

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information & Insurance Oversight
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Subject: Guidance on State Alternative Applications for Health Coverage through the Small Business Health Options Program (SHOP)

Purpose and Scope of Guidance

Beginning on October 1, 2013, the new SHOP Marketplaces will use single employer and employee applications to determine eligibility for participation in SHOP and enrollment in Qualified Health Plans (QHPs) through the SHOP.

On May 31, 2013, CMS released the model single employer and single employee applications for SHOP coverage. These model SHOP applications are available for review at <http://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/> and on the Collaborative Application Lifecycle Tool (CALT) and State Exchange Resource Virtual Information System (SERVIS). The model SHOP applications, in both their paper¹ and online versions, will be the sole applications used by the Federally-facilitated SHOPS to make SHOP eligibility determinations and facilitate enrollment in SHOP qualified health plans. State-based SHOPS may choose to use these model SHOP applications, or may use alternative SHOP applications that are approved by CMS. This guidance is intended to provide background on the process for development, review, and approval of alternative SHOP applications.

Designing an Alternative Application

States may submit for approval alternative SHOP applications that can be tailored to accommodate state preferences and policies, while also reflecting the general principles of the model application and complying with the applicable provisions of law, as described below. This section outlines the parameters for creating an alternative application and also identifies areas where a formal approval of modifications to the model application is not needed.

¹ Under a proposed rule, CMS proposes relieving SHOPS of having to accept paper and telephone applications. (Program Integrity: Exchange, SHOP, Premium Stabilization Programs, and Market Standards, 78 Fed. Reg. 37032 (June 19, 2013) (amending 45 C.F.R. §155.730). If the rule is finalized as proposed, when it becomes effective states electing not to accept paper and/or telephone applications will not need to address to the portions of this memo specific only to paper and/or telephone applications.

General Principles

States must adhere to regulations implementing the Affordable Care Act in the areas of SHOP applications, eligibility standards, and eligibility determinations in developing alternative applications. In particular, states should be guided by the SHOP model applications and by 45 CFR 155.730. Some examples of the aspects of the application that are minimally required for alternative application approval include:

1. *An alternative application must request information necessary for determining SHOP eligibility.* All SHOP single employer applications must contain the required elements set forth in 45 CFR 155.730(b). For example, a state must collect information on the employer application to determine that the employer is a qualified employer under 45 CFR 155.710(b), such as that the employer is a small employer and offers all full-time employees coverage in a QHP through a SHOP. Consistent with 45 CFR 155.730(e)(2), all SHOP single employee applications must request all information necessary to establish that the employee has been offered coverage by an eligible SHOP employer and to complete enrollment for the employee and any dependents who will be enrolled in SHOP coverage.
2. *States must ask only those questions that are necessary for determining eligibility for SHOP and enrolling in a Qualified Health Plan (QHP) through the SHOP.* Questions that are not essential to these purposes cannot be asked. For example, a state may not ask questions related to individual market eligibility determinations or about eligibility for advance payments of the premium tax credit or cost sharing reductions, such as questions about the affordability of employer sponsored insurance. (See 45 CFR 155.715(c)).
3. *Requests for information from application filers should minimize the burden on the applicant.* For example, we recommend that online applications be structured in a dynamic manner that will tailor the information required from an applicant based on the applicant's circumstances and responses to previous questions.

Customizing the Model Application (No Approval Required)

There are a number of ways that a state may adapt the model applications without need for formal approval from CMS as an alternative application. These include:

1. Adding the state Marketplace or SHOP program names and contact information to the application. It is important that the state's application provide the appropriate contact information for applicants to mail the paper application, contact the applicable call center, and access online help tools.
2. Changing the colors, logos, icons, and pictures on the model application to reflect branding appropriate for that state. This includes removing CMS logos from the application.
3. Adding language to the privacy statement or rights and responsibilities section of the application, if required by state law or regulation.
4. Removal of the question about text messaging if the state does not plan to send text messages to individuals.

Modifications that Minimize Consumer Burden (No Approval Required)

States may add or change the model application questions so that their application reflects the eligibility policies in place in the state. Formal approval from CMS is not required for these changes if they do not add burden on the consumer. Examples of these types of acceptable modifications include:

1. Removing questions when a state elects to address an issue post-eligibility.
2. Tailoring questions to make them more state-specific, such as modifying the employer's plan election options to conform to the state's employee choice policy.
3. Changing the order of questions, as long as the change does not impede the online application's dynamic nature.

