



Health Care Reform

LEGISLATIVE BRIEF

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Small Business Health Options Program (SHOP)

The Affordable Care Act (ACA) required each state to establish an online competitive marketplace, called an Exchange, where individuals and small businesses may purchase health insurance, beginning in 2014. The Small Business Health Options Program (SHOP) is the Exchange component for small businesses. According to the Department of Health and Human Services (HHS), the SHOP gives small businesses the same purchasing power as large businesses and will allow small employers to provide their employees with a choice of health plan options.

SHOP EXCHANGE OPTIONS FOR STATES

Each Exchange must include both an individual market component and a SHOP component for small employers. A state may elect to establish and operate its own **state-based Exchange** that includes both the individual market and SHOP components. HHS operates a **federally-facilitated Exchange** (FFE) in each state that did not establish its own Exchange. The FFE includes both individual market and SHOP components.

Alternatively, a state that does not establish its own Exchange may **partner with HHS** so that some FFE functions can be performed by the state. Also, a state may elect to operate its own SHOP for small employers and let HHS run the individual market Exchange in the state.

ELIGIBLE SMALL EMPLOYERS

Small employers with up to 100 employees will be eligible to participate in the SHOP. However, until 2016, states may limit participation to businesses with **up to 50 employees**. Beginning in 2017, states may allow businesses with more than 100 employees to participate in the SHOP.

To participate in a SHOP, an employer must qualify as a "small employer" for purposes of Exchange participation. In addition, the employer must:

- Elect to offer, at a minimum, all full-time employees coverage in a qualified health plan (QHP) through a SHOP; and
- Either have its primary office in the Exchange service area and offer all its employees coverage through that SHOP, or offer coverage to each eligible employee through the SHOP servicing the employee's primary worksite.

In the SHOP, there are no residency standards for either the employer or employee. Small employers must either offer employees coverage through the SHOP serving the employer's primary business address or offer coverage to an employee through the SHOP serving the employee's primary worksite.

The SHOP's eligibility rules permit an employer to participate in more than one Exchange. Thus, multi-state employers may participate in multiple SHOPs. However, an employer may only establish one federal SHOP (FF-SHOP) account per state. In addition, issuers will not be required to determine employee counts for FF-SHOP eligibility purposes. Employers will attest that they employ 50 or fewer employees through information provided directly to the FF-SHOP.

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Participation in a SHOP is voluntary for eligible small employers. However, beginning in 2014, a small employer that qualifies for the ACA's small business health care tax credit must purchase coverage through a SHOP to be eligible for the tax credit. For 2014, the maximum small business health care tax credit increases from 35 percent to 50 percent of employer contributions toward health coverage (from 25 percent to 35 percent for tax-exempt small employers).

SHOP COVERAGE—EMPLOYEE CHOICE MODEL

A SHOP must allow employers the option to offer employees all QHPs at a level of coverage chosen by the employer—bronze, silver, gold or platinum. This is called the “**employee choice model**.” Under the employee choice model, the employer chooses a level of coverage and a contribution amount and employees then select any QHP at that level.

SHOPS may also allow a qualified employer to choose one QHP for its employees. The [2015 Notice of Benefit and Payment Parameters Final Rule](#) also allows employers in the FF-SHOP to offer their employees (and dependents, if desired) a single **stand-alone dental plan** or a choice of all stand-alone dental plans at a single dental actuarial value level after the employee choice model becomes available.

The FF-SHOP will give employers the option of offering only a single QHP in addition to the employee choice model.

Delay for 2014

On June 4, 2013, HHS issued a [final rule](#) that **delayed implementation of the employee choice model as a requirement for all SHOPS for one year, until 2015**. According to HHS, this approach provides all SHOPS (both state SHOPS and the FF-SHOP) with additional time to prepare for the employee choice model.

