



Maryland Health Benefit Exchange Board of Trustees Meeting Minutes

October 9, 2012
1:00 p.m. - 4:00 p.m.
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://dhmh.maryland.gov/exchange/SitePages/meetings.aspx>

Members Present

Joshua M. Sharfstein, M.D.
Therese Goldsmith, J.D., M.S.
Jennifer Goldberg, J.D., LL.M.
Thomas Saquella, M.A.
Ben Steffen, M.A.

Kenneth Apfel, M.P.A.
Darrell Gaskin, Ph.D.
Georges Benjamin, M.D. (by phone)
Rebecca Pearce, M.B.A.
Enrique Martinez-Vidal, M.P.P.

Opening Comments and General Updates

Secretary Sharfstein welcomed everyone to the meeting.

Ms. Pearce announced that the Maryland Health Benefit Exchange (MHBE) is looking for additional employees. She noted that job openings are listed on the MHBE website (<http://dhmh.maryland.gov/exchange/SitePages/Job%20Announcements.aspx>).

A motion to adopt the minutes, with revisions, from the September 25 meeting was unanimously approved.

Regulations Review

Maansi Raswant of The Hilltop Institute presented to the Board an overview of the proposed regulations covering both Individual Exchange Navigator Certification and Insurance Producer Authorization. She began by explaining that the Maryland Health Benefit Exchange Act of 2012 granted MHBE the authority to adopt such regulations. She then briefly outlined the content of the proposed regulations.

Next, Ms. Raswant described the promulgation process, noting that MHBE had gathered feedback from both the Navigator Program Advisory Committee and from the public, and that the Insurance Commissioner had reviewed and approved the proposed regulations. She outlined the next steps in the process leading up to MHBE's formally adopting the regulations.

Commissioner Goldsmith asked about the continuing education requirement for producer authorization renewal. She felt that the training required would not necessarily be mutually exclusive from the requirement for producers to maintain their licensure under the Maryland Insurance Administration (MIA). Ms. Raswant replied that the Commissioner was correct, adding that there may be cases in which the same training course is approved by both MIA and MHBE.

Mr. Martinez-Vidal noted that the Individual Exchange Navigator renewal regulations contained a continuing education requirement that must be met within the renewal term of two years, and a requirement for "Exchange Annual Training." He asked whether the "Exchange Annual Training" would take place once or twice during the two year term. Ms. Raswant explained that the "Exchange Annual Training" would be truly annual, and that the regulation would require navigators to complete that training

every year for all the years they hold a certification. Ms. Pearce added that the “Exchange Annual Training” is intended to cover year-to-year changes in the qualified health plans (QHPs), the Maryland Health Connection, and other changes that may affect how that navigator must work. Mr. Martinez-Vidal asked for clarification that navigators will receive notification of that annual requirement, to which Ms. Raswant replied in the affirmative.

Mr. Steffen pointed out the requirement that producers hold an appointment by every insurance issuer on the Health Connection and asked whether a producer who lets his or her appointment with one of the issuers lapse would then lose authorization to sell QHPs. Ms. Raswant replied that that was the intent, since each producer must be able to present each QHP to each consumer. Ms. Pearce noted that MHBE has been working with issuers and brokers to find common ground around this issue, and that the work is ongoing. Chairman Sharfstein asked Ms. Pearce whether she thought the regulations contained enough flexibility to adequately address this issue. Ms. Pearce replied that she did.

Finally, Ms. Raswant presented a chart showing the other sets of regulations currently under development by MHBE. She noted that four sets of regulations (General Provisions, Fraud Waste and Abuse, Call Center, and Eligibility Determination and Verification) would be presented to the Board in its November meeting. She added that the Appeals and Grievances policy would be presented at the October 23, 2012 meeting. Professor Apfel requested that Ms. Raswant provide the Board with a more legible copy of the regulations development timeline.

