



## Maryland Health Benefits Exchange Board of Trustees

June 20, 2016

1:00 PM – 3:00 PM

Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, MD 21215

### **Board Members Present**

Van Mitchell, Chair  
Kenneth Apfel  
Michelle Gourdine  
Sastry Dhara

Benjamin Steffen  
Tony McCann  
Al Redmer  
Thomas Saquella

### **Board Members Absent**

Linda Sue Comer

### **Also in Attendance**

Carolyn Quattrocci, Maryland Health Benefit Exchange (MHBE) Executive Director; Sarah Rice, Counsel to MHBE; Caterina Pangilinan, MHBE Chief Compliance Officer; Jonathan Kromm, MHBE Deputy Executive Director; Michele Eberle, MHBE Chief Operating Officer; Andrew Ratner, MHBE Director, Marketing and Strategic Initiatives., Michelle Wojcicki, Director of Policy.

### **Opening & General Updates**

Chairman Mitchell called the meeting to order and welcomed all present.

### **Approval of Meeting Minutes**

Mr. McCann moved that the Board approve the minutes of the May 16, 2016 meeting. Dr. Gourdine seconded the motion. The motion passed unanimously.

### **Closed Session**

At approximately 1:05 PM, Chairman Mitchell announced that the Board deemed it necessary to discuss certain matters in a closed session. Chairman Mitchell read the closed session statement<sup>1</sup> which stated that the reasons for the closed session were:

1. To obtain legal advice and protect the confidentiality of that legal advice.

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<sup>1</sup> Available at <http://www.marylandhbe.com/wp-content/uploads/2016/01/Written-Statement-for-Closing-a-Meeting-Under-the-Open-Meetings-Act-06.20.16.pdf>.

2. To obtain advice from staff about pending or potential litigation and protect the confidentiality of that advice.

Mr. Saquella moved that the Board meeting adjourn to a closed session. Dr. Gourdine seconded the motion. The motion passed unanimously.

The closed session lasted until approximately 1:20 PM.

### **Executive Report**

Carolyn Quattrocki, MHBE Executive Director

Ms. Quattrocki advised that since this meeting was also the Agency's annual meeting the Agency was required to provide a list of all of its currently active contracts. This list was shared with Board members prior to the meeting and will be made available to the public<sup>2</sup> in the near future.

Additionally, the Agency's By-Laws provide that at the annual meeting, the Board should vote on the proposed list of meeting dates for the upcoming calendar year. A list of proposed 2017 meeting dates was provided to the Board. Mr. Apfel moved that the Board approve the proposed 2017 MHBE Board meeting dates. Dr. Gourdine seconded the motion. The motion passed unanimously.

Ms. Quattrocki next stated that MHBE had elected to exercise its option to take assignment of the Deloitte lease in Linthicum, MD. MHBE will not be renewing its contract with Deloitte, but MHBE will still need the space for IT personnel. MHBE consulted with the Department of General Services (DGS) to confirm that the lease for the Linthicum space conforms to all necessary requirements for a lease held by a state agency.

### **Procurement Report**

Michele Eberle, MHBE Chief Operating Officer

Ms. Eberle first informed the Board about two upcoming contract award decisions for which no vote was immediately required.

MHBE utilizes a software tool developed by Oracle America for customer relationship management. The tool is used by MHBE employees, Maximus call center representatives, and some consumer assistance workers at Connector Entities. The contract has been amended multiple times to reflect the continued increased usage of the tool. Oracle charges MHBE based on usage in a unit known as seat-months.

In July, MHBE anticipates asking the Board to modify the contract with Oracle to approve the purchase of additional seat-months. Currently it is anticipated that the number of seat-months required during FY 2017 will be less than the amount used during FY 2016.

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<sup>2</sup> Available at <http://www.marylandhbe.com/wp-content/uploads/2015/09/List-of-Current-Contracts.pdf>.

Chairman Mitchell asked if any other vendors aside from Oracle America create and sell this type of software.

Ms. Eberle replied that there were and that moving forward the Agency would evaluate if a different software tool would be more appropriate especially if MHBE considers working more closely with another State Agency to service its consumers.

