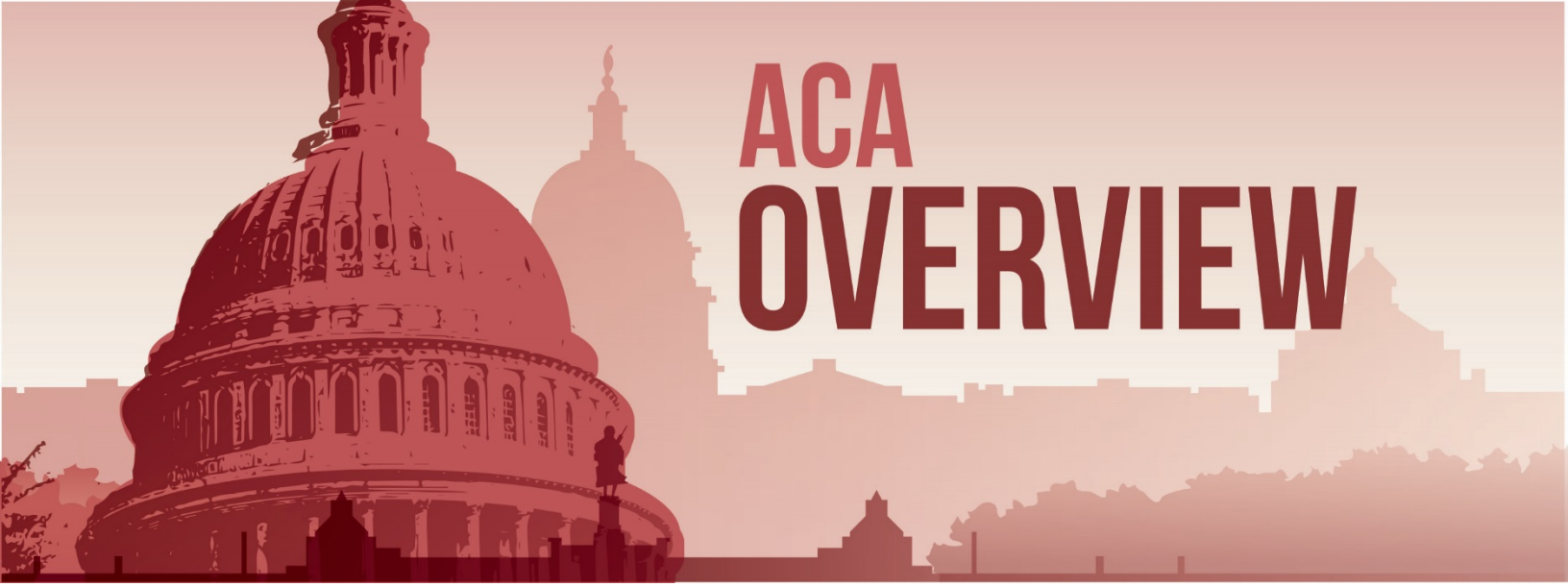

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Small Business Health Options Program

The Affordable Care Act (ACA) required each state to establish an online competitive marketplace, called an Exchange, where individuals and small businesses may purchase health insurance, beginning in 2014. Each Exchange must include both an individual market component and a component for small employers. The **Small Business Health Options Program (SHOP)** is the Exchange component for small businesses.

According to the Department of Health and Human Services (HHS), the SHOP gives small businesses the same purchasing power as large businesses and allows small employers to provide their employees with a choice of health plan options.

This ACA Overview provides detailed information on the ACA's SHOP Exchanges, including which employers are eligible to participate, how to enroll and other requirements. Please contact Boone Insurance Associates if you need more information on SHOP Exchanges.

LINKS AND RESOURCES

- The Protecting Affordable Coverage for Employees (PACE) Act was enacted on Oct. 7, 2015, to amend the ACA's definition small group market for purposes of eligibility for SHOP participation.
- On April 23, 2014, HHS released the SHOP FTE Calculator and the SHOP Tax Credit Estimator for employers to use in the FF-SHOP.
- Employers can visit the Exchange website for more information on federal SHOP eligibility.

HIGHLIGHTS

ELIGIBLE EMPLOYERS

A "qualified employer" for purposes of SHOP participation is one that:

- Is a small employer (generally, up to 50 employees, although states may expand this to up to 100 employees);
- Elects to offer, at a minimum, all full-time employees coverage in a QHP through a SHOP; and
- Either has its primary office in the Exchange service area and offers all its employees coverage through that SHOP, or offers coverage to each eligible employee through the SHOP servicing the employee's primary worksite.

