

**Recommendation Form for the
2015 Transition to Employee Choice
Due to HHS June 2, 2014 for FF-SHOP States**

Instructions: Please fill out the following form and attach your recommendation for a one year transition to employee choice including an evidence-based assessment of the full landscape of the small group market in your State.

State: New Hampshire

Insurance Commissioner (signature):



**Roger A. Sevigny, Commissioner
New Hampshire Insurance Department**

Please adequately explain that it is in your expert judgment, based on a documented assessment of the full landscape of the small group market in your State that the 2015 Transition to Employee Choice would be in the best interest of small employers and their employees and dependents, given the likelihood that implementing employee choice would cause issuers to price their products and plans higher than they would otherwise price them. Please base your recommendation on discussions with those issuers expected to participate in the SHOP, including naming those issuers, and keep your recommendations specific to 2015 since this is a one year transitional policy.



THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

21 SOUTH FRUIT STREET SUITE 14
CONCORD, NEW HAMPSHIRE 03301

Roger A. Sevigny
Commissioner

June 2, 2014

Alexander K. Feldvebel
Deputy Commissioner

Via electronic mail delivery to shop@cms.hss.gov

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: Recommendation for 2015 Transition to Employee Choice

Dear Secretary Sebelius:

It is my opinion, based on the expert judgment of staff analysts of the New Hampshire Insurance Department and after consultation with affected stakeholders, that it would be in the best interest of New Hampshire small employers and their employees and dependents to delay the transition to employee choice for the federally-operated Small Business Health Options Program (FF-SHOP) until 2016.

Landscape of the small group market in New Hampshire: The Department is very concerned about maintaining a competitive small group market on the FF-SHOP in 2015. Every year, the Department collects data from health insurers licensed in New Hampshire and issues a report analyzing these data and evaluating the status of New Hampshire health insurance markets. The most recent report, based on activity during calendar year 2012, was issued April 29, 2014.¹ As laid out in this report, New Hampshire's small group market is dominated by two carriers, Anthem Blue Cross Blue Shield and Harvard Pilgrim Health Care. Most people are covered through HMO products, and Anthem insures about 67 percent of those members.

Adverse selection concerns: For 2014, Anthem was the only carrier that chose to participate in the FF-SHOP, and the potential for adverse selection was one of the primary reasons Harvard Pilgrim cited in its choice not to sell insurance in the New Hampshire Marketplace or SHOP in 2014. In 2013, the Insurance Department performed a statistical analysis of insured populations, using the state's all-payer claims database for the purpose of providing comparative information to carriers as they sought to determine how risk adjustment mechanisms under the Affordable

¹Supplemental Report of the 2012 Health Insurance Market in New Hampshire, issued April 29, 2014, http://www.nh.gov/insurance/lah/documents/supp_rpt_2012.pdf.

Care Act would affect their organizations beginning in 2014.² This analysis supports carriers' concerns about the potential for adverse selection. Specifically, the Department's 2013 report on markets and health status concluded that, despite a higher average member age, Anthem insures a healthier population than Harvard Pilgrim does in this market. If the distribution of risk further shifts to Harvard Pilgrim or other small companies, a stable small group market is less likely to exist, despite the use of risk adjustment mechanisms.

Public comment/consultation with issuers: The Insurance Department held a public comment period regarding the issue of FF-SHOP employee choice.³ The Department received eight public comment letters, all of which are attached. Two letters were from producers; three were from health issuers, including Anthem, Harvard Pilgrim and Minuteman Health (a co-op planning to enter New Hampshire markets for the first time in 2015); one was from a dental issuer; and two were from consumer advocacy groups.

All of the carriers and producers filing substantive comments urged the Department to request that the employee choice functionality be delayed until 2016.⁴ In their comment letters, both Anthem and Harvard Pilgrim expressed anti-selection concerns as well as concerns about timing in view of the Department's filing deadlines for proposed qualified health plans. Policy forms, including benefit designs, were due to the Department on May 1, 2014, and thus have already been filed. Similarly, rate demonstrations were due to the Department on June 1, 2014. The two producers that filed comments strongly urged postponement, citing concerns about adverse selection. Both also noted that delays in FF-SHOP functionality, even without employee choice, had been disruptive and confusing to their small-business clients. The dental carrier filing comments expressed concern about how stand-alone dental plans would be handled under employee choice.

The comments submitted by consumer groups emphasized the importance of ultimately having the employee choice functionality be available but also recognized the potential problems of moving forward prematurely and causing confusion to employers and employees. One of the letters noted that a delay would be helpful in allowing more time for the state to work with employers to enable them to continue to use a uniform worker contribution approach, as has been traditional in New Hampshire, rather than differential contributions that are tracked to the list billing approach required under the ACA.

At its May 9, 2014 meeting, the New Hampshire Health Exchange Advisory Board discussed the FF-SHOP employee choice issue. This board, created under NH RSA 420-N:10 to advise the Insurance Commissioner and the Commissioner of Health and Human Services, includes

² New Hampshire Insurance Department Analysis of Population Health Status by Carrier and Market Segments, April 3, 2013, http://www.nh.gov/insurance/reports/documents/nhid_anal_pop_hs_carrmkt.pdf.

³ Notice of Public Comment Period: SHOP Employee Choice for 2015, posted May 19, 2014, http://www.nh.gov/insurance/consumers/documents/shopnh_2015comments.pdf

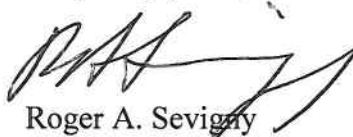
⁴ Minuteman noted only that it was a new entrant to the New Hampshire market for 2015, and did not make substantive comments.

representatives of (among others) health and dental carriers, consumer advocates, small employers and employees of small employers.⁵ As noted in Anthem's letter, the board engaged in a thoughtful discussion of the issue, with a number of members (including employers) expressing concern about the effects of a premature launch of the employee choice functionality.

Conclusion. Based on the Department's analysis and consultation with stakeholders, I conclude that it is in the best interest of employers and their employees to delay employee choice until 2016. This is not to suggest that FF-SHOP employee choice should never be implemented in New Hampshire, but to recognize that carriers, producers, and even employers themselves have significant concerns about pricing, timing and clarity. Issuers, in my expert judgment and based upon the foregoing, respond to their concerns around these matters by increasing premium. Therefore, in my opinion, it would be in the best interest of small employers and their employees and dependents to delay employee choice by one year. Delaying implementation for one year, particularly where the Department has worked hard to bring new carriers into the state, and where product filings have already been made, would allow carriers adequate time to resolve those concerns, and to implement employee choice in a manner that will allow its benefits to be fully used and appreciated by FF-SHOP users, without unnecessary pricing impacts.

In view of the foregoing, I recommend that HHS approve a 2015 transition period for the FF-SHOP it operates for New Hampshire, and that the employee choice functionality not take effect until 2016.

Very truly yours,

A handwritten signature in black ink, appearing to read 'RAS', with a long horizontal stroke extending to the right.

Roger A. Sevigny

⁵ Link to statute: <http://www.gencourt.state.nh.us/rsa/html/XXXVII/420-N/420-N-10.htm>; link to board information: http://www.nh.gov/insurance/consumers/nhid_health_ex_advbrd.htm.