

Multi-State Plans in the California Health Benefit Exchange (Covered California)

What is a Multi-state Plan (MSP)?

The Affordable Care Act (ACA) requires the federal Office of Personnel Management (OPM) to contract with health insurance issuers (or a group of issuers) to offer, in each state and the District of Columbia, at least 2 MSPs in each state-based or federally facilitated exchange, that provide both individual and small employer group coverage.¹

The ACA requires OPM to contract with issuers, or an affiliated group of issuers, at least one of which must be nonprofit. MSPs are required to offer essential health benefits, meet all ACA requirements that apply to qualified health plans offered in exchanges and be licensed and comply with applicable state laws not otherwise inconsistent with MSP requirements or OPM rules. Finally, the ACA requires that at least one of the MSP plans does not provide coverage for elective abortions. MSPs under contract with OPM are deemed certified to participate in the state exchanges and state exchanges must offer them if they meet federal requirements.

What is the purpose of the MSP program?

One goal of the ACA is to increase consumer choice by stimulating market competition among health plans to offer more affordable, value-based options through the new insurance exchanges.² In addition to establishing the exchanges themselves, the ACA requires the offering of MSPs in the exchanges to further competition. According to the OPM web site:

“The ACA created the MSP options to drive competition. MSP options ensure that Americans across the country have access to high-quality health insurance plans with reliable benefits. OPM ensures that these plans have a broad network of providers, high percent of spending on health care rather than administrative costs, and strong consumer protections. These plans may [Emphasis added] also provide families with members who live in different states the option of being enrolled in the same plan.

With the MSP Program in place, uninsured Americans will have even more options for affordable coverage that works for them. Multi-State plans are already helping to drive competition and expand the number of plan options in many states. The MSP Program ensures that consumers have choice of plans across the country. Without the MSP option, in three states (Alaska, New Hampshire, and West Virginia) there would be only one type of insurance plan for consumers to consider. Additionally, MSP options will be offered in 10 Federally-facilitated Marketplaces where there are 5 or fewer issuers offering qualified health plans.”

As of this writing, which issuers are under contract with OPM?

The OPM has entered into a contract with the Blue Cross and Blue Shield Association to offer more than 150 MSP options in 30 States and the District of Columbia on the health insurance marketplaces,

including the California Health Benefit Exchange (Covered California). The ACA directs OPM to extend MSP options to all 50 States plus the District of Columbia within the next four years.

What are the MSP options available in Covered California?

In California, one issuer, Anthem Blue Cross (Anthem) is participating as the MSP, with MSP individual options available in every region through Covered California. Under federal law, MSPs are only required to offer silver and gold level coverage so only Anthem's silver and gold level options in each region are certified MSPs. Depending on the geographic region in California, OPM approved the offering of Anthem Preferred Provider Organization (PPO) or Exclusive Provider Organization (EPO) coverage at the silver and gold levels.

California law goes beyond federal law and requires issuers participating in the state exchange to offer coverage at all five coverage levels (platinum, gold, silver, bronze and catastrophic). Consistent with that California requirement, Anthem has offerings in Covered California at all metal levels, but only the silver and gold offerings are considered MSPs.

Are the Anthem MSPs licensed health plans in California and subject to state law?

Yes. Anthem is offering its MSPs as licensed health care service plan contracts under the jurisdiction of the state Department of Managed Health Care (DMHC). Under federal rules, MSPs must be licensed and comply with state laws in states where they are offering MSP products, except those state requirements that would be in conflict with the ACA, as determined by OPM.

The OPM application process also required applicant issuers seeking federal certification as MSPs to demonstrate compliance with federal ACA standards for qualified health plans, including essential health benefits, premium rating rules, network adequacy and other ACA requirements.

What benefit designs are offered by the Anthem MSPs in Covered California?

Anthem MSPs comply with California essential health benefits requirements and offer Covered California standardized benefit designs. Pursuant to final federal rules regarding MSPs, MSP issuers must comply with any state standards relating to essential health benefits, substitution of benchmark benefits and standard benefit designs.³ California's essential health benefits implementing law does not allow for substitution of benefits.⁴ Covered California did adopt standardized benefit designs for all qualified health plans (QHPs) in the Exchange as it was authorized to do under California law. Because of the timing of the OPM MSP contracting process, Anthem was able to submit to OPM QHP benefit designs that met the requirements in Covered California standard benefit designs. The Anthem MSP offerings replaced the silver and gold Anthem QHPs previously approved by Covered California.

Are MSP enrollees eligible for the federal premium tax credits administered by exchanges including Covered California?

Yes. Enrollees in MSPs who meet the federal eligibility standards will be eligible for the income-based premium subsidy and cost-sharing assistance available through exchanges established under the ACA including Covered California.

Will the Anthem MSPs provide coverage and/or reciprocity outside of California for MSP enrollees?

No. The Anthem products offered through Covered California provide traditional in-state coverage and would only cover emergency or urgent care outside of the state.