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SHOP EXCHANGE OPTIONS FOR STATES

Each Exchange must include both an individual market component and a SHOP component for small employers. A state may elect to establish and operate its own **state-based Exchange** that includes both the individual market and SHOP components. HHS will operate a **federally-facilitated Exchange** (FFE) in each state that did not establish its own Exchange. The FFE includes both individual market and SHOP components (FF-SHOP). Alternatively, a state may **partner with HHS** so that some FFE functions can be performed by the state. Also, a state may elect to operate its own SHOP for small employers and let HHS run the individual market Exchange in the state.

ELIGIBLE SMALL EMPLOYERS

The ACA provided that small employers with up to 100 employees would be eligible to participate in the SHOP. However, until 2016, states were permitted to limit participation to businesses with **up to 50 full-time equivalent (FTE) employees**. Beginning in 2017, states could allow businesses with more than 100 FTE employees to participate in the SHOP.

However, the PACE Act amended the ACA's definition small group market. As a result, the ACA defines a small employer for purposes of eligibility for SHOP participation as one that has up to 50 employees. Due to this new definition, states now have the option, but are not required, to expand their small group markets to include businesses with up to 100 employees.

For purposes of SHOP eligibility, FTEs are calculated using the most recent year, and excluding seasonal employees (those working fewer than 120 days per year).

Employers will:

- Count the number of people who worked an average of 30 or more hours per week; and
- Add to this amount the number of hours worked per week by non-full-time employees, divided by 30.

Employers can use the SHOP FTE Calculator to help determine whether they meet the definition of a small business for participation in the FF-SHOP, based on their number of employees. To use the SHOP FTE Calculator, employers will need to enter their number of full-time employees (those who work 30 or more hours per week), and the hours worked per week by part-time employees.

Employers can visit the Exchange website for more information on federal SHOP eligibility. In states that run their own SHOP, employers should contact the state Exchange for information on calculating FTEs.

To participate in a SHOP, an employer must qualify as a "small employer" for this purpose, and also must:

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

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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 worksite.

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 may only establish one federal SHOP (FF-SHOP) account per state. In addition, issuers will not be required to determine employee counts for FF-SHOP eligibility purposes. Employers will attest that they employ 50 or fewer employees through information provided directly to the FF-SHOP.

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 a SHOP 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).

Employers can use the SHOP Tax Credit Estimator to determine the potential amount of any Small Business Health Care Tax Credit they may be eligible for. To use the SHOP Tax Credit Estimator, employers will need to enter their:

- Tax status (exempt or non-exempt);
- Number of full-time employees;
- Hours worked by part-time employees;
- Total employee wages;
- Total premiums; and
- Employer contributions.

For this purpose, full-time employees are those who worked (or are expected to work) the equivalent of 40 hours per week for 52 weeks (for a total of 2,080 hours each).

SHOP COVERAGE—EMPLOYEE CHOICE MODEL

All SHOPs must allow employers the option to offer employees all qualified health plans (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 (known as "**horizontal choice**").

SHOPs may also choose to allow a qualified employer to choose one QHP for its employees. The 2015 Notice of Benefit and Payment Parameters (NBPP) also allows 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 at a single dental actuarial value level after the employee choice model becomes available. The FF-SHOP will give employers the option of offering only a single QHP in addition to the employee choice model.

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The employee choice model was delayed as a requirement for all SHOPs until 2015. In addition, HHS implemented a transition policy further delaying implementation of the employee choice model for certain SHOPs, until 2016. However, beginning with 2016 plan years, employers in all states must have employee choice available to them.

"Vertical Choice" Option

For plan years beginning on or after Jan. 1, 2017, the 2017 NBPP adds an additional employer choice option in FF-SHOPs, called a **"vertical choice" option**. This vertical choice allows employers to offer qualified employees a choice of all plans across all available levels of coverage from a single issuer. SHOPs in all states are still required to allow employers to offer horizontal choice.

However, states that have FF-SHOPs may recommend that the FF-SHOP in their state not offer vertical choice. In addition, states that have state-based SHOPs using the federal platform for SHOP enrollment functions can opt out of making vertical choice available in their states. State-based SHOPs not using the federal platform have the flexibility to provide employers with vertical choice, or other options for providing employer choice in addition to "horizontal" choice.

ENROLLMENT

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

ENROLLMENT PROCESS COMPLETED	EARLIEST EFFECTIVE DATE
Between the 1st and 15th day of the month	First day of the following month
Between the 16th and last day of the month	First day of the second following month

Under the FF-SHOP, 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 earliest coverage effective date is the first day of the second following month. For example, if an employer completed the enrollment process on June 16, 2015, the group's earliest effective date would be Aug. 1, 2015. 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.

HHS provided a one-page guide on how to enroll in the SHOP, as well as a SHOP Employer Enrollment User Guide that provides detailed instructions for employers on how to fill out the SHOP application.

