AGENDA
PENNSYLVANIA HEALTH INSURANCE EXCHANGE AUTHORITY
BOARD of DIRECTORS MEETING

Date: February 19, 2020
Time: 12:00 p.m.
Location: The Keystone Building, 400 North Street, Hearing Room 3, Harrisburg, PA 17120

1.0 Preliminary Matters
- Meeting was called to order at 12:00 p.m.

1.01 Call to Order

1.02 Roll Call
- Paula Sunshine, IBC – absent, but designated Mark Nave as proxy
- Sheryl Kashuba, UPMC Health Plan - present
- Tia Whitaker, PACHC - present
- Antoinette Kraus, PHAN - present
- Mark Nave, Highmark - present
- Jessica Brooks, Pittsburgh Business Group on Health - present
- Todd Shamash, CBC – present by phone
- Laval Miller-Wilson, PA Health Law Project - present
- Dr. Rachel Levine, DOH - present
- Secretary Teresa Miller, DHS – represented by Lisa Watson (present)
- Commissioner Jessica Altman, PID - present

1.03 Approval of Previous Meeting's Minutes
***Recommended Motion**: To approve as true, correct and accurate the minutes recording the events, actions and details of the January 23, 2020 Public Meetings of the Pennsylvania Health Insurance Exchange Authority Board.*
- *Discussion:* None
- *Motion:*
  - Laval Miller-Wilson
- *Second:*
  - Tia Whitaker
- *Yays:*
  - All Board members
- *Nays:*
  - No one

1.04 Opportunity for Public Comment
- Please note that public participation is permitted at this meeting, as required by the Sunshine Act, 65 P.S. § 280.1. In the absence of official policy relating to public comment at Board meetings (which the Board anticipates will be forthcoming), and to ensure the orderly progress of today's meeting, all comments should be directed to the Chairperson, and should be limited to no more than five (5) minutes in duration.

Questions asked of the Chairperson or the Board as part of public comment may or may not be addressed at the meeting.

Public comment deferred until appropriate section being discussed.

2.00 Action/Discussion Items by the Board

2.01 Standard Administrative Updates

- Personnel
    - Heather Lemmon hired as Chief Financial Officer. She was formerly employed with PennDOT.
    - Erik Huet hired as a policy analyst. He was formerly employed with DOH.
    - David Thomsen hired as a senior policy analyst. He was formerly employed with DHS.
    - The Chief Information Officer position is currently open.
    - EDI, Information Security and Marketing/Communications manager positions are all currently open. Selection of candidates on these positions should be happening in the near future.

- Stakeholder engagement
    - Advisory council
        - The first meeting occurred February 7th.
        - On the agenda was policy development, processes to be implemented and topics which will be introduced in the near future.
    - Brokers
        - There was broker representation on the advisory council.
        - Additionally, the organization, Insurance Agents and Brokers, has been engaged and updated on processes and potential policies from the Exchange.
    - Insurers
        - Working groups (biweekly) -there are both policy and technical biweekly meetings occurring with all medical and dental carriers participating on the Exchange in the upcoming open enrollment period.
        - The SharePoint site is live for participants of these calls and this is how information is being disseminated. There are live updates on questions being asked and comprehensive answer logs.
    - Navigators and Assisters
        - An after-action review occurred with representatives of Navigator and assister groups. There were participants from the Insurance Department and the Exchange Authority present and feedback was provided on past open enrollment periods and elements which could be improved upon.
    - Other community groups
        - The Exchange Authority scheduled an initial meeting on February 21st with the PA Coalition for Oral Health in an effort to engage dental advocacy groups.

        - The Secretary of DOH also informed the Exchange that the Commonwealth now has a state-wide dentist with whom the Exchange can connect in order to gain a better perspective on how to meet the needs of dental insurers during the transition.
        - The Exchange Authority is continuing to work with Aligning Solutions to Advance Programs ("ASAP") to establish a list of community groups.
    - CMS/CCIIO
        - The Exchange Authority Executive Director and the Insurance Commissioner traveled to Washington, D.C. last week and met with the Director of CCIIO. The meeting was very productive, and the Exchange's progress was determined to be on a very positive track.