Under this approach, for **plan years beginning on or after Jan. 1, 2014, and before Jan. 1, 2015**:

- **State-run SHOP Exchanges** may provide the employee choice model for small employers in 2014, but are not required to provide this model until 2015. Many state-run Exchanges offer employee choice to small employers in 2014, including California, Colorado, Massachusetts, Minnesota and New York, among others.
- **The FF-SHOP** will not provide the employee choice model for small employers in 2014. For 2014 plan years, the FF-SHOP will assist employers in choosing a single QHP to offer their qualified employees.

Transition Policy for 2015

Beginning in 2015, HHS stated that the FF-SHOP will give employers the option of offering only a single QHP in addition to the employee choice model. However, on May 16, 2014, HHS issued a [final rule](#) that provides a **one-year transition policy** for the employee choice model for certain SHOPS.

This transition policy allows a state's Insurance Commissioner to recommend that employee choice **not be implemented in that state in 2015** if the Commissioner can adequately explain that this would be in the best interest of small employers (and their employees and dependents), given the likelihood that implementing employee choice would cause issuers to price their products and plans higher in 2015 than they would otherwise price them, due to the issuers' beliefs about adverse selection.

The state Insurance Commissioner's recommendation must have been:

- Made in writing; and
- Based on concrete evidence, including (but not limited to) discussions with those issuers expected to participate in the SHOP in 2015.

HHS noted that the decision to delay employee choice in 2015 must be made sufficiently in advance of the end of the QHP certification application window, so that issuers can make informed decisions about whether to participate in the SHOP. In the FF-SHOPS, state Insurance Commissioners were required to submit their recommendations to HHS by

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June 2, 2014. HHS anticipated that its decision regarding the implementation of employee choice in states with an FF-SHOP would be made by June 10, 2014.

This is a one year transition policy and applies only for 2015. **Unless HHS issues guidance providing otherwise, employee choice will be available in all FF-SHOPs in 2016.**

FF-SHOP States Not Implementing Employee Choice in 2015

As anticipated, on June 10, 2014, HHS released its [decisions](#) regarding the recommendations submitted by state Insurance Commissioners for implementing employee choice in states with an FF-SHOP. In total, HHS approved the recommendations of **18 states with an FF-SHOP** to not implement employee choice in 2015, including:

Alabama	Alaska	Arizona	Delaware	Illinois	Kansas
Louisiana	Maine	Michigan	Montana	New Hampshire	New Jersey
North Carolina	Oklahoma	Pennsylvania	South Carolina	South Dakota	West Virginia

Employers in these states will be able to offer their employees **a single health plan and a single dental plan** through the SHOP Exchange.

The remaining **14 states with FF-SHOPs** will have employee choice available to small businesses in 2015, including:

Arkansas	Florida	Georgia	Indiana	Iowa	Missouri	Nebraska
North Dakota	Ohio	Tennessee	Texas	Virginia	Wisconsin	Wyoming

Employers in these states will be able to offer their employees either:

- A single health and dental plan; or
- A choice of health plans in a single metal level and dental plans in a single coverage level.

Most **state-run SHOPs** began offering the employee choice model to small employers in 2014. HHS will post a list of state-run Exchanges that will offer employee choice in 2015 once all states have reported their decisions to HHS.

ENROLLMENT

A SHOP must allow a qualified employer to purchase coverage for its small group **at any point during the year.** Coverage effective dates are based on a date selected by the employer during the application and enrollment process.

ENROLLMENT PROCESS COMPLETED	EARLIEST EFFECTIVE DATE
Between the 1st and 15th day of the month	First day of the following month
Between the 16th and last day of the month	First day of the second following month

Under the FF-SHOP, employers must complete the enrollment process by the 15th of any month for coverage to take effect on the first day of the following month. Otherwise, the earliest coverage effective date is the first day of the second following month. For example, if an employer completes the enrollment process on June 16, 2014, the group's

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earliest effective date will be Aug. 1, 2014. The employer's plan year must consist of the 12-month period, beginning with the employer's effective date of coverage. Open enrollment and renewal periods will occur on a rolling basis throughout the year.

