



TO: Colorado Health Benefit Exchange Board Members

FROM: Colorado Health Benefit Exchange Staff

SUBJECT: Employer/Employee Choice—Contribution and Participation

DATE: November 6, 2012

In July 2012, the COHBE Board voted on and approved 4 out of 5 options regarding employer and employee choice. COHBE staff also recommended COHBE set a minimum employer contribution and employee participation requirement in line with market conditions. The Board tabled discussions on defined contribution to allow the SHOP and Health Plan Advisory Groups to garner feedback from stakeholders, and provide the Board with detailed considerations and options to facilitate informed decision-making.

At the November 12 Board meeting, COHBE staff, in conjunction with its Advisory Groups, will make a recommendation to the Board on employer contribution rules, defined contribution strategies, and employee participation rules. COHBE staff would like to provide you with a document, produced for the July 9 Board meeting, that provides background information and considerations on minimum participation rates and minimum contributions. The SHOP and Health Plan Advisory Groups are each holding one more meeting during the week of November 5. The attached policy document is subject to change after the Advisory Groups meet and finalize a recommendation for the Board on November 12.

ATT: Employer Contribution and Employee Participation Report

EMPLOYER CONTRIBUTION & EMPLOYEE PARTICIPATION IN THE SMALL BUSINESS HEALTH OPTIONS PROGRAM (SHOP) EXCHANGE

Background Analysis for Colorado Health Benefit Exchange (COHBE)

This paper outlines some important considerations for COHBE’s Board as they explore how to implement employer contribution and employee participation in the SHOP. Specifically, this paper addresses the following questions:

What, if any, restrictions should COHBE place on employers and employees in the SHOP?

- I. What, if any, percentage of employees should COHBE require of a small business to participate?
- II. How should COHBE regulate employers’ contributions to their employees’ health insurance premiums?

MINIMUM PARTICIPATION RATES

Background

The Affordable Care Act (ACA) requires that an employer that decides to participate in a state’s SHOP offers at least one QHP provided in the SHOP to all full-time employees.¹ A minimum participation rate in the Exchange would require employers to ensure that a certain percentage of the employer’s “qualified” (e.g., full-time) employees buy an insurance plan through the SHOP. COHBE needs to decide whether to issue, and whether to allow carriers to issue, a minimum participation rate or minimum number of employee subscribers in the SHOP.

State and Federal Law

Colorado	Colorado state law does not require any minimum participation rate in the small group market. Some carriers impose participation rates as high as 60 or 75 percent. However, Ins. Reg. 4-6-8 caps the participation rate a carrier can require at 75 percent of eligible employees. ² The participation rate required of an employer may vary with employer size underneath the 75 percent cap in the small group market. ³
Federal	The final Exchange Rule affirms that SHOPS may establish a minimum participation rate; however, any minimum participation rate must be calculated as a proportion of qualified employees participating in the SHOP generally, rather than employee participation in a particular QHP. ⁴

Considerations

The motivating theory behind a minimum participation rate is to ensure a sufficiently large pool that can spread risk and achieve economies of scale. Such a threshold, however, may discourage employers from joining the SHOP.

What Other Exchanges Do

- Connecticut’s Health Connections and Utah’s Health Exchange require that at least 75 percent of employees of a participating small employer must join a plan.⁵
- New York City’s HealthPass requires that 75 percent of employees of a participating small employer must have health insurance through the Exchange, either through a policy themselves or through a spouse.⁶
- Massachusetts law states that carriers may impose a minimum participation rule and may rate each employee as an individual if too few employees join the plan.⁷

EMPLOYER CONTRIBUTION

Background

In the existing market, many carriers require employers to make a minimum contribution. Rocky Mountain Health Plans require a minimum contribution of 50 percent of employees’ premiums, for example.⁸ Anthem BlueCross BlueShield plans have different requirements, ranging from a minimum contribution of \$50 to \$125 or 25 to 50 percent of employees’ premiums.⁹ Similarly, the Exchange could adopt one of these health plan approaches across-the-board in the SHOP.

The ACA envisions that the SHOP will be the conduit for greater employee choice in the context of employer-based coverage. COHBE’s charge at this point in time is to determine the policy and business levers that will create incentives for health plans, employers, and employees to utilize the SHOP to facilitate employee health coverage.

One key question in this analysis is: What restrictions, if any, should the SHOP place on an employer’s contribution to employee health coverage acquired through the SHOP?

State and Federal Law

Colorado	Colorado law does not require a minimum employer contribution towards employees’ premiums, but it does allow the carrier of a small employer insurance plan to mandate a certain contribution. CRS 10-16-105(7.4) requires that minimum participation and minimum employer contributions be applied uniformly among all small employers with the same number of eligible employees applying for or receiving coverage from the carrier. A carrier may vary the minimum participation and contribution rates by the size of a small employer group and by product, but cannot increase the participation or contribution rate after the employer has been accepted for coverage.
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Federal	<p>The final Exchange Rule holds that the SHOP must collect the employer contributions and deliver them to the issuers of the health plan(s).¹⁰</p> <p>The final Exchange Rule also holds that the SHOP must provide qualified employers with at least 30 days before the plan year ends in which they “may change its participation in the SHOP for the next plan year.”¹¹ Employers may change their contributions level of coverage they offer (along with the QHPs they offer, and/or the method by which they make available QHPs for employees, as discussed earlier in this report).¹²</p> <p>Additionally, under the Age Discrimination in Employment Act, the percentage of the total premium cost paid by employees who are at least 40 years old may not exceed that paid by employees under age 40.¹³ (This law applies only to employers with at least 20 employees.¹⁴)</p>
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Considerations

Legal

First, because state law prohibits carriers from varying minimum employer contributions among similarly-sized small employers, the Exchange would likely wish to tie any minimum contribution rules imposed on employers to the size of the business. This will allow the Exchange to remain consistent with existing state law and policy.

