



SECTION 3: COVERAGE FOR SMALL BUSINESS EMPLOYERS

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Because of high costs and limited options, many small businesses have struggled to offer health insurance to their workers, and the number of small businesses doing so has declined over time. Currently, the states define a small business to include at least one but no more than 50 employees. However, by 2016, the Affordable Care Act will expand the definition of small business to include those with up to 100 employees.

The Affordable Care builds on a prior federal law – HIPAA – to improve the accessibility, adequacy and affordability of health insurance for small businesses through a series of reforms. Many of the Affordable Care Act's reforms apply to small business health insurance but not to large businesses. Specific reforms include the following requirements:

(NOTE: States may enact stronger laws or rules to protect consumers)

- Modified community rating. Insurers are no longer allowed to charge higher premiums based on the health status or claims experience of an employer group. However, insurers may charge more if the employer group is older than average (up to three times more) or if a number of employees use tobacco products and the employer doesn't offer tobacco users services to help them quit.
- Prohibition on pre-existing condition exclusions. Prior to the Affordable Care Act, some small employer plans would refuse to cover care for employees' pre-existing conditions. In many states this period could last for up to 12 months. Under the Affordable Care Act, health insurers are no longer allowed to exclude pre-existing conditions from covered benefits under the plan.
- Minimum essential benefit standard. Insurers are required to cover a minimum set of benefits within at least the following 10 categories: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care.
- Minimum generosity of coverage. Small employer coverage must provide a minimum level of financial protection for health costs, at least 60 percent of total average costs for covered benefits. Further, the Affordable Care Act requires plans to be offered at specified coverage levels, so that employers and employees can more easily compare them. The lowest level of coverage (60 percent) is called the bronze level. A silver level plan will cover 70 percent of total

average costs for covered benefits, a gold plan covers 80 percent, and a platinum plan covers 90 percent.

- Maximum out-of-pocket costs. Insurers are required to limit how much consumers can pay in out-of-pocket costs (including deductibles, co-payments, and co-insurance) for covered benefits in a given year. In 2014, the limits are \$6,350 for individuals and \$12,700 for families. However, some employer-sponsored plans may have higher limits in the first year, to provide a transition period for employers that use one company to administer its primary medical benefits and another company to administer certain benefits, such as prescription drugs. In these cases, the maximum out-of-pocket limit will apply to the primary set of medical benefits but a separate limit – or in some cases no limit at all – will apply to any benefits administered by another company.
- Creation of a Small Business Health Options Program (SHOP), designed to simplify the process of buying health insurance for small business. In the SHOP, employers can compare health plans online and may qualify for a small business health care tax credit worth up to 50 percent of premium costs.

Frequently Asked Questions

235. I own my own business and have no employees, what are my options?

While you are not eligible to purchase small group health insurance through the SHOP marketplace, you can purchase individual market coverage and may be able to qualify for financial assistance through the health insurance marketplace for individuals.

236. I'm self employed and the only employee I have is my spouse or child. What are my options?

While you are ineligible to purchase small group health insurance through the SHOP exchange, you can purchase individual market coverage and may be able to qualify for financial assistance through the health insurance marketplace.

237. I have 47 employees and I'm trying to decide if I should hire more. What are the implications if I have more than 50 employees?

With 47 employees you can purchase coverage either inside or outside of the SHOP. If you choose to purchase through the SHOP now, you will be able to continue in your SHOP plan even if you go over 50 employees, so long as you meet all other eligibility rules (for example, you must offer coverage to all full-time employees). However, before 2016 – when all health insurance marketplaces must open to groups up to 100 – you will not be eligible to purchase coverage through the SHOP if you wait until after you go over 50 employees.

Until 2016, groups with more than 50 employees will be subject to different rules than groups with 50 or fewer employees. For example, insurers offering coverage to large groups will not need to provide the essential health benefit package, while they are required to offer such coverage to small groups. Beginning in 2016, however, these protections will extend to groups with up to 100 employees. The Affordable Care Act applies “shared responsibility” requirements to employers with more than 50 full-time or full-time equivalent employees. While it does not directly require such employers to offer health insurance, it imposes financial penalties if their employees qualify for premium tax credits for individual coverage, either because the employer did not offer coverage or offered coverage that was deemed unaffordable or to not provide adequate protection against cost-sharing. These rules take effect in January 2015 for employers with 100 or more employees and in January 2016 for employers with between 50 and 99 employees.

238. I’m a small business owner. Can I qualify for a tax credit to buy insurance?

Beginning in 2014, the small business tax credit is only available for coverage bought through the SHOP. To qualify for a small business health insurance tax credit, you must cover at least 50 percent of premiums for your employees (not including dependents) and have fewer than 25 full-time employees whose average annual wages are less than \$50,000.

The number of full-time employees is calculated based on the total number of hours of service for which you pay wages to employees during the year, up to 2,080 hours per employee. This number is then divided by 2,080 and rounded down to the next lowest whole number to determine your number of full-time employees (or full-time equivalent employees). Seasonal workers are not included unless they work for more than 120 days during the tax year. Business owners and their family members generally are not included either. For more information, see <http://www.taxpayeradvocate.irs.gov/calculator/SBHCTC.htm>

Average wages are determined by adding up the total amount of wages you paid during the tax year, and dividing by your number of full-time employees for the year. Round down to the nearest \$1,000.

The amount of the tax credit is set on a sliding scale based on the number of employees and average wages, with the maximum credit going to firms with 10 or fewer full-time employees and average wages equal to or less than \$25,000. Employers who are not tax-exempt are eligible for a higher tax credit than employers who are tax-exempt.

