

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HEALTH
COMMITTEE REPORT
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

TO: All Councilmembers

FROM: Councilmember Vincent C. Gray, Ward 7
Chairperson, Committee on Health



DATE: July 1, 2020

SUBJECT: Report on Bill 23-0584, the “Pregnancy as a Qualifying Event Act of 2020”

The Committee on Health, to which Bill 23-0584 was referred, reports favorably thereon and recommends approval by the Council.

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I. BACKGROUND & NEED

The stated purpose of Bill 23-0584 is to require health insurers to provide a special enrollment period after an individual learns that they are pregnant. The “Pregnancy as a Qualifying Event Act of 2020” was introduced on December 17, 2019, by Councilmembers Mary Cheh and Vincent Gray at Committee of the Whole. The bill was also co-sponsored by Councilmembers Charles Allen, Anita Bonds, Brianne Nadeau, David Grosso, Trayon White, and Robert White.

Currently, the Affordable Care Act allows state-based marketplaces to have Special Enrollment Period (SEP) opportunities beyond what federal law stipulates. During a Health Benefit Exchange Executive Board Meeting in January of 2020, the HBX Executive Board unanimously adopted the recommendations from the Standing Advisory Board to create a Special Enrollment Period triggered by pregnancy. The recommendations stipulated that:

1. A pregnant woman and her dependents can enroll in individual or small group coverage through DC Health Link.
2. If a pregnant woman or her dependents are already enrolled, then both can change the plan they are enrolled in.
3. The triggering event for this new right is the date a health care practitioner confirms the pregnancy. Therefore, an over-the-counter pregnancy test would not trigger the SEP; confirmation by a health care practitioner would.
4. A pregnant woman has a choice to enroll retroactively to the first of the month a pregnancy is confirmed or to start coverage at a future date. For individual market coverage, the woman has up to 60 days to enroll after confirmation of pregnancy by health care practitioner. Coverage becomes effective first of the month following plan selection. If she is enrolling in small group coverage—meaning she or her spouse/domestic partner works for an employer enrolled in small group coverage on DC Health Link—the employee and dependents have up to 30 days to enroll after confirmation of pregnancy by a health care practitioner. Coverage becomes effective first of the month following plan selection.

Currently, this added opportunity for coverage and protection only applies to plans in the individual and small group markets, as HBX SEPs do not apply to large group health insurance coverage. The “Pregnancy as a Qualifying Event Act of 2020” is necessary to recognize pregnancy as a qualifying event to enroll in large group health insurance.

II. LEGISLATIVE CHRONOLOGY

December 17, 2019	B23-0584 Introduced by Councilmembers Cheh, and Gray at Committee of the Whole
December 17, 2019	Referred to Committee on Health
December 20, 2019	Notice of Intent to Act on B23-0584 Published in the District of Columbia Register
January 10, 2020	Notice of Public Hearing Published in the District of Columbia Register
January 27, 2020	Public Hearing on B23-0584
July 1, 2020	Consideration and vote on Bill 23-0584

III. POSITION OF THE EXECUTIVE

Diane Lewis, Chair, DC Health Benefit Exchange Authority (HBX) Executive Board, testified in strong support of Bill 23-0584, stating that it builds on the Affordable Care Act and creates new coverage opportunities for pregnant women and their families. She expressed that

having health insurance during a pregnancy is important for the health of both the mother and the baby. “Without the new protections in the bill, pregnant women will continue to be shut out of the large group private health insurance market” Ms. Lewis testified.

She then shifted her focus on the recent actions taken by the HBX’s Executive Board to address problems in the individual and small group insurance markets on DC Health link. To date, the Board had adopted 30 special enrollment triggering events in addition to protections that exist under federal law. She detailed the process for creating an SEP, and noted that in January of 2020, the board unanimously adopted the recommendations of the Standing Advisory Board to create a SEP triggered by pregnancy. While the ACA prohibits insurers from charging women higher premiums than men in the individual and small group markets, treating pregnancy as a preexisting condition, and from excluding pregnancy from coverage, federal health reform law does not fully address the historical view that pregnancy is a medical condition instead of a life event like other qualifying life events. “By recognizing pregnancy as a life event, this legislation is an important necessary step toward ending discrimination against women in health insurance” she concluded.

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

Public Witnesses

- | | |
|-----------------------------|--|
| 1. Sara Imershein, MD, PLLC | Vice Chair, American College of Obstetricians and Gynecologists – DC Chapter |
| 2. Rebecca Barson, MPH | Public Witness |

Executive Witness

Diane Lewis	Chair, DC Health Benefit Exchange Authority Executive Board
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Sara Imershein, MD, PLLC, Vice Chair, American College of Obstetricians and Gynecologists – DC Chapter, testified in support of the legislation, stating that it will allow coverage for care during pregnancy and improve outcomes for both mothers and their babies, reduce complications in pregnancy, and help lower DC’s high maternal mortality rate. Designating pregnancy as a qualifying life event with a SEP exemption would remove health insurance barriers for pregnant people and expedite access to earlier, comprehensive prenatal care, providing pregnant individuals more opportunity for a healthy pregnancy, a health baby, and a

healthy beginning. She asked that the committee consider additional and specific language to recognize the more generous Medicaid income-qualifying level afforded to persons be retroactive to the first day of the month when pregnancy is diagnosed/certified.

