

EMPLOYER & EMPLOYEE CHOICE 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 Advisory Groups and Board as they explore how to govern employer 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. How, if at all, should COHBE limit the number of plans from which employers can choose?
- II. What, if any, percentage of employees should COHBE require of a small business to participate?
- III. How should COHBE regulate employers' contributions to their employees' health insurance premiums?

I. SELECTION OF PLANS

Background

Federal regulations and COHBE authorizing legislation have delegated much of the SHOP's structure to COHBE's discretion. One of COHBE's most fundamental tasks is to design the process by which employers and employees will pick health insurance plans, while balancing the interests of employer control, employee choice, health plan needs, and COHBE's business strategies.

Possibilities for SHOP Design

Outlined below are the various options that employers may have for providing coverage to their employees in the SHOP in addition to the option required by the final Exchange Rule (i.e., an employer picks one metal tier). The question for consideration is:

*Should the COBHE Board limit the number of options from which **employers** can provide coverage to their employees?*

The list below is obviously not exhaustive, however at a certain point the options start to resemble Option 10 below (Absolute Employee Choice). Outlined are also some points to consider when weighing the options. Overall, the policy question highlights the necessary balance between offering employers a reason to use the SHOP and providing more choice than currently exists, versus adverse selection and administrative burden concerns that will drive up premiums.

Two other considerations:

- 1 – Will the COHBE Board require a certain percentage of employees from an employer to participate in the Exchange (Minimum Participation Rate)?
 - Potentially mitigates adverse selection against the Exchange
- 2 – Will the COHBE Board require a minimum contribution amount for employers?

Federally Required Option:

- Employer – Picks one metal tier
- Employee – Picks any QHP within that tier.

Sample Selection an Employer Could Make Under this Option

	Platinum	Gold	Silver	Bronze	<i>Should Option be Allowed? Why?</i>
Insurer 1					Yes. The final Exchange Rule requires this option.
Insurer 2					
Insurer 3					
Insurer 4					
Insurer 5					

Option 1: Absolute Employer Choice

- Employer – Picks one particular QHP for all employees
- Employee – No choice
- *Considerations:* This is typically how the market works today.

Sample Selection an Employer Could Make Under this Option

	Platinum	Gold	Silver	Bronze	<i>Should Option be Allowed? Why?</i>
Insurer 1					
Insurer 2					
Insurer 3					
Insurer 4					
Insurer 5					

Option 2: One Insurer Option

- Employer – Picks one Insurer
- Employee – Picks a QHP in any metal tier for that Insurer
- *Considerations:* There are some adverse selection concerns because typically only sicker employees will choose Platinum and Gold plans, while healthy employees will choose Silver and Bronze. Thus, prices for the higher tiers are driven up because of the increased utilization. However, the adverse selection concerns are somewhat mitigated by the fact all employees will be in the same insurer’s risk pool, so the healthy employees help balance out the sicker employees.

Sample Selection an Employer Could Make Under this Option

	Platinum	Gold	Silver	Bronze	<i>Should Option be Allowed? Why?</i>
Insurer 1					
Insurer 2					
Insurer 3					
Insurer 4					
Insurer 5					

Option 3: One Insurer Limited Option

- Employer – Picks one Insurer, but limits choice to three consecutive metal tiers
- Employee – Picks a QHP in any metal tier offered for that Insurer
- *Considerations:* The adverse selection concerns above are further mitigated because there is not as large a difference between the available tiers.

Sample Selection an Employer Could Make Under this Option

	Platinum	Gold	Silver	Bronze	<i>Should Option be Allowed? Why?</i>
Insurer 1					
Insurer 2					
Insurer 3					
Insurer 4					
Insurer 5					

Option 4: Two Insurers Option

- Employer – Picks two Insurers
- Employee – Picks a QHP in any metal tier for either Insurer
- *Considerations:* There is a chance for adverse selection if all sicker employees tend to select higher tier plans for only one carrier. This option does provide employers and employees more choices (may draw employers to the SHOP) without as significant adverse selection concerns as full employee choice (Option 11).

Sample Selection an Employer Could Make Under this Option

	Platinum	Gold	Silver	Bronze	<i>Should Option be Allowed? Why?</i>
Insurer 1					
Insurer 2					
Insurer 3					
Insurer 4					
Insurer 5					

Option 5: Two Insurers Limited Option

- Employer – Picks two Insurers, but limited to three consecutive metal tiers
- Employee – Picks a QHP in any metal tier for either Insurer
- *Considerations:* Similar to Option 3, this option provides more choice with some mitigation of adverse selection because the difference in the tiers is reduced.

