

## State-by-State Analysis of Letters Requesting to Delay Employee Choice

- Alabama's reason for requesting a delay of employee choice is that they only have one interested carrier in SHOP. This is not a valid reason to delay. The letter says that if other carriers were to enter the SHOP, research shows that carriers would price their products higher because of "potential" adverse selection. The letter does not provide any backup for this research. Moreover, "potential" for adverse selection does not meet HHS's standard of concrete evidence.
- Arizona cites technical problems that will arise with choice, which is not an allowable reason to delay this provision. Also, they state half of the carriers may experience adverse selection although no concrete evidence is provided. However, if only half of the carriers experience adverse selection, employers and employee could simply select the other carriers and avoid price increases caused by adverse selection with other carriers.
- Kansas cites increased administrative costs and doubts the federally facilitated SHOP marketplace will be ready to implement choice in time. This is also not an allowable reason to delay the choice provision under the regulation. The letter also claims choice will cause adverse selection based on documented evidence, although the state does not actually cite any of the evidence. Thus, it's impossible to determine exactly how the state came to this conclusion.
- Louisiana's letter states choice among "significantly different plan designs" causes adverse selection. But what they ignore is the federally facilitated SHOP will limit choice to choice within one tier, so employees are not picking from plans that offer significantly different plan designs. They also cite higher administrative costs in running a SHOP with employee choice. Again, this is not an allowable reason to delay choice.
- Maine's letter cites real numbers and describes some more in-depth research. However, in requesting a delay, the letter suggests allowing some states to delay choice will be beneficial because it will essentially create a pilot project for the states that do opt to implement choice in 2015. However, a pilot project is redundant because most of the state-based SHOPS are already implementing choice this year, providing enough data for other states to learn from.
- New Hampshire's letter includes reasons for delay such as employer confusion and timing related to the Qualified Health Plan (QHP) process. The letter also states that implementing employee choice in 2015 would be "premature." However, federal law requires this feature in 2014, so implementing it a year later is in no way "premature." Further, none of these reasons are issues HHS can consider, according to the regulations. A delay request must be based on concrete evidence that "implementing employee choice would cause issuers to price products and plans higher in 2015 due to the issuers' beliefs about adverse selection." New Hampshire does claim choice would cause adverse selection but does so based on out-of-date data from 2012. This data did not factor in the ACA risk adjustment measures that were implemented in 2014, and subsequently is not the kind of "concrete evidence" the regulations require.
- North Carolina's letter says their decision is based on their discussion with just one insurance company. HHS regulations clearly require states to base decisions on "a documented assessment of the full landscape of the small group market." They also argue that employee choice is too complex which, according to the regulations, is not a factor HHS can consider.
- Oklahoma's letter bases their decision on conversations with the three carriers likely to participate in the SHOP. It is not clear if Oklahoma conducted an "assessment of the full

landscape of the small group market" as required by the regulation. The letter also cites consumer confusion and increased administrative cost as reasons to delay choice. Again, these are not factors that the regulations allow to be part of the consideration.

- Pennsylvania's letter implies that implementing employee choice in 2015 would be a "rush." Given that the federal statute enacted in 2010 clearly requires this feature to be implemented in 2014, it is hard to see how implementing this feature in 2015, a full five years after the ACA was enacted could be considered "rushed." When HHS delayed choice a year ago, carriers had a year to prepare for launching choice in 2015. Further, the letter says they received feedback from carriers that adverse selection would be caused by sick people selecting plans with richer benefits. However, HHS has already taken steps to avoid this by limiting employee choice to one tier. The letter also states operational concerns, which HHS cannot consider based on the regulations.
- South Carolina's letter says their decision is based on their "discussion with health insurance carriers that are expected to participate in the FF-SHOP", while the HHS regulations clearly require an assessment of the full landscape of the small group market. This letter acknowledges that the likelihood of adverse selection will be tempered by limiting choice to one tier. However, they state carriers will have to raise their rates anyway, not because of adverse selection, but because they do not have any experience pricing products under an employee choice model. This does not meet the threshold set by the regulations, which only cite adverse selection as an acceptable reason to delay choice.