Rebecca Barson, MPH, Public Witness, testified in support of Bill 23-0584. As a recently appointed member of the DC Health Link Standing Advisory Board, adding a special enrollment period for pregnancy was one of the first initiatives Ms. Barson took part in. She testified that the bill extremely important, in that it will allow people who find themselves in need of a different insurance plan when they become pregnant to change plans and get the care they need. “At a time when we are trying to make maternal health a priority in DC, this bill is another way we can do so” she concluded.

VI. IMPACT ON EXISTING LAW

Bill 23-0584 has no impact on existing law.

VII. FISCAL IMPACT

Funds are sufficient in the fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the bill.

VIII. SECTION BY SECTION ANALYSIS

- | | |
|------------------|---|
| <u>Section 1</u> | States the short title of Bill 23-0584 |
| <u>Section 2</u> | Defines, for the purposes of this act, the following terms: “Health insurer”, “Open enrollment period”, and “Special enrollment period.” |
| <u>Section 3</u> | Establishes that a health insurer shall allow for a special enrollment period for a pregnant individual for: <ul style="list-style-type: none">• Sixty days when offering individual health insurance coverage from the date of confirmation of pregnancy as certified by a licensed healthcare professional acting within the scope of the professional’s practice; and• At least 30 days when offering group health insurance coverage from the date of confirmation of pregnancy as certified by a licensed healthcare professional acting within the scope of the professional’s practice. |

This section also states that coverage shall be effective as of the first of the month in which the health care professional certifies the individual is pregnant, unless the individual elects to have coverage effective on the first

day of the month following the date that the individual makes a plan selection.

Section 4 Adopts the fiscal impact statement

Section 5 States the Act will take effect following Mayoral approval, Congressional review, and publication in the District of Columbia Register.

IX. COMMITTEE ACTION

Bill 23-584, the “Pregnancy as a Qualifying Event Act of 2020.” The meeting was called to order at 9:10 a.m. after a quorum was present consisting of Committee Chairperson Vincent C. Gray and Councilmembers Brianne K. Nadeau, David Grosso and Mary M. Cheh. Bill 23-584 was the fifth item on the agenda.

After discussing the chronology and purpose of the bill, Chairperson Gray gave brief remarks, and opened the floor for discussion. Councilmember Cheh, who introduced the legislation noted that individuals can only enroll in private health insurance programs during the open enrollment period (which happens once annually), or during a “special enrollment period” that follows a qualifying life event such as childbirth but not pregnancy. Councilmember Cheh stated that prenatal healthcare was critical and that this legislation to include pregnancy on the list of “qualifying life events” would address that gap in legislation and improve birth outcomes in the District.

Hearing no further discussion, Chairperson Gray moved the print and report, with leave for staff to make technical and editorial changes. The vote on the print and report were unanimous. (Chairperson Gray and Councilmembers Grosso, Cheh and Nadeau voting “aye”, Councilmember Todd being absent) The meeting adjourned at 9:43 a.m.

X. ATTACHMENTS

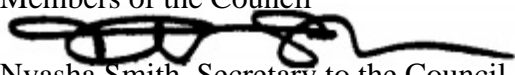
- A. Secretary’s Notice
- B. Bill 23-0584 as Introduced
- C. Hearing Notice and Witness List
- D. Copies of Written Testimony
- E. Fiscal Impact Statement
- F. Legal Sufficiency Memorandum
- G. Committee Print of Bill 23-0584

ATTACHMENT A

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : 
Nyasha Smith, Secretary to the Council

Date : December 17, 2019

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Committee of the Whole on Tuesday, December 17, 2019. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Pregnancy as a Qualifying Event Act of 2019", B23-0584

INTRODUCED BY: Councilmembers Cheh and Gray

CO-SPONSORED BY: Councilmembers Allen, Bonds, Nadeau, Grosso, T. White, and R. White

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

Attachment

cc: General Counsel
Budget Director
Legislative Services

ATTACHMENT B

1 *Vincent C. Gray*
2 Councilmember Vincent C. Gray

Mary M. Cheh
Councilmember Mary M. Cheh

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4
5
6 A BILL

7 _____
8
9 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
10
11 _____
12

13 To require health insurers to provide a special enrollment period after commencement of a
14 pregnancy.

15
16 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
17 act may be cited as the "Pregnancy as a Qualifying Event Act of 2019".

18 Sec. 2. Definitions.

19 (1) "Health insurer" means any person that provides one or more health benefit
20 plans or insurance in the District of Columbia, including an insurer, a hospital and medical services
21 corporation, a fraternal benefit society, a health maintenance organization, a multiple employer
22 welfare arrangement, or any other person providing a plan of health insurance subject to the
23 authority of the Commissioner of the Department of Insurance, Securities and Banking.