Sample Selection an Employer Could Make Under this Option

	Platinum	Gold	Silver	Bronze	<i>Should Option be Allowed? Why?</i>
Insurer 1					
Insurer 2					
Insurer 3					
Insurer 4					
Insurer 5					

Option 6: Two Insurers “Buy-Up” or “Buy-Down” Option

- Employer – Picks two Insurers in one metal tier
- Employee – Picks a QHP offered by the employer, but has the option to “buy-up” or “buy-down”
- *Considerations:* An employer may choose to allow employees to only take the offer or “buy-up,” to only take the offer or “buy-down,” or to do either. Also, adverse selection concerns exist assuming all healthy employees “buy-down.”

Sample Selection an Employer Could Make Under this Option

	Platinum	Gold	Silver	Bronze	<i>Should Option be Allowed? Why?</i>
Insurer 1					
Insurer 2		+		-	
Insurer 3					
Insurer 4		+		-	
Insurer 5					

Option 7: Two Metal Tiers Option

- Employer – Picks two metal tiers
- Employee – Picks any QHP in either metal tier
- *Considerations:* Similar to Option 4, adverse selection could occur if all sicker employees choose the same insurer in the higher tier. Some of those concerns could be mitigated if the employers were restricted to choosing two consecutive tiers (i.e. Silver and Gold). There may be questions about age discrimination depending on the employer’s contribution system if only older employees select the higher tier.

Sample Selection an Employer Could Make Under this Option

	Platinum	Gold	Silver	Bronze	<i>Should Option be Allowed? Why?</i>
Insurer 1					
Insurer 2					
Insurer 3					
Insurer 4					
Insurer 5					

Option 8: One Metal Tier “Buy-Up” or “Buy-Down” Option

- Employer – Picks a metal tier
- Employee – Picks any QHP within that metal tier, but has the option to “buy-up” or “buy-down” to a lower metal tier
- *Considerations:* An employer may choose to allow employees to only take the offer or “buy-up,” to only take the offer or “buy-down,” or to do either. It is unclear how this option would be administratively run and how it operates under the federal Exchange rules. Also, adverse selection concerns exist assuming all healthy employees “buy-down.”

Sample Selection an Employer Could Make Under this Option

	Platinum	Gold	Silver	Bronze	<i>Should Option be Allowed? Why?</i>
Insurer 1		+		-	
Insurer 2		+		-	
Insurer 3		+		-	
Insurer 4		+		-	
Insurer 5		+		-	

Option 9: Popcorn Option

- Employer – Picks a selection of QHPs from any insurer and metal tier
- Employee – Picks any QHP from that selection
- *Considerations:* Could present adverse selection problems. Might consider ameliorating this impact by limiting the number of QHPs an employer could select (e.g., employer can pick any 5 plans in the SHOP, employer could pick any plans from three adjacent metal tiers).

Sample Selection an Employer Could Make Under this Option

	Platinum	Gold	Silver	Bronze	<i>Should Option be Allowed? Why?</i>
Insurer 1					
Insurer 2					
Insurer 3					
Insurer 4					
Insurer 5					

Option 10: Absolute Employee Choice

- Employer – Does not make any restrictions
- Employee – Picks any QHP
- *Considerations:* Provides the most choice for employees and could relieve employers from all decision making responsibilities. It is harder to administer. This option carries the greatest adverse selection impacts, which will drive up premiums for all tiers across all plans.

	Platinum	Gold	Silver	Bronze	<i>Should Option be Allowed? Why?</i>
Insurer 1					
Insurer 2					
Insurer 3					
Insurer 4					
Insurer 5					

State and Federal Law

Colorado	Senate Bill 11-200 directs COHBE to “foster a competitive marketplace for insurance and shall not solicit bids or engage in the active purchasing of insurance.” ¹
Federal	<p>The final Exchange Rule holds that the SHOP must allow participating employers to pick a metal level, the QHPs of which would be available for employee selection.² Thus COHBE may not select the first design option as the sole method by which a QHP is selected.</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.”³ Employers may change the level of coverage they offer, the QHPs they offer, and/or the method by which they make available QHPs for employees.⁴</p>

Considerations

Legal

Some may interpret the charge in SB-200 to “foster a competitive marketplace” as reason to offer employers the opportunity to permit their employees to select any QHP in the SHOP. However, the degree of competition in the SHOP is largely unaffected by the SHOP design for QHP selection; carriers would still need to compete with each other to offer the most attractive options, whether employers could pick only one metal tier of QHPs or could allow their employees to pick any QHP in the SHOP, for example. Further, Senate Bill 11-200 directs COHBE’s Board to “investigate requirements [and] develop options... to ensure that the best interests of Coloradans are protected.”⁵ It may be in citizens’ best interests to adopt parameters for the number of plans available for employer and employee selection.

