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:	**December 6, 2011**
SUBJECT:	**Fiscal Impact Statement – "District of Columbia Health Exchange Authority Authorizing Act of 2011"**
REFERENCE:	**Bill Number 19-2 – Amendment in the Nature of a Substitute**

Conclusion

Funds are not sufficient in the FY 2012 through FY 2015 budget and financial plan to implement the provisions of the proposed legislation. The implementation of the proposed legislation is projected to cost $8.2 million in FY 2012 and $92.7 million in the four-year financial plan period. Implementation of the proposed legislation is subject to the inclusion of its fiscal impact in an approved budget and financial plan.

The federal government has committed to provide funds through 2014 to support the establishment of Health Benefit Exchanges ("exchanges") in each state. The District has already received two grants totaling $9.2 million in federal funds and the available federal funds are sufficient for implementation of the proposed legislation in FY 2012.

The District is preparing to apply for another grant (commonly known as a Level 2 Establishment Grant) that, if approved as expected, would pay for the costs in FY 2013 and FY 2014 of establishing and setting up the exchange.[1] The proposed legislation is required in order for the District to apply for this grant.[2]

Federal law requires that starting in January 2015, each state's exchange must be financially self-sustaining. The proposed legislation would authorize establishment of user fees to create a revenue

[1] The only state that has received Level 2 Establishment Grant for its exchange is Rhode Island, which was approved for $58 million in federal funds in the last week of November.
[2] The District is required to submit its Level 2 Establishment Grant application by June of 2012.

source to fund the exchange. The Office of Revenue Analysis estimates that the annual cost of maintaining the exchange would be approximately $24.8 million starting in FY 2015. Any fee structure put in place must be sufficient to cover the annual operating costs of the exchange. The funding proposals would be subject to Council review, and the Chief Financial Officer (CFO) will provide a fiscal impact analysis of such proposals once they are in place.

Background

Purpose of the Legislation

The federal Affordable Care Act (ACA), 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 exchanges. The ACA 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.

The ACA 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 $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 Legislation

The proposed legislation establishes the DC HIX as "an independent authority of the District government" that "shall be an instrumentality, created to effectuate the purposes stated in this act, that shall have a legal existence separate from the District government."[3] As outlined in Sections 6 and 8, the DC HIX would be governed by an Executive Board of seven voting members, all of whom would be District residents appointed by the Mayor with advice and consent from the Council. The Director of DHCF, the Commissioner of DISB, the Director of the Department of Health, and the Director of Human Services would serve as non-voting, *ex officio* members. In addition, the Executive Board would be assisted by a standing Advisory Board of nine members who would provide certain additional professional expertise. The Executive Board and Advisory Board members would not receive compensation for their work.

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

[3] B19-2 Health Committee Print, draft November 14, 2011, p. 6.

like insurers or insurance administrators, and enter into Memoranda of Understanding (MOUs) with District agencies to facilitate performing the duties of the exchange. In hiring its Executive Director and staff, the DC HIX is exempted from some District government compensation and personnel regulations. Section 11 outlines strict conflict of interest regulations for the Executive Board and DC HIX staff. Section 18 provides that the DC HIX may promulgate rules and regulations in accordance with the District of Columbia Administrative Procedures Act of 1968 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 4, the proposed legislation creates the District of Columbia Health Benefit 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 on health carriers selling qualified dental plans or qualified health plans in the District." This provision is important because the ACA 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. All proposed user fees shall be subject to Council approval as per the rulemaking language in Section 18, and assessments "shall not exceed reasonable projections regarding the amount necessary to support the operations of the Authority."[4]

Sections 5 and 10 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 directs the DC HIX to study several implementation issues and make recommendations to the Mayor within six months of enactment 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 – the Executive Board must prepare a plan to that effect, have it certified by an independent actuary as actuarially sound, and submit it to the Mayor and Council not later than December 15, 2013.

Legislative and Fiscal Impact Analysis History

The proposed legislation, first introduced on January 4, 2011, was sequentially referred to the Committee on Public Services and Consumer Affairs ("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 the Committee on Health marked up its version of the bill on November 10, 2011. Though the CFO issued a placeholder fiscal impact statement to allow the committees to issue their committee reports on the bill, the CFO understood that the bill to be introduced to the Committee of the Whole would be an Amendment in the Nature of a Substitute (AINS) that was to include changes that would facilitate making a determination on the sufficiency of funds for implementation. The CFO has therefore deferred its determination on the sufficiency of funds to this fiscal impact statement, which reflects the Office of Revenue Analysis's evaluation of the AINS version of the bill.

[4] B19-2 Health Committee Print, draft November 14, 2011, p. 8.

Financial Plan Impact

Funds are not sufficient in the FY 2012 through FY 2015 budget and financial plan to implement the provisions of the proposed legislation. The implementation of the proposed legislation is projected to cost $8.2 million in FY 2012 and $92.7 million in the four-year financial plan period. While funds are sufficient for implementation of the proposed legislation in FY 2012, future federal grant funds and other revenue sources outlined below cannot be certified at this time. Implementation of the bill is subject to the inclusion of its fiscal impact in an approved budget and financial plan.

