



Supplemental 2018 Plan Invitation for SHOP Direct Enrollment: Question and Answer (May 3, 2018)

Question 1.

Reporting

What, if any, reporting requirements will NYSOH or CMS impose on insurers newly offering SHOP-certified plans? One specific example we thought of is whether CMS, for the purposes of risk adjustment/EDGE Server data submissions, will require insurers to classify enrollment in SHOP-certified plans as on-exchange or off-exchange (current Edge Server data submissions require separating on- and off-exchange enrollment figures). Our guess is the former, but clarification would be helpful.

Answer – Updated May 3, 2018

Due to guidance received from CMS in April 2018, for plan years starting in 2018, for the purposes of risk adjustment/EDGE Server data submissions and other reporting requirements, CMS will continue to require insurers to classify and report enrollment and other data as on-exchange (01 HIOS ID Suffix) or as off-exchange (00 HIOS ID Suffix). CMS requires insurers to continue to classify the enrollment separately for data integrity and reporting purposes.

Insurers that designated additional off-exchange small group products as on-exchange through SHOP for 2018, will be required to update their SERFF filings to reflect both the 00 and the 01 variants. This will allow insurers to provide reporting of membership, financial performance, 1095s, Tax Credit eligibility, as required by CMS, based on the variant level. These updates need to be made by September 2018. NY State of Health will send these insurers “Instructions for Updating SERFF 2018 Plans & Benefits Template” directly.

Question 2.

Can insurers require employers to obtain an eligibility determination from the SHOP as a condition of enrollment into SHOP-certified plans?

Answer.

No. Federal regulations do not permit this. However, employers are encouraged to obtain an eligibility determination as close to the date in which they purchase a SHOP QHP as possible.

Question 3.

How will insurers know if employers have obtained a favorable eligibility determination from the SHOP?

Answer.

Under federal rules, insurers are expected to establish processes to ensure that they can accurately identify which enrollments are considered SHOP enrollments and which are not. Insurers must use a uniform enrollment form, maintain processes sufficient to identify whether a small group market enrollment is an enrollment through the SHOP, and maintain records of SHOP enrollments for a period of 10 years following the enrollment. In addition, NY State of Health will retain information about employers’ SHOP eligibility determinations; issuers can request confirmation of an employer group’s

eligibility determination from NY State of Health and/or a copy of the employer's eligibility notice from the employer.

Question 4.

Are insurers required to track groups as SHOP or non-SHOP?

Answer.

Yes, under federal rules, insurers are expected to establish processes to ensure that they can accurately identify which enrollments are considered SHOP enrollments and which are not. The final federal regulations stipulate that insurers must use a uniform enrollment form, maintain processes sufficient to identify whether a small group market enrollment is an enrollment through the SHOP, and maintain records of SHOP enrollments for a period of 10 years following the enrollment.

Question 5.

What is the turnaround time for groups to apply and receive an eligibility determination from SHOP?

Answer.

In most cases an eligibility determination is provided immediately upon application submission, in limited circumstances, NY State of Health may request additional information from the employer to determine their eligibility. Once eligibility is determined a determination letter is provided which can be downloaded, printed or a hard copy can be mailed to the employer group.

Question 6.

If an employer group receives a favorable eligibility determination from SHOP does that mean that they are eligible for the federal tax credits?

Answer.

No. SHOP does not determine eligibility for federal small employer tax credits. But, a SHOP eligibility determination is required for tax credit eligibility. A favorable eligibility determination from SHOP confirms that a small business is a certified NYS Small Business. Employers must enroll in a SHOP certified QHP and meet other IRS requirements to be eligible to receive the federal small employer tax credit. More information about federal small business tax credits and the SHOP marketplace can be found here; <https://www.irs.gov/affordable-care-act/employers/small-business-health-care-tax-credit-and-the-shop-marketplace>

Supplemental 2018 Plan Invitation for SHOP Direct Enrollment: Question and Answer (March 13, 2018)

Process for Certification

Question 1.

I understand that issuers are only required to review the Dep 26, FP, DP plan variation in SERFF, but we should be submitting all of our Small Group DFS certified HIOS IDs if we intend for them to be SHOP eligible, correct?

Answer.

Correct. Insurers should submit HIOS IDs for all plans they intend to offer through SHOP; however, insurers will only need to review the display of the plan variation that includes dependents to age 26, Family Planning and Domestic Partnership riders.

Timeline

Question 2.

Can you please clarify what the earliest effective date can be for new groups coming on direct with carriers starting 4/1/18?

Answer.

The earliest effective date for direct enrollment is 5/1/18 for new SHOP Employer Groups. Note that employers will continue to have flexibility to set effective dates.

Question 3.

We are in receipt of the amended supplemental 2018 plan invitation for SHOP issued on March 12, 2018, and it describes the transition differently than the original supplemental invitation issued on March 5, 2018, I would like to confirm that NY State of Health will continue to administer groups with plan years that began in 2017 or that began before July 1, 2018.

Answer.

Correct.

Communication Plan

Question 4.

Will the Small Business Marketplace communicate the change to affected employers and if so, may we have a copy of the correspondence?