On May 9, 2014, HHS updated a [series of slides](#) that describe a proposed enrollment process for the FF-SHOP for 2015. The slides describe the following ten-step enrollment process:

Step One	Employer completes FF-SHOP application and provides a roster of full-time employees
Step Two	FF-SHOP determines if employer is eligible (if determined not eligible, employer may appeal)
Step Three	Employer chooses a coverage effective date, which must be the first of a month and within the current quarter
Step Four	Employer selects a deadline for employee enrollment and decides whether to offer stand-alone dental plan (SADP) coverage and dependent coverage
Step Five	Employer decides whether to offer employee choice (or selects a QHP/SADP if not using employee choice). If using employee choice, employer selects a level of coverage (that is, bronze, silver, gold or platinum) and determines level of employer contribution
Step Six	Employer offers coverage to full-time employees (and others eligible to enroll) and notifies them of enrollment deadline
Step Seven	The FF-SHOP notifies person offered coverage of their eligibility determination (and offers an appeal to those determined ineligible)
Step Eight	Employees make plan selection(s) or waive coverage
Step Nine	After employee election period closes, if applicable minimum participation rate is met, employer finalizes enrollment. The first month's premium can be calculated and charged to the employer at this step. (Outside of Nov. 15–Dec. 15, employers not meeting the applicable minimum participation rate will not be able to complete the enrollment process)
Step Ten	Once the group enrollment process is complete, an XML file is established for the group, reflecting the QHPs/SADPs selected by employees

During the application process, SHOPS may not collect any information other than what is required to make SHOP eligibility determinations or complete enrollment through the SHOP. SHOPS are prohibited from performing any individual market eligibility determinations or verifications, including, for example, making eligibility determinations for advance payments of the premium tax credit and cost-sharing reductions in the individual market Exchange.

Also, employers may add employees for coverage after the initial enrollment process is complete. These employees will need to meet the employer's new hire waiting period established at the time of initial enrollment. Available waiting period options in the FF-SHOP include 0, 15, 30, 45 and 60 days. Coverage effective dates for new hires are always the first of the month. Because of operational limitations, the FF-SHOP allows employers to make changes to their new hire policy only upon their annual renewal; mid-year changes are not currently possible.

Employees and dependents may enroll outside of the annual renewal period if there is a special enrollment event and if the event is reported to the FF-SHOP within a specified period of time. Coverage effective dates under the special

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enrollment period will depend on the employee's specific situation (for example, marriage, losing minimum essential coverage or gaining access to new QHPs as a result of a permanent move).

Online Enrollment Delay

On Nov. 27, 2013, HHS [announced](#) that **online enrollment in the FF-SHOP will not be available until November 2014**. Employers that wish to enroll their employees in SHOP coverage for 2014 will do so through "direct enrollment" with an agent, broker or insurer offering a certified SHOP plan. The direct enrollment process applies in states with FF-SHOPs only. States that operate their own SHOPs will still be permitted to offer online enrollment.

HHS released a set of [FAQs](#) on how FF-SHOP enrollment will function until November 2014. Although online enrollment is expected to be available for the 2015 plan year enrollment, CMS issued an [FAQ](#) clarifying that the FF-SHOP will not support COBRA transactions as of Nov. 15, 2014. CMS expects to support these transactions as part of a future release.

Role of Brokers and Agents

Where permitted under state law, HHS will work with agents and brokers to assist consumers in Exchange enrollment. For the FF-SHOP, agents and brokers will work with consumers using the Exchange website to complete the employer and employee applications. However, due to the online enrollment delay for 2014, brokers and agents will help consumers enroll in the FF-SHOP by using the direct enrollment process until online enrollment becomes available.

If permissible under state law, the 2015 Notice of Benefit and Payment Parameters Final Rule allows small employers to enroll in a state-run SHOP or the FF-SHOP through an **agent's or broker's own website**. This change is effective for plan years beginning on or after Jan. 1, 2015, if the SHOP has the technical capability to make this possible. HHS does not anticipate that the FF-SHOPs will make this functionality available in 2015.

