



The Small Business Health Options Program (SHOP)

Introduced on April 2, 2008 by Senators Durbin, Snowe, Lincoln, and Coleman

Small, Business Majority has endorsed the SHOP Act, a bill that was introduced earlier this year in the U.S. Senate with the goal of making health insurance more affordable, predictable, and accessible for small businesses and the self-employed. The legislation would offer tax incentives to encourage states to reform poorly functioning small group insurance markets and has been introduced with the goal of encouraging the development of state purchasing pools backstopped by a voluntary, nationwide pool.

A companion bill has been introduced in the U.S. House of Representatives by Congressman Ron Kind.

The following are the key provisions of the legislation, with some preliminary analysis. A table is listed at the end of this document.

- Beginning in 2011, the SHOP Act will allow small businesses of 1-100 employees (including sole proprietors) to obtain health insurance via a new federal “SHOP” purchasing pool. Both state and nationwide plans will be a part of SHOP.
- Health status and claims experience rating will be PROHIBITED in the SHOP program for both nationwide and state plans and in state small group markets starting in 2011. Otherwise, between 2011-2012, for state and nationwide SHOP plans, in order to minimize adverse selection, the state rules will apply to purchasers in those states.
- In 2011 the National Association of Insurance Commissioners (NAIC) will issue a report with rating rules and a recommended adjusted rating model that can be considered by Congress in 2012. Beginning in 2013, state and nationwide SHOP plans must adhere to these new standards if enacted by Congress. If Congress fails to act, the bill sets forth fallback rating rules that include, among other things, a prohibition of health status and claims experience rating, age variations of no more than 3:1, and industry variations of no more than 1.15:1. Variations may also apply for geographic area, family composition, and tobacco use. The process is designed to prevent the enactment of a set of guidelines that result in adverse selection or discrimination.
- Starting in 2013, for states with tighter requirements than the guidelines adopted by Congress, the particular state’s rules will prevail in state-based and nationwide SHOP plans for those states. The drafters have consulted closely with NAIC during development of the legislation, and the NAIC has said that this bill addresses the adverse selection concerns it had raised about the 2006 Durbin-Lincoln small business pooling bill.

- Federal HIPAA provisions regarding portability, renewability, guaranteed issue and enforcement in the small group market will continue to be followed.
- Tax credits: Starting in 2009 small business owners with 1-50 employees, in states that regulate the small group market to require age variations of no more than 3:1 and industry variations of no more than 1.15:1 (plus variations for geographic area, family composition, and tobacco use), AND where sole proprietors are covered in the group market, small businesses who pay at least 60% of the insurance premiums can get federal tax credits for purchasing group insurance in those states. Employers with 10 or fewer employees will receive \$1,000 for each covered employee (\$2,000 for family coverage), and the credit will be phased down as the size of the employer increases. Those who pay more than 60% of the premiums will receive a bonus. In 2011 states would also have to have created a statewide purchasing pool in order for their residents to be eligible for the tax credit. These tax credit provisions will also be available for coverage purchased through SHOP starting in 2011.
- SHOP will provide self-employed individuals with an \$1,800 annual tax credit (\$3,600 for family coverage) to purchase health insurance.
- Within SHOP, individual employees will be able to choose their own health plan in any state in which (a) rating is not permitted based on health status and claims experience and (b) state rating rules allow a maximum age rating variation of 3:1 or less.
- Health plans participating in SHOP must be licensed in each state they serve, and the bill preserves states as the primary regulators of health insurance. State insurance commissioners will ensure that all health plans in SHOP meet state requirements for financial solvency, network adequacy, and claims and appeal procedures; will handle consumer complaints; and will ensure compliance with applicable rating rules.
- States can opt out of SHOP (i.e. exclude purchasing from SHOP by residents of their states) only if they: include sole proprietors, prohibit rating by health status and claims experience, and allow age variations no greater than 3:1 and industry variations no greater than 1.15:1, Variations may also apply for geographic area, family composition, and tobacco use.
- Associations will not be able to sell insurance plans, but the bill creates a different role for them. The bill creates a new role for associations, unions and others -- called "navigators" -- who would work with SHOP to provide information to eligible employers/ees about SHOP, the tax credit, the health plans available, comparative information, how to enroll, etc. The drafters believe that SHOP can benefit from the relationships and communication channels associations that have with their members, and associations would be able to show they are assisting their members find health coverage. A navigator would have to provide information on all plans participating in SHOP. They couldn't steer their members to a particular one. There is some conflict of interest language to prevent that.
- Aside from bringing in sole proprietors, the SHOP Act would have no effect on the individual market in any state.

It has not yet been determined if there will be hearings on the bill. Senators Lincoln and Snowe are on the Finance Committee which would be the logical committee to hold hearings.

