



VIA EMAIL (Marlene.Sawicki@ins.nh.gov)

Commissioner Roger Sevigny
NH Insurance Department
21 S. Fruit Street, Suite 14
Concord, NH 03301

Dear Commissioner Sevigny,

Thank you for the opportunity to provide input regarding the option for New Hampshire to recommend a delay to the implementation of employee choice functionality in the SHOP Marketplace. As you know, NH Voices for Health (“VOICES”) is a nonprofit advocacy organization that is committed to expanding access to quality, affordable health care in New Hampshire. In collaboration with our network of advocacy organizations, small businesses and individuals – including over 50 partner organizations – we represent more than 375,000 people statewide.

We commend you for enabling and prioritizing a public comment opportunity prior to deciding how to proceed, especially in light of the quick turnaround required for your decision. As you no doubt agree, the full implementation of the SHOP Marketplace holds great importance in our state given the dominance of small employers in NH’s workforce. In a state in which so many Granite Staters rely on – or would benefit from – receiving health insurance coverage through small employers, the SHOP holds great promise to expand access to quality, affordable coverage. This is particularly true because many small employers can access tax credits to make health insurance more affordable through the SHOP. VOICES, in fact, is itself a small employer that offers health insurance coverage through the small group market. As a result of our belief that the SHOP will provide greater access to quality, affordable coverage in the state broadly – and VOICES’ interest as a small employer - we believe that it is critical that the full implementation of the SHOP move forward as quickly as reasonably practicable.

VOICES appreciates the difficult decision before you. We do not believe we have enough information about the possible implications of implementation of employee choice functionality in 2015 to give you a determinative answer of what we believe your final decision should be. We urge you to fully consider the full range of perspectives you gather through this public comment period as you decide how to proceed. As you consider that input and how to proceed, we urge you to:

- **Recommend a delay if – and only if – doing so is *necessary* and *sufficient* to ensure a smooth implementation of employee choice**

As we will expand upon below, the employee choice functionality of the SHOP is a central feature of making the SHOP meaningful and successful. This perspective stems from our policy background, our position as a small employer, and from what we have heard from the small employer community. At the same time, we understand and appreciate that there are concerns associated with the implementation of employee choice functionality and that more time may help to protect against unintended adverse consequences of implementation of 2015. We urge you to *equally balance* both the benefits of the NH SHOP implementing employee choice functionality in 2015 and the potential benefits of delaying implementation a year.

In doing so, we ask you to approach your decision with the goal of moving employee choice functionality forward as quickly as can be done while minimizing unintended consequences. In short, the default should be moving forward as planned, unless it is clear that doing so would cause clear harm that:

- o Outweighs the benefits of moving forward;
- o Cannot be mitigated in any other way, and;
- o Can be mitigated by the year delay.

If concerns about disruption likely to be caused by the rollout in 2015 *outweigh* the benefits to be lost in 2015 due to postponing the implementation, and the one-year delay is likely to ensure a smoother rollout, we would agree it would make more sense to proceed more slowly to ensure the implementation is done well. If, however, delaying employee choice functionality a year would not bring more good than harm (given the loss of employee choice for an additional year), or the delay would not help to ensure a smoother rollout, we urge you not to recommend the delay; in these scenarios, the delay would constitute “punting the ball” unnecessarily.

- **Carefully consider the impact of delaying the benefits of employee choice on small employers, their employees and the SHOP itself**

As you will likely remember from the NH Stakeholder Input Process statewide survey and public hearing in the winter of 2013, small employers in New Hampshire have expressed a desire for this option. In fact, in the survey responded to by 649 Granite Staters, 92% said that employers should at least be given the option of allowing employees to choose among a range of health plans as long as they can still “lock in” a predictable employer premium contribution (which will be provided for in federally-facilitated SHOP employee choice model). Small employers that

testified at the public hearing reiterated the importance of employee choice.¹ Employers expressed that it was a burden to have to find one health plan that will meet the needs of each of their employees and that, in fact, they preferred not to have to think about their employees' specific health care needs at all. As Steve Robinson from Checkmate Payroll Services (based in Concord) said²:

In my small group we each have our individual needs. This currently requires me to have some idea of my employee's [sic] medical issues that I might rather not know about. The marketplace can and should allow employers to offer a range of plans that their employees can choose from.

In addition to the burden on employers related to having to choose one health plan for all employees, the lack of employee choice also makes it harder for small employers to compete with large employers as far as employee benefits. Prospective employees want to have the ability to choose among a range of health plans, as most people who work for large employers often can. Looking to 2015, as more small employers in neighboring states have the ability to offer employee choice in health coverage through SHOPS, if employee choice is not available in NH's SHOP, it would be a competitive disadvantage for Granite State employers in border communities who are looking to attract the best employees.

The preference for employee choice among employers has borne out in Rhode Island where employee choice has been implemented and the majority of employers who have purchased coverage in the SHOP have offered their employees the choice among a range of health plans.³ In New Hampshire, employee choice holds the promise of being particularly meaningful next year, as more carriers enter the SHOP and there is likely to be variation between carriers regarding the breadth of provider networks as well as other plan features.