Development and Approval of Alternative Applications – Modifications that Require CMS Approval

If your state's application differs from the model application in ways other than those described in the previous sections (which do not require CMS approval), CMS will review these changes to ensure that the state's application is consistent with the applicable statute and regulations, and maintains the principle of minimizing burden on the consumer.

Process for Submission and Approval of Alternative Applications

For State-based SHOPS, the state's Marketplace Blueprint application will indicate the state's intent to use either the model SHOP applications or CMS-approved alternative SHOP applications. As part of the Blueprint application, State-based SHOPS proposing to use an alternative application should submit the material described below for CMS review and approval. For State-based SHOPS that develop alternative applications, decisions pertaining to the approval of the state's applications will be conferred by the Center for Consumer Information and Insurance Oversight (CCIIO). CMS is committed to providing states with a streamlined review process.

For the paper application, states proposing to use an alternative application should submit a full copy of the proposed alternative form and any accompanying supplements and instructions. For the online application, the state may submit: 1) a questionnaire document in a format similar to the model application online questionnaires; 2) a packet of screenshots depicting the screens an applicant completing the alternative application would see; and/or 3) a flow chart demonstrating the logic that takes applicants between sections and questions on the online application. CMS may also request an interactive demonstration of the proposed online application.

States proposing to use an alternative application should also provide an analysis document that identifies and describes key differences between the model application and the state's alternative application, in terms of the modifications that require CMS approval. Differences that do not require CMS approval do not need to be included in this document, but would be helpful to note them, and doing so may expedite the review process. States using a common IT vendor to develop their core applications can submit one analysis document for the vendor-developed core

applications, along with a state-specific analysis describing only the state-specific modifications made, or proposed, to the core application that represents differences from the model application. Upon receipt of a submission, CMS will contact the state to confirm receipt and conduct its review.

Approval of Alternative Applications for Coverage Year 2014

CMS recognizes that a unique set of circumstances exist for State-based SHOPS which are implementing applications for SHOP coverage beginning on January 1, 2014. Specifically, we are aware of the challenges posed by the amount of development work that states had completed on their applications and eligibility systems prior to the release of the model application and the release of this guidance. CMS may offer an expedited approval process, as necessary, for states and CMS will allow for conditional approval of an alternative application for 2014.

In order to receive conditional approval of an alternative application, a state must: 1) attest that the alternative application meets, or will meet by a certain date, all applicable regulatory requirements described in the “General Principles” section of this document²; 2) attest that the design of the state’s alternative application took into consideration, or aligns with, the proposed model SHOP applications released on January 29, 2013; and 3) provide the material described in the section above, “Process for Submission and Approval of Alternative Applications,” for CMS review. A state must also submit a proposed timeline for addressing any recommendations identified through CMS’ review.

In order to receive full approval from CMS, a state must demonstrate that all applicable regulatory requirements are met by doing the following: 1) modifying its application based on any recommendations identified by CMS’ review, or modifying its application to align with the model application (this includes modifications to core application functionality that is shared across multiple states, through the use of a common IT vendor; CMS will evaluate the state’s proposed timeline for such modifications and will arrive at an agreed-upon timeline between CMS and the state); and 2) subsequently submitting evidence of the modifications, or submitting evidence indicating alignment with the model application, for CMS review. (This evidence can be submitted as part of regular or ad-hoc reviews conducted by CMS, such as Exchange Life Cycle Reviews, Gate Reviews, Design Reviews, and/or Implementation Reviews.)

States intending to implement alternative applications for coverage year 2014 may begin requesting conditional approval from CMS upon the release of this guidance and will need to receive full approval of their applications in 2014 for coverage year 2015. CMS will make every effort to work with states in achieving conditional or full approval to states in as timely a manner as possible.

² To receive CMS’s conditional approval, an alternative application must, at a minimum, at the time of approval, meet the requirement of requesting the information necessary for accurately determining SHOP eligibility. (See general principle 1).

Technical Assistance

CMS is committed to providing states with an effective and timely technical assistance process to states in their development of alternative SHOP applications. CMS remains available to provide technical assistance to states to facilitate adoption of the model SHOP applications or in their development of alternative SHOP applications. CMS staff is available to review draft materials, participate in discussions, and join interactive demonstrations with states. Questions from State-based SHOPS regarding this guidance can be directed to Ronnie Johnson in the State Exchange Group at CCIIO at 410-786-4908 or Jenny Chen in the State Exchange Group at CCIIO at 301-492-5156.