



Health Care Reform

LEGISLATIVE BRIEF

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Small Business Health Options Program (SHOP)

Beginning in 2014, the Affordable Care Act (ACA) requires online competitive marketplaces, or Exchanges, to be available in each state for individuals and small businesses to purchase health insurance coverage. The first open enrollment period for plans offered through the ACA's Exchanges began on **Oct. 1, 2013**, for coverage starting on Jan. 1, 2014.

Both state-operated Exchanges and the federally facilitated Exchange (FFE) must include a **Small Business Health Options Program (SHOP)** component for small businesses to purchase health insurance coverage for their employees. According to the Department of Health and Human Services (HHS), SHOPs will allow small employers to provide their employees with a choice of health plan options and will give small businesses the same purchasing power as large businesses.

ELIGIBLE SMALL EMPLOYERS

Small employers with up to 100 employees will be eligible to participate in the Exchanges. However, until 2016, states may limit participation in the Exchanges to businesses with **up to 50 employees**. Beginning in 2017, states may allow businesses with more than 100 employees to participate in the Exchanges.

To participate in a SHOP, an employer must qualify as a "small employer" for purposes of Exchange participation. In addition, the employer must:

- Elect to offer, at a minimum, all full-time employees coverage in a qualified health plan (QHP) through a SHOP; and
- Either have its primary office in the Exchange service area and offer all its employees coverage through that SHOP, or offer coverage to each eligible employee through the SHOP servicing the employee's primary worksite.

In the SHOP, there are no residency standards for either the employer or employee. Small employers must either offer employees coverage through the SHOP serving the employer's primary business address or offer coverage to an employee through the SHOP serving the employee's primary work site.

The SHOP's eligibility rules permit an employer to participate in more than one Exchange. Thus, multi-state employers may participate in multiple SHOPs. However, an employer will be limited to establishing one federally-facilitated SHOP (FF-SHOP) account per state.

Participation in a SHOP is voluntary for eligible small employers. However, beginning in 2014, a small employer that qualifies for the ACA's small business health care tax credit must purchase coverage through an Exchange to be eligible for the tax credit. For 2014, the maximum small business health care tax credit increases from 35 percent to 50 percent of employer contributions toward health coverage (from 25 percent to 35 percent for tax-exempt small employers).

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SHOP COVERAGE—EMPLOYEE CHOICE MODEL

A SHOP must allow employers the option to offer employees all QHPs at a level of coverage chosen by the employer—bronze, silver, gold or platinum. This is called the “**employee choice model**.” Under the employee choice model, the employer chooses a level of coverage and a contribution amount and employees then select any QHP at that level.

In addition, SHOPS may allow a qualified employer to choose one QHP for its employees. The FF-SHOP will give employers the option of offering only a single QHP in addition to the employee choice model.

On June 4, 2013, HHS issued a [final rule](#) that **delayed implementation of the employee choice model as a requirement for all SHOPS for one year, until 2015**. According to HHS, this approach provides all SHOPS (both state SHOPS and the FF-SHOP) with additional time to prepare for the employee choice model. Under the transition approach:

- **State-run Exchanges:** A state-run Exchange’s SHOP may provide the employee choice model for small employers in 2014, but is not required to provide this model until 2015. Many states that have decided to run their own Exchanges are planning to offer the employee choice model to small employers in 2014, including California, Colorado, Massachusetts, Minnesota, New York and Oregon, among others.
- **FFE:** The FF-SHOP will not provide the employee choice model for small employers until 2015. For 2014 plan years, the FF-SHOP will assist employers in choosing a single QHP to offer their qualified employees.

In addition, a [proposed rule](#) from Dec. 2, 2013, would allow employers in the FF-SHOP to offer their employees (and dependents, if desired) a single **stand-alone dental plan** or a choice of all stand-alone dental plans available in an FF-SHOP after the employee choice model becomes available in 2015. Under this proposal, an employer could choose either option for stand-alone dental plans, regardless of whether it offers the employee choice model for QHP coverage.

ENROLLMENT

Timeline

A [final rule](#) from March 27, 2012 established a uniform process and timeline for each employer seeking to participate in a SHOP.