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. SHOPs are prohibited from performing any individual market eligibility determinations or verifications, including, for example,

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making eligibility determinations for advance payments of the premium tax credit and cost-sharing reductions in the individual market Exchange.

Also, employers may add employees for coverage after the initial enrollment process is complete. These employees will need to meet the employer's new hire waiting period established at the time of initial enrollment. Available waiting period options in the FF-SHOP include 0, 15, 30, 45 and 60 days. Coverage effective dates for new hires are always the first of the month. Because of operational limitations, the FF-SHOP allows employers to make changes to their new hire policy only upon their annual renewal; mid-year changes are not currently possible.

Employees and dependents may enroll outside of the annual renewal period if there is a special enrollment event and if the event is reported to the FF-SHOP within a specified period of time. Coverage effective dates under the special enrollment period will depend on the employee's specific situation (for example, marriage, losing minimum essential coverage or gaining access to new QHPs as a result of a permanent move).

Role of Brokers and Agents

Where permitted under state law, HHS will work with agents and brokers to assist consumers in Exchange enrollment. When assisting employers and employees in completing the eligibility application and enrolling in coverage online through the FF-SHOP, agents and brokers will use the SHOP Exchange Agent/Broker Portal.

- Licensed and registered agents and brokers will connect to the SHOP Exchange through the SHOP Exchange Agent/Broker Portal available through www.HealthCare.gov.
- The agent or broker logs in to the SHOP Exchange Agent/Broker Portal with their User ID and password. The agent or broker will establishes an authorization with an employer and assists with the application, enrollment process and case management for employers in the SHOP Exchange.
- An employer must create their own log in through www.HealthCare.gov and confirm the authorization of an agent or broker before the agent or broker may gain access to their account.
- All agent and broker authorizations in the SHOP Exchange will be established at the employer-level. Employees cannot authorize a separate agent or broker, but can enroll with the assistance of their employer-selected and authorized agent or broker.

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 (November 15—December 15). However, insurers may not deny coverage for failure to meet minimum participation requirements.

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 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.

Counting Individuals

On July 5, 2013, HHS issued FAQs on the FF-SHOP that provide the following guidance on who is counted when determining the minimum participation rate in the FF-SHOP:

- ***Out-of-state Employees.*** An employer that has worksites in more than one state may establish one FF-SHOP account serving all work locations or multiple SHOP accounts in each state where employees have a primary worksite. If one account is established, employees in all states will be considered when calculating the employer's FF-SHOP participation rate. If multiple accounts are established, employees on each employee roster in each state will be considered separately when calculating the 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 participation rate calculations.

Enrollment Period and Guaranteed Availability

Small employers cannot be denied guaranteed availability of coverage for failure to satisfy a SHOP's minimum participation requirements. During the special enrollment period (November 15—December 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 participation requirement will be enforced for new groups applying for FF-SHOP coverage.

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

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. CMS has provided information on 2017 plans and premium estimates.

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 January 1, April 1, July 1 or October 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 February 1 and the issuer adjusted its index rate on January 1, the issuer's January 1 rate would apply to the employer's plan only on February 1. Any new rates set by the issuer after February 1 would apply only upon the plan's renewal the following year.

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

The 2015 Notice of Benefit and Payment Parameters Final Rule prohibits composite premium 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 applies only to the FF-SHOP; state-based SHOPs may set their own policies. The final rule also extends this limitation on

composite premium rating to stand-alone dental plans when an employer opts to offer employees the choice of all stand-alone dental plans at a dental actuarial value level.

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.

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.

Payment Timelines

For 2015, rates charged to employers in the FF-SHOP are calculated at the time of initial enrollment and upon renewal based on approved rates for the quarter in which initial enrollment or renewal occurs. Each month, the SHOP provides each employer with an invoice that identifies the employer contribution, the employee contribution and the total amount that is due to the FF-SHOP.

For plan years beginning in 2015, employers are required to make payment to the FF-SHOP prior to the initial coverage effective date. After the initial enrollment, a group's current balance is due by the first of the coverage month. If payment is not received within 31 days from the first of the coverage month, the FF-SHOP may terminate the employer for lack of payment. If an employer is terminated due to lack of premium payment, within 30 days following its termination, the employer may request reinstatement by contacting the SHOP call center. If the employer pays all premiums owed, and pays the premium for the next month's coverage to the FF-SHOP within 30 days, the employer's previous coverage will be reinstated.

CONTRIBUTIONS

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;

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- 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
- The resulting contribution amounts for each employee's coverage may then be applied toward the QHP selected by the employee.

Employee Groups

For plan years beginning on or after Jan. 1, 2015, FF-SHOPs may permit employers to define a different percentage contribution for full-time employees and part-time employees. FF-SHOPs may also 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 may 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. However, the FF-SHOP does not currently allow employers to contribute different percentages based on employee class.

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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