



Maryland Health Benefit Exchange Board of Trustees

February 18, 2020
2 p.m. – 4 p.m.
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, MD 21215

Members Present:

Robert R. Neall, Chair
S. Anthony (Tony) McCann, Vice Chair
Alfred W. Redmer, Jr.
Mary Jean Herron
Ben Steffen, MA
Dana Weckesser
Dr. Rondall Allen (by phone)
Robert D'Antonio, PhD
K. Singh Taneja (by phone)

Also in Attendance:

Michele Eberle, Executive Director, Maryland Health Benefit Exchange (MHBE)
Andrew Ratner, Chief of Staff, MHBE
Tony Armiger, Chief Financial Officer, MHBE
Venkat Koshanam, Chief Information Officer, MHBE
Caterina Pañgilinan, Chief Compliance Officer, MHBE
Sharon Stanley Street, Principal Counsel, Office of the Attorney General
Johanna Fabian-Marks, Director, Policy & Plan Management, MHBE
Betsy Plunkett, Director, Marketing & Web Strategies, MHBE
Raelene Glasgow, Procurement Manager, MHBE
Lourdes Padilla, Secretary, Maryland Department of Human Services (DHS)

Welcome and Introductions:

Secretary Neall opened the meeting and welcomed all in attendance.

Approval of Meeting Minutes

The Board reviewed the minutes of the January 20, 2020 open meeting. The Board voted unanimously to approve the minutes of the January 20, 2020 open meeting.

Public Comment

Secretary Neall invited members of the public to offer comment. No members of the public offered comment.

Executive Update

Michele Eberle, Executive Director, MHBE

Ms. Eberle explained that the state's legislative session is underway with several bills of interest to the agency. The MHBE is closely following legislation including bills to fund premium subsidies with reinsurance dollars, a small business premium subsidy program, and to add chambers of commerce to the definition of association health plans. Ms. Herron asked how the association health plan change would impact the MHBE if passed. Commissioner Redmer explained that similar bills have not passed previously because this would fragment the single risk pool in Maryland's small group market. Finally, Ms. Eberle noted that the MHBE has two budget hearings this week.

Next, Ms. Eberle discussed the recently released report from the Maryland Department of Budget and Management (DBM). The document includes a recommendation that the MHBE's mandated funds be reduced from \$35 million to \$32 million. She pointed out that the agency understands the rationale for the recommendation, since the MHBE has never spent the entire \$35 million, but plans to use the additional funds to achieve its goals in the small group market. Since the federal government does not match spending on small group programs, the budget dollars are necessary. Secretary Neall asked for confirmation that the recommended budget reduction amount comes from DBM and not the Maryland Department of Legislative Services (DLS). Ms. Eberle replied in the affirmative, adding that the DLS document is not yet available.

Ms. Eberle then noted that the open enrollment for the 2020 plan year has ended. She shared developments from across the nation, including a decrease in premiums in 31 states and an attempt by Blue Cross insurers to begin manufacturing drugs themselves, beginning with insulin. Among the states, California and Massachusetts had the highest increases in enrollment. She noted that both states have additional subsidies and mandates and explained that the agency will look for similar effects of the Maryland Easy Enrollment Program.

Next, Ms. Eberle discussed the impact of federal action on the MHBE. She explained that the public charge rule takes effect this month and could lead to a decline in the use of public services. In addition, carriers will be required to bill any portion of premiums that cover abortion services separately from any other premium, on two different invoices. This rule is the subject of several lawsuits, she noted, adding that the risk of increased burden on the MHBE is quite high. Finally, she described a recommendation from federal authorities that all exchanges halt automatic renewals of coverage, in response to which the agency submitted comments in opposition.

Ms. Eberle concluded her remarks by announcing changes in the MHBE's staff, including promotions, vacancies, and new hires.