A SHOP must permit a qualified employer to purchase coverage for its small group **at any point during the year**. Coverage effective dates will be based on a date selected by the employer as part of the application and enrollment process.

| Plan Selection Date | Coverage Effective Date |
|--|----------------------------------|
| Oct. 1, 2013 through Dec. 23, 2013 | Jan. 1, 2014 |
| Between the 1 st and 15 th day of the month (beginning Jan. 1, 2014, except if a plan selection is made between Dec. 24, 2013 and Jan. 15, 2014, the coverage effective date will be Feb. 1, 2014) | First day of the following month |
| Between the 16 th and last day of the month (beginning Jan. 1, 2014) | First day of the second month |

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Employers that complete the FF-SHOP enrollment process on or before Dec. 23, 2013 will have coverage in effect for their employees on Jan. 1, 2014. State-based SHOPS may require plan selection by as early as Dec. 15, 2013, to ensure coverage effective on Jan. 1, 2014.

After Jan. 1, 2014, under the FF-SHOP, employers may submit applications at any point throughout the year for coverage starting on the first day of the following month. Employers must complete the enrollment process by the 15th of any month for coverage to take effect on the first day of the following month. Otherwise, the coverage will be effective on the first day of the second following month. For example, if an employer completes the enrollment process on Feb. 16, 2014, the group's coverage would be effective on April 1, 2014.

The employer's plan year must consist of the 12-month period beginning with the employer's effective date of coverage. Open enrollment and renewal periods will occur on a rolling basis throughout the year. There will always be a period of at least 30 days prior to the completion of a plan year for the employer to decide whether to renew its selected coverage option, and there will always be a subsequent period of at least 30 days for employees to decide whether they want to renew or change their coverage.

The FF-SHOP will operate under the following timeline:

- Three months before the end of an employer's plan year, the FF-SHOP will send an employer a renewal notice, and employers will have 30 days to review their offer of coverage.
- After this period has elapsed, if the employer has decided to continue offering coverage to employees through the SHOP, the SHOP will notify the employer's employees about their coverage options for the following year.
- Employees will have at least 30 days to review the new offer of coverage and decide to either accept the offer of coverage or waive the offer of coverage. During this open enrollment period, employees may also add eligible dependents and make changes to their plan selection (if an employer has made employee choice available to employees).
- The group's renewal (both the employer's plan offerings and employee coverage decisions) must be submitted by the 15th of the month prior to the end of the employer's plan year to be effective for the beginning of the following plan year.

Example: An employer enrolling on June 1, 2014, for coverage in the FF-SHOP will receive a renewal notice from the SHOP by March 1, 2015. The employer will then have until the end of March to review its offer of coverage and make any changes for the next 12-month plan year. By April 1, employees will be notified by the FF-SHOP of the updated offer of coverage. They will have until the end of April to either accept the offer of coverage or waive the offer of coverage. The final renewal decision is made by the employer. The employer must confirm renewal after the employers confirm coverage. This must occur by May 15, 2015, for coverage to remain in effect for the next 12 months. The time between the end of the employee renewal deadline and the 15th of the month prior to the beginning of the next plan year allows for additional time to ensure the renewal is processed in time. If an employer misses this deadline, it may reapply for coverage.

During the application process, SHOPS may not collect any information other than what is required to make SHOP eligibility determinations or complete enrollment through the SHOP. HHS' proposed rule from Dec. 2, 2013 would specifically prohibit SHOPS from performing any individual market eligibility determinations or verifications, including, for example, making eligibility determinations for advance payments of the premium tax credit and cost-sharing reductions in the individual market Exchange.

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Online Enrollment Delay

On Nov. 27, 2013, HHS [announced](#) that **online enrollment in the FF-SHOP will not be available until November 2014**. Employers that wish to enroll their employees in SHOP coverage for 2014 will do so through “direct enrollment” with an agent, broker or insurer offering a certified SHOP plan. The direct enrollment process applies in states with FF-SHOPs only. States that operate their own SHOPs will still be permitted to offer online enrollment.

HHS also released a set of [Frequently Asked Questions](#) (FAQs) on how FF-SHOP enrollment will function until November 2014.

Role of Brokers and Agents

Where permitted under state law, HHS will work with agents and brokers to assist consumers in Exchange enrollment. If permissible under state law, HHS’ proposed rule from Dec. 2, 2013 would allow small employers to enroll in a state-run SHOP or the FF-SHOP through an **agent’s or broker’s own website**. This change would be effective for plan years beginning on or after Jan. 1, 2015, if the SHOP has the technical capability to make this possible.

MINIMUM PARTICIPATION REQUIREMENTS

SHOPs may impose minimum participation requirements that are based on the rate of employee participation in the SHOP (and not the rate of employee participation in any particular QHP or QHPs of any particular issuer), if permitted by state law. If an employer does not meet the minimum participation requirement, its ability to enroll through the SHOP may be restricted to a limited enrollment period (Nov. 15–Dec. 15).