Mr. McCann pointed out that given the unknown future usage quantities, and the fact that Oracle America only charges for seat-months actually used, and issues credits back to MHBE for unused seat-months previously purchased, that the amount of money being approved by the Board with its vote in July will effectively be a “Not-to-Exceed” amount for the Oracle contract for FY 2017. Ms. Eberle agreed with this characterization.

Ms. Eberle then went on to discuss the Agency’s inbound document processing needs. Currently Scan-Optics is the vendor who provides this service to MHBE, and that contract will run through December 31, 2016. Ms. Eberle stated that moving forward it is possible that the vendor operating the consolidated service center (CSC), Maximus, who already has a sub-contractor, Art & Negative, handling the agency’s outbound document processing, could subsume the job of inbound document processing into their functions without hiring extra staff, and in doing so save the agency some money. A more detailed proposal for Maximus, through Art & Negative, to fulfill MHBE’s inbound document processing needs will be presented for a Board vote at a later date.

### **Contracts and Modifications**

Michele Eberle, MHBE Chief Operating Officer & Jonathan Kromm, Deputy Executive Director

Ms. Eberle advised that at the prior Board meeting Board members had asked for two pieces of information prior to voting on the modification to the Maximus CSC contract for FY 2017:

1. What is the anticipated breakdown of federal vs. state funds for purchasing Maximus’ services during FY 2017?
2. What is the average tenure of Maximus employees staffing the CSC?

Ms. Eberle presented slides<sup>3</sup> that contained the answers to these questions.

Ms. Eberle clarified that the total amount presented as the anticipated cost of operating the call center during FY 2017, \$27,375,421.00, does not include the cost of the BAT (Broker-Assisted-Transfer) phone program. Another factor that could alter the cost of operating the call center during FY 2017 is the effectiveness of the Medicaid “auto-renewal” program. Although the auto-renewals are happening effectively now, if that option encounters difficulty, it is likely that phone center staffing numbers would need to increase to accommodate Medicaid renewal cases.

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<sup>3</sup> Available at <http://www.marylandhbe.com/wp-content/uploads/2015/09/Consolidated-Service-Center-NTE.pdf>.

If the estimate of \$27,375,421.00 turns out to be correct, the cost of operating the call center during FY 2017 would be roughly \$7,400,000.00 less than the amount spent during FY 2016. The reasons for the anticipated savings include:

- 1) The Medicaid auto-renewal system
- 2) Other software/system enhancements that allow additional users to enroll online without the assistance of a call center worker
- 3) Increased and improved training of call center workers, reducing the amount of call-backs and thus the number of overall calls received
- 4) The effectiveness of Connector entities and their navigators at getting consumers enrolled in coverage without the help of the call center

Commissioner Redmer expressed concern that the financial projection was based on an assumption of the likely number of calls to be received that seems very optimistic.

Ms. Eberle replied that there is data to support the assumption that call center workers have become more effective and efficient. Additionally, the current proposal aims to have 80% of all calls received during Open Enrollment handled within 20 minutes. While this would be a significant achievement considering the available funding, in the realm of customer service it is not an optimal answer rate.

Dr. Gourdine pointed out that there appeared to be a discrepancy between the amount of funds in the budget for the call center for FY 2017 (\$27,606,689) and the amounts of funds being projected and discussed now as the total cost for the call center for FY 2017 (\$27,375,421).

Ms. Eberle explained that while she was formally requesting that the Board approve an NTE amount of the full budgeted amount (\$27,606,689) the projected cost is currently \$27,375,421, leaving some leeway for other expenses such as the BAT phone program and any hiccups with Medicaid auto-renewals.

Mr. Apfel commented that he agreed with Commissioner Redmer that the projections seem optimistic and that he would not be surprised if it were necessary to allocate more resources to the call center later in FY 2017.

Chairman Mitchell remarked that given all the funds expended on improving IT infrastructure he was actually hoping that the Exchange would spend even less than the projected amount on the call center during FY 2017.

Mr. Steffen asked if the statistics regarding the effectiveness of our call center had been compared to the call centers of other states operating Exchanges.

Ms. Eberle said that she did not have data on other states' Exchange call centers and that the value of such a comparison is questionable as many other call centers do not assist both individuals purchasing a Qualified Health Plan and consumers enrolling in Medicaid.