Paradoxically, there are QHPs in Covered California that offer some out-of-state coverage and/or reciprocity with affiliated companies in other states, such as access to providers in other states at in-network cost sharing or coverage in the same QHP for family members who live in other states. The specific coverage available will depend on the terms of the issuer's policy or contract and consumers will need to verify with the issuer what is covered.

Although MSPs are subject to state licensure and regulatory oversight, they are also subject to oversight by OPM. What areas of oversight will be addressed by OPM?

OPM is required to negotiate premiums with MSPs, monitor their performance, conduct oversight related to network adequacy and oversee compliance with contractual terms. The final MSP federal rules allow for OPM final review of premium rates even where state regulators conduct rate review. OPM will also review and approve MSP benefit plan information and materials but this review does not preclude states from also reviewing the materials. OPM stated that it would work with states to resolve any discrepancies. Finally, MSP issuers are subject to external and internal review of disputed claims and appeals as described below.

What process will apply to consumer appeals of disputed claims and claims denials by MSPs?

The final federal MSP rules called for OPM to “conduct external review of adverse benefit determinations” using a process similar to that in place for disputed claims under the Federal Employees Health Benefits Program (FEHBP), also administered by OPM.⁵ According to program administration guidance issued by OPM (September guidance), the MSP program external review process extends to all final denials of claims – including those not based on medical judgment (as defined in federal rules related to external review of claims denials)⁶ -- and coverage rescissions. OPM will make an initial determination on whether the denial is based on medical judgment and if so forward the request to an independent external organization for review. Those requests not involving medical judgment will be resolved internally by OPM.

According to OPM, MSP enrollees will also continue to have access to state complaint resolution and appeals processes for health insurance related complaints not subject to OPM internal or external review. The September guidance includes definitions and a series of complex examples to illustrate what types of consumer situations would trigger the OPM external and internal review process for enrollees of MSPs and which types of complaints and grievances will be handled at the state level. Consumers enrolled in MSPs will be able to contact the state DMHC for assistance in determining whether a specific complaint is subject to OPM or state review.

The federal external review process for MSPs is very similar, but not identical to, California's independent medical review (IMR) program which offers independent external reviews for denials, delays or partial denials of benefits, payment or services based on medical necessity or for out-of-

network emergency care and services. California's IMR preceded the ACA and the federal Centers for Medicare and Medicaid Services deemed the CA-IMR program to be in compliance with the newly imposed federal external review requirements under the ACA.⁷

Is there an MSP option available in the Covered California Small Business Health Options Program (SHOP) for small employers?

No. Anthem is not participating in the Covered California SHOP for small employers and there is no small employer group MSP option in California.

How has the MSP Program affected consumer choice and market dynamics in Covered California?

To date, it appears to have had little effect, in that Anthem MSPs would have been offered as QHPs in California with or without the federal MSP designation. The provider networks, benefits and rates are similar for the Anthem MSPs as they would have been if they were simply offered as QHPs in Covered California. One substantive difference between MSPs and QHPs in Covered California for 2014 that will require monitoring is the difference in consumer appeals rights and policies as described above. Since California has a robust independent external review process already in place, the Anthem MSP designation does not confer additional rights for consumers but may add confusion as consumers enrolled in MSPs navigate their rights and deal with an additional regulatory agency, OPM.

One area of uncertainty that exists relates to the role of MSPs approved by OPM in states that engage in active purchasing as in California.⁸ Under federal law, state exchanges must offer MSPs designated by OPM regardless of state-level purchasing strategies or issuer selection criteria. As an active purchaser, Covered California evaluates potential QHP issuers and selects from among those that meet state standards and are in the best interest of exchange consumers, as determined by Covered California, rather than automatically allowing all applicant issuers to offer coverage in the Exchange. It remains to be seen if and to what extent the MSP program, and the role of OPM in designating MSPs in the state, will impact Covered California's issuer selection process in the future.

*For questions or additional information, contact Deborah Kelch, Director of the Health Insurance Alignment Project, at dk@kelchpolicy.com. The Health Insurance Alignment Project is supported by a grant from the **California HealthCare Foundation**. The Project provides policymakers, state departments and agency staff with policy research, analysis, advice and technical assistance to advance the goals of reducing duplication, improving transparency and maximizing consumer protections in health insurance oversight in California.*

¹ Affordable Care Act §1334; 42 United States Code (USC) §18054.

² Trish Riley and Jane Hyatt Thorpe. *Multi-State Plans under the Affordable Care Act*. George Washington University, School of Public Health and Health Services. Undated.

³ 45 Code of Federal Regulations (CFR) §800.105 (b)(3).

⁴ See CA Health and Safety Code §1367.005 (c) and CA Insurance Code §10112.27 (c).

⁵ Office of Personnel Management. *Multi-State Plan Program Administration Letter: 2013-001*. September 5, 2013.

⁶ 45 CFR §147.136 (d)(1)(ii)(A).

⁷ Additional information about CA-IMR can be found on the DMHC web site at:

http://www.dmhc.ca.gov/dmhc_consumer/pc/pc_imrqa.aspx

⁸ Sarah Goodell. *Health Policy Brief: Multi-State Plan Program*. Health Affairs. March 26, 2013.