SHOP Policy Overview

Kevin Yang, Chief Information Officer of MHBE, presented to the Board an update on the issues under discussion around the Small Business Health Options Program (SHOP). He noted that, for many policy issues, MHBE must wait for guidance from the Center for Consumer Information and Insurance Oversight (CCIIO). That guidance is expected to be released in late November or early December of 2012.

Mr. Yang began by providing the background on SHOP including the functions required by the federal government along with those functions and requirements Maryland has elected to include. He described the two models for participation: Employer Choice and Employee Choice. Megan Mason of the MIA clarified that the Employee Choice model is available only on Maryland Health Connection, and only to qualifying small businesses. Dr. Gaskin asked why the Employer Choice model should restrict employers to one carrier, noting that an employer may wish to choose a platinum plan from one carrier and a silver plan from another carrier to offer to his or her employees. Ms. Pearce replied that the Employer Choice model simply mirrors what occurs in the market today, and that MHBE, in its work in 2011, identified risk management issues around expanding the model to include multiple carriers. Chairman Sharfstein declared that the Employer Choice model as it exists today will remain in place, but that MHBE will gather feedback from employers as to whether expanding their options would be compelling. He said that the Board would take another look at this issue in the future.

Next, Mr. Yang laid out both the process by which MHBE included input from stakeholders in developing the policy recommendations and the methods for formalizing and establishing policies around SHOP. These methods include direct implementation by MHBE, business agreements with carriers, interim procedures under the Maryland Health Benefit Exchange Act of 2012, legislation sponsored by the MIA, and legislation initiated by MHBE. Ms. Mason pointed out that the discussions around rating rules included brokers.

Mr. Yang then presented several decisions the Board must make around SHOP policies, beginning with the methodology for counting employees to determine SHOP eligibility. He noted that the Board has two options. Either each part time employee would be considered equivalent to a full time employee when calculating group size or the hours worked by part time employees would be aggregated into a full time equivalency (FTE). He added that there are federal regulations that would lend support to either method.

- Commissioner Goldsmith pointed out that, should MHBE receive guidance from the federal government that would exclude part time and non-eligible employees from the count, there would have to be an amendment to Maryland law.

The next decision Mr. Yang presented to the Board was about employer defined contribution set-up. He noted that there is no federal guidance on this issue at present.

- Commissioner Goldsmith asked whether the employer's contribution amount could be zero. Mr. Yang said that it could.
- Commissioner Goldsmith noted that current Maryland law prohibits carriers from setting a minimum contribution amount for employers, and that, if MHBE wishes to do so, there would have to be an amendment to Maryland law.
- Mr. Steffen asked if the reference plan set-up mentioned by Mr. Yang would be the same as what exists in the federal employee plan. Mr. Yang replied that, while he wasn't completely certain, it sounded quite similar.
- Mr. Martinez-Vidal pointed out that age discrimination could still be an issue in a reference plan set-up. Mr. Yang agreed, and further stated that employers could run afoul of antidiscrimination rules in a variety of ways—for instance by offering richer benefits for management versus regular staff.

The next decision Mr. Yang presented to the Board was about minimum participation rate for the Employee Choice model. He noted that the Affordable Care Act allows states to specify a minimum participation rate per employer, but not per carrier. He noted further that current law allows carriers to specify a minimum participation rate, but that rate may not be higher than 75%. Most, if not all, carriers in today's market set the minimum participation at 75%.

- Professor Apfel asked what would happen if MHBE sets minimum participation at, for instance, 60%. Mr. Yang replied that, in that case, a group that did not meet the minimum participation level would not be qualified to purchase QHPs on the SHOP exchange. Professor Apfel then asked whether the group members would then go to the individual exchange. Mr. Yang responded that that would be possible, but the employees could also shop on the outside market.
- Ms. Pearce pointed out that, should MHBE institute a minimum participation level, that requirement would be laid on employers, as opposed to the current market wherein the requirement is the responsibility of carriers.
- Mr. Steffen said that the law regarding participation rates doesn't require them—it says they "may" be used. Further, he said that his organization, the Maryland Health Care Commission, has wondered how low participation would have to reach for carriers to be uninterested in insuring a group.
- Ms. Goldberg pointed out that with extremely small groups, one or two employees opting in or out could make the difference in a group's eligibility.
- Ms. Pearce and Mr. Saquella wondered whether a minimum participation requirement remains useful and appropriate in today's market.

