

*United States*

***Office of  
Personnel Management***

*The Federal Government's Human Resources Agency*



**Multi-State Plan Program Issuer Letter**

**Number:** 2016-001

**Date:** January 13, 2016

**Subject: Multi-State Plan Program Annual Letter for Plan Year 2017**

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**INTRODUCTION**

The Office of Personnel Management's Multi-State Plan (MSP) Program is a promising entrant in the dynamic healthcare landscape that has emerged from the implementation of the Affordable Care Act (ACA). The purpose of the MSP Program is to offer high-quality health insurance products in each State through contracts with private insurers. The MSP Program has established a strong foundation since its implementation in 2014. OPM recognizes 2016 may prove challenging for many issuers who offer products in the individual and small group markets, both on and off the Affordable Insurance Exchanges, or "Exchanges" (also called Health Insurance Marketplaces, or "Marketplaces.") Nonetheless, OPM believes that 2017 will be a year of great opportunity for issuers who choose to participate in the markets.

The OPM team has built strong relationships with all Marketplaces: State-based, State Partnership, and Federally-facilitated, including State-based Marketplaces – Federal Platform. OPM's broad portfolio allows it to act as a convener, connecting Federal and State Agencies and information systems to facilitate communication, streamline workflows, and ensure the most accurate information is available to consumers.

OPM has designed efficient review and management processes that can expand to accommodate new applicants. OPM certified 261 MSP options for Plan Year 2016 and anticipates introducing additional innovative MSP options in 2017. The goal is to provide MSP options that are a top choice for consumers seeking dependable coverage.

To foster the positive growth of the MSP Program, this Annual Letter outlines OPM's priorities for Plan Year 2017, including phased expansion and the prescription drug exceptions process.

**PHASED EXPANSION**

While section 1334(e) of the ACA authorizes OPM to contract with issuers that offer nationwide expansion of coverage over a four-year schedule, the law does not preclude OPM from contracting with issuers that offer fewer than the scheduled number of States in any given year. The statute establishes general authority for OPM to contract for at least two plans in each State, but does not mandate firm

parameters for attaining nationwide coverage. It remains the goal of the MSP Program to provide nationwide availability of MSP options by an issuer or group of issuers. However, the experience of the first three years of the program has demonstrated that providing nationwide coverage for any issuer or group of issuers is difficult to achieve. Moreover, the statute does not give the Director of OPM authority to compel any issuer to provide nationwide coverage or to participate in the MSP Program. Therefore, OPM will exercise administrative discretion in deciding whether to contract with an issuer or group of issuers who would like to participate in the MSP Program but who cannot commit to offering coverage in all 51 jurisdictions by the fourth year of their participation in the program. OPM encourages any issuer or group of issuers interested in participating in the MSP Program to submit an application, whether or not they can commit to a four-year schedule for nationwide coverage.

## **PRESCRIPTION DRUG EXCEPTIONS PROCESS FOR THE MSP PROGRAM**

### Background:

On February 27, 2015, the Department of Health and Human Services (HHS) published the final rule for the Notice of Benefit and Payment Parameters for 2016 (2016 Payment Notice),<sup>1</sup> which builds upon an existing exceptions process for prescription drugs that are not included on a plan's formulary list. In particular, the revised exceptions process provides for an external review level of appeal, for standard and expedited requests, which are to be conducted by an independent review organization (IRO). In effect, this process allows consumers to request an internal appeal as well as an external review of denials of prescription drugs not listed on the plan's formulary. This process is described in [45 C.F.R. § 156.122\(c\)](#).

Per [45 C.F.R. § 800.503](#), OPM administers the MSP Program external review process for disputed adverse benefit determinations based on the standards and timeframes in the HHS external review process. These provisions, established in [45 C.F.R. § 147.136\(d\)](#) indicate that such standards and timeframes are the **minimum** requirements for an effective external review process; an effective external review process may exceed the minimum requirements. Accordingly, in 2013, OPM articulated the standards and timeframes for the MSP Program external review process in an MSP Program Administration Letter,<sup>2</sup> which indicated that the scope of external review includes not only cases involving medical judgment and rescissions, but also interpretation of coverage under the enrollee's contract.

Although processing external review requests for the prescription drug exceptions process exceeds the minimum requirements stipulated in 45 C.F.R. § 147.136(d), OPM's handling of such requests falls within the purview of "coverage appeals" in that the granting of an exceptions request, in effect, leads to an enrollee receiving coverage for that prescription. Conversely, a denial of an exceptions request constitutes a denial of coverage in that it results in "failure to pay for or provide a benefit under the plan," which is an adverse benefit determination as defined in [45 C.F.R. § 800.501](#) and 45 C.F.R. § 147.136.

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<sup>1</sup> Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016, 80 FR 10749 (February 27, 2015). Available at <https://federalregister.gov/a/2015-03751>.

<sup>2</sup> MSP Program Administration Letter, 2013-002, "Multi-State Plan Program External Review Process." Published November 27, 2013. [http://www.opm.gov/media/4592632/pal\\_2013-002.pdf](http://www.opm.gov/media/4592632/pal_2013-002.pdf).

OPM Action:

In an effort to maintain consistency among external review processes available to MSP enrollees, reduce consumer confusion, and continue to have an effective external review process that exceeds the minimum requirements, OPM will be conducting external review for the prescription drug exceptions process for MSP enrollees.

OPM will send drug exceptions external review requests to the same IRO that handles other medical judgment external review requests for the MSP Program, consistent with the 2016 Payment Notice. We will also use the 2016 Payment Notice's timelines for standard and expedited exceptions process determinations of 72 and 24 hours, respectively.

MSP Issuer Action:

For Plan Year 2017 policy documents and notices, MSP Issuers must direct MSP enrollees to use the OPM external review process for their prescription drug exceptions process claims and must include the same OPM contact information that is otherwise used for coverage appeals external review requests.

**MSP ISSUER CONTINUING OBLIGATIONS**

MSP Issuer continuing obligations regarding external review and abortion services are described in Multi-State Plan Program Issuer Letter No. 2015-01.<sup>3</sup> Current MSP Issuers will find guidance on specific MSP document language and State Form Filings in the MSP Application Guide. New MSP Issuers will be able to access the MSP Application Guide upon OPM's acceptance of their Notice of Intent to Apply. In addition, MSP benefit plan materials or information must meet standards set forth in [45 C.F.R. § 800.113](#), including the requirement to be written in plain language.

**CONCLUSION**

There is no official public comment period for this letter. If you have any questions about this letter, please address them to [MSPPIssuer@opm.gov](mailto:MSPPIssuer@opm.gov).

Sincerely,

John O'Brien  
Director  
Healthcare and Insurance

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<sup>3</sup> MSP Program Issuer Letter, 2015-001, "Multi-State Plan Program Call Letter for Plan Year 2016." Published January 22, 2015. [https://www.opm.gov/media/4949664/msp\\_call\\_letter\\_2016.pdf](https://www.opm.gov/media/4949664/msp_call_letter_2016.pdf).