

PUBLICATION

HHS Revisions to SHOP Rule

April 8, 2013

On March 11, 2013, the Department of Health and Human Services (HHS) published a proposed rule that would amend an earlier final rule related to health insurance exchanges and, more specifically, the Small Business Health Options Program (SHOP) created by the Affordable Care Act. The proposed rule would modify the regulations provided in a Final Rule published on March 27, 2012. Specifically, this proposed rule would 1) amend the special enrollment periods for qualified employees and their dependents, and 2) implement a transitional policy regarding employees' choice of qualified health plans in the SHOP Exchange.

Background

The Affordable Care Act (ACA) mandated the creation of health insurance exchanges and directed each state that chose to operate an Exchange to also establish a SHOP, a "competitive marketplace" designed to assist small employers in providing health insurance options to their employees. The federal government will establish a SHOP Exchange in each state where a state-operated Exchange is unavailable. Whether operated by the state or federal government, the SHOP program would allow multiple small businesses to pool their risks to obtain insurance coverage for their employees at a presumably lower cost. Once an employer selected a level of health care coverage (health plans in the small group markets must meet certain actuarial values, or metal levels: 60 percent for a bronze plan, 70 percent for a silver plan, 80 percent for a gold plan, and 90 percent for a platinum plan), the employer would have the option to offer its employees all qualified health plans at the level of coverage chosen by the employer.

Special Enrollment Period Changes

In the previous final rule, HHS established standards for special enrollment periods for people enrolled through an Exchange or SHOP and provided that, in most instances, the period for enrollment be 60 days from the triggering event. The proposed rule would shorten that period to 30 days to align with the special enrollment period established by the Health Insurance Portability and Accountability Act (HIPAA).

To further align with the provisions of HIPAA, the proposed rule also proposes to add a provision that, if an employee or dependent becomes eligible for premium assistance or Medicaid or the Children's Health Insurance Program (CHIP) or loses eligibility for either Medicaid or CHIP, this event would be a triggering event and the employee or dependent would have a 60-day special enrollment period.

SHOP Functions

The previous final rule set requirements that 1) the SHOP allow employers the option to offer their employees all Qualified Health Plans (QHP) at a level of coverage chosen by the employer, and 2) the SHOP allow employers to offer one or more QHP by other methods. Under that final rule the employer could offer their employees a number of plans to choose from that were offered in the SHOP. But under the proposed rule for plan years beginning on or after January 1, 2014 and before January 1, 2015, state-run SHOPS would not be required to permit employers the option to offer multiple choices, but could chose to do so. However, the federally-run SHOPS could not exercise this multiple-choice option, effectively limiting employers in those states from giving their employees a choice of more than one QHP.

HHS indicates this proposed transitional provision is intended to provide the time to prepare for additional employee choice. This modification was sought by a number of commenters, including a number of health plans, who were concerned that the final rules did not provide sufficient time to educate brokers, employers and employees about the employee option program and to increase the stability of the small group market while providing small groups with the benefits of a SHOP in 2014.

Should you have any questions regarding the employer-specific provisions of the Affordable Care Act or the implementation and requirements of the Affordable Care Act, please contact one of the attorneys in the Firm's Insurance Regulatory Group.