The next decision Mr. Yang presented to the Board was about individual versus average age rating in the Employee Choice model. MHBE must decide whether to have carriers present rates customized for each member of the group, or to present rates based on the average age of the group members. Current market practice is the latter, but with the advent of Employee Choice, average age rating presents additional risks to carriers. Individual rating, on the other hand, could reduce the benefit to employers and employees of forming a group. Mr. Yang noted that a third choice has been discussed, whereby carriers would present a rate based on the average age of the group. These rates would then be adjusted once those carriers see which group members actually select their QHPs. This choice was widely regarded as unsuitable by stakeholders.

- Chairman Sharfstein asked whether MHBE expected to receive any guidance on this issue from CCIIO. Mr. Yang responded that MHBE has asked, but that CCIIO hasn't replied, and that this issue could be left for MHBE to decide.
- Ms. Mason described some of the risks and tradeoffs inherent in either choice:
 - With average age rating, carriers will not know which members they'll actually get. They could get cohorts that are younger or older than the average age of the group. For that reason, carriers would prefer to rate on individual ages.

- With average age rating, there are benefits to the employer such as more consistent pricing across all employees, making employer contribution easier to manage. Also, average age rating is what employers are accustomed to in today's market.
- With individual rating, older employees would lose the benefit of being rated with the younger employees.
- With individual rating, younger employees might be incentivized to opt out of group coverage, and to find coverage on the individual market.
- Ms. Pearce asked, based on Ms. Mason's assertion that this decision has wide ranging impact on all the other decisions before the Board, whether this issue had to be decided first. Ms. Mason responded, "Cautiously, yes."
- Mr. Steffen asked whether MHBE has any information regarding small employers' preferences on Employer Choice vs. Employee Choice. Mr. Yang replied that MHBE has seen 3rd party studies including one conducted by Kaiser Permanente that showed significant interest in the Employee Choice model. He pointed out that, since employers can access the Employer Choice model in the non-MHBE market, Employee Choice is a value proposition for them.
- Mr. Steffen asked whether employee-driven market segmentation would be a worry, to which Mr. Yang responded that, while it's not known, some carriers may resonate better with certain populations.
- Tequila Terry, Director of Plan and Partner Management at MHBE, informed the Board that MHBE has been communicating with small employers in Maryland about Employee Choice. She added that those businesses have expressed interest in the Employee Choice model, thinking it will make them more competitive in hiring.
- Dr. Gaskin asked how volatile premiums are in the current small group market. Ms. Mason responded that it depends upon the size of the group. With very small groups, she said, one person can drastically alter the average age.
- Professor Apfel asked whether MHBE has learned any lesson from the Massachusetts experience on this issue. Mr. Yang responded that Massachusetts employed both the individual and the average age rating, and that the individual rating scheme was not deemed successful in that case.
- Chairman Sharfstein asked Mr. Yang to confirm that MHBE will have a policy recommendation on this issue at the next meeting, which Mr. Yang did confirm.
- Chairman Sharfstein listed several categories of information the Board will require in order to make its policy decision, and asked Board members to suggest other categories:
 - Insurance carriers' views
 - Small employers' views
 - Current market experience
 - Employee perspectives
 - Operational challenges for each choice
 - Input from third-party administrators (TPAs)

Plan Management Interim Procedures

Ms. Terry, Ms. Raswant, Frank Kolb, Director of Policy at MHBE, and Kristine Hoffman, Assistant Attorney General at MHBE, presented to the Board an overview of the final interim procedures around plan management.