24 (2) "Open enrollment period" means the yearly period during which a person can
25 enroll in a health insurance plan.

26 (3) "Special enrollment period" means any time a health insurer allows a person
27 to enroll in or change their health insurance outside of the open enrollment period.

28 Sec. 3. Pregnancy as a Qualifying Event.

29 (a) A health insurer that issues a health insurance policy or contract that provides eligibility
30 for a special enrollment period shall allow for the enrollment of a pregnant individual at any time
31 after the commencement of the pregnancy, as certified by a licensed healthcare practitioner acting
32 within the scope of his or her practice.

33 (b) Coverage shall be effective as of the first of the month in which the individual receives
34 certification of the pregnancy.

35 Sec. 4. Fiscal impact statement.

36 The Council adopts the fiscal impact statement in the committee report as the fiscal
37 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
38 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

39 Sec. 5. Effective date.

40 This act shall take effect following approval by the Mayor (or in the event of veto by the
41 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
42 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
43 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
44 Columbia Register.

ATTACHMENT C

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HEALTH
NOTICE OF PUBLIC HEARING
1350 PENNSYLVANIA AVE., N.W., WASHINGTON, D.C. 20004**

REVISED

**COUNCILMEMBER VINCENT C. GRAY, CHAIRPERSON
THE COMMITTEE ON HEALTH**

ANNOUNCES A PUBLIC HEARING ON

BILL 23-0547, THE “NATIVE AMERICAN BIRTH RECOGNITION AMENDMENT ACT OF 2019”

BILL 23-0565, THE “HEARING AID SALES AMENDMENT ACT OF 2019”

BILL 23-0584, THE “PREGNANCY AS A QUALIFYING EVENT ACT OF 2019”

**MONDAY, JANUARY 27, 2020
10:00 A.M., ROOM 412, JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004**

Councilmember Vincent C. Gray, Chairperson of the Committee on Health, announces a Public Hearing on Bill 23-0547, the “Native American Birth Recognition Amendment Act of 2019”, Bill 23-0565, the “Hearing Aid Sales Amendment Act of 2019”, and Bill 23-0584, the “Pregnancy as a Qualifying Event Act of 2019.” The hearing will be held on Monday, January 27, 2020, at 10:00 a.m., in Room 412 of the John A. Wilson Building. **This notice has been revised to reflect the addition of Bill 23-0565 and Bill 23-0584 to the hearing agenda.**

Bill 23-0547, the “Native American Birth Recognition Amendment Act of 2019”, would allow birth certificate recognition of Native American tribal enrollment. It allows an individual to request a replacement birth certificate that includes recognition of Native American tribal enrollment.

Bill 23-0565, the “Hearing Aid Sales Amendment Act of 2019”, requires both minors and adults to receive a medical clearance from an otolaryngologist and receive a hearing test evaluation before an entity can fit, offer for sale, or sell a hearing aid to them. Adults may also receive clearance from a licensed physician.

Bill 23-0584, the “Pregnancy as a Qualifying Event Act of 2019”, requires health insurers to provide a special enrollment period after commencement of a pregnancy.

The Committee invites the public to testify at the hearing. Those who wish to testify should contact Malcolm Cameron, Committee Legislative Analyst at (202) 654-6179 or mcameron@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization, by 5:00 p.m. on Thursday, January 23, 2020. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony

in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to mcameron@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 113, Washington D.C. 20004.

Witnesses who anticipate needing language interpretation, or require sign language interpretation, are requested to inform the Committee on Health of the need as soon as possible, but no later than Monday, January 20, 2020. We will make every effort to fulfill timely requests, however requests received after this date may not be fulfilled and alternatives may be offered.

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HEALTH
WITNESS LIST - PUBLIC HEARING
1350 PENNSYLVANIA AVE., N.W., WASHINGTON, D.C. 20004**

**COUNCILMEMBER VINCENT C. GRAY, CHAIRPERSON
THE COMMITTEE ON HEALTH**

ANNOUNCES A PUBLIC HEARING ON

BILL 23-0565, THE “HEARING AID SALES AMENDMENT ACT OF 2019”

BILL 23-0584, THE “PREGNANCY AS A QUALIFYING EVENT ACT OF 2019”

**MONDAY, JANUARY 27, 2020
10:00 A.M., ROOM 412, JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004**

WITNESS LIST

BILL 23-0565, THE “HEARING AID SALES AMENDMENT ACT OF 2019”

Public Witnesses

- | | |
|------------------|----------------|
| 1. Nicole Jordan | Public Witness |
|------------------|----------------|

Executive Witness

- | | |
|----------------------|--|
| Dr. Anjali Talwalkar | Senior Deputy Director, Community Health
Administration, Department of Health |
|----------------------|--|

