



Maryland Health Benefit Exchange Board of Trustees Meeting Minutes

February 12, 2013
1:00 PM – 4:00 PM
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, MD 21215

The materials presented in the meeting are listed on the Maryland Health Benefit Exchange webpage: <http://marylandhbe.com/exchange-board/board-meetings/>

Members Present

Joshua M. Sharfstein, M.D.
Darrell Gaskin, Ph.D.
Ben Steffen, M.A.
Enrique Martinez-Vidal, M.P.P

Kenneth Apfel, M.P.A. (by phone)
Jennifer Goldberg, J.D., LL.M. (by phone)
Georges Benjamin, M.D. (by phone)
Rebecca Pearce, M.B.A

Members Absent

Therese Goldsmith, J.D., M.S.

Thomas Saquella, M.A.

Opening Comments and General Updates

Chairman Sharfstein welcomed everyone and announced that the current round of proposed legislation concerning the Maryland Health Benefit Exchange (MHBE) has been drafted and is currently under review.

Ms. Pearce introduced MHBE's new Chief Compliance Officer, Russell Smith. Mr. Smith thanked the Board and gave a brief overview of his background.

A motion was unanimously approved to adopt the minutes, with one revision, from the January 9, 2013, meeting.

SHOP Update

Kevin Yang, Chief Information Officer at MHBE, gave an update on the Small Business Health Options Program (SHOP) development. He began by reminding the Board of the decision it made regarding rating in the SHOP. In December of 2012, the Board adopted a policy whereby an average age rating methodology would be used in the employer choice model. Mr. Yang explained that the proposed rating rules recently released by the Center for Consumer Information and Insurance Oversight (CCIO) would necessitate a change in that policy. Under the proposed rule, rates for all families will be determined by aggregating the individual rate for each family member.

Mr. Yang then demonstrated how the proposed rule might be implemented for a group of hypothetical employees and asked the Board to consider how it may affect employers' defined contribution setup. He first showed a percentage-defined contribution example wherein an employer pays 50% of each employee's premium and 30% of each dependent's premium. Next, he showed a defined contribution example wherein each employee getting coverage only for themselves pays the same amount and each employee family pays the same amount.

- Dr. Gaskin asked whether, under the defined contribution setup wherein each employee pays the same amount, employees with multiple children would be on the same tier as employees with only a spouse or a single adult dependent. Mr. Yang responded by saying that he has been having discussions on that issue, and is considering which contribution variations to allow

employers, such as by family size tier or by product. He added that it might not be fair to blend a large family and a couple together to determine the employer contribution amount.

- Mr. Martinez-Vidal noted that, in the example Mr. Yang provided, the employees choosing the HMO plan receive the same employer contribution as those choosing the PPO plan. He noted that employees would have no incentive for choosing a plan with fewer benefits. Mr. Yang replied that Mr. Martinez-Vidal was right, and cited that lack of incentive as the reason to add product type to the list of variations available to employers when defining their premium contribution.
- Mr. Martinez-Vidal asked why the example shows a variation in premium between employees aged 35 and 55 when the federal rule established a single age band of 21 to 60. Mr. Yang clarified that the federal rule prescribed a maximum rate of premium increase within that band.

Mr. Yang then noted that the proposed rating rules would apply to the entire market, not just to MHBE. Carriers must adopt an individual rating scenario for each dependent in a group or family regardless of whether the plan is sold on Maryland Health Connection.

- Mr. Steffen asked whether MHBE has researched the likely impact of the proposed rule on groups purchasing coverage in the outside market. Mr. Yang replied that they have not. Ms. Pearce asked that Mr. Yang conduct such an investigation.

Next, Mr. Yang gave the Board an update on the Third Party Administrator (TPA) SHOP Certification Program. He described the three programs MHBE plans to offer TPAs who wish to participate:

- Program 1: Alternate Online Marketplace – Certification to establish an online shopping website where employees can enroll in plans. Must also participate in Program 2.
- Program 2: SHOP Back-Office Administrative Services – Certification of TPAs to use their own systems for a range of SHOP functions.
- Program 3: SHOP Online Administrative Service Provider – Certification to use MHBE systems on behalf of employers.

