



EXPERT UPDATE



Compliance Headlines from Henderson Brothers:

- Exchange for Small Business: The Small Business Health Option Program (SHOP)



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HHS has released regulations for the establishment of Exchanges. These regulations provide the underlying framework and minimum requirements for the new health insurance marketplace. In addition to providing information for states establishing Exchanges, the regulations also provide direction for insurers wanting to offer Qualified Health Plans (QHPs) through the Exchanges. HHS' release also includes information for the Small Business Health Options Program (SHOP), an Exchange available for small companies wanting to enroll their employees in an Exchange designed specifically for employers. Exchanges were designed with the intent that they would encourage competition, improve choice of affordable coverage and provide businesses with improved purchasing power.

HHS provides states with substantial discretion in the design and operation of their state-based individual Exchanges and their SHOPS. Standardization is required with respect to certain benefit provisions, efficiency and consumer protections. In May of 2012, HHS released information regarding its approach when a federally-facilitated Exchange (for individuals) and federally-facilitated SHOP are needed for states that

do not establish their own state-based Exchanges or are unable to have their own Exchanges up and running for 2014. In 2014, some states will have state-based Exchanges in place, while others will rely on federally-facilitated Exchanges to make Exchange coverage available to small businesses.

Starting in 2014, SHOPs will allow small employers to offer their employees several different health plan options. As communicated in a previous update, the regulations define a small employer as an organization that employed an average of at least one but not more than 100 employees on business days during the preceding calendar year, and employs at least one employee on the first day of the plan year.

Before 2016, a state will have the option to define small employer as an organization that employed “50 or less employees” versus the “100 or less employees” that appears in the standard federal definition. In addition to providing employees the ability to pick coverage from several different health plans, also known as Qualified Health Plans (QHPs), HHS has indicated that these SHOPs are expected to provide small employers with more bargaining power and a bigger risk pool.

Although each state-based Exchange is required to implement a SHOP, employer participation in the state SHOP is strictly voluntary. Some small employers who purchase employer sponsored coverage through a SHOP will be able to obtain a small business health care tax credit.

Small Employers Eligible for a SHOP

A qualified employer is defined as an employer that meets three requirements:

- is a small employer as defined on the previous page that elects to offer all full-time employees coverage in a QHP through a SHOP;
- and 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.

If a qualified employer ceases to be qualified solely because of an increase in the number of employees, HHS regulations require a SHOP to continue treating the employer as qualified until the employer either fails another eligibility requirement or elects to no longer purchase coverage for its employees through the SHOP.

Multi-state Employers

HHS allows multi-state employers flexibility in offering coverage to their employees and unlike the individual marketplace, the SHOP will have no statutory residency standards for either the qualified employer or qualified employee. Small employers may offer employees coverage through the SHOP serving the employer's principle business address or offer coverage to an employee through the SHOP serving the employee's primary worksite. Employers will be considered a large employer if there are 100 or more employees, regardless of whether those employees are scattered across multiple states or working in one location.

Employer Participation in the SHOP

HHS regulations establish a uniform process and timeline for each employer seeking to become a qualified employer through the SHOP. While employers may begin participating in the SHOP at any time, once an employer begins participating, the employer will be obligated to adhere to an annual employer election period. During that annual employer election period the employer can change to other plan options; changes to another plan option can not be made outside this annual window. Qualified employers who are participating in the SHOP must provide clear information to its employees about the plan selection and enrollment process.

How the SHOPS Will Function

For the most part, a SHOP is required to carry out all of the functions of an Exchange for individuals, but is not required to carry out certain requirements related to individual coverage. HHS does provide some flexibility with design so that a state may choose to merge its individual and small group market risk pools together. This would create one state-based program where the Individual Exchange and SHOP will operate under the same structure, allowing individuals and employees of small businesses to have the same plan options. Starting in 2017, a state-based Exchange could choose to allow insurers in the large group market to offer Qualified Health Plans inside the SHOP as well. If a state does not merge the individual and small group market risk pools, the SHOP must permit each qualified employee to enroll only in QHPs in the small group market. For now, HHS guidance only directs state-based Exchanges to offer health plans that have been certified as Qualified Health Plans. We expect additional information regarding tools, resources and billing options to follow once states establish their SHOPS.

Qualified Health Plans Offered in the SHOP

A Qualified Health Plan (QHP) is a plan that offers the "essential health benefits package". An essential health benefits package must include essential benefits and limits on cost sharing. Plans must be either bronze, silver, gold or platinum coverage that are actuarially equivalent to 60%, 70%, 80% or 90% respectively. It appears that catastrophic coverage, also referred to as "young invincibles" coverage, will also be made available. In addition to offering QHPs, Exchanges are required to offer limited-scope dental benefits if an insurer is willing to provide the pediatric dental benefits that are required by the Act.

Defined Contribution Plans

Most employers have a desire to limit their health insurance expenses to a set dollar amount regardless of what benefits employees select. The combination of federal health reform and the availability of Exchange options, along with many employers' desire to limit health insurance expense, have increased interest in "defined contribution" health benefits.

The SHOPs provide small employers with the ability to offer health coverage in a defined contribution approach, capping employers' insurance contributions while shifting the authority to control terms and cost on to the employees. In a recent report published by the Employee Benefit Research Institute (EBRI), experts have indicated that employers have not moved to this defined contribution approach because they have been hesitant to drop group coverage in favor of individual policies. There is a concern that employees would not be able to secure comprehensive and affordable coverage in the individual market. The SHOP is a solution for this, enabling small employers to limit health care cost to a fixed-dollar contribution that employees can use to purchase health coverage of their choice. The Exchanges provide options that otherwise would be limited or not available to small employers. Additionally, small employers that offer their employees benefits through a state-based or federally-facilitated SHOP will be able to offer such coverage with pre-tax dollars under the employer's cafeteria plan.

Benchmarks Used to Define Essential Health Benefits

HHS provided information to facilitate each state's selection of benchmark plans to be used as reference programs for the development of essential health benefits. QHPs offered by the SHOP must include items and services within 10 statutorily defined benefit categories. The three largest group health insurance products, ranked by enrollment in each state, have been identified and will be used to determine the

scope of benefits provided in these 10 different categories for each state's Exchange QHPs.

Revisiting the Small Business Health Care Tax Credit

In accordance with the Affordable Care Act and as communicated by the IRS, some small employers are entitled to a health care tax credit. Eligible employers must cover at least 50 percent of the cost of single-only health coverage for each employee and must also have fewer than 25 full-time equivalent employees (FTEs). Additionally, employees must have average wages of less than \$50,000 a year.

For tax years 2012 and 2013, the maximum credit is 35 percent for small business employers and 25 percent for small tax-exempt employers such as charities. Starting in 2014, an enhanced version of the credit will be in effect. Additional information about this new version will be added to IRS.gov as it becomes available. In general, on January 1, 2014, the maximum credit will increase to 50 percent and 35 percent, respectively.

If you are a small business employer who did not owe tax during the year, you can still carry the credit back or forward to other tax years. In addition, since the amount of the health insurance premium payments are more than the total credit, eligible small businesses can still claim a business expense deduction for the premiums in excess of the credit.

We will continue to provide updated information regarding the Exchanges as further guidance becomes available. If you have additional questions about the SHOPs, Qualified Health Plans (QHPs) or the Small Business Health Care Tax Credit please feel free to call your HBI consultant.

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