

## Extent of Employer Versus Employee Choice

### Summary

The California Health Benefit Exchange considered the extent to which employers and employees will have a choice of health plans and benefit designs under the Small Employer Health Options Program (SHOP) Exchange. This "Employer Versus Employee Choice" Board Recommendations Brief provides a summary of the options available to the Exchange to optimize employer and health plan participation, and to ensure employees have meaningful choice while minimizing the potential for adverse selection that could jeopardize the stability of the SHOP. In considering how much choice will be made available to employers and employees, the key issues that were addressed are adverse selection both within the Exchange and between the Exchange and the broader insurance market, the amount of information and decision support that will be needed to enable employers or employees regarding how to make appropriate choices, the interest level of health plans in participating in the Exchange, and the interest level of employers in purchasing insurance through the Exchange. The brief includes revised staff recommendations submitted for stakeholder and board input.

### Background

Federal guidance provides that the SHOP has the option of allowing employers either to make a full range of health plans available to their employees, or may allow the employer to limit choice to one or more Qualified Health Plans (QHPs). Within that guidance is also the opportunity for employers to limit the "metal tier" of coverage available to employees, or to set a contribution level and allow the employee to choose among metal tiers (but not to choose a lower tier than the minimum established by the employer.) Note that this limitation would be linked to the employer contribution requirement and the decision regarding the number of plans to be made available through the SHOP, which are discussed in separate Board Recommendations Briefs; for purposes of this Brief we have assumed that Qualified Health Plans will be required to offer all metal tiers in all geographic areas in which they contract with the SHOP.

The level of choice afforded to employees represents a tradeoff between providing employees with more choice, such as that available to individuals purchasing on their own, and concerns about adverse selection on the part of health plans that may impact the availability or pricing of plans in the SHOP Exchange. The ultimate level of choice also depends on decisions regarding the number and range of qualified health plans that will receive contracts in each geographic area. For example, if the decision is made to limit the number of plans receiving contracts, choice will be naturally limited to those plans, whereas if there are a large of health plans choice will inherently be greater in the absence of any limitations that are imposed.

The final federal regulation requires that the SHOP allow employers to **select a level** at which all qualified health plans are made available to employees. The final rule further provides that Exchanges may permit participating employers to make **one or more** QHPs available to their employees through a different method.

The concern about offering full employee choice of both issuer and coverage level or metal tier is the potential that individual employees within an employer group who have a known need for health care services will choose a higher level of coverage that is not offset by the level of increase in premium rates, while those who predict they will not have high health care needs during the year will choose a lower level of coverage at lower premium rates. This risk is greatest for the smallest employers (those with fewer than 10 employees) since there are fewer employees over which to spread the cost of one or two high cost individuals. When considered within the SHOP, the aggregate experience across all employer groups will be important in determining the level of risk of the enrollees, while those risk differences would apply to individual employer groups for products purchased outside of the Exchange.

### Stakeholder Comments

Stakeholders provided the Department of Health and Human Services with many comments on the proposed employee/employer choice provisions, ranging from those supporting additional employee choice options such as offering plans across metal tiers, to comments concerned about risk selection and in favor of more limited employee choice options in the SHOP. The final regulations note that nothing in the Affordable Care Act limits an Exchange's ability to offer additional options, including choice across metal tiers, or allowing employers to offer only one plan.\*

Most health plans tend to prefer options that rely on "employer choice" and result in less choice for employees, to protect against adverse selection. As one example, a large health plan offered in their comments to the Exchange the following:

*"...We recommend that the California Health Benefit Exchange employ reasonable limits to guard against adverse selection and preserve a functional small group market. In particular, we are concerned that permitting employees to select from among any plan available in the SHOP exchange will lead to sicker employees selecting richer products while healthier employees select slimmer benefit packages.*

---

\*<sup>1</sup>. Employer choice requirements. With regard to QHPs offered through the SHOP, the SHOP must allow a qualified employer to select a level of coverage as described in section 1302(d)(1) of the Affordable Care Act, in which all QHPs within that level are made available to the qualified employees of the employer.