Mr. Yang explained that TPAs would be certified in Program 3, Program 2, or Programs 1 and 2. In other words, no TPA would be certified for Program 1 only.

- Chairman Sharfstein asked for a more detailed description of Program 2, especially the interaction between TPAs and MHBE. Mr. Yang explained that the TPA in Program 2 would work with MHBE and the employer to set up plan options on Maryland Health Connection. At the end of the employer's open enrollment, MHBE would send a full enrollment and payment file to the TPA who would then take over management of the employer's plan.
- Chairman Sharfstein asked how Program 2 differs from Program 3. Mr. Yang explained that Program 3 TPAs would use MHBE's systems, including Maryland Health Connection, rather than their own systems.
- Mr. Martinez-Vidal asked how closely a TPA's shopping website under Program 1 must follow the plan search requirements in the Affordable Care Act (ACA) and other governing regulations. Mr. Yang replied that Program 1 is designed to mirror the ACA requirements. He went on to say that, since provider and quality information is so important to plan search and presentation, MHBE will supply Program 1 TPAs with provider and quality data for display on their websites.
- Mr. Steffen asked whether MHBE foresees TPAs moving from one program to the next in an evolutionary path. Mr. Yang replied that there could be a progression, and that the most sensible evolution would be to start in Program 3 and then move through Program 2 before eventually being capable of transitioning to Program 1.
- Chairman Sharfstein asked how TPAs have responded to the programs. Mr. Yang replied that TPAs have been quite favorable to the idea and have been very collaborative. He added that other states are considering Maryland's model for their own exchanges.

Mr. Yang finished his presentation by outlining the next steps in the programs' development, ultimately leading to at least some TPAs being certified beginning in July 2013.

IT Update

Rebecca Pearce, Executive Director of MHBE, gave the Board an update on the progress of her agency's Information Technology (IT) development. She noted that six of the nine sprints are complete and expressed confidence and optimism regarding MHBE's progress.

Next, Ms. Pearce described guidance MHBE recently received from CCIIO, along with a list of tasks to achieve. She announced that, based on the discussions with CCIIO, MHBE will conduct a two-week gap analysis on the progress of IT development and business operations with the goal of identifying the most important areas of focus. One intended product of the gap analysis is a clear definition of which aspects of exchange functionality are "must-have" versus "nice-to-have." She noted that the analysis might yield a list of efforts that could be postponed until after open enrollment on October 1, 2013. Finally, she added that Minnesota, New York, and California are also doing a gap analysis at this time.

- Professor Apfel expressed support for the gap analysis plan and asked whether the Board needs to meet again to go over the details. Chairman Sharfstein expressed that he would prefer to leave that up to Ms. Pearce. Ms. Pearce replied that, should another Board meeting be required, she would not hesitate to schedule one.
- Dr. Gaskin asked what sorts of non-technical problems MHBE anticipates discovering through the gap analysis. Chairman Sharfstein replied that he does not anticipate any particular problems; rather, the process may lead to a change in scope of some aspects of the project.

Producer Advisory Council

Tequila Terry, Director of Plan and Partner Management at MHBE, gave the Board an overview of a newly established stakeholder group advising MHBE, the Producer Advisory Council. She began by reiterating the key role that producers will play in helping individuals and small business access coverage on Maryland Health Connection.

Next, Ms. Terry explained the purpose and authority of the Producer Advisory Council, noting that it will be a non-voting body convened to provide input to help shape key MHBE policies and procedures for producers. She described the process by which the Producer Advisory Council members were identified, with particular focus on their geographic, experiential, and gender diversity.

Ms. Terry then laid out the proposed scope of work for the Council and its term, noting that the inaugural group would be asked to serve for 2 years, after which terms would be 1 year in length. She listed the proposed members of the Council and identified herself and Danielle Davis, Director of Outreach and Communication at MHBE, as Co-Chairs.

