

# **State Health Reform Assistance Network**

## Charting the Road to Coverage

Support  
provided by



Robert Wood Johnson  
Foundation

# **1332 State Innovation Waivers: States Seek to Preserve Small Group Market Practices Through 1332**

**Manatt Health**  
**February 25, 2016**

# Agenda

- **Overview of Small Group Market Requirements in the ACA**
- **State 1332 Applications (Hawai'i, Massachusetts, Vermont)**

# Overview of ACA Small Group Market Requirements

# First Three State 1332 Waivers Focus on Small Group Market Reforms

These states are seeking to preserve innovative pre-ACA programs



## **Hawai'i**

seeks to preserve its pre-ACA employer mandate (Hawai'i Prepaid Health Care Act)



## **Massachusetts**

seeks to maintain features of its pre-ACA merged individual and small group markets



## **Vermont**

seeks to maintain pre-ACA direct enrollment approach for small employers

# CMS has Permitted States to Continue Some Pre-ACA Small Group Market Practices\*

Nov. 2013	Feb. 2014	May 2014	July 2015	October 2015
CMS announces employees in FFM states will enroll directly through an insurer	Treasury announces employers with 50 – 99 FTEs are exempt from employer mandate until 2016	CMS allows states to delay employee choice in 2015 at State Insurance Commissioner's discretion	CMS announces 85,000 individuals have purchased coverage through SHOP representing 10,700 employers	President Obama signs PACE Act amending definition of small employers to 1 – 50 FTEs (states may opt to 100 FTEs)

## January 2017\*

**States are required to meet ACA requirements for enrolling employer groups in states with merged individual and small group markets, and replacing direct enrollment with online SHOP portal**

# ACA Small Group Requirements Effective in 2017

## ACA Requirement

- States must establish a Small Business Health Options Program (SHOP)
- SHOP must maintain an internet portal to enroll employees in QHPs
- Employers choose a metal level and employees may enroll in any QHP within that metal level (state can add more levels of employee choice)
- Small employers may receive tax credit for using SHOP

## Purpose

- Allows small businesses to pool enrollment to reduce risk and administrative expense
- Provides employers with the ability to set contribution and know the cost of plans within a metal level
- Allows employees to choose among a variety of plans otherwise unavailable to them

## State Impact

- **Hawai'i:** would be required to permit less comprehensive employer coverage and build a SHOP portal
- **Massachusetts:** with its merged market, would be required to change small group enrollment and rating cycle, causing market disruption
- **Vermont:** would be required to build a new, duplicative enrollment system for small group coverage



# **State 1332 Applications (Hawai'i, Massachusetts, Vermont)**

# Hawai'i Seeks to Maintain its Existing Prepaid Health Care Act Employer Mandate

## Waiver Rationale

- **Hawai'i requires employers with at least one FTE to provide health coverage to qualified employees and pay 90% of individual premium cost**
  - Employers must provide equivalent of platinum or gold coverage
  - Other requirements are generally more stringent than ACA (e.g., which employees are covered, limits on cost sharing)
  - State relies on direct enrollment rather than SHOP (employer rather than employee choice)

## Proposed Waivers

- **Without waiver, Hawai'i would be required to permit less generous employer coverage and build a duplicative SHOP marketplace**
- **Section 1301:** Participating insurers must offer a silver and gold plan
- **Section 1304:** Small employer may enroll through SHOP
- **Section 1311:** Establishment of a SHOP Marketplace
- **Section 1312:** Consumer choice and definition of employer

## Guardrail Assessment

- **Comprehensiveness:** No change to EHBs
- **Affordability:** Preserves more generous state benefits
- **Scope:** Maintains or increases employer offers
- **Federal Deficit:** Decreased cost with no SHOP

# Massachusetts Focuses on Preserving Existing Small Group Features in Merged Market

## Waiver Rationale

- Massachusetts merged its individual and small group markets pre-ACA, but continues to use the same small group enrollment model as states with non-merged markets:
  - Small group enrollment on a rolling basis throughout calendar year
  - Issuers allowed to offer new products and refresh rates for small group plans on a quarterly basis
- **Without waiver, federal requirements would result in a mid-year disruption for 90% of small employers and cause premium increases**

## Proposed Waivers

- **Section 1312(c)(3):** State may require individual and small group insurance markets within a state to be merged if state determines appropriate

## Guardrail Assessment

- **Comprehensiveness:** No change to EHBs
- **Affordability:** Maintains or increases affordability as insurers can continue pricing small group plans accurately and without disruption
- **Scope:** Maintains or increases affordability; maintains or expands coverage
- **Federal Deficit:** No increase in federal deficit anticipated