Additionally, 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.

Other Implications of Policy Options

Advantages of Limiting Employee Selection

- Makes options more easily digestible, potentially boosting participation rates. Research indicates that a large number of choices can overwhelm decision-makers, creating a sense of confusion and difficulty in discerning the optimal choice. This finding surfaced in Massachusetts’ analysis of its Connector through surveys, focus groups, and consumer assistance programs.⁶
 - Placing parameters around employee choice seems to yield a more meaningful selection of retirement plans as well. A major study analyzed the decisions of 800,000 workers whose employers offered multiple plans that a worker could choose if she wished. For every 10 plans added to the list, the rate of employees joining any plan dropped by almost two percentage points. When only two plans were offered, about 75 percent of workers picked a plan. When employees could choose from 59 options, only 60 percent did so.⁷

- May afford businesses greater predictability in costs. A selection of a few plans would allow businesses more certain expectations for what their premium contributions would be, in contrast to having all QHPs available to employees.

Disadvantages of Limiting Employee Selection

- May create dissatisfaction among employees who wish to have more choice in the plans available for purchase. However, most small businesses currently offer only a few health insurance plans if any at all. (In 2011, 85 percent of small employers – under 200 workers – that offered health insurance offered just one plan type.⁸) Thus limiting employee selection in the SHOP is unlikely to represent a significant departure from the norm.
- Increases employee exposure to risk of increased cost or poorly-tailored coverage. Employees are less able to handpick a plan that is well-tailored to their family's needs, which may force them into a plan that has increased costs up-front or when care is accessed.

What Other Exchanges Do

- Connecticut's Health Connections Exchange offers pre-designed suites of health plans that differ in benefit generosity. The employer picks one suite of plans, and the employee picks her own plan within the suite with a contribution from the employer.⁹
- New York City's HealthPass allows employees to pick one of at least 25 plans.¹⁰
- Massachusetts' Connector:
 - In the Business Express program, employers pick one of 21 plans (as of July 2011) for all of their employees. The program is targeted to very small employers.¹¹
 - In the Voluntary Plan, the employee picks their own plans from all the offerings in the Connector.¹²
 - In the Contributory Plan, the employer picks a benefit tier (similar to the Affordable Care Act's metal tier), within which the employee picks his own plan.¹³
- Utah's Health Exchange allows an employee to pick his own plan, but the employer enrolls the employee in a default plan if he does not select one.¹⁴

II. 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.¹⁵ 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. ¹⁶ The participation rate required of an employer may vary with employer size underneath the 75 percent cap in the small group market. ¹⁷
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. ¹⁸

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.¹⁹
- 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.²⁰
- 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.²¹

III. 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.²² Anthem BlueCross BlueShield plans have different requirements, ranging from a minimum contribution of \$50 to \$125 or 25 to 50 percent of employees' premiums.²³ 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.
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).²⁴</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."²⁵ 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).²⁶</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 40.²⁷ (This law applies only to employers with at least 20 employees.²⁸)</p>

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,²⁹ 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.³⁰

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.³¹
- 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.³² (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.³³)
- 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.³⁴

¹ Colorado Revised Statute 10-22-104. <<http://www.lexisnexis.com/hottopics/Colorado/>>

² 45 CFR 155.705(b)(2)

³ 45 CFR 155.725(c)

⁴ 45 CFR 155.725(c)

⁵ Colorado Revised Statute 10-22-106. <<http://www.lexisnexis.com/hottopics/Colorado/>>

⁶ “Determining Health Benefit Designs to be Offered on a State Health Insurance Exchange,” BlueCross BlueShield of Massachusetts Foundation, Massachusetts Health Insurance Connector Authority, Robert Wood Johnson Foundation, <<http://www.rwjf.org/files/research/73722.bcbsmass.toolkit3.pdf>> Nov. 2011.

⁷ N. Goldstein, S. Martin, R. Cialdini, Yes! 50 Scientifically Proven Ways to Be Persuasive (Free Press: New York 2008) p. 31.

