DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201

**Date**: April 18, 2016

**Title**: Extension of state-based SHOP Direct Enrollment Transition

## Purpose

On March 14, 2014, the Centers for Medicare & Medicaid Services (CMS) issued Frequently-Asked-Questions allowing state-based Small Business Health Options Programs (SHOP)[1] that had not been able to provide for enrollment through an online portal additional time to complete the implementation of such functionality and, as a transitional measure, utilize a direct enrollment approach for plan years beginning in 2014 through SHOP Qualified Health Plan (QHP) issuers and/or agents and brokers. On June 1, 2015, CMS extended the transitional policy for plan years beginning in 2015 and 2016.[2]

CMS further indicated that state-based SHOPs utilizing direct enrollment should implement an approach that meets the following three criteria: 1) the employer applies for, and receives, a favorable eligibility determination from the SHOP either before or after enrollment is completed; 2) eligible employees and dependents enroll in a SHOP QHP; and 3) the SHOP QHP issuer conducts enrollment consistent with all SHOP rules and policies.

## Guidance

We are extending the option for 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. This extension is only for state-based SHOPs that currently utilize direct enrollment.

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

[1]CMS Bulletin to Marketplaces on Availability of Retroactive Advance Payments of the Premium Tax Credit and Cost Sharing Reductions in 2014 Due to Exceptional Circumstances, and Related SHOP Issues - Frequently-Asked Questions (FAQs) (March 14, 2014) available at https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/retroactive-advance-payments-ptc-csrs-03-14-14.pdf.

[2] CMS, *Flexibilities for State-based SHOP Direct Enrollment – Frequently-Asked Questions* (June 1, 2015) available at https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/SBM-SHOP-Transitional-Flexibility-FAQ-Rev-5-29-2015.pdf.

beyond the transitional period.

State-based SHOPs should also consider the following.

- *Employee Choice Models.* CMS remains committed to increasing the choices that employers and 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"). State-based SHOPs, in addition to providing employers with the option of offering horizontal choice, may implement other employee choice models. For example, state-based SHOPs 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").

- *Small Business Health Care Tax Credit and Associated Reporting Requirements.* Consistent with prior guidance, qualified employers that wish to claim the Small Business Health Care Tax Credit must (among other eligibility criteria) generally have employees enrolled in coverage certified to be sold through a SHOP and must be determined eligible to participate in a SHOP, even if the state has taken advantage of the transitional relief under this guidance. State-based SHOPs continuing direct enrollment under this guidance should continue to ensure that employers seeking the credit are able to submit an application to the state-based SHOP to receive an eligibility determination and can obtain information on how to file for the credit with the Internal Revenue Service (IRS). Employers and issuers should also be informed that (1) 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 (2) employers who do so might not be able to claim the credit if those employers 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 data reporting requirements pursuant to 45 CFR § 155.720(i) are met.

**State Options**

For plan years beginning in 2019 and beyond, state-based Marketplaces (SBMs) should be prepared to either have in place online functionality for SHOP, or have in place one of the options described below.

*SHOP Federal Platform*

The final Health and Human Services (HHS) Notice of Benefit and Payment Parameters for 2017 (Payment Notice), published on March 8, 2016, provided that SBMs may elect to use the federal

information technology (IT) platform for eligibility and enrollment functions for their SHOP Marketplaces, even while using their own IT system for their individual Marketplaces. SBMs that wish to utilize this option should notify CMS nine months prior to the start of the open enrollment period for the benefit year, submit a revised Blueprint application, and enter into a federal platform agreement with CMS in order to receive approval or conditional approval to rely on the federal IT platform for services related to SHOP functions. Should an SBM elect to utilize this option, its SHOP issuers would be assessed a user fee by CMS.

