



Date: October 27, 2017

Title: CMS to Allow Small Businesses and Issuers New Flexibilities in the Small Business Health Options Program (SHOP) For Plan Year 2018

In the recently released 2019 Payment Notice proposed rule, the Department of Health and Human Services (HHS) proposed new rules pertaining to the implementation of the Small Business Health Options Program (SHOP) Exchanges. On May 15, HHS announced its intent to propose enabling small businesses to enroll in SHOP plans directly through the agent, broker, or insurer of their choice and receive a simplified eligibility determination for tax credits on Healthcare.gov.¹ These changes would reduce administrative burdens and allow SHOPS to operate in a leaner, more flexible fashion—promoting both financial stability and fiscal responsibility while maintaining access to the small business tax credit for qualifying small employers.

Specifically, HHS proposed to reduce the regulatory burdens imposed on SHOP participants by removing several requirements to provide functionality not expressly required by the Patient Protection and Affordable Care Act (PPACA). These proposals, if finalized, could change how small employers and employees enroll in SHOP plans for plan years beginning on or after January 1, 2018. If finalized, these changes would become effective as of the effective date of the final rule but would be applicable to all 2018 plans, regardless of whether they began after or before the effective date of the rule. The Federally-facilitated SHOPS (FF-SHOPs) and State-Based Exchanges using the Federal Platform for SHOP (SBE-FP SHOPS) would operate as described in the proposed rule as of the effective date of the rule, for plan years beginning on or after January 1, 2018. State-based Exchanges operating their own SHOP would have the flexibility to operate their SHOP in a leaner fashion similar to the FF-SHOPs and SBE-FP SHOPS, for plan years beginning on or after January 1, 2018, or continue to offer SHOP functionalities as they do now.

Under the proposals in the 2019 Payment Notice proposed rule, which the FF-SHOPs and SBE-FP for SHOP states would adopt if finalized, employers would enroll in a SHOP plan directly with an insurance company offering SHOP plans, and could use the assistance of a SHOP-registered agent or broker. Employers would still need to obtain a determination of eligibility by going to HealthCare.gov.

¹ <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/The-Future-of-the-SHOP-CMS-Intends-to-Allow-Small-Businesses-in-SHOPs-Using-HealthCaregov-More-Flexibility-when-Enrolling-in-Healthcare-Coverage.pdf>

HHS understands that the changes outlined in the proposed rule, if finalized, would result in a departure from current operations for participating SHOP Qualified Health Plan (QHP) issuers, agents and brokers, employers, and enrollees. We recognize that if the proposed rule is finalized, it would be effective upon the effective date of the final rule, and thus could take effect after the first date that employers can complete an enrollment that takes effect on or after January 1, 2018. HHS wishes to minimize any operational challenges resulting from this mid-plan year transition, particularly for the small number of employers enrolling between the time when rates become available for plan years beginning in 2018 and when this rule would go into effect.

In the FF-SHOPs and SBE-FPs for SHOPs, if the proposals are finalized and take effect after rates become available for plan years beginning in 2018, employers participating in an FF-SHOP who complete the enrollment process under the current system (e.g., through HealthCare.gov) for a plan that would take effect on or after January 1, 2018, but prior to the effective date of the final rule, might receive billing and premium aggregation services through the FF-SHOP for only a short time period in 2018. If FF-SHOP enrollment processes were then discontinued when the rule took effect, issuers and small employers could experience a disruption in the processing of payments or subsequent enrollments, which could result in loss of coverage due to non-payment of premiums and might affect an employer's ability to claim the Small Business Health Care Tax Credit. This approach could also result in complex data transfers between a FF-SHOP and issuers, and issuers would need to continue paying the user fees for at least a portion of plan year 2018. Not allowing the proposed changes to SHOPs to be operationalized as soon as possible for plan year 2018 could cause SHOPs to continue to incur financial and operational burdens, and would undermine the goals of these changes--namely, financial sustainability, market stability, and reducing overall burden for SHOP insurance companies and small employers.

To mitigate these operational complexities for issuers, agents and brokers, and employers, while HHS considers comments to the proposed rule, HHS will permit FF-SHOPs and SBE-FPs for SHOP, QHP issuers, SHOP-registered agents and brokers, and employers to begin operating in accordance with the approach for SHOP enrollment proposed in the rule, starting on the first date on which employers can complete a group enrollment for a plan year that would take effect in 2018 (e.g. for plans with effective dates on or after January 1, 2018). SBEs operating their own SHOP will have this same flexibility, and their relevant stakeholders (e.g., issuers and agents and brokers) upon direction from these SBEs.

Issuers in the SHOPs that begin operating in accordance with the approach proposed in the rule starting on the first date on which employers can complete a group enrollment for a plan year that would take effect in 2018 would avoid the complexities described above. Therefore, they would not pay any user fees to HHS for plan years beginning on or after January 1, 2018 for FF-SHOP and SBE-FP for SHOP enrollments completed under the proposed new enrollment approach, even if HHS decide not to finalize the proposals, or the finalized rule does not take effect until sometime later in 2018.

Issuers that intend to use the federal platform for SHOP for enrollments for plan years beginning on or after January 1, 2018 should inform HHS of their intention to do so as soon as possible, so that HHS may work through the necessary operational, technology, and transition issues to

establish manual procedures to accommodate them. Manual procedures could include premium aggregation services and processing of enrollments in SHOP QHPs.

Employers that have enrolled in FF-SHOP or SBE-FP for SHOP coverage for plan years that began in 2017 will be able to continue using HealthCare.gov in 2018 for enrollment and premium payment, until their current plan year ends and it's time to renew. Eligible employers can still sign up for SHOP coverage taking effect in 2017 on HealthCare.gov until November 15, 2017.