The stated purpose of Bill 21-8 is to amend the Health Benefit Exchange Authority Establishment Act of 2011 to provide for the financial sustainability of the Health Benefit Exchange Authority.

The Health Benefit Exchange Establishment Act of 2011 (Bill 19-002) was enacted in March 2012 to provide the necessary authority for the District to establish its own health exchange under the Patient and Protection Affordable Care Act. The Health Benefit Exchange Establishment Act, codified at D.C. Code §31-3171.01 et seq., established a seven-member Health Benefit Exchange Authority Board to govern the exchange, provided the board with the
authority to hire staff and seek grant funding, created a standing advisory board to inform the executive board’s decisions regarding the operation of the exchanges, and set the requirements for qualified health plans, individuals, and carriers on the Exchange. Additionally, the Health Benefit Exchange Establishment Act requires that the Executive Authority (the Authority) “prepare a plan that identifies how the Authority will be financially self-sustaining by January 1, 2015.”

The requirement for the Exchange to be self-sustaining by January 1, 2015 is also a requirement under federal law. Under the Affordable Care Act, grant funds were made available to all state-based exchanges in order to assist them in planning, establishing, and operating their own state-based marketplaces. The District received these funds to set up the Exchange, and, as a condition of receiving these funds, the Affordable Care Act requires that the state-based exchanges be self-sustaining by January 1, 2015. (ACA § 1311(a)(4)(B); 45 CFR § 155.160(b)).

In order to “prepare a plan that identifies how the Authority will be financially self-sustaining by January 1, 2015” as required by District law, the Exchange Authority established a Working Group on Financial Sustainability in April 2013. The Working Group was comprised of members of the Authority Executive Board in addition to people representing consumers, insurance carriers, and brokers. Over the course of several meetings, the Working Group considered several revenue sources to fund the Exchange so that it may become self-sustaining. Some of these revenue sources included a user fee on premiums administered through the Exchange, an assessment on insurance premium revenue, an assessment on all benefits, including self-insured plans, or hospital revenue and other private medical claims as a way to reach all medical benefits, and a public funding source. The Working Group concluded that the most financially viable option was a broad-based assessment approach applied to all District health insurance carriers, similar to the assessment used by the Department of Insurance, Securities, and Banking (DISB) to fund the its own operating expenses and to fund the Ombudsman program.¹

In 2014, the Authority entered into a Memorandum of Agreement (MOA) with DISB, which enabled DISB to perform the broad base assessment and transfer funds to the Authority. The Authority entered into the MOA due to the fact that DISB was already performing assessment functions and the Authority did not wish to be duplicative. This first assessment was completed in August 2014. The Authority’s assessment percentages were based on its projected operating expenses and the previous year’s total health insurance premium dollars. Each health insurance carrier was assessed based on a percentage of its market share of premiums. Furthermore, the broad based assessment only applies to health insurance carriers with annual premiums of at least $50,000.

On July 3, 2014, the American Council of Life Insurers (ACLI), filed suit in U.S. District Court for the District of Columbia against the Health Benefit Exchange Authority challenging the District’s plan to ensure that the Exchange was self-sustaining by implementing a broad—

based assessment on health carriers in the District. The case was dismissed in November 2014, and in dismissing the case Judge Beryl A. Howell stated that “Congress intended in the ACA to encourage States to operate their own Exchanges and to give the States broad authority to provide adequate funding for those Exchanges when federal funding ceased.”

This decision effectively authorized the District’s current plan to ensure the Exchange is self-sustaining.

The Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015 will codify in to law the Authority’s current practice and plan of implementing a broad based assessment on all health insurance carriers to ensure that the District’s Health Benefit Exchange is self-sustaining as required by federal and District law. In effect, the Exchange can continue to serve the District’s residents and small businesses by providing adequate and affordable health care coverage.

II. LEGISLATIVE CHRONOLOGY

January 6, 2015  
Bill 21-8, the “Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015” is introduced by Councilmember Alexander at Legislative Meeting.

January 6, 2015  
Bill 21-8 is referred to Committee on Health and Human Services.

January 9, 2015  
Notice of Intent to Act on Bill 21-8 published in the District of Columbia Register.

January 9, 2015  
Notice of Public Hearing published in the District of Columbia Register.

January 29, 2015  
Committee on Health and Human Services holds public hearing on Bill 21-8.

March 11, 2015  
The Committee on Health and Human Services meets to mark-up and vote on the report and committee print of Bill 21-8.

III. POSITION OF THE EXECUTIVE

Diane Lewis, Chair, Health Benefit Exchange Authority Board, testified in support of the bill. Ms. Lewis urges the council to enact the bill. She explained that the establishment of the Health

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Benefit Exchange Authority marked the District’s commitment to building a state-based marketplace. Ms. Lewis reported that when new marketplaces opened nationwide in 2013, DC Health Link was one of four state-based exchanges to be up and running. She encourages the Council to implement permanent legislation. She also said that because financial sustainability is essential to obtaining certification as a state-based marketplace by the federal government, it is prudent that this legislation be passed.

Mila Kofman, Executive Director, Health Benefit Exchange Authority, testified in support of the bill. Ms. Kofman said that the legislation will ensure a District-based health insurance marketplace for residents and businesses and helps continue the successful implementation of the Affordable Care Act. Ms. Kofman expressed her belief that the District of Columbia can largely relate its success in having the lowest rates of uninsured residents to significant investments in the city’s health care delivery and coverage. She stated that the Affordable Care Act created an opportunity in the District of Columbia to achieve near universal coverage. Ms. Kofman calls the approach presented in the bill fair and equitable. To that end, she explains that the approach, as written, allows for assessment of health carriers that will ultimately benefit them directly or indirectly.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The committee received no testimony or comments from Advisory Neighborhood Commissions.

V. LIST OF WITNESSES AND SUMMARIES OF TESTIMONY

1. Michael Sindram 
   Public Witness

2. Wes Rivers 
   Policy Analyst, DC Fiscal Policy Institute

3. Alka Pateriya 
   Public Witness

4. Angela Franco 
   President & CEO, Greater Washington Chamber of Commerce

5. Kathy Hollinger 
   President & CEO, Restaurant Association of Metropolitan Washington

3 Link to public hearing can be viewed at: http://dc.granicus.com/MediaPlayer.php?view_id=32&clip_id=2512
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<th>No.</th>
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<td>Harry Wingo</td>
<td>President &amp; CEO, DC Chamber of Commerce</td>
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<td>7.</td>
<td>Margarita M. Dilone</td>
<td>President &amp; CEO, Crystal Insurance Group Inc.</td>
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<td>8.</td>
<td>Wayne McOwen</td>
<td>District of Columbia Insurance Regulatory Trust Fund Bureau</td>
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<td>9.</td>
<td>Laurie Kuiper</td>
<td>Senior Director, Government Relations, Kaiser Permanente</td>
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<td>10.</td>
<td>Rev. Dr. Wendell Christopher</td>
<td>Second Episcopal District Social Action Director, D.C. Health Link</td>
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<td>11.</td>
<td>Geralyn Trujillo</td>
<td>Regional Director, MidAtlantic/Mideast Region, State Affairs, America’s Health Insurance Plans</td>
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<td>John Secondari</td>
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<td>14.</td>
<td>Falasha Culpepper</td>
<td>DC Health Link Assister Program Manager &amp; DC Health Link Assister, Capital City Area Health Education Center</td>
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<td>Senior Manager of Public Benefits and Insurance Navigation; DC Health Link Assister Program Manager &amp; DC Health Link Assister, Whitman-Walker Health</td>
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<td>19.</td>
<td>Diane Lewis</td>
<td>Chair, Health Benefit Exchange Authority Board</td>
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<td>20.</td>
<td>Mila Kofman</td>
<td>Executive Director, Health Benefit</td>
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**Government Witness**

19. Diane Lewis
Chair, Health Benefit Exchange Authority Board

20. Mila Kofman
Executive Director, Health Benefit
Michael Sindram, Disabled Veteran, testified in support of the bill. Mr. Sindram said that the health of the people of the District of Columbia should be paramount. Mr. Sindram also expressed the importance that he places on receiving help acquiring health insurance. Furthermore, Mr. Sindram stated that what is best for the people is having quick and easy access to Medicaid.

Wes Rivers, Policy Analyst, DC Fiscal Policy Institute, testified in support of the bill. He claims that the large amount of people that have signed up for health plans through the D. Health Link is a testament to the functionality of the market and consumer need. He said that the District must find a sustainable local funding source for the operations of the Health Benefit Exchange Authority because federal funding might soon run out which will leave many residents without financial support regarding insurance. He claims the benefits of the approach noted in Bill 21-8 are that (1) a broader assessment base that will result in lower costs to individual consumers and small businesses, (2) consumers and small businesses will benefit from a fully funded and well-functioning District-based exchange, and (3) a sustainable funding source will also allow the authority to monitor and develop consumer protections for plans sold on DC Health Link.

Alka Pateriya, Public Witness, testified in support of this bill. She says that DC Health Link has been instrumental in establishing career independence. Through DC Health Link she was able to accomplish her dream of becoming an educational consultant. The health plan that she obtained allowed her to pay less money out-of-pocket, spend less time at the doctor’s office, and continue seeing the health care providers of her choice.

Angela Franco, President & CEO, Greater Washington Hispanic Chamber of Commerce, testified in support of the bill. Ms. Franco claims that the SHOP market has helped her save up to 9% of her spending in past years. Ms. Franco said that by spreading the financial burden over many insurers, premiums can be minimized. She also stated that one of the main concerns when small businesses are choosing coverage is cost, and that a lower cost for businesses ultimately means a lower cost for consumers.

Kathy Hollinger, President & CEO, Restaurant Association of Metropolitan Washington, testified in support of the bill. Ms. Hollinger said that DC Health Link has been instrumental in educating restaurants about government requirements. She also said that the legislation will be a vehicle for the Health Benefit Exchange Authority’s financial self-sustainability. She went on to state that small businesses are able to offer employees a larger variety of health insurance choices with the enactment of this bill. Ms. Hollinger testified that broad-based assessment is the fairest approach and lowers cost for small businesses and its employees, and ultimately consumers as well.
Harry Wingo, President & CEO, DC Chamber of Commerce, testified in support of the bill. He said that the Chamber of Commerce has been able to maintain a successful partnership with DC Health Link, and that prompt personal responses to technical problems and coordination in providing small businesses with education sessions is a testament to that partnership. He claimed that a broad-based approach spreads the financial burden of the marketplace and continues to support outreach and technical assistance work. He believes that the bill becoming law will facilitate lower cost for small businesses, their employees, and individual consumers as well. Furthermore, He stated that failure to enact Bill 21-8 will put the District of Columbia at risk of losing its state-based marketplace.

Margarita M. Dilone, President & CEO, Crystal Insurance Group Inc., testified in support of the bill. She claims that the Health Benefit Exchange Authority has actively helped her and her clients receive information, support and assistance in enrolling in affordable health plans. She remarks that she has experienced technical difficulties since working with DC Health Link but direct access to responsive staff has helped alleviate any difficulties she experienced. Ms. Dilone testified that her daughter died of a brain injury and she could not afford her health insurance because the medical expenses became too great.

Wayne McOwen, Executive Director, District of Columbia Insurance Federation, testified in support of the bill. Mr. McOwen believes that a cap on the assessment rate levied on insurers should be implemented. He claims that a cap will provide necessary stability for insurers. Mr. McOwen also said that he believes that the Health Benefit Exchange Authority should continue to run off of a form of public funding.

Laurie Kuiper, Senior Director of Government Relations, Kaiser Permanente, testified in support of the bill. Ms. Kuiper states that Kaiser Permanente supports the enactment of the bill’s allocation of power to the Health Benefit Exchange Authority to assess health carriers an amount that is proportional to their gross receipts. She states that a broad-based assessment is a fair way of distributing financial burden. She stated her belief that requiring all carriers to pay a portion of the total assessment amount will promote healthy functionality of the Health Benefit Exchange.

Rev. Dr. Wendell Christopher, Second Episcopal District Social Action and Director, DC Health Link, testified in support of the bill. Dr. Christopher said that when there is a problem with enrollment D.C. Health Link representatives respond quickly and efficiently. He also claimed that he has seen improvements in DC Health Link’s functioning and is in constant contact with the program representatives to communicate ideas about future modifications. In his closing remarks he stated that he believes that a broad-based assessment is fair and a strong method in ensuring financial sustainability.
Geralyn Trujillo, Regional Director, MidAtlantic/Mideast Region, State Affairs, America’s Health Insurance Plans, did not testify in support of the bill. He states that legislation as written promotes an open ended assessment on health insurers that will have negative effects on premiums. He claims that the proposed annual assessment is based on projected and amounts and does not take into account yearly variance. He also said that he believes that there should be a cap on the funding assessment levied against health carriers. He testified that Exchanges are a community good and should not be funded strictly through one sector of the economy. Mr. Trujillo expressed that HIPPA excepted-benefits must be excluded from any exchange funding mechanisms.

John Secondari, Public Witness, testified in support of the bill. Mr. Secondari claims said that when he lost his job as a federal contractor he was overwhelmed with medical bills and DC Health Link services helped him obtain affordable medical coverage. He stated that the broker from DC Health Link that helped him while obtaining coverage was very helpful. Mr. Secondari’s concluding statements express his content with the program saying it has provided him with a measure of financial sustainability and peace of mind.

Falasha Culpepper, DC Health Link Assister Program Manager & DC Health Link Assister, Capital City Area Health Education Center, testified in support of the bill. Ms. Culpepper said that her assistant program in conjunction with DC Health Link has helped educate thousands and enroll hundreds of people. Ms. Culpepper said each day she is thankful to be able to help the residents of DC. Ms. Culpepper also stated that through her program she is able to help residents in need navigate the new health care system.

Katie Nicol, Senior Manager of Public Benefits and Insurance Navigation; DC Health Link Assister Program Manager & DC Health Link Assister, Whitman-Walker Health. Ms. Nicol says that the consumer protections in the Affordable Care Act have been of great importance to the people that she’s helped. Ms. Nicol goes on to say that ensuring competence and expertise of DC Health Link Assistors requires initial and continuing training of those who are certified. Furthermore, Ms. Nicol said that it is necessary to ensure that the Health Benefit Exchange has the revenue that will be needed to continue to fund this critical work.

David Wilmot, Executive Director, District of Columbia Association of Health Plans, testified in support of the bill. Mr. Wilmot recommends that the Council modify the language in the bill to specify exactly what needs to be assessed regarding any audits. He claimed that the budget is not yet stabilized, so that needs to be assessed over an agreed on period of time. He believes that the broad-based assessment is a good way to make sure that funds are available for the Health Benefit Exchange Authority. Furthermore, Mr. Wilmot suggested that there be some sort of adjustment to language regarding “reasonable projections”.

8
Wordna Warren, Volunteer, GirlTrek, testified in support of the bill. Ms. Warren said that after experiencing a difficult divorce she realized the importance of having health insurance. Ms. Warren also stated that DC Health Link made obtaining health insurance simple. In Ms. Warren’s final comments, she stated that knowing that she has health insurance has helped alleviate some stress that she was feeling.

Eric Vicks, Associate Director of Policy and Advocacy, DC Primary Care Association, testified in support of the bill. He says that DCPA and related health center partners rely on the Health Benefit Exchange web portal, DC Health Link. Mr. Vicks claims that the District of Columbia successfully launched a robust and effective exchange providing comprehensive enrollment information to thousands of residents newly seeking insurance. Mr. Vicks also stated that Bill 21-8 creates an assessment on all health carriers as an effective way to raise revenue for Health Benefit Exchange operations while minimizing impact on health plan premiums for consumers.

VI. IMPACT ON EXISTING LAW

Bill 21-8 amends the D.C. Code § 31-3171.01 by adding new paragraphs (3A) and (8C) that define “direct gross receipts” and “net premium receipts or considered received” respectively. Additionally, Bill 21-8 amends D.C. Code § 31-3171.01 by adding a new subsection (f), which (1) mandates that the Authority annually assesses each health carrier doing business in the District an amount based on a percentage of its direct gross receipts for the preceding calendar year, (2) permits the Authority to adjust the assessment rate in each assessable year, (3) mandates that each health carrier pay the Authority the required amount within 30 business days after the date of the Notice of Assessment, and (4) imposes a penalty for failure to pay the assessment.

VII. FISCAL IMPACT

The attached fiscal impact statement from the Chief Financial Officer states that funds are sufficient in the proposed FY 2015 through FY 2018 budget and financial plan to implement the bill.

VIII. SECTION BY SECTION ANALYSIS

Section 1 States the short title of Bill 21-8.

Section 2 Adds two new paragraphs, (3A) and (8C) to § 31-3171.01:

○ (3A): Defines “Direct gross receipts.”
○ (8C): Defines “Net premium receipts or consideration received.”
Adds a new subsection (f) to § 31-3171.01:

- (1): Mandates that the Authority conduct an annual assessment to health carriers doing business in the District with direct gross receipt of $50,000 or greater where the assessment is based on a percentage of its direct gross receipts for the preceding calendar year.
- (2): Mandates that the Authority adjust the assessment rate in each assessable year.
- (3): Requires that each health carrier pay the Authority the amount of the assessment within 30 business days of after the date of the Notice of Assessment.

Section 3  Adopts the fiscal impact statement.