Funding for the DC HIX over the four-year financial plan years of FY 2012 through FY 2015 will come from two primary sources – federal grants, and revenue to be raised by DC HIX activities. As noted above, DHCF has already received a $1 million planning grant and $8.2 million in Level 1 Establishment Grant funds that will be used through FY 2012 on efforts to stand up the DC HIX. DHCF will take the lead on applying by June 29, 2012, for a Level 2 Establishment Grant, intended to fund the DC HIX through the remainder of the standing-up process in FY 2013 and its first year of operation, FY 2014. The ACA requires the DC HIX to be financially self-sustaining beginning in FY 2015, and the intent is to design a package of user fees and other assessments that would fully fund the DC HIX in FY 2015 and future years without the need for locally-appropriated funds. Section 17(b) of the proposed legislation requires a plan to be submitted to the Mayor by December 15, 2013, that details such a package of user fees and a corresponding budget for DC HIX operations.

Estimating the cost of the DC HIX, and thus the amount of grant funds and revenue that will be needed to create and operate it, is a challenge because many critical path policy decisions have not been made at the local and federal levels that will determine, for example, how many people in the District are likely to buy health insurance through the DC HIX. ORA therefore constructed an operating model for the DC HIX from the bottom up, estimating the staff, consultant support, materials, and financial resources needed to run an exchange that serves all functions required by the ACA.[5] The resulting cost estimate over four years is below.[6]

[5] In constructing the model, the Office of Revenue Analysis drew on a multitude of sources, including the ACA legislation and subsequent federal regulations; reports completed for DHCF by Mercer Government Human Services Consulting; conversations with and annual budgets of DHCF and DISB; conversations with employees of the U.S. Department of Health and Human Services; conversations with state Departments of Insurance in other states currently creating health benefit exchanges; news reports and research reports prepared for other states currently creating health benefit exchanges; and miscellaneous web research. Financial and economic assumptions draw on figures documented by OCFO in the annual budget and financial plan and other research publications.

[6] The Office of Revenue Analysis's estimated budget figures fall within the expected cost range provided to DHCF by Mercer Government Human Services Consulting. Compared to the annual operating budget for the Massachusetts Connector, the only currently-operating health exchange that is comparable to the DC HIX in scope, the projected costs are lower by an amount that seems reasonable considering Massachusetts is a bigger health insurance market.

Estimated Four-Year Cost of Standing Up and Operating the DC Health Benefit Exchange -- FY 2012 - FY 2015 -- $ in millions					
	FY 2012 (Start-Up Yr)	FY 2013 (Start-Up Yr)	FY 2014 (Operating Yr1)	FY 2015 (Operating Yr2)	4-Year Total
Startup Costs - IT	$5.2	$22.3	$0.0	$0.0	$27.5
Startup Costs - Non-IT	$3.0	$15.1	$0.0	$0.0	$18.1
HIX Staff Salaries & Fringe	$0.0	$0.0	$7.8	$9.9	$21.5
Consultant Costs	$0.0	$0.0	$4.5	$4.7	$16.4
IT Ops, Support, Maintenance	$0.0	$0.0	$6.6	$6.8	$13.4
HIX Operations	$0.0	$0.0	$3.4	$3.4	$10.9
Total Costs	**$8.2**	**$37.4**	**$22.3**	**$24.8**	**$92.7**

The budget for FY 2012, as noted, is currently funded with a federal Level 1 Establishment Grant. The Office of Revenue Analysis estimates that FY 2013 and FY 2014, the two years the District hopes to pay for with federal Level 2 Establishment Grant funds, together will cost approximately $59.7 million. There is good reason to believe that the District can get a budget of this size funded by the federal government. First, the federal government is motivated to fund the set-up of state exchanges because if a state fails to create its own exchange, the ACA requires HHS to operate an exchange in that state, an outcome the federal government considers less desirable than a state-run exchange. Second, Rhode Island, the only state that has applied for and received a Level 2 Establishment Grant to date, received approximately $58 million. Rhode Island is a small state with a 2010 population of just over one million people, so the size and scope of its exchange are relatively comparable to the District's.

As noted above, DC HIX operating costs in FY 2015 will be paid from revenue derived from user fees or other assessments. It is too early to anticipate the package of revenue sources that will be most appropriate to funding the DC HIX going forward, so the CFO cannot certify the availability of any funding for FY 2015 and beyond. Based on the analysis provided in this FIS, the estimated annual operating cost for the HIX is projected to be approximately $24.8 million, and unless other local revenues are identified, the proposed fee structure must raise sufficient resources to pay for these costs. When the fee structure is submitted to the Council for review, presumably some time during FY 2014, the CFO will provide a fiscal impact analysis for this proposal.