Karen Weldin Stewart, CIR-ML
Commissioner

Delaware Department of Insurance

Via electronic mail delivery to shop@cms.hhs.gov

May 30, 2014

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Re: Recommendation for 2015 Transition to Employee Choice

Dear Secretary Sebelius:

I respectfully request a one year transition to employee choice in Delaware. Delaware's deadline for submission of rates is June 13, 2014, which is after the June 2, 2014 deadline imposed for response regarding the matter. The recommendation is based on discussions with several categories of stakeholders including the issuers, agent/broker community, State Chamber of Commerce, as well as actuaries for the Department of Insurance.

Two issuers have expressed intent to file applications to participate in the SPM SHOP for Delaware in 2015: (1) Highmark Blue Cross Blue Shield of Delaware and (2) Aetna Insurance Company (which merged with Coventry in 2013 and will be using a combination of Aetna/Coventry branding for 2015). Both carriers have stated that implementation of employee choice will result in an increase in their prices in 2015. They cited a variety of factors in their response to the Delaware Department of Insurance's inquiry including concerns they have about risk selection issues in the market. Because the concept of employee choice is new, issuers do not have enough data available to determine expected enrollee risk in this type of environment. As a result the issuers have concerns about the potential for adverse selection and are likly to price conservatively, which will impact off-exchange pricing all due to the requirement of issuing the same rates on/off exchange. A marketplace with employee choice option seeks to create a fundamentally different system with SHOP presenting adverse

implications on the SHOP and threatens the viability of the commercial small group market off the SHOP.

The total enrollment number for the SHOP marketplace for 2014 was well below the expectations. The low enrollment indicates that the SHOP was unable to attract new employer groups to the market. Other than the availability of the small employer tax credit which applies to a small subset of employers and expires in 2016, there are few incentives for small employer groups to enroll in SHOP.

We recognize that the limitation of employee choice to available plans within a given metal level and, further, by the risk sharing mechanisms under the ACA somewhat tempers the likelihood of adverse selection. However, this is offset by the fact that issuers have limited experience in Delaware on which to base their prices.

Most small employers rely heavily on agents and brokers in the decision-making process and pushing enrollment on the SHOP requires more of the agent's resources without any additional compensation. The burden will be amplified in an employee choice environment, where multiple options will require substantially more time to educate employees and provide ongoing support to the employer.

There is unanimous agreement among the various stakeholders that delay in employee choice will be beneficial. The additional year will provide all parties, including the issuers, agent and small employer and employees to become more familiar with and gain experience in the operations of SHOP. Additionally, the year will be a buffer for the Federal SHOP to institute its operational procedures and automate all functions required to be fully ready. Concerns exist about the fact that there are only six month until open enrollment and the lack of technical specifications and concern over the timeline for automating, as well as new vendor involvement. Challenges of bringing the SHOP into production will be compounded by layering the rollout of employee choice on this project.

Based upon the foregoing, my judgment is that in the best interest of small employers and their employees and dependents to delay employee choice by one year given the likelihood that implementation would result in issuers pricing their product and plans higher than they would otherwise price them and the effect on the outside market

is also a notable concern. I am recommending that HHS implement the 2015 Transition to Employee Choice for the State Partnership Marketplace SHOP in Delaware. Should my recommendation be accepted, The Delaware Department of Insurance, on behalf of the State of Delaware as an Effective Rate Review State, will ensure that health insurance issuers are not factoring employee choice into the prices

for the 2015 plan year through the review of the rates and forms filings associated with the QHP applications submitted. This will include an attestation by each issuer's actuary that this option is not factored into their projections, assumptions or ultimately the prices for the plans and products. This will ensure that small employers and their employees are receiving full benefit via their premiums as a result of the Transition to Employee Choice.

The Transition will be least disruptive to consumers, issuers and agents who continue to adjust to the many changes occurring due to the ACA implementation.

Respectfully yours,

Karen Weldin Stewart, CIR-ML
Delaware Insurance Commissioner

Recommendation Form for the 2015 Transition to Employee Choice Due to HHS June 2, 2014 for FF-SHOP States

Instructions: Please fill out the following form and attach your recommendation for a one year transition to employee choice including an evidence-based assessment of the full landscape of the small group market in your State.

State: Delaware

Insurance Commissioner (signature):

Please adequately explain that it is in your expert judgment, based on a documented assessment of the full landscape of the small group market in your State that the 2015 Transition to Employee Choice would be in the best interest of small employers and their employees and dependents, given the likelihood that implementing employee choice would cause issuers to price their products and plans higher than they would otherwise price them. Please base your recommendation on discussions with those issuers expected to participate in the SHOP, including naming those issuers, and keep your recommendations specific to 2015 since this is a one year transitional policy.