Section 4  Provides the effective date.

IX. COMMITTEE ACTION

On Wednesday, March 11, 2015, the Committee on Health and Human Services met to consider Bill 21-8, the “Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015". The meeting was called to order at 2:10 p.m., and Bill 21-8 was the third item on the agenda. After ascertaining a quorum, Councilmember Alexander opened up the floor for discussion, in which there was none. Councilmember Alexander moved the print and report separately, with leave for staff to make technical and editorial changes. The vote on the print and report was unanimous (Chairperson Alexander and Councilmembers Cheh and Nadeau voting “aye.” Councilmember Grosso was absent.). The meeting adjourned at 2:20 p.m.
X. ATTACHMENTS

1. Bill 21-8 as Introduced.
2. Copies of Written Testimony.
4. Legal Sufficiency Memorandum.
5. Comparative Print of Bill 21-8.
6. Committee Print of Bill 21-8.
Memorandum

To: Members of the Council

From: Nyasha Smith, Secretary to the Council

Date: January 14, 2015

Subject: Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Legislative Meeting on Tuesday, January 6, 2015. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015", B21-0008

INTRODUCED BY: Councilmember Alexander

The Chairman is referring this legislation to the Committee on Health and Human Services.

Attachment

cc: General Counsel
    Budget Director
    Legislative Services
A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Health Benefit Exchange Authority Establishment Act of 2011 to provide for the financial sustainability of the Health Benefit Exchange Authority.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015”.

Sec. 2. The Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-94; D.C. Official Code § 31-3171.01 et seq.), is amended as follows:

(a) Section 2 (D.C. Official Code § 31-3171.01) is amended as follows:

(1) New paragraph (3A) is added to read as follows:

“(3A) “Direct gross receipts” means all policy and membership fees and net premium receipts or consideration received in a calendar year on all health insurance carrier risks originating in or from the District of Columbia.”.

(2) New paragraph (8C) is added to read as follows:
“(C) "Net premium receipts or consideration received" means gross premiums or consideration received less the sum of premiums received for reinsurance assumed and premiums or consideration returned on policies or contracts canceled or not taken.”.

(b) Section 4 (D.C. Official Code § 31-3171.03) is amended by adding a new subsection (f) to read as follows:

“(f)(1) The Authority shall annually assess, through a ‘Notice of Assessment,’” each health carrier doing business in the District with direct gross receipts of $50,000 or greater in the preceding calendar year an amount based on a percentage of its direct gross receipts for the preceding calendar year. These assessments shall be deposited in the Fund.

“(2) The Authority shall adjust the assessment rate in each assessable year. The amount assessed shall not exceed reasonable projections regarding the amount necessary to support the operations of the Authority.

“(3) Each health carrier shall pay to the Authority the amount stated in the Notice of Assessment within 30 business days of receipt of the Notice of Assessment.


Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.
ATTACHMENT TWO
Council of the District of Columbia
Committee on Health and Human Services
Notice of Public Hearing
1350 Pennsylvania Ave., N.W., Washington, D.C. 20004

COUNCILMEMBER YVETTE M. ALEXANDER, CHAIRPERSON
COMMITTEE ON HEALTH AND HUMAN SERVICES ANNOUNCES A PUBLIC HEARING

on

Bill 21-8, the “Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015”

Thursday, January 29, 2015
11:00 a.m., Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Councilmember Yvette M. Alexander, Chairperson of the Committee on Health and Human Services, announces a public hearing on Bill 21-8, the “Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015”. The hearing will take place at 11:00 a.m. on Thursday, January 29, 2015 in Room 412 of the John A. Wilson Building.

The purpose of this bill is to amend the Health Benefit Exchange Authority Establishment Act of 2011 to provide for the financial sustainability of the Health Benefit Exchange Authority.

Those who wish to testify should contact Cory Davis, Legislative Assistant to the Committee on Health and Human Services, at 202-741-0904 or via e-mail at cdavis@dcouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business on Tuesday, January 27, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Tuesday, January 27, 2015, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses.

For those unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements can be emailed to cdavis@dcouncil.us or to mailed to Cory Davis at the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Room 404, Washington, D.C., 20004. The record will close at 5:00 p.m. on Monday, February 2, 2015.
COUNCILMEMBER YVETTE M. ALEXANDER, CHAIRPERSON
COMMITTEE ON HEALTH AND HUMAN SERVICES ANNOUNCES A PUBLIC HEARING
on
Bill 21-8, the “Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015”

Thursday, January 29, 2015
11:00 a.m., Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

WITNESS LIST

1. Michael Sindram Public Witness
2. Wes Rivers Policy Analyst, DC Fiscal Policy Institute
3. Alka Pateriya Public Witness
4. Angela Franco President & CEO, Greater Washington Chamber of Commerce
5. Kathy Hollinger President & CEO, Restaurant Association of Metropolitan Washington
6. Harry Wingo President & CEO, DC Chamber of Commerce
7. Margarita M. Dilone President & CEO, Crystal Insurance Group Inc.
8. Wayne McOwen District of Columbia Insurance Regulatory Trust Fund Bureau
9. Laurie Kuiper Senior Director, Government Relations, Kaiser Permanente
10. Rev. Dr. Wendell Christopher Second Episcopal District Social Action Director, D.C. Health Link
11. Geralyn Trujillo  
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16. David Wilmot  
   Executive Director, District of Columbia Association of Health plans

17. Wordna Warren  
   Volunteer, GirlTrek

18. Eric Vicks  
   Associate Director of Policy and Advocacy, DC Primary Care Association

Government Witness

1. Diane Lewis  
   Chair, Health Benefit Exchange Authority Board

2. Mila Kofman  
   Executive Director, Health Benefit Exchange Authority
Dear Chairwoman Alexander,

As organizations that serve and advocate for residents of the District of Columbia, we write to express our support for the Bill 21-8 “Health Benefit Exchange Authority Financial Sustainability Emergency Amendment Act of 2014.” The bill creates a broad-based assessment on all health carriers in the District and dedicates those funds to support the operations of the DC Health Benefit Exchange Authority. So far, the District has been a national model of success in health exchange implementation, and we believe the proposed assessment is the fairest and most consumer-friendly way to continue that success in the District of Columbia.

The DC Health Benefit Exchange, also known as DC Health Link, has had success in providing comprehensive access to health coverage for District residents. So far, the District’s transparent and well-functioning web portal has enrolled more than 70,000 people into private health plans and Medicaid and is the marketplace for many staff of the United States Congress and President Barack Obama.

To continue our success, the District must find a sustainable local funding source to support the operations of the exchange. While initial operations have been funded with federal implementation grants, those funds will not continue. After considering recommendations of a community stakeholder working group, the Health Benefit Exchange Authority determined an assessment on health carriers would be the most effective way to raise revenue for operations while minimizing the impact on premiums for health plans sold both inside and outside of the exchange.

The bill creates an assessment on each District health carrier with direct gross receipts of $50,000 or greater. Health carriers constitute “entities [...] that contracts or offers to contract, to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services”, including major medical insurers selling on and off the exchange, managed care organizations, and HIPAA-excepted benefit products. The assessment is based on a percentage of the carrier’s direct gross receipts in the previous calendar year and is expected to be 1 percent or less in fiscal year 2015.

We support this approach because the broad-based assessment has several advantages for consumers:

First, a broader assessment base will result in lower costs to individual consumers and small businesses. Carriers are likely to pass on the cost of the assessment, but if the assessment is broad, the premium of each individual plan will be affected minimally. The proposed assessment’s inclusion of carriers selling outside of the exchange, managed care organizations, and carriers that sell HIPAA-excepted benefits (such as long-term care and disability insurance and indemnity products)
will also mean that all health carriers are assessed evenly, and exchange plans and their enrollees are not disproportionately impacted. All health carriers will benefit from residents getting access to coverage through DC Health Link, as it creates healthier risk pools and reduces uncompensated care. HIPAA-excepted plans will directly benefit as they will have more demand for the many of their products that supplement major medical plans. This may be especially relevant upon finalization of proposed federal regulations that would prohibit the sale of fixed indemnity plans unless those plans are sold to supplement major medical coverage.

Secondly, consumers and small businesses benefit from a fully funded and well-functioning exchange. The assessment allows the District’s marketplace to operate independently of the District’s General Fund, avoiding potential spending pressures with other health programs. A consistent revenue stream is necessary to ensure that the technical and operational functions of the marketplace that are critical to delivering health insurance to consumers are never jeopardized due to funding concerns. It will also allow DC Health Link to maintain a strong network of consumer assistance – increasing the capacity at the call-center, funding assister and navigator organizations, and improving outreach efforts in hard-to-reach communities. Sufficient funding is also necessary to further improve the IT capabilities for the marketplace and to enhance the consumer experience.

Finally, a sustainable funding source will allow the Authority to actively monitor and evaluate the plans sold through DC Health Link so that consumer protections can be implemented as needed. For example, data collection regarding health plans’ provider networks would allow the Authority to improve consumers’ access to primary care doctors and specialists once they have a plan.

We believe the broad-based health carrier assessment is the best tool for funding the exchange’s operations while maintaining affordability for consumers and businesses, and we hope that you support the bill as it moves forward.

We thank you for your dedication to the health of DC residents, and please feel free to contact Wes Rivers at DC Fiscal Policy Institute (202-325-8821) with any questions.

Sincerely,

American Cancer Society Cancer Action Network, Inc.
American Heart Association/American Stroke Association
American Lung Association in DC
Autism Speaks
Bread for the City
Center on Budget and Policy Priorities
DC Chapter of the National Organization for Women
DC Coalition on Long Term Care
DC Fair Budget Coalition
DC Fiscal Policy Institute
DC Primary Care Association
Families USA
Family and Medical Counseling Service, Inc.
Family Voices of the District of Columbia Inc.
Greater Washington Society for Clinical Social Work
Hemophilia Association of the Capital Area
Hemophilia Federation of America
La Clinica del Pueblo
Legal Aid Society of the District of Columbia
Mary's Center
Metropolitan Washington Council, AFL-CIO
Miriam’s Kitchen
National Multiple Sclerosis Society, National Capital Chapter
National Women's Law Center
Planned Parenthood of Metropolitan Washington, DC
Unity Health Care Inc
Whitman-Walker Health
Chairwoman Alexander and other members of the committee, thank you for the opportunity to testify today. My name is Wes Rivers, and I am a Policy Analyst with the DC Fiscal Policy Institute. DCFPI engages in research and public education on the fiscal and economic health of the District of Columbia, with a particular emphasis on policies that affect low- and moderate-income residents.

I am here today to testify in support of Bill 21-8 "Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015." The DC Fiscal Policy Institute applauds the Health Committee and the Exchange Authority for leadership in making DC Health Link a top tier state-based marketplace and for your efforts to find an adequate and sustainable funding stream. For the record, I am also submitting a letter signed by 27 health advocacy organizations in support of this legislation.

So far, more than 70,000 people have signed up for private health plans or Medicaid through DC Health Link – a testament to the high functionality of the marketplace and the robust network of assistance available to consumers. The District-based exchange has also given DC the ability to implement policies that address local barriers to health access and ensures that nearly 2,500 residents will get access to financial assistance when purchasing insurance – a support that may not be available to consumers on the federal exchange pending Supreme Court proceedings next month.

The District must find a sustainable local funding source for these and other operations of the Exchange Authority. While initial operations have been funded with federal implementation grants, those funds will not continue. After consultation with consumers, businesses, and carriers, the Authority is proposing a permanent assessment on the gross receipts of all health carriers operating in the District. The assessment was around 1 percent of premium revenue in fiscal year 2015. DCFPI supports this approach because the broad-based assessment has several advantages for consumers:

- **First, a broader assessment base will result in lower costs to individual consumers and small businesses.** Insurance carriers will pass on the assessment costs to consumers in the form of higher premiums, but if the assessment base is broad, each individual premium will be affected minimally. The proposed assessment’s inclusion of carriers selling outside of the exchange, managed care organizations, and carriers that sell HIPAA-excepted benefits will
mean that all health carriers are assessed evenly, and exchange plans and their enrollees are not disproportionately impacted.

- Secondly, consumers and small businesses benefit from a fully funded and well-functioning District-based exchange. A local marketplace means that consumers have direct access to consumer supports and exchange staff in their community. If they have problems, which happen, they know who to call and how to get help. A consistent revenue stream is necessary to continue a strong network of consumer assistance, to improve IT capabilities for the marketplace, and to enhance the consumer experience.

- Finally, a sustainable funding source will also allow the Authority to monitor and develop consumer protections for plans sold on DC Health Link. For example, data collection regarding health plans' provider networks would allow the Authority to improve consumers' access to primary care doctors and specialists once they have a plan. The District is developing a plan certification process which will increase data collection and transparency.

The broad-based assessment on all carriers is logical and fair because all carriers will benefit from the exchange. Carriers that sell plans on the exchange will benefit from a fully-funded and well-functioning marketplace that will help drive consumer demand for their products. HIPAA-excepted plans will directly benefit as they will have more demand for many of their products that supplement major medical plans. This may be especially true given proposed federal regulations that would prohibit the sale of fixed indemnity plans unless those plans are sold to supplement major medical coverage.

Thank you for the opportunity to testify, and I am happy to take any questions.
Bill 21-8: The Health Benefit Exchange Authority
Financial Sustainability Amendment of 2015
January 29, 2015

Testimony of Kathy Hollinger, President and CEO
Restaurant Association Metropolitan Washington
Good morning members of the Council. My name is Kathy Hollinger and I am the President and CEO of the Restaurant Association Metropolitan Washington (RAMW).

The Restaurant Association Metropolitan Washington actively promotes the Washington, DC area foodservice industry on behalf of our 850 plus members, which include restaurant owners and operators, food distributors, and service providers. As the restaurant scene in DC continues to expand, so does our membership, which grows daily, and soundly represents the diversification of the industry in the District. Established in 1920, RAMW has become an advocate, resource, and community for our members.

I am here today to testify in support of Bill 21-8: The Health Benefit Exchange Authority Financial Sustainability Amendment of 2015. We strongly believe in the mission of the DC Health Benefit Exchange, and are not only partners of HBX but also customers of DC Health Link. We have worked closely with DC Health Link to educate restaurants about the requirements mandated by the Affordable Care Act, and to connect our small business members who are interested in extending healthcare benefits to employees with HBX certified brokers and assisters. The certified brokers and assisters provide a variety of services that guide our members through the steps in determining the best options available to them in selecting an affordable health insurance plan.

The legislation before the Committee puts in place the financing mechanism needed for the Health Benefit Exchange Authority to be self-sustaining for the future—a requirement of both District and Federal law. We believe District businesses and residents benefit from a fully-funded and well-functioning health insurance marketplace, which is why we strongly support a broad-based assessment of insurance needs spread across a wide array of insurers in the District.

We have found that cost is one of the fundamental components considered by small business owners when deciding to provide health insurance coverage to employees. By spreading the assessment among many insurers, the financial impact on premiums is minimized, which means lower costs for small businesses, their employees, and individual consumers. The broad-based assessment is the fairest approach, as it spreads cost evenly across many insurers, not impacting companies disproportionately and guaranteeing a level playing field in the District.

Failure to enact permanent legislation to put in place a broad-based assessment puts the District's small businesses and residents at risk of losing a state-based marketplace that was built by our community and for our community. Without a secure reliable funding source, the District is in danger of not being certified as a state-based exchange. If permanent legislation is not enacted, we would go into the “one-size fits all”
Federal Marketplace which has far less to offer businesses and individuals on the SHOP side.

The DC Health Link SHOP marketplace opened on time and with an employee choice model on October 1, 2013. In contrast, the Federal SHOP Marketplace is still in its infancy, having just opened in all Federal Marketplace states in November 2014 for the 2015 plan year. In the District, the employer can choose to offer one health plan or can expand choice to their employees to allow one metal tier of coverage with any health plan or one carrier at any metal tier of coverage. For the first time, small businesses are able to offer their employees choices in health insurance that was previously only available to large employers. This is a huge advantage that is not yet available in the federal system.

As I previously mentioned, we are a customer of DC Health Link. We signed up for coverage through the DC SHOP Marketplace in June 2014. We are saving money compared to our previous coverage and we are, in fact, obtaining better coverage. We are saving approximately $15 thousand per year by enrolling for coverage through HBX. Our employee benefits very closely mirror those of our previous plan and in some instances the benefits extend to additional services.

While we have had a positive experience with DC Health Link, we acknowledge that no IT system is perfect. We have faced some challenges ourselves, and we have two key points to make on that front. First, when we encountered problems with enrollment, we knew exactly who to call at DC Health Link, the issue was addressed in a timely manner, and the enrollment was completed. Second, we have seen ongoing improvements in the website functionality and are in regular contact with HBX about future modifications that would increase a positive user experience.

We fear that if we were to be sent to the Federal Marketplace, we would be at the mercy of automated phone systems and online complaint forms. We have no confidence that we would be able to receive timely assistance to make sure our needs are met. When we enrolled our office through the SHOP marketplace, we experienced an issue with an employee profile that required assistance from our direct contact at HBX. The issue was resolved efficiently, and accurately. This is a huge benefit, the importance of which cannot be overstated.