Chairman Mitchell then requested that Ms. Eberle generally discuss the BAT phone program and the likelihood that it will be in place again during the Open Enrollment period beginning November 1, 2016.

Ms. Eberle explained that the size of the BAT phone program, as well as who bore its costs, would largely depend on the information gathered by MHBE and the MD Insurance Administration (MIA) at an upcoming meeting in July. At that time, MHBE and MIA staff will hear from brokers who participated in last year's BAT phone pilot program and learn what about it was effective, what needs to be improved, and what level of interest there is from brokers in seeing the BAT phone program continue.

Commissioner Redmer remarked that regardless of the cancellation, continuation, or expansion of the BAT phone program, he feared that we may soon see reduced broker participation in the Exchange in general due to carriers paying reduced commissions.

Mr. McCann asked if the Board approved a certain dollar amount for the Maximus NTE and the agency spent less, if Board approval would be required for those funds to be reallocated.

Mr. Kromm explained that yes, Board approval would be needed, but only to increase the NTE amount of the 'other' program, and not to spend less on the Maximus deal.

Mr. Apfel moved that the Board approve the request to spend the full budgeted amount of \$27,606,689.00 on the operation of the Maximus call center during FY 2017. Mr. McCann seconded the motion. The motion passed unanimously.

Next, the Board turned its attention to the awards of the Connector Entity grants.

Ms. Eberle requested that the Board approve the award of the following grants:

<b>Region</b>	<b>Proposed Grantee</b>
Far Western	Western Maryland Area Health Education Center (AHEC-WEST)
Mid-Western	Healthy Howard, Inc.
Central	Health Care Access Maryland (HCAM)
Capital-South	PG County Department of Social Services
Southern	Healthy Howard, Inc.
Upper Eastern	SEEDCO
Lower Eastern	Worcester County Health Department
Capital-North	Montgomery County Health Department

Chairman Mitchell asked for a clarification of the labels Capital-North and Capital-South. Ms. Eberle stated that the Capital-South region includes Prince George's County only and the Capital-North region includes Montgomery County only. Chairman Mitchell requested that the labels be switched to Prince George's County Region and Montgomery County Region for the sake of clarity.

Ms. Eberle also clarified that although the number of regions, and thus entities, was increasing from 6 to 8, the amount of money being used to fund all of the Connector Entities was not increasing.

Mr. Steffen asked what led MHBE staff to believe that AHEC-West was capable of handling a responsibility as large and significant as functioning as a Connector Entity. Ms. Eberle replied that MHBE staff had reviewed the grant application, met with AHEC-West staff, and received assurances from other community partners that they would work with AHEC-West to tackle this load.

Chairman Mitchell inquired if any other organizations applied for the Southern Maryland Connector Entity grant aside from the proposed awardee, Healthy Howard, Inc. Ms. Eberle indicated that there had indeed been more than a single applicant.

Mr. Steffen asked if Calvert Healthcare Solutions applied for the Southern MD Connector Entity grant. Ms. Eberle stated that they had not.

Dr. Gourdine moved that the Board approve the proposed grant awards. Mr. Steffen seconded the motion. The motion passed unanimously.

Following the vote, Mr. Saquella pointed out that if the Connector Entities use their own names for marketing purposes, potential consumers may feel confused. Ms. Eberle stated that in this year's Request for Applications, MHBE made clear its expectations that the winning grantees would be required to market themselves as MD Health Connection.

Next, Mr. Kromm, with the help of Greg Yaculak, MHBE'S Chief Information Security Officer, presented the agency's request that the Board approve an expenditure of about \$1,840,000 for certain IBM software licenses to be used between July 2016 and June 2017.

Slides were shown<sup>4</sup> that indicated the identity of the proposed winning bidder as well as what portions of the proposed expenditure would be federally versus state funded.

Six bidders, all re-sellers of IBM software products, submitted proposals to provide the required services. The bidder being suggested as the winner provided the lowest priced proposal.

Mr. Dhara asked if other software licenses will need to be renewed. Mr. Kromm replied in the affirmative but stated that the only licenses requiring an immediate renewal were the IBM licenses at issue here.

Chairman Mitchell inquired how the software licenses were tracked. Mr. Yaculak stated that in some instances licenses are tracked by hand, but in this particular instance IBM provides a software tool that generates reports regarding usage and the pending expiration of the licenses.