# Vermont Proposes to Maintain SHOP Direct Enrollment

Waiver Rationale

Proposed Waivers

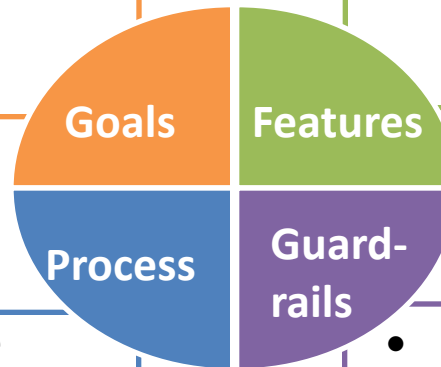
Guardrail Assessment

- **Vermont has direct enrollment process for small group employers who must buy ACA compliant coverage:**
  - Small employers and employees enroll through the insurer instead of the Vermont Health Connect (VHC) website
  - Employers have choice of any certified QHP and employees enroll in QHPs across insurer(s) of employer's choice
- **Without waiver, Vermont would be required to build new, duplicative enrollment system**
- **Section 1311(b):** Design a SHOP internet portal to enroll employers and employees in QHPs
- **Section 1311(c):** Small group rating system and enrollee satisfaction survey be available through a separate SHOP internet portal
- **Section 1311(c) and (d):** All references to internet portals
- **Comprehensiveness:** No change to EHBs
- **Affordability:** Maintaining current process will ensure affordability
- **Scope:** Without waiver, employers may cease offering coverage
- **Federal Deficit:** No increase in federal deficit anticipated

# Questions for Hawai'i, Massachusetts, and Vermont

- Why did your state choose to pursue the specific waiver proposal?
- How does the waiver meet your state's goals for health reform?

- What features of your waiver are most applicable to other states?
  - At least three states have merged markets with others considering this as rates converge
  - At least 20 states running a SHOP may be interested in maintaining direct enrollment



- How is your state meeting the actuarial requirements?
- How did your proposal incorporate the President's budget and national health expenditure data?
- What was the most challenging aspect of developing the waiver?

- How did your state arrive at the guardrail projections?
- Were any guardrails more problematic than others?
- What, if any, issues do you anticipate HHS and/or Treasury raising regarding the guardrails?

# Discussion



# Next Steps

Webinar Topic	Date
What's Next for States	4/20/15
What Can be Waived?	5/29/15
Getting off the Ground	7/13/15
Coordinating 1332 and 1115 Waivers	8/24/15
Issues Related to Coordinated Waivers	10/06/15
Lessons Learned from the Basic Health Program	11/18/15
HHS and Treasury Guidance on State Innovation Waivers	12/13/16
States Seek to Preserve Small Group Market Practices Through 1332	Today
Looking Ahead to Potentially Broader Waivers: The View from Several States Including MN and CA	4/13/16

# Thank you!

Heather Howard [heatherh@princeton.edu](mailto:heatherh@princeton.edu)

Brian Shott [bshott@princeton.edu](mailto:bshott@princeton.edu)

Joel Ario [jario@manatt.com](mailto:jario@manatt.com)

Deborah Bachrach [DBachrach@Manatt.com](mailto:DBachrach@Manatt.com)

Patti Boozang [PBoozang@Manatt.com](mailto:PBoozang@Manatt.com)

Spencer Manasse [SManasse@Manatt.com](mailto:SManasse@Manatt.com)



# References

- <sup>1</sup> United States Department of Health and Human Services. *FAQs on New Enrollment Process for the Federally Facilitated SHOP Marketplace*. November 2013. Available at: <http://www.doi.nebraska.gov/aca/marketplace/ffm/faqs-on-shop-enrollment.pdf>
- <sup>2</sup> United States Treasury Department. *Fact Sheet: Final Regulations Implementing Employer Shared Responsibility Under the Affordable Care Act for 2015*. February 2014. Available at: <https://www.treasury.gov/press-center/press-releases/Documents/Fact%20Sheet%20021014.pdf>
- <sup>3</sup> Centers for Medicare and Medicaid Services. *Small Business Health Options Program 2015 Transition to Employee Choice*. May 2014. Available at: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/2015-Transition-to-Employee-Choice-.html>
- <sup>4</sup> Kevin Coughlin, Centers for Medicare and Medicaid Services. *Update on SHOP Marketplaces for Small Businesses*. July 2015. Available at: <https://blog.cms.gov/2015/07/02/update-on-shop-marketplaces-for-small-businesses/>
- <sup>5</sup> United States Congress. *H.R. 1624 - Protecting Affordable Coverage for Employees Act*. October 2015. Available at: <https://www.congress.gov/bill/114th-congress/house-bill/1624/text>
- <sup>6</sup> David Y. Ige, Governor. *Hawaii's Proposal to Waive Certain Provisions of the Patient Protection and Affordable Care Act*. February 2016. Available at: <http://governor.hawaii.gov/wp-content/uploads/2014/12/Hawaii-ACA-Innovation-Waiver-Proposal-DRAFT-2-15-2016.pdf>
- <sup>7</sup> Massachusetts Health Connector. *Request for a State Innovation Waiver Under Section 1332 of the Affordable Care Act*. February 2016. Available at: <https://betterhealthconnector.com/about/policy-center/state-innovation-waiver>
- <sup>8</sup> Department of Vermont Health Access. *Vermont's Proposal to Waive Affordable Care Act Requirement to Establish an Internet Portal for the Small Business Health Options Program (SHOP) Per Section 1332, Waivers for State Innovation*. February 2016. Available at: <http://dvha.vermont.gov/administration/11332-draft-waiver-app-for-public-comment.pdf>