



Maryland Health Benefit Exchange Board of Trustees

May 21, 2018

2:00 p.m. – 4:00 p.m.

Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, MD 21215

Members Present

Robert R. Neall Chair
S. Anthony (Tony) McCann, Vice Chair
K. Singh Taneja

Ben Steffen, MA
Dana Weckesser

Members Absent

Linda S. (Susie) Comer
Sastry Dhara

Alfred W. Redmer, Jr.

Also in Attendance

Joseph Fitzpatrick for Alfred W. Redmer, Jr. (MIA)
Lourdes Padilla, Secretary, Maryland Department of Human Services
Michele Eberle, Executive Director, Maryland Health Benefit Exchange (MHBE)
Andrew Ratner, Chief of Staff, MHBE
Venkat Koshanam, Chief Information Officer, MHBE
John-Pierre Cardenas, Director, Policy & Plan Management, MHBE
Heather Forsyth, Director, Consumer Assistance, Eligibility & Business Integration, MHBE
Betsy Plunkett, Director, Marketing & Web Strategies, MHBE
Aaron Jacobs, Director, Organizational Effectiveness and Human Resources, MHBE
Sharon Stanley Street, Principal Counsel & Assistant Attorney General, Office of the Attorney General

Welcome & Introductions

Secretary Neall welcomed everyone to the Board meeting.

Approval of Meeting Minutes

The Board reviewed the minutes for the April 14, 2018 open meeting. Ms. Weckesser noted that one substantive change and several minor technical corrections to the minutes were necessary. The substantive change appeared on page eight in paragraph four, where Ms. Weckesser proposed that the phrase, “discussed the issues that MHBE faces with the current contractor” replace the existing phrase, “discussed the issues with the current contractor.” The Board voted unanimously to approve the minutes of the April 14, 2018 open meeting as amended.

Executive Update

Michele Eberle, Executive Director, MHBE

Ms. Eberle thanked Secretary Neall and commented that the meeting would include a lot of material regarding the 1332 waiver application. She thanked the Board members who attended the public hearings on the 1332 waiver application over the previous 30 days. She also thanked the Maryland Insurance Administration (MIA) for working closely with the MHBE to prepare the 1332 waiver application and associated tasks.

Next, Ms. Eberle discussed the recently released proposed premium rates for the 2019 plan year. She explained that the CareFirst health maintenance organization (HMO) product, with a little over 120,000 members, proposed an average rate increase of 18.5 percent, while Kaiser Permanente, with over 73,700 members, proposed an average

rate increase of 37.5 percent. The CareFirst preferred provider organization (PPO) products, with about 14,000 members, proposed an average rate increase of 91.4 percent. Ms. Eberle noted that the MIA will host a public hearing on the proposed rates on July 9, 2018 at 10 A.M.

Ms. Eberle then described the contents of the Maryland Health Connection software release scheduled for May 24, 2018, explaining that it would deploy new features including automatic assignment of Medicaid enrollees to a managed care organization (MCO), federal verification of identity at Level of Assurance three (LOA3) as required by the Centers for Medicare & Medicaid Services (CMS), user interface enhancements, and a new income flow process in the application for subsidies.

Next, Ms. Eberle announced that, of the 1.2 million Marylanders using Maryland Health Connection, the agency currently has only 591 open escalated cases. She added that 80 percent of open cases have been open for fewer than 14 days. Thirty-nine percent of open cases are for Medicaid enrollees whose most common issues involve income and identity verification. Forty-four percent of open cases are for qualified health plan (QHP) enrollees, most of whom are experiencing enrollment problems. Standalone dental plan enrollees account for three percent of open escalated cases.

Ms. Eberle then noted that the agency is in the final stages of completing a Memorandum of Understanding (MOU) with the Maryland Department of Health regarding the integration of the MHBE into MDThink.

Next, Ms. Eberle stated that, at their June meeting, the Board will be presented with several procurement requests for consideration and a vote. One such request will be \$442,000 for Akamai licenses that include infrastructure, security, and traffic access technologies, as well as configuration and product support. Another request will be \$300,000 for maintenance and operations support for the Corticon rules engine. She added that both procurements will use an invitation for bid process, rather than a request for proposals process.

