

What Employers Need to Know About the Marketplace

by Garrett M. Cravener and Lynn V. Luther

The Affordable Care Act required the creation of a new “one-stop” competitive health insurance “Marketplace” where individuals and small business owners may purchase health insurance. The insurance offered through the Marketplaces is provided exclusively by private health insurance issuers. Marketplaces (one for individuals and one for small businesses) must be made available within each state, with states having the option to create their own Marketplace, to operate a Marketplace in partnership with the federal government, or to defer to the federally-run Marketplace.

Plans sold through the Marketplace will be provided on four different metal tier groups – bronze, silver, gold and platinum – which represents the level of coverage offered by each plan. For example, a bronze level plan will cover 60% of the average overall cost of providing essential health benefits to its insureds, while a platinum level plan will cover 90%.

The states of Michigan and Ohio chose to defer to the federally-run Marketplace, but retained the right to control which plans would be approved to participate in their respective Marketplace. Ohio currently has 12 insurance companies taking part in the individual Marketplace, and six insurance companies participating in the small business Marketplace. Michigan presently has 14 insurance companies participating in the individual Marketplace, and six insurance companies taking part in the small business Marketplace.

Open enrollment for the Marketplaces begins October 1, 2013, and ends on March 31, 2014. Coverage will begin on January 1, 2014.

Individual Marketplace

Beginning this fall, individuals (and families) will have the opportunity to shop for coverage on the Marketplace. Applications for coverage can be made online, via mail or in-person. A refundable premium tax credit will be available to individuals (and families) with incomes between 100% and 400% of the federal poverty level. The majority of Ohio and Michigan residents will qualify for a premium tax credit based on income alone if they apply for coverage on the Marketplace unless they are offered affordable coverage by their employers.

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Small Business Health Options Program (SHOP) Marketplace

For 2014, employers with 50 or fewer full-time equivalent employees may be eligible to use the SHOP Marketplace to purchase coverage for their employees. The SHOP Marketplaces will expand to include employers with 100 or fewer full-time equivalent employees for plan years beginning on or after January 1, 2016. In order to be eligible to participate in the SHOP Marketplace, employers must offer coverage to all of their full-time employees (i.e., employees who work at least 30 hours per week, on average).

As an incentive to participate in the SHOP Marketplace, certain small employers will be eligible to receive a tax credit for the contributions they made toward their employees' health insurance premiums. For 2014, eligible employers may receive a tax credit up to 50% (up to 35% for tax-exempt employers) of their contributions toward employees' premiums. To be eligible, a small business must satisfy the following criteria:

1. the business has fewer than 25 full-time equivalent employees;
2. the employees make less than \$50,000 per year, on average;
3. the business contributes toward at least 50% of the employees' health insurance premium; and
4. the coverage must be obtained through the SHOP Marketplace.

The credit phases out once a business gets closer to 25 employees and average earnings of \$50,000 per year, so the largest tax credit will be received by the smaller employers. The tax credit may be requested on IRS Form 8941.

The Department of Health and Human Services prepared two draft applications for the SHOP Marketplace: (1) an application for small businesses to participate in the SHOP Marketplace; and (2) an application for employees to receive SHOP coverage. The draft applications may be accessed at the following links:

Small business: <http://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/shop-employer-application-5-31-2013.pdf>

Employee: <http://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/shop-employee-application-5-31-2013.pdf>

What Employers Need to Do

An immediate action item for nearly all employers is to provide written notice to their employees of the upcoming Marketplace. This notice requirement applies to all employers covered by the Fair Labor Standards Act, and the notice must be provided to all employees, including part-time employees. The notice must contain information about the Marketplace, including, but not limited to, a description of the Marketplace, contact information to receive additional information about the Marketplace, the potential qualification for a premium tax credit and information about the coverage offered by the employer, if any. The Department of Labor prepared Model Forms that employers may use to satisfy the notice requirement:

Employers with Employer-Sponsored Plans: <http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf>

Employers without Employer-Sponsored Plans: <http://www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf>

Notice must be provided to all employees no later than October 1, 2013. For new employees hired after October 1, 2013, notice must be provided at the time of hire; however, for 2014, notice to new employees will be deemed to have been provided at the time of hire if provided within 14 days of the employee's start date. Separate notice to dependents is not required by the Act.

Contact your benefits attorney if you have any questions, or to discuss your company's strategy for long term compliance with the Act's requirements.

For information about Marketplaces or other Affordable Care Act question, please contact [Garret M. Cravener](#) or [Lynn V. Luther](#) or visit our web site at www.eastmansmith.com.

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