



**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

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Notice of public comment period: SHOP Employee Choice for NH in 2015

In response to a regulation issued on Friday by the federal government, New Hampshire Insurance Commissioner Roger A. Sevigny is seeking comments from health carriers, small employers, employees of small employers, and any other interested members of the public on whether it is in the best interest of New Hampshire's small group health insurance market to include the employee choice functionality in New Hampshire's federally-operated Small Business Health Options Program (SHOP) during 2015 or to delay this functionality until 2016. Because the Commissioner's recommendation to the federal agency is due June 2, 2014, **all comments submitted to the Department must be received no later than 4:30 pm on Tuesday, May 27, 2014.**

Under the federal Patient Protection and Affordable Care Act (ACA), SHOPs are intended to facilitate employee choice by giving qualified small employers the option of selecting a particular level of coverage, then making all plans at that level available to their employees. However, due to technical constraints, the employee choice functionality was not available in 2014 in the SHOP operated by the federal government.

On Friday, May 16, 2014, the federal Centers for Medicare and Medicaid Services (CMS) issued a Final Rule under the ACA on Exchange and Insurance Market Standards for 2015 and Beyond (Final Rule). A link to the Final Rule is below. One topic addressed by the Final Rule is the rollout of employee choice for the SHOP.

In the Final Rule, CMS states that the technical capability for employee choice will be available for the federal SHOP in 2015, although a specific date is not given. Final Rule at 252. However, CMS has chosen to allow state insurance commissioners to request that this functionality not take effect until 2016, if 2015 implementation is likely to disrupt the small group market in their states. Specifically, CMS has recognized that some issuers "have concerns about the potential for adverse selection in the small group market in light of the fact that employee choice will be a new feature in many markets" Final Rule at 248. Without "sufficient data available concerning expected enrollee risk in an employee choice environment," issuers may choose to price coverage "more conservatively than they otherwise would." *Id.* CMS also noted the concern on the part of some state insurance commissioners that "this potential for adverse selection will result in less robust issuer participation in a SHOP that offers employee choice." *Id.* In New Hampshire, the rate filings for SHOP plans are due June 1, 2014, so there is concern about the effect of uncertainty on carrier participation, given that carriers' plans and rates are already in nearly their final form.

The Final Rule gives Insurance Commissioners in states using the federal SHOP the opportunity to "recommend to the SHOP that employee choice not be implemented in that State in 2015 if

the Commissioner can adequately explain that this 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.” Final Rule at 246-47. Specifically, the regulation provides that, for plan years beginning in 2015 only, the SHOP may delay implementation of employee choice:

in the case of a Federally-facilitated SHOP, . . . **only if the State Insurance Commissioner submits a written recommendation** to the SHOP adequately explaining that it is the State Insurance Commissioner’s expert judgment, **based on a documented assessment of the full landscape of the small group market** in his or her State, **that not implementing employee choice would be in the best interests of small employers and their employees and dependents**, given the likelihood that implementing employee choice would cause issuers to price products and plans higher in 2015 due to the issuers’ beliefs about adverse selection. A State Insurance Commissioner’s recommendation **must be based on concrete evidence, including but not limited to discussions with those issuers expected to participate in the SHOP in 2015.**

45 CFR 155.705(b)(3)(vi)(emphasis added).

Recommendations from state Insurance Commissioners on the SHOP employee choice issue are due June 2, 2014. In order to ensure that Commissioner Sevigny is in a position to make a timely and thoughtful recommendation to CMS on this issue, he seeks public comment, in the form of written submissions, on the issue of how implementation of SHOP employee choice in 2015 would affect the small group market in New Hampshire. In accordance with the language of the Final Rule, if the Commissioner does submit a recommendation that employee choice not be implemented in New Hampshire in 2015, he will include with that submission all public comments received on this issue. See Final Rule at 254.

In order to be considered, comments must be received no later than 4:30 pm on Tuesday, May 27, 2014. Submissions should be sent via email to Marlene.Sawicki@ins.nh.gov.

Link to the Final Rule: <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/508-CMS-9949-F-OFR-Version-5-16-14.pdf>