Procurement Policy Adoption

Caterina Pañgilinan, Chief Compliance Officer, MHBE

Tony Armiger, Chief Financial Officer, MHBE

Mr. Armiger presented the proposed changes to the MHBE procurement policies, noting that the Board reviewed the changes during its November meeting. He laid out three proposed changes: establishment of a minimum solicitation period, addition of Intergovernmental Cooperative Purchasing Agreements (ICPAs) as a procurement method, and a revision to the contract approval process.

Next, Mr. Armiger discussed the minimum solicitation period change in more detail. He explained that the proposed change arose from an audit finding by the Office of Legislative Audits (OLA) and would require that the MHBE keep invitations for bids and requests for proposals open for a minimum of 14 to 21 days. Ms. Weckesser asked whether the 21 days in the proposal would be the maximum period allowed. Mr. Armiger replied that the range refers to the minimum period and that the agency could extend the period as long as it likes. Commissioner Redmer asked why the minimum period is so brief. Mr. Armiger answered that the short period is due to the speed at which the MHBE operates. Commissioner Redmer noted that his agency, the Maryland Insurance Administration, received six bids on their actuarial services contract with a 30-day solicitation period, whereas the MHBE received only one bid on their similar contract that was only out for 17 days. Mr. Armiger acknowledged the point. Secretary Neall asked what proportion of the typical MHBE procurement timeline is covered by 14 to 21 days. Mr. Armiger replied that the 14 to 21 day time period represents the bulk of the MHBE's procurement time. Raelene Glasgow, Procurement Manager for the MHBE, added that the agency's procurements typically take place within 19 to 25 days. With regard to the actuarial services contract, Ms. Glasgow explained that the agency was rushed for time and did receive inquiries from two other potential bidders, neither of whom identified the duration of the solicitation period as the reason they declined to bid. Ms. Herron stated that including a range of days as a minimum is confusing and asked that the policy change be amended to state a single number of days as the minimum solicitation period. Ms. Pañgilinan explained that OLA's finding included a range of days as the minimum. Ms. Herron asked that, if the agency establishes a maximum solicitation period, it be set at least at 60 days. Mr. McCann cautioned against establishing a maximum in policy and agreed that the minimum should not be a range. Dr. D'Antonio expressed discomfort with the length of the minimum solicitation period proposed, adding that federal solicitations have a 30-day minimum and that shorter solicitation periods would advantage incumbents. He stated that the minimum should be no lower than 30 days. Mr. McCann noted that other state agencies operate under rules whereby small procurements of less than \$50,000 may be closed quickly, but anything over that dollar amount would require a longer period. He asked whether the MHBE can use the same rules. Ms. Glasgow replied that the MHBE's procurements operate under a different set of rules than other state agencies. Ms. Eberle noted that the proposed change in policy language came directly from the OLA recommendation, but that the Board has the final procurement authority for the MHBE and can decide not to adopt the OLA language. After some further discussion, Commissioner Redmer moved to amend the proposed change from "14 to 21 days" to a "minimum of 30 days." The motion was adopted with one opposition vote. Sharon Stanley-Street, counsel to the MHBE, asked whether the same modification would apply to both invitations to bid and requests for proposal. Secretary Neall answered in the affirmative.

Mr. Armiger then described the proposed change that adds a new procurement method, the ICPA, explaining that it would allow other state agencies to "piggyback" on the MHBE's contracts. He noted that it would not apply to such things as property/office rental. Ms. Weckesser asked why the

proposed language includes nonprofits as potential beneficiaries of the arrangement. Ms. Stanley-Street replied that the language comes from the Code of Maryland Regulations (COMAR).

Next, Mr. Armiger discussed proposed changes to the contract approval process. He explained that the new policies would establish procedures by which the MHBE will approve ongoing and new task orders, as well as modifications to contracts. Commissioner Redmer asked why task orders would not come before the Board. In response, Mr. Armiger described the time constraints under which the MHBE often operates with regard to task orders, given that the Board sometimes does not meet for two months. Ms. Eberle provided context of the master contracting system whereby the Board gives its approval to an overall contract under which the task orders are issued. She described a hypothetical situation where one person working under a task order has to be replaced by another very quickly. Secretary Neall noted that any process established in policy will be used as the standard by which auditors judge the agency.