We strongly support a swift passage of Bill 21-8: The Health Benefit Exchange Authority Financial Sustainability Amendment of 2015. The District’s small business community greatly benefits from a state-based marketplace that is designed and operated within our community. We believe the broad-based assessment is a fair, well-supported methodology to ensure financial sustainability and we urge the Council to
pass the bill expeditiously so that DC Health Link can obtain final certification as a state-based marketplace.
Testimony of Harry Wingo
President and CEO, DC Chamber of Commerce
Before the Committee on Health and Human Services
Thursday, January 29, 2015

Good morning Chairwoman Alexander and other members of the DC Council. I am Harry Wingo, President and CEO of the DC Chamber of Commerce. I am pleased to be here today to state our support for Bill 21-8 the Health Benefit Exchange Authority Financial Sustainability Amendment of 2015.

We believe strongly in the mission of the DC Health Benefit Exchange Authority and that is why we are willing to allow our logo to be used on the DC Health Link website and to work closely together to expand affordable coverage options to small business owners and their employees.

Since July 2013, the DC Chamber has embraced its partnership with DC Health Link. From providing small business education sessions, local outreach and disseminating relevant information, our partnership with the Health Benefit Exchange Authority has been a success. We have conducted extensive outreach and educational forums to expose small businesses to the new online health insurance marketplace. We have reached out to businesses in every Ward by physically visiting businesses, meeting with ANCs and citizen and civic associations. We have hosted educational and technical sessions at local libraries and at DCRA. We have also successfully partnered with non-profits associations to bring DC Health Link to their members. And of course, we leverage our own DC Chamber connections by providing businesses key information at our many events.

In our active role to get businesses onto Health Link, we faced significant challenges in both educating businesses and addressing concerns over website functionality. Fortunately the process continues to improve. First, when there is a problem with an enrollment, we know exactly who to call at DC Health Link and we get the problem addressed and the enrollment is completed. Second, we have seen ongoing improvements in the website functioning and are in regular contact with HBX about future modifications as well.

Not only do we educate businesses on Health Link, but we are customers. We sincerely recommend DC Health Link to employers. The Chamber signed up for coverage in July of 2014. We are saving money and have access to better coverage than in the past. Frankly, as with the businesses we have been assisting, there were a few bumps in the road to getting signed-up. It was the broker assigned to the Chamber that played a vital part in quickly resolving the issues that arose during the process.
The broker was also very instrumental in streamlining a shortlist of health insurance plans that met our company's needs. Without his help, weeding through all the plan offerings would have been overwhelming. Our broker walked individual employees through the process, he even prepared a plan comparison that was similar to the insurance our employees already have. We strongly advise the use of a broker to complete the process and suggest looking into a tech tool to ensure a smoother enrollment process.

Regarding, Bill 21-8, which establishes the funding mechanism for DC Health Link to be self-sustaining. We strongly support a broad-based assessment that spreads the financial burden of the marketplace, and continues to support the outreach and technical assistance work that has been so helpful to the small business community. The most fundamental component of a small business' decision to provide coverage to their employees is the cost. By spreading the assessment among many insurers, the financial impact on premiums is minimized. That means lower costs for small businesses, their employees, and individual consumers as well. That is vitally important.

The District must enact Bill 21-8, as failure to do so puts District small businesses and residents at risk of losing a state-based marketplace. Without a secure reliable funding source, the District is at risk of not being certified as a state-based exchange. Instead, the District would be forced to go into the one-size fits all Federal Marketplace which, on the Small Business Health Options Program (SHOP) side in particular, has far less to offer. The Federal Marketplace will never be able to accommodate the unique make-up of the District's small business insurance market.

In closing we urge the Council to act quickly to pass Bill 21-8. The District small business community greatly benefits from a District-based marketplace. We support the funding mechanism within the Bill as it will provide the financial sustainability required of the marketplace.

I thank you for the opportunity to testify and am able to answer questions at this time.
STATEMENT OF MARGARITA DILONE, PRESIDENT & CEO
CRYSTAL INSURANCE GROUP, INC.

DC COUNCIL COMMITTEE ON HEALTH AND HUMAN SERVICES AT DC HEALTH LINK’S PUBLIC HEARING ON BILL 21-8, The “HEALTH BENEFIT EXCHANGE AUTHORITY FINANCIAL SUSTAINABILITY AMENDMENT ACT OF 2015.
Thursday, January 29th, 2015 – 11:00 AM
John A. Wilson Building, Council Chambers Room 500
1350 Pennsylvania Avenue, NW, Washington, DC 20004

Good morning Councilmembers of the Committee on Health and Human Services. My name is Margarita Dilone, and I am the President and CEO of the Crystal Insurance Group, Inc. based in the District of Columbia. I am a licensed insurance agent and broker and have owned and operated my Agency since 1984. My agency currently has a client base of over 4,500 individuals and businesses. Many of my clients are immigrants of Spanish-speaking countries, other minorities and many small businesses.

Since enrollment began for the Affordable Care Act I have enrolled over 354 individuals and families in the District of Columbia, Maryland & Virginia – of these over 159 have been enrolled in DC Health Link. I have also enrolled several businesses.

As both a resident and native Washingtonian, I would like to state that I unequivocally support both the mission and work of the DC Health Benefit Exchange Authority. It has been an honor and joy to work with the staff at the Exchange from Mila Kofman to Dr. Wharton Boyd to every single professional staff member – my clients and I have received information, support and assistance in enrolling in affordable health plans.

Yes – I have had challenges at times on the technical side. However, I have received the assistance and dedication needed to resolve the issues. Most importantly I have direct access to a staff that is responsive and follows through sometimes even late into the evening.

I am very concerned and want to make sure that HBX is able to achieve financial sustainability as required by Federal Law since I know from working in the federal exchange that neither I nor my clients would receive the same type of personalized and dedicated support that I receive from DC Health Link staff. I would be relegated to long wait times and never be able to speak with the same person and have the specific follow up on a given case that I receive from DCHL.

On a personal level, I have enjoyed working with clients who are truly grateful when they have been able to lower their premiums substantially. Even more fulfilling is when I worked with a single mother who had been the victim of domestic abuse and was unaware that she was eligible – she left my office with a premium of less than $50 for herself (after a generous subsidy) and Medicaid for her daughter. One of my first clients was a woman of 61 years of age who purchased a Platinum $0 deductible and a High Option Dental at a cost of over $800
(unassisted) but she told me that she was still saving over $420 because her prior policy had a surcharge for a pre-existing condition and she had been unable to get anything better. What did she do with her savings – invest it in her retirement plan.

Through working with DCHL & also as a Board Member with the Greater Washington Hispanic Chamber of Commerce I have participated in countless outreach and enrollment fairs throughout the District. Currently I am working with the GWHCC to conduct outreach and enrollment events 2 times per week at the Consulate Office for El Salvador where they have no less than 120 people waiting daily while renewing their TPS Status and we are planning to offer a similar program with the Consulate Office for Honduras.

I can tell you that enrolling individuals and families can take a lot of time explaining the nuances of health insurance to a population that does not understand co-pays, deductibles or maximum out of pocket expenses. The work is challenging and not as financially rewarding as writing a Commercial Package Policy for a business. Why do I do it? Because years ago I had a daughter named Crystal who suffered a brain injury at birth and I could not afford to keep our health insurance after her medical expenses exceeded $750,000 in 1987. Crystal died in 2013 and I can tell you that the experiences that I went through with her as a single mother have left me with a lesson in compassion that I will never forget.

In summary, I strongly support swift passage of Bill 21-8 “the Health Benefit Exchange Authority Financial Sustainability Amendment of 2015.” The District of Columbia residents and small businesses benefits from a strong state-based marketplace that is designed and operated within our community. I believe the broad-based assessment is fair and will ensure financial sustainability. I urge the Council to pass this bill expeditiously so that DC Health Link can obtain final certification as a state-based marketplace.

Thank you for the opportunity to testify today.
Testimony of
District of Columbia Insurance Federation
Before the
DC Council Committee on Health & Human Services
29 January 2015

“Health Benefit Authority Financial Sustainability Amendment Act of 2015”
Good morning Chairperson Alexander and members of the Committee on Health & Human Services. My name is Wayne E. McOwen. I represent the District of Columbia Insurance Federation (DCIF), a state insurance trade association whose members provide property, casualty, life and health insurance products and services in the District of Columbia. On behalf of the DCIF, I thank you for the opportunity to provide testimony.

First, I congratulate this committee, the DC Council and the leadership, staff and board of the DC Health Benefit Exchange (HBX) for the impressive progress made to date to enable District residents to access healthcare coverages. As has been demonstrated repeatedly -- in terms of the response to the AIDS crisis, the impressive Medicaid enrollment statistics, and most recently the establishment of a fully operational Health Benefit Exchange -- the District of Columbia continues to be a leader among all jurisdictions in addressing the healthcare needs of its residents.

The bill before this committee, and the subject of today's Public Hearing, intends to secure the financial sustainability of the DC HBX. We applaud the Committee for its efforts toward that goal, and we offer the following comments for your consideration:

- A cap of the assessment rate levied on insurers makes sense. Historically, jurisdictions, including the District of Columbia, have set caps on assessment levels. In DC, the Department of Insurance, Securities and Banking assesses all insurance carriers to fund its operating budget. That assessment is capped at $/ of 1%. Further, in years for which a surplus results, those excess funds are carried over to apply against (and, thus, reduce) the next year's assessment. A cap works, and it can provide a necessary stability for insurers in terms of knowing the maximum rate of assessment it can expect to be required.

- The HBX facilitates access to health insurance plans but has none of the regulatory or fiduciary responsibilities of other DC government agencies, such as the Department of Insurance, Securities and Banking (DISB), which is charged with oversight of the licensure of individuals and entities selling and servicing health insurance products, as well as determining the actuarially appropriate premium levels and terms of coverage for those products. We believe this relationship between the HBX and the DISB is logical and consistent with the
requirements for regulatory oversight set forth for all lines of insurance by the National Association of Insurance Commissioners and, thus, followed in all jurisdictions.

- Funding is critical to success. The federal government recognized the need to appropriately fund health benefit exchange mechanisms by grants. Once that public funding is exhausted, we urge the Committee to consider the allocation of some measure of continuing public funding – either contributed by the District of Columbia, or provided by the federal government in recognition of the substantial number of federal employees who derive their health benefits through DC HBX.

- Finally, we applaud the DC Council for having passed an initiative, authored by you, Chairperson Alexander, authorizing the DC Insurance Regulatory Trust Fund Bureau (RTFB) to audit the HBX. (Incidentally, at a board meeting of the RTFB on Tuesday of this week, plans for the first such audit were discussed, along with the Bureau’s intent to conduct such audits bi-annually as it does for the DISB.) We additionally suggest that the District set an audit framework and schedule, in the event this has not already been done.

As stated above, the DC Insurance Federation applauds the work accomplished thus far to create an Exchange that has begun to well-serve its clients. Further, we appreciate the efforts of the Committee to craft the most effective mechanism to ensure financial sustainability for the HBX. It is our belief that following a path that is reflective of the comments submitted above for your consideration will result in a sustainability formula that is fair, equitable and successful.

Thank you for this opportunity to provide testimony on this issue. I look forward to your questions.
January 29, 2015

The Honorable Yvette Alexander
Chairwoman, Committee on Health
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Ave, NW
Washington, DC 20004

Re: Testimony to the DC Council Committee on Health on B21-8 Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015

Dear Chairwoman Alexander:

Thank-you for the opportunity to provide testimony on the B21-8 Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015. Kaiser Permanente supports B21-8 which would allow the Health Benefit Exchange Authority to annually assess each health carrier doing business in the District an amount based on a percentage of its direct gross receipts as necessary to support the operations of the Authority.

The provisions in the bill indicate that all carriers that have $50,000 or more in District of Columbia-based gross receipts per year would be subject to the assessment. It is our understanding that major medical and HIPAA-exempted benefit products would be included in the calculation along with the gross-receipts of Medicaid Managed Care Organizations (MCOs).

Kaiser Permanente supports the intent of the bill to implement a broad-based funding mechanism to support the operations of DC Health Link. By including the gross receipts of all types of health benefit products in the assessment methodology, the assessment will be less of a financial burden on any one entity. Conversely, to require that only those carriers participating in DC Health Link pay the assessment would impose a significant burden on only a few carriers, essentially penalizing those carriers for offering plans through DC Health Link. Assessing only the carriers participating in DC Health Link is likely to lead to increased premiums and cost sharing and/or reduced benefits for plans purchased through DC Health Link in future years, undermining the goals of DC Health Link and the Affordable Care Act.

Furthermore, the carriers offering products through DC Health Link in 2014 will not necessarily be those participating in DC Health Link in future years. In order to have a well-functioning Exchange that encourages carriers to offer products in future years, we believe it is reasonable and appropriate to require all insurers of health risks in the District of Columbia to pay a portion of the total assessment amount.
As you may be aware, Kaiser Permanente actively participated in the Exchange Authority’s Financial Sustainability Working Group. During those meetings, Kaiser Permanente and other commercial plans argued for a broader funding mechanism that included other organizations in addition to carriers that would benefit from the availability of affordable coverage for District residents. We’d like to suggest that the Exchange Authority reconvene the Financial Sustainability Working Group in 2015 to identify additional funding sources for DC Health Link, including DC general fund revenues.

All insured persons and entities in the District of Columbia will benefit from the effects of near-universal coverage—stabilizing the risk pool, reducing health care costs and eliminating uncompensated care losses—intended by the Affordable Care Act and implemented through a combination of Medicaid expansion and the availability of affordable insurance through DC Health Link. Assessing a smaller portion of the total assessment amount on a broader set of entities will ensure sustainable funding for DC Health Link while preventing year-to-year instability in premiums for plans sold through the Exchange.

Thank you for your time and consideration. Please feel free to contact me at Laurie.Kuiper@KP.org or 301.816.6480, if you have any questions or require additional information.

Sincerely,

Laurie G. Kuiper
Senior Director, Government Relations
Kaiser Foundation Health Plan of Mid-Atlantic States, Inc
Testimony of The Right Reverend William P. DeVeaux, Presiding Bishop
Second Episcopal District, African Methodist Episcopal Church
Before the
COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HEALTH AND HUMAN SERVICES
Public Hearing on Bill 21-8
"The "Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015"

Thursday, January 29, 2015 – 11:00 am
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington DC 20005

Good morning Chairperson Yvette Alexander and members of Committee on Health and Human Services:

I am Rev. Dr. Wendell Christopher, Pastor of Pilgrim AME Church in Ward 6 and the Social Action Director of Second Episcopal District. I am here this morning representing the Second Episcopal District of the African Methodist Episcopal (AME) Church on behalf of Bishop William P. and Episcopal Supervisor Dr. Pam DeVeaux to declare their support of Bill 21-8 “the Health Benefit Exchange Authority Financial Sustainability Amendment of 2015”.

As you are aware, the Second Episcopal District of the AME Church represents approximately 10,000 parishioners in the District of Columbia and another 96,000 throughout the region. We serve and as a faith-based partner of DC Health Link, supporting all it is doing to improve health outcomes for our members and the larger community. In addition, to being a faith-based partner, we have also served as an Assister organization since the first enrollment period in 2013. In this capacity, we have been involved with outreach to residents throughout the District in the surrounding communities of our churches. We have enrolled hundreds of people in quality, affordable health insurance. For the past two years, we have worked closely with DC Health Link to engage not only our denomination leaders in educating and enrolling residents, but also engaging other faith based organizations and community groups. We are proud of our partnership and we continue to support these efforts.

Our focus is on providing outreach to the faith based community to inform and encourage persons without insurance including members of congregations to avail themselves of the opportunity provided by President Obama’s Affordable Care Act (ACA). We have taken the lead to implement Faith-In-Action Sundays Initiative. Our specific target populations are: African Americans, males, those with difficulty completing an online application, low and middle income Persons, young adults ages 18-34 and small businesses.

Bishop William P. DeVeaux, Presiding Prelate of the Second District is strongly in support of the work of the DC Health Benefit Exchange (DCHBX) Executive Board and he urges them to continue to be advocates for consumers to ensure that health insurance premiums are affordable. In support, Bishop DeVeaux sent a letter to Mayor Gray acknowledging the support on September 22, 2014. We believe strongly in the mission of the DC Health
Benfri Exchange Authority and that is why we are willing to work day in and day out to reach our community and let them know about affordable health insurance coverage options available to individuals and their families.

When President Barack Obama's Affordable Care Act (ACA) passed in 2010, it laid the foundation to provide quality, affordable health care for all Americans, which includes residents of the District of Columbia. The new law represents the most significant overhaul of the healthcare system in decades by putting in place comprehensive reforms that aim to protect consumers from unfair health insurance practices and allows all Americans to make health insurance choices that work best for them. At the same time, it guarantees access to care for the most vulnerable populations, and provides new ways to lower costs and improve the quality of care.

The legislation before the Committee today puts in place the financing mechanism needed for the Health Benefit Exchange Authority to be self-sustaining for the future—a requirement of both District and Federal law. Ensuring that this healthcare legislation is approved is essential when it comes to protecting and caring for our residents who are most in need. Preventing this legislation from moving forward which will stabilize and finance the Exchange would deny access to quality, affordable care to our residents and will undermine our city in terms of healthcare, and improving the quality of life for our residents.