- Dr. Gaskin asked for clarification on the meaning of "non-voting" in the description of the Producer Advisory Council's authority. Ms. Terry replied that the Council will have no authority to determine policies or procedures, but will be asked to provide input and suggestions. She added that the Council will behave much the same as the Board's current Advisory Committees.
- Mr. Steffen expressed his hope that Council members would be able to continue past the first term, and asked whether current members would be able to reapply. Ms. Terry responded that the intent of the initial 2-year term was to provide consistency and stability during that period, but that MHBE hopes to get new perspectives involved as time goes on by engaging new members after the initial period. Mr. Steffen rephrased his question by asking whether MHBE would impose term limits, and whether an effective member could continue to serve. Ms. Terry replied that they could.
- Dr. Gaskin suggested that the Producer Advisory Council should have staggered terms; that is, rather than replacing the entire membership after two years, some members should serve for two years while others serve for three years. Ms. Terry replied that she very much supported that idea.

Producer Appointment Policy

Ms. Terry presented a policy recommendation on producer appointments to the Board. She began by noting that one of the first issues that arises in discussions with and about producers is the process for producer appointment.

Ms. Terry then reviewed with the Board the guiding principles of MHBE's plan management approach as well as the processes by which interim procedures have been established thus far. In explaining the development pathway of the producer appointment policy, she noted that no federal requirements around producers exist.

Next, Ms. Terry described five producer appointment policy options under consideration by MHBE:

- Option 1: "MHBE Decision Model" - Carriers would be required to appoint any producer who obtains MHBE authorization.
- Option 2: "Common Set Model" - Carriers would continue to appoint producers according to their own internal policies. Only those producers who are agreed upon by all carriers would be authorized to sell through Maryland Health Connection.
- Option 3: "Shared Decision Model" - Carriers would continue to appoint producers according to their own internal policies, with a few limitations—chiefly that carriers would not be permitted to impose production volume requirements on producers for Maryland Health Connection plans. Carriers would be permitted to limit the scope of a producer's appointment to Maryland Health Connection business, should they so desire. The Maryland Insurance Administration (MIA) would resolve any dispute regarding producer appointments.
- Option 4: "All Carrier Appointments Not Required Model" - Carriers would continue to appoint producers according to their own internal policies. Producers could be authorized to sell plans on Maryland Health Connection without obtaining appointments from each carrier. Producers would be required to inform consumers about all plan options available, regardless of appointment status. Producers would have to refer consumers to other resources should the consumer choose a plan from a carrier from which the producer does not hold an appointment.
- Option 5: "Hybrid Model" - MHBE producer authorization would be performed separately from carrier appointment. Producers would be required to inform consumers about all Maryland Health Connection options as a condition of MHBE authorization. Producers not appointed by all carriers would be required to provide a disclosure to consumers about the inability to complete sales for all plans. Carriers would be required to appoint producers at the point of sale unless there was cause to exclude the producer. For producers who applied for appointment outside of a point of sale, carriers would be allowed to use their current criteria for evaluating producer appointments, with some limitations—chiefly that carriers would not be permitted to impose production volume requirements on producers for Maryland Health Connection plans. Carriers would be permitted to limit the scope of a producer's appointment to Maryland Health Connection business, should they so desire. For a carrier that declines to appoint a producer or seeks to terminate a producer, the carrier would be required to provide a mechanism for the producer to request a decision reconsideration. If, after reconsideration, the dispute is not resolved, MIA would resolve any dispute regarding a carrier that declines to appoint a producer or seeks to terminate an appointment.

Ms. Terry added that Options 1 through 4 were presented for public comment. Of the roughly 40 responses received, Options 1 and 3 received the most support. Option 5 was developed in response to the public comment and was designed to be a cross between Option 1 and Option 3. Ms. Terry noted that Option 5 enables carriers to retain control of the producer appointment process within MHBE parameters, provides a wide distribution channel for Maryland Health Connection plans, and gives producers the ability to dispute unfair treatment. For those reasons, MHBE recommends that the Board adopt Option 5, the "Hybrid Model," as its producer appointment policy in the first year of operation with possible redetermination or refinement for the second year.