Mr. Steffen moved to adopt the proposed policies as amended. Dr. D'Antonio opposed the motion. The motion was approved.

Procurement Items: Salesforce Renewal

Venkat Koshanam, Chief Information Officer, MHBE

Raelene Glasgow, Procurement Manager, MHBE

Ms. Glasgow presented the Board a request for approval of a newly expanded contract for the Salesforce platform with Carahsoft Technology Corp. She provided a license-by-license breakdown of the request, noting that the contract not-to-exceed (NTE) amount increased by nearly \$1.2 million.

Commissioner Redmer asked how the agency will use the sandbox environment. Mr. Koshanam explained that, until now, the MHBE has used Salesforce primarily as the customer relationship management (CRM) system for the call center, but that in the last year and a half, the use of Salesforce has expanded for other internal functions including procurement, human resources (HR), and escalated case tracking. He added that more Salesforce projects are planned for the next fiscal year. In order to accomplish these expansions, Mr. Koshanam noted, the existing CRM system must be segregated from the others, making it necessary to stand up a full copy of the existing system for things like load testing. Commissioner Redmer asked whether the expansion projects will move existing functions into the sandbox. Mr. Koshanam replied that many of the functions the agency will deploy into Salesforce currently operate manually at the MHBE.

Mr. Taneja asked whether the functions being moved into Salesforce will result in staff changes. Mr. Koshanam replied in the negative, noting that those additional workers already approved by the Board for improvements to the CRM will be deployed on the project and can be used for the other Salesforce tasks.

Ms. Herron asked why the MHBE intends to build custom HR and finance applications in Salesforce rather than using commercial off-the-shelf (COTS) software. Mr. Koshanam answered that the project would align with the MHBE's specific workflow. Ms. Eberle clarified that the Salesforce solution for HR and finance are intended to manage the internal workflow of the MHBE for tasks such as gathering

signatures. Mr. Armiger added that the agency will not develop new finance and accounting systems and will continue using the state's systems.

Ms. Herron moved to increase the Not-to-exceed (NTE) amount of the Salesforce license procurement contract with Carahsoft Technology Corp from \$2,596,746.24 by \$1,192,076.05 to \$3,788,822.29 and award contract to Carahsoft Technology Corp in the amount of \$1,192,076.05 to renew Salesforce Licenses for the period from March 2, 2020 to March 1, 2021. The motion was approved unanimously.

Procurement Items: Actuarial Services Contract

Johanna Fabian-Marks, Director, Policy & Plan Management, MHBE

Raelene Glasgow, Procurement Manager, MHBE

Ms. Fabian-Marks presented the Board with a request to increase the NTE amount of the contract for actuarial services with Lewis & Ellis for the first year of the contract. She explained that the contract includes additional unanticipated work—the need to generate state reinsurance program (SRP) parameters for both 2020 and 2021 in the same year and an analysis of the proposal by the Affordability Workgroup to provide a state premium subsidy to young adults between 400 and 600 percent of the federal poverty level (FPL). She added that the need to generate two years of SRP parameters is a singular event and that, going forward, only one set of parameters will need to be generated per year.

Commissioner Redmer asked whether the additional analysis work has already been performed by the contractor. Ms. Fabian-Marks answered in the affirmative.

Ms. Herron asked for a breakdown of the requested NTE increase between the Affordability Workgroup analysis and the 2021 parameters. Ms. Fabian-Marks answered that \$54,000 is attributable to the 2021 parameters and \$65,000 to the Affordability Workgroup analysis. She added that the MHBE will come to the Board for approval for such projects in the future. Ms. Eberle stated that some portion of the additional expense will be covered by the federal reinsurance dollars for studies, adding that the invoices for the additional work were not in line with the existing NTE amount.