The default minimum participation rate for the FF-SHOP is 70 percent. The rate is calculated as the number of qualified employees accepting coverage under the employer’s group health plan, divided by the number of qualified employees offered coverage (excluding any employee who, at the time the employer submits the SHOP application is enrolled in coverage through another employer’s group health plan or through a governmental plan, such as Medicare, Medicaid or TRICARE).

The FF-SHOP may use a different minimum participation rate in a state if state law sets a minimum participation rate or if there is a higher or lower minimum participation rate that is customarily used by the majority of QHP issuers in that state for products in the state’s small group market outside of the SHOP.

On July 5, 2013, HHS issued a [set of FAQs](#) on the FF-SHOP that address the minimum participation requirements. The FAQs provide the following guidance on who is counted when determining the minimum participation rate in the FF-SHOP:

- **Out-of-state Employees.** When an employer has worksites in more than one state, it may establish one FF-SHOP account serving all work locations or establish multiple SHOP accounts in each state where employees have a primary worksite. When one account is established, employees in all states will be considered when calculating an employer’s FF-SHOP participation rate. When multiple accounts are established, employees on each employee roster in each state will be considered separately when calculating an employer’s FF-SHOP participation rate.
- **Retirees.** Retirees offered coverage will be counted in the employer’s participation rate.
- **COBRA Enrollees.** An employer’s COBRA enrollees will be included in the minimum participation rate calculations.

In addition, small employers cannot be denied guaranteed availability of coverage for failure to satisfy a SHOP’s minimum participation requirements. During the special enrollment period (Nov. 15–Dec.15), an employer is not subject to a minimum participation requirement and any employer otherwise qualifying for FF-SHOP coverage will be able to enroll in the FF-SHOP regardless of its level of employee participation. Outside of this period, the minimum

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participation requirement will be enforced for new groups applying for FF-SHOP coverage. This guaranteed availability requirement will be in effect as of Nov. 15-Dec. 15, 2013.

HHS has also provided that the FF-SHOP will not impose minimum participation requirements for renewals occurring between Nov. 15 and Dec. 15.

Outside of the annual special enrollment period, the FF-SHOP will hold an employer's application until the employer meets the 70 percent minimum participation requirement (or the threshold required in that employer's state). The FF-SHOP will not send any information to issuers until the group has met the minimum participation requirement.

PREMIUMS

Rating Factors

The ACA limits the factors that can vary premium rates in small group and individual markets for non-grandfathered plans, effective for 2014. Health insurance issuers will only be able to vary premium rates based on age, geography, individual or family enrollment and tobacco use.

The geographic area premium rating factor in the small group market must be based on the employer's **principal business address** in each state. Thus, the principal address entered by the employer on the employer application will be used for rating purposes for the entire group.

Premium Changes

SHOP issuers may not vary premium rates charged to employers during a plan year. HHS' [final rule](#) from Oct. 30, 2013, requires health insurance issuers in the small group market to make changes to premium rates at a uniform time that is **no more frequently than quarterly**. Any changes to premium rates must have effective dates of Jan. 1, April 1, July 1 or Oct. 1.

These quarterly rates will apply to both new and renewing business for the entire plan year, depending on the plan year of the employer. For example, if an employer's plan year begins on Feb. 1 and the issuer adjusted its index rate on Jan. 1, the issuer's Jan. 1 rate would apply to the employer's plan only on Feb. 1. Any new rates set by the issuer after Feb. 1 would apply only upon the plan's renewal the following year.

Due to current system limitations, quarterly rate updates cannot currently be processed for QHPs in the FF-SHOP. **Until the FF-SHOP is able to process quarterly rate updates, the final rule requires issuers to set rates for non-grandfathered plans in the small group market on an annual basis market-wide.** HHS anticipates that the FF-SHOP will be capable of processing quarterly updated rates effective for the third quarter of 2014 (that is, beginning with rates effective no sooner than July 1, 2014). In a state in which the individual and small group risk pools were merged by the state, an issuer would be able to adjust its index rate and plan-specific pricing no more frequently than **annually**.

Rating Method

On Oct. 31, 2013, HHS released a [set of frequently asked questions](#) (FAQs) on premium calculations under the FF-SHOP. These FAQs clarify that the total premium charged to an employer group under the FF-SHOP is determined by summing the premiums of each of the participants and beneficiaries covered under the plan. Under the individual rating method, the premium for each individual covered participant and beneficiary under a specific plan may be adjusted using allowable rating factors, which include age and tobacco usage.

A **composite rating method** may also be used in the FF-SHOP if requested by the employer or required by state law. Under this approach, a total premium is calculated by adding up the per-member premiums for each employee enrolling in coverage. The total amount is then divided by the number of employees to produce a uniform premium rate. The FF-SHOP is able to accommodate composite rating for employees only. Premiums for employees' dependents will be determined on an individual rating basis.