BILL 23-0584, THE “PREGNANCY AS A QUALIFYING EVENT ACT OF 2019”

Public Witnesses

- | | |
|-----------------------------|--|
| 1. Sara Imershein, MD, PLLC | Vice Chair, American College of
Obstetricians and Gynecologists – DC
Chapter |
| 2. Rebecca Barson | Public Witness |

Executive Witness

Mila Kofman

Executive Director, Health Benefit
Exchange Authority

ATTACHMENT D



The American College of
Obstetricians and Gynecologists
WOMEN'S HEALTH CARE PHYSICIANS

District of Columbia Section

Greetings Members of the Committee on Health. Thank you for the opportunity to discuss the proposed legislation: B-23-0584: *Pregnancy as a Qualifying Event Act of 2019*.

Our thanks to the Committee for holding this hearing and kudos to Councilmembers Gray and Cheh for sponsoring this important bill. We applaud your commitment to women's health. We thank you for recognizing the significance of having the most suitable health insurance coverage at a pivotal point in one's life. Your leadership on this issue is vital as we work to improve women's health by increasing access to health insurance and affordable, high-quality care.

My name is Dr Sara Imershein. I am a clinician, educator, and advocate for women's health. I am a board-certified obstetrician-gynecologist, licensed, practicing medicine and residing in the District for 35 years. I am Associate Clinical Professor of Obstetrics & Gynecology at the George Washington University School of Medicine.

Today, I speak as Senior Fellow and Vice-Chair of the DC Section of the American College of Obstetricians and Gynecologists (ACOG). ACOG, with over 58,000 nationwide members, maintains the highest standards of clinical practice and continuing education for our nation's women's health physicians. Locally, our DC membership includes 137 Fellows, 22 Junior Fellows in Practice and 69 Junior Fellows in-training at our University-affiliated DC hospitals. We are responsible for delivering the huge majority of babies born in DC, including most DC Medicaid beneficiaries.

As the nation's leading group of professionals providing health care for women, ACOG knows the importance of timely access to prenatal and maternity care and the barrier created by un-accessible or unaffordable health insurance coverage.

The Affordable Care Act (ACA) established landmark protections for pregnant women, declaring maternity care an *Essential Health Benefit* and requiring health insurance plans to cover prenatal care with no cost-sharing. However, there are still women who lack access to comprehensive maternity coverage. Too many patients arrive in the Emergency Room or on Labor & Delivery without prenatal care because they lack full coverage health insurance.

While ideally all residents should be enrolled in an affordable health insurance plan at all times, especially prior to pregnancy - through employer-based insurance or from the DC exchange - we recognize that may not be the case especially among the working poor, and those new to our city as well as women covered under grandfathered and transitional health plans, as a dependent on a parent's employer-sponsored plan, or on self-funded student health plans¹. Women who are

¹ <https://khn.org/wp-content/uploads/sites/2/2015/02/without-maternity-coverage.pdf>

uninsured may not qualify for Medicaid or CHIP coverage prior to pregnancy. The initial confirmation of pregnancy and initial prenatal visit is very expensive. Without the recognition that pregnancy is a *Life Event*, the ACA's protections cannot be fully realized.

We ask you consider to additional and specific language to recognize the more generous Medicaid income-qualifying level afforded pregnant persons be retroactive to the first day of the month when pregnancy is diagnosed/certified. We are hopeful this bill will encourage earlier prenatal care resulting in healthier pregnancies, perhaps lowering costs in the long run. We know pregnancy-related maternal mortality is 3-4 times higher among women who receive no prenatal care compared to women who receive prenatal care¹. Access to early prenatal care has been shown to reduce rates of low birthweight.² Assuring prenatal coverage from initial diagnosis until twelve months postpartum would certainly help our patients and address one of multiple complex and connected risk factors for high maternal mortality.

For more than thirty years our Nation's Medicaid program has recognized pregnancy as a critical life event, a point at which pregnant people need immediate access to affordable care through coverage expansions and presumptive eligibility based on pregnancy status. Pregnancy is a high-risk time and surpasses the life-changing significance of other qualifying events, such as marriage or a new job.

This bill is good for DC women & good for D.C. family health. Designating pregnancy a *Qualifying Life Event* with a *Special Enrollment Period* exemption would remove health insurance barriers for pregnant people and expedite access to earlier, comprehensive prenatal care. This bill will provide pregnant individuals one more opportunity for a healthy pregnancy a healthy baby and a healthy beginning.

This bill, B-23-0584: *Pregnancy as a Qualifying Event Act of 2019* will allow coverage for care during pregnancy, and improve outcomes for both mothers and their babies, reduce complications in pregnancy, and help lower D.C.'s high maternal mortality.

Thank you for your time.