Mr. Taneja asked whether the additional NTE amount would continue into the contract extension years. Ms. Fabian-Marks answered in the negative.

Secretary Neall asked whether the contractor informed the MHBE that they had exceeded the NTE. Ms. Fabian-Marks replied that they had discussed it with her predecessor.

Mr. McCann asked whether the agency will have to match the additional federal funds. Mr. Armiger clarified that the money under discussion is reinsurance funds.

Mr. McCann asked what processes or systems are in place to monitor contractors' possibly exceeding their NTE. Ms. Eberle replied that it is the responsibility of the contract monitor, and thus an internal issue for the MHBE. She added that none of the invoices that exceed the NTE have yet been paid.

Commissioner Redmer asked for the total value of the proposed year one modified contract and how much has been billed. Ms. Fabian-Marks answered that the year one contract value as proposed would be \$223,000 and that the contractor has invoiced approximately \$117,000 to date. Commissioner Redmer expressed opposition to increasing the NTE and urged the agency to manage its contractor more closely.

Mr. McCann asked who within the MHBE has the authority to request additional work of the contractor. Ms. Glasgow replied that the program manager has that authority. Mr. McCann asked for confirmation that the program manager has the authority to request entirely new work, rather than routing a request for scope expansion through the Board. Ms. Eberle acknowledged that the agency's internal controls failed in this case.

Secretary Neall noted that auditors will find that the NTE was exceeded and will require evidence of procedures to ensure it does not happen again. Commissioner Redmer asked whether such procedures exist. Dr. D'Antonio asked why the Board is hearing of this only now.

Commissioner Redmer reiterated that he had not heard any discussion of a process by which the agency will ensure this incidence does not reoccur. Ms. Eberle replied that the agency has such a process but that it was not followed in this case.

Ms. Herron asked whether the Affordability Workgroup analysis has been completed. Ms. Fabian-Marks answered in the affirmative. Ms. Herron then noted that the MHBE is liable for that money since the work has been completed. Ms. Eberle suggested that the agency can stop the remaining work. Ms. Herron pointed out that the first year NTE will be exceeded even in that case, since the Affordability Workgroup analysis is an expansion of the scope of work. Mr. Taneja expressed concern that the Board heard of this issue seven months later. Ms. Herron added that a staff transition complicates the issue.

Mr. Steffen asked how the matter impacts other participants in the market. Ms. Fabian-Marks replied that the MIA rate-approval process timing could be impacted. Ms. Stanley-Street added that most contracts contain language constraining who can authorize contract modifications and that there may be mechanisms to address the contractor's having worked outside of that process. Commissioner Redmer objected, stating that the contractor undertook additional work for which they should be paid. He asked whether his understanding is correct that the contract has most of its work in year one with a lighter load in years two and three. Ms. Fabian-Marks replied that the MHBE intends to ask the contractor to perform a new variation that would constitute additional work. Commissioner Redmer pointed out that additional work provides opportunities for the agency to manage the contractor to the NTE figure.

Dr. D'Antonio stated that the MHBE owes a bill that it has to pay and that the agency has an internal issue it must deal with. He added that communication between the MHBE and the contractor must be improved.

Ms. Eberle asked whether the total contract including all option years could be kept at the same value, while shifting NTE dollars from years two and three into year one. Ms. Stanley-Street replied that the Board could make that modification, adding that any such possibility should be disclosed up-front to contractors. Ms. Herron noted that transferring NTE money from years two and three into year

one will not address the expansion in the scope of work. Ms. Stanley-Street added that, since years two and three are option years, the agency does not know whether the contract will continue into those years.

Mr. McCann asked whether his understanding is correct that the original contract covered analysis of three years' data but that the contractor is now being asked to analyze four years. Ms. Fabian-Marks answered in the affirmative.

Secretary Neall called for a vote on Commissioner Redmer's motion to deny the increase in NTE. The motion was approved by a 5 to 4 vote.

Secretary Neall stated that all contractors should notify the agency of any instance wherein they would exceed the NTE, the scope of work, or both.

