§ 800.105 Benefits.

(a) *Package of benefits.* (1) An MSP issuer must offer a package of benefits that includes the essential health benefits (EHB) described in section 1302 of the Affordable Care Act for each MSP option within a State.

(2) The package of benefits referred to in paragraph (a)(1) of this section must comply with section 1302 of the Affordable Care Act, as well as any applicable standards set by OPM and any applicable standards set by HHS.

(b) *Package of benefits options.* (1) An MSP issuer must offer at least one uniform package of benefits in each State that is substantially equal to:

(i) The EHB-benchmark plan in each State in which it operates; or

(ii) Any EHB-benchmark plan selected by OPM under paragraph (c) of this section.

(2) An issuer applying to participate in the MSP Program may select either or both of the package of benefits options described in paragraph (b)(1) of this section in its application. In each State, the issuer may choose one EHB-benchmark for each product it offers.

(3) An MSP issuer must comply with any State standards relating to substitution of benchmark benefits or standard benefit designs.

(c) *OPM selection of benchmark plans.* (1) The OPM-selected EHB-benchmark plans are the three largest Federal Employees Health Benefits (FEHB) Program plan options, as identified by HHS pursuant to section 1302(b) of the Affordable Care Act, and as supplemented pursuant to paragraphs (c)(2) through (5) of this section.

(2) Any EHB-benchmark plan selected by OPM under paragraph (c)(1) lacking coverage of pediatric oral services or pediatric vision services must be supplemented by the addition of the entire category of benefits from the largest Federal Employee Dental and Vision Insurance Program (FEDVIP) dental or vision plan options, respectively, pursuant to 45 CFR 156.110(b) and section 1302(b) of the Affordable Care Act.

(3) In all States where an MSP issuer uses the OPM-selected EHB-benchmark plan, the MSP issuer may manage formularies around the needs of anticipated or actual users, subject to approval by OPM.

(4) An MSP issuer must follow the definition of habilitative services and devices as follows:

(i) An MSP issuer must follow the Federal definitions where HHS specifically defines habilitative services and devices if the State does not define the term, if the State defines the term in a conflicting way, or if the State definition is less stringent than the Federal definition.

(ii) An MSP issuer must follow State definitions where the State specifically defines the habilitative services and devices category pursuant to 45 CFR 156.110(f) and the State definition

is not in conflict with the Federal definition or goes above the standards set in the Federal definition.

(iii) In the case of any State that does not define this category and absent a clearly applicable Federal definition, if any OPM-selected EHB-benchmark plan lacks coverage of habilitative services and devices, OPM may determine what habilitative services and devices are to be included in that EHB-benchmark plan.

(5) Any EHB-benchmark plan selected by OPM under paragraph (c)(1) of this section must include, for each State, any State-required benefits enacted before December 31, 2011, that are included in the State's EHB-benchmark plan as described in paragraph (b)(1)(i) of this section, or specific to the market in which the plan is offered.

(d) *OPM approval.* An MSP issuer's package of benefits, including its formulary, must be submitted for approval by OPM, which will review a package of benefits proposed by an MSP issuer and determine if it is substantially equal to an EHB-benchmark plan described in paragraph (b)(1) of this section, pursuant to standards set forth by OPM and any applicable standards set forth by HHS, including 45 CFR 156.115, 156.122, and 156.125.

(e) *State payments for additional State-required benefits.* If a State requires that benefits in addition to the benchmark package be offered to MSP enrollees in that State, then pursuant to section 1334(c)(2) of the Affordable Care Act, the State must defray the cost of such additional benefits by making payments either to the enrollee or to the MSP issuer on behalf of the enrollee.