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The Affordable Care Act Helps Small Businesses Shop for Health Insurance for Their Employees

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While employers understand the value of providing health insurance to their employees, doing so can be challenging for small businesses. Small businesses lack the purchasing power of larger employers and end up paying about 18% more than larger employers for the same health insurance policy.

The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively, the Affordable Care Act) aim to close this gap by offering certain small employers tax credits to offset the high cost of providing insurance and, starting in 2014, offering small employers (that employed an average of 1 to 100 employees in the preceding calendar year) the opportunity to purchase private health insurance through competitive marketplaces known as Exchanges. The Affordable Care Act requires each state that chooses to operate an Exchange to also establish a Small Business Health Options Program (SHOP) to assist eligible small businesses in providing health insurance options to their employees. SHOP Exchanges are particularly relevant to employers with between 50 and 100 employees, which are required to offer health insurance to their employees or be subject to the shared responsibility penalty.

On March 1, 2013, the Centers for Medicare & Medicaid Services (CMS) and the Department of Health and Human Services (HHS) finalized provisions that set forth standards for the administration of SHOP Exchanges to help ensure a competitive market in the SHOP (the Final Rule). HHS simultaneously issued a proposed rule (the Proposed Rule) that amends the existing regulations in two specific areas, as outlined below.

The Final Rule

Under the Final Rule, SHOPs function similar to Exchanges, but with several key exceptions. Specifically, SHOPs are not required to carry out certain functions required of Exchanges, such as those related to individual eligibility determinations or enrollment of qualified individuals, the requirement to issue certificates of exemption or requirements related to the payment of premiums by individuals, Indian tribes, tribal organizations and urban Indian organizations. However, that being said, SHOPs have unique functions, including, but not limited

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to, the following:

- The SHOP must adhere to certain enrollment and eligibility requirements;
- The SHOP must allow a qualified employer to select a level of coverage in which all qualified health plans (QHPs) within that level are made available to the qualified employees of the employer;
- In addition to allowing employers to select a specific level of coverage, the SHOP may also allow the qualified employer to make one or more QHPs available to qualified employees by a different method than the employer choice method described above;
- The SHOP must perform certain premium aggregation functions related to payment administration, including, but not limited to, providing 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, collecting from each employer the total amount due and making payments to the QHP issuers for such amounts; and
- The SHOP must ensure that each QHP meets certain requirements, require that all QHP issuers make any changes to rates at a uniform time (quarterly, monthly or annually) and refrain from varying rates for a qualified employer during the employer's plan year.

Qualified employers, for purposes of utilizing a SHOP, are small employers (with 1 to 100 employees) that either (1) elect to offer all of its full-time employees coverage in one or more QHPs offered in the small-group market through the SHOP covering its principal business address; or (2) elect to offer all of its employees coverage in one or more QHPs through the SHOP serving each employee's primary worksite.

In addition to initial and open enrollment periods, SHOPs must also provide special enrollment periods. Under the Final Rule, a qualified individual or enrollee has 60 days from the date of a triggering event to enroll in a QHP. The Final Rule defines triggering events to include, without limitation, circumstances when:

- a qualified individual or dependent loses minimum essential coverage;
- a qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption or placement for adoption;
- an individual who was not previously a citizen, national or lawfully present individual gains such status;
- a qualified individual or enrollee gains access to new QHPs as a result of a permanent move;

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- a qualified individual's enrollment or non-enrollment in a QHP is unintentional, inadvertent or erroneous and is the result of an error, misrepresentation or inaction of the Exchange or HHS;
- an enrollee adequately demonstrates that the QHP in which he or she is enrolled in substantially violated a material provision of its contract;
- an individual is determined newly eligible or newly ineligible for advance payment of a premium tax credit or has a change in eligibility for cost-sharing reductions; or
- other exceptional circumstances exist.

Changes Set Forth in the Proposed Rule

The Proposed Rule, issued concurrently with the Final Rule on March 1, 2013, would amend existing regulations regarding triggering events and special enrollment periods for qualified employees and their dependents and would implement a transitional policy regarding employees' choice of QHPs in the SHOP.

Special Enrollment & Triggering Events. The Proposed Rule aligns SHOP special enrollment provisions to those in the broader group health insurance market. Under the existing regulations, in most instances, a special enrollment period is 60 days from the date of a triggering event. The Proposed Rule amends the special enrollment period for the SHOP to 30 days for most applicable triggering events. This is consistent with the length of special enrollment periods in group markets provided by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which lasts for 30 days after loss of eligibility for 2 other private insurance coverage or after a person becomes a dependent through marriage, birth, adoption or placement for adoption. The Proposed Rule also establishes as a triggering event circumstances where an employee or dependent becomes eligible for premium assistance under Medicaid or the Children's Health Insurance Premium (CHIP), or loses eligibility under either of these programs. For this triggering event, however, the Proposed Rule sets forth a 60-day special enrollment period.

Transitional Policy. As discussed above, a SHOP must allow employers the option to offer employees all QHPs at a level of coverage chosen by the employer. A SHOP may also allow employers to offer one or more QHPs to qualified employees by other methods. The Proposed Rule sets forth a new transitional policy with respect to employees' choice of QHPs in order to provide additional time to prepare for the employee choice model and to increase stability of the small-group market while providing small groups with the benefits of SHOP in

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2014.

Under the Proposed Rule, for plan years beginning on or after January 1, 2014, and before January 1, 2015, a SHOP would have the option to, but is not be required to, permit qualified employers to offer their qualified employees a choice of QHPs at a single level of coverage. For plan years beginning during that same period, federally facilitated SHOPs (FF-SHOPs) would assist employers in choosing a single QHP to offer their qualified employees. However, for plan years starting on or after January 1, 2015, both SHOPs and FF-SHOPs must allow employers the option of offering the employee choice model.

According to the New York Times article, "Small Firms' Offer of Plan Choices Under Health Law Delayed," Obama Administration officials said earlier this week that they would be delaying the employee choice model in the 33 states where the federal government will be running the SHOPs. In those states, employers will be limited to offering their employees a single insurance plan.

An Early Glimpse at Employee Reaction

A recent Wall Street Journal article entitled "To Save, Workers Take On Health-Cost Risk" provides a glimpse of employee reaction to similar employer-centric marketplaces known as private exchanges. These private exchanges operate on a similar principle as SHOP, allowing people to shop for health coverage in an online marketplace. In analyzing two large employers that embarked on this new approach to employee health benefits, the results indicated that many employees were willing to choose lower-priced plans that required them to pay more out of their pocket for health care. Moreover, early survey results show that employees were generally pleased with the setup of these exchanges.

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