2021 Open Enrollment Dates and 2021 Estimated Reinsurance Parameters

Johanna Fabian-Marks, Director, Policy & Plan Management, MHBE

Ms. Fabian-Marks began her remarks by reminding the Board that, while the dates of open enrollment are established in regulation as extending from November 1 to December 15 of each year, they have the authority to modify those dates as circumstances require. She added that the MHBE does not intend to ask the Board to deviate from those dates for the 2021 plan year.

Next, Ms. Fabian-Marks discussed the parameters of the 2021 State Reinsurance Program (SRP). She noted that the Board must approve estimated parameters by April 1 with the final parameters established by December 1. She explained the importance of maintaining that schedule due to the interconnectedness of the reinsurance process with the MIA's rate approval process.

Ms. Fabian-Marks then displayed the actual results, including projected total costs, projected federal pass-through funding, and actual federal pass-through funding, of the 2019 and 2020 SRPs alongside the projections for the 2021 SRP. She noted that the actuarial contractor completed an analysis of the actual 2020 enrollment results showing that maintaining the 2019 and 2020 parameters will achieve the desired premium reduction.

Mr. Steffen asked why the federal pass-through funding in 2020 was so much higher than projected. Ms. Fabian-Marks answered that federal authorities included the impact of the Maryland Easy Enrollment Program in their calculations and applied more generous subsidy estimates than the actuarial contractor.

Ms. Fabian-Marks then presented the MHBE staff recommendation—to maintain the same attachment point, coinsurance rate, and overall cap as the 2019 and 2020 SRPs, with a carrier-specific dampening factor to be provided by the Commissioner of the MIA. Commissioner Redmer asked whether the MHBE has received feedback from carriers as to the attachment point. Ms. Fabian-Marks replied that the agency intends to open the proposed parameters to public comment after the Board votes, gather that feedback, and present it to the Board before final adoption.

Mr. Steffen, noting that 2019 data should be complete, asked whether the MHBE has identified any characteristics of the population whose claims triggered the SRP. Ms. Fabian-Marks answered that, while that information is not yet available, she will provide it to the Board before their final vote. Ms. Herron requested that any such data provided to the Board include results by carrier.

Mr. Steffen stressed the generosity of the \$20,000 attachment point. Ms. Fabian-Marks agreed, noting that it partly explains the generosity of the federal pass-through.

Commissioner Redmer expressed concern that carriers will not be incentivized to manage patients with chronic conditions. Ms. Fabian-Marks replied that the SRP includes provisions requiring the carriers to supply information on this issue. Mr. McCann commented that such monitoring is the responsibility of the Health Services Cost Review Commission (HSCRC).

Next, Ms. Fabian-Marks described the history and current status of the SRP dampening factor, describing a range of approaches, including claims- and risk-based methods as well as a hybrid claims- and risk-based approach developed by the MIA, resulting in a dampening factor of .773 for 2020. She outlined the next steps in the process of establishing the parameters, culminating in their final adoption at the July meeting of the Board.

Finally, Ms. Fabian-Marks asked that the Board approve the estimated parameters of the 2021 SRP.

Secretary Neall asked whether the dampening factor will deter new carriers from entering the market, expressing concern that Maryland has thus far been unable to attract other insurers. Mr. Steffen explained that, according to the evidence, concentrated insurance markets do not become less concentrated absent external influence. Ms. Eberle replied that the dampening factor is attractive to potential new market entrants.

Mr. McCann asked that the Board be given the opportunity to evaluate the parameters for the 2022 SRP much earlier in the process.

Commissioner Redmer moved to approve the estimated parameters of the 2021 State Reinsurance Program as presented. The motion was approved unanimously.

Closing

Noting the time, Secretary Neall announced that the Marketing presentation will occur during the April meeting.

Commissioner Redmer introduced Jimmy Williams, the new chief liaison of the MIA to the MHBE.

Adjournment

The meeting was adjourned.