

Comments on proposed 1332 Waiver of SHOP internet portal with responses from Department of Vermont Health Access in bold.

GENERAL COMMENTS

The SHOP waiver should not be dependent on the individual market IT platform.

We suggest that the waiver application clearly seek express clarification that the SHOP waiver is not dependent on the existence of a state based exchange for the individual market. The waiver application should seek clarity regarding what will happen to the small group market in the event that the individual qualified health plan market ultimately ends up on a federal information technology platform. In the event that the individual market were to transition to a different technology platform, we do not believe Vermonters would be benefitted by investing resources in a federal SHOP platform.

Response: We agree with this comment and have incorporated the change.

Remove references to the over 100 employee market.

Currently, Vermont law provides that all employers, regardless of size, will have access to the exchange in 2018. Recently, the Green Mountain Care Board released a report which shows that such a transition does not support State health care policy goals. It is also our understanding that legislative language has been introduced that will repeal the large group transition. As such, we recommend removing the references to the large group market. Although we understand that the legislation has not yet passed, the risk of not removing this reference is that HHS may consider this an element that must be retained in order for the waiver to remain valid.

Response: We agree with this comment and have incorporated the change.

SPECIFIC COMMENTS

The following comments refer to specific references within the document.

Page 3: Last paragraph

This sentence isn't that clear: "Furthermore, Vermont merged its small group and individual markets and limited the purchase of individual or small group plans outside of its health benefits exchange, Vermont Health Connect (VHC)." We suggest restructuring it so it more clearly states that no individual or small group plans were originally allowed to be sold, except through Vermont Health Connect.

Response: We agree with this comment and have incorporated the change.

Page 4: First full paragraph

This sentence is not accurate: “Any new plan designs or plan benefits are presented to Vermont’s independent health care oversight entity, the Green Mountain Care Board (GMCB), where they go through a public process before board approval.” Although standard plans are determined and approved by the GMCB, non-standard plans are reviewed first by DFR for compliance, then a certification decision is made by the Department of Vermont Health Access (DVHA).

Response: We agree with this comment and have incorporated the change.

We also suggest some discussion of the DFR process in the section discussing the forms process. DFR reviews all proposed plan designs (standard and non-standard) for compliance with ACA and insurance market rules before such plan designs are proposed for consideration to the GMCB or DVHA.

Response: We agree with this comment and have incorporated the change.

Additionally, it is stated in this paragraph that the Health Care Advocate is automatically a party to the rate review when, in fact, the HCA must enter an appearance in order to gain party status.

Response: We agree with this comment and have incorporated the change.

Also, in this same paragraph, the language in italics (added) isn’t quite accurate: “Next, the GMCB posts on its website *an opinion of its actuary of the impact of the rates* as well as an opinion from Vermont’s Department of Financial Regulation regarding the solvency of the health insurance carrier.” It would be more accurate to say that the GMCB posts an actuarial analysis of the requested rates, based on statutory criteria.

Response: We agree with this comment and have incorporated the change.

Pages 4-5: “Implementation of a State-Based Marketplace and Lessons Learned”

Although we recognize the sensitivity associated with VHC implementation challenges, and we do not expect the State to focus unnecessarily on them, the characterization of the small group market roll out fails to specify that there is not, nor has there ever been, a SHOP information technology option of any kind. This is relevant because it underscores the need for the waiver. So, for example, on page 5, the waiver application notes that in 2015 and 2016 Vermont “continued to encourage small

employers to directly enroll with health insurance issuers". Small employers were not "encouraged" – they had no other choice if they wanted health insurance. Off-exchange plans are not legal and there was no small group VHC option. We recommend the following amendment: "For 2015 and 2106, Vermont took advantage of CCIIO's transitional flexibilities for State-based SHOP direct enrollment and ~~continued to encourage~~ small employers continued to directly enroll with health insurance issuers; this allowed the State in order to concentrate its resources on developing a fully functional marketplace for the individual."

Response: We agree with this comment and have incorporated the change.

Again, this is not intended to highlight VHC challenges, but rather to underscore that Vermont will have to start from scratch if it is required to implement an IT solution for the SHOP.

Page 5: Second bullet

We recommend the following amendment to this language to more accurately represent what is occurring:

- ensured seamless transition between small group plans and individual qualified health plans, so that any cost sharing paid under ~~one a qualified health plan during the calendar year~~ would be credited to ~~the same an individual's new qualified health plan during the course of the calendar year, in the event the individual moved from the individual to the small group market and vice-versa if that individual's employer status.~~

Response: We agree with this comment and have incorporated the change.

Page 6: Proposed Waiver: Direct Purchase of Vermont Health Connect Plans from Health Insurance Carriers

After the bulleted sections, the application reads: "Waiving each of the items listed above would not compromise the comprehensiveness or affordability of coverage, total number of Vermonters covered, or the federal deficit." However, the items listed above this sentence are things that Vermont wants to keep about its current small group market. As such, a waiver of those items is not being requested. We suggest rewording this sentence to make that clear.

Response: We agree with this comment and have incorporated the change.

Pages 8-9: Statutory waiver chart

- Regarding ACA § 1311(b), we recommend refining the reference to § 1311(b)(1)(B), since that is the specific provision for which a waiver is sought.