Grant Award Policies and Procedures

Heather Forsyth, Director, Consumer Assistance, Eligibility & Business Integration, MHBE

Ms. Forsyth began by describing the proposed internal policy document provided to the Board as setting forth procedures to facilitate the orderly transaction of grant business between the MHBE and its various Connector Entities (CEs). She pointed out that the procedures are inward-facing, are not required by statute, and confer no rights to CE applicants.

Next, Ms. Forsyth drew distinctions between grants and contracts, noting that grants are not subject to the same Maryland procurement law as contracts, that grants generally contain fewer specific performance standards than contracts, and that grants have conditions and focus on objectives, while contracts have deliverables and are requirements-based. She added that the MHBE attempts to compose conditions and objectives in such a way as to entice qualified applicants to describe how they will provide the most successful Navigator program possible.

Ms. Forsyth then presented a clause included in all grant solicitations beginning in 2017:

“This grant solicitation is not subject to the MHBE Procurement Policies and Procedures. By submitting an application in response to this Grant Solicitation, the applicant acknowledges that the MHBE’s grant application and review process and award determination are not subject to protest.”

Next, Ms. Forsyth described the lifecycle of a CE grant wherein the agency issues a request for applications (RFA) every three years with funding for one year along with two optional one-year renewal periods, reviews applications, recommends grantees to the Board for approval, executes agreements with the grantees, and manages ongoing oversight of the grantees.

Ms. Forsyth then listed the MHBE’s criteria for evaluating grant applications and explained how applications are ranked.

Secretary Neall asked what happens when a grantee fails to perform adequately. Ms. Forsyth replied that the MHBE has not had that happen to date. Secretary Neall pointed out that CEs are small organizations for whom the loss of a

single key person could be a calamity. Ms. Forsyth responded that, in the past, an existing CE decided not to renew its grant application whereupon two other existing CEs bid on that territory. She added that key personnel have left CEs in the past, but that the organizations have enough staff to make such departures non-catastrophic. She explained that more than half of all Navigators have been on board since the first open enrollment. With regard to the performance of CEs, Ms. Forsyth cited ongoing quarterly reporting on CE objectives and goals as reason to believe the agency will not be caught off guard by serious issues of this type.

Noting that the CE grants are for fixed sums of money and thus leave the quality of the proposal as the only factor to differentiate one applicant from another, Secretary Neall asked whether the CEs face any competition for the grants. Ms. Forsyth replied that when the program had two regions with no incumbent, there was some competition among CEs already covering other regions. She added that the Navigator program is regionally focused, leading the agency to value local area knowledge of CE staff quite highly.

Ms. Forsyth expanded on her explanation of ongoing CE oversight. She meets with each CE annually, and her program manager also meets with them once per year. In addition, the MHBE's compliance team performs a yearly audit on each CE; the results of which thus far have included only a few findings that have been swiftly addressed.

Mr. McCann expressed concern that the MHBE does not have a procedure to address a failing CE. He added that the current document combines both general procedures and procedures specific to CEs and recommended that the MHBE draft a generic policy for grants that would encompass both the current CE program, as well as future activity to be determined. In response, Ms. Forsyth noted that the CEs are the only grants that the MHBE currently offers, but that Mr. McCann's point was well taken.

Secretary Padilla asked whether the grant award process is subject to the State's minority business enterprise (MBE) goals. Ms. Forsyth replied that while the grants are not subject to the MBE requirement, the agency includes suggestions in the RFA that the MHBE is interested in minority business involvement, especially given the focus on underserved and vulnerable populations.

Mr. Steffen, noting that last year's grant process resulted in a protest, asked about the due process rights of unsuccessful applicants. Ms. Forsyth referred the question to counsel. Ms. Street replied that the occurrence of the protest last year prompted the agency to include the language in the RFA excluding the applicants from protesting. She added that the MHBE is currently drafting public-facing regulations on this process, and that applicants' only due process would be directly to circuit court, which would impose a very high standard. Mr. Steffen commented that the protest last year was successful. Ms. Street pointed out that the action last year was technically not a protest—that the agency allowed the applicant to use the protest mechanism, and was not successful. Ms. Street acknowledged the lack of outward facing regulation as being an issue the agency is working to address. Mr. Steffen, noting that the Board must ultimately decide these issues, declared that having a process for an unsuccessful applicant is highly desirable.