2.02 Standard Technology and Operations Update

- As a reminder, in the status report, the color yellow indicates "at risk." There are a few yellow sections in the report, including establishing connectivity with insurers, gather all requirements, and draft submission of the security documents. There are processes in place though to address these risks. Some are a bandwidth issue.
- As a reminder, in the status report, the color green indicates "on track." There are many green sections in the report, but one call-out is the roadmap from GetInsured. This document is still in process, but it is green because it is on its way and will prompt further conversations.
- System requirements and design process
    - The Exchange is working closely with New Jersey, as they are also working with GetInsured.
    - After many discussions, there are over 200 items which are potentially requirements candidates for the system.
    - Identifying core requirements will be completed by end of February, then conversations will continue throughout March identifying prioritized requirements.
- Informational decisions
    - The APTC percentage will default to 100% when customers are plan shopping in the system.
    - The Exchange will need to decide what the default APTC percentage should be at auto-renewal. Currently, it always defaults to 100%, but the decision could be made to have it default to the percentage the individual utilized the previous year.
        - Feedback on this decision has been mixed. The Exchange's decision is to try to keep the default percentage as close to the current percentage as possible, pending technological feasibility
    - Two factor authentications
        - The Exchange decided to require two-factor authentications for brokers and assisters, understanding the importance of having the authentication process run smoothly, as not to lose distribution channels.

2.03 Branding Update

- Representatives from the Bravo Group spoke on the current branding work.

- Bravo Group is the largest public relations group in the state, and it specializes in healthcare research. It will be partnering with Mendoza group, who will serve as a strategic subcontractor.
- This research approach was designed around the problem of, "what are the problems to be solved by the PHIEA brand?"
  - There is currently an estimated 5.5% uninsured rate in Pennsylvania, and in order to combat this rate, the Exchange's brand needs to be disseminated through various distribution channels to reach consumers.
  - Research is currently in progress, but Bravo Group representatives will be back to address the Board in March to present research strategies and findings.
  - The tentative timeline is as follows:
    - Creative testing – April 8
    - Creative recommendation – early May
    - Brand guidelines – June 15
- By the next Board meeting, March 19th, names for the Exchange will be voted on.

2.04 Update from Chini Krishnan of GetInsured

- GetInsured was founded in 2005 and formed to deliver cloud-based solutions for states. The team is very mission-oriented and state exchanges are at the core of their work.
- The Executive's focus is currently on top level issues including migration, Medicaid integration and CMS's viewpoint of operations.
- During the question and answer session, the following questions were raised:
- Is this the first time GetInsured has brought up two states at one time?
  - Response: No, GetInsured brought up Minnesota and Nevada at the same time last year, and part of California.
- How is coordination with Medicaid going?
  - Response: Coordination is going well, there is much involvement form both sides.
- Can you comment on the workings for the call center?
  - Response: GetInsured has been working with the selected call center and call center representatives for some time and there was a signed agreement for a facility just put into place. He has complete confidence in the selected call center team.

2.05 Review and Discussion of the 2021 Plan Certification Requirements and Process

- Comments will be taken at the end of this section from the public.
- There was a concern raised by a few board members about the timing on voting for these plan certification guidelines and whether the two weeks provided for stakeholder feedback was sufficient. A question was asked about the impact of deferring to March.
  - The response to this concern was that these plan certification guidelines are being moved along quickly in the interest of aligning them with the

plan certification guidelines from the Insurance Department, which are being shared with insurers at the beginning of March.
        - The consensus from all board members was to move forward with discussion on each of the plan certification guidelines and if there is consensus on individual certification requirements, then those can be voted on, but if there is disagreement, those requirements will be deferred.
- The proposed plan certification guidelines are in addition to state and federal regulations.
    - **Proposed Requirement #1 – Neither the Insurer nor any subsidiary or affiliate of the Insurer may offer short-term limited duration (STLD) plans in the individual market within the Commonwealth for the 2021 plan year.**
        - There were no arguments put forth from the plans saying that STLD were viable plans.
        - There appears to be consensus that these plans are confusing and there are difficulties in explaining the differences to consumers.
        - There were concerns raised about having this requirement in the future if the environment for STLD plans changes. Staff reiterated that plan certification requirements are considered on an annual basis.
    - **Proposed Requirement #2 - Require plans to incorporate Opioid crisis guidelines, implemented by Medicaid in March 2018.**
        - All QHPs have already incorporated the Opioid crisis guidelines into their plans.
        - The concern was raised that this requirement could be viewed as a new mandate, which could incur a cost for the state. There is a currently a draft federal rule, expected to be finalized later this year, on the incurring of this cost for states.
        - To further explain the additional cost to the state, the ACA rule says that since 2012, if there are any new state mandates which go above EHBs defined by the federal rules, then additional costs associated with those state mandates come at a cost to the state (there are tax credit implications). The federal government has never enforced this rule on the states; however, they have put forth a proposal on how they are going to begin enforcing this rule and charging states for additional mandates. There is also the potential that it will apply retroactively. This could be a significant cost to the Commonwealth.
        - The Insurance Commissioner stressed that all Pennsylvania insurers are already participating in the agreement and so, at the present moment, this proposed requirement is moot, and could only subject the Exchange to unnecessary liabilities.
        - Laval Miller-Wilson emphasized the fact that he believes the Exchange should be part of addressing the opioid crisis, but does not want to subject the Exchange to additional monetary liabilities, so he is comfortable with tabling this requirement for plan year 2021, but would like to revisit it for plan year 2022.
            - The risk was again identified as being, if CMS determines this requirement to be an additional mandate, then the

