



# VCU Medical Center

## Office of Health Innovation

### Final Rule: Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges

**Description:** The U.S. Office of Personnel Management (OPM) is issuing a final rule establishing the Multi-State Plan Program (MSPP). Through contracts with OPM, health insurance issuers will offer at least two multi-State plans (MSPs) on each of the Affordable Insurance Exchanges (Exchanges). One of the issuers must be non-profit. Under the law, an MSPP issuer may phase in the States in which it offers coverage over 4 years, but it must offer MSPs on Exchanges in all States and the District of Columbia by the fourth year in which the MSPP issuer participates in the MSPP. The purpose of this regulation is to outline the process by which OPM will establish and administer the MSPP, as well as to establish standards and requirements for MSPs and MSPP issuers.

### Major Provisions

Section 1334 of the Affordable Care Act directs the U.S. Office of Personnel Management (OPM) to establish the Multi-State Plan Program (MSPP) to foster competition among plans competing in the individual and small group health insurance markets on the Exchanges. Specifically, section 1334 directs OPM to contract with private health insurance issuers (one of which must be non-profit) to offer at least two multi-State plans (MSPs) on each of the Exchanges in each State.

### General Requirements

An MSPP issuer must:

- Be licensed as a health insurance issuer in each State where it offers health insurance coverage;
- Have a contract with OPM pursuant to this part;
- Offer levels of coverage as required by § 800.107;
- Meet the same requirements for eligibility, enrollment, and termination of coverage as those that apply to QHPs and QHP issuers;
- Ensure that each of its MSPs meets the requirements of this part;
- Comply with all standards set forth in this part;
- Timely comply with OPM instructions and directions and with other applicable law;
- Meet such other requirements as determined appropriate by OPM, in consultation with HHS, pursuant to section 1334(b)(4) of the Affordable Care Act; and
- Comply with applicable Federal and State non-discrimination laws.

### Compliance with Federal Law

As a condition of participation in the MSPP, an MSPP issuer must comply with applicable provisions of part A of title XXVII of the Public Health Service Act, as well as applicable provisions of title I of the Affordable Care Act. Compliance shall be determined by the Director.

### **Authority to Contract with Issuers**

OPM may enter into contracts with health insurance issuers to offer at least two MSPs on Exchanges and SHOPs in each State, without regard to any statutes that would otherwise require competitive bidding. OPM will enter into a contract with at least one non-profit entity, defined as “an organization that is incorporated under State law as a non-profit entity and licensed under State law as a health insurance issuer.” The contracts will provide for individual health insurance coverage and for group health insurance coverage for small employers.

### **Phased Expansion**

OPM may enter into a contract with a health insurance issuer to offer an MSP if the health insurance issuer agrees that:

- With respect to the first year for which the health insurance issuer offers an MSP, the health insurance issuer will offer the MSP in at least 60 percent of the States;
- With respect to the second such year, the health insurance issuer will offer the MSP in at least 70 percent of the States;
- With respect to the third such year, the health insurance issuer will offer the MSP in at least 85 percent of the States; and
- With respect to each subsequent year, the health insurance issuer will offer the MSP in all States.

OPM may enter into a contract with an MSPP issuer who is not licensed in every State, provided that the issuer is licensed in every State where it offers MSP coverage through any Exchanges in that State and demonstrates to OPM that it is making a good faith effort to become licensed in every State consistent with the timeframe above.

An MSPP issuer must comply with State standards governing participation in State-based SHOP. For these State-based SHOP standards, OPM retains discretion to allow an MSPP issuer to phase-in MSPP SHOP participation in States pursuant to section 1334(e) of the Affordable Care Act. SPP issuer’s participation in SHOPs must be in accordance with the 45 C.F.R. § 156.200(g) requirements for QHPs and state SHOP standards.

### **Benefits**

An issuer applying to participate in the MSPP must select one of the two benefits package options described in this section in its application. An issuer must comply with any State standards relating to substitution of benchmark benefits or standard benefit designs.