We strongly support a broad-based assessment spread across a wide array of insurers in the District. The most fundamental component of a small business' decision to provide coverage to their employees is the cost. By spreading the assessment among many insurers, the financial impact on premiums is minimized. That means lower costs for small businesses, their employees, and individual consumers as well. That is vitally important. We also believe the broad-based assessment is a fair approach. It spreads the cost evenly across many insurers, not impacting companies disproportionally and ensuring a level-playing field in the District. We believe District businesses and residents would benefit from a fully-funded and well-functioning health insurance marketplace.

Finally, failure to enact permanent legislation to put in place this broad-based assessment puts the District's small businesses and residents at risk of losing a state-based marketplace that was built by our community and for our community. Without a secure reliable funding source, the District is at risk of not being certified as a state-based exchange. Instead, we'd go into the one-size fits all Federal Marketplace which, on the SHOP side in particular, has far less to offer. We acknowledge that no IT system is perfect. We've faced some challenges ourselves. But, we have two key points to make on that front:

1. First, when there is a problem with an enrollment, we know exactly who to call at DC Health Link and we get the problem addressed and the enrollment is completed.

2. Second, we have seen ongoing improvements in the website functioning and are in regular contact with HBX about future modifications as well.

I commend the efforts of the Health Benefit Exchange staff, as they have worked many hours trying to make the Exchange the most efficient resource tool for residents and small business owners. In conclusion, we the Second Episcopal District of the AME Church strongly support swift passage of Bill 21-8 "the Health Benefit Exchange Authority Financial Sustainability Amendment of 2015." We believe the broad-based assessment is fair; it is a well-supported methodology to ensure financial sustainability. So we urge the Council to pass it expeditiously so that DC Health Link can obtain final certification as a state-based marketplace and continue the great work it is doing.

I thank you for this opportunity to testify on behalf of the Second Episcopal District of the AME Church.

Respectfully Submitted,

Bishop William P. DeVeaux, Presiding Prelate
Good morning Madam Chair Yvette Alexander, members of the Council Committee on Health and Human Services. My name is John Secondari, and I am a cyber-security consultant and have been a District resident since 1986. I am pleased to offer testimony before you today regarding the difference DC Health Link has made in my life.

DC Health Link has made my life significantly easier. In 2013, I was a contractor with the federal government until that contract ended abruptly through no fault of my own. I’m in my 60’s, and I can’t go without health insurance coverage. So, after my contract ended, I began paying high premiums to get health insurance through COBRA. As you can imagine, making ends meet during this time was difficult. We would occasionally need to dip into savings to pay some bills.

When DC Health Link opened, I got in touch with a health insurance broker, who was very helpful. The enrollment process was very smooth and I got signed up for coverage quickly. The coverage I have now is great and I have outstanding doctors. I see my doctors frequently and have been very pleased with the care I’ve received. I save $250 every month from what I was paying, and I have a lower deductible than I did through my former employer’s plan. All of my doctors are on the HMO I selected. To give you an idea as to how much better my health plan is, the health plan I have now would have cost me $1,000 per month before DC Health Link launched.

The health coverage I have has saved me a lot of money. The monthly savings I receive gives my wife and me more flexibility. We can use that money to pay for other expenses or put some of it away in savings. At our age, and with retirement approaching, every little bit helps. Knowing that we don’t have to scramble each month to creatively balance our household budget and pay for health care is a welcome relief.

In short, DC Health Link has provided us with a measure of financial stability and peace of mind.

When friends and relatives in other states tell me about problems they are having with their health insurance, I tell them to move to DC, because my experience has been great.
AHIP's Comments on Bill 21-08,
Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015

by

Geralyn Trujillo, MPP
Regional Director, State Affairs
America's Health Insurance Plans

For the Council of the District of Columbia, Committee on Health and Human Services
Hearing

January 29, 2015
Good morning, Chairwoman Alexander and members of the Committee on Health and Human Services. My name is Geralyn Trujillo and I am here on behalf of America’s Health Insurance Plans. AHIP is the national trade association representing the health insurance industry. AHIP’s members provide health insurance and supplemental benefits to more than 200 million Americans through employer-sponsored coverage, the individual and small group insurance markets, and public programs such as Medicare and Medicaid. Our members offer a broad range of health insurance products in the commercial marketplace and also have demonstrated a strong commitment to participation in public programs.

I appreciate the opportunity to offer comments on the Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015. AHIP appreciates all of the hard work and effort that has gone into the creation of the Exchange Authority. We also understand the unique position of the DC Council in supporting the only Exchange in the country that is responsible not only for meeting the insurance needs of the District, but also of the Congressional employees that avail themselves of coverage through an insurance exchange.

In my time allotted today, I would like to provide AHIP’s perspective on the financing of the Exchange, as well as our ongoing concerns regarding the calculation of the assessment that serves as the funding mechanism for the Authority.

As a national trade association, AHIP has been engaged in the development of the Exchanges across the country. As such, we have a unique perspective as to how each exchange is addressing the question of financial sustainability.

AHIP believes that every exchange should first establish a responsible budget. Then, an appropriate funding mechanism can be determined, which reflects a responsible and fiscally prudent methodology that focuses on the underlying expectation that the Exchange keep the products sold affordable. This process must be transparent and efficient.

Over the past year, AHIP has continued to raise concerns regarding the total budget of the Authority, as well as the funding mechanism. Our research has found that the District, when compared to enrollment populations of similar states, is an outlier. Based on the number of enrollees, we found that DC’s per enrollee costs are significantly higher than those of other state-based exchanges. While we fully support and encourage a robust health insurance marketplace that allows every consumer the opportunity to obtain coverage, we continue to fear that the question of affordability will remain, endangering the very intent of the creation of the Authority.

Affordability is at the heart of the marketplace. As we consider this permanent legislation, we reiterate our concerns that the open-ended assessment on health insurers that is
codified in this bill will create instability in premiums. Since the proposed annual assessments are based on projections of amounts needed to support Exchange Authority operations, the result is year-to-year uncertainty with respect to the impact on premiums. We do not support such an approach since it creates unpredictable premium fluctuations for consumers and does not sufficiently encourage wise stewardship of resources.

AHIP would suggest that the Committee consider amending the legislation to include a cap on the funding assessment levied against health carriers. Such a cap is currently in place for other state agencies, including the Department of Insurance, Securities, and Banking. In fact, DISB has been able to serve the District and its consumers quite well and has seldom needed the full capped amount in order to meet its expenditures. We would strongly encourage such a system be applied to the Authority, a program that serves strictly as a means to facilitate access to health insurance plans and has none of the regulatory and fiduciary responsibilities that other state agency authorities hold.

In this vein, it also seems prudent, and in the public's best interest, to have the Authority publically post and receive comment on a one-, three-, and five-year business plan and projected budget. Given the role the Authority plays in the sphere of public health, and given that it is funded by the health carriers in the District, it seems fiscally appropriate to provide a window into the short- and long-term plans of the Authority.

Secondly, AHIP does not support Exchange funding mechanisms that fail to recognize that Exchanges are a community good that should not be funded strictly through one sector of the economy. Broad-based funding, such as general revenues, recognizes that the benefits of Exchange coverage extend beyond health insurers to the larger community. We strongly encourage this Committee and the full Council to again reconsider redirecting currently collected taxes and assessments that were at one time earmarked for the purpose of assuring health care coverage, but which have since been redirected because envisioned programs were not realized.

We would also recommend the addition of the Regulatory Trust Fund's audit to this legislation. While it was included in the Authority's budget last year, we believe that memorializing the need for an outside audit reflects the Committee's, and the Council's, desire to ensure that the budget of the Authority remains fiscally responsible and appropriate. Given that the Trust Fund's primary function is to monitor the budget and operations of the District's agencies that are funded through assessments on licensed insurers, and that it was established by statutory authority to ensure that the monies assessed are properly and most efficiently utilized, AHIP believes that codifying this language within the permanent legislation underscores the importance and value of
an appropriate budget and the fiscal responsibility that the Authority owes to the carriers and the consumers of the District.

Finally, our position has also been consistently clear that HIPAA excepted-benefits must be excluded from any Exchange funding mechanisms because these products are not regulated under the ACA and have no relationship to health benefit plans that are offered on the Exchange. While an ongoing case winds its way through the Courts, we remind the Committee that these products are financial protection products - they are not traditional health insurance coverage products. They are not, and are in fact specifically forbidden, from being sold on the Exchange. And yet this legislation seeks to make permanent a tax on these products. The impact of this tax is an inequitable premium increase cost for consumers who purchase insurance products that have no relationship to the Exchange or ACA-related health care reforms.

We appreciate the time, energy, and effort that has gone into developing the DC Health Benefit Exchange. AHIP shares this Committee's, and the full Council's, goal of a successful, financially sustainable health insurance market that provides affordable coverage options to consumers and we look forward to continuing to work with the Authority and with this Committee. Thank you.
Good morning Chairperson Alexander and members of the Committee on Health. My name is Falasha Culpepper. I am an In-Person Assister with DC Health Link and Program Manager with Capital City Area Health Education Center.

The Capital City Area Health Education Center (CC AHEC) is a 501(c)(3) non-profit committed to creating public-private partnerships to improve the supply, distribution, diversity, and quality of the DC healthcare workforce, to increase access to health care in medically underserved areas. Our evidence based and award winning Patient Navigation program annually serves over 20,000 community, small business and campus partners. We have demonstrated proven success since October 2013 through our network of Certified In-Person Assisters and Certified Application Counselors to address the enrollment needs of the people in the district to meet their unique cultural and language needs.

Today is a historic day in the outreach and enrollment efforts of Assister Organizations around the nation, as we kick-off the 2nd Annual National Youth Enrollment Day. A national movement where young people, communities, and organizations come together in a unified effort to ensure young adults know about their new health care options and enroll in health coverage. Throughout the city today, young district residents are showing our support for DC health Link and the Affordable Care Act through social media and enrollment activities.

Collectively, my organization has met with and educated thousands of DC residents and enrolled hundreds. I am thankful that DC Health Link has allowed me to continue to educate District residents. Each day I help my community better navigate the new health care system, so that together we can all live and work in healthier communities. In my position, I understand the
importance of a stable state based health insurance marketplace. I have been able to help many hard to reach and reluctant people live healthier lives because of the accessibility and affordability DCHL Health Link offers.

I would like to see the continued success of DC Health Link as it is a national model of success in health exchange implementation. The Proposed Assessment Rule for Financial Sustainability is a consumer-friendly way to continued success in the District of Columbia. From what I understand, I believe a narrow assessment would likely lead to increased premiums and cost sharing and/or reduced benefits for plans purchased through DC Health Link in future years, undermining the goals of DC Health Link and the Affordable Care Act. Furthermore, the carriers offering products through DC Health Link in 2014 will not necessarily be those participating in DC Health Link in future years. In order to have a sustainable exchange that encourages carriers to offer products in future years, I believe it is reasonable and appropriate to require all insurers of health risks in DC to pay a portion of the total assessment amount. This would also help to ensure affordable rates for our community.

On behalf of Capital City AHEC, I would like to thank the DC Health Benefit Exchange for the honor to serve our city as DC Health Link In-Person Assister and the DC City Council Committee on Health for your time and the opportunity to share.
Good afternoon, Chair Alexander and distinguished members of the Committee. My name is Katie Nicol, the manager of our DC Health Link Assister program at Whitman-Walker Health (WWH).

WWH provides high quality, affirming health care to more than 15,000 individuals, including nearly 10,000 DC residents – approximately 4,000 of whom are living with HIV and 45% of whom are members of the city's gay, lesbian, bisexual, and transgender communities. Through our integrated model of care, we serve consumers from every Ward in the City at our two sites – the Elizabeth Taylor Medical Center in Ward 1 and the Max Robinson Center in Ward 8. We are proud to be on the front lines of the District of Columbia's health care system and implementation of health care reform.

As a community health center, WWH understands the real barriers that DC residents have faced in securing affordable health insurance in today's insurance markets. That understanding is derived from our public benefits and health insurance team's day-to-day interactions with WWH patients – many of whom are living with significant health conditions. We are pleased to be here today to share a few examples of the critical importance of the DC Health Link Assister Program. WWH was one of the 33 community based organizations selected to serve as DC Health Link Assisters. As trained experts, our Assisters provide outreach and education to uninsured and vulnerable consumers – our patients and any other DC resident needing in-person assistance. The consumer protections in the Affordable Care Act have been of critical importance to those we've helped – especially the right to enroll in any health plan on the Exchange regardless of medical history or pre-existing condition. We help consumers understand their insurance options; enroll in insurance; troubleshoot any challenges; and provide health insurance literacy to make sure that they not only receive their insurance card, but also understand how to use their insurance to stay healthy.

Ensuring the competence and expertise of DC Health Link Assisters requires initial and continuing training of those who are certified. WWH proudly served as the lead trainer of the Assisters, in partnership with Families USA, for the DC Health Benefit Exchange.

Financial sustainability of the Exchange is critical. While the Exchange initially benefited from federal funds to support the critical services of the DC Health Link Assisters, that funding will not continue. It will be necessary to ensure that the Exchange has the revenue that will be needed to continue to fund this critical work. We see first-hand every day consumers who would not get connected to health insurance without the help of a DC Health Link Assister.

For the first open enrollment period between October 2013 and April 2014, more than half (57%) of the consumers WWH Assisters helped were living with HIV and 40% identified as LGBT – both of WWH's and DC's important target populations. The DC Health Benefit Exchange designated WWH to serve as one of the
four DC Health Link Storefront Enrollment Centers for the second open enrollment. WWH is proud of this designation and the partnership with DC.

Consumers want the help of In-Person Assisters to explain their choices and ensure they get what they want and are eligible for. The DC Health Link Assister funding allowed WWH to expand hours of operation for these insurance navigation services, conduct critical outreach in partnership with DC Health Benefit Exchange - including One Touch Enrollment events and our mobile testing van – in order to reach as many uninsured and under-insured DC residents as possible, not just WWH patients. We applaud DC Health Link for the diverse group of trusted organizations selected to serve as Assisters – all of whom reached specific target populations. We support the funding mechanism for financial sustainability of the Exchange and urge the District of Columbia Government to ensure that the Exchange has the funding needed to ensure that this vital service continues.

Thank you for your time.
To: The Honorable Yvette Alexander, Chairperson, Committee on Health and Human Services
Members of the Committee on Health and Human Services
From: Eric Vicks, Associate Director of Policy and Advocacy, DC Primary Care Association (DCPCA)
RE: Support for "Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015"
Date: January 29, 2015

DCPCA works to ensure that all residents of Washington, DC have the ability and opportunity to lead healthier lives—through increased health insurance coverage, expanded access to care, and improved health care quality. Our key partners in this effort include community-based safety net primary care providers who are committed to our mission of creating a health care system that allows for everyone to be covered and everyone to be cared for. DCPCA and our health center partners rely on the Health Benefits Exchange (HBX) web portal known as DC Health Link to provide timely and accurate information and access for District residents seeking health care insurance and health care providers, and we support Bill 21-8, "Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015"

More than 74,000 District residents have used DC Health Link to enroll in private or public health plans. Unlike so many other jurisdictions, the District successfully launched a robust and effective exchange providing comprehensive enrollment information to thousands of residents newly seeking insurance. Where the federal exchange struggled and so many states failed, DC Health Link proved its capacity to provide essential services to District residents seeking to navigate the complex world of health insurance products and offerings. The District’s rate of uninsured dropped by 43% since the opening of the Exchange, and DC has among the highest rates of health insurance coverage in the nation. HBX has proved its value.

The District tapped federal funds to build the Exchange and fund initial operation, but those resources are not available to sustain operations going forward. Bill 21-8 creates an assessment on all health carriers as an effective way to raise revenue for HBX operations while minimizing impact on health plan premiums for consumers. Even carriers selling outside of the exchange derive some benefit from residents’ increased health care access, and across-the-board assessment avoids disadvantaging exchange plans and their enrollees.

Again, DCPCA supports Bill 21-8 because it creates a sustainable, reliable funding source for an agency critical to the District’s efforts to build a healthier DC. We thank you for the opportunity to testify, and for your work and partnership. I am happy to answer any questions now or going forward.
Statement of the
American Council of Life Insurers (ACLI)

Public Hearing on
Bill 21-8
(the “Health Benefit Exchange
Authority Financial Sustainability
Amendment Act of 2015”)

Before

Councilmember Yvette M. Alexander, Chairperson
Committee on Health and Human Services

Thursday, January 29, 2015
11:00 am
John A. Wilson Building, Room 412
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
• Good morning Chairperson Alexander and members of the Committee on Health and Human Services. My name is Joann Waiters and I am a Regional Vice President with the American Council of Life Insurers (ACLI). ACLI is a Washington, D.C. – based national trade association with 284 member companies operating in the United States and abroad. Two hundred and thirty seven (237) of our members are licensed to do business in the District of Columbia. Our members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance.

• Thank you for the opportunity to present testimony at the Committee on Health and Human Services' public hearing relating to Bill 21-8 entitled the “Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015.” The stated purpose of the bill is to amend the Health Benefit Exchange Authority Establishment Act of 2011 to provide for the financial sustainability of the Health Benefit Exchange Authority. This bill is identical to an Emergency bill (Bill 20-775) and Temporary bill (Bill 20-776) that became effective in 2014 during Council Period 20. Today, as well as last year, ACLI strongly opposes any bill that would allow the Health Benefit Exchange Authority (the Exchange) to assess a fee on all “health carriers” doing business in the District with direct gross receipts of $50,000 or greater. We are concerned that as the bill is currently drafted, the fees are imposed on supplemental insurance products without regard to whether the underlying product was, or even could be, sold on the D.C. Exchange, and thus without regard to what, if any, benefit the assessed insurer received from the Exchange. Examples of such products include long-term care, disability income, and vision insurance. To be clear, ACLI does not have a position on the Affordable Care Act. Our concerns are solely focused on how D.C. is seeking to fund its own exchange.