state would have to defray the cost by sending money to the federal government.

- Another question was raised about the risk that insurers would identify the loophole with covering medication assisted treatment and stop providing coverage.
    - Commissioner Altman: There is good will with the insurers. A concern of insurers discontinuing coverage does not present itself currently.
- Deputy Secretary Watson conveyed DHS's approval of the position that this requirement should be removed for plan year 2021, but the Exchange should make clear its stand on combatting the opioid crisis.
- All board members are aligned with trying to help communities address the opioid crisis.

- **Proposed Requirement #3 - Require consistent rate of producer commissions.**
    - The Exchange Authority's recommendation is to withdrawal this requirement based upon the stakeholder feedback received
    - Questions presented as part of this discussion are as follows:
        - Where did the consumer feedback come from on this requirement? It must be evaluated as to whether or not this is the best approach from the consumer's perspective.
            - Response: During the advisory council meeting.
        - Did other SBEs have this requirement?
            - Response: No, Rhode Island did not have individual market commissioned brokers, so this was not a considered requirement. Commissions are also historically difficult to discuss.
    - Mark Nave commented by saying that the market has corrected itself over time, because in the beginning, companies went belly up. From Highmark's perspective, now that market is functioning better, it can make sure the distribution partners are compensated appropriately. He believes these aspects will work themselves out and that a requirement is not needed.
    - Laval Miller-Wilson shared that he is more comfortable with withdrawing this requirement, but he is still concerned about the distinction between open enrollment and special enrollments. He would not like to see lower commissions for Authority directed special enrollment periods or life qualifying events based on individual circumstances. He would like to revisit this conversation for plan year 2022.
    - Jessica Brooks would like to caution how distribution channels are prioritized.
    - Mark Nave would like to stress the importance of providing businesses the right to pay more to some brokers over others in order to incentivize certain products or behaviors. Such as during this transition year, incentivizing getting the word out.
    - Commissioner Altman: In order to properly address this requirement, the Exchange needs to evaluate what is happening in

this area, what the problems are and what the Exchange should be doing about it. This is not something that is feasible for open enrollment this year, but should be feasible for next year's open enrollment.

- **Proposed Requirement #4 - Issuers must provide advanced notice of producer commission payment schedules.**
  - There are benefits to having brokers market products, so insufficient notice cannot allow for broker agencies to staff up appropriately and decide if they are going to participate in this year's open enrollment.
  - In the initial proposal, this requirement said 90 days must be given in advance of OEP. There was a request however to shorten this time to closer to 30 or 60 days before OEP.
  - The recommendation then by the Exchange is to amend: Require insurers to provide advanced notice of 45 days before OEP of producer/broker commission payment schedules. Given the withdrawal of proposed requirement #3, requirement #4 needs to be updated to address mid-year changes. These will need to be communicated at least 30 days in advance, with an exception for extenuating circumstances.

- There are also considerations in addition to requirements which the Exchange is proposing. Considerations are less specific than the requirements and require some interpretation. In practice, adherence to these considerations could be conveyed to the Exchange through a memo and then the Exchange could negotiate to get to a better result. These considerations are a way for the Exchange to express to the carriers before plans are filed what it believes to be meaningful.
  - **Proposed Consideration #1 - Meaningful difference**
    - No discussion
  - **Proposed Consideration #2 - Avoid disruption due to renewal plan mapping**
    - No discussion
  - **Proposed Consideration #3 - Effect on APTC**
    - APTC is calculated based on the second lowest cost silver plan. When new products enter the market, if they change what is the second lowest cost silver plan, then it will affect APTC.
    - Question: How would the Exchange determine malicious intent with regards to affecting APTC?
      - Response: This happened in Rhode Island once. It is hard to prove, but it comes down to how much consumers are going to have to pay in excess of current prices as a result.
    - Question: These cases would come to the Board, correct? Does the Board want to get in the middle of an insurer's strategic approach?
      - Response: The Exchange is not trying to stifle competition. In order to alleviate those concerns, the Board would be the referee.
      - There is concern that insurer representatives on the Board would have to recuse themselves.