Second, while the final Exchange Rule requires SHOPs to allow employers to make these changes once a year, it does not specify whether a SHOP could choose to allow employers to make these changes *more* than once a year. However, to maintain parity between the markets inside and outside the Exchange, COHBE may wish to allow employers to make these changes only once a year.

Finally, because the ACA allows the cost of premiums of individual and small group plans for older Americans to be as much as three times the premiums for younger Americans,¹⁵ employers must ensure that they pay for the difference insofar as to ensure employees at least 40 years old do not pay a greater percentage of their premiums than do younger workers.

From the employer perspective, ACA’s tax credits provide many employers an incentive to cover a significant portion of employees’ premiums. Employers with fewer than 26 employees who are paid below \$50,000 annually on average can qualify for tax credits to lower the cost of health insurance purchased in the SHOP.

- Through 2013, employers that contribute at least half of the employees’ premium cost or half of a benchmark premium can receive a tax credit of up to 35 percent (depending on employer size and average wage) of that contribution.
- Starting in 2014, the maximum tax credit jumps to 50 percent of the employer contribution and lasts for two years.¹⁶

However, employers who are not eligible for these tax subsidies have less incentive to provide employee coverage and participate in the SHOP.

What Other Exchanges Do

- Employers in the Connecticut Exchange must make a contribution towards their employees' premiums that at least equals half of the lowest premium that an employee can pay each month from the suite of health plans selected by the employer.¹⁷
- Massachusetts' Connector requires an employer with at least 11 employees must make a fair share contribution to full-time employees' annual premiums; the highest amount that could be mandated by law is \$295 per worker.¹⁸ (If such an employer does not make a fair share contribution, it will not be penalized if at least a quarter of its full-time employees have joined a group health plan or if it pays for a third of the premiums for people who have been employees for at least 90 days.¹⁹)
- Utah's Exchange prohibits insurance companies from mandating that employers pay at least 50 percent of their employees' premiums. Small business employers choose the level of contribution they make.²⁰

¹ 45 CFR 155.20.

² For purposes of applying the participation rate, coverage under Medicare, Medicaid, another employee welfare benefit plan, group health insurance or health benefit plan, a state high risk pool (CoverColorado or Getting US Covered), or other federal government health coverage (Indian, veteran, Peace Corps, etc.) are considered coverage to be included in the participation rate.

³ Colorado Revised Statute 10-16-105(7.4). <<http://www.lexisnexis.com/hottopics/Colorado/>>

⁴ 45 CFR 155.705(b)(10)

⁵ T. Gardiner and I. Perera, "SHOPing Around – Setting up State Health Care Exchanges for Small Businesses: A Roadmap."

⁶ T. Gardiner and I. Perera, "SHOPing Around – Setting up State Health Care Exchanges for Small Businesses: A Roadmap."

⁷ Massachusetts General Laws, Title XXII, Chapter 176J, Section 3(a)1
<<http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXXII/Chapter176j/Section3>>

⁸ "Small Employer Group Enrollment Guidelines," Rocky Mountain Health Plans
<http://www.rmhp.org/pdf/employerpercent20groups/mk220_broker_underwritng_guidelines.pdf>

⁹ "Small Group Health Plans," Anthem BlueCross BlueShield
<http://www.anthem.com/wps/portal/ahpagent?content_path=agent/co/f1/s0/t0/pw_b144912.htm&state=co&rootLevel=0&label=Smallpercent20Grouppercent20Healthpercent20Plans>

¹⁰ "Small Group Health Plans," Anthem BlueCross BlueShield
<http://www.anthem.com/wps/portal/ahpagent?content_path=agent/co/f1/s0/t0/pw_b144912.htm&state=co&rootLevel=0&label=Smallpercent20Grouppercent20Healthpercent20Plans>

¹¹ 45 CFR 155.725(c)

¹² 45 CFR 155.725(c)

¹³ 29 CFR 1625.10

¹⁴ "Facts About Age Discrimination," U.S. Equal Employment Opportunity Commission <<http://www.eeoc.gov/facts/age.html>> 8 Sept. 2008.

¹⁵ Patient Protection and Affordable Care Act, §1201(2A) <<http://housedocs.house.gov/energycommerce/ppacacon.pdf>>

¹⁶ "Summary of New Health Reform Law," Kaiser Family Foundation, publication 8061
<<http://www.kff.org/healthreform/upload/8061.pdf>>

¹⁷ T. Gardiner and I. Perera, "SHOPing Around – Setting up State Health Care Exchanges for Small Businesses: A Roadmap."

¹⁸ Massachusetts General Laws, Title XXI, Chapter 149, Section 188.

¹⁹ “How Massachusetts health insurance reform affects your business and its employees,” Fallon Community Health Plan <<http://www.fchp.org/news/health-care-reform/massachusetts-health-care-reform-employer-FAQs.aspx>>

²⁰ S. Corlette, J. Alker, J. Tuschner, and J. Volk, “The Massachusetts and Utah Health Exchanges: Lessons Learned