SBM has been told by staff on the Finance Committee and others that it is not likely that the SHOP Act will garner the 60 votes necessary to overcome a filibuster in the Senate. However, the sponsors are hoping that this will spark a debate around the very important issue of small business access to healthcare and that the results will be the passage of legislation in the near future that maintains many of the key features of SHOP. The bill sponsors see this as one practical step toward comprehensive healthcare reform, envisioning that broader measures will be built on top in the future.

The National Federation of Independent Business (NFIB) and the National Association of Realtors (NAF) were an integral part of the drafting process and strongly support the SHOP Act. It is also supported by the Service Employees International Union (SEIU). Other supporters of the legislation include: Small Business California, the National Partnership for Women and Families (with some reservations), the American Rental Association, the National Funeral Directors Association and the National Roofing Contractors Association. Our understanding is that the National Small Business Association (NSBA) intends to remain neutral.

SBM's analysis is that the legislation is far better than the *status quo* -- certainly for sole proprietors, and for small business owners in the majority of states that don't have community rating rules for the small group market. Our only concerns are that (1) the enactment of this legislation might slow down, and give certain small business groups a reason not to support, the process of enactment of comprehensive healthcare reform, particularly the need to reform the individual market, and (2) because the individual market is not affected by this bill, and because there is no mechanism to ensure participation by all, despite the drafters' efforts to the contrary, there may still be an adverse selection problem.

Press release: <http://durbin.senate.gov/showRelease.cfm?releaseId=295402>

See table on next page

The following a table about the SHOP legislation prepared by the Senate sponsors' staffs:

	In the Existing Small Group Market	In SHOP
Years 1 & 2 (2009 & 2010)	<ul style="list-style-type: none"> Existing state small group market rating rules apply. A tax credit is available to small businesses in states that (1) include the self-employed in a small group market that at least includes groups of 1-50 and (2) prohibits rating based on health status and claims experience and allow rating to vary only for age (up to a 3:1 maximum), industry (up to 1.15:1), geographic area, family composition, and tobacco use. 	<ul style="list-style-type: none"> Steps are taken to prepare for a nationwide SHOP purchasing pool to give small businesses a new option for obtaining health insurance beginning in year 3. The National Association of Insurance Commissioners begins to study the rating rules inside and outside SHOP. The Institute of Medicine develops the initial minimum benefit package for plans that will be offered through SHOP on a nationwide basis.
Years 3 & 4 (2011 & 2012)	<ul style="list-style-type: none"> States continue to set their own rating rules EXCEPT that rating based on health status and claims experience is prohibited nationwide (enforced under ERISA) in order to protect small businesses from excessive premium fluctuation and to help prevent adverse selection. The tax credit is available to small businesses purchasing in the state small group market if their state has adopted the rating rules described above for Year 1 and has established a statewide purchasing pool allowing purchasers in the small group market to choose from a range of health plans. 	<ul style="list-style-type: none"> SHOP begins to offer small businesses the option of obtaining health insurance through SHOP, including plans that operate in individual states (following state benefit rules) and plans that operate nationwide (initially following the IOM minimum benefit package if ratified by SHOP). In each state, plans offered through SHOP follow the rating rules of that state's small group market (with no health status or claims experience rating). The tax credit is available to small businesses that participate in SHOP. States that have adopted the specified rating rules and have established a statewide purchasing pool may choose to exclude SHOP from their state by enacting legislation, signed by the governor, requesting an opt-out.
Year 3 (2011)	After broad consultation, NAIC issues a report on rating rules with a recommended rating model it thinks would be best for SHOP beginning in Year 5, including a maximum permissible variance between state rating and SHOP rating that will allow state flexibility but not cause significant adverse selection for SHOP.	
Year 4 (2012)	Congress considers legislation to implement the NAIC recommendations, which may include changes in SHOP's rating rules and possibly in state rating rules, under an expedited procedure, with limited amendments and a guaranteed vote (subject to the standard 60-vote threshold in the Senate).	
Years 5 (2013) & Later	<ul style="list-style-type: none"> States continue to set their own rating rules as in Year 3 (rating is not permitted based on health status or claims experience). The tax credit is available to small businesses purchasing in the state small group market if their state includes the self-employed in the small group market, has adopted rating rules that allow the same or less variance than the rating rules for SHOP, and has established a statewide purchasing pool. 	<ul style="list-style-type: none"> Rating rules adopted by Congress in year 4 based on NAIC's actuarially-guided recommendations will apply. Fallback: If Congress does not adopt new rules, rating in SHOP may vary only for age (up to a 3:1 maximum*), industry (up to 1.15:1*), geographic area, family composition, and tobacco use. The tax credit is available to small businesses that participate in SHOP. <p>* If a state's rating rules allow less variation, the state's maximum variation would apply in SHOP.</p>