

procurement, renewal, significant modification, or option relating to such a provider agreement. Examples of information to be provided are a description of the supplies or services required, basis for reimbursement, reason the proposed provider was selected, method of contracting and competition obtained, methodology used to compute profit, and provider risk provisions. This new oversight initiative reflects OPM's need to be informed of the types of carrier large provider agreements and their terms and conditions, because of the value and cost of such agreements to the FEHB Program.

The proposed regulation authorizes the contracting officer to request additional information after he or she receives the carrier's notification and required information and prior to award of a large provider agreement, and any time during the performance of the agreement. The contracting officer will give the carrier either written comments on the agreement, or will give written notice that there will be no comments. If the contracting officer provides comments, the carrier must tell the contracting officer how it intends to address the contracting officer's concerns.

In the event the carrier awards the large provider agreement without providing notification and addressing each of the contracting officer's written concerns, the contracting officer may disallow the carrier's costs incurred under the agreement.

Under the proposed regulation, large providers must retain and make available for Government inspection all records applicable to the carrier's provider contractual agreement. The Government will have audit rights with respect to large provider contractual agreements that are the same as for carriers. The contract clause at 1652.204-74, Large provider agreements, contains a flow-down provision that requires the carrier to insert the clause in all large provider agreements.

We are updating our policy for FEHB Program subcontracting consent which currently requires advance approval of carrier subcontracts or modifications that exceed \$100,000. The proposed regulation increases the threshold so that subcontracts and modifications will require advance approval only if they equal or exceed \$550,000. The regulation also clarifies the cost components the carrier must consider in determining the \$550,000 threshold. Under the Competition in Subcontracting Clause (FAR 52.244-5), however carriers must still comply with

the competition requirements even when the subcontract does not require OPM approval.

We have added a new section in part 1631, Contract Cost Principles and Procedures, concerning the inferred reasonableness of a subcontract's costs. If the carrier follows the notification and consent requirements of 1652.244-70, Subcontracts, and later obtains the contracting officer's consent or ratification of the subcontract's costs, then the reasonableness of the subcontract's costs will be inferred.

The modified definitions of Cost or Pricing Data and Experience Rate incorporate mental health benefits capitation rates to reflect the new mental health parity requirements in the FEHB Program effective as of the 2001 contract year. Specifically, we are clarifying that mental health capitation rates are considered to be cost or pricing data and are included as actual paid claims and administrative expenses in experience rating.

We are also updating the contractor records retention requirement for carrier rate submissions, patient claims, large provider agreements, and subcontracts to 6 years. Earlier in the history of the Program when virtually all records were maintained in paper format, we established a requirement for carriers to retain claims records for three years and financial records for five years. Since electronic data storage significantly reduces the maintenance burden and the Program can benefit from having records available for a slightly longer period, we are modifying and standardizing the records retention requirement. All carriers' records are subject to The Health Insurance Portability and Accountability Act (HIPAA) standards for privacy of individually identifiable health information.

To conform with the current FAR sections, we have redesignated and/or retitled certain sections and references in FEHBAR parts 1615, 1632, and 1652. No material changes were made to these three Parts. Old FEHBAR 1615.1, General Requirements for Negotiation, is retitled "Source Selection Processes and Techniques." Old FEHBAR 1615.170, Negotiation authority, is now section 1615.070. Old FEHBAR 1615.4, Solicitations and Receipt of Proposals and Quotations, is now 1615.2, Solicitations and Receipt of Proposals and Information. Old 1615.401, Applicability, is now 1615.270. Old FEHBAR 1615.6, Source Selection, is now 1615.3. Old FEHBAR 1615.602, Applicability, is now 1615.370. We moved the provisions in old FEHBAR Subparts 1615.8, Price Negotiation, and

1615.9, Profit, to Subpart 1615.4, Contract Pricing, to correspond with the FAR. We removed and reserved sections 1615.8 and 1615.9 because there are no longer corresponding references in the FAR. Old Section 1615.802, Policy, is now 1615.402, Pricing policy. Old paragraph 1615.804-70, Certificate of accurate cost or pricing data for community rated carriers, is now 1615.406-2, Certificate of accurate cost or pricing data for community rated carriers. Old paragraph 1615.804-72, Rate reduction for defective pricing or defective cost or pricing data, is now 1615.407-1. Old paragraph 1615.805-70, Carrier investment of FEHB funds, is now 1615.470. Old paragraph 1615.805-71, Investment income clause, is now 1615.470-1. Old Section 1615.902, Policy, is now 1615.404-4, Profit, and old Section 1615.905, Profit analysis factors, is now 1615.404-70.

In 1632.170, Recurring premium payments to carriers, we removed paragraph (c) relating to the 3-Year DoD Demonstration Project (10 U.S.C. 1108) because the term of the demonstration project expired December 31, 2002.

In 1632.771, Non-commingling of FEHB Program funds, and 1632.772, Contract clause, we removed the incorrect reference to paragraph 1652.232-70 and replaced it with the reference 1652.232-72.

We removed the reference to "1615.804-72" in the introductory text of "1652.215-70, Rate reduction for defective pricing or defective cost or pricing data," and replaced it with "1615.407-1." In the same section, we removed the reference to "15.804-2(a)(1)" and replaced it with "15.403-4(a)(1)." We also replaced the clause date with "2003." In paragraph (a) of the clause, we replaced "1615.804-70" with "1615.406-2." Finally, we removed paragraph (d) relating to the 3-Year DoD Demonstration Project (10 U.S.C. 1108) because the term of the demonstration project expired December 31, 2002.

In the introductory text of 1652.215-71, Investment income, we replaced "1615.805-71" with "1615.470-1."

In 1652.216-70, Accounting and price adjustment, we changed the clause date to "2003" and removed paragraph (c) because the term of the 3-Year DoD Demonstration Project (10 U.S.C. 1108) expired December 31, 2002.

In 1652.216-71, Accounting and allowable cost, we changed the clause date to "2003" and removed paragraph (d) because the term of the 3-Year DoD Demonstration Project (10 U.S.C. 1108) expired December 31, 2002.

In 1652.222-70, Notice of significant events, we revised paragraph (d) of the clause to increase the threshold for