Ms. Terry began by providing the Board with background information including MHBE's definition of plan management, the guiding principles it employs for plan management, the authority granted MHBE to adopt interim procedures, the process for developing the procedures, and the steps undertaken by MHBE to obtain stakeholder feedback on plan management. Ms. Terry then briefly outlined the content of MHBE's final recommendations for plan management interim procedures and offered to answer any questions the Board might have.

- Chairman Sharfstein asked Ms. Terry how the current recommended procedures differ from those previously presented to the Board. Ms. Terry replied that, in response to concerns raised about

the possibility of Maryland's definition of essential community providers (ECPs) being out of compliance with federal statute, MHBE amended the ECP procedure to reflect that it will use the federal standard only.

- Chairman Sharfstein asked that the phrase "relevant data" be added to the beginning of the line under section .03(C)(2)(b). He noted that this language will serve to support the Board's determination to monitor carriers' performance on ECP on a quarterly basis.
- Commissioner Goldsmith noted that some of the citations included in the interim procedures document were incorrect. Ms. Terry acknowledged the oversight, and committed to correcting the document.
- Chairman Sharfstein informed the Board that MHBE has included a narrow waiver authority into the procedures to allow for rapid response to unpredictable, extraordinary situations.

Chairman Sharfstein then turned the discussion to the *Maryland Health Benefit Exchange Board of Trustees Statement of Policy Regarding Essential Community Providers and Network Adequacy* and asked Ms. Goldberg to speak about it. Ms. Goldberg said that the new requirements allow MHBE to ensure that consumers can access the providers they need and ensure that MHBE gathers the data necessary to inform future efforts. She added that the language of the requirement covers a broad range of different kinds of ECPs. Chairman Sharfstein noted that the Board is faced with striking a balance between three competing priorities. First, he said, ECPs are vitally important to the health of consumers in Maryland. Second, MHBE wishes to avoid "micro-regulation" of interactions between entities in health care where possible. Third, provider networks may not always follow a "bigger is better" pattern. The chairman thanked Ms. Goldberg and the MHBE staff for their work in crafting a statement that makes it clear that MHBE expects to see ECPs, mental health, and substance abuse clinics very engaged without spelling out in detail how that engagement will be managed, but that makes it clear that MHBE will be closely monitoring the situation.

Ms. Hoffman read out a resolution to adopt the interim procedures. A motion to adopt the resolution passed with no opposition.

A motion to adopt the statement of policy passed with no opposition.

Navigator Policy Overview

Leslie Lyles-Smith, Director of Operations at MHBE, along with the co-Chairs of the MHBE Navigator Program Advisory Committee, Leigh Cobb and Jon Frank, presented to the Board an overview of the issues around the Navigator program in preparation for discussions in the next meetings. On October 23 the Board will be presented with policy options, and on November 13 they will be presented with recommendations and asked to adopt policies.

Ms. Cobb and Mr. Frank presented some background information on their committee, including its purpose, objective, scope, membership, and state agency liaisons. They listed the topics covered in each of their meetings, including topics for discussion in upcoming meetings, and gave an overview of the range of stakeholders present on the committee. They showed the committee's progress on a timeline leading up to a final report and the development of the Navigator grants.

Ms. Cobb and Mr. Frank then showed a few examples of questions the committee was tasked with considering. Chairman Sharfstein asked that the committee use a word other than "compensation" when discussing the grant and contract relationships between Navigator Entities and MHBE, citing his conviction that "compensation" more aptly describes a financial arrangement with an individual. He went further by saying that MHBE should not necessarily set policy at the outset on how Navigator Entities compensate their individual Navigator employees.

Then Ms. Cobb and Mr. Frank described a Request for Information (RFI) developed by MHBE in consultation with the committee, noting that 26 responses were received from a range of stakeholders. In response to questions from Professor Apfel, Ms. Lyles-Smith said she would provide the Board with further details about the respondents to the RFI.