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<sup>4</sup> Available at <http://www.marylandhbe.com/wp-content/uploads/2015/09/IBM-Software-Subscription.pdf>



Mr. McCann moved that the Board approve the proposed software license purchase. Mr. Dhara seconded the Motion. The motion passed unanimously.

### **Policy Report & Vote on Proposed Regulations**

Michelle Wojcicki, Director of Policy

Ms. Wojcicki explained that she was present to request that the Board authorize and direct MHBE staff to take the next steps involved in the promulgation of certain regulations, namely COMAR 14.35.07 and corresponding definitions. The next steps are to submit the proposed regulations simultaneously to the House of Delegates' Health and Government Operations (HGO) Committee and the Maryland Senate's Finance Committee, and then to the General Assembly's Joint Committee on Administrative, Executive & Legislative Review (AELR).

Ms. Wojcicki then stated that prior to a vote, she wished to share with the Board both the deliberative and transparent process that MHBE staff had undertaken to discuss the proposed regulations with stakeholders prior to submission of the proposed regulations to the requisite legislative committees, and the areas of the proposed Chapter 07 that generated the most comments from external stakeholders.

Ms. Wojcicki presented and discussed slides<sup>5</sup> which described the timeline and process whereby the Chapter 07 Regulations were publicized for stakeholder comment and revised after receiving numerous comments from stakeholders.

The slides also showed the numbers of comments received on given sections and how many were accepted and incorporated into the proposed regulations. Ms. Wojcicki explained that generally MHBE Policy staff endeavored to incorporate stakeholder comments, but sometimes could not. One example of such a scenario is where a commenter suggested an edit that did not comply with the State of Maryland's Style Manual<sup>6</sup> for the drafting of regulations.

One area where numerous comments from stakeholders could not be accepted was the issue of including federal requirements into the proposed state regulations. Many commenters suggested that MHBE's regulations either let the federal regulations stand alone without a state counterpart, or simply cross-reference the appropriate federal law, but should not reiterate, paraphrase, or restate any federal requirements.

Ms. Wojcicki, again working from and explaining her aforementioned slides, and providing specific detailed examples, stated that in many instances, failing to reiterate and explicitly incorporate federal requirements into MHBE's regulations would either render the proposed regulations non-complaint with the State of Maryland's Administrative Procedure Act (APA), leave a potential reader of the regulations feeling flummoxed, or both.

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<sup>5</sup> <http://www.marylandhbe.com/wp-content/uploads/2015/09/Regulations-Process.pdf>

<sup>6</sup> The State of Maryland's Division of State Documents (DSD), a unit of the Secretary of State, publishes a document titled "Style Manual for Maryland Regulations" which, as its title suggests, outlines rules to which regulations must conform.

Mr. Apfel inquired if after all of the very thorough work completed by MHBE's Policy and Legal teams there was still substantial opposition to the promulgation of the proposed regulations as currently constituted.

Chairman Mitchell stated that there was.

Ms. Quattrocki added that in addition to making numerous individual decisions about when a federal cross-reference was appropriate or not, MHBE staff had attempted, to the extent possible, to ensure that MHBE's regulations utilize the same language as federal statutes and regulations to reduce confusion and misunderstanding. Also, a "purpose clause" was added to certain sections to further clarify that in the event of any ambiguity, the effort of the section was to reiterate and implement the appropriate federal requirement. Further, many of the federal regulations are still the subject of significant dispute and debate, so merely cross-referencing would not eliminate all ambiguity and lack of clarity.

Mr. McCann asked what the mechanism will be for ensuring that MHBE's regulations incorporate future changes to the relevant federal regulations.

Ms. Wojcicki replied that as other agencies have done for years, it will be incumbent upon MHBE staff to monitor the federal regulations and revise the state regulations accordingly.

Mr. McCann asked if MHBE's challenge was greater than most since our regulations could be impacted by multiple federal agencies who are often not coordinating with each other.

Ms. Wojcicki replied that to date, MHBE has already been required to monitor multiple areas of federal regulations and the decision to promulgate regulations, or whether to cross-reference or reiterate federal requirements, will neither increase or decrease that ongoing responsibility. In either event the agency must abide by all relevant federal rules.

Mr. Saquella asked if the proposed regulations would be the subject of legislative committee hearings.