When assisting employers and employees in the FF-SHOP in 2015, an agent or broker will generally use the **SHOP Enrollment Pathway**. In this pathway, licensed and registered agents and brokers will connect to the FF-SHOP through the SHOP Agent Broker Portal available through [HealthCare.gov](#).

- The agent or broker logs in to the Portal with their MyAccount, receives an authorization from an employer and assists with the application, enrollment process and case management for employers and employees.
- An employer must create their own log-in through HealthCare.gov and confirm the authorization of an agent or broker before the agent or broker may gain access to their account.
- All agent and broker authorizations in the SHOP will be established at the employer-level; employees cannot authorize a separate agent or broker, but can enroll with the assistance of their employer-selected and authorized agent or broker.

MINIMUM PARTICIPATION REQUIREMENTS

SHOPs may impose minimum participation requirements that are based on the rate of employee participation in the SHOP (and not the rate of employee participation in any particular QHP or QHPs of any particular issuer), if permitted by state law. If an employer does not meet the minimum participation requirement, its ability to enroll through the SHOP may be restricted to a limited enrollment period (Nov. 15–Dec. 15).

The default minimum participation rate for the FF-SHOP is 70 percent. The rate is calculated as the number of qualified employees accepting coverage under the employer's group health plan, divided by the number of qualified employees offered coverage (excluding any employee who, at the time the employer submits the SHOP application, is enrolled in coverage through another employer's group health plan or through a governmental plan, such as Medicare, Medicaid or TRICARE).

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The FF-SHOP may use a different minimum participation rate in a state if state law sets a minimum participation rate or if there is a higher or lower minimum participation rate that is customarily used by the majority of QHP issuers in that state for products in the state's small group market outside of the SHOP.

In addition, if an issuer conducting direct enrollment in the FF-SHOP in 2014 demonstrates to HHS that it would be operationally impracticable for it to apply the FF-SHOP minimum participation rate, HHS has indicated that it will not take any adverse action against the issuer for failing to impose the applicable minimum participation rate. These issuers have the following options for plan years beginning in 2014:

- Do not impose a minimum participation rate; or
- Use a minimum participation rate and methodology that is allowable in the relevant state small group market. However, issuers may not deny enrollment to any employer group that is eligible to enroll in SHOP coverage and that meets the FF-SHOP minimum participation rate.

Counting Individuals

On July 5, 2013, HHS issued [FAQs](#) on the FF-SHOP that address the minimum participation requirements. The FAQs provide the following guidance on who is counted when determining the minimum participation rate in the FF-SHOP:

- **Out-of-state Employees.** An employer that has worksites in more than one state may establish one FF-SHOP account serving all work locations or multiple SHOP accounts in each state where employees have a primary worksite. If one account is established, employees in all states will be considered when calculating the employer's FF-SHOP participation rate. If multiple accounts are established, employees on each employee roster in each state will be considered separately when calculating the FF-SHOP participation rate.
- **Retirees.** Retirees offered coverage will be counted in the employer's participation rate.
- **COBRA Enrollees.** An employer's COBRA enrollees will be included in the participation rate calculations.

Enrollment Period and Guaranteed Availability

Small employers cannot be denied guaranteed availability of coverage for failure to satisfy a SHOP's minimum participation requirements. During the special enrollment period (Nov. 15—Dec.15), an employer is not subject to a minimum participation requirement and any employer otherwise qualifying for FF-SHOP coverage will be able to enroll in the FF-SHOP regardless of its level of employee participation. Outside of this period, the minimum participation requirement will be enforced for new groups applying for FF-SHOP coverage.

Outside of the annual special enrollment period, the FF-SHOP will hold an employer's application until the employer meets the 70 percent minimum participation requirement (or the threshold required in that employer's state). The FF-SHOP will not send any information to issuers until the group has met the minimum participation requirement. In addition, HHS issued the following guidance on its technical assistance portal regarding how the minimum participation requirements apply to small employers purchasing coverage through the SHOP.