⁸ “Employer Health Benefits: 2011 Annual Survey,” Kaiser Family Foundation and Health Research & Educational Trust, <<http://ehbs.kff.org/pdf/2011/8225.pdf>>

⁹ T. Gardiner and I. Perera, “SHOPing Around – Setting up State Health Care Exchanges for Small Businesses: A Roadmap,” Small Business Majority, Center for American Progress, <http://www.smallbusinessmajority.org/reports/shop_exchange.pdf> 2011 July.

¹⁰ T. Gardiner and I. Perera, “SHOPing Around – Setting up State Health Care Exchanges for Small Businesses: A Roadmap.”

¹¹ T. Gardiner and I. Perera, “SHOPing Around – Setting up State Health Care Exchanges for Small Businesses: A Roadmap.”

¹² “Find Insurance: Employers,” HealthConnector, <https://www.mahealthconnector.org/portal/site/connector/template.MAXIMIZE/menuitem.3ef8fb03b7fa1ae4a7ca7738e6468a0c/?javax.portlet.tpst=2fdfb140904d489c8781176033468a0c_ws_MX&javax.portlet.prp_2fdfb140904d489c8781176033468a0c_viewID=content&javax.portlet.prp_2fdfb140904d489c8781176033468a0c_docName=content&javax.portlet.prp_2fdfb140904d489c8781176033468a0c_folderPath=/FindInsurance/Employer/Createpercent20apercent20Plan/voluntarypercent20plan/&javax.portlet.begCacheTok=com.vignette.cachetoken&javax.portlet.endCacheTok=com.vignette.cachetoken>

¹³ T. Gardiner and I. Perera, “SHOPing Around – Setting up State Health Care Exchanges for Small Businesses: A Roadmap.”

¹⁴ T. Gardiner and I. Perera, “SHOPing Around – Setting up State Health Care Exchanges for Small Businesses: A Roadmap.”

¹⁵ 45 CFR 155.20.

¹⁶ 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.

¹⁷ Colorado Revised Statute 10-16-105(7.4). <<http://www.lexisnexis.com/hottopics/Colorado/>>

¹⁸ 45 CFR 155.705(b)(10)

¹⁹ T. Gardiner and I. Perera, “SHOPing Around – Setting up State Health Care Exchanges for Small Businesses: A Roadmap.”

²⁰ T. Gardiner and I. Perera, “SHOPing Around – Setting up State Health Care Exchanges for Small Businesses: A Roadmap.”

²¹ Massachusetts General Laws, Title XXII, Chapter 176J, Section 3(a)1 <<http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXXII/Chapter176j/Section3>>

²² “Small Employer Group Enrollment Guidelines,” Rocky Mountain Health Plans <http://www.rmhp.org/pdf/employerpercent20groups/mk220_broker_underwritng_guidelines.pdf>

²³ “Small Group Health Plans,” Anthem BlueCross BlueShield <http://www.anthem.com/wps/portal/ahpagent?content_path=agent/co/fl/s0/t0/pw_b144912.htm&state=co&rootLevel=0&label=Smallpercent20Grouppercent20Healthpercent20Plans>

²⁴ “Small Group Health Plans,” Anthem BlueCross BlueShield <http://www.anthem.com/wps/portal/ahpagent?content_path=agent/co/fl/s0/t0/pw_b144912.htm&state=co&rootLevel=0&label=Smallpercent20Grouppercent20Healthpercent20Plans>

²⁵ 45 CFR 155.725(c)

²⁶ 45 CFR 155.725(c)

²⁷ 29 CFR 1625.10

²⁸ “Facts About Age Discrimination,” U.S. Equal Employment Opportunity Commission <<http://www.eeoc.gov/facts/age.html>> 8 Sept. 2008.

²⁹ Patient Protection and Affordable Care Act, §1201(2A) <<http://housedocs.house.gov/energycommerce/ppacacon.pdf>>

³⁰ “Summary of New Health Reform Law,” Kaiser Family Foundation, publication 8061
<<http://www.kff.org/healthreform/upload/8061.pdf>>

³¹ T. Gardiner and I. Perera, “SHOPing Around – Setting up State Health Care Exchanges for Small Businesses: A Roadmap.”

³² Massachusetts General Laws, Title XXI, Chapter 149, Section 188.

³³ “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>>

³⁴ S. Corlette, J. Alker, J. Touschner, and J. Volk, “The Massachusetts and Utah Health Exchanges: Lessons Learned.”