

Government of the District of Columbia
Office of the Chief Financial Officer



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Kwame R. Brown
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi
Chief Financial Officer 

DATE: November 9, 2011

SUBJECT: Fiscal Impact Statement – “District of Columbia Health Exchange Authority Authorizing Act of 2011”

REFERENCE: Bill Number 19-2 – As Marked Up by the Committee on Public Services and Consumer Affairs

Conclusion

The Office of Revenue Analysis (ORA) is not prepared at this time to issue a determination on the sufficiency of funds for implementation of the proposed legislation.

The proposed legislation was sequentially referred to the Committee on Public Services and Consumer Affairs (“PSCA Committee”) and the Committee on Health. Since the Committee on Health must mark up its version and issue its Committee Report before the legislation can be formally introduced in the Committee of the Whole, the CFO intends to defer his determination on the sufficiency of funds to ORA’s evaluation of the Committee on Health version.

Background

The federal Patient Protection and Affordable Care Act (PPACA), signed into law by President Obama on March 23, 2010, reforms certain aspects of the private health insurance industry and, among other elements, establishes the legal authority for the creation of state-based Health Benefit Exchanges (“exchanges”). PPACA requires that every state and the District of Columbia establish an exchange and begin operations by January 1, 2014. A state or the District may choose not to establish an exchange, in which case the federal government will operate the federal exchange in that jurisdiction.

PPACA provides three types of grants to fund the establishment of exchanges – Planning Grants, Level 1 Establishment Grants, and Level 2 Establishment Grants. The District previously received a

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\$1 million Planning Grant, which the Department of Healthcare Finance (DHCF) used in coordination with the Department of Insurance, Securities, and Banking (DISB) and the Mayor's Health Reform Implementation Committee (HRIC) to begin creating an implementation plan for the District of Columbia Health Exchange Authority ("DC HIX"). In August, DHCF was awarded a Level 1 Establishment Grant of \$8.2 million to fund further implementation activities during the period of August 15, 2011 through August 15, 2012. The District has until June 29, 2012, to apply for continued funding under Level 2 to complete DC HIX implementation and begin operations.

In order to apply for Level 2 Establishment Grant funds, the District must have in place legislation that authorizes operation of the DC HIX and creates a governance structure that meets federal guidelines. The proposed legislation achieves these goals and is therefore critical to advancing the District's intention to establish its own exchange.

Provisions of the Proposed Legislation

The proposed legislation establishes the DC HIX as "an independent authority of the District government, which shall create and administer the Exchange." As outlined in Sections 4 and 5, the DC HIX would be governed by an Executive Board of eleven members, seven of whom would be Mayoral appointees. The remaining four would be the Director of DHCF, the Commissioner of DISB, the Director of the Department of Health, and the Director of Human Services, all serving in a non-voting, *ex officio* capacity. In addition, the Executive Board would be assisted by a standing Advisory Board of eleven members who would provide certain additional professional expertise.

The proposed legislation gives the Executive Board a broad range of authority to start up and operate the DC HIX. Among its powers, the Executive Board may spend existing federal grant funds to set up the DC HIX, apply for and receive future grants, enter into contracts with private entities, and enter into Memoranda of Understanding (MOUs) with District agencies to share or consolidate functions. In hiring its Executive Director and staff, the DC HIX is exempted from District government compensation and personnel regulations. Sections 10 and 11 provide that the DC HIX may promulgate rules and regulations to implement the proposed legislation, and that the Council will have a thirty-day passive review period on all regulations adopted by the DC HIX.

In Section 12, the proposed legislation creates the District of Columbia Health Exchange Authority Fund (the "Fund"), a special non-lapsing fund whose monies cannot revert to the General Fund. The DC HIX administers the Fund to pay for its operations and administrative costs. The DC HIX is authorized to "charge user fees, licensing fees, or other assessments that may generate funding necessary to support its operations." This provision is important because PPACA requires all exchanges to be financially self-sustaining by no later than January 1, 2015. While under federal guidelines appropriated local funds may be part of the DC HIX's self-financing arrangement, the District's intent at this stage is that the DC HIX will fund itself fully with user fees and other such sources.

Sections 14 and 15 of the proposed legislation detail the duties of the DC HIX and its procedures for qualifying health plans to offer to its participants. These sections closely track the model language developed by the federal Department of Health and Human Services (HHS) as a guideline for exchange authorizing legislation. Finally, Section 17 notes that many important exchange implementation issues have not yet been clarified by HHS, and therefore restricts the DC HIX from moving forward with implementation in these areas until further guidance is available. This section also directs the DC HIX to study several implementation issues and make recommendations to the

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Mayor before decisions can be made on how to proceed. One of the critical issues to be studied is how the DC HIX will become financially self-sustaining by January 1, 2015.

Financial Plan Impact

The ORA is not prepared at this time to issue a determination on the sufficiency of funds for implementation of the proposed legislation. As previously noted, the proposed legislation was sequentially referred to the PSCA Committee and the Committee on Health. The PSCA Committee held a mark-up of its version of the bill on October 24, 2011, and now requires a fiscal impact statement to be issued so that it can complete its Committee Report within thirty days of the mark-up. However, it is our expectation that the subsequent Committee on Health version of the legislation will include changes from the PSCA Committee version that will facilitate making a determination on the sufficiency of funds on that version of the bill. Since the Committee on Health must mark up its version and issue its Committee Report before the legislation can be formally introduced in the Committee of the Whole, the CFO intends to defer determination on the sufficiency of fund to ORA's evaluation of the Committee on Health version.