Answer.

NY State of Health has already begun to communicate these changes with Current SHOP Employer Groups. In addition, NYSOH will issue a letter to these groups the first week of April. NY State of Health will send all SHOP insurers a copy of the letter for reference.

Supplemental 2018 Plan Invitation for SHOP Direct Enrollment: Question and Answer (March 5, 2018)

Participation

Question 1.

How will the process accommodate plans that are not currently participating in the SHOP as well as plans that may be participating with a different license (e.g., affiliate)?

Answer.

The “Supplemental 2018 Plan Invitation for SHOP Direct Enrollment” was issued on March 5, 2018 to all insurers licensed to offer small group health insurance in New York State. The invitation specifically states that it is open to all New York State insurers eligible under the terms of the April 18, 2017 Invitation, including insurers that currently offer SHOP products and those that do not.

Small Business Health Care Tax Credit

Question 2.

What obligation, if any, will insurers have to educate employers enrolled in a SHOP-certified plan on the premium contribution requirement – or other qualifying requirements – of the Small Business Health Care Tax Credit? Our position is that it should be the responsibility of the SHOP, the employer, or the employer’s tax professional to assist the employer in meeting any relevant IRS requirements.

Answer.

There is no change to the insurers’ role with regard to notifying employers of rules pertaining to small business tax credits as a result of this Supplemental Invitation. Information about eligibility for the federal small business tax credit and an estimator tool are included on the NY State of Health website, as well as links to the IRS website for further information.

Question 3.

Please confirm that insurers with SHOP-certified plans would not be required to provide any SHOP pre-qualifier or plan comparison tool on their websites.

Answer.

There is no requirement that insurers include SHOP eligibility “pre-qualifier” tools or plan comparison tools.

Question 4.

What is the process for SHOP-based redetermination of an employer’s Small Business Health Care Tax Credit eligibility if there are changes after the initial tax credit determination? For example, in instances in which an employer decides to increase their premium contribution, or if there are changes to the employer’s group size or business income?

Answer.

Employer groups can request a re-determination of SHOP eligibility at any time. Such requests can be made by phone, on-line, or with the help of an assistor. NY State of Health determines employer eligibility by confirming that an employer has a valid EIN, a physical location in NYS, and between 1-100

FTE employees. NY State of Health does not collect information pertaining to business income or premium contribution amounts.

Question 5.

It is our understanding that the proposed 2019 NBPP rule contemplates the implementation of a limit on the amount of time an employer would be permitted to claim the Small Business Health Care Tax Credit from the date on which the employer group purchased a SHOP-certified plan. If this provision is adopted in the final rule, what will be the impact, if any, on the direct enrollment process in NYSOH/SHOP? And the impact, if any, on insurers offering SHOP-certified plans?

Answer.

Pursuant to federal [guidance](#) that state-based SHOPs may implement the proposed rule on or after January 1, 2018, NY State of Health is implementing the Direct Enrollment process as described in the proposed federal rule ([HHS Notice of Benefit and Payment Parameters for 2019, 82 Fed. Reg. 51052](#)). As described in this rule, employers are permitted to claim federal small business tax credits for 2018 if they are determined to be SHOP eligible and are enrolled in a SHOP-certified plan, regardless of the date in which enrollment in the SHOP-certified plan commenced. To claim the tax credits (if otherwise eligible), employers will need to provide evidence of SHOP eligibility and enrollment in a SHOP-certified plan.

Reporting

Question 6.

What, if any, reporting requirements will NYSOH or CMS impose on insurers newly offering SHOP-certified plans? One specific example we thought of is whether CMS, for the purposes of risk adjustment/EDGE Server data submissions, will require insurers to classify enrollment in SHOP-certified plans as on-exchange or off-exchange (current Edge Server data submissions require separating on- and off-exchange enrollment figures). Our guess is the former, but clarification would be helpful.

Answer.

NY State of Health will not require any additional reporting as a result of the Direct Enrollment process.

We have no guidance about changes to CMS requirements for EDGE Server data submissions at this time. **This response has been updated on May 3, 2018.**

Question 7.

If an insurer decides to offer SHOP-certified plans, what is the impact to those plans' HIOS ID suffixes, and what related information will insurers be required to submit?

Answer.

As described in the "Process for Certification" section of the Supplemental Invitation (page 6), insurers seeking to designate additional small group products for offer through SHOP will be required to submit by March 23, 2018 a list of products for which SHOP certification is sought by HIOS ID. There will be no change to plans' HIOS ID suffixes. Additional information about the certification process is included in the Supplemental Invitation and more detailed instructions will be sent to insurers following NY State of Health's receipt of the insurer's Letter of Interest.

Question 8.

Will the SHOP require insurers to provide confirmation or ongoing reporting of employer enrollment into SHOP-certified plans? Our preference is to keep any enrollment-level reporting requirements as simple and infrequent as possible.

Answer.

NY State of Health will not require confirmation or reporting of employer enrollment into SHOP-certified plans.

Question 9.

