Office of Personnel Management

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(3) Does not prevent the application of a requirement of title I of the Affordable Care Act.

(c) Request for review. The request must be in writing and include contact information, including the name, telephone number, email address, and mailing address of the person or persons whom OPM may contact regarding the request for review. The request must be in such form, contain such information, and be submitted in such manner and within such timeframe as OPM may prescribe.

(1) The requester may submit to OPM any relevant information to support its request.

(2) OPM may obtain additional information relevant to the request from any source as it may, in its judgment, deem necessary. OPM will provide the requester with a copy of any additional information it obtains and provide an opportunity for the requester to respond (including by submission of additional information or explanation).

(3) OPM will issue a written decision within 60 calendar days after receiving the written request, or after the due date for a response under paragraph (c)(2) of this section, whichever is later, unless a different timeframe is agreed upon.

(4) OPM’s written decision will constitute final agency action that is subject to review under the Administrative Procedure Act in the appropriate U.S. district court. Such review is limited to the record that was before OPM when OPM made its decision.

Subpart C—Premiums, Rating Factors, Medical Loss Ratios, and Risk Adjustment

§ 800.201 General requirements.

(a) Premium negotiation. OPM will negotiate annually with an MSPP issuer, on a State by State basis, the premiums for each MSP offered by that issuer in that State. Such negotiations may include negotiations about the cost-sharing provisions of an MSP.

(b) Duration. Premiums will remain in effect for the plan year.

(c) Guidance on rate development. OPM will issue guidance addressing methods for the development of premiums for the MSPP. That guidance will follow State rating standards generally applicable in a State, to the greatest extent practicable.

(d) Calculation of actuarial value. An MSPP issuer must calculate actuarial value in the same manner as QHP issuers under section 1302(d) of the Affordable Care Act, as well as any applicable standards set by OPM or HHS.

(e) OPM rate review process. An MSPP issuer must participate in the rate review process established by OPM to negotiate rates for MSPs. The rate review process established by OPM will be similar to the process established by HHS pursuant to section 2794 of the PHS Act and disclosure and review standards established under 45 CFR part 154.

(f) State Effective Rate Review. With respect to its MSPs, an MSPP issuer is subject to a State’s rate review process, including a State’s Effective Rate Review Program established by HHS pursuant to section 2794 of the PHS Act and 45 CFR part 154. In the event HHS is reviewing rates for a State pursuant to section 2794 of the PHS Act, HHS will defer to OPM’s judgment regarding the MSPs’ proposed rate increase. If a State withholds approval of an MSP and OPM determines, in its discretion, that the State’s action would prevent OPM from operating the MSPP, OPM retains authority to make the final decision to approve rates for participation in the MSPP, notwithstanding the absence of State approval.

(g) Single risk pool. An MSPP issuer must consider all enrollees in an MSP to be in the same risk pool as all enrollees in all other health plans in the individual market or the small group market, respectively, in compliance with section 1312(c) of the Affordable Care Act, 45 CFR 156.80, and any applicable Federal or State laws and regulations implementing that section.

§ 800.202 Rating factors.

(a) Permissible rating factors. In proposing premiums for each MSP, an MSPP issuer must use only the rating factors permitted under section 2701 of the PHS Act.

(b) Application of variations based on age or tobacco use. Rating variations permitted under section 2701 of the PHS Act must be applied by an MSPP
§ 800.203 Medical loss ratio.

(a) Required medical loss ratio. An MSPP issuer must attain:

(1) The medical loss ratio (MLR) required under section 2718 of the PHS Act and regulations promulgated by HHS; and

(2) Any MSP-specific MLR that OPM may set in the best interests of MSP enrollees or that is necessary to be consistent with a State’s requirements with respect to MLR.

(b) Consequences of not attaining required medical loss ratio. If an MSPP issuer fails to attain an MLR set forth in paragraph (a) of this section, OPM may take any appropriate action, including but not limited to intermediate sanctions, such as suspension of marketing, decertifying an MSP in one or more States, or terminating an MSPP issuer’s contract pursuant to §800.404.

§ 800.204 Reinsurance, risk corridors, and risk adjustment.

(a) Transitional reinsurance program. An MSPP issuer must comply with section 1341 of the Affordable Care Act, 45 CFR part 153, and any applicable Federal or State regulations under section 1341 that set forth requirements to implement the transitional reinsurance program for the individual market.

(b) Temporary risk corridors program. An MSPP issuer must comply with section 1342 of the Affordable Care Act, 45 CFR part 153, and any applicable Federal regulations under section 1342 that set forth requirements to implement the risk corridor program.

(c) Risk adjustment program. An MSPP issuer must comply with section 1343 of the Affordable Care Act, 45 CFR part 153, and any applicable Federal or State regulations under section 1343 that set forth requirements to implement the risk adjustment program.

Subpart D—Application and Contracting Procedures

§ 800.301 Application process.

(a) Acceptance of applications. Without regard to section 6101(b)–(d) of title 41, United States Code, or any other statute requiring competitive bidding, OPM may consider annually applications from health insurance issuers, including groups of health insurance issuers as defined in §800.20, to participate in the MSPP. If OPM determines that it is not beneficial for the MSPP to consider new applications for an upcoming year, OPM will issue a notice to that effect.

(b) Form and manner of applications. An applicant must submit to OPM, in the form and manner and in accordance with the timeline specified by OPM, the information requested by OPM for determining whether an applicant meets the requirements of this part.

§ 800.302 Review of applications.

(a) Determinations. OPM will determine if an applicant meets the requirements of this part. If OPM determines...