• As you may recall, on July 3, 2014, ACLI filed a Complaint (see attachment no. 1) against the Exchange in the U.S. District Court for the District of Columbia. The Complaint, which recognizes the challenge the District faces in attempting to fund the unusually high costs of its Exchange, asserts that as noted above, the assessments on supplemental insurance products are imposed without regard to whether the underlying product was, or even could be, sold on the D.C. Exchange. While we are extremely disappointed with the U.S. District Court Judges’ decision (November 14, 2014) to grant the defense’s motion to dismiss, ACLI maintains that the Exchange’s assessment on supplemental products to fund its health exchange violates the Affordable Care Act and is unconstitutional. Therefore, on December 15, 2014, ACLI filed a notice of appeal to the judge’s decision dismissing ACLI’s original Complaint against the Exchange. (see attachment no. 2).

• Again, Chairperson Alexander and members of the Committee, we thank you for the opportunity to testify on Bill 21-8. I would typically be happy to answer any questions that you may have. However, this remains a matter of ongoing litigation and on advice of counsel, I respectfully direct your attention to our testimony today and the attached Complaint. If you would like our submission of legislative language, we would be happy to provide it.
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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<td>MILA KOFMAN, in her official capacity as Executive Director of the District of Columbia Health Benefit Exchange Authority</td>
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<td>DIANE C. LEWIS, in her official capacity as Chairperson of the Executive Board of the District of Columbia Health Benefit Exchange Authority</td>
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<td>VINCENT C. GRAY, in his official capacity as Mayor of the District of Columbia</td>
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Case No. _

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
PRELIMINARY STATEMENT

1. In 2010, Congress enacted the Patient Protection and Affordable Care Act (the “ACA”). Among other things, the ACA mandates that an American Health Benefit Exchange (“Exchange”) shall be established in each State and the District of Columbia (the “District”). Each State and the District is given a choice of operating its own Exchange or having the federal government establish and operate such an Exchange. These Exchanges are intended to facilitate the purchase and sale of qualified health plans by individuals and small businesses.

2. As a matter of federal law, only “qualified health plans” – i.e., plans that offer “minimum essential coverage” as that term is defined by federal law – and certain stand-alone dental plans may be sold on an Exchange. Other types of insurance, such as life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, may not be sold on an Exchange. The ACA seeks to incentivize private insurers to offer qualified health plans on the Exchanges by offering them various benefits, including direct federal subsidies for many of the plans they sell on Exchanges.

3. Although the ACA appropriated funding to assist States and the District in getting their Exchanges off the ground, it does not allow for the expenditure of federal funds to finance the continued operation of an Exchange. Instead, the ACA mandates that each Exchange be self-sustaining by January 1, 2015. To that end, the ACA authorizes States and the District to fund the operation of their Exchanges by charging assessments or user fees to participating health insurance issuers. Likewise, the federal government has announced that it will fund the Exchanges it operates by charging assessments or user fees to participating health insurance issuers.

4. In 2011, the District enacted the Health Benefit Exchange Authority Establishment Act (the “Establishment Act”), which declares the District’s intent to establish its
own Exchange ("the D.C. Exchange") and establishes an entity designated the Health Benefit Exchange Authority (the "Authority") to operate that Exchange in accordance with the provisions of the ACA. The Establishment Act vested the Authority with limited regulatory jurisdiction over health insurance issuers that sell "qualified health plans" and "qualified dental plans."

5. In addition, the Establishment Act authorized the Authority to fund the D.C. Exchange's operations by imposing user fees, licensing fees, and other assessments on issuers that offer qualified health or dental plans in the District. The Establishment Act did not authorize the Authority to regulate or to impose fees or assessments on issuers that do not offer qualified health or dental plans — i.e., on issuers that offer only products such as life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance.

6. In the two years since the District decided to create its own Exchange, it has become clear that the costs of operating the D.C. Exchange will be extraordinary. In 2015 alone, the Authority projects that its operating budget will be $28.75 million. That is nearly ten times the $2.9 million operating budget of the entire insurance bureau of the Department of Insurance, Securities and Banking, which monitors the solvency of more than 1,300 insurance companies and nearly 67,000 licensed insurance agents and brokers. The Authority, by contrast, operates an Exchange on which only four issuing insurers sell coverage to, at the moment, less than 50,000 enrollees.

7. In an effort to generate the substantial funding that will be necessary to operate the D.C. Exchange, on May 22, 2014, the Council of the District (the "Council") enacted the Health Benefit Exchange Authority Financial Sustainability Emergency Amendment Act of 2014 (the "Emergency Legislation"). The Emergency Legislation amends the Establishment Act to
direct the Authority to fund the operations of the D.C. Exchange by imposing assessments not just on companies that sell qualified health or dental plans on the Exchange, but on every "health carrier" that does business in the District (the "Carrier Fee"). The Carrier Fee will reach not only health and dental plans sold through the Exchange, but also wholly unrelated insurance products that are not and cannot be sold on the D.C. Exchange. For example, according to Defendants, the Emergency Legislation empowers the Authority to impose the Carrier Fee on all disability income insurance sold in the District even though disability income insurance is not a "qualified health plan" that can be offered on the D.C. Exchange. Similarly, Defendants have indicated that the Carrier Fee will also be assessed on dental plans that the ACA allows to be sold on an Exchange but that the Authority is currently excluding from the D.C. Exchange.

8. The Emergency Legislation empowers the Authority to assess and collect the Carrier Fee even from issuers that do not sell any products eligible for sale on the D.C. Exchange.

9. The only limitation the Emergency Legislation imposes on the Authority's power to assess the Carrier Fee is that the total amount assessed may not exceed reasonable projections of the costs to operate the Authority.

10. Under Defendants' interpretation of the Emergency Legislation, carriers subject to the fee will be required to fund the operations of the D.C. Exchange even if they receive no benefits from its operation. In effect, the Emergency Legislation imposes "user fees" on non-users, i.e., on companies and products that are ineligible for participation on the Exchange and beyond the Authority's power to regulate.

11. By seeking to fund the operation of the D.C. Exchange in this manner, the District is seeking to obligate certain companies to endow a State-sponsored marketplace for the
exclusive use of a small subset of health insurance issuers. There is no other Exchange – state or federal – that will be funded in this manner. Instead, both the States and the federal government have imposed fees only on products that can be sold on the Exchanges, which give rise to benefits under the ACA such as federal subsidization of premiums.

12. Defendants have announced that they intend to issue assessment notices pursuant to the Emergency Legislation imminently. Plaintiff American Council of Life Insurers ("ACLI") brings this action seeking a declaratory judgment that the Emergency Legislation is unconstitutional and preempted by the ACA. Plaintiff also seeks an injunction enjoining Defendants from assessing and collecting the Carrier Fee as currently threatened by the Authority.

THE PARTIES

13. ACLI is a trade association with approximately 300 member insurance companies operating throughout the United States, including in the District. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers’ products for financial and retirement security.

14. ACLI’s members sell numerous products that are not and cannot be sold on the D.C. Exchange. Such products include life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance. Defendants have asserted that many of these products will be subject to the Carrier Fee, regardless of the fact that they are not and cannot be sold on the D.C. Exchange. ACLI has associational standing to pursue claims for injunctive and declaratory relief on behalf of its members. ACLI’s members have standing to sue in their own right. The protection of its members from unwarranted and unlawful industry fees is germane to
the purpose of ACLI. Individual participation of ACLI’s members is not required to determine whether the Carrier Fee violates federal law or the United States Constitution; nor is it required to provide injunctive and declaratory relief to ACLI and its members. ACLI thus brings this action on its members’ behalf.

15. The Authority is an instrumentality of the District that is charged with implementing a health insurance exchange program in the District in accordance with the ACA. It is also charged with responsibility for issuing assessments for the Carrier Fee. D.C. Code § 31-3171.04.

16. Mila Kofman is the Executive Director of the Authority, and this action is brought against her in that capacity.

17. The Executive Board of the Authority exercises the powers that are granted to the Authority pursuant to D.C. Code § 31-3171.06.

18. Diane C. Lewis is the Chairperson of the Executive Board of the Authority, and this action is brought against her in that capacity.

19. Vincent C. Gray is the Mayor of the District of Columbia. The Mayor is authorized by statute to “take care that the laws [of the District] be faithfully executed.” D.C. Code § 1.301.76. Under the Emergency Legislation, the Mayor is empowered to impose penalties and to suspend or revoke certificates of authority or licenses to transact business in the District if an issuer fails to pay the Carrier Fee.

20. The District is a municipal corporation established by Congress as authorized in the United States Constitution, Art 1, § 8 cl. 17.
JURISDICTION

21. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983.

22. This Court has authority to issue a declaratory judgment and “further necessary or proper relief” pursuant to 28 U.S.C. §§ 2201 and 2202.

VENUE

23. Venue is proper in this Court because the actions of Defendants complained of herein have occurred and shall occur in this district. 28 U.S.C. § 1391(b).

FACTS

The ACA: The Patient Protection and Affordable Care Act, as Amended


25. The ACA amends and supplements the provisions of Part A of title XXVII of the Public Health Service Act relating to group health plans and health insurance issuers in the group and individual markets. Part A of title XXVII contains the ACA’s key reforms to the health insurance market. These provisions include the mandatory extension of group health coverage to children up to age 26, the elimination of annual and lifetime medical benefit limits, and prohibitions on pre-existing condition exclusions. 42 U.S.C. §§ 300gg-3, 300gg-11, and 300gg-14.

26. Although the ACA imposes comprehensive reforms on the health insurance market, those reforms do not apply to every kind of insurance that might be characterized as
“health coverage” for purposes of state insurance filings. In particular, the ACA has no application to what section 2791(c) of the Public Health Services Act defines as “Excepted Benefit” coverage. Examples of Excepted Benefit coverage include disability income, worker’s compensation policies, automobile liability insurance, long-term care coverage, fixed indemnity insurance, and coverage offered as supplemental to Medicare, Armed Forces health coverage, or certain group health insurance policies. 42 U.S.C. § 300gg-91(c). Because these plans do not offer the kind of health coverage that the ACA contemplates, they are wholly outside the scope of the ACA’s regulatory scheme.

27. The core of the ACA is the “Individual Mandate,” which requires individuals to purchase and maintain comprehensive health insurance coverage (“Minimum Essential Coverage”) or pay a penalty. 26 U.S.C. § 5000A. Individuals who do not have access to government-sponsored, employer-provided, or other third-party coverage must purchase Minimum Essential Coverage from a private health insurance issuer through the private or public health insurance market. 26 U.S.C. § 5000A(f).

28. To facilitate the purchase of Minimum Essential Coverage by such individuals, the ACA mandates that an Exchange shall be established in each State and the District. If a State elects not to establish an Exchange, the ACA requires the Secretary to establish and operate a federally-facilitated exchange in that state (a “Federal Exchange”). Many of the statutory Exchange standards that govern State Exchanges also apply to the Federal Exchange.

29. Whether operated by a State, the District, or the federal government, Exchanges are heavily regulated by the ACA. States implementing an Exchange must adopt federal standards and effectuate state laws and regulations that implement such standards. The ACA dictates each Exchange’s open enrollment periods, governance structure, manner of offer of
coverage, and minimum functions. The ACA also imposes limitations on how Exchanges may be funded. The Secretary of the United States Department of Health and Human Services (the “Secretary”) has ongoing authority to establish standards for the Exchanges. 42 U.S.C. § 18031(c), (d).

30. One of the requirements that the ACA imposes is that health plans offered on an Exchange must meet the requirements of and be certified as a “Qualified Health Plan.” Qualified Health Plans are, generally, comprehensive plans that offer “essential health benefits,” and that meet other federal and state regulatory standards. 42 U.S.C. § 18031(a)-(d). The ACA explicitly prohibits a State Exchange from offering a health plan that is not a Qualified Health Plan, other than certain stand-alone dental plans.

31. Because Excepted Benefit policies do not offer essential health benefits, 42 U.S.C. § 300gg-21, they cannot be certified as Qualified Health Plans and cannot be used to satisfy the ACA’s Individual Mandate to maintain health insurance coverage. Thus, Excepted Benefit policies, other than certain stand-alone dental plans, cannot be sold on a State Exchange and are not subject to regulation by an Exchange. 42 U.S.C. §§ 18021(a), 18031(d)(2)(B).

32. Section 18031(d)(5)(A) of the ACA provides that “[i]n establishing an Exchange under this section, the State shall ensure that such Exchange is self-sustaining beginning January 1, 2015, including allowing the exchange to charge assessments or user fees to participating health insurance issuers, or to otherwise generate funding, to support its operations.” (emphasis added).

33. In interpreting section 18031(d)(5)(A), which also applies to Federal Exchanges, the Secretary has concluded that the federal government may charge monthly user fees only to issuers that actually sell Qualified Health Plans and stand-alone dental plans on a Federal
Exchange. 45 CFR 156.50(c). The monthly Federal Exchange fee is equal to the product of the monthly user fee rate and the monthly premium charged by the issuer for each policy under the plan where enrollment is through a Federal Exchange. Id. As the Secretary has explained, this fee is permissible because of the “special benefits derived” from the ability to sell Qualified Health Plans on an Exchange. HHS Notice of Benefit and Payment Parameters for 2015, 79 Fed. Reg. 13,744, 13,746 (March 11, 2014).

34. In addition to the District, 14 States have elected to operate an Exchange under the ACA. Each of these State Exchanges must develop a self-sustaining financial model by 2015 pursuant to section 18031(d)(5)(A). Like the federal government, the States that have chosen to sustain their Exchanges through user fees have imposed such fees only on issuers that actually sell health and dental plans that can be sold on an Exchange. No State Exchange has sought to sustain its Exchange by imposing a fee upon receipts from insurance products that cannot be sold on that State’s Exchange under the ACA.

The Establishment Act: The District’s Health Benefit Exchange Authority Establishment Act of 2011

35. The Establishment Act declared the District’s intent to establish its own Exchange, established and set out the responsibilities of the Authority, and detailed the core responsibilities of the D.C. Exchange. The Establishment Act became effective on March 2, 2012. D.C. Law 19-94; D.C. Code § 31-3171.01 et seq.

36. The Authority is an instrumentality of the District created to effectuate the purposes of the Establishment Act. The purposes of the Authority are to: “(1) Enable individuals and small employers to find affordable and easier-to-understand health insurance, (2) Facilitate the purchase and sale of qualified health plans, (3) Assist small employers in facilitating the enrollment of their employees in qualified health plans, (4) Reduce the number of uninsured,
(5) Provide a transparent marketplace for health benefit plans, (6) Educate consumers; and (7) Assist individuals and groups to access programs, premium assistance tax credits, and cost sharing reductions.” D.C. Code § 31-3171.02. These purposes are wholly unrelated to products that are not and cannot be sold on the Exchange.

37. The Establishment Act directs the Authority to undertake a number of activities. The Authority was required to establish the D.C. Exchange and to certify plans as Qualified Health Plans that may be offered on the D.C. Exchange. D.C. Code § 31-3171.04(a). The Establishment Act limits certification eligibility to “health benefit plans” that meet the requirements of the ACA. D.C. Code § 31-3171.09(a).

38. A “health benefit plan” is defined under the Establishment Act as “a policy, contract, certificate, or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.” D.C. Code § 31-3171.01(5)(A). The Establishment Act explicitly excludes Excepted Benefits, which are not subject to regulation under the ACA, from the definition of “health benefit plan” for all purposes related to the D.C. Exchange. Id. Thus, Excepted Benefit policies cannot be certified as Qualified Health Plans that can be offered on the D.C. Exchange.

39. The Establishment Act also established the Health Benefit Exchange Authority Fund (the “Fund”). The Fund is to be administered by the Authority and “shall be used solely for the purposes set forth in [the Establishment Act] and the costs of administering [the Establishment Act].” D.C. Code § 31-3171.03(a).

40. The Fund shall consist of: “(1) Any user fees, licensing fees, or other assessments collected by the Authority; (2) Income from investments made on behalf of the Fund; (3) Interest on money in the Fund; (4) Money collected by the executive board as a result of a legal or other
action; (5) Donations; (6) Grants; (7) All general revenue funds appropriated by a line item in the budget submitted pursuant to section 446 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 801; D.C. Official Code § 1-204.46), and authorized by Congress for the purposes of the Authority; and (8) Any other money from any other source accepted for the benefit of the Fund.” D.C. Code § 31-3171.03(b).

41. The Establishment Act provides that “the Authority is authorized to charge, through rulemaking: (A) User fees; (B) Licensing fees; and (C) Other assessments on health carriers selling qualified dental plans or qualified health plans in the District, including qualified health plans and qualified dental plans sold outside the exchanges.” D.C. Code § 31-3171.03(e) (emphasis added).