Sincerely,



Sara Imershein MD MPH FACOG
Submitted 1.27.2020

¹ <https://www.cdc.gov/mmwr/preview/mmwrhtml/ss5202a1.htm#tab3>

² <https://rd.springer.com/article/10.1007/s10995-015-1783-1>

Testimony in Support of Bill 23-0584, "Pregnancy as a Qualifying Event Act of 2019"
Public Hearing: Committee on Health
January 27, 2020
Rebecca D. Barson, MPH

Good morning, and thank you to Chairman Gray and members of the Committee for allowing me to speak before you today to support the "Pregnancy as a Qualifying Event Act of 2019." And thank you to the Chairman and Councilmember Cheh for introducing this important legislation. My name is Rebecca Barson, and I am a Ward 3 resident and a public health professional with 20 years of experience in the areas of reproductive and maternal health. I am also proud to have recently been appointed to the Standing Advisory Board for DC HealthLink. One of the first votes I got to take as part of the Board was adding a special enrollment period for pregnancy to DC HealthLink, and this legislation offers an exciting opportunity to broaden that policy to all insurance plans regulated by the District of Columbia.

Unintended pregnancy is a common occurrence. The latest national estimates from the Guttmacher Institute indicate that nationally 45% of pregnancies were unintended as of 2011, with just under 5% of reproductive age women experiencing an unintended pregnancy on an annual basis.¹ The Institute's latest estimate for DC is from 2014 and shows a slightly higher rate of unintended pregnancies at 48%.² These numbers are probably a bit lower now because of the implementation of the Affordable Care Act, and its expanded coverage of contraception, but there are likely still a lot of women making decisions about their insurance coverage for the year ahead without also considering that they may become pregnant – or they may assume their insurance covers maternity care and be dismayed to become pregnant and learn otherwise.

Unfortunately, if someone becomes pregnant and their current insurance plan does not include maternity care, it is difficult – if not impossible – to access maternity coverage upon becoming pregnant, unless they are in the income range to qualify for Medicaid, because currently insurance plans use the birth of a child as a qualifying event for a special enrollment period, but not pregnancy. We're fortunate here in DC that we have a high income range to qualify for Medicaid, but people above that level still need access to care, and maternity care, particularly the labor and delivery costs, are extremely expensive to pay for out of pocket and often range in the tens of thousands of dollars. This can be exacerbated if a pregnant person hasn't gone for the full range of prenatal visits, where they can receive preventive care and potential problems can be identified earlier in the pregnancy. However, without insurance, it is understandable that someone might try to save money and ration those visits.

This is why this legislation is so important – it would allow pregnancy to be a qualifying event for a special enrollment period in insurance plans regulated by the District so that people who find themselves in need of a different insurance plan when they become pregnant will have the ability to change plans and get the care that they need. At a time when we are trying to make maternal health a priority in DC, this bill is another way we can do so. We also have the opportunity to be a national leader on an innovative new measure. I urge the Committee to support the bill and move it forward to the Committee of the Whole.

Thank you for your time today, and I am happy to answer any questions.

¹ Guttmacher Institute. *Unintended Pregnancy in the United States* Fact Sheet. Available at <https://www.guttmacher.org/fact-sheet/unintended-pregnancy-united-states>.

² Guttmacher Institute. *Pregnancy Desires and Pregnancies at the State Level: Estimates for 2014*. Available at <https://www.guttmacher.org/report/pregnancy-desires-and-pregnancies-state-level-estimates-2014>.



Public Hearing on
B23-584, the "Pregnancy as a Qualifying Event Act of 2019"

Testimony of
Diane C. Lewis
Executive Board Chair
Health Benefit Exchange Authority

Before the
Committee on Health
Council of the District of Columbia
The Honorable Vincent C. Gray, Chairperson

Monday, January 27, 2020
10:00 am
Room 412
John A. Wilson Building
1350 Pennsylvania Avenue N.W.
Washington, DC 20004



Good morning, Chairman Gray and members of the Committee on Health. My name is Diane Lewis. I am the Chair of the DC Health Benefit Exchange Authority (HBX) Executive Board, a public-private partnership established to create and operate DC's state-based online health insurance marketplace, DC Health Link. Thank you for the opportunity to testify before you in support of B23-584, the "Pregnancy as a Qualifying Event Act of 2019." Thank you also, Chairman Gray, for your support and commitment to health reform, ensuring the Affordable Care Act (ACA) remains strong in the District, protecting residents and businesses against never ending attacks on the ACA by the federal Administration, and your efforts to help residents and businesses gain affordable health coverage. I would also like to thank Mayor Bowser for her support, advocacy for the ACA, and commitment to ensuring that all residents have access to affordable health insurance coverage.

Since we opened for business on October 1, 2013, HBX has helped the District cut the uninsured rate by 50 percent, we are currently ranked number two in the nation for the lowest uninsured rate according to the last Census report, and we continue to receive national recognition for our successful outreach, enrollment, and IT system. We cover nearly 100,000 people - both individual and small group private health insurance, and over 5,100 District small businesses.