Ms. Cobb and Mr. Frank then presented a few common themes that arose from the RFI responses. Chairman Sharfstein pointed out, in the discussion of outreach to culturally diverse populations, that local groups may not necessarily be Navigator Entities. Ms. Cobb and Mr. Frank agreed with the Chairman, saying that local groups would be part of the team. Dr. Gaskin asked whether the committee had discussed getting consumer feedback on their experience of the interaction with Navigators. Ms. Cobb replied that the committee deliberated requiring individual Navigators to have identifiers supporting robust reporting requirements on the Navigator Entities. Dr. Gaskin asked that the committee think about how to capture information as to whether the consumer's experience has been positive. Ms. Lyles-Smith explained that consumer-satisfaction data collection was captured in the RFI and would be included in the terms and conditions of grants to Navigator Entities.

Ms. Lyles-Smith reported that, at its next meeting, the Board will be asked to consider options and committee feedback around several issues of Navigator policy:

- Navigator Roles & Responsibilities
- Ensuring Culturally Diverse Outreach
- Training
- Compensation
- Oversight
- Integration Models

Finally, Ms. Lyles-Smith provided the Board with a few upcoming milestones leading up to the awarding of Navigator Entity grants in February of 2013.

Chairman Sharfstein noted that funding for Navigators was not included in the Level 2 Establishment Grant and that MHBE would have to find some way to pay for those grant awards. He said that a close review of that issue would be beneficial to undertake soon. Ms. Lyles-Smith replied that MHBE and the Board had a number of issues to work through before tackling that discussion, not least of which would be the financial terms of grants to Navigator Entities.

Mr. Martinez-Vidal mentioned that there is another type of consumer assistance entity that is mentioned in the federal guidance, assisters, and asked that the Board be presented with information on how those entities will be incorporated into the overall plan. Ms. Pearce replied that MHBE has met with CCIIO several times on that issue, and expressed MHBE's determination to make the most of that opportunity.

Brand Marketing Update

Danielle Davis, Director of Communications and Outreach at MHBE, presented to the Board an update on the communications and marketing effort underway. She noted that the Maryland Health Connection brand launch took place at a press conference on August 23, 2012, and that the consumer-facing microsite had launched. She shared some statistics showing how many interested parties had signed up for notifications about the microsite, and announced that it the microsite would be expanded in November.

Ms. Davis then discussed the newly introduced style guide, explaining that she had given overviews of its contents to various partners and agencies. She described the style guide's content, giving particular attention to the rule stating that MHBE is never to be referred to as "the Exchange." Similarly, Maryland Health Connection is never to be referred to as "the Exchange."

Ms. Davis then described upcoming changes to the Maryland Health Connection microsite, including the development and deployment of new and customized content. She noted that several members of the Board and MHBE staff are involved in speaking engagements as part of the outreach effort. Mr. Saquella asked that Ms. Davis share the speaking schedule with the Board.

Finally, Ms. Davis gave an overview of the upcoming changes to the stakeholder website. Responding to Mr. Martinez-Vidal, she confirmed that this website will be where meeting documents can be found. She noted that this site will launch in mid-November.

IT Update

Sunny Raheja, Project Manager with MHBE, presented to the Board an update on the progress of the information technology (IT) project. He began by showing an overall timeline of the project, noting that it is proceeding on schedule. Ms. Pearce asked whether he expects that the IT system will be in complete compliance with federal requirements by January 1, 2013. Mr. Raheja replied that Curam will release an update to their software on December 16, 2012 that will make the system fully compliant, but that, due to the structure of the sprint development schedule, that Curam update won't be fully recognized until sprint 6 begins in January.