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When a composite rate is used, the average employee premium rate is locked in for the entire plan year, regardless of whether any employees enter or leave the group during the plan year.

Additionally, HHS' proposed rule from Dec. 2, 2013 provides that if an issuer offers a composite premium, the premium amount would not be permitted to vary for any participant during the plan year with respect to a particular plan, even if the composition of the group changes. For example, if several older employees joined the group or several employees terminated their coverage, the composite premium would remain the same until renewal.

HHS' proposed rule would also **prohibit composite rating in the FF-SHOPs when an employer elects the employee choice model**. According to HHS, having employees spread across multiple plans would make composite rating complex and may discourage issuers from offering QHPs in an employee choice environment. This prohibition would apply only to the FF-SHOP; state-based SHOPs would be allowed to set their own policies.

Premium Aggregation and Calculator

SHOPs must include a **premium aggregation feature** to help employers whose employees are enrolled in multiple QHPs. A SHOP will provide each qualified employer with a bill on a monthly basis that identifies the employer contribution, the employee contribution and the total amount that is due to the QHP issuers from the employer. The SHOP will collect the amount due from each employer and make payment to the QHP issuers in the SHOP for all enrollees. By facilitating aggregate billing, an employer can make one payment to the SHOP for the premiums of its employees' QHP coverage.

HHS intends to establish a payment timeline and process for employers to remit premiums to the FF-SHOP. Under the proposed premium methodology, FF-SHOPs would only charge groups for the portion of the month for which they are enrolled and would require FF-SHOP issuers to provide coverage for a group unless the FF-SHOP sends a cancellation notice to the issuer.

Because this premium aggregation function will not be necessary in 2014 for SHOPs that delay implementation of the employee choice model, the premium aggregation function is optional for state-run Exchanges for plan years beginning before Jan. 1, 2015. The FF-SHOP will perform premium aggregation functions in plan years beginning on or after Jan. 1, 2015.

In addition, a SHOP must provide a premium calculator to help employees determine their cost of coverage after any employer contribution. The calculator must compare available QHPs after the application of any applicable employer contribution and any advance payment of the premium tax credit and any cost-sharing reductions.

CONTRIBUTIONS

Contribution Method

Each SHOP may provide one or more standard methods for employers to contribute toward the cost of employee coverage. Employers must decide on a contribution method before their employees select coverage in the SHOP because employees will be choosing their own coverage. In the FF-SHOP, employers will contribute to employee and dependent premiums in the following manner:

- The employer will select a metal level of coverage;
- The employer will select a QHP within that level of coverage to serve as a reference plan on which contributions will be based;
- The employer will define a **percentage contribution** toward premiums for employee-only coverage under the reference plan;
- If dependent coverage is offered, the employer will define a percentage contribution toward premiums for dependent coverage under the reference plan; and

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- The resulting contribution amounts for each employee's coverage may then be applied toward the QHP selected by the employee. In the FF-SHOPS in plan years beginning prior to Jan. 1, 2015, employers will offer their employees one QHP for medical coverage. In this case, the benchmark plan is the one selected by the employer.

Employee Groups

For 2014, employers in the FF-SHOP will not be able to contribute a different amount to premiums for employees and their dependents based on whether the employee works full-time or part-time. Employers in the FF-SHOP will be able to contribute a uniform percentage to all employees, and will not be able to vary that amount based on employee classes (for example, salaried vs. hourly workers).

For plan years beginning on or after Jan. 1, 2015, HHS has proposed providing FF-SHOPS with the option of permitting employers to define a different percentage contribution for full-time employees and part-time employees. This proposal would also allow an FF-SHOP to permit an employer to define different percentage contributions toward premiums for dependent coverage for full-time and non-full-time employees. Thus, an FF-SHOP under this proposal could allow an employer to define up to four different contribution levels: full-time employee-only, full-time employee dependent, non-full-time employee-only, and non-full-time employee dependent.

A small employer's decision to define different contribution levels for full-time and non-full-time employees may impact its eligibility for the small business tax credit, which generally requires employers to contribute a uniform percentage to all employee premiums.

ADEA Implications

According to HHS, there is a **potential for violations of the Age Discrimination in Employment Act (ADEA)** if an employer contributes the same dollar amount to each employee and employees must pay a premium that varies by age. However, the standard contribution method for the FF-SHOP establishes a method by which the employer can contribute in a standard, non-discriminatory way. The requirement to use this method to determine employer contributions only exists in the FF-SHOP.

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