We support the legislation because it builds on the ACA and creates new coverage opportunities for pregnant women and their families. If enacted, the legislation would require insurers to recognize pregnancy as a qualifying life event, which will enable a pregnant woman to enroll in health insurance coverage outside of open enrollment. Having health insurance during a pregnancy is important for the health of both the mother and the baby. Without the new protections in the bill, pregnant women will continue to be shut out of the large group private health insurance market.

First, I would like to share with you the recent actions taken by HBX's Executive Board to address this problem in the individual and small group insurance market on DC Health Link. The ACA allows state-based marketplaces to have special enrollment period (SEP) opportunities beyond what federal law has. Meaning, in addition to defined special enrollment triggering

events, federal law allows states to add additional triggering events.¹ Special enrollment is the only way to enroll in coverage outside of the open enrollment period. Because our actions do not apply to the large group market, passage of this bill is necessary.

To date, the HBX Executive Board has adopted 30 special enrollment triggering events in addition to protections that exist under federal law. Our process for creating a SEP is:

1. Staff identify a need based on either (1) denied requests for enrollment or (2) other state actions adopting new enrollment opportunities.
2. The Standing Advisory Board then reviews SEP requests and makes recommendations to the Executive Board. The Standing Advisory Board is a statutorily created board that advises the HBX Executive Board. The Standing Advisory Board membership includes diverse stakeholders including one DC Health Link health insurance carrier, a medical provider (usually a physician), a health insurance broker, and consumer and patient advocates.² Part of the Standing Advisory Board's review involves receiving input from the public at public meetings.
3. If the Standing Advisory Board approves a proposed SEP, the recommendation then goes to the HBX Executive Board for consideration. To date, the Executive Board has adopted through resolutions all SEPs recommended by the Standing Advisory Board.
4. If approved by the Executive Board, HBX staff then implements the SEP for the individual and/or small group coverage on DC Health Link.

At the HBX Executive Board meeting on January 8, 2020, the HBX Executive Board unanimously adopted the recommendations from the Standing Advisory Board to create a SEP triggered by pregnancy (Attachment A: "To define an additional 'Exceptional Circumstance' for a Special Enrollment Period related to individuals who are pregnant."). Here is the way our new special enrollment works:

¹ See 45 C.F.R. 155.420(d)(9). Permits an exchange marketplace to define "exceptional circumstances" qualifying for a special enrollment period.

² In the early years of HBX operations, working groups also discussed and recommended SEPs.

- A pregnant woman and her dependents can enroll in individual or small group coverage through DC Health Link.
- If a pregnant woman or her dependents are already enrolled, then both can change the plan they are enrolled in.
- The triggering event for this new right is the date a health care practitioner confirms the pregnancy. So an over-the-counter pregnancy test would not trigger the SEP. Confirmation by a health care practitioner would.
- A pregnant woman has a choice to enroll retroactively to the first of the month a pregnancy is confirmed or to start coverage at a future date. For individual market coverage, the woman has up to 60 days to enroll after confirmation of pregnancy by health care practitioner. Coverage becomes effective first of the month following plan selection. If she is enrolling in small group coverage— meaning she or her spouse/domestic partner works for an employer enrolled in small group coverage on DC Health Link—the employee and dependents have up to 30 days to enroll after confirmation of pregnancy by a health care practitioner. Coverage becomes effective first of the month following plan selection.

Although we are very proud of this new opportunity to enroll in coverage, our protections only apply to the individual and small group coverage on DC Health Link. Our HBX SEP does not apply to large group health insurance coverage. The Pregnancy as a Qualifying Event Act of 2019 is necessary to recognize pregnancy as a qualifying event to enroll in large group health insurance.³

Historically, health insurance plans treated women differently than men and were allowed to engage in many discriminatory practices. Women of child-bearing years were charged higher premiums than men of the same age – actuaries assumed that all women of child bearing years would get pregnant. In most states, pregnancy was not covered by individual health insurance at all—pregnancy had predictable costs and thus not covering such costs was one way to protect

³ Note that ERISA preempts states from regulating self-insured group health plans. In other words, if an employer self-insures health benefits, B23-584 will not apply. To address this in self-insured group health plans, Congress would have to pass legislation to apply to self-insured ERISA plans.

insurers from paying claims. And when women signed up for coverage, if a woman was pregnant, insurers considered pregnancy a medical condition and as such excluded it from coverage as a pre-existing condition. These discriminatory practices prevailed in nearly all state individual health insurance markets, many practices -- including gender rating -- were allowed in individual, small group, and large group markets, and preexisting condition exclusions were common in all markets including the large group market.

The ACA addressed nearly all of these discriminatory practices. The ACA prohibits insurers from charging women higher premiums than men in the individual and small group market, from treating pregnancy as a preexisting condition and from excluding pregnancy from coverage. However, the federal health reform law did not fully address the historical view that pregnancy is a medical condition instead of a life event like other qualifying life events including birth of a child, getting married, or moving which qualify under federal law for a special enrollment period. By recognizing pregnancy as a life event, this legislation is an important additional necessary step toward ending discrimination against women in health insurance.