Next, Mr. Raheja displayed a flowchart showing the integrated eligibility and enrollment application process. He noted that the Maryland Department of Health and Mental Hygiene (DHMH), Maryland Department of Human Resources (DHR), and MHBE jointly determined that there would be one single application process to manage eligibility and enrollment for Modified Adjusted Gross Income (MAGI), non-MAGI, and social services benefits, no matter which point of entry is used. Regardless of which site one begins on, there would be a single application.

Ms. Goldberg asked whether Mr. Raheja would supply the Board with technical workflows for the non-MAGI and social services processes. Mr. Raheja noted that his presentation contains backup slides showing some of these processes in more detail that he did not plan to present to the Board in the interest of time. He went on to say that he would be more than happy to share any such information with the Board, and that his team is currently building the requirements for sprints 6, 7, and 8 which involve state-specific requirements.

Ms. Goldberg asked where in the flowchart the Navigator module is shown. Mr. Raheja replied that it's not shown in the flowchart, but that such a module is planned. Ms. Pearce added that MHBE is still working with the IT vendor to determine how that will be handled. Ms. Goldberg asked that the team keep in mind how Navigators and community assisters will interact with the IT system, as they will play a critical role in MHBE's success.

Mr. Raheja then described a workgroup that meets twice a week to define the roles that will be fulfilled by the integrated eligibility and enrollment application. Ms. Pearce asked who from MHBE attends those workgroup meetings. Mr. Raheja replied that Justin Stokes of the MHBE Project Management Office, and Kevin Yang, Chief Information Officer of MHBE attend.

Next, Mr. Raheja updated the Board on the IT system's progress in establishing interfaces with other systems. He noted that the system is communicating and passing eligibility files back and forth with Maryland's Medicaid Management Information System (MMIS). He noted that MHBE's system is communicating with the federal data hub, adding that Maryland is the first state to have such a linkage with security in place.

Ms. Pearce asked about the status of the linkages with other state systems. Mr. Raheja responded that his team is working now to develop memoranda of understanding (MOUs) with the Department of Labor, Licensing, and Regulation (DLLR) and the Motor Vehicle Administration (MVA) to develop interfaces with systems for verification of income and verification of presence. He noted that MOUs are developed as a last step in the interface process, after the technical requirements and specifications are worked out between the agencies.

Mr. Martinez-Vidal noted that Mr. Raheja's previous update to the Board did not contain an interface directly between the Exact system and other state systems. Those state systems were linked through the federal data hub. Further, Mr. Martinez-Vidal asked whether those interfaces would be bi-directional. Mr. Raheja responded that his previous presentation's leaving out that interface was incorrect. While MHBE would use the federal data hub as a bridge to many state systems, some state systems would not route through the federal data hub. In addition, the direct linkage to state systems would serve as a backup when a query to the federal data hub returns no results. He noted that conversations about making that

direct linkage bi-directional are underway, and that it is certainly possible to build it that way, but that each interface would need to be designed separately based on its own technical environment.

Ms. Pearce then asked Mr. Raheja whether the agreement with the federal data hub regarding two way communications has been finalized. Mr. Raheja replied that, while it hasn't been finalized, the discussions are underway and all parties agree in principle. One point of discussion with the federal data hub personnel is how standardized the interfaces can be. Since Maryland is so far ahead of other states in building out the IT system, there is a dearth of other examples with which it can be decided whether to standardize.

Mr. Martinez-Vidal asked whether Mr. Raheja felt confident that the federal data hub would integrate with all the other federal data sources referenced in the presentation. Chairman Sharfstein expressed his confidence that the federal data would be available to MHBE when needed. Mr. Raheja noted that MHBE and the federal data team meet quite often and that confidence on that score is increasing.

Mr. Raheja finished his presentation by providing more details about the interim test period scheduled to begin in November. Ms. Goldberg expressed pleasure that external stakeholders are explicitly mentioned in the testing plan, noting that they will likely bring fresh perspectives to the issues.

Closing

A motion to adjourn passed unanimously.