- The FF-SHOP will not impose minimum participation requirements for renewals occurring between Nov. 15 and Dec. 15 of each year.
- If a state-based SHOP did not offer guaranteed availability without regard to minimum participation during the Nov. 15-Dec. 15, 2013 enrollment period, it cannot impose minimum participation requirements in 2014.

PREMIUMS

The ACA limits the factors that can vary premium rates in small group and individual markets for non-grandfathered plans, effective for 2014. Health insurance issuers will only be able to vary premium rates based on age, geography, individual or family enrollment and tobacco use.

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The geographic area premium rating factor in the small group market must be based on the employer's **principal business address** in each state. Thus, the principal address entered by the employer on the employer application will be used for rating purposes for the entire group.

Premium Changes

SHOP issuers may not vary premium rates charged to employers during a plan year. HHS' [final rule](#) from Oct. 30, 2013, requires health insurance issuers in the small group market to make changes to premium rates at a uniform time that is **no more frequently than quarterly**. Any changes to premium rates must have effective dates of Jan. 1, April 1, July 1 or Oct. 1.

These quarterly rates will apply to both new and renewing business for the entire plan year, depending on the plan year of the employer. For example, if an employer's plan year begins on Feb. 1 and the issuer adjusted its index rate on Jan. 1, the issuer's Jan. 1 rate would apply to the employer's plan only on Feb. 1. Any new rates set by the issuer after Feb. 1 would apply only upon the plan's renewal the following year.

Due to current system limitations, quarterly rate updates cannot currently be processed for QHPs in the FF-SHOP. **Until the FF-SHOP is able to process quarterly rate updates, the final rule requires issuers to set rates for non-grandfathered plans in the small group market on an annual basis market-wide.** HHS anticipates that the FF-SHOP will be capable of processing quarterly updated rates effective for the third quarter of 2014 (that is, beginning with rates effective no sooner than July 1, 2014). In a state in which the individual and small group risk pools were merged by the state, an issuer would be able to adjust its index rate and plan-specific pricing no more frequently than **annually**.

Rating Method

On Oct. 31, 2013, HHS released [FAQs](#) on premium calculations under the FF-SHOP. These FAQs clarify that the total premium charged to an employer group under the FF-SHOP is determined by summing the premiums of each of the participants and beneficiaries covered under the plan. Under the individual rating method, the premium for each individual covered participant and beneficiary under a specific plan may be adjusted using allowable rating factors, which include age and tobacco usage.

A **composite rating method** may also be used in the FF-SHOP if requested by the employer or required by state law. Under this approach, a total premium is calculated by adding up the per-member premiums for each employee enrolling in coverage. The total amount is then divided by the number of employees to produce a uniform premium rate. The FF-SHOP is able to accommodate composite rating for employees only. Premiums for employees' dependents will be determined on an individual rating basis.

When a composite rate is used, the average employee premium rate is locked in for the entire plan year, regardless of whether any employees enter or leave the group during the plan year.

The 2015 Notice of Benefit and Payment Parameters Final Rule prohibits composite premium rating in the FF-SHOPs when an employer elects the employee choice model. According to HHS, having employees spread across multiple plans would make composite rating complex and may discourage issuers from offering QHPs in an employee choice environment. This prohibition applies only to the FF-SHOP; state-based SHOPs may set their own policies. The final rule also extends this limitation on composite premium rating to stand-alone dental plans when an employer opts to offer employees the choice of all stand-alone dental plans at a dental actuarial value level.

Premium Aggregation and Calculator

SHOPs must include a **premium aggregation feature** to help employers whose employees are enrolled in multiple QHPs. A SHOP will provide each qualified employer with a bill on a monthly basis that identifies the employer contribution, the employee contribution and the total amount that is due to the QHP issuers from the employer. The SHOP will collect the amount due from each employer and make payment to the QHP issuers in the SHOP for all

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enrollees. By facilitating aggregate billing, an employer can make one payment to the SHOP for the premiums of its employees' QHP coverage.