<sup>2</sup>. SHOP options with respect to employer choice requirements. With regard to QHPs offered through the SHOP, the SHOP may allow a qualified employer to make one or more QHPs available to qualified employees by a method other than the method described in paragraph (b)(2) of this section.

*To address these concerns, we recommend that the exchange follow the default option set forth in the final exchange rule and direct employers to select a metal level, and that employee choice be within that level. And to further avoid adverse selection, we strongly encourage the exchange to include a provision ensuring employees are not allowed to enroll in a QHP below the level selected by their employer. Alternatively, to permit employers to offer multiple plan designs to their employees, such as the choice of an HMO or a PPO, we propose that employers could select several QHPs offered by a single QHP issuer and permit employees to choose among them. Lastly, the exchange should permit issuers to price accordingly for any version of employee choice given the selection dynamics that will result from this option."*

There is some experience with employee choice in exchanges that suggests that full unlimited choice may indeed have negative impacts. In an article written for Health Affairs, Micah Weinberg of the Bay Area Council and William Kramer of the Pacific Business Group on Health write:

*"The experience of PacAdvantage shows that choice can come in many forms. The most commercially successful product offered through this purchasing pool was a hybrid that combined employer and employee choice. The Paired Choice product allowed an employer to select among a number of different PPOs, one of which would be paired with an HMO from the large integrated delivery system, Kaiser Permanente. Employees then chose between the PPO and the HMO paying higher premiums if they wanted lower point-of-service costs."*

However, advocates for consumers and some small businesses tend to favor more choice for employees. In the case of Massachusetts Connector's pilot employee-choice program, 90% of responding employees reported liking a model that offers choice of plans. While adverse selection in the small group market is perhaps the biggest risk of an employee-choice model, the model offers new opportunities for many small businesses and it has been successful in New York, Connecticut and Massachusetts. According to the Center for State Health Policy report,

*"Connecticut's Health Connections launched in 1995 serves 6,000 small employers and covers over 80,000 lives. By ensuring a level playing field and robust participation of diverse small businesses and their employees, this cooperative has avoided adverse selection and remained a viable market since inception. New York HealthPass, a not-for-profit exchange operating since 1999, offers another example of widespread use of employee-choice model and defined contributions. HealthPass has not struggled with adverse selection undermining its operation, perhaps owing in part to the pure community rating environment in New York State. Like Health Connections, HealthPass offers participating employers and their employees extensive administrative support, such as enrollment and premium aggregation services. Together with employee choice of coverage option, the rich administrative services help attract many small businesses, particularly those without in-house human resources staff."*

*Both Health Connections and HealthPass also maintain good relationships with the broker community, which has been instrumental in reaching and enrolling new small businesses. A large and growing pool of covered individuals is more likely to have a risk profile that resembles the*

*larger population and to attract insurers to the market, further reducing the potential for adverse selection."*

In a report documenting the results of a forum held on the California SHOP Exchange, the Small Business Majority reports:

*"Creating an employee choice model, however, will differentiate the SHOP from the outside market and provide an incentive for businesses to purchase coverage through the exchange. Small business owners will be relieved from the administrative burden of finding a one-size-fits-all plan and workers will have the freedom to select the plan that is right for them. Today, employee choice is something only usually offered by large companies and government agencies, putting small businesses at a competitive disadvantage when trying to attract and retain the best employees."*

### **Response to Stakeholder Comments**

Among the features considered to be important to the success of the employee choice model in New York, Connecticut and Massachusetts was common pricing in and out of the exchange, which is a requirement of the Affordable Care Act. Other market reforms that are expected to reduce the potential for adverse selection between the Exchange and the broader insurance market are the requirements for common benefit designs and common pricing in both markets. Further, market wide Risk Assessment and Risk Adjustment is intended to adjust for any adverse selection. At the same time, the Risk Assessment and Risk Adjustment program has not yet been tested, and there is uncertainty about whether the program will fully measure and compensate for all risk differences. Consequently, the SHOP cannot rely on Risk Adjustment as a guaranteed solution to the full risk of adverse selection.