    - Determined that process is key. There could be a committee created on the Board of the three cabinet Secretaries to vote on whether there was malicious intent by an insurer.
- Public comments: Sean Brenner from Independence Blue Cross
    - Speaking on behalf of Independence Blue Cross, he expressed his concern with this process of determining plan certification requirements. He believes the process has been very rushed, with only providing the insurers two weeks to review the requirements. IBC is in full support of the exchange and the reinsurance program, but wanted to express its concerns with inadequate review time.
    - Additionally, he expressed a concern that the Exchange is trying to restrict off-exchange products. In the future if there was a different board or different administration, this could provide significant power to the Exchange over insurers. He is concerned with the precedent being set that the Exchange can restrict insurer business off the exchange, and how this could potentially be expanded to more than short-term limited duration plans.
- The Board revisited the question of voting on each of the plan certification requirements and considerations. The Board decided to 1) accept the Staff recommendations for withdrawal, 2) to vote on Proposed Requirement #1, Proposed Considerations #1 and #2, and 3) to defer Proposed Requirement #4 and Proposed Consideration #3 for consideration at the next meeting to allow for additional stakeholder feedback on the amended language. The motions and votes went as follows.

***Recommended Motion**: To adopt the first consideration as is, to adopt the second consideration as amended by the Exchange Authority's staff to use FFM standards for 2021 renewal plan mapping, to defer the third consideration for discussion at the next Board meeting, to exclude the second requirement, to defer third requirement until the exchange facilitates discussions for what will be appropriate for 2022, and to defer the fourth requirement for discussion at the next Board meeting.*

- *Discussion: See above*
- *Motion:*
    - *Dr. Rachel Levine*
- *Second:*
    - *Jessica Brooks*
- *Yays:*
    - *All Board Members*
- *Nays:*
    - *No one*

***Recommended Motion**: To approve the recommendation of staff that an insurer seeking to offer plans through the exchange satisfy that neither the insurer nor any of its subsidiaries or affiliates will offer short-term limited duration plans in the individual market within the Commonwealth for the 2021 plan year. This recommendation will be reviewed annually by the Board.*

- *Discussion: See above*
- *Motion:*
    - *Sheryl Kashuba*

- *Second:*
  - *Dr. Rachel Levine*
- *Yays:*
  - *All Board Members*
- *Nays:*
  - *No one*

2.06 Notice of Benefit and Payment Parameters

Recommended Motion: *To authorize the Executive Director or his designee to submit the comments outlined to the Board at this meeting as public comments to HHS's 2021 Notice of Benefit and Payment Parameters.*

- *Discussion: None*
- *Motion:*
  - *Dr. Rachel Levine*
- *Second:*
  - *Jessica Brooks*
- *Yays:*
  - *All board members*
- *Nays:*
  - *No one*

2.07 Presentation of the Employee Handbook

Recommended Motion: *To adopt Version 1.0 of the Exchange Authority's Employee Handbook, dated February 19, 2020, as the employee handbook of the Pennsylvania Health Insurance Exchange Authority.*

- *Discussion:*
  - The Exchange has to draft its own HR manual because it is not under the auspices of the Governor's jurisdiction.
  - Special holidays are delegated to the Executive Director to determine.
  - There will be extraordinary pay increases and bonuses.
    - A unique aspect is that the Executive Director can pay a one-time bonus on an annual basis to employees.
  - Commissioner Altman is very supportive of additional powers delegated to the Executive Director.
  - Mark Nave had a question on military personnel – would the Exchange promise to make up the delta for active duty members who would be called back?
    - Response: We would review this policy for future consideration.
- *Motion:*
  - Mark Nave
- *Second:*
  - Laval Miller-Wilson
- *Yays:*
  - All board members
- *Nays:*

- No one

3.00 Adjournment

***Recommended Motion**: To adjourn this meeting of the Pennsylvania Health Insurance Exchange Authority Board.*

- *Discussion: None*
- *Motion:*
  - *Lisa Watson*
- *Second:*
  - *Laval Miller-Wilson*
- *Yays:*
  - *All Board Members*
- *Nays:*
  - *No one*