



ACA COMPLIANCE BULLETIN

HIGHLIGHTS

- State-based SHOP Exchanges that have not been able to implement online enrollment can continue to use direct enrollment for plan years beginning in 2017 and 2018.
- State-based SHOPS that plan to continue using direct enrollment must submit a plan to CMS.
- Outside of a CMS-approved transition period, state-based SHOPS may not allow direct enrollment.

IMPORTANT DATES

November 15, 2014

Online enrollment became available in all FF-SHOPs beginning Nov. 15, 2014.

January 1, 2019

All state-based SHOPS are generally expected to have online enrollment functionality in place for plan years beginning on or after Jan. 1, 2019.

SOME STATE SHOP EXCHANGES MAY FURTHER DELAY ONLINE ENROLLMENT UNTIL 2019

OVERVIEW

On April 18, 2016, the Centers for Medicare & Medicaid Services (CMS) [extended a transition policy](#) for state-based Small Business Health Options Program (SHOP) Exchanges that have not been able to implement online enrollment.

The extended transition policy allows certain state-based SHOPS to use **direct enrollment** as a transitional measure for up to an additional two years, for **plan years beginning in 2017 and 2018**. However, the extension applies only for state-based SHOPS that currently use direct enrollment.

ACTION STEPS

As a result, some small employers will continue to be required to enroll their employees in state-based SHOP coverage through direct enrollment, instead of online. Using the direct enrollment process, small employers enroll in qualified health plan (QHP) coverage through an agent or broker or directly with an insurer.

Despite this, the ACA's small business tax credit will continue to be available in all SHOP Exchanges.

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Overview of SHOP Exchanges

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 SHOP is the Exchange component for small businesses.

Online enrollment generally became available in all federally run SHOPs (FF-SHOPs) beginning **Nov. 15, 2014**. Prior to Nov. 15, 2014, employers had been required to use a process called “direct enrollment” with an agent, broker or insurer to enroll their employees in FF-SHOP coverage for 2014 (similar to how most small employers previously got insurance).

All state-based SHOPs are generally expected to have online enrollment functionality in place for plan years beginning in 2019 and beyond.

States that operate their own SHOP Exchanges (state-based SHOPs) could still offer online enrollment.

Flexibility for State-based SHOP Exchanges

On May 29, 2015, CMS issued [FAQs](#) that provide flexibility for state-based SHOP Exchanges in making online enrollment available. As a transition to full online functionality, these FAQs allow state-based SHOPs to use direct enrollment for 2015 and 2016, if certain criteria are met.

Due to the extension, CMS is allowing state-based SHOPs to continue to use direct enrollment as a transitional measure **for up to an additional two years—for plan years beginning in 2017 and 2018**—if the state-based SHOP currently uses direct enrollment and meets certain criteria.

Under the extended transition policy, state-based SHOPs using direct enrollment should implement an approach that meets the following three criteria:

- ✓ The employer applies for, and receives, a favorable eligibility determination from the SHOP either before or after enrollment is completed;
- ✓ Eligible employees and dependents enroll in a SHOP QHP; and
- ✓ The SHOP QHP issuer conducts enrollment consistent with all SHOP rules and policies.

As under prior guidance, state-based SHOPs interested in continuing the direct enrollment option must submit a plan to CMS, including a description of how the direct enrollment approach will meet the three criteria described above, along with the state’s plan for implementing SHOP beyond the transitional period.

Outside of a CMS-approved transition period, state-based SHOPs may not allow direct enrollment.

Impact on the Employee Choice Models

The ACA generally requires all SHOP Exchanges to provide “employee choice models,” where the employer chooses a level of coverage and a contribution amount and employees then select any plan at that level. Despite the extended transition policy, CMS remains committed to increasing the choices that employers and

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their employees have in the small group health insurance market. All SHOPs are required to provide employers with the option to offer employees all QHPs at a single actuarial value level (**horizontal choice**).

In addition to providing horizontal choice, state-based SHOPs may implement other employee choice models. For example, they can also provide employers with the option to offer employees all QHPs available through the SHOP, or all QHPs across all available actuarial value levels from a single issuer (**vertical choice**).

Impact on the Small Business Health Care Tax Credit

The ACA created a tax credit for certain small employers that provide health insurance coverage to their employees. Qualified employers claiming the small business health care tax credit must (among other eligibility criteria) generally have employees enrolled in SHOP coverage and must be determined eligible to participate in a SHOP, *even if the state has taken advantage of the extended transitional relief*.

State-based SHOPs continuing direct enrollment under this relief should continue to ensure that employers seeking the credit are able to receive an eligibility determination from the state-based SHOP and can obtain information on how to file for the credit with the IRS. Employers and issuers should also be informed that:

- ✓ Employers can, but are not required to, complete the enrollment process directly with a SHOP QHP issuer before receiving the SHOP's formal eligibility determination; and
- ✓ Employers who do so might not be able to claim the credit if they are later determined ineligible to participate in the SHOP.

State-based SHOPs must also continue to work with issuers, CMS and the IRS to ensure that associated data reporting requirements are met.

Enrollment in SHOP Exchanges for Future Years

For plan years beginning in 2019 and beyond, state-based SHOPs should be prepared to either **have online enrollment functionality in place**, or **implement one of the following options**:

SHOP Federal Platform

Beginning in 2017, HHS allows state-based Exchanges to use the federal information technology (IT) platform for eligibility and enrollment functions for their SHOP Exchanges, even while using their own IT system for their individual Exchanges. To receive approval or conditional approval to rely on the federal IT platform for services related to SHOP functions, state-based Exchanges should:

- Notify CMS nine months prior to the start of open enrollment for the benefit year;
- Submit a revised blueprint application; and
- Enter into a federal platform agreement with CMS.

CMS assesses a user fee on any SHOP issuers in a state-based Exchange using this option.

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Shared/Regional SHOP Platform

According to CMS, some state-based Exchanges have expressed interest in sharing or reusing their SHOP IT solutions and services for other state-based SHOPS. Other state-based SHOPS have utilized enrollment platforms shared with other insurance programs operating in the state, which are maintained by a third-party administrator. CMS supports these efforts and is available to assist states in these and other efforts.

Section 1332 State Innovation Waiver

Requirements related to online enrollment functionality for state-based SHOPS may be waived under a Section 1332 State Innovation Waiver in some cases. To be approved to waive provisions related to online enrollment in a SHOP, a state must demonstrate that it meets certain requirements related to coverage, comprehensiveness, affordability and the cost to the federal government under the waiver compared to those measures absent the waiver. CMS outlined certain considerations for state-based Exchanges that wish to apply for a State Innovation Waiver related to these requirements.

State-based SHOPS that do not implement one of the three options described above are expected to have online enrollment functionality in place for plan years beginning in 2019 and beyond.