- Dr. Gaskin asked whether MHBE reviewed carriers' producer appointment policies and found them reasonable. Ms. Terry replied that, in its research, MHBE found only the production requirements to be problematic, and thus included limitations to address them. She added that there may be other reasons carriers would seek to exclude a producer, but that such occurrences would be very few in number.
- Mr. Steffen asked whether MHBE has determined how many producers are currently appointed to the leading carriers in the State. Ms. Terry replied that such data is not available, but that she is beginning an effort to project those numbers. She noted that there are over 20,000 active producers in the State, and that MHBE is beginning work on surveying the producer community to determine how many intend to seek authorization from MHBE.
- Mr. Steffen asked whether a producer would be allowed to count his or her on-exchange production volume toward a requirement imposed by a carrier in the outside market. Ms. Terry replied that MHBE has not considered that possibility and that she would look into it. Commissioner Goldsmith added that she is concerned about such a policy creating an incentive to steer consumers.
- Ms. Goldberg expressed skepticism of consumer disclosures and asked whether MHBE expects producers to attempt to obtain appointment from each participating carrier. Ms. Terry replied that MHBE's goal is to ensure that producers are encouraged during the authorization process to obtain appointment from all carriers, but that a balance must be struck.
- Chairman Sharfstein expressed concern that adopting too stringent a policy would result in having too few producers working with MHBE.
- Ms. Goldberg stated that the Board and MHBE should watch the issue very closely and gather data on consumer understanding of the situation. Chairman Sharfstein agreed, noting that the Board will want to understand how consumers reach Maryland Health Connection and their satisfaction across all channels.
- Mr. Martinez-Vidal asked for clarification of the clause under Option 5 that referenced a point-of-sale appointment. He noted that the requirement of producers to disclose to consumers their inability to sell all plans conflicts with the requirement that carriers appoint producers at the point of sale; if carriers must appoint, then producers are able to sell all plans. Ms. Terry responded that the intent was that the producer would disclose to the consumer that he or she is not currently appointed with all carriers. She noted that the current practice in the marketplace is that carriers will accept enrollments from a non-appointed producer while conducting its research into that producer's suitability for appointment. MHBE envisions a similar scenario under Option 5 and expects that, unless there is some cause, the producer would be appointed. Mr. Martinez-Vidal asked whether such point-of-sale appointments would be limited to the one sale or be ongoing. Ms. Terry replied that MHBE expects such appointments to be ongoing.
- Chairman Sharfstein asked whether the point-of-sale appointment would be automatic. Ms. Terry replied that it would not. Chairman Sharfstein then asked whether his understanding of the situation was correct—namely that the consumer disclosure would state that the producer is currently not appointed with certain carriers but may be able to become appointed and, if unable, will have a method to refer the consumer to someone that can help them. Ms. Terry replied that his understanding was correct; she added that, even in today's market, there are very few situations in which a carrier would decline to appoint a producer who brings in business.
- Mr. Martinez-Vidal noted that there might be a conflict between the guaranteed issue requirement of the ACA on carriers and the option to decline a point-of-sale appointment. Ms. Terry clarified that the carrier would enroll the consumer or group but would not pay a commission to the non-appointed producer if there were cause, such as criminal or ethical issues.
- Mr. Steffen stated that, rather than referring to a point-of-sale appointment, the policy should reference a point-of-sale application, since appointment would not be immediate. Ms. Pearce replied that it is no different from the normal process in the market today and asked Ms. Terry to outline the normal process for the Board. Ms. Terry explained that, in today's market, carriers can opt not to consider a producer for appointment unless they have a group to enroll. Producers who have new business in hand provide the enrollment paperwork along with an application for appointment. The carrier then proceeds through its normal appointment process. Regardless of the outcome of the appointment application, the carrier will enroll the new consumers or group.

