

# Health Benefit Exchange BOARD BY-LAWS

## PREAMBLE

Chapter 43.71 RCW established the Washington Health Benefit Exchange (the “HBE”), a quasi-governmental, public-private partnership separate and distinct from the state of Washington, charged with exercising functions delineated in Chapter 43.71 RCW, and operating consistent with the federal Patient Protection and Affordable Care Act of 2010, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, and regulations or guidance issued there under (the “Affordable Care Act”).

Chapter 43.71 RCW further provided that the HBE shall have a board, governing the HBE’s functions and operations delineated in Chapter 43.71 RCW and the Affordable Care Act, including but not limited to, the design, implementation, and administrative functions necessary to operate the HBE, beginning on October 1, 2013 (the “HBE Board or the “Board”).

## ARTICLE I

### Board of Directors

- 1.1 Powers and Duties – The HBE shall be governed by its eleven member Board. The Board shall have all the powers and duties conferred by Chapter 43.71 RCW and other applicable law and authority.
- 1.2 Initial Board – Term of Office – The initial Board shall be appointed by the Governor in accordance with Chapter 43.71 RCW. Initial Board members shall serve staggered terms not to exceed four years.
- 1.3 Successor Board – Term of Office – Following the expiration of the terms of office of initial Board members, successor Board members shall be appointed by the Governor in accordance with Chapter 43.71 RCW and shall serve two-year terms. Members of the initial or a successor Board may be reappointed to multiple terms in accordance with Chapter 43.71. Any Board member whose term has expired but whose successor has not been appointed by the Governor may continue to serve until such member has been reappointed or upon the appointment of his or her successor.
- 1.4 Ex Officio Board Members – The Washington State Insurance Commissioner, or his or her designee, and the Director of the Health Care Authority, or his or her designee, shall serve as non-voting, ex officio members of the Board.
- 1.5 Vacancies – A vacancy on the Board shall exist in the case of resignation, death, retirement, disqualification or removal of any Board member. The vacancy on the

Board for any reason shall be replaced by gubernatorial appointment, and the person appointed to fill such vacancy shall serve for the remainder of the unexpired term of office for the position to which he or she was appointed.

- 1.6 State Law Applicable to the HBE Board – The Board and any of its Committees, constituted pursuant to Article III, are subject to the provisions of Chapter 42.30 RCW, the Open Public Meetings Act, and Chapter 42.56 RCW, the Public Records Act, and not to any other law or regulation generally applicable to state agencies.
- 1.7 Compensation – Members of the Board shall be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and RCW 43.03.060.

## ARTICLE II

### Officers

- 2.1 Board Chair – The Chair of the Board shall be appointed by the Governor and shall (i) serve as a nonvoting member except in the case of a tie; (ii) preside at all meetings of the Board and (iii) have all powers and duties conferred by law and the Board’s By-laws. The Chair may also sign and execute, in the name of the Board, any instrument duly authorized by the Board, unless such signatory authority is delegated by Board resolution or required by law to be signed or executed in some other manner. In the absence or disability of the Chair, a Chair Pro-Tem, designated by the Chair in the case of absence or by the Board in the case of disability, shall perform the duties of the Chair. When so acting, the Chair Pro-Tem shall have all the powers of, and be subject to, all the restrictions upon the Chair.
- 2.2 Other Officers – *(reserved)*

## ARTICLE III

### Committees

- 3.1 Advisory Committee – Pursuant to RCW 43.71.020(7)(a), the Board shall establish an advisory committee to allow the views of the health care industry and other stakeholders to be heard in the operation of the HBE. The Advisory Committee shall keep regular minutes of its proceedings and shall report to the Board when requested to do so.
- 3.2 Technical Advisory Committees – In accordance with RCW 43.71.020(7)(b), the Board, by resolution, may establish technical advisory committees when necessary to execute its powers and duties. Any technical advisory committee