In conclusion, we strongly support passage of B23-584. Thank you for the opportunity to testify. I am happy to answer any questions you may have.



RESOLUTION

EXECUTIVE BOARD OF THE DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY

To define an additional “exceptional circumstance” for a Special Enrollment Period related to individuals who are pregnant.

WHEREAS, the Health Benefit Exchange Authority Establishment Act of 2011, effective March 4, 2012 (D.C. Law 19-94; D.C. Official Code § 31-3171.01 *et seq.*) (“Act”) created the District of Columbia Health Benefit Exchange Authority (“Authority”), an independent authority of the Government of the District of Columbia, and its governing Executive Board;

WHEREAS, §5 of the Act (D.C. Official Code §31-3171.04(a)(1), (2), & (9)) requires the Authority to establish an American Health Benefit Exchange for individuals and families and a Small Business Health Options Program (SHOP) Exchange through which qualified employers can access coverage for employees, including the establishment of enrollment periods, and §7 of the Act (D.C. Official Code §31-3171.06(a) & (b)) authorizes the Executive Board to take necessary lawful action to implement provisions of the Affordable Care Act of 2010 (“ACA”) (P.L. 111-148 & P.L. 111-152);

WHEREAS, 45 C.F.R. §155.420(d)(1) – (8) & (10) – (14) and 45 C.F.R. §§155.725(j) and 155.726(c) establish a series of circumstances in which QHPs must permit qualified individuals as well as qualified employees and dependents to receive special enrollment periods (SEPs) to enroll in the Individual Exchange or SHOP marketplaces outside the Open Enrollment Periods;

WHEREAS, 45 C.F.R. §155.420(d)(9), 155.725(j), and 155.726(c) permits the Exchange to define “exceptional circumstances” for SEPs;

WHEREAS, Authority staff, through monitoring market conditions, identified a situation where an additional “exceptional circumstances” SEP warranted consideration by the Standing Advisory Board; and

WHEREAS, on December 13, 2019, the Standing Advisory Board considered the staff recommendation, deliberated on the topic, took public comment, and unanimously approved the recommendation to the Executive Board;

NOW, THEREFORE, BE IT RESOLVED that the Executive Board hereby adopts the following:

A new special enrollment period shall be available to individuals, and their dependents, to enroll in an individual market or SHOP market Qualified Health Plan (QHP) if that individual is pregnant, as confirmed by a health care practitioner.

Triggering Event

This triggering event for this special enrollment period is the date of confirmation of pregnancy by the health care practitioner.

Effective Date of Coverage

The effective date of coverage shall be either of the following dates, at the option of the individual.

- the first of the month in which the individual receives confirmation of pregnancy from a health care practitioner; or
- the first of the month following the date the individual makes a plan selection.

When an individual enrolls dependents via this SEP, the dependents receive the same effective date selected by the individual.

SEP Length

This special enrollment period shall last for:

- 60 days from the triggering event in the individual market; and
- 30 days from the triggering event in the SHOP market.

I HEREBY CERTIFY that the foregoing Resolution was adopted on this 8th day of January, 2020, by the Executive Board of the District of Columbia Health Benefit Exchange Authority in an open meeting.

/s/
Khalid Pitts, Secretary/Treasurer
District of Columbia Health Benefits Exchange Authority

1/8/2020
Date



**Testimony for the Record
Council of the District of Columbia
Committee on Health
Bill 23-0584, the “Pregnancy as a Qualifying Event Act of 2019”**

CareFirst BlueCross BlueShield (CareFirst) appreciates the opportunity to submit testimony for the record on Bill 23-0584, the “Pregnancy as a Qualifying Event Act of 2019.”

CareFirst supports the “Pregnancy as a Qualifying Event Act of 2019”, which will help to ensure that pregnant women in the District of Columbia have access to health insurance. Last year, CareFirst stood with Mayor Bowser in providing \$2.15 million in grants, over the next two years, to a dozen community-based providers working to improve outcomes for maternal and infant health. This contribution will support efforts to expand care for pregnant mothers, who might not otherwise get the care they need, and help to curb premature births and infant mortality. In 2018, CareFirst contributed nearly \$38 million to grant investments, throughout the region, that addressed community need and health care access in key areas, including improving maternal and child health. Through our continued investments, CareFirst hopes to make a significant difference in the lives of expecting mothers and their infants.

Bill 21-0584 establishes a special enrollment period (SEP) to allow pregnant women the opportunity to enroll in or change their health insurance outside of the annual open enrollment period. Currently, women only have this opportunity after the birth of their child, which can prevent access to critical services. CareFirst was pleased to support the District of Columbia Health Benefit Exchange Authority (HBX) when they established a SEP for pregnant women, which is now operational. Consistent with Federal rules and existing HBX processes, this SEP is time limited to 60 days for enrollment in individual coverage and 30 days for enrollment in small employer coverage. In addition, consumers have the option of prospective coverage, rather than being forced to pay for retroactive coverage. CareFirst recommends that the Committee amend the bill to mirror the existing processes already in place to minimize disruption and confusion.