*Shared/Regional SHOP Platform*

Since the initial implementation of SBMs, CMS has encouraged the sharing and reuse of IT solutions and services, where feasible, to support similar Marketplace functions and activities in order to realize economies of scale and reduce the cost of individually maintaining a SHOP eligibility and enrollment platform and associated services. In particular, some SBMs have expressed interest in opportunities in leveraging their SHOP IT solutions and/or 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. We continue to support these efforts and are available to assist states in these and other efforts.

*Section 1332 State Innovation Waiver*

Section 1332 of the Affordable Care Act (ACA) provides the Secretary of Health and Human Services and the Secretary of the Treasury with the discretion to approve a state's proposal to waive specific provisions of the ACA, as long as the proposed State Innovation Waiver will provide coverage to a comparable number of residents of the state as would be provided coverage absent a waiver, will provide access to health coverage that is at least as comprehensive as would be provided absent the waiver, will provide access to health coverage that is at least as affordable as would be provided absent the waiver, and will not increase the federal deficit. States must demonstrate that a proposed waiver will meet these four statutory requirements through the submission of economic and actuarial analysis, as well as supporting data, assumptions, and targets.

Requirements related to online enrollment functionality for state-based SHOPs may be waived pursuant to a State Innovation Waiver, provided that the requirements set forth in Section 1332 of the ACA and implementing regulations and guidance are satisfied.

As described in the statute and applicable regulations and guidance, for each year of the waiver, applications must compare measures of coverage, comprehensiveness, affordability and the cost to the federal government under the waiver to those measures absent the waiver (the baseline). For purposes of this assessment, a state that does not utilize an online SHOP enrollment portal for 2017 and 2018, pursuant to the transitional flexibility described in this guidance, should use a

baseline for those years reflecting the lack of an online SHOP portal. For 2019 and later years, the state should use a baseline that reflects the utilization of an online SHOP portal as described in CMS regulations.

To be approved, a State Innovation Waiver proposal to waive provisions related to online enrollment in a SHOP must demonstrate that it meets the Section 1332 statutory requirements set forth above. For years when the baseline reflects the utilization of an online SHOP for enrollment, this includes demonstrating that the provisions of the proposed waiver would offset any effect of not having an online SHOP enrollment functionality on the four statutory requirements for a waiver, such that the waiver proposal as a whole meets those statutory requirements. For example, in determining the waiver's impact on the coverage requirement, we would expect a state to provide data and analysis to demonstrate that the proposed methods for facilitating enrollment in small group market coverage are expected to enroll at least as many individuals as would be enrolled through a SHOP online portal, while at the same time satisfying the other statutory requirements for a waiver.

We note that our experience operating HealthCare.gov, particularly with respect to the individual market, has indicated that availability of a consumer-friendly online portal successfully facilitates increased enrollment in insurance coverage. However, assessments of proposed State Innovation Waivers can take into account the particular circumstances of the individuals and organizations that would be affected by a waiver. In constructing a waiver application relating to the SHOP online enrollment portal, states should consider the aspects of SHOP that may differ from the individual market, including the number and type of consumers who would utilize an online SHOP and structural differences between the small group and individual markets (e.g., state minimum participation rate requirements or the role of agents and brokers). States should also consider factors that motivate small business owners to offer coverage to employees, and factors that motivate employees to enroll in employer-sponsored coverage, and how those factors may be affected by a SHOP online enrollment portal.

We encourage states to review the December 16, 2015 Waivers for State Innovation Guidance[3] on what changes should be considered when determining the estimated effect on federal revenue and federal spending under the proposed waiver. Any state pursuing a State Innovation Waiver must submit an application for the Secretaries to determine if the waiver proposal meets the requirements of the February 27, 2012 Final Rule on the Application, Review, and Reporting Process for Waivers for State Innovation[4] – including the provisions for economic and actuarial analysis, data, and methodology – and the December 16, 2015 guidance.

[3] https://www.federalregister.gov/articles/2015/12/16/2015-31563/waivers-for-state-innovation
[4] https://www.federalregister.gov/articles/2012/02/27/2012-4395/application-review-and-reporting-process-for-waivers-for-state-innovation