- shall keep regular minutes of its proceedings and shall report to the Board when requested to do so.
- 3.3 Standing Committee on Policy – the Board establishes a standing committee of the Board on Policy. The policy committee is responsible for deliberating key policy topics and issues identified by the Board, Exchange staff, and stakeholders and making recommendations to the Board.
  - 3.4 Standing Committee on Operations – the Board establishes a standing committee of the Board on operations. The operations committee is responsible for monitoring activities related to the administration of the Exchange, including operations, finance, and information technology and making recommendations to the Board.
  - 3.5 Standing Committee on Audit and Compliance – the Board establishes a standing committee of the Board on audit and compliance. The audit and compliance committee is responsive for oversight of the financial reporting and internal controls, monitoring compliance, overseeing audits and making recommendations to the Board.
  - 3.6 Standing Committee on Nominations – the Board establishes a standing committee of the Board on nominations. The nominating committee is responsible for reviewing and recommending nominees to advisory and other committees established by the Board.
  - 3.7 Standing Committee on CEO Oversight – the Board establishes a standing committee of the Board on CEO Oversight of the Chief Executive Officer. The CEO oversight committee is responsible for recommending actions to the Board relating to (1) hiring and, when necessary, terminating the CEO; (2) annually evaluating the performance and determining the compensation for the CEO; and (3) ensuring appropriate CEO succession planning.
  - 3.8 Other Committees – In addition to the committees established under Sections 3, the Board, by resolution, may establish one or more additional committees, which shall serve at the pleasure of the Board. Any committee established pursuant to this Section may exercise the authority of the Board to the extent provided in its enabling resolution and any subsequent resolutions adopted in like manner, provided that the authority of each such committee shall be subject to applicable law, and shall keep regular minutes of its proceedings and report to the Board when requested to do so.

## **ARTICLE IV**

### **Meetings**

- 4.1 Time, Place and Notice of Regular Board Meetings – Regular meetings of the Board shall be at the call of the Chair and shall be held at such time, place, and manner to efficiently carry out the Board’s duties. Board meetings shall be held in a location that provides reasonable access to the public, including the use of accessible facilities. The Chair shall propose an annual schedule of regular Board meetings for adoption by the Board. The schedule of regular Board meetings, and any changes to the schedule, shall be filed with the State Code Reviser’s Office in accordance with RCW 42.30.075. The Chair may cancel a regular Board meeting at his or her discretion, including the lack of sufficient agenda items. Except as provided in this Section 4.1, no notice of regular meetings shall be required.
- 4.2 Special Meetings and Notice of Special Board Meetings – The Chair may call a special meeting of the Board at any time and proper notice must be given of a special meeting as provided by the Open Public Meetings Act, Chapter 42.30 RCW (“Open Public Meetings Act”).
- 4.3 Open Public Meetings – All Board meetings, and all Board committee meetings, shall be open to the public to the extent required by the Open Public Meetings Act. The Board and committees may hold executive sessions to consider matters enumerated in the Open Public Meetings Act or privileged matters recognized by applicable law.
- 4.4 No Conditions for Attendance – A member of the public is not required to register his or her name or provide other information as a condition of attendance at a Board or committee meeting.
- 4.5 Meeting Minutes and Agendas – The agenda for an upcoming Board or committee meeting shall be made available to the Board or committee and the interested members of the public prior to the meeting date or as otherwise required by the Open Public Meetings Act. Agendas may be sent by electronic mail and shall also be posted on the HBE website. Minutes summarizing the significant action of the Board or a committee shall be taken by a member of the HBE staff during the Board or committee meeting, and an audio recording (or other generally-accepted) electronic recording shall also be made. The audio files shall be retained for six (6) months. Summary minutes shall be provided to the Board or committee for review and adoption at the next Board or committee meeting.
- 4.6 Attendance – Board members shall inform the Chair with as much notice as possible if unable to attend a scheduled Board meeting. Board staff preparing the minutes shall record the attendance of Board members at the meeting for the minutes.

## **ARTICLE V**

### **Meeting Procedures**

- 5.1 Quorum – Five voting Members of the Board shall constitute a quorum for the transaction of Board business. No final action may be taken in the absence of a quorum. The Chair may declare a meeting adjourned in the absence of a quorum necessary to transact Board business.
- 5.2 Order of Business – The order of Board business shall be determined by the agenda.
- 5.3 Teleconference Permitted – A Board Member may attend a meeting in person or, by special arrangement and advance notice to the Chair, a Board member may attend a meeting by telephone conference call or video conference when in-person attendance is impracticable. Any Board member participating in a meeting by telephone call or video conference is deemed to be present in person at the meeting for all purposes, including, but not limited to, establishing a quorum.
- 5.4 Voting – Each Board member eligible to vote shall have one vote on matters coming before the Board. On motions, resolutions, or other matters, a voice vote may be used. At the discretion of the Chair, or upon request of a Board member, a roll call vote may be conducted. Votes may be taken by telephone or by proxy. In the case of a tie on a motion or resolution, the Chair is eligible to vote and shall have one vote.
- 5.5 Public Testimony – The Board actively seeks input from the public at large, from participants served by the programs it administers, and from other interested parties. Time is reserved for public testimony at each regular meeting, generally at the end of the agenda. At the direction of the Chair, public testimony at Board meetings may also occur in conjunction with a public hearing or during the Board’s consideration of a specific agenda item. The Chair has authority to limit the time for public testimony, including the time allotted to each speaker, depending on the time available and the number of persons wishing to speak.
- 5.6 Motions and Resolutions – All actions of the Board shall be expressed by motion or resolution. No motion or resolution shall have effect unless passed by the affirmative votes of a majority of the Board members present or deemed to be present and eligible to vote, or in the case of a proposed amendment to the By-laws, a 2/3 majority of the Board.
- 5.7 Representing the Board’s Position on an Issue – No Member of the Board may endorse or oppose an issue purporting to represent the Board or the opinion of the Board on the issue unless the majority of the Board approve of such position.
- 5.8 Parliamentary Procedure – All rules of order not provided for in these By-laws shall be determined in accordance with the most current edition of Robert’s Rules of Order [RONR]. Board staff shall provide a copy of *Robert’s Rules* at all Board meetings.