42. As initially enacted, the Establishment Act did not authorize the Authority to assess carriers that do not sell products that can be sold on the Exchange. D.C. Code § 31-3171.03(e).

The Rule: A Notice of Proposed Rulemaking by the Authority

43. The ACA provided States with federal grant funds to establish an Exchange. The District received more than $133 million in federal grant funds to establish the D.C. Exchange. However, the federal government will not finance Exchange operations after 2014.

44. The projected costs of operating the Exchange that the Authority has created are enormous. In 2015 alone, the Authority anticipates that its operating budget will be $28.75 million. By comparison, the budget of the insurance bureau within the Department of Insurance, Securities and Banking, which is also funded by assessments on insurance issuers, is just $2.9 million. Despite the Authority’s significantly larger budget, the responsibilities of the insurance bureau are much more extensive than the responsibilities of the Authority. The insurance bureau
monitors the solvency of the more than 1,300 insurance companies operating in the District and the nearly 67,000 licensed insurance agents and brokers. This bureau also approves all policy forms and premium rates for insurance products sold in the District. The Authority, by contrast, operates an Exchange that, at the moment, consists of four insurance providers and approximately 50,000 consumers.

45. After the Establishment Act was enacted, the Authority appointed a “working group” consisting of, among others, health insurance issuers offering Qualified Health Plans on the D.C. Exchange. The working group was charged with developing a plan to pay for the D.C. Exchange once federal funding ceases in 2015. The working group proposed that the Authority raise the necessary funds by imposing a “broad” assessment that would extend beyond products sold on the Exchange to other insurance products that are not and cannot be sold on the D.C. Exchange. The proposed assessment would apply even to issuers that do not sell any products eligible for sale on the Exchange and therefore can receive no benefits from the D.C. Exchange’s operation. Consistent with the working group’s recommendation, on February 12, 2014, the Authority proposed a rule implementing such an assessment to fund the D.C. Exchange. 61/9 D.C. Reg. 001741 (Feb. 28, 2014).

46. During the public notice and comment period for the proposed rule, the Authority received multiple comment letters explaining that the assessment contemplated by the proposed rule would be illegal because, under the Establishment Act, the Authority was empowered only to assess issuers that offered qualified health and dental plans that could be sold on the D.C. Exchange.

47. After receiving comments that its proposed rule was illegal, the Authority abandoned the proposed rule without warning or public notice. Instead, the Authority sought
emergency legislation from the Council to amend the Establishment Act to grant the Authority broader fee assessment powers. The Emergency Legislation was passed by the Council and signed into law on May 22, 2014. D.C. Act 20-329.¹

**The Emergency Legislation: The Health Benefit Exchange Authority Financial Sustainability Emergency Amendment Act of 2014**

48. The Emergency Legislation amends the Establishment Act to provide that “the Authority shall annually assess, through a ‘Notice of Assessment,’ each health carrier doing business in the District with direct gross receipts of $50,000 or greater in the preceding calendar year an amount based on a percentage of its direct gross receipts for the preceding calendar year. These assessments shall be deposited in the Fund.” D.C. Code § 31-3171.03(f)(1).

49. “Health carrier” is defined in the Establishment Act as “an entity subject to the insurance laws and regulations of the District that contracts, or offers to contract, to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including: (A) An accident and sickness insurance company; (B) A health maintenance organization; (C) A hospital and medical services corporation; or (D) Any other entity providing a health benefit plan.” D.C. Code § 31-3171.01(6). “Direct gross receipts” means “all policy and membership fees and net premium receipts or consideration received in a calendar year on all health insurance carrier risks originating in or from the District of Columbia.” D.C. Code § 31-3171.01(3A).

50. This new assessment power is granted in addition to, and not in lieu of, the assessment power originally provided to the Authority under the Establishment Act.

51. The assessment power granted to the Authority under the Emergency Legislation is virtually unlimited. The only constraint on the Authority's power to impose assessments is that "[t]he amount assessed shall not exceed reasonable projections regarding the amount necessary to support the operations of the Authority." D.C. Code § 31-3171.03(f)(2). Neither the Establishment Act nor the Emergency Legislation places limits on the Authority's ability to expand its operations or structure in a manner that would support any assessment target chosen in its sole discretion. For the 2015 fiscal year, the Authority plans to generate nearly all of its $28.75 million operating budget through the Carrier Fee.

52. The Emergency Legislation requires payment of the amount stated in the Notice of Assessment within 30 business days of receipt of such assessment. D.C. Code § 31-3171.03(f)(3).

The Emergency Rule Supplemetning the Emergency Legislation

53. On June 11, 2014, the Authority again invoked "emergency" processes to adopt a rule relating to the Carrier Fee (the "Emergency Rule"). 61 D.C. Reg. 6236 (June 20, 2014). The Emergency Rule attempts to implement a restricted appeals procedure for challenging Carrier Fee assessments. Under the proposed language, an issuer is limited to contesting its classification as a health carrier subject to the Carrier Fee, processing errors, the incorrect application of relevant methodology, or a mathematical error with respect to the assessment. D.C. Mun. Regs. tit. 26-D, § 110.1. Also, an issuer may contest an assessment only if the amount in dispute is equal to or exceeds one percent of the applicable assessment. D.C. Mun. Regs. tit. 26-D, § 110.2. The Emergency Rule does not toll the 30 day period for Carrier Fee payments during the pendency of an appeal.
The Threatened Assessments Will Be Imminently Imposed And Issuers that Are Assessed Will Lack An Adequate Remedy

54. Defendant Kofman, the Executive Director of the Authority, has asserted that the Carrier Fee is a broad-based assessment that will be imposed upon receipts from sales of Excepted Benefit plans. Defendant Kofman has also stated that assessments will be issued this summer.

55. The Emergency Legislation provides that “[a]ny failure to pay the assessment shall subject the health carrier to [D.C. Code § 31-1204].” D.C. Code § 31-3171.03(f)(4).

56. D.C. Code § 31-1204(a) provides that any insurer that fails to pay an assessment on or before the due date shall be subject to a penalty imposed by the Mayor that is equal to 10% of the assessment plus interest at one-half of 1% per month for the period between the due date and the date of full payment.

57. D.C. Code § 31-1204(b) provides that if an insurer fails to pay the assessment in a timely manner, the Mayor shall send the insurer a notice of deficiency, and that 10 days after serving the notice, the Mayor may take whatever action he deems appropriate in his discretion, including “suspending or revoking the insurer’s … certificate of authority or license to transact business, or any other appropriate action or sanction authorized under the insurance laws for failure to comply with District laws, including referring the matter to the Corporation Counsel for legal action to collect the assessment.”

58. D.C. Code § 31-1204(a) states that the Mayor shall order a refund if an overpayment is made or if the amount is later found to be in error. However, neither the Emergency Legislation nor D.C. Code § 31-1204 contain administrative procedures to dispute the assessments to be imposed by the Emergency Legislation.
59. Thus, issuers must pay the Carrier Fee or they will be subject to penalties, interest and/or the potential revocation or suspension of their certificate of authority or license to transact business. The circumscribed "appeals" process contained in the Authority's Emergency Rule does not allow for challenges to the Carrier Fee on the basis of its inconsistency with federal law or its unconstitutionality, such as those made in this Complaint.

COUNT I

(DECLARATORY/INJUNCTIVE RELIEF – THE EMERGENCY LEGISLATION IS PREEMPTED BY FEDERAL LAW)

60. ACLI realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 59, above.

61. The doctrine of preemption is grounded in the authority of Congress to reserve for itself exclusive dominion over an entire field of legislative concern. "Conventional conflict pre-emption principles require pre-emption where compliance with both federal and state regulations is a physical impossibility, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Boggs v. Boggs, 520 U.S. 833, 844 (1997) (internal citations omitted).

62. The ACA provides: "In establishing an Exchange under this section, the State shall ensure that such Exchange is self-sustaining beginning January 1, 2015, including allowing the exchange to charge assessments or user fees to participating health insurance issuers, or to otherwise generate funding, to support its operations." 42 U.S.C. § 18031(d)(5)(A).

63. The Emergency Legislation is preempted by the ACA because, inter alia, the ACA does not authorize the District to impose assessments or user fees on the sale of products that are not sold on the Exchange. The Emergency Legislation imposes the Carrier Fee on a carrier's "policy and membership fees and net premium receipts or consideration" without regard
to whether the underlying product was, or even could be, sold on the D.C. Exchange. This result conflicts with the ACA and HHS’s interpretation of the ACA; conflicts with, stands as an obstacle to, and frustrates Congress’ purposes in the ACA; and is preempted by the ACA.

COUNT II

(DECLARATORY/INJUNCTIVE RELIEF – VIOLATION OF THE TAKINGS CLAUSE OF THE UNITED STATES CONSTITUTION)

64. ACLI realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 63, above.

65. The Takings Clause of the Fifth Amendment to the United States Constitution states, in relevant part, that “[n]o person shall be ... deprived of life, liberty, or property, without due process of law ....” The Fifth Amendment applies to the District.

66. A governmental user fee that fails to bear a sufficient relationship to the value received or fails to provide a fair approximation of the cost of benefits supplied constitutes a taking within the meaning of the Takings Clause.

67. The Carrier Fee is imposed without regard to whether the underlying product was, or even could be, sold on the D.C. Exchange, and thus without regard to what, if any, benefit the assessed issuer received from the Exchange.

68. The Carrier Fee therefore constitutes a taking of property without just compensation in violation of the Fifth Amendment to the United States Constitution.

COUNT III

(DECLARATORY/INJUNCTIVE RELIEF – VIOLATION OF THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION)

69. ACLI realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 68, above.
70. The Due Process Clause of the Fifth Amendment to the United States Constitution states, in relevant part, that “[n]o person shall be ... deprived of life, liberty, or property, without due process of law ....” The Fifth Amendment applies to the District.

71. When the government imposes a fee to fund a government benefit, due process requires a sufficient relationship between the target of the fee and the benefit the government seeks to fund.

72. The Carrier Fee is imposed without regard to whether the underlying product was, or even could be, sold on the D.C. Exchange, and thus without regard to what, if any, benefit the assessed issuer received from the Exchange. Accordingly, the Carrier Fee bears an insufficient relationship to the government's intended purpose of defraying the regulatory and administrative costs of operating the D.C. Exchange.

73. The Carrier Fee therefore violates carriers’ right to due process as provided for in the Fifth Amendment to the United States Constitution.

COUNT IV

(DECLARATORY/INJUNCTIVE RELIEF - VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION)

74. ACLI realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 73, above.

75. The Fourteenth Amendment to the United States Constitution provides: “[N]or shall any State ... deny to any person within its jurisdiction equal protection of the laws.” The principle of equal protection, as applied to the District through the Fifth Amendment, prohibits the District from making unreasonable classifications for assessing fees and other purposes.

76. The Emergency Legislation creates an unreasonable classification that is not rationally related to the District’s objective. The Carrier Fee is imposed on certain D.C.
businesses without regard to whether the products they sell are, or even could be, sold on the D.C. Exchange. At the same time, the Carrier Fee is not imposed on other similarly situated businesses in the District that cannot sell their products on the D.C. Exchange. There is no reasonable basis for imposing a fee on the sale of some products that are not and cannot be sold on the D.C. Exchange while imposing no assessment on the sale of other products that are equally detached from the operation of the D.C. Exchange.

77. The Carrier Fee therefore violates carriers' right to equal protection as provided for by the Fifth Amendment to the United States Constitution.

COUNT V

(DECLARATORY/INJUNCTIVE RELIEF – UNCONSTITUTIONAL DELEGATION)

78. ACLI realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 77, above.

79. The Due Process Clause and separation of powers principles inherent in the United States Constitution prohibit the delegation of legislative power to an executive officer or agent absent some intelligible principle that limits and guides the manner in which that power may be exercised. The D.C. Home Rule Act also limits the extent to which the Council may delegate its legislative power.

80. By delegating to the Authority the power to assess fees on products that are not sold and cannot be sold on the D.C. Exchange, and are beyond the Authority's jurisdiction to regulate, subject only to the condition that such assessments may not exceed reasonable projections of cost necessary to operate the Authority, the Emergency Legislation unlawfully and unconstitutionally delegates to the Authority an arbitrary and unlimited legislative power.

COUNT VI

PRELIMINARY INJUNCTION

82. ACLI realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 81, above.

83. A plaintiff may obtain a preliminary injunction if it can demonstrate: (1) that there is a substantial likelihood it will prevail on the merits; (2) that it is in danger of suffering irreparable harm during the pendency of the action; (3) that more harm will result to it from the denial of the injunction than will result to the defendant from its grant; and (4) that the public interest will not be disserved by the issuance of the requested order.

84. There is a substantial likelihood that ACLI will prevail on the merits because ACLI has demonstrated that the Emergency Legislation conflicts with and is preempted by the ACA and violates the United States Constitution.

85. ACLI’s members are in danger of suffering irreparable harm during the pendency of the action because: (1) Defendant Kofman has announced that the assessments will be issued in the summer of 2014, (2) the Emergency Legislation permits the Mayor to impose penalties and interest, and to revoke or suspend a carrier’s certificate of authority or license to transact business if it fails to pay its assessment within 10 days after receiving a deficiency notice, (3) the Emergency Legislation does not provide a process for obtaining refunds of amounts paid in the event the Emergency Legislation is determined unlawful after payment has been made, (4) the Emergency Rule does not allow for challenges based on the unconstitutionality of the Carrier Fee or its inconsistency with federal law, and (5) it is unclear whether carriers subject to the Carrier Fee will be able to obtain a refund of amounts paid if the Carrier Fees are spent to fund the operation of the Authority and the D.C. Exchange while this litigation is pending.
86. More harm will result to ACLI's members from the denial of the injunction than will result to the Authority from its grant because carriers must either risk the forfeiture of any Carrier Fees paid or subject themselves to penalties and/or the revocation or suspension of their certificate of authority or license to transact business. In contrast, the Authority and the D.C. Exchange will be required to seek funding through means allowable within the confines of the ACA and the United States Constitution.

87. The public interest will be served by the issuance of an injunction because the public has an interest in ensuring that the Authority and the D.C. Exchange are funded with legal and constitutional funds. Moreover in the absence of an injunction, the public interest will be disserved by increased costs for products offered by issuers that do not participate in or benefit from the D.C. Exchange, but are still subject to the Carrier Fee.

88. ACLI requests a preliminary injunction enjoining Defendants from assessing and collecting the Carrier Fee on premiums or other receipts from products that are not sold on the D.C. Exchange.

CLAIMS FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

That the Court declare that the Emergency Legislation, as construed by the Authority, is unconstitutional and is preempted by the ACA and is thus unenforceable;

That the Court enjoin Defendants from assessing and collecting the Carrier Fee upon "all policy and membership fees and net premium receipts or consideration received in a calendar year on all health insurance carrier risks originating in or from the District of Columbia" rather than a carrier's receipts from the sale of products made on the D.C. Exchange.

That the Court award Plaintiff reasonable attorneys' fees and costs; and
That the Court award such other and further relief as it may deem just and proper.

Dated: July 3, 2014

Respectfully submitted,

/s/
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ATTORNEYS FOR PLAINTIFF
ACLI FILES NOTICE OF APPEAL ON D.C. HEALTH EXCHANGE FUNDING DECISION

Washington, D.C. (December 15, 2014) — The American Council of Life Insurers (ACLI) has filed a notice of appeal to a lower court’s decision dismissing ACLI’s original complaint against the District of Columbia. ACLI maintains that action taken by the District of Columbia to cover operating costs for its health insurance exchange violates the Affordable Care Act and is unconstitutional. The District of Columbia Health Exchange Authority has assessed user fees on supplemental insurance products that are prohibited from being sold on the exchange. This includes long-term care insurance, disability income insurance, vision insurance and other supplemental products.

“We respectfully disagree with the ruling by the U.S. District Court for the District of Columbia,” said ACLI Executive Vice President and General Counsel Gary Hughes. “Under the Affordable Care Act, the D.C. Health Exchange Authority can only assess qualified health plans under its jurisdiction to fund the exchange. Supplemental benefits do not fall under this definition.

“To be clear, ACLI does not have a position on the Affordable Care Act. Our concerns are only in regard to how D.C has chosen to fund its own exchange,” Hughes said.

“Because these products are prohibited from even being sold on the exchange, the assessments amount to a user fee on non-users. In addition, the cost of the assessments will likely and unfairly impact the affordability of these products for consumers in the District of Columbia,” Hughes said.

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The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with approximately 300 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers’ products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums. Learn more at www.acll.com.
Statement of Diane C. Lewis
Chairperson
D.C. Health Benefit Exchange Authority Executive Board

COUNCIL OF THE DISTRICT OF COLUMBIA COMMITTEE ON HEALTH
COUNCILMEMBER YVETTE ALEXANDER, CHAIRPERSON

Hearing on Bill 21-8 the “Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015”

Thursday, January 29, 2015, 11:00 am
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Chairperson Alexander, Members of the Committee, my name is Diane Lewis and I am the Chair of the Executive Board of the DC Health Benefit Exchange Authority. Thank you for the opportunity to appear before you today. I’m here to urge the Council to enact the “Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015.”

When Congress passed the Affordable Care Act (ACA) in March of 2010, the District of Columbia seized the opportunity put forth by that law to ensure affordable, quality health care to those in the District who were uninsured and to improve health coverage options for everyone in the small and individual group marketplaces.