Mr. McCann asked whether the proposed language regarding protest would be appropriate if it were true that the MHBE had to go before the Board of Public Works for grant approval and suggested that the Board revisit this topic in a few months. Ms. Street responded that, to her knowledge, grants do not go before the Board of Public Works.

Connector Entity Grant Renewals

Heather Forsyth, Director, Consumer Assistance, Eligibility & Business Integration, MHBE

Ms. Forsyth presented the Board with an overview of the CE program to support her request that the Board approve the proposed grant renewals. She explained the grant funding timeline from inception in 2013 to the next RFA scheduled for 2019. Ms. Forsyth went into detail regarding each CE, including its region, accomplishments, grant funding, key focus for the upcoming year, and strategies for achieving goals. She concluded her presentation by providing statistics for each region, including the percentage reduction in the uninsured population in the last two years, the estimated remaining uninsured population, enrollment goals for the coming year, and the distribution of grant funds to the region.

Mr. Taneja asked for further explanation of the relationship between the remaining uninsured, the enrollment goals, and the grant funds. Ms. Forsyth replied that the distribution of funds follows a formula accounts for overall population, the number of uninsured, and where the region falls on the spectrum of urban to rural.

Mr. Taneja noted that the uninsured count for the Capital North (Montgomery County) and Capital South (Prince George's County) regions are quite different, but that their grant funding was exactly the same. In response, Ms. Forsyth explained that the two regions were once one single region, but the agency split the region and its grant funding right down the middle a few years ago.

Mr. Steffen asked whether any CEs have returned any grant money. Ms. Forsyth replied that, two years previously, the program changed to a reimbursement model wherein the entities must first spend the money themselves then submit invoices for reimbursement by the MHBE. She noted that the Capital North region had an unexpended balance one year due to missing the cutoff for reimbursement.

Ms. Weckesser moved to approve the grant extension for fiscal year (FY) 2019 to the existing CEs. Mr. McCann seconded the motion. The motion was carried with no opposition.

Marketing Procurement Award

Betsy Plunkett, Director, Marketing & Web Strategies, MHBE

Ms. Plunkett gave the Board an overview of the MHBE's request for proposals (RFP) process to secure a vendor for marketing services. She began by detailing the timeline of the RFP process, culminating in her recommendation at the meeting. She listed the services to be rendered under the contract and presented the recommendation that the contract should be awarded to GMMB, Inc., the incumbent vendor.

Next, Ms. Plunkett presented information regarding the subcontractors included in GMMB's bid, noting that the contract would include MBE participation above the threshold required by law. She delineated the value of the contract at \$2,275,000 divided into \$1,229,838 in state funds and \$1,045,162 in federal funds, and she described the term of the contract as having a base term of FY 2019 with two one-year options for FYs 2020 and 2021. She then asked the Board for a vote in approval of the contract.

Ms. Weckesser, noting that ten vendors attended the pre-proposal conference, asked why only two proposals were submitted in response to the RFP. Ms. Plunkett answered that, while it is impossible to know why only two proposals were received, some of the vendors at the pre-proposal conference may have been potential subcontractors.

Secretary Neall asked the meaning of the term "reasonably susceptible," used in reference to the proposals submitted in response to the RFP. Ms. Plunkett replied that the term applies to any proposal that is free of defect.

Mr. Steffen asked how the marketing effort interacts with the CE program. Ms. Plunkett explained that the MHBE and its marketing services vendor work very closely with CEs, including monthly meetings and biweekly conference calls, as well as providing customized marketing collateral to CEs.

Secretary Neall asked whether the incumbent's current contract is similarly structured to the one recommended, specifically a single base year term with two one-year extension options. Ms. Plunkett replied in the affirmative. Secretary Neall then asked if he was correct in his understanding that the vendor's incumbency could number six years, which Ms. Plunkett affirmed. She noted that the MHBE contracted with a different vendor during the agency's first three years.

