



HEALTH CARE REFORM UPDATE: FINAL "SHOP" REGULATIONS ISSUED

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On June 4, 2013, the Department of Health and Human Services ("HHS"), Centers for Medicare & Medicaid Services ("CMS"), issued final regulations implementing the provisions of the Affordable Care Act ("ACA") related to the establishment and operation of the Small Business Health Options Program ("SHOP").

The final regulations delay by one year the implementation of the "employee choice" model under SHOPs and provide for special enrollment periods depending on the nature of the event triggering eligibility for SHOP coverage.

BACKGROUND

Under ACA Section 1311, state health insurance exchanges must create and operate SHOPs to assist "qualified small employers" in offering a choice of health insurance options to their employees, starting on Jan. 1, 2014. A "qualified small employer" is an employer that:

- (1) Employed an average of at least one but not more than 100 employees (states may reduce the maximum threshold from 100 to 50 employees until 2016) on business days during the preceding calendar year and at least one employee on the first day of the plan year,
- (2) Offers coverage in one or more qualified health plans ("QHPs") in the small group market to at least all full-time employees, and
- (3) Offers coverage through a SHOP covering either the area in which the employer maintains its primary office or the area where the employee's primary worksite is located.

Qualified small employers who offer coverage through a SHOP may be eligible for a small business healthcare tax credit of up to 50 percent of the employer's premium contribution. CMS previously issued rules addressing various aspects of SHOP establishment and operation.

FINAL REGULATIONS

The final regulations make the following notable changes to the SHOP rules:

1. TRANSITIONAL POLICY

The regulations establish a transitional policy which delays the implementation of the "employee choice" model by one year.

Under the employee choice model, SHOPS must allow employers to offer their employees a choice among all QHPs at the level of coverage (bronze, silver, gold, or platinum) chosen by the employer.

For plan years beginning on or after Jan. 1, 2014 and before Jan. 1, 2015,

- a. federally-facilitated SHOPS ("FF-SHOPs") will not offer the employee choice model (meaning that employers under such SHOPS will be allowed to select a single QHP to offer their employees), while
- b. state-operated SHOPS will be permitted, but not required, to offer the employee choice model (meaning that employers under such SHOPS may be permitted to offer their employees a choice among all QHPs at a chosen level of coverage).

For plan years starting on or after Jan. 1, 2015,

- a. all state and federal SHOPS will be required to offer the employee choice model.

According to CMS, this transitional policy is intended to provide additional time for all parties to implement the employee choice model and increase the stability of the small group market, while providing some of the SHOP benefits in 2014.

2. SPECIAL ENROLLMENT PERIODS AND TRIGGERING EVENTS

Under the final regulations, most triggering events open a 30-day SHOP enrollment period for individuals who become eligible for coverage.

- This rule aligns SHOP enrollment with the special enrollment periods for the group market under HIPAA.
- However, if the triggering event is an employee or dependent becoming eligible for premium assistance under, or losing eligibility for, Medicaid or the Children's Health Insurance Program, the employee or dependent will have an extended period of 60 days to enroll in a QHP through a SHOP.

The final regulations are available online at [here](#).

SHOP APPLICATIONS

In connection with the issuance of the final regulations, CMS has published paper applications for employers' and their employees' use in signing up for coverage under SHOPS starting Oct. 1, 2013.

The applications are available online at

- **EMPLOYER:** <http://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/shop-employer-application-5-31-2013.pdf>
- **EMPLOYEE:** <http://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/shop-employee-application-5-31-2013.pdf>

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