The Affordable Care Act requires that health plans price the same benefit plan identically in and outside of the Exchange, and California law requires that all health plans offering coverage in the Exchange offer identical benefit designs in the external market (they may also offer other benefit designs.) Health plans must pool their Individual market pricing and their Small Group pricing, such that the difference in premium rates relates to variation in actuarial value rather than difference in risk mix. The Affordable Care Act also establishes market-wide Risk Assessment and Risk Adjustment that will mitigate the effects of adverse selection among health plans and between plans offered through the Exchange and the outside market. In California's earlier experience with a small employer purchasing pool these common pricing and benefit design rules did not exist, and there was a challenge in maintaining competitive pricing compared to the external market. The lack of common rules in both markets ultimately required the development of different marketing arrangements to try to offset the effects of adverse selection both in and out of the Exchange, including the decision to use a Paired/Defined Choice offering, defined more fully below.

## Options

There are a number of options for determining the level of employer and employee choice in the SHOP, ranging from asking the employer to choose the level of coverage available to their employees, to giving the employees full choice of both issuer and metal tier.

The preliminary staff recommendations are to apply rules that are consistent with the current small business commercial marketplace to both be competitive and to reduce the risk of adverse selection. At the same time, the recommendations should recognize that there will be broad changes in product offerings as a result of the requirements of the Affordable Care Act that provide a greater level of standardization to health insurance options for small employers.

The preliminary options were:

- Option 1: Employer chooses Issuer and Tier, requiring that the Employer make all of the choices for his/her employees;
- Option 2: Employer chooses Issuer, employee chooses Tier, providing that the Employer chooses which health plan will be made available, and allowing the employee to choose the coverage level they prefer;
- Option 3: Employer chooses Tier, employee chooses Issuer, providing that the Employer chooses the coverage level for all employees, but allowing the employee to choose their health plan from the available options;
- Option 4: Paired/Defined Choice, requiring that the Exchange negotiate paired options from which the employer would choose to make Issuers available to his/her employees; and
- Option 5: Full Employer Choice, whereby the employee would choose among all options available within their geography, limited by the contribution level made by the employer.

A sixth option is now also offered:

- **Option 6:** Paired/Defined Choice with Limited Tier options, requiring that the employer choose two issuers among the available options, and choose two or more contiguous Tier options to be made available to their employees.

Attached as Table 1 is a summary comparison of the options.

## Recommended Approach

Staff is recommending a hybrid approach that offers both Employer Choice and “Paired Choice”. Specifically staff recommends that all small employers (those with 2 - 50 employees) operate whereby the employer chooses the coverage tier and the employees choose among the offered plans (**Option 3**). Staff further recommends that larger employers (those with 10 - 50 employees) also have the option to operate under a Paired Choice with Limited Tier Options approach (**Option 6**).

Important note: The current small group rules generally allow small group employers to select a single health plan issuer from which all plans (products) may be offered to their employees. The broad range of plan (products) types typically include HMO, PPO and HDHP plans eligible for health savings accounts, with a range of deductibles and benefits found in the full metal tier spectrum. In the current market, an employer with as few as 5 employees (in some cases, as few as 2 employees) may select a single plan issuer and could have as many as 40 plans from which to choose. In this hypothetical example of a group of 5 employees; each employee could enroll in a different plan across all plan tiers. The exchange staff submits this option (**Option 2**) for discussion and consideration. While Option 2 is the current default option for most health plan issuers today, the market dynamic may change by 2014. Since this is the default option for many health plan issuers today, this option must be considered.

Given the difference in risk that has been shown for the smallest employer groups, staff recommends that special care be taken to simultaneously provide attractive coverage for these groups and to minimize the selection risk to the SHOP. The SHOP will serve as a gateway to coverage for many small businesses that have not provided coverage to date. Broad choice for very small groups may present a level of risk during the early implementation of the SHOP that cannot be sustained. In the current market all small groups are subject to strict participation rules. For smaller employers, these rules often result in a single health plan issuer being made available to the entire group although the employer may offer a wide range of plans from which to choose. For somewhat larger groups, the option of offering another health plan issuer is also available. When two health plan issuers are offered, the plan issuers may apply specific “pairing” rules with a limited menu of health plans from which to choose. Where multiple plans are offered there are typically participation rules that require at least a minimum level of enrollment in each plan (typically a minimum of 5 employees must enroll in each plan), and there may be a premium increase to account for the offering of choice of two plan issuers. It is the goal of the SHOP to serve the interests of the varied stakeholders keeping in mind both the desire for choice and the goal of maintaining affordability to enhance the SHOP's long-term success and price stability. Specifically, the recommendation for which we request feedback is to offer:

- Employer Choice for all groups with 2-50 employees: Employer selects one plan tier and employees may select from all health plan issuers available in their region.
- In addition to the above option, groups with 10+ employees may offer “Paired Choice”: Employer selects two plan issuers and offers two contiguous metal tiers.

Among the significant advantages to small employers and their employees of purchasing coverage through the SHOP is expanded choice compared to current options and options in the external market, as well as administrative simplification. Consequently, an approach that capitalizes on those elements should be considered, while also monitoring the approach for its impact on adverse selection, both within the Exchange and relative to the broader insurance market.

Having the employer choose the two issuers to be offered to their employees both allows employers to make the choices they believe will be most attractive to their employees, and



provides for a level of protection to issuers to limit selection. This approach best mirrors today's small employer market for the employers with 10 or more employees.

The decision regarding the range of choice that will be offered to employees in the SHOP Exchange depends in part on other decisions the Board must make. For example, if the Exchange decides to limit contracting to a smaller number of QHPs in each geographic region and decides to limit the range of benefit designs offered within each rating tier, broader employee choice among the available options may be preferred. Alternatively, if a large number of health plans and benefit design options are offered, less employee choice may be preferred or complex decision support tools will need to be provided to assist employees in selecting appropriate plans among the range of options. We note that participants in the Individual Exchange will have the full range of options available to them, and will need to have a similar level of decision support. The decision is also dependent on health plan interest in and willingness to contract with the Exchange under the various options, as well as the price at which the options will be made available.

Staff recommends a review of the revised recommendation or “hybrid option” (choice of a single tier for the smallest employers and paired choice for larger employers illustrated above). We believe this option provides sufficient choice for employees, which may encourage long term participation of employers in the Exchange, requires minimal decision-making by the employer, and enhances competition among health plans. Our final recommendation regarding Employer/ Employee choice will be made after we receive additional stakeholder feedback and analysis is reviewed, including investigation of the following:

- Level of health plan interest in contracting with the SHOP under the revised choice options;
- Consideration of new stakeholder comments or suggestions which fully consider the new marketplace rules and dynamic not present today but in place for 2014 (e.g. community rating, new product offerings, impact of tax credits, standardized health plans, implementation of essential health benefits requirements and other market rule changes)
- Additional data analysis to validate the need for a premium adjustment if a paired choice approach is used, as well as legal analysis of whether a premium adjustment is permitted
- Premium pricing differences that may be charged under the options, recognizing that premium rates will be constrained by provisions of the Affordable Care Act;
- Operational challenges that may arise as a result of selecting a particular option, including decision support needs and interactions with the Risk Assessment and Risk Adjustment methods;
- The overall level of choice that will be available in the SHOP, including the number of Issuers that will receive contracts and the mix of plan type and benefit design;
- Employer interest in broader choice options compared to the external market.

