individual mandate will be designed to protect against these risks by excluding from the definition of qualifying coverage future association health plans that may be permitted under these looser rules. However, to prevent disruption of existing coverage, association health plans that meet the requirements in place under federal law as of December 15, 2017 will meet a District mandate.

Exemption Changes

District residents will be further protected by exempting low-income individuals and families, such as those under 200% of the federal poverty level or at Medicaid or other public program eligibility levels.

The District will also better protect residents by clarifying that they will not be penalized for short lapses in coverage of three months or less.

Outreach and Education Changes

The District will use the tax filing process as an opportunity to conduct outreach and education regarding health coverage options for those that are uninsured.

Penalty Changes

If the federal government reinstates a federal individual responsibility payment, District residents will not be subject to double penalties.

This policy should be enacted in time to impact premiums for 2019 and become effective January 1, 2019. Implementation of a District penalty should be coupled with significant outreach and education to begin upon enactment. The key to success is maintaining strong DC Health Link partnerships with assisters, brokers, business associations, and carriers and working closely with health care providers, government agencies, elected officials and other stakeholders. Over time, refinements to the District's individual mandate should be considered to maintain its effectiveness.

This recommendation supplements the HBX Executive Board's and ACA Working Group's November 2017 recommendation for local policy interventions to protect market stability

and affordability in the District's health insurance marketplace. This recommendation amends the individual responsibility fallback provision in the previous recommendation [\[LINK\]](#).

I HEREBY CERTIFY that the foregoing Resolution was adopted on this 21st day of February, 2018, 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