Because this premium aggregation function will not be necessary in 2014 for SHOPS that delay implementation of the employee choice model, the premium aggregation function is optional for state-run Exchanges for plan years beginning before Jan. 1, 2015. The FF-SHOP will perform premium aggregation functions in plan years beginning on or after Jan. 1, 2015.

In addition, a SHOP must provide a premium calculator to help employees determine their cost of coverage after any employer contribution. The calculator must compare available QHPs after the application of any applicable employer contribution and any advance payment of the premium tax credit and any cost-sharing reductions.

Payment Timelines

For 2015, rates charged to employers in the FF-SHOP will be calculated at the time of initial enrollment and upon renewal based on approved rates for the quarter in which initial enrollment or renewal occurs. Each month, the SHOP will provide each employer with an invoice that identifies the employer contribution, the employee contribution, and the total amount that is due to the FF-SHOP.

For plan years beginning in 2015, employers will be required to make payment to the FF-SHOP prior to the initial coverage effective date. After the initial enrollment, a group's current balance is due by the first of the coverage month. If payment is not received within 31 days from the first of the coverage month, the FF-SHOP may terminate the employer for lack of payment. If an employer is terminated due to lack of premium payment, within 30 days following its termination, the employer may request reinstatement by contacting the SHOP call center. If the employer pays all premiums owed, and pays the premium for the next month's coverage to the FF-SHOP within 30 days, the employer's previous coverage will be reinstated.

CONTRIBUTIONS

Each SHOP may provide one or more standard methods for employers to contribute toward the cost of employee coverage. Employers must decide on a contribution method before their employees select coverage in the SHOP because employees will be choosing their own coverage. In the FF-SHOP, employers will contribute to employee and dependent premiums in the following manner:

- The employer will select a metal level of coverage;
- The employer will select a QHP within that level of coverage to serve as a reference plan on which contributions will be based;
- The employer will define a **percentage contribution** toward premiums for employee-only coverage under the reference plan;
- If dependent coverage is offered, the employer will define a percentage contribution toward premiums for dependent coverage under the reference plan; and
- The resulting contribution amounts for each employee's coverage may then be applied toward the QHP selected by the employee. In the FF-SHOPS in plan years beginning prior to Jan. 1, 2015, employers will offer their employees one QHP for medical coverage. In this case, the benchmark plan is the one selected by the employer.

Employee Groups

For 2014, employers in the FF-SHOP will not be able to contribute a different amount to premiums for employees and their dependents based on whether the employee works full-time or part-time. Employers in the FF-SHOP will be able

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to contribute a uniform percentage to all employees, and will not be able to vary that amount based on employee classes (for example, salaried vs. hourly workers).

For plan years beginning on or after Jan. 1, 2015, FF-SHOPs may permit employers to define a different percentage contribution for full-time employees and part-time employees. FF-SHOPs may also permit an employer to define different percentage contributions toward premiums for dependent coverage for full-time and non-full-time employees. Thus, an FF-SHOP may allow an employer to define up to four different contribution levels: full-time employee-only, full-time employee dependent, non-full-time employee-only, and non-full-time employee dependent. HHS has advised, however, that the functionality to implement different contribution levels for full-time versus non-full-time employees and their dependents will not be available in the FF-SHOPs until sometime after Jan. 1, 2015.

A small employer's decision to define different contribution levels for full-time and non-full-time employees may impact its eligibility for the small business tax credit, which generally requires employers to contribute a uniform percentage to all employee premiums.

ADEA Implications

According to HHS, there is a **potential for violations of the Age Discrimination in Employment Act (ADEA)** if an employer contributes the same dollar amount to each employee and employees must pay a premium that varies by age. However, the standard contribution method for the FF-SHOP establishes a method by which the employer can contribute in a standard, non-discriminatory way. The requirement to use this method to determine employer contributions only exists in the FF-SHOP.