Immediately in 2010, the District expanded Medicaid to childless adults as permitted under the ACA. In 2011, the District took the next major step when the Council approved the Health Benefit Exchange Authority Establishment Act, committing the District to build a state-based marketplace. In January 2012, the Mayor signed this legislation into law and appointed the Health Benefit Exchange Authority Executive Board – of which I am proud to serve as the current Chairperson. In December 2012, the District was conditionally approved to have a state-based marketplace by the Federal Government. We were one of the first jurisdictions to gain that approval.

As you will hear from our Executive Director Mila Kofman in her testimony, we are very proud of what we’ve achieved so far. According to press reports when the new marketplaces opened nationwide on October 1, 2013, DC Health Link was one of only four state-based exchanges to be up and running, without any incidents, on day one. We also started with both an individual
and Small Group (SHOP) marketplace -- while the Federal Marketplaces and many states deferred their small group marketplaces to a later date.

Since October 1, 2013, more than 70,000 people have come through DCHealthLink.com and obtained private health insurance coverage for themselves and their family members through our individual marketplace; coverage through their employer in our small group (SHOP) marketplace; or been found eligible for Medicaid.

We are before you today to ensure that we are able to continue providing this coverage and extend affordable, quality coverage to all eligible District residents and small businesses. In order to gain approval as a state-based marketplace, the ACA requires that we be self-sustaining as of January 1, 2015. That means we have to have a financing mechanism in place that funds the operational and maintenance costs of our state-based marketplace.

Last year, the Council took the first step necessary for financial sustainability by passing the emergency and temporary versions of the permanent bill before your Committee today. Now we need the Council to complete that work by passing the permanent legislation so that we have in place the permanent means to ensure we are self-sustaining as required by federal law.

The broad-based assessment outlined in this legislation, and implemented for the first time last year, is one that we developed through process that began in the spring of 2013 with an Advisory Working Group in the made up of public participants that included carriers, brokers and consumer advocates. They came to a consensus recommendation of a broad-based assessment on health carriers in the District to fund HBX, similar to the assessment that funds the DC HealthCare Ombudsman program. Importantly, the annual assessment is limited to the funds needed for the HBX annual budget as approved by the Council. That recommendation was brought to the Executive Board for our consideration; and the Executive Board voted to support their recommendation on June 6, 2013.

The next step by HBX was to promulgate proposed regulations. We shared these and sought public input. Insurers of supplemental health plans who opposed the assessment suggested the potential for a lawsuit. It was then determined that a better course of action would be to enact legislation through the Council to put the assessment directly into statute. With your help, we gained unanimous support for the emergency and temporary versions of this legislation last year. Now, we are asking for your ongoing leadership to enact the permanent legislation.

As you know, financial sustainability is a key component of obtaining certification as a state-based marketplace by the Federal Government. So, without passage of this legislation, we endanger the ability for DC Health Link to continue to provide affordable, quality coverage options to thousands of District residents and small businesses.

I am truly honored to be part of the historic effort of implementing the ACA and making affordable, quality health insurance a reality for thousands of people in the District of Columbia.
Swiftly enacting permanent legislation to enable our broad-based assessment will be key to our success. I thank you and the other members of this committee for your ongoing support. It is now my pleasure to turn things over to Mila Kofman, Executive Director of the DC Health Benefit Exchange Authority.

Again, thank you, Madam Chair, for the opportunity to testify today.
Chairperson Alexander and members of the Committee, my name is Mila Kofman. I am the Executive Director of the DC Health Benefit Exchange Authority (HBX) and it is an honor to be here today. I am here to testify in strong support of Bill 21-8, the “Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015.” This legislation will help ensure a District-based, not federal, health insurance marketplace for our residents and businesses and will help continue our successful implementation of the Affordable Care Act.

Information about DC Health Benefit Exchange Authority (HBX)

The Health Benefit Exchange Authority (HBX) is an independent instrumentality (private-public partnership) created by the Council to help implement the federal health coverage reform law, the Affordable Care Act (ACA). HBX is governed by an Executive Board with seven voting members who are District residents and recognized experts in the area of health insurance coverage. Four government agency directors also serve on the Board as non-voting members. Due to the strong political leadership of the Council, the District was among the first jurisdictions in the nation to move forward with its effort to establish a state-based health insurance marketplace.

HBX is responsible for implementing a state-based on-line health insurance marketplace under the ACA. The marketplace, called DC Health Link (DCEHalthLink.com), enables individuals and small businesses to compare health insurance prices and benefits and to purchase affordable,
quality health insurance. For the first time, individual and small business consumers have the purchasing power of large employers and have choices of coverage from multiple insurance companies.

In January 2013, the District, through the Office of Contracts and Procurement, entered into an IT services contract to build an on-line marketplace. Although we were the last state to start the IT build, DC Health Link opened for business on time on October 1, 2013 for individual and small business customers. Bloomberg News reported that the District was one of only four states that opened on time and stayed open.

In October 2013, the federal government designated the District’s small business marketplace as the source of coverage for Members of Congress and their designated staff. And in December 2013, President Obama enrolled in coverage through DC Health Link and December 2014 renewed coverage.

From October 1, 2013 to January 27, 2015, DC Health Link has served 76,996 people: 19,987 people enrolled in a private qualified health plan, 41,347 people have been determined eligible for Medicaid, and 15,662 people enrolled through the DC Health Link small business marketplace (includes Congressional enrollment).

In 2015, DC Health Link offers a choice of four health insurers (Aetna, CareFirst, Kaiser and United) and 193 different coverage options for small businesses. There are 31 coverage options for individuals and their families offered by Aetna, CareFirst and Kaiser in the individual marketplace. Individual and small business plans vary from high deductible health plans to zero deductible options, and include HMO, PPO, and Point of Service plans.

The District is a national leader in protecting and improving the health of our residents. Even before DC Health Link opened for business on October 1, 2013, the District had one of the lowest uninsured rates in the nation. This success is directly due to the significant investments in the City’s health care delivery and coverage initiatives and the hard work of all sister agencies, especially Department of Health Care Finance (DHCF), Department of Human Services (DHS), Department of Insurance Securities and Banking (DISB), and Department of Health (DOH). Your strategic policy decisions make the District a national leader.

The Affordable Care Act (ACA) created an unprecedented opportunity here in the District to achieve near universal coverage. When the District began implementation, there were 42,000 residents without any health coverage – either public or private health insurance. And, thousands of people were underinsured. Preliminary analysis of DC Health Link’s enrollment shows that the District’s uninsured rate dropped by as much as 43% in the first year of DC Health Link’s operations, with more than 18,000 previously uninsured people gaining coverage.

DC Health Link was built through a community-based approach. Our success to date is in large part a reflection of the efforts and the investments made by our communities and your strong support. Strong political support for HBX and strong efforts by community leaders, our business partners, and consumer advocates resulted in people gaining coverage in every ward.
HBX is proud of our accomplishments to date. Importantly, our goal is to ensure that every person who lives or works in the District, and every small business based in the District, has affordable, quality health coverage. That is why the Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015 is so important. Only through its enactment will HBX be able to continue to build on our initial success.

Federal Funding for State-Based Marketplaces & Sustainability Requirement

The ACA provided an opportunity for states to receive funding to plan for and to establish state-based health insurance marketplaces. The District was awarded grants to build the on-line marketplace. While federal financial support has been essential for building DC Health Link, those funds are not permanent. The ACA requires that state-based marketplaces be financially self-sustaining by January 1, 2015. In addition, the District’s enabling legislation for HBX requires a sustainability plan.

To this end, the Council unanimously passed emergency and temporary financial sustainability legislation in 2014. Permanent legislation is necessary if HBX is to receive final certification as a state-based marketplace.

The bill before you will make the financial sustainability legislation permanent and is based on a local, transparent, and DC-based community stakeholder process.

ACHIEVING FINANCIAL SUSTAINABILITY FOR HBX

Health Benefit Exchange Authority Financial Sustainability Emergency and Temporary Amendment Act of 2014

In Spring 2014, the Council unanimously passed the emergency and temporary financial sustainability legislation. The bill before you today would make this legislation permanent and is identical to the Emergency and Temporary financial sustainability legislation. The bill reflects the local stakeholder-driven process and policies developed by people who live and work here.

The legislation allowed for a broad-based assessment on health carriers in the District to fund HBX, similar to the assessment funding the DC Healthcare Ombudsman program. In addition to carriers offering major medical coverage and supplemental benefits, the assessment includes Medicaid managed care organizations (not currently assessed for the Ombudsman program). The broad-based assessment assures minimal impact on premiums and sustainable funding of the District’s Affordable Care Act Health Insurance Marketplace.

The approach is fair and equitable. It allows for assessment of health carriers that benefit directly or indirectly from DC Health Link. Health carriers that offer coverage through DC
Health Link are assessed, as well as carriers that directly or indirectly benefit from DC Health Link. Health carriers that do not sell through DC Health Link benefit from the new marketplace.

For example, most supplemental products are sold as an add-on product for people who already have a major medical policy. By expanding the number of insured residents in the District through DC Health Link, this law will help create a broad customer base for supplemental products. And, newly insured small businesses may also begin offering products like disability income – typically only offered if a business is offering health insurance.

Additionally, the ACA requires health insurance to be comprehensive. Because most supplemental plans are triggered by a medical condition, a person with comprehensive coverage is less likely to have a triggering event. When there is an insurance claim, a person can recover quicker than a person without comprehensive coverage. For example, a hospital stay may be shorter, and therefore less payout by a supplemental plan that pays per day for each day in the hospital. Another example is disability income insurance. When a disabled person has comprehensive health insurance, he or she is more likely to recover fully or move from a total to a partial disability. This means less payout for disability income carriers.

The assessment is not open ended. The assessment has a cap. The cap is the annual Council approved budget for HBX. The budget is developed by HBX staff with public input through our Standing Advisory Board and members of the public. The draft budget also goes through the HBX Executive Board process. First, the Executive Board’s Finance Committee reviews and provides input. Once approved by the Finance Committee, the full board reviews it in public session after public input. The proposed budget goes to the Mayor’s office for review and is submitted to the Council as part of the Mayor’s budget. This Committee and the Council reviews and approves the budget before submission to the full Council. The Committee’s review includes a hearing similar to hearings for traditional agencies, and markup with recommendations for changes, if any. And, as recommended by the Committee and approved by the Council last year, the draft budget is presented to the Insurance Regulatory Trust Fund Bureau that also reviews the budget of the Department of Insurance, Securities and Banking. The Bureau is also given the authority to audit the HBX, as it audits DISB.

2014 Assessment

Pursuant to the enactment of the Health Benefit Exchange Authority Financial Sustainability Emergency Amendment Act of 2014 (D.C. Act No. A20-0329) and Health Benefit Exchange Authority Temporary Amendment Act of 2014 (D.C. Law No. L20-1033), HBX entered into a Memorandum of Agreement with the Department of Insurance Securities and Banking (DISB) to implement the assessment. DISB implements its own assessment and the assessment for the DC Ombudsman program. DISB on behalf of HBX identified health carriers, determined the assessment amount, and issued initial assessment notices in August 2014.

The 2014 assessment was 1% on premiums for health carriers doing business in the District that have direct gross receipts of $50,000 or greater. Premiums are based on what is reported by the carrier to DISB for insurance sold in the preceding calendar year. The assessment percent was based on the Council approved budget for HBX. HBX received $26,333,382 from the assessment.
Bill 21-8 -- The Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015

The temporary sustainability legislation expires on March 21, 2015. We strongly urge the Council to pass Bill 21-8, the “Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015” that will make permanent the broad-based assessment to ensure a state-based health insurance marketplace in the District of Columbia. It is fair and equitable.

By making the financial sustainability legislation permanent, you will help ensure that the District continues to implement the Affordable Care Act successfully through a state-based health insurance marketplace.

DC Health Link has been built from the ground up by District residents to provide our community with guaranteed, quality, affordable health coverage. HBX is proud that in a short time period the District successfully implemented individual and SHOP marketplaces under the Affordable Care Act. In just one year of operation, we have reduced the number of uninsured residents by nearly one half. Many of our customers -- businesses and individuals alike -- have told us that their premiums are lower and they have better coverage because of what HBX has done. The District must continue to build on our successes to date.

BACKGROUND: Development of a Financial Sustainability Plan - Spring 2013 HBX Working Group on Sustainability

HBX policy decisions are made through a stakeholder-driven process. In 2013 and 2014, HBX had many working groups and continues to have standing advisory committees in addition to a Standing Advisory Board. The HBX Board has adopted consensus recommendations from stakeholder working groups and committees. All policies adopted through resolutions are available at http://hbx.dc.gov/page/adopted-resolutions.

Consistent with the process for other policy decisions, the HBX Executive Board established a stakeholder Working Group on Financial Sustainability in April 2013. HBX Executive Board Member Leighton Ku chaired this group. Standing Advisory Board Member (a small business owner) Jill Thorpe served as vice-chair. Working group membership consisted of people representing consumers, insurance carriers, brokers and other stakeholders. A full list of working group members and the report to the Executive Board is available on the HBX website.

The stakeholder working group considered a variety of funding mechanisms including: a user fee or surcharge on premiums administered through the Exchange Marketplace; a broad assessment on all health insurance premiums; an assessment on self-insured plans and benefits; provider and hospital fees; and public funding sources such as general revenue taxes, tobacco tax, and soda tax.
Key considerations for the stakeholder working group were the potential impact on people's health insurance premiums through the Exchange Marketplace and feasibility. Members of the group considered existing revenue sources, including the 2% premium tax and the existing .3% DISB operating assessment, which would require taking these funding sources away from programs they currently support. Provider taxes were considered not feasible.

The stakeholder working group concluded that a broad-based assessment on health carriers is preferable. Spreading costs broadly would mean the lowest assessment rate, and a minimum impact on premiums. Larger states that have hundreds of thousands of people or even millions purchasing through their marketplaces can fund their operations through fees only on the insurers selling through their marketplaces. Due to our small size, the District cannot fund the marketplace solely through fees on participating carriers. The stakeholder working group’s modeling showed that an assessment only on products sold through DC Health Link would result in a premium assessment of 15.91%. A broad-based assessment across all health carriers minimizes the effect on health insurance premiums.

After reviewing and discussing potential revenue sources, the stakeholder working group made a consensus recommendation to the HBX Executive Board supporting a broad-based assessment on all health carriers with direct gross receipts of $50,000 or greater. After an opportunity for additional public input, the HBX Executive Board unanimously adopted the stakeholder working group’s recommendations on June 6, 2013.

**HBX enabling legislation, self-sustainability report, and implementing regulations**

The District’s enabling legislation for the HBX requires that the Executive Board of the Authority “prepare a plan that identifies how the Authority will be financially self-sustaining by January 1, 2015,” and further requires that the plan “be certified by an independent actuary as actuarially sound and shall be submitted to the Mayor and Council not later than December 15, 2013.” HBX submitted the sustainability report on December 13, 2013. Prior to finalizing the report, HBX accepted public comments for a thirty-day period to ensure input from the public and impacted stakeholders. The report reflects the sustainability approach recommended by the stakeholder working group on sustainability and adopted by the Executive Board six months earlier.

HBX followed a similar transparent and inclusive process for proposed rules to administer the broad-based assessment. HBX staff drafted a proposed rule and sought public comments. The Executive Board reviewed the comments and incorporated a date change that was requested by carriers. The Board also accepted public testimony on the draft rule. After consideration of written and oral comments, the HBX Executive Board adopted the proposed rule. The proposed rule was submitted to the DC Register on February 28, 2014. The formal comment period closed on March 31, 2014.

The process used to develop the policy and the rule was transparent and based on extensive discussions and consensus recommendations by people who live or work here in the District.
The approach adopted in the proposed rule is based on how the District funds another initiative. The District has a broad-based assessment to fund the Ombudsman Program. Most of these same insurers, with the exception of the Medicaid managed care plans which are statutorily excluded, pay that assessment. When considering this option, HBX looked at the Ombudsman program as a model. However, HBX included Medicaid managed care plans, working closely with DHCF Director Wayne Turnage on this approach.

Threats of a Lawsuit

During the rulemaking process, HBX received comments from the American Council of Life Insurers (ACLI) and its member companies. In its comments ACLI indicated in part:

If the proposed rule is not withdrawn and amended to comply with District of Columbia and federal law, carriers of excepted benefits and other coverage that is offered on the DC Exchange have cause to mount a legal challenge to the law on both procedural and substantive grounds. (Page 6 ACLI Comments Regarding the DC Health Benefit Exchange Proposed Health Carrier Assessment, March 31, 2014)

Given the threat of litigation, HBX believed that the most prudent action is to have its authority to assess broadly clarified through legislation. Incorporating the standards in the rule into the DC Code, would help avoid costly litigation challenging HBX authority. To mitigate the risk of a lawsuit, HBX sought legislative action.

ACLI Federal Court Lawsuit

After the District Council unanimously passed emergency and temporary versions of the Sustainability Act, the American Council of Life Insurers (ACLI), nonetheless, filed a lawsuit challenging the District’s law in U.S. District Court for the District of Columbia. The District of Columbia Office of the Attorney General defended the District’s law.

ACLI argued that the ACA preempts the District from assessing or requiring user fees on the sale of products that are not sold on the Exchange, and that the assessment was unconstitutional.