- Mr. Martinez-Vidal expressed concern that some carriers' commissions increase once a producer reaches a certain sales volume and asked whether the MHBE prohibition on production requirements would also rule out production incentives. Chairman Sharfstein replied that MHBE wants to avoid any involvement in commissions. He noted that carriers might be able to use commission structures to circumvent the prohibition on production requirements, and that such activity is counter to MHBE's intent and must be identified and brought to the Board's attention. Chairman Sharfstein added, however, that MHBE's immediate challenge is to get Maryland's uninsured population enrolled and thus it will need as many people striving toward that goal as is reasonable while evaluating better methods.
- Dr. Gaskin asked how much overlap exists between the authorization processes for producers and carriers. Ms. Terry replied that the producer authorization process is still in the very early stages of design, but that there could be some overlap and that she intends to raise that issue to the Producer Advisory Council.
- Chairman Sharfstein stated that MHBE should come back to the Board to discuss how people are engaging with Maryland Health Connection.
- Ms. Goldberg stated that the Board should look at whether the producer authorization process can be used to make clear the goal of presenting all plans to all consumers.

A motion to adopt the Option 5 Hybrid Model as the producer authorization policy was unanimously approved.

Ms. Terry finished by noting that she would return to present interim procedures based on the policy to the Board at some point in the future.

General Updates

Ms. Pearce announced that MHBE is presently focused on hiring. She noted that the current staff count is in the teens and that positions are constantly being posted.

Ms. Pearce announced that MHBE has moved to its new, permanent location and is progressing steadily toward full functionality.

Ms. Pearce invited the MHBE Executive Team to provide staff updates. Since Danielle Davis, Director of Communications and Outreach, was unable to attend the meeting, Ms. Pearce announced that marketing and outreach work with Weber Shandwick is proceeding, noting that a meeting is scheduled for May 14, 2013, to work with faith leaders on the health and financial literacy toolkit. She added that MHBE will be holding a series of small business workshops and will be publishing a monthly producer newsletter.

Mr. Yang announced that the development of the Carrier Integration Guide is in its final stages, a draft RFP for production hosting has been released, and MHBE is evaluating an environment management strategy along with connectivity and deployment.

Leslie Lyles-Smith, Director of Operations at MHBE, announced the hiring of Roger Lewis as Chief Procurement Officer and that the Connector Entity grant solicitation was released with responses due February 28, 2013. She noted that MHBE received an overwhelming number of questions on the RFP, and she intends to evaluate the responses and make awards by April 2013. She announced that MHBE published an RFP for the Consolidated Services Center just the previous day, noting that responses are due March 15, 2013, and that there will be a pre-bid conference on February 19 at the UMBC Tech Center. She announced that MHBE did not receive many public comments on the proposed performance measures.

Ms. Terry announced that MHBE has hired a Manager of Plan Services, Lena Hershkovitz, previously with Healthy Howard. She stated that MHBE has launched a carrier participation intent process that has yielded a preliminary list of carriers including nine medical, seven dental, and four vision carriers. The next step is to get business agreements in place with each, and to conduct network consultations with

them. She announced that MHBE is working with the Maryland Health Care Commission to leverage existing commercial quality data to develop a five-star rating methodology for consumers.

Frank Kolb, Director of Policy at MHBE, announced that MHBE continues to follow federal regulations and is looking at comments on minimum essential coverage. He noted that they received public comments on the Carrier Appeals interim procedures and are working on legislation for the Maryland Health Progress Act of 2013.

Mr. Martinez-Vidal asked Ms. Terry whether there was a formal RFP for qualified health plans. Ms. Terry replied that Maryland elected not to do selective contracting with carriers. Rather, MHBE is employing an open model wherein any carrier that meets the certification requirements may offer plans on Maryland Health Connection. She added that carriers were asked to submit letters of intent to help MHBE gauge interest and that carriers will not be committed to participate unless and until business agreements are in place.

Mr. Apfel asked whether the recent federal regulations around the streamlined application will cause problems for MHBE. Chairman Sharfstein replied that it's too early to say, noting that there are potentially some issues, but the federal regulations leave some room for states to maneuver. Mr. Yang clarified that the federal authorities are publishing a streamlined application and encouraging states to follow it. The Centers for Medicare and Medicaid Services (CMS) will have a process in place whereby Maryland can obtain authorization to use its own application.

Adjournment

A motion to adjourn unanimously passed.