**Table 1: Summary Comparison of Employer Choice Options**

Option 1: Employer Chooses Issuer and Tier	Option 2: Employer Chooses Issuer, Employee Chooses Tier	Option 3: Employer Chooses Tier, Employee Chooses Issuer
<p><b>SUMMARY:</b> The employer makes a choice of health plan and coverage level within the available SHOP options for their geography</p>	<p><b>SUMMARY:</b> The employer chooses among the available health plans for the geography, and allows the employee to determine the level of coverage among the metal tiers</p>	<p><b>SUMMARY:</b> The employer establishes the metal tier for coverage for all employees; the employees choose among available health plans</p>
<p><b>PURPOSE:</b> This option is similar to the situation commonly available to small employers in the existing market, whereby the employer chooses either a single health plan's product or suite of products and offers that plan to his/her employees</p>	<p><b>PURPOSE:</b> Option allows employees additional choice among coverage levels to better meet individual employee needs, but continues to work with a single health plan</p>	<p><b>PURPOSE:</b> Option ensures all employees of a given employer have the same level of coverage, but can choose among offered plans to allow employees to express their preference</p>
<p><b>PROS</b></p> <ul style="list-style-type: none"> <li>▪ Most similar to current options for small employers</li> <li>▪ Simplest to understand</li> <li>▪ Minimizes adverse selection risk across health plans</li> </ul>	<p><b>PROS</b></p> <ul style="list-style-type: none"> <li>▪ Increases options for employees, while minimizing selection challenges</li> <li>▪ Information on offered health plan is uniform for employees, so decision making can be focused on coverage level</li> </ul>	<p><b>PROS</b></p> <ul style="list-style-type: none"> <li>▪ Ensures a common level of coverage for all employees of a given employer</li> <li>▪ Allows employees to select health plan that best meets their provider and network coverage needs</li> <li>▪ Enhances competition among plans</li> <li>▪ Enhances continuity of coverage for employees that switch jobs</li> </ul>
<p><b>CONS</b></p> <ul style="list-style-type: none"> <li>▪ Provides limited reason for employers to select the SHOP, as the same range of options are likely to be available in the external market, except those eligible for tax subsidies</li> <li>▪ Potentially added cost without added benefit to employers and employees</li> </ul>	<p><b>CONS</b></p> <ul style="list-style-type: none"> <li>▪ Limits employee options, particularly if available network of selected plan is relatively narrow</li> <li>▪ Modest increase in options compared to purchasing in external market, may be insufficient to encourage broad participation</li> </ul>	<p><b>CONS</b></p> <ul style="list-style-type: none"> <li>▪ Less choice than Individual Exchange</li> <li>▪ Level of coverage may be insufficient to meet employee needs, without option to "buy up"</li> </ul>



Table 1: Summary Comparison of Employer Choice Options		
Option 4: Paired or Defined Choice	Option 5: Full Employee Choice	Option 6: Employer based Paired Choice
<p><b>SUMMARY:</b> The exchange negotiates paired choice options from which the employer chooses; all coverage tiers are available.</p>	<p><b>SUMMARY:</b> The employer chooses neither the health plan options or coverage levels, but determines the maximum contribution that will be made on behalf of employees within the constraints of the minimum contributions established by the Exchange</p>	<p><b>SUMMARY:</b> The employer chooses two issuers in a paired choice offering to their employees, and chooses two or more contiguous coverage tiers. Pairings are not negotiated by the Exchange</p>
<p><b>PURPOSE:</b> Provides a hybrid of choice options to the employer and employee, ensuring the employee has choice within a relatively narrow range of options, with the SHOP negotiating with issuers for the combination of offerings that will be made available</p>	<p><b>PURPOSE:</b> Provides maximum choice to employees, similar to options available in the Individual Exchange; takes the employer out of the decision making process once the contribution level is established</p>	<p><b>PURPOSE:</b> Provides a hybrid of choice options to the employer and employee, ensuring the employee has choice within a relatively narrow range of options, with the employer choosing the combination of offerings that best meet their employees' needs</p>

