



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

January 4, 2013

Mr. John O'Brien
Director, Healthcare and Insurance
U.S. Office of Personnel Management
Room 2347
1900 E Street, NW
Washington, DC 20415

Terie T. Norelli
Speaker
New Hampshire House
President, NCSL

Patsy Spaw
Secretary of the Texas Senate
Staff Chair, NCSL

William Pound
Executive Director

Re: RIN 3206-AM47 – Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges;
Proposed Rule

Dear Director O'Brien:

The National Conference of State Legislatures (NCSL) appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) for the Establishment of the Multi-State Plan Program (MSPP) established in the Patient Protection and Affordable Care Act (ACA). This rule and others promulgated by the U.S. Department of Health and Human Services (HHS), the U.S. Department of Labor (DOL) and the Internal Revenue Service (IRS) in recent weeks provide important guidance and raise important issues that must be addressed in the coming weeks. NCSL appreciates the challenges the Office of Personnel Management (OPM) faces as you bring the MSPP to life and looks forward to working with you as each state provides a home in the state health exchange for the Multi-State Plans (MSPs).

OPM's proposed regulatory approach seeks to: (1) create a program that will attract issuers to apply to offer a new product in each Exchange in 50 states and the District of Columbia; and (2) balance state and federal regulatory interests in a manner that will enable MSPP issuers to offer viable plans in Exchanges while maintaining a "level playing field" between issuers such that "neither MSPs nor plans offered by non-MSPP issuers are advantaged or disadvantaged" in Exchange marketplaces. NCSL supports this approach. To achieve this goal, all plans participating in an exchange in a state must be subject to the same rules. All plans, including MSPs must comply with state and federal laws, regulations and policies. Exceptions should be limited to situations where there is a compelling national goal that cannot be achieved another way. It is imperative that all of the federal agencies and the states coordinate efforts, avoid duplication and conflicting requirements and achieve program efficiencies wherever and whenever possible.

States have a wealth of expertise regulating the individual and small group health insurance issuers and plans. While OPM has unparalleled expertise and experience in providing health insurance coverage to federal employees across the nation, there are many differences between the Federal Employees Health Benefits Program (FEHBP) and the individual and small group market plans that will be offered in the state health exchanges. NCSL urges you to take advantage of the considerable resources at the state level as you move forward with the implementation of the MSPP.

NCSL looks forward to working with you in the coming months and hopes that our comments are helpful to you. If you have any questions or need additional information, please contact me at joy.wilson@ncsl.org or by phone at 202-624-8689.

Sincerely,

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Health Policy Director

**Comments of the National Conference of State Legislatures
Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges**

Small Business Health Option Program (SHOP) Exchange (§800.102) – The NPRM would not require Multi-State Plan Program (MSPP) issuers to offer plans in a state’s SHOP exchange until their fourth year of participation in the program. In the fourth year, MSPPs must offer complete coverage in the 50 states and the District of Columbia. Some states **require all issuers participating in the state exchange** to participate in both the individual exchange and the SHOP exchange. In these states, MSPPs should be required to comply with the state law.

Phased Expansion (§800.104) – The NPRM proposes to permit MSPP issuers to phase-in statewide coverage. Some states require Qualified Health Plans (QHPs) participating in the state exchange to provide statewide coverage. In these states the MSPPs should be required to comply as well.

Essential Health Benefits (§800.105) – The NPRM proposes to allow MSPP issuers to select their Essential Health Benefit Package from three federal health plan models in addition to the **state-selected** Essential Health Benefit (EHB) benchmark package. The state plans are all based on products currently available in the state and have been reviewed and vetted by states. **MSPP issuers should be required to use the state benchmark plan.**

Network Adequacy (§800.109) – Network adequacy is one of the most important requirements for Qualified Health Plans. MSPP issuers should be required to fully comply with all state network adequacy rules and regulations.

Service Areas (§800.110) – The proposed rule would allow MSPP issuers to limit areas of services within a state. It is difficult to imagine a scenario where this would not lead to “cherry picking” the most lucrative services areas and leaving less attractive areas without adequate coverage. MSPP issuers should be required to meet the same network adequacy and service area requirements as other Qualified Health Plans.

Reporting Requirements (§800.112) – OPM proposes to impose an additional set of reporting requirements on MSPs in state exchanges. NCSL urges you to coordinate reporting requirements with the other federal agencies and the states to: (1) streamline the reporting requirements for the plans; (2) avoid duplication; and (3) agree on the most important data to be reported/collected and what will be done with the data.

Benefit Plan Material and Information (§800.113) – OPM proposes to develop its own benefit plan materials. NCSL urges you to coordinate with the states and HHS so that the MSPP materials and those provided by Qualified Health Plans can be easily compared by potential customers. Considerable work has been done to provide an easy to use one-stop-shopping center for individuals seeking health insurance coverage. The MSPP products should be displayed with the products offered by the other Qualified Health Plans in the same format and on the same platform.

Compliance with State Law (§800.114) – The MSPPs must be required to comply with state laws, regulations and policies except when they prevent the application of federal law or regulation or when there is a compelling national goal that cannot be achieved another way. The final MSPP regulation should be clear on this matter.

Process for Dispute Resolution (§800.116) – NCSL supports the development of a dispute resolution process, but notes that to the extent the MSPP issuers comply and comport with state laws and requirements, the need for such a process should be minimal.

Internal and External Review (§800.504) – OPM proposes to use its own internal and external review processes in lieu of existing state requirements. NCSL urges you to reconsider. We believe coordinating efforts with the states using existing state review processes will be more efficient and easier for plan participants to understand.