

## Proposed rule to delay employee choice would harm small businesses

The Administration's proposed rule to allow states to delay a critical requirement that SHOP marketplaces allow employees to choose among multiple insurance carriers is not only a major letdown for small business owners, but could have legal ramifications if the rule is adopted.

The vast majority of small employers want their employees to be able to choose among multiple insurance carriers. Moreover, the law clearly states this feature is required. The resulting harm to America's small business owners could potentially result in legal action if it's further delayed.

Section 1312 (a) of the Affordable Care Act states that employees are allowed to choose which health plan, under the level of coverage chosen by their employer, best fits their needs. Allowing states to opt-out of this requirement would harm small employers by putting them at a competitive disadvantage to big businesses that are able to offer a choice of plans to their employees. What's more, most states running their own marketplaces offer employee choice. Allowing states to opt out of this critical feature where the small business marketplaces are being run by the federal government further puts small businesses in those states at a competitive disadvantage to small employers in states whose marketplaces have employee choice.

Small Business Majority's [opinion polling](#) found two-thirds of small employers believe allowing employees to choose among multiple carriers is an important element of the healthcare marketplaces. This component is fundamental in distinguishing the new insurance marketplaces from the outside health insurance market, which is why we strongly advise against the finalization of this rule.

By including employee choice in the health insurance marketplaces, the Affordable Care Act reverses a longstanding market trend that has left small employers on unequal footing for too long. These kinds of benefits have historically been reserved for large businesses and public employees, while small businesses often have to offer a "one-size fits all" plan with added cost and fewer benefits.

Some have said that including employee choice might discourage health insurers from participating in SHOP. However, federal regulations require insurance carriers that hold more than 20% of the market to participate in the small business marketplaces if they are participating in the individual marketplace (commonly referred to as the "tying" rule). Most insurance carriers participating in the marketplaces do, in fact, have more than 20% of the market share, and therefore are unlikely to decline participating in SHOP since they already participate in the individual marketplace. Moreover, for those plans that do not have a 20% share of the market, the employee choice feature makes it much easier for them to participate in the SHOP marketplaces, thus expanding the competitive choices available to small business employees.

While we strongly advise against finalizing this rule and believe it violates the law and the spirit of the Affordable Care Act, if the rule were in fact implemented we propose requiring every state's insurance commissioner to clearly demonstrate a compelling governmental interest to delay employee choice in the small business marketplace. We believe insurance commissioners should have to provide a clear and convincing reason, supported by hard evidence, as to why employee choice would discourage plans from participating in their state's small business marketplace, and that there would be fewer options for small businesses if employee choice were to become a feature of the marketplace.