Mr. Taneja asked about the benchmarks the agency uses to evaluate success in a marketing services vendor. Ms. Plunkett replied that the agency uses data from consumer assistance organizations, as well as the results of efforts including events and advertising on television, radio, print, and other media. Ms. Eberle added that the MHBE has had a special focus on increasing enrollment among African American, Hispanic, and rural Marylanders and that the incumbent vendor's targeted marketing campaigns were important to the success of that effort.

Mr. Taneja moved to approve the contract. Mr. McCann seconded the motion. The motion was carried with no opposition.

Summary of Public Comment and Testimony Received During 1332 Waiver Application Hearings and Staff Recommendations

John-Pierre Cardenas, Director, Policy & Plan Management, MHBE

Mr. Cardenas gave the Board a presentation about the recently completed public comment period for the Section 1332 State Innovation Waiver application. He thanked the MIA for their efforts in this endeavor.

Mr. Cardenas began by describing the planning, execution, and results of the public comment period. He listed the hearing dates and locations. He presented several frequently asked questions from the hearings and laid out themes that emerged from the public comments. He explained that several of the themes that emerged from the hearings were not specific to the 1332 waiver process.

Then, Mr. Cardenas presented the MHBE staff recommendation that the Board adopt a resolution incorporating portions of the feedback received during the public comment period into the 1332 State Innovation Waiver application. Specifically, the language used in the resolution would require the Board to take regulatory action on potentially duplicative payments to issuers under the state reinsurance program and the federal risk adjustment program. In addition, the resolution would allow the MHBE to include in the waiver application the possibility that the state reinsurance program will include financial incentives to issuers to manage high risk and high cost enrollees.

Mr. Cardenas then laid out the next steps in the waiver process, leading to the application submission deadline of May 31, 2018 and followed by the release of a study by the Wakely Consulting Group on the possible duplication of payments by June 30, 2018.

After some discussion among Board members regarding the language to include in the resolution, Secretary Neall moved to change the word “will” in the first resolution clause to “may.” Mr. McCann seconded the motion.

Mr. Steffen asked about the scope, nature, technique, and methodology of the Wakely study. Mr. Cardenas, noting that the Board has been provided with a document containing these details, explained that Wakely will project 2019 results based on 2017 data, then apply both the risk adjustment and the reinsurance rules to determine the degree of overlap.

Ms. Weckesser asked for confirmation that the Wakely study will uncover potential double payments on the level of the individual subscriber. Mr. Cardenas confirmed that it would.

Mr. McCann noted that the federal risk adjustment program is available only when subscribers have 1 of 79 conditions and asked whether the Wakely study will thus find that anyone with 1 of those conditions will result in a double payment. Mr. Cardenas replied that the issue to be uncovered in the study is whether the double payments will result in the issuer being reimbursed for more than 100 percent of their cost. Mr. McCann asked why the Board would not simply say that no issuer can be reimbursed more than 100 percent of their cost. Mr. Cardenas agreed that it would be a good regulation for this program.

The motion to change “will” to “may” passed with no opposition.

Mr. Steffen moved to adopt the resolution¹ as amended. Mr. McCann seconded the motion. The motion was carried without opposition.

¹ <https://www.marylandhbe.com/wp-content/uploads/2018/05/Resolution-1332-State-Innovation-Waiver-Application.pdf>

Closed Session & Adjournment

Mr. McCann moved that the meeting be closed in accordance with General Provisions Article § 3-305(b)(7) to consult with counsel to obtain legal advice.² The Board voted unanimously to move into closed session. For topics discussed and actions taken, please see the Statement for Closing a Meeting.³

The meeting adjourned in closed session at 3:57 PM.

² General Provisions Article § 3-305(b)(7) allows a closed session to consult with counsel to obtain legal advice. Article § 3-305(b)(14) allows a closed session to discuss, before a contract is awarded or bids are opened, a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.

³ Statement for Closing a Meeting: <https://www.marylandhbe.com/wp-content/uploads/2018/05/5.21.18-Closed-meeting-statement.pdf>