

Appendix C: Instructions for the Small Business Health Options Program (SHOP) Participation (“Tying”) Provision

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1. Overview

The Small Business Health Options Program (SHOP) Participation Provision is a qualified health plan (QHP) certification requirement that links certification of a QHP issuer in the individual market to SHOP participation (45 CFR 156.200(g)). The certification requirement applies when an issuer or a member of the same issuer group as the issuer (defined at 45 CFR 156.20 as a group under common ownership and control, or using a common national service mark) has a share of the small group market in an FFE/FF-SHOP state that exceeds 20 percent, as determined from the most recent earned premiums data reported to HHS¹.

The participation (sometimes called “tying”) provision applies in the following circumstances.

- We interpret 45 CFR 156.200(g)(1) to require that issuers that have greater than 20 percent of the state’s small group market share offer at least one silver-level QHP and one gold-level QHP through the Federally-facilitated SHOP, as a condition of participation in the Federally facilitated individual market Exchange.
- We also interpret 45 CFR 156.200(g)(1) to require that issuers that do not have greater than 20 percent market share in a state’s small group market, but that are members of an issuer group that has at least one member with greater than 20 percent market share, must offer the required silver and gold level coverage through the SHOP as a condition of participation in the individual market Exchange.
- Pursuant to 45 CFR 156.200(g)(2), issuers that do not offer small group market products in a state, but are members of an issuer group that has at least one member with greater than 20 percent market share, would not have to offer the required SHOP coverage

¹ “Medical Loss Ratio Data and System Resources.” <http://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.html>

themselves. Instead, another issuer in that issuer’s group would do so. In light of the fact that we intend the tying provision to fall primarily on issuers with greater than 20 percent market share, we interpret 45 CFR 156.200(g)(2) to require that the issuer meeting the requirement in these circumstances be an issuer whose small group market share exceeds 20 percent.

Dental issuers are not required to comply with the SHOP Participation Provision.

2. Purpose

This appendix guides issuer through the SHOP Participation Provision and provides instructions for completing the Federally-facilitated SHOP Participation Provision Supporting Documentation and Justification for the Federally-facilitated Individual Marketplace form.

3. SHOP Participation Provision Data Requirements

To complete this section, you need the following information:

1. SHOP participation provision list of issuers with greater than 20% of a state’s small group market (identifies issuers with greater than 20% of the state’s small group market to help determine whether an issuer must comply with the provision) posted on zONE and RegTAP².
2. The Federally-facilitated SHOP Participation Provision Supporting Documentation and Justification for the Federally-facilitated Individual Marketplace form. Please note that all qualified health plan (QHP) issuers must submit the Federally-facilitated SHOP Participation Provision Supporting Documentation and Justification for the Federally-facilitated Individual Marketplace form. Dental issuers do not have to comply with the SHOP Participation Provision.

4. Instructions

Each QHP issuer filing a QHP to be sold through a Marketplace in the individual market must complete the Federally-facilitated SHOP Participation Provision Supporting Documentation and Justification for the Federally-facilitated Individual Marketplace form for each applicable state Marketplace. The form identifies issuer’s method of compliance with Exchange-SHOP tying requirement, and is required for all individual issuers. This supporting documentation and justification document can be found at <http://cciio.cms.gov/programs/exchanges/qhp.html>.

Select the applicable box to describe how the issuer will comply with 45 CFR 156.200(g).

“We” and “our” in these statements refer to the applicant issuer completing this form.

- Neither we nor any issuer in our issuer group has a share of this State’s small group market greater than 20%, as determined by the most recent list of these issuers published by HHS.

² “Application of the SHOP Tying Provision By Issuer.”
https://www.regtap.info/uploads/library/SHOP_Tying_Provisions_by_Issuer_5CR_052114.pdf

- We have a share of this State’s small group market greater than 20% as determined by the most recent list of these issuers published by HHS and we have filed QHP applications for silver and gold plans in this state’s FF-SHOP.
- Another issuer in our issuer group has a share of this State’s small group market greater than 20% as determined by the most recent list of these issuers published by HHS, we have a share of this State’s small group market less than 20% as determined by the most recent list of these issuers published by HHS, and we have filed QHP applications for silver and gold plans in this state’s FF-SHOP.
- Another issuer in our issuer group has a share of this State’s small group market greater than 20% as determined by the most recent list of these issuers published by HHS, we do not participate in this state’s small group market, and another issuer in our issuer group with greater than 20% small group market share (identified below) has filed QHP applications for silver and gold plans in this state’s FF-SHOP.

If you select box 4, include the issuer name, HIOS ID, and NAIC code from your issuer group at the bottom of the form.

Save the form using the title of the document and the associated issuer ID (to the extent possible). In the description field, enter a description of the document (such as SHOP Participation Justification). Upload the document into the Benefits & Service Area Module. Select Other as the document type. The file name including its full path cannot exceed 255 characters when uploading in the HIOS system.

Examples:

- SHOPParticipationJustification_12345
- 12345_SHOPTyingForm
- SHOPJustification_12345