**Table 1: Summary Comparison of Employer Choice Options**

Option 4: Paired or Defined Choice	Option 5: Full Employee Choice	Option 6: Employer based Paired Choice
<p><b>PROS</b></p> <ul style="list-style-type: none"> <li>▪ Provides options without overwhelming employee</li> <li>▪ Choice may encourage long term participation of employers in the Exchange</li> <li>▪ While some level of decision making by the employer is required, the extent is minimal and most decision remain in the hands of the employees</li> <li>▪ Less susceptible to adverse selection than unlimited choice, so may be more attractive to issuers</li> <li>▪ Enhances competition among plans compared to Options 1 &amp; 2</li> </ul>	<p><b>PROS</b></p> <ul style="list-style-type: none"> <li>▪ Maximum choice for employee, similar to Individual Exchange</li> <li>▪ Choice may encourage long term participation of employers in the Exchange</li> <li>▪ Minimal decision making required by employer; opportunity to provide employees with health insurance coverage with no further time commitment by employer</li> <li>▪ Enhances competition among plans</li> </ul>	<p><b>PROS</b></p> <ul style="list-style-type: none"> <li>▪ Provides options without overwhelming employee</li> <li>▪ Choice may encourage long term participation of employers in the Exchange</li> <li>▪ While some level of decision making by the employer is required, the extent is minimal and most decisions remain in the hands of the employees</li> <li>▪ Less susceptible to adverse selection than unlimited choice, so may be more attractive to issuers</li> <li>▪ Employer choice of pairings ensures a match to each employer's circumstances while reducing adverse effects of broader choice</li> <li>▪ Enhances competition among plans compared to Options 1 &amp; 2, and provides more choice to employer than Option 5</li> </ul>
<p><b>CONS</b></p> <ul style="list-style-type: none"> <li>▪ Compared to unlimited choice, some desired options may not be available</li> <li>▪ Requires negotiations with health plans regarding which other plans they may be paired with</li> </ul>	<p><b>CONS</b></p> <ul style="list-style-type: none"> <li>▪ Broad choice may be confusing for employees, decision support tools will be needed</li> <li>▪ Increased potential for adverse selection across health plans that may exceed corrections made by risk adjustment</li> </ul>	<p><b>CONS</b></p> <ul style="list-style-type: none"> <li>▪ Compared to unlimited choice, some desired options may not be available</li> </ul>

## Reference Material

California Health Benefit Exchange. Stakeholder Comments for Developing Options for the Exchange - Qualified Health Plan, Benefit Design and Promoting Delivery System Reform. 2012.

Chou J, Koller M, Cantor J, Belloff D. "Examining a Defined Contribution Strategy in the SHOP Exchange." Center for State Health Policy; 2011. Available from: <http://www.cshp.rutgers.edu/Downloads/9130.pdf>

Department of Health and Human Service. Patient Protection and Affordable Act; establishment of exchanges and qualified health plans. Fed Reg. 2012; 77 (59): 18464 - 467.

Small Business Majority, Making California's New Healthcare Exchange Work for Small Businesses, 2012. Available from: [http://www.smallbusinessmajority.org/policy/docs/020712\\_CA\\_SHOP\\_Exchange\\_Report.pdf](http://www.smallbusinessmajority.org/policy/docs/020712_CA_SHOP_Exchange_Report.pdf)

Gardiner T, Perera I. "SHOPping Around - Setting up State Health Care Exchanges for Small Businesses: A Roadmap" Center for American Progress and Small Business Majority; 2011. Available from: [http://healthreformgps.org/wp-content/uploads/shop\\_exchange.pdf](http://healthreformgps.org/wp-content/uploads/shop_exchange.pdf)

Institute for Health Policy Solutions. "Study of SHOP Exchange: Analysis of Key Maryland SHOP-Related Policy Options." 2011. Available from: [http://dhmh.maryland.gov/exchange/pdf/FinalSHOPEXchangeIHPS\\_1.pdf](http://dhmh.maryland.gov/exchange/pdf/FinalSHOPEXchangeIHPS_1.pdf)

Jost, T. "Employers And The Exchanges Under The Small Business Health Options Program: Examining The Potential And The Pitfalls." Health Affairs 31, No. 2 (2012): 267-274

Kaiser Family Foundation, Health Research and Educational Trust. Employer health benefits: 2011 annual survey. Available from: <http://ehbs.kff.org/>

Kingsdale J. "How Small-Business Health Exchanges Can Offer Value To Their Future Customers - And Why They Must" Health Affairs 31, No. 2 (2012): 275-283

Weinberg M, Kramer W. "Building successful SHOP exchanges: lessons from the California experience." Pacific Business Group on Health; 2011. Available from: [http://www.pbgh.org/storage/documents/PBGH\\_SHOP\\_05.pdf](http://www.pbgh.org/storage/documents/PBGH_SHOP_05.pdf)