- 5.9 Civility – While engaged in Board duties, Board members conduct shall demonstrate civility, respect and courtesy toward each other, HBE staff, and the public and shall be guided by fundamental tenets of integrity and fairness.

## ARTICLE VI

### *Amendment of By-Laws and Rules of Construction*

- 6.1 Amendment – The Board is expressly authorized to make, alter and repeal the HBE Board By-laws. The HBE Board By-laws may be amended upon a two-thirds (2/3) majority vote of the Board. Notice of all amendments will be given to all Board members at least thirty (30) days prior to the vote on an amendment.
- 6.2 Liberal construction – All rules and procedures in these By-laws shall be liberally construed so that the public’s health, safety and welfare shall be secured in accordance with the intents and purposes of applicable State laws and regulations.

## ARTICLE VII

### *Indemnification of Board Members*

- 7.1 Grant of Indemnification – Each person who was or is made a party or is threatened to be made a party to or is involved (including without limitation, as a witness) in any threatened, pending, or completed action, suit or proceeding, whether formal or informal, civil, criminal, administrative or investigative (hereinafter “proceeding”), by reason of the fact he or she is or was a Board member, shall be indemnified and held harmless by the HBE to the fullest extent permitted by applicable law, as then in effect, against all expense, liability and loss (including attorneys’ fees, costs judgments, fines, taxes or penalties and amounts to be paid in settlement) reasonably incurred or suffered by such person in connection therewith if such person acted in good faith and reasonably believed his or her conduct to be within the scope of his or her duties as an HBE Board member; and, in the case of any criminal proceedings, he or she had no reasonable cause to believe his or her conduct was unlawful. The right of indemnification shall continue as to a person who has ceased to be a Board member and shall inure to the benefit of his or her heirs, executors and administrators.

Whenever a proceeding is instituted against a Board member arising out of performance of duties as a Board member, he or she shall tender defense of such action to the HBE and request that counsel be retained by the HBE to defend him or her. The HBE may accept such tender and grant the request by the person that the attorney be of the HBE’s choosing authorized to defend the proceeding. The

costs of defense, attorneys' fees, and obligation for payments arising from the action may be paid by the HBE's funds.

- 7.2 Advancement of Expenses – Notwithstanding Section 7.1 and to the extent permitted by applicable law, the right to indemnification in this section shall include the right to be paid by the HBE the reasonable expenses incurred in defending such proceeding in advance of its final disposition, except where the Board shall have adopted a resolution expressly disapproving such advancement of expenses. The authorization of payments for such advancement of expenses shall be made by resolution adopted by the Board.
- 7.3 Insurance – To the extent permitted by applicable law, the HBE shall purchase and maintain appropriate insurance to protect any individual who was or is a Board member, officer, employee or agent of the HBE against liability asserted against or incurred by the individual in that capacity or arising from his or her status as a Board member, officer, employee or agent.

## **ARTICLE VIII**

### **Public Records**

The Board shall maintain all of its records consistent with Chapter 42.56 RCW, the Public Records Act.

## **ARTICLE IX**

### **Conflict of Interest**

No Board member or the entity that the Board member represents may benefit financially from such Board member's participation in decisions of the Board. Any Board member who engages in such activity shall resign or be removed from the Board.

In addition, the Board has, by resolution, adopted a conflict of interest and ethics policy for Board members and HBE employees, which addresses conflicts of interest, gifts, confidential information, use of Exchange resources, and subsequent employment. Any Board member with a potential conflict of interest shall recuse himself or herself from participating in discussions, deliberations, preliminary negotiations, and votes on matters before the Board if the Board member may benefit from such participation, as defined in the policy.

<b>Date of Amendment</b>	<b>Description of Change</b>
March 15, 2012	Original bylaws adopted

April 17, 2013	Amend Article IX to align language with newly adopted Conflict of Interest Policy.
July 28, 2021	Amend Article III to include five standing Board Committees including: Policy, Operations, Audit & Compliance, Nominations, and CEO Oversight.