The Court, in a 60-page decision, disagreed with ACLI’s arguments and dismissed the lawsuit in its entirety in November 2014. The Court ruled that the District’s funding mechanism for the Exchange was not unconstitutional or preempted by the Affordable Care Act, but that the ACA gave “the States broad flexibility to operate State Exchanges without limiting the States’ authority to employ alternative funding sources.” Memorandum Opinion, Case No. 1:14-cv-01138-BAH, at 22 (November 11, 2014). The Court further opined that the District’s assessment “reflects a considered, not arbitrary choice by the District that is rationally related to, and intended to further the goals of, the ACA and the Establishment Act to facilitate access to affordable health insurance for underserved District residents and small businesses.” Opinion, at 52.

The Court indicated that its decision was supported by the following additional findings:
• The assessment has only a minimal economic impact on ACLI’s members;
• The assessment advances a legitimate public purpose – extending health insurance to the uninsured in the District;
• The assessment was enacted after review in the normal, legislative process;
• The assessment contains sufficient guidance for the Authority’s exercise of discretion in funding the operations of the Exchange.

On December 15, 2014, ACLI appealed this decision to the U.S. Court of Appeals for the District of Columbia Circuit. The Court has not yet heard the issues and the case is still pending.

CONCLUSION

DC Health Link has been built from the ground up by District residents and businesses to ensure that our communities have quality, affordable health coverage. The District has a history of investing in our communities by expanding access to medical care and coverage. Building on past successes here, DC Health Link — in just one year of operations — has cut the uninsured by as much as 43 percent, and has helped increase competition to keep premiums as low as possible. Our success in a very short time period is strong evidence that the District made the right decision – to implement the Affordable Care Act by building a state-based marketplace.

By moving forward with a state-based marketplace, the District has achieved a better outcome than states relying on the federal marketplace. We are not subject to the uncertainty of a Supreme Court case that may result in millions of people in other states losing tax credits that keep their premiums affordable.

In the District, we have built a new health insurance marketplace that is responsive to the needs of our community.

To continue our record of success, our sustainability legislation must be made permanent. I urge you to pass the “Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015.”

We are committed to continue to pursue our mission to reduce the number of uninsured residents in the District and to provide affordable choices for those in the individual and small group marketplace. But we can do so only with your continued strong support and with the funding mechanism that this law will provide. With your support, we will continue to have a successful District-based marketplace -- DC Health Link -- the District’s health insurance marketplace offering quality affordable health coverage to our residents and businesses.
Good morning Madam Chair Yvette Alexander, members of the Committee on Health and Human Services. My name is Marisela Rodela. I am the Chief Community and Culture Officer of DC Brau Brewing Company. I am pleased to offer testimony before you today regarding DC Health Link and the positive impact it has had on our small business, DC Brau Brewing Company, and how it has enhanced our ability to support and retain employees.

Longtime District residents Jeff Hancock and Brandon Skall are the founders and co-owners DC Brau Brewing Company, the District’s first production brewery since 1956. Our brewery located off of Bladensburg Road in Northeast, Ward 5, produces craft beer that is available in local stores and on tap at area bars and restaurants. Not including our founders, DC Brau employs 23 people—14 full-time and 9 part-time employees.

Before our enrollment in the DC Health Link, we were only able to offer a very limited range of options for employees through our employer-sponsored health insurance. Since our launch in 2009, the goal of DC Brau was to offer our hardworking employees a comprehensive set of health care coverage options. However, at the time, we could only afford to offer two plans, and we were not clear whether either of those plans covered exactly what our employees needed.

This all changed after we signed onto the DC Health Link in September of 2014. We worked with a local broker, The Capital Group, and the small business team at DC Health Link to set up
our coverage to include plenty of employee coverage options. Starting last September, DC Brau now offers more than fifty health insurance options to our employees. Thanks to DC Health Link we can give younger employees who don’t use health care frequently a low-cost option. At the same time, we can also provide more extensive coverage for workers who would like more comprehensive health coverage.

None of this was possible before DC Health Link came around.

At DC Brau, we are passionate about the artistry and craftsmanship that goes into our award winning beers. So, it’s important that we support and retain our employees because they’re not just our workforce, they’re our collaborators. A smart business plan ensures that our team is happy and healthy because, not only will they be spending fewer days out sick, but also they will be more productive while they’re at work with the piece of mind knowing they have coverage.

Our employees deserve health insurance plans that best work for them, and being able to offer them more than fifty health insurance options and allowing them to take a more active role in selecting their coverage achieves that goal. As a business owner, it is a great feeling to hear 'thank you' from your employees because they appreciate that you’re looking out for them.

DC Health Link has had a very positive impact on our business, as well as our employees, who deserve to have the best access to health care.
Testimony of Sam Whitfield
257 15th St SE
Washington, DC 20003
Before the
COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HEALTH AND HUMAN SERVICES
Public Hearing on Bill 21-8
“The "Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015"

Thursday, January 29, 2015 – 11:00 am
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington DC 20005

Good morning Madam Chair Yvette Alexander, members of the Committee on Health and Human Services. My name is Sam Whitfield. My wife Kristi and I are pleased to offer testimony before you today regarding DC Health Link and the positive impact it has had on our small business.

We are the owners of Curbside Cupcakes, Washington DC’s first mobile “cupcakery.” We are also longtime residents of the District. You can see our bright-pink cupcake trucks around the District and, since opening in 2009, we have expanded our business to include the new Curbside Café on 15th Street in Southeast. Not including ourselves, we employ eight people.

Before DC Health Link opened, Curbside Cupcakes couldn’t afford employer-sponsored health insurance. The group plans we found were just too expensive. So, we were left just buying individual plans for ourselves. However, it was always a goal of ours to have health insurance through the company and offer it to our employees. It’s good business to offer health insurance to our employees to help keep them healthy and productive. Most importantly, offering our hard-working employees health insurance coverage is the right thing to do from a moral perspective.

When DC Health Link opened for business in October 2013, we immediately created an account and started comparing small business plans. We worked with DC Health Link’s small business team to get set up and select a health insurance plan that best fit our company’s needs. The small-business plan we purchased in 2013 through DC Health Link provides at least as good, if not better, coverage than the individual plans we had previously. Even better, it cost us roughly $300 less each month, and that doesn’t include tax credits Curbside Cupcakes can apply for to help cover some of the cost to cover our employees.
Since we signed up with DC Health Link, the cost of offering our employees health insurance coverage has dropped even further. Because we have fewer than 10 employees, we are now eligible for credits in the Affordable Care Act that cover half our company’s health costs. We wouldn’t be eligible for these credits if we didn’t purchase our plan through DC Health Link.

One employee, who was previously uninsured, has enrolled and now has coverage. More employees have expressed interest in getting coverage. Our employees can choose from several different health plans from our insurance carrier—at different rates and different levels of coverage—thanks to DC Health Link.

As small business owners, signing up with DC Health Link made good business sense because we can get the same or better coverage for less money. As individuals, we can tell you that the value of an affordable, quality health insurance plan through DC Health Link is without measure.

We spent much of last October at Children’s National Medical Center with our youngest son, who had gotten sick. After returning home in early November when our son recovered, we began going through the claim notices for our son’s treatment and stay at Children’s. Notice after notice said the same thing: ‘You owe nothing.’ We would be bankrupt if we had to pay for the care that our son needed.

DC Health Link made it possible for Curbside Cupcakes to offer our employees health care coverage at a savings to our small business. The quality health insurance coverage we receive made it possible to pay for the medical care our son needed and avoid ruining our personal finances. However, most importantly, our health care coverage made it possible for our son to come home healthy from the hospital.
Testimony of Myles Hungerford  
3144 19th Street NW  
Washington, DC 20010  

Before the  
COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE ON HEALTH AND HUMAN SERVICES  

Public Hearing on Bill 21-8  
"The "Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015"  
Thursday, January 29, 2015 – 11:00 am  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington DC 20005

Good morning Madam Chair Yvette Alexander, members of the Council Committee on Health and Human Services. My name is Myles Hungerford and I am a graduate student at the Johns Hopkins School of Advanced International Studies and an intern at the U.S. International Trade Commission. I am pleased to offer testimony before you today regarding how DC Health Link changed my life by making it possible to get the health insurance coverage I desperately needed and saving me thousands of dollars in the process.

When I returned from living abroad, my insurance company refused to cover a pre-existing condition that I had lived with for years. Even though I had lived in a country with national health insurance and I had always been covered in the U.S. before that, I was told that this coverage didn’t count and would need to do an 18-month waiting period before they would cover my condition. As a result, I was faced with having to pay a lot of money out-of-pocket to cover my prescriptions.

All of that has changed since I signed up for health insurance through DC Health Link in 2013. I now have great coverage at a great price. I do not need to pay an exorbitant amount of money out-of-pocket for prescriptions to treat my pre-existing medical condition. My new doctor is a leading specialist in his field, and I couldn’t be happier with the care I’m receiving.

It is difficult to quantify the peace of mind I have knowing that my treatment is covered and that I do not need to worry about loss of healthcare coverage. Being able to live without the stress of having to figure out how I am going paying thousands of dollars out of pocket makes day-to-day life so much easier.

On top of that, there is no way that I could afford to pursue my advanced studies towards a career in public service if I had to continue to pay prescription bills out-of-pocket. Paying for graduate school is expensive enough and being saddled with additional medical debt would have made it impossible for me to finish school and start a new career.
In short, getting the coverage I have through DC Health Link has made a night and day difference in my life. I can’t thank DC Health Link enough for the absolutely great job they did for me.
ATTACHMENT THREE
MEMORANDUM

TO: The Honorable Phil Mendelson
   Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
      Chief Financial Officer

DATE: February 25, 2015


REFERENCE: Bill 21-8, shared with the Office of Revenue Analysis on February 20, 2015

Conclusion

Funds are sufficient in the FY 2015 through FY 2018 budget and financial plan to implement the bill and its accompanying emergency and temporary versions.

Background

The bill allows the Health Benefit Exchange Authority ("Authority") to annually assess health carriers operating in the District with direct gross receipts of $50,000 or more. The assessment will be a percentage of the carriers' direct gross receipts. Each year the Authority will set the percentage so that it generates enough funds to cover the cost of operations. Some years there will be other funding sources, like grants, and the Authority will take this into account when it sets the assessment rate.

The bill’s provisions are already in effect via a temporary bill that went into effect on August 8, 2014. Council is reintroducing this permanent legislation along with emergency and temporary versions so that the law does not lapse.

Financial Plan Impact

1 By amending sections 2 and 4 of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-94; D.C. Official Code §§ 31-3171.01 and 31-3171.03.)

Funds are sufficient in the FY 2015 through FY 2018 budget and financial plan to implement the bill and its accompanying emergency and temporary versions. The Authority first assessed health carriers in FY 2014. The assessment will partially fund the Authority's FY 2015 and future budgets.
ATTACHMENT FOUR
MEMORANDUM

TO: Councilmember Yvette Alexander

FROM: John Hoellen, Acting General Counsel

DATE: March 10, 2015

RE: Legal Sufficiency Determination for Bill 21-8, the Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015

The measure is legally and technically sufficient for Council consideration.

Bill 21-8 amends the Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-94; D.C. Official Code § 31-3171.01 et seq.), to:

1. Define the terms "direct gross receipts" and "net premium receipts or consideration received":

2. Require the District of Columbia Health Benefit Exchange Authority to assess, through a "Notice of Assessment," each health carrier doing business in the District with direct gross receipts of $50,000 or greater an amount based on the percentage of its direct gross receipts for the preceding calendar year;

3. Require the assessments to be deposited into the District of Columbia Health Benefit Exchange Authority Fund; and

4. Provide penalties for the failure to pay the assessment within 30 business days after receipt of the Notice of Assessment.

I am available if you have questions.
ATTACHMENT FIVE
The Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-94; D.C. Official Code § 31-3171.01 et seq.), is amended as follows:

1. Amendment to Section 2

§ 31-3171.01 Definitions

(1) "American Health Benefit Exchange" means an entity established pursuant to § 31-3171.04, and section 1311(b) of the Federal Act.

(2) "Authority" means the District of Columbia Health Benefit Exchange Authority established by § 31-3171.02.

(3) "Commissioner" means the Commissioner of the Department of Insurance, Securities and Banking, as established by § 31-102.

(3A) "Direct gross receipts" means all policy and membership fees and net premium receipts or consideration received in a calendar year on all health insurance carrier risks originating in or from the District of Columbia.


[unaffected text omitted]

(7) "Health professional" shall have the same meaning as provided in § 3-1201.01(8).


(8A) "Metal level" means the bronze, silver, gold, and platinum levels of coverage as defined in section 1302(d)(1) of the Federal Act.

(8B) "Navigator" refers to the entities described in section 1311(i) of the Federal Act.

(8C) "Net premium receipts or consideration received" means gross premiums or consideration received less the sum of premiums received for reinsurance assumed and premiums or
consideration returned on policies or contracts canceled or not taken.

(9) "PHSA" means the Public Health Service Act, approved July 1, 1944 (58 Stat. 682; 42 U.S.C. § 201 et seq.).

(10) "Qualified dental plan" means a limited-scope dental plan that has been certified in accordance with § 31-3171.09.

2. Amendment to Section 4

§ 31-3171.03 District of Columbia Health Benefit Exchange Authority Fund

(a) There is established as a nonlapsing fund the District of Columbia Health Benefit Exchange Authority Fund ("Fund"), which shall be administered by the Authority in accordance with generally accepted accounting principles and which shall be used solely for the purposes set forth in this chapter and the costs of administering this chapter.

(b) The Fund shall consist of:

(1) Any user fees, licensing fees, or other assessments collected by the Authority;

(2) Income from investments made on behalf of the Fund;

(3) Interest on money in the Fund;

(4) Money collected by the executive board as a result of a legal or other action;

(5) Donations;

(6) Grants;

(7) All general revenue funds appropriated by a line item in the budget submitted pursuant to § 1-204.46, and authorized by Congress for the purposes of the Authority; and

(8) Any other money from any other source accepted for the benefit of the Fund.

(c) All revenues, income from investments, proceeds, and other monies, from whatever source derived, that are collected or received by the Authority shall be deposited into the Fund. All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in this chapter without regard to fiscal year limitation, subject to authorization by Congress.
(d) The Chief Financial Officer shall invest the money of the Fund in the same manner as other District money may be invested.

(e) (1) The Authority is authorized to charge, through rulemaking:

(A) User fees;

(B) Licensing fees; and

(C) Other assessments on health carriers selling qualified dental plans or qualified health plans in the District, including qualified health plans and qualified dental plans sold outside the exchanges.

(2) User fees, licensing fees, or other assessments authorized shall not exceed reasonable projections regarding the amount necessary to support the operations of the Authority.

(f)(1) The Authority shall annually assess, through a “Notice of Assessment,” each health carrier doing business in the District with direct gross receipts of $50,000 or greater in the preceding calendar year an amount based on a percentage of its direct gross receipts for the preceding calendar year. These assessments shall be deposited in the Fund.

(2) The Authority shall adjust the assessment rate in each assessable year. The amount assessed shall not exceed reasonable projections regarding the amount necessary to support the operations of the Authority.

(3) Each health carrier shall pay to the Authority the amount stated in the Notice of Assessment within 30 business days after the date of the Notice of Assessment.

(4) Failure to pay the assessment in accordance with paragraph (3) of this subsection shall subject the health carrier to section 5 of the Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; D.C. Official Code § 31-1204).
ATTACHMENT SIX
A BILL

21-8

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Health Benefit Exchange Authority Establishment Act of 2011 to provide for the financial sustainability of the Health Benefit Exchange Authority by assessing, on an annual basis, all health insurance carriers.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015”.

Sec. 2. The Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-94; D.C. Official Code § 31-3171.01 et seq.), is amended as follows:

(a) Section 2 (D.C. Official Code § 31-3171.01) is amended as follows:

(1) New paragraph (3A) is added to read as follows:

“(3A) “Direct gross receipts” means all policy and membership fees and net premium receipts or consideration received in a calendar year on all health insurance carrier risks originating in or from the District of Columbia.”.

(2) New paragraph (8C) is added to read as follows:

“(8C) “Net premium receipts or consideration received” means gross premiums or consideration received less the sum of premiums received for reinsurance assumed and premiums or consideration returned on policies or contracts canceled or not taken.”.
(b) Section 4 (D.C. Official Code § 31-3171.03) is amended by adding a new subsection (f) to read as follows:

“(f)(1) The Authority shall annually assess, through a “Notice of Assessment,” each health carrier doing business in the District with direct gross receipts of $50,000 or greater in the preceding calendar year an amount based on a percentage of its direct gross receipts for the preceding calendar year. These assessments shall be deposited in the Fund.

“(2) The Authority shall adjust the assessment rate in each assessable year. The amount assessed shall not exceed reasonable projections regarding the amount necessary to support the operations of the Authority.

“(3) Each health carrier shall pay to the Authority the amount stated in the Notice of Assessment within 30 business days after the date of the Notice of Assessment.

“(4) Failure to pay the assessment in accordance with paragraph (3) of this subsection shall subject the health carrier to section 5 of the Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; D.C. Official Code § 31-1204).”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor, (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District
Committee on Health and Human Services
Committee Print
March 11, 2015
Bill 21-8

52 of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204(a)).