Response: We agree with this comment and have incorporated the change.

- Regarding ACA § 1311(c)(3), which requires a quality rating system for qualified health plans, we want to clarify that data collection for the QRS could exclude the small group market, even though the plan designs are the same. However, we do not recommend this approach. For this provision, health plans can continue to collect this data for the small group qualified health plan market, irrespective of the state operating a SHOP internet portal.

Response: We agree with this comment and have incorporated the change.

- Regarding ACA § 1311(d)(4)(B), requiring that the exchange maintain a toll-free hotline, we recognize that the Exchange will continue to do this. However, we would like language making it clear that health plans will be the primary source of customer service assistance for small groups. It would be unfortunate if HHS imposed cumbersome new customer service requirements on DVHA, whereby the Exchange is expected to maintain service capacity for the group market (beyond those related to the tax credit).

Response: We agree with this comment and have incorporated the change.

- Regarding ACA § 1311(d)(4)(E), pertaining to the presentation of QHPs in a standardized format, it might bear noting that the VHC website will include all of this information and since the QHPs in the small group market are the same, this information will be available, even if the groups are not able to enroll from that site.

Response: We agree with this comment and have incorporated the change.

- Regarding the ACA § 1312(a) reference, we suggest refining the reference to § 1312(a)(2). We also note that it might bear explaining the current rules a little more specifically. For example, health plans cannot limit the number of qualified health plans an employer chooses to offer its employees.

Response: We agree with this comment and have incorporated the change.

- Regarding ACA § 1312(f)(2)(A), noting that employer size is enforced through employer attestation, note that BCBSVT has more robust employer size review systems in place beyond simply an attestation. In the event this becomes an

area of inquiry for HHS, we recommend meeting with the health plans to determine what is currently in place and what might be possible in the future.

Response: We agree with this comment and have incorporated the change.

Page 10: Affordability of Coverage Remains the Same or More Affordable

It might make sense to specifically note here that the rates for the individual QHPs and the small group QHPs are the same. Furthermore, the existence of a SHOP internet portal has no bearing on those rates, except to the extent such costs would be borne by the purchasers of insurance, in which case the coverage would be more expensive, absent the waiver.

Response: We agree with this comment and have incorporated the change.

Page 11: 10-Year Waiver Budget Projection: Maintaining Deficit Neutrality

In this section, we suggest noting that a stable and robust employer sponsored health insurance market reduces the need for federal funding to support tax credit subsidies. Thus, granting the waiver could reduce the deficit to the extent it reduces the need for individual coverage by supporting the employer sponsored market.

Response: We agree with this comment and have incorporated the change.

Page 11: No Impact on Other Sections of the ACA or Other Public Coverage Programs

We recommend adding the word "SHOP" in front of "Internet" in the first sentence.

Response: We agree with this comment and have incorporated the change.

Appendix B: Section by Section Consideration of Waivable Provisions

We provide the following comments on these provisions:

- We believe that ACA § 1302(c)(2) was repealed.

Response: We agree with this comment and have incorporated the change.

- Regarding ACA § 1311(c)(6), please note that the open enrollment periods do not necessarily apply to group health plans – although all plans are on a calendar year, plans can conduct open enrollment with their employees at other times of the year. It might also bear mentioning that Vermont does not currently have

any minimum participation rules or minimum employer contribution rules that would apply outside of a standard open enrollment period.

Response: Vermont's individual and group QHPs comply with federal regulations. As a result, we will keep this provision unchanged.

Appendix C: Relevant Implementing Regulations

- Regarding 45 C.F.R. § 155.705(b)(4)(i), we recommend specifically noting that Vermont requests a waiver of this provision since neither health plan would be able to do premium aggregation.

Response: We agree with this comment and have incorporated the change.

- As noted above, regarding 45 C.F.R. § 155.710 relating to employer eligibility, if HHS becomes concerned with self-attestation as the sole method of determining an employer's eligibility to purchase in the small group market, BCBSVT does have more robust systems in place to monitor group eligibility.

Response: We agree with this comment and have incorporated the change.

- Regarding the requested waiver of 45 C.F.R. § 155.720, we note that some of these provisions are being enforced through current market practices. For example, 45 C.F.R. § 155.720(e) requires the SHOP to ensure that issuers notify employees of the effective date of their coverage. Although there is no SHOP, the issuers are notifying employees of the effective date of their coverage. As such, Vermont is not actually seeking to waive all of the rules.

Response: We agree with this comment and have incorporated the change.

- Regarding the requested waiver of 45 C.F.R. § 155.725, it may bear mentioning that by Vermont law, health plans are required to administer the same special enrollment periods in the small group market that are available in the individual market. Furthermore, health plans generally follow the open enrollment rules that would have applied for a SHOP. The way the application currently reads, one could conclude that there are no rules about the enrollment periods in the small group market currently administered by the health plans, when, in fact, the rules generally mimic the federal rules.

Response: We agree with this comment and have incorporated the change.

March 11, 2016

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BCBSVT appreciates the opportunity to review this waiver proposal. We support the State's goals of waiving the internet portal requirements of the SHOP. We believe the current approach of allowing small groups to directly enroll in qualified health plans preserves the most important consumer protections in the ACA for the group market, while not requiring investment in technology of limited benefit.