

# Office of Personnel Management

---

# Eliminate Funding for the Office of Personnel Management’s Multi-State Plan Program

## RECOMMENDATION

Congress, working with the President, should eliminate funding for the Office of Personnel Management’s (OPM’s) Multi-State Plan (MSP) program established under the Affordable Care Act of 2010.

## RATIONALE

Under Section 1334 of the Affordable Care Act, Congress created the MSP program to be administered by the OPM. The OPM was to contract with at least two insurance companies; at least one plan was to be a nonprofit insurer. The MSP plan was authorized to compete with private health plans in the health insurance exchanges throughout the United States. The Obama Administration and its congressional allies created the MSP as a substitute for the “robust public option” that was discarded by House and Senate Democratic leaders in the final stages of the 2010 congressional debate on the Affordable Care Act. The Administration and its congressional allies argued that the MSP program was necessary to enhance competition in the health insurance exchanges.<sup>1</sup> In fact, the MSPs have had a relatively poor showing, with unimpressive enrollment. In 2014, the OPM contracted with only one insurer; and in 2015, the OPM added the so-called co-op plans—another set of government-financed

health plans—to the MSP program. Those plans have generally proven to be financially unstable, and most co-ops have left the markets.

In fact, there is no need for the government to sponsor special health plans to compete against other private plans in the individual markets. Competition in the exchanges and the individual markets has declined, and the MSP program has not measurably improved the situation. The MSP was supposed to have at least two plans in each state by 2017, but instead of increasing, the number of states with one or more MSP has declined. Currently, only 22 states have MSPs.<sup>2</sup> Meanwhile, OPM staff have major responsibilities for administering the Federal Employees Health Benefits Program (FEHBP), one of the government’s most successful programs; and the elimination of the MSP program would enable them to concentrate their time, energy, and effort on FEHBP administration.<sup>3</sup>

---

## ADDITIONAL READING

- Robert E. Moffit and Neal R. Meredith, “Multistate Health Plans: Agents for Competition or Consolidation?” Mercatus Center *Working Paper*, January 2015.

# Eliminate Special Congressional Subsidies for Health Insurance

## RECOMMENDATION

The President should order the OPM to stop funding congressionally unauthorized subsidies for the health insurance of Members of Congress and their staffs in the Affordable Care Act's health insurance exchange.

## RATIONALE

The OPM is the central personnel management agency of the federal government. The OPM enforces all civil service laws, rules and regulations. It also administers federal pay and benefits and health and retirement programs. In that capacity, it administers the FEHBP, a system of competing private health plans available to federal workers and retirees and their families. The FEHBP is the largest group health insurance program in the world.

During the debate on the 2010 ACA, Congress created Section 1312 (d)(3)(D), which required that Members of Congress and their staff obtain their health coverage through the ACA's new health insurance exchange program instead of through the FEHBP.

When Members of Congress realized that, in enacting the ACA, they had voted themselves and their staffs out of their own health coverage, many urgently tried to find a way out of their predicament, preferably in the form of an administrative solution. That option would avoid the public embarrassment of a recorded vote on the floor of the House or the Senate.<sup>4</sup>

President Obama provided that administrative relief in 2013: He ordered the OPM to provide special taxpayer subsidies for Congress and staff to offset their higher insurance costs in the law's new health insurance exchange. On August 7, 2013, the OPM ruled that Members of Congress and staff—despite their exit from the FEHBP—would henceforth receive FEHBP subsidies for coverage outside the FEHBP in the exchanges. This was purely an administrative action outside the constraints of the Constitution or the laws. In other words, the Obama Administration took this regulatory action without statutory authority under either the ACA or Title 5 of the U.S. Code, the law that governs the FEHBP.<sup>5</sup>

It is impossible to recover the same coverage and health plans that prevailed in the past. In repealing and replacing the ACA, while promoting personal choice of health plans and benefits, Members of Congress, to the extent practicable, should allow Americans to try to get the kind of coverage they liked before the enactment of Obamacare. That would include the FEHBP plans that they and their staffs had before they mistakenly voted themselves out of their own program.

---

## ADDITIONAL READING

- Robert E. Moffit, Edmund F. Haislmaier, and Joseph R. Morris, "Congress in the Obamacare Trap: No Easy Way Out," Heritage Foundation *Backgrounder* No 2831, August 2, 2013.

---

## ENDNOTES

1. For a discussion of the MSP program, see Robert E. Moffit and Neal Meredith, “Multistate Health Plans: Agents for Competition or Consolidation?” Mercatus Center *Working Paper*, January 2015, <https://www.mercatus.org/system/files/Moffit-Multistate-Health-Plans.pdf>.
2. Office of Personnel Management, “Multi-State Plan Program and the Health Insurance Marketplace,” <https://www.opm.gov/healthcare-insurance/multi-state-plan-program/consumer/> (accessed May 26, 2017).
3. Concern over the allocation of OPM mission and staff responsibilities has been recurrent. See, for example, Hon. Linda Springer et al., “The Office of Personnel Management: A Power Player in America’s Insurance Markets?” Heritage Foundation *Lecture* No. 1145, February 19, 2010, <http://www.heritage.org/health-care-reform/report/the-office-personnel-management-power-player-americas-health-insurance>.
4. For a detailed discussion of the legislative history behind the controversy, see Robert E. Moffit, Edmund Haislmaier, and Joseph R. Morris, “Congress in the Obamacare Trap: No Easy Way Out,” Heritage Foundation *Background* No. 2831, August 2, 2013, <http://www.heritage.org/health-care-reform/report/congress-the-obamacare-trap-no-easy-escape>.
5. For a blow-by-blow description of the progression of events, see Robert E. Moffit, “How Congress Mysteriously Became a Small Business to Qualify for Obamacare Subsidies,” *The Daily Signal*, May 11, 2016, <http://dailysignal.com/2016/05/11/how-congress-mysteriously-became-a-small-business-to-qualify-for-obamacare-subsides/>.