Beginning January 1, 2014, the maximum value of this sliding scale tax credit will increase significantly – from 35 percent to 50 percent of premiums paid by small businesses. Small businesses can claim the credit on your annual income tax return, using Form 8941. Tax-exempt employers can claim the tax credit as a refundable credit by filing Form 990-T with an attached Form 8491.

239. If I offer coverage to my employees, is there a minimum requirement for what I must contribute to the cost of my employees' premiums?

Minimum contribution requirements will vary based on where you purchase your coverage. For example, insurers offering coverage through the federally-facilitated SHOP are prohibited from requiring employers to make a minimum contribution. However, outside of the federally facilitated SHOP and in some states operating their own SHOPS, minimum contribution rules may still apply. However, minimum contribution requirements must be waived between November 15 and December 15 of each year, allowing employers that do not meet the minimum contribution requirements to still access coverage. In addition, states may independently require employers offering coverage to make a minimum contribution to the cost of their employees' premiums.

240. If I offer coverage, is there a minimum threshold for the number of employees that must enroll?

In most, but not all, states, if you purchase coverage through the SHOP, 70 percent of eligible employees must enroll in coverage. SHOPS in some states may have slightly higher or lower thresholds, while only a few have prohibited such rules. Outside of the SHOP, minimum thresholds may vary across insurers. However, all insurers are required to waive this requirement between November 15 and December 15 of each year, allowing employers that do not meet the minimum participation requirements to still access coverage.

241. My insurance company is offering me the option to renew my current policy before the end of the year. What are the pros and cons of doing that?

Some employers may find that their insurer is offering lower rates if they renew early. However, doing so would exempt your coverage from many of the new protections going into effect in 2014, including modified community rating and the requirement to cover a set of minimum essential health benefits. In addition, because you will not be insured through the SHOP, you would be ineligible for the small business health insurance tax credit in 2014 (For more information on the tax credit, see FAQ #238). Also, some insurers are asking employers to decide to early renew before they have the opportunity to learn about what their plan options and rates would be if they buy through the SHOP or wait to renew on schedule. Employers should take the time to compare all of their options before making a decision.

Early renewing also may require you to make changes to related documents, such as your Summary Plan Description, and other employee benefits. Employers should consult a benefits advisor or ERISA attorney to understand the financial and legal implications of early renewing.

NOTE: Some states have limited or prohibited this practice.

242. I'm going to buy a plan through the SHOP. When can I enroll in coverage?

Small employers can generally enroll in coverage at any time during the year, either through the SHOP or in the outside market. During most of the year, insurers may condition enrollment on meeting minimum participation rules and/or contribution requirements. (While insurers participating in the federally run SHOP cannot apply minimum contribution requirements, insurers in the outside market and some state-based health insurance marketplaces may apply such rules.) However, insurers must waive these rules from November 15 to December 15 each year and allow groups that don't meet these rules to enroll in coverage.

243. I want to buy coverage through the SHOP. Can my employees pick their own plan?

In most states in 2014, if you are purchasing coverage through the SHOP, you will only be able to provide your employees with one plan option. However, certain states are running their own health insurance marketplaces and these may allow you to provide your employees with greater choice. For example, in some of these states you may allow your employees to pick any plan at a given precious metal level, such as silver, or to pick between multiple plans offered by a selected insurer. In other states, you also may allow your employees to pick from an even wider selection of plans. Typically, if you choose to provide greater choice to your employees, you will select a "reference plan" to calculate how much you will contribute to your employees' premiums. If they choose to purchase a more expensive plan than the "reference plan," they may be responsible for the additional cost. If they choose to purchase a less expensive plan, they may be able to reduce their portion of premium expenses compared to what they would owe if they selected the reference plan. In 2015, all SHOPS will at least allow employers to let their employees pick any plan at a given precious metal level of coverage. Check with your health insurance marketplace to determine what plan choice options your employees may have.

244. Does SHOP allow me to buy a pre-established level of coverage and let my employees buy a higher level of coverage if they make up the difference?

In most states, the SHOPS will only offer a traditional shopping approach in the first year. You will be able to pick one plan for your employees and determine what percentage you want to contribute. However, in some states operating their own SHOPS, you will be able to choose a benchmark plan on which you base your contribution level, which can be a pre-set dollar amount instead of a percentage of premium, and your employees can choose that plan or more or less expensive plans. If they buy a more expensive plan, they would make up the difference, while they could reduce their premium if they purchased a less expensive plan.

245. I'm interested in the SHOP but there aren't any participating insurers in my area (or there's only one insurer participating but I don't like them). Can I still get coverage through the SHOP, and can I still get the tax credit?

In most states, you can purchase coverage outside the SHOP. However, beginning with your first plan year starting in 2014, you will not be eligible for the small business health insurance tax credit if you choose to purchase coverage outside of the SHOP.

The District of Columbia and Vermont plan to only allow individuals and small groups to purchase coverage through their state-based health insurance marketplace. In Vermont, this rule will go into effect across the board in 2014. In D.C., small groups newly purchasing coverage will be required to seek coverage through the SHOP in 2014, while small employers that are renewing their coverage are provided a one year transition and will not need to purchase coverage through the SHOP until 2015.

246. I run a small farm (less than 50 employees) with a mix of full-time and part-time workers. Am I required to offer coverage?

No, there is no requirement for small employers to offer health benefits to their workers.