Of course, employee choice will also offers significant benefit to employees themselves, ensuring more Granite Staters have access to the health insurance coverage that will best fit their needs. Again in Rhode Island, 47% of employees offered the choice among a range of health plans through the SHOP have chosen a plan *other than* the employer's reference plan.⁴

¹ <http://www.nhvoicesforhealth.org/default/assets/File/FINAL%20REPORT%20with%20appendices-1.pdf> , see pages 11-12, 42, 85; See also http://www.nhvoicesforhealth.org/default/assets/File/HealthBenefit_3-8-2013.mp3 to hear additional oral testimony of small employers that did not submit written comments.

² <http://www.nhvoicesforhealth.org/default/assets/File/FINAL%20REPORT%20with%20appendices-1.pdf>, page 42.

³ See attached slide

⁴ See attached slide

Most small employers and their employees do not have the option of employee choice outside the SHOP and, therefore, must wait for implementation within the SHOP to benefit from that option. Employee choice is a critical benefit of the SHOP that will distinguish it from the broader small group market. This too, is important, since small business tax credits relative to health insurance coverage are only available through the SHOP and, therefore, the effectiveness of those tax credits in making health insurance more affordable and accessible for small employers and their employees depends on a sustainable and impactful SHOP.

- **Consider – based on an independent assessment – whether expressed concerns about adverse selection are well-founded**

We share concerns about anything that would cause premiums to be artificially high or choice to be diminished. However, we urge you to carefully consider whether that would actually bear out from the implementation of employee choice functionality in 2015 and whether it would be appropriate and legitimate for carriers to make those decisions.

It appears that, nationwide, there is already considerable experience with employee choice. By our count, state-based SHOPS in 14 states have already implemented employee choice functionality, including in small states like Rhode Island.⁵ This is in addition to prior experience in Massachusetts and Connecticut and within private exchanges. We also ask you to question whether employee choice creates challenges related to adverse selection that are distinct from the challenges carriers already must account for in the individual market where purchasers have full choice. It is important to bear in mind that in 12 of the SHOPS mentioned above, and the individual market, choice is not limited to within an actuarial value coverage level as it will be in NH's SHOP.⁶

We urge you to consider whether, given these existing similar choice scenarios, carriers truly do not have enough experience to participate in the SHOP and / or accurately price their plans. We also ask you to question – based on the experience in those markets – whether adverse selection is an issue of great concern given the structure of employee choice that will be implemented in the federally-facilitated SHOPS (FF-SHOPS).

⁵ See <http://www.cbpp.org/cms/index.cfm?fa=view&id=4123>; SHOPS in the following states have implemented employee choice: CA, CO, CT, DC, HI, KY, MD, MN, NV, NY, OR, RI, WA, UT; VT's SHOP is not yet functional but will implement employee choice immediately as well.

⁶ See <http://www.cbpp.org/cms/index.cfm?fa=view&id=4123>; SHOPS in the following states have implemented employee choice: CO, CT, DC, HI, KY, MD, MN, NV, NY, OR, RI, UT; VT's SHOP will offer choice among various coverage levels as well.

- **Consider the impact of other mechanisms to mitigate the impact of concerns about adverse selection**

As you consider the potential impact of concerns regarding adverse selection and employee choice, we ask that you factor in the impact of tools to mitigate adverse selection, including the risk corridors and risk adjustment programs. These tools should be relied on primarily for mitigating risk and should only be expanded upon with a delay if necessary. We also ask you to be mindful of the fact that choice will be limited to within one actuarial value level. As a result, choices should vary less by the amount of coverage a person feels they need than by personal preferences such as provider network.

- **Consider whether a delay will be effective in mitigating concerns about adverse selection**

Delay should only be considered if there is harm that needs to be, and can be, avoided by the delay. If the delay will not impact any valid concerns, there is no reason to simply “punt the ball / risk” by a year. We raise this question particularly in light of the fact that employee choice is already moving forward in a number of states. Is there significant additional experience that will be gained by adding some other number of states in addition to the 14 in which employee choice is already in place? And, can you determine how many other FF-SHOP states will be recommending a delay? If all or most other FF-SHOPS will not implement employee choice in 2015, that calls into significant question how much experience will be gained that will help to protect against concerns related to adverse selection and against other possible disruptions mentioned below by delaying implementation until 2016.

- **Consider the disruption that will be caused by the prohibition on composite billing for those employers that select employee choice**

The possible impact caused by concerns about adverse selection is not the only possible disruptions that could be caused by the implementation of employee choice functionality in 2015, and we urge you to weigh the impact – and ability to mitigate that impact with time – of other possible disruptions. For example, we commend the Department for requiring carriers to present illustrative composite rates to employers and we are concerned about the disruption to small employer workforces and employee benefit packages that will be caused for employers who will not be able to use composite rating because they select employee choice. The FF-SHOP prohibition of composite billing for employers that select employee choice will be a significant change to rating of small group health plans in New Hampshire. We are particularly concerned about the impact this change will have on older employees (who will face a spike in

health coverage costs and significantly higher costs for the same coverage as their younger colleagues). We also worry that this transition could incentivize less robust employer contributions based on the youngest employees and may create challenging dynamics in the workforce as workers face vastly different costs for the same benefits.