The SEP established by the HBX does not apply to large employer health insurance coverage, nor to grandfathered health insurance coverage. To ensure continuity across the employer markets, CareFirst recommends applying the 30-day time limit, as well as the option for prospective coverage, to the large group market. Additionally, we recommend that grandfathered health plans be excluded from this legislation, as these plans were designed to allow consumers the ability to maintain an existing plan, not choose a new plan. Moreover, they are not required to provide the Essential Health Benefits mandated by the Affordable Care Act, so may not be appropriate coverage for pregnant women.

A redline of our amendments to support these recommendations is included with this testimony. CareFirst appreciates the efforts of the DC Council to ensure that pregnant women in the District of Columbia have early access to prenatal care.

ATTACHMENT E


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



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

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

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: February 27, 2020

SUBJECT: Fiscal Impact Statement – Pregnancy as a Qualifying Event Act of 2020

REFERENCE: Bill 23-584, Committee Print as provided to the Office of Revenue
Analysis on February 14, 2020

Conclusion

Funds are sufficient in the fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the bill.

Background

The bill requires health insurers that offers individual or group health insurance coverage in the District to allow for a special enrollment period for pregnant individuals. The individual insurance market must offer open enrollment for sixty days from the date of confirmation of pregnancy, and the group insurance market must give individuals the option to enroll for at least thirty days from the date of confirmation of pregnancy. Coverage is retroactive to the first of the month in which a health care professional certifies the pregnancy.

Financial Plan Impact

Funds are sufficient in the fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the bill. The Patient Protection and Affordable Care Act allows state-based marketplaces to have special enrollment periods beyond what federal law mandates. There is no cost to the Health Benefit Exchange to implement the bill's individual market provisions. There is also no cost for the Department of Insurance, Securities and Banking to implement the bill's group market provisions.

ATTACHMENT F



OFFICE OF THE GENERAL COUNSEL

Council of the District of Columbia
1350 Pennsylvania Avenue NW, Suite 4
Washington, DC 20004
(202) 724-8026

MEMORANDUM

TO: Councilmember Vincent C. Gray

FROM: Nicole L. Streeter, General Counsel *NLS*

DATE: June 20, 2020

RE: Legal sufficiency determination for Bill 23-584, the
Pregnancy as a Qualifying Event Act of 2020

The measure is legally and technically sufficient for Council consideration.

The legislation requires a health insurer to offer a special enrollment period¹ for pregnancy.

I am available if you have any questions.

¹ “Open enrollment period” means the yearly period during which a person can enroll in a health insurance plan. “Special enrollment period” means any time a person has the option to enroll in or change their health insurance outside of the open enrollment period.

ATTACHMENT G

1 **Committee Print**
2 **Bill 23-584, Pregnancy as a Qualifying Event Act of 2020**
3 **Committee on Health**
4 **July 1, 2020**

5
6
7 A BILL
8
9
10 _____

11
12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
13
14 _____
15

16 To require health insurers to provide a special enrollment period after an individual learns the
17 individual is pregnant.

18
19 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
20 act may be cited as the “Pregnancy as a Qualifying Event Act of 2020”.

21 Sec. 2. Definitions.

22 For the purposes of this act, the term:

23 (1) “Health insurer” means a person that provides one or more health benefit
24 plans or insurance in the District of Columbia, including an insurer, a hospital and medical
25 services corporation, a fraternal benefit society, a health maintenance organization, a multiple
26 employer welfare arrangement, or any other person providing a plan of health insurance subject
27 to the authority of the Commissioner of the Department of Insurance, Securities, and Banking.

28 (2) “Open enrollment period” means the yearly period during which a person can
29 enroll in a health insurance plan.

30 (3) “Special enrollment period” means any time a person has the option to enroll
31 in or change their health insurance outside of the open enrollment period.

32 Sec. 3. Pregnancy as a qualifying event.

33 (a) A health insurer shall allow for a special enrollment period for a pregnant individual
34 for:

35 (1) Sixty days when offering individual health insurance coverage from the date
36 of confirmation of pregnancy, as certified by a licensed healthcare professional acting within the
37 scope of the professional's practice.

38 (2) At least 30 days when offering group health insurance coverage from the date
39 of confirmation of pregnancy, as certified by a licensed healthcare professional acting within the
40 scope of the professional's practice.

41 (b) Coverage shall be effective as of the first of the month in which the health care
42 professional certifies the individual is pregnant, unless the individual elects to have coverage
43 effective on the first day of the month following the date that the individual makes a plan
44 selection.

45 Sec. 4. Fiscal impact statement.

46 The Council adopts the fiscal impact statement in the committee report as the fiscal
47 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
48 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

49 Sec. 5. Effective date.

50 This act shall take effect following approval by the Mayor (or in the event of veto by the
51 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
52 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
53 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
54 Columbia Register.