Ms. Wojcicki replied that the legislative committees will review the proposed regulations and may or may not request that MHBE attend hearings regarding the proposed regulations.

Mr. Saquella asked if it was anticipated that the parties who have expressed their displeasure with the proposed regulations will again state their position at the legislative level.

Ms. Quattrocki replied in the affirmative, but assured the Board that MHBE would defend its position and that there is a good record, at least on the issues of process and transparency, to defend.

Ms. Wojcicki then advised that another issue where stakeholders had differing opinions on the substantive approach, even after the lengthy, open, and deliberative process of drafting these proposed regulations, is where MHBE is required by federal regulation to make a decision on a particular issue. Once again working from her slides, Ms. Wojcicki discussed two particular



examples where the federal regulation directs a state-based marketplace to render a decision on an issue. Ms. Wojcicki discussed how groups lobbied for a variety of approaches, and MHBE tried to present an approach that was logical based on MHBE's experience to date and a compromise position between the opinions expressed by consumer advocacy groups and carriers. Further, in both examples Ms. Wojcicki stated that MHBE had drafted the proposed regulations to only take effect in the future so that stakeholders would have time to orient themselves as to how to comply with the proposed regulations and to mirror the MIA's form filing deadlines.

Mr. Saquella noted that no matter how well thought out and balanced MHBE's approach is, and no matter how well justified our efforts may be, carriers will continue to automatically push back against any efforts by MHBE to impose additional regulations on the already heavily regulated health insurance industry.

Mr. Steffen asked if MHBE anticipated receiving additional comments from stakeholders before the proposed regulations had been reviewed by the legislative committees or only as part of the committees' respective legislative processes.

Ms. Quattrocki explained that since MHBE's statute is unique in requiring submission of proposed regulations to the House HGO Committee and Senate Finance Committee prior to submission to AELR, there is no evidence on which to base a guess of exactly how the process will unfold. However, it is likely that whenever they are able to do so, the stakeholders who remain unsatisfied with the current version of the proposed regulations will advance the same arguments before any legislative committee who permits them to do so.

Chairman Mitchell likewise commented that in his experience it would be unusual for a party to suddenly advance new arguments against regulations during the AELR review that had not been put forth previously.

Mr. Steffen asked when the regulations must be submitted to the legislative committees.

Ms. Wojcicki answered that MHBE staff feel that it is important to have the proposed regulations in place before the start of the upcoming Open Enrollment period on November 1, 2016.

Mr. Apfel inquired if there was a presumed timeline for getting all necessary regulations on the books based on the experience of trying to promulgate the Chapter 07 regulations.

Ms. Wojcicki stated that given this experience it seems likely that at least another year will be used to replace all of the agency's interim procedures and operating policies with formal regulations codified in COMAR.

Chairman Mitchell stated that it is important for us to be conscious of the frustration of the insurers who are needed for this system to work. Although their angst may stem from the marketplace and profitability/pricing issues, which MHBE does not control, this pent-up frustration will at least partially be manifested in opposing more government regulation. In other words, no matter how

transparent our process is, and how logical our decisions may be, some carriers will be unhappy with the regulations we propose.

Mr. Steffen commented that it is advisable to resolve as many issues with stakeholders as possible in the drafting/development stage prior to the submission of proposed regulations to legislative committees.

Chairman Mitchell proposed that MHBE staff invite the AELR Committee chairs to attend the presentations to the HGO and Finance committees.

Mr. Apfel moved that the Board adopt a Resolution<sup>7</sup> authorizing and directing MHBE staff to take the next steps required for the promulgation of the regulations. Mr. Saquella seconded the motion. The motion passed unanimously.

### **General Comments and Questions**

Mr. Apfel requested that MHBE staff provide the Board with a document describing a “big-picture” sense of the main issues facing MHBE over the coming fiscal year and some of the agency’s broader goals.

### **Adjournment**

The meeting was adjourned at approximately 3:00 PM.

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<sup>7</sup> Available at <http://www.marylandhbe.com/wp-content/uploads/2016/02/Resolution-of-Board-of-Trustees-Approving-Submission-of-Proposed-Amendments-To-COMAR-14.35.01-and-14.35.07-6.20.16.pdf> and attached hereto.