We urge you to explore whether a delay can provide the Department time to work with the FF-SHOP to ensure *all* employers in New Hampshire can maintain composite billing. We understand that seven states that have already implemented employee choice are doing so in combination with the “Employer Reference Plan / Uniform Worker Contribution by Family Category Approach” model that will approximate composite billing while holding carriers harmless.⁷

- **Consider the possible disruption of a “bumpy” rollout of employee choice functionality and also options to mitigate that concern**

No one wants to see employers face the same challenges that individuals faced trying to shop via the federally-facilitated Marketplace early in the 2014 open enrollment period. It is critical to weigh whether delaying implementation of employee choice functionality until 2016 is necessary to – and would – mitigate possible significant IT challenges.

At the same time, we urge you to consider and balance other options for mitigating those concerns, such as:

- Whether the decision / risk could be left to individual employers by providing them with a “buyer beware warning” about whether to choose to participate in employer choice in 2015 rather than just offering one plan through the SHOP until 2016.
- Whether New Hampshire businesses could be provided with a direct support person within the FF-SHOP with expertise on navigating any issues that arise.

Similarly, we ask you to explore whether New Hampshire could request flexibility in employee choice functionality being implemented in 2015 to mitigate these concerns, such as:

- Could delay be less than a year if disruption can be minimized in a shorter time period? For example, can employee choice functionality be introduced in the NH FF-SHOP several months after the initial roll-out in the FF-SHOP generally?
- Could employee choice in the NH FF-SHOP be offered as a pilot to a small / limited number of New Hampshire employers in the first year so that it will be easier to address

⁷ <http://www.ihps.org/pubs/Small%20Employer%20Exchange%20Issues%20Calif%20FINAL+4%20June2011.pdf>, page 20. See also, <http://www.cbpp.org/cms/index.cfm?fa=view&id=4123>; SHOPs in the following states have implemented employee choice: CO, CT, DC, KY, NV, OR, RI; VT’s SHOP is not yet functional but will implement employee choice immediately as well.

any enrollment challenges? And, again, could those businesses be provided with a direct support person within the FF-SHOP with expertise on navigating any issues that arise?

We thank you for keeping these priorities in mind as you move forward with the decision-making process. **If a delay is recommended, we urge that you ensure that the Department takes steps to ensure another delay is not needed in subsequent years.** Given the importance of employee choice to small employers, their employees, and the SHOP's sustainability and impact, it is critical that it not be delayed beyond the start of 2016. To that end, we ask that, if you recommend a delay, you and your staff immediately begin work to develop and implement a plan to ensure full implementation of employee choice can move forward in 2016 while minimizing impact to the small group market. In addition to addressing how to minimize the impact of concerns related to adverse selection on premiums and carrier participation, the plan should also:

- Address how to ensure a smooth rollout of the employee choice functionality;
- Include working with the FF-SHOP to enable composite billing / premium equity for employers that offer employee choice, and;
- Include working with the FF-SHOP to consider mechanisms for mitigating adverse selection while allowing employee choice across coverage levels.

Thank you again for both your appreciation of the importance of the decision before you, and of the value of seeking public input. As always, we strive to be a resource for you. Please do not hesitate to call upon us if we can provide any further information

Sincerely,



Lisa Kaplan Howe

Policy Director

NH Voices for Health

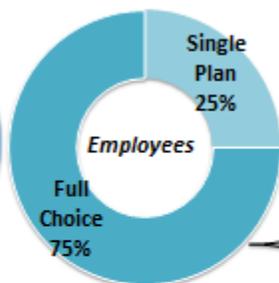
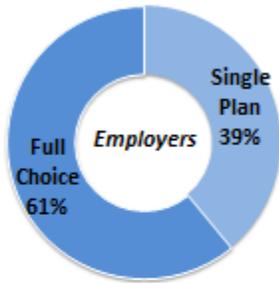
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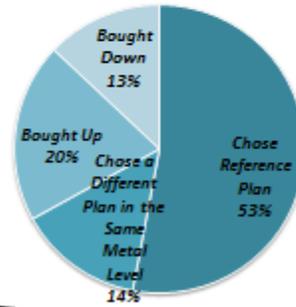
Rhode Island Marketplace

SHOP Market Enrollment by Choice Model October 1, 2013 – May 10, 2014



| | Full Employee Choice | | Single Plan | |
|----------|----------------------|-----|-------------|-----|
| Employer | 129 | 61% | 83 | 39% |
| Employee | 652 | 75% | 212 | 25% |
| Lives | 1041 | 75% | 338 | 25% |

- About half of employees in Full Choice chose out of their employer's reference plan
- Of employees changing metal levels, more bought up than bought down



Note: SHOP enrolled Lives show a comparable breakout to Employees