In slide 4 of the attached NYSOH deck (from the recent NYSOH plan meeting), the box in the right-hand column and in the second to last row notes that NYSOH will still be responsible for 1095 reporting to the IRS (“upon IRS request”) for the employer bit. Can NYSOH please describe in greater detail how this will work under the “new process”, as well as provide examples of situations under which the IRS would request 1095 reporting for the employer bit.

Answer.

We have no further guidance about these requirements at this time but we anticipate that NY State of Health would continue to be able to meet the requirements to report employer 1095s.

Question 10.

Please confirm the 1095 employee reporting requirements under the new process, and specifically issuers’ responsibilities in generating and delivering these 1095s.

Answer.

Insurers’ IRS 1095 reporting requirements will be the same as for the non-SHOP small group insurance market.

Broker Certification by SHOP**Question 11.**

Would a broker or general agent have to be SHOP-certified when enrolling an employer directly into an issuer’s SHOP-certified plans? And will there be a bifurcation of broker/GA-based SHOP certification requirements in terms of assisting an employer to only determine eligibility for the Small Business Health Care Tax Credit versus instances in which a broker/GA is assisting with enrollment into a SHOP-certified plan? For example, an employer works with broker/GA X to get a Small Business Health Care Tax Credit determination in the SHOP, but subsequently uses broker/GA Y to actually enroll into a SHOP-certified plan. Which broker/GA would require SHOP-certification? Both brokers/GAs or only broker/GA X?

Answer.

In order to submit employer applications to SHOP, brokers and general agents must have the necessary New York State licensure and must be certified by NY State of Health. Certification of brokers and general agents is an on-going process.

NY State of Health will provide employers with a SHOP eligibility determination letter for use claiming the federal small business tax credit. NY State of Health will not track enrollment of employer groups into health plans.

Broker Compensation

Question 12.

Please confirm that any broker/general agent compensation structures, as it relates to SHOP-certified plans, will be determined by the insurer.

Answer.

There is no change to broker/general agent compensation structures as a result of the Direct Enrollment process. As described in the NY State of Health April 2018 Health Plan Invitation (page 26), "All QHP Applicant's compensation arrangements, including bonus arrangements and all other arrangements that relate to compensation to Producers, must be the same for products sold inside and outside of the Marketplace, and must comply with all applicable provisions of New York State law. For example, the commission and/or bonus for a policy sold on the Marketplace must be the same as the commission and bonus for a policy sold outside of the Marketplace. In addition, if compensation is provided, QHP Applicants must provide the same compensation at all metal levels."

SHOP Appeals

Question 13.

Please confirm that NYSOH/SHOP will only be responsible for appeals related to the determination of the Small Business Health Care Tax Credit and that appeals related to the issuer's minimum participation requirements and enrollment rules is resolved by the issuer and employer.

Answer.

NY State of Health will be responsible for adjudication of appeals of employer eligibility determinations. Insurers will be responsible for appeals pertaining to employee eligibility and enrollment. The Department of Financial Services will handle enforcement of minimum participation rules, consistent with the outside small group insurance market.

Plan Offerings

Question 14.

Please confirm that insurers have the option of determining which plans/products to be SHOP-certified, and that insurers will not be required to offer all their plans/products on the SHOP (e.g., Healthy New York). And what restrictions, if any, will NYSOH/SHO impose in terms of which small group plans insurers could offer as SHOP-certified (e.g., only from certain metal levels, etc.).

Answer.

Insurers may select the products to offer from those previously approved by the NYS Department of Financial Services for issuance in 2018. There is no limit on the number of products that may be offered but insurers must agree to offer at least one product at each metal tier. Insurers participating on the SHOP as of January 1, 2018 will be required to continue offering products previously certified for 2018 and may select additional small group products to be offered through the SHOP in 2018.

Minimum Participation & Enrollment

Question 15.

Please confirm that insurers offering SHOP-certified plans will be permitted to apply and enforce their minimum participation guidelines, including any enrollment determinations, documentation verifications, and requests to determine employer and employee eligibility (e.g., employee roster submission, NYS-45 tax documentation).

Answer.

As described in the “Minimum Participation Requirements” section of the **Supplemental 2018 Plan Invitation for SHOP Direct Enrollment**, SHOP rules will be aligned with the outside (non-SHOP) small group insurance market. Although insurers are strongly encouraged to refrain from imposing any minimum participation requirements in the small group market, insurers (other than HMOs) may impose minimum participation requirements in the small group market. However, if a small group cannot meet the insurer’s minimum participation requirements, an insurer must still permit the group to enroll during an annual open enrollment period that begins November 15 and extends through December 15 of each year. The annual open enrollment period applies to coverage issued or renewed between November 15 and December 15 and coverage applied for between November 15 and December 15 with an effective date of January 1. Insurers may impose minimum participation requirements on renewal outside of the open enrollment period but only to the extent the same requirements were imposed upon the group’s initial application for coverage.

For coverage issued on SHOP prior to April 1, 2018, insurers were not permitted to impose minimum participation requirements. Therefore, insurers may not impose minimum participation requirements mid-plan year or upon renewal for Current SHOP Employer Groups. For New Employer Groups, insurers may impose minimum participation requirements that are consistent with such requirements used for its off-SHOP small group business.