

Chapter 17: Small Business Health Options Program Participation (“Tying”) Provision

1. Overview

The Small Business Health Options Program (SHOP) Participation Provision is a Qualified Health Plan (QHP) certification requirement that links the certification of a QHP issuer in the individual market to SHOP participation (45 *Code of Federal Regulations* [CFR] 156.200[g]). The certification requirement applies when an issuer or a member of the same issuer group as the issuer (defined in 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 a Federally-facilitated Exchange/Federally-facilitated SHOP (FF-SHOP) state that exceeds 20 percent, as determined from the most recent earned premiums data reported to the Department of Health and Human Services (HHS).¹

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 FF-SHOP, as a condition of participation in the individual market of the Federally-facilitated Marketplace (FFM).
- 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 of the FFM.
- Pursuant to 45 CFR 156.200(g)(2), issuers that do not offer small-group market products in a state, but that 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 themselves. Instead, another issuer in that issuer’s group would do so. In light of the fact that the tying provision should 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.

The SHOP participation provision list of issuers with greater than 20 percent of a state’s small-group market (identifies issuers with greater than 20 percent of the state’s small-group market to

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

help determine whether an issuer must comply with the provision) is posted on zONE and REGTAP.

Issuers subject to the provision are not required to submit separate documentation attesting to their compliance. Compliance with QHP certification standards will be verified based on the issuer's plan offerings.

Issuers will fall into one of the four categories below:

1. Neither the issuer, nor any issuer in the issuer group has a share of their State's small group market greater than 20%, as determined by the most recent list of these issuers published by HHS.
2. The issuer has a share of their State's small group market greater than 20% as determined by the most recent list of these issuers published by HHS and the issuer has filed QHP applications for silver and gold plans in this state's FF-SHOP.
3. Another issuer in the issuer's group has a share of the State's small group market greater than 20% as determined by the most recent list of these issuers published by HHS, the issuer has 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 the issuer has filed QHP applications for silver and gold plans in this state's FF-SHOP.
4. Another issuer in the issuer's group has a share of the State's small group market greater than 20% as determined by the most recent list of these issuers published by HHS, the issuer does not participate in this state's small group market, and another issuer in the issuer group with greater than 20% small group market share has filed QHP applications for silver and gold plans in this state's FF-SHOP.