An MSPP issuer must offer a benefits package, in all States, that is substantially equal to:

- The EHB-benchmark plan in each State in which it operates; or
- Any EHB-benchmark plan selected by OPM.

The OPM-selected EHB-benchmark plans are the three largest Federal Employees Health Benefits Program (FEHBP) plan options, as identified by HHS pursuant to section 1302(b) of the Affordable Care Act. Any EHB-benchmark plan selected by OPM lacking coverage of pediatric oral services or pediatric vision services must be supplemented by the addition of the entire category of benefits from the largest Federal Employee Dental and Vision Insurance Program (FEDVIP) dental or vision plan options, respectively.

### **Levels of Coverage**

An MSPP issuer must offer at least one MSP at the silver level of coverage and at least one MSP at the gold level of coverage on each Exchange in which the issuer is certified to offer an MSP pursuant to a contract with OPM. Pursuant to a contract with OPM, an MSPP issuer may offer one or more MSPs at the bronze level of coverage or the platinum level of coverage, or both, on any Exchange or SHOP in any State. In addition, for each level of coverage, the MSPP issuer must offer a child-only plan at the same level of coverage as any health insurance coverage offered to individuals who, as of the beginning of the plan year, have not attained the age of 21.

### **Assessments and User Fees**

Beginning in 2015, OPM may require an MSPP issuer to pay an assessment or user fee as a condition of participating in the MSPP. The amount of the assessment or user fee charged by OPM for a plan year is the amount determined necessary by OPM to meet the costs of OPM's functions under the Affordable Care Act for a plan year, including but not limited to such functions as entering into contracts with, certifying, recertifying, decertifying, and overseeing MSPs and MSPP issuers for that plan year.

### **Level Playing Field**

An MSPP issuer must, with respect to each of its MSPs, meet the following requirements in order to ensure a level playing field:

- Guarantee that an enrollee can renew enrollment in an MSP;
- In proposing premiums for OPM approval, use only the rating factors permitted under section 2701 of the PHS Act and State law;
- Not impose any preexisting condition exclusion;
- Comply with section 2705 of the PHS Act (non-discrimination);
- Comply with all Federal and State quality improvement and reporting requirements.
- Comply with all Federal and State fraud and abuse laws;
- Be licensed in every State in which it offers an MSP;
- Comply with the solvency standards set by each State in which it offers an MSP;
- Comply with the market conduct standards of each State in which it offers an MSP;
- Comply with applicable State law in negotiating the terms of payment in contracts with its providers and in making payments to claimants and providers;
- Comply with Federal standards for appeals and grievances relating to adverse benefit determinations;

- Comply with all Federal and State privacy and security laws and requirements, including any standards required by OPM in guidance or contract; and
- Comply with Federal and State law.

### **Application and Contracting Procedures**

MSPP issuers may apply to participate in the MSPP on an annual basis in the form and manner specified by OPM. OPM has discretion to negotiate contracts with applicants that meet the application requirements. OPM and applicants must negotiate premiums and may negotiate other terms and conditions that OPM deems appropriate. MSP contracts must contain a clause certifying the Issuer to offer MSPs on specified Exchanges.

### **Consumer Choice with Respect to Certain Services**

OPM must ensure that at least one MSP does not cover abortion services. MSPs may not cover abortion services in states that prohibit such coverage.

### **Additional Provisions**

The final rule sets forth standards related to how OPM will coordinate with States and HHS to approve rates, standards for rating, medical loss ratios, and an MSPP issuer's participation in reinsurance, risk adjustment, and risk corridor programs. The final rule sets forth OPM's process for MSPP application and contracting procedures, including review of applications, contract negotiations, terms of the MSPP contract, and contract renewal and nonrenewal. Additionally, the final rule sets forth how OPM will monitor contract performance for the MSPP, including ensuring quality assurance, preventing fraud and abuse, and possible contract compliance actions. Finally, the final rule sets out a process and standards for handling appeals for enrollees that are denied claims for payment or service.