

From: [DeRosa, Ellen](#)
To: [CMS Shop](#)
Cc: [DeRosa, Ellen](#)
Subject: Recommendation Regarding Vertical Choice
Date: Wednesday, March 23, 2016 3:14:48 PM

Dear HHS,

New Jersey appreciates the opportunity to make a recommendation with respect to allowing the “vertical choice” option for New Jersey employers in the Federally-facilitated SHOP (FF-SHOP). As explained below, New Jersey recommends that “vertical choice” not be available to New Jersey employers.

New Jersey agrees with the commenters who expressed concern that “vertical choice” would lead to adverse selection. New Jersey does not agree with the CMS response to the adverse selection comments that states that the limitation of “vertical choice to a single issuer’s plans will help allow the issuer to manage the risk of adverse selection.”

Section 155.705(b)(3)(viii)(C) would allow employees of small employer purchasing coverage through the FF-SHOP to select from among all of the various plans offered by the issuer selected by the small employer. The choice among various plans would extend across all metal level plans, which may include different products. Essentially, vertical choice would provide employees the same choice of plans available in the individual market.

To anticipate what might occur with vertical choice, it is important to consider the product and plan landscape of the New Jersey individual market. With limited exceptions, issuers have limited the products to closed panel plans (HMO and EPO). While one issuer has offered a PPO plan the issuer has experienced severe adverse selection with that offering. Issuers offer very few platinum level plans. Coverage of brand name prescription drugs is most often subject to deductible and coinsurance as opposed to copayments. These restricted product and plan options have evolved over time in attempts to address adverse selection. It is our understanding there will be further restrictions in 2017 as issuers seek to further mitigate the effects of adverse selection.

Most issuers in the New Jersey small employer market offer a variety of products with some closed panel plans such as HMO and EPO but also offering plans with out of network options such as PPO and POS. Issuers have been able to offer a wide variety of products and plans because they have not faced the selection issues that exist in the individual market. If an issuer offers closed panel plans along with plans with out of network benefits, with plans across all metal levels, and with a variety of moderate as well as rich prescription drug benefits, it would be very easy to determine which employees would gravitate toward the rich plans and which would elect the less rich options. The higher value plans will be routinely selected against by a select segment of employees. That selection disrupts any reasonable assumptions issuers made when pricing the plans. Issuers could react by raising premiums or they could react as they have done in the individual market by greatly curtailing the choice of products and plans. Neither is a desirable consequence.

Small employers in New Jersey have enjoyed the protections of New Jersey law, N.J.S.A. 17B:27A-17 et seq. since 1994. Striking the appropriate balance between employer requests and the overall health of the small employer market has not been without challenge. New Jersey currently allows a much modified version of “vertical choice” whereby each issuer is given the opportunity to set limits on the number of plans an employer can offer employees by means of underwriting rules. The issuers generally limit the number of plans to three and further limit the types of plans that may be selected. The reliance on issuer underwriting rules allows each issuer to manage adverse selection based on the nature of each issuer’s products and plan options.

Another consideration is the fact that the selection risk associated with vertical choice would be unique to issuers participating in the FF-SHOP since issuers offering products only outside of the FF-SHOP need not be exposed to the added risk of vertical choice. This would create rate and cost pressures that are not equal among issuers selling small employer coverage in New Jersey and place FF-SHOP participating issuers at a competitive disadvantage because they must use the same premium structure in and outside of the FF-SHOP.

For these reasons, New Jersey recommends that vertical choice not be available to New Jersey employers electing coverage through the FF-SHOP.

If you have any questions or require further information regarding our recommendation please contact me.

Ellen

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