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Part II

Office of Personnel Management

5 CFR Part 890
48 CFR Parts 1602, 1615, and 1652
Federal Employees Health Benefits Program; Proposed Rules

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1602, 1615, and 1652

RIN 3206–AN00

Federal Employees Health Benefits Program; Rate Setting for Community-Rated Plans

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a Notice of Proposed Rulemaking to make changes to the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). These changes would: Define which subscriber groups may be included for consideration as similarly sized subscriber groups (SSSGs); require the SSSG to be traditional community rated; establish that traditional community-rated Federal Employees Health Benefits (FEHB) plans must select only one rather than two SSSGs; and make conforming changes to FEHB contract language to account for the new medical loss ratio (MLR) standard for most community-rated FEHB plans.

DATES: Comments are due on or before March 9, 2015.

ADDRESSES: Send written comments to Delon Pinto, Senior Policy Analyst, Planning and Policy Analysis, U.S. Office of Personnel Management, Room 4312, 1900 E Street NW., Washington, DC; or FAX to (202) 606–4640 Attn: Delon Pinto. You may also submit comments using the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Delon Pinto, Senior Policy Analyst, at *Delon.Pinto@opm.gov* or (202) 606–0004.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management is issuing a notice of proposed rulemaking to update the Federal Employees Health Benefits Acquisition Regulation to accommodate the new FEHB specific medical loss ratio (MLR) requirement for most community-rated plans as well as to update the similarly sized subscriber group (SSSG) requirement for traditional community-rated plans.

Background on Federal Employees Health Benefits Rate-Setting for Community Rated Plans

The Patient Protection and Affordable Care Act, Pub. L. 111–148, was enacted on March 23, 2010; the Health Care and Education Reconciliation Act, Pub. L. 111–152, was enacted on March 30, 2010 (these are collectively known as the ''Affordable Care Act''). In April 2012, OPM issued a final rule establishing an FEHB specific MLR requirement to replace the SSSG comparison requirement for most community rated FEHB plans (77 FR 19522). The FEHB specific MLR rules are based on the medical loss ratio standard established by the Affordable Care Act and defined by the U.S. Department of Health and Human Services, the U.S. Department of Labor, and the U.S. Department of Treasury in 26 CFR part 54, 29 CFR part 2590, 45 CFR part 146, and 45 CFR part 158. Community-rated FEHB plans were permitted to elect to follow the FEHB specific MLR requirements instead of the SSSG requirements for calendar year 2012. Beginning with the 2013 calendar year, the FEHB specific MLR requirements were mandatory for all community-rated carriers except those that are State-mandated to use traditional community rating (TCR). State mandated TCR plans will continue to be subject to the SSSG comparison requirements.

Provisions of This Proposed Regulation

This proposed rule makes three changes to the requirements for SSSGs. In the past, OPM has required that plans identify two non-FEHB subscriber groups (employer groups covered by an issuer) that are closest in size to the FEHB group and, if either or both of those groups received a discounted rate, the carrier must provide the largest discount to FEHB. This proposed rule defines the entities whose groups may be selected for comparison as an SSSG. In addition, this rule states any SSSG must also be rated TCR in order to maintain alignment between the TCR-rated FEHB group and the subscriber group used for comparison. Last, OPM is requiring plans to identify one, rather than two, SSSG subscriber groups used for the comparison. OPM considers it unnecessary to require more than one comparison group if the SSSG must also be rated TCR for the reasons set forth below.

TCR plans are those that, usually by State law, are required to set the same rates for all subscriber groups regardless of the health risks and other characteristics of any specific group. Under TCR, an FEHB group must be charged the same premium as all other groups in its service area that receive the same set of benefits. The health plan cannot adjust premiums for a specific group to reflect the healthcare utilization characteristics of that specific group.

Since the TCR premium does not necessarily reflect the experience of a specific group, an FEHB specific MLR requirement is not appropriate. However, if a State-mandated TCR carrier has no other groups that are TCR, and therefore no SSSG, the carrier will be subject to the FEHB specific MLR requirements. In that situation, applying the FEHB specific MLR requirement is appropriate.

Definition of Entities Included for SSSG Comparison

This proposed regulation identifies which SSSGs are available for comparison under 48 CFR 1602.170–13. A subscriber group purchasing healthcare benefits from an entity may be an SSSG if the entity is the carrier, a division or subsidiary of the carrier, a separate line of business or qualified separate line of business of the carrier, or if the entity maintains a contractual arrangement with the carrier to provide healthcare benefits. If the entity is any of the preceding, any of its subscriber groups may be included as an SSSG so long as the entity reports financial statements on a consolidated basis with the carrier or shares, delegates, or otherwise contracts with the carrier, any portion of its workforce that involves the management, design, pricing, or marketing of the healthcare product.

Conforming Changes Due to MLR-Based FEHB Rate Requirements

The FEHBAR contains language required in all FEHB contracts with health insurance carriers. In the April 2, 2012 final rule, OPM did not update all of the FEHBAR contract language to account for the new FEHB-specific MLR requirement. Omitted from that regulation were some changes, described below, to 48 CFR 1652.215–70, ''Rate Reduction for Defective Pricing or Defective Cost or Pricing Data,'' to account for the new rules.

48 CFR 1652.215–70 describes how a contracting officer at OPM may make an offset from premiums if pricing or cost and pricing data are defective. This proposed rule adds a provision stating that such an offset can be made if a Carrier, which is not mandated by the State to use traditional community rating, has developed FEHB rates inconsistent with the FEHB-specific MLR requirement. This proposed rule also adds a provision that simple interest must be paid to the Government when an MLR penalty is assessed as a result of an audit finding by the OPM Office of the Inspector General (OIG). This is not a policy change, but a conforming change so all FEHB

contracts account for the new FEHB-specific MLR requirement.

The April 2, 2012 final rule included two different ''Certificates of accurate cost or pricing data'' in 48 CFR 1615.406–2: One for SSSG pricing, and one for MLR pricing. Previously there was only one certificate for all carriers. This proposed rule changes some references from ''certificate'' to ''certificates'' to reflect this change.

Technical Corrections

This proposed rule includes two technical corrections that correct inadvertent errors from earlier amendments to chapter 16 of the FEHBAR.

In the June 2011 interim final rule, the word ''issuer'' was used erroneously in place of the word ''carrier'' in two places. Per chapter 89 title 5 U.S. Code, OPM is authorized to contract with carriers. This technical correction is made in 48 CFR 1602.170–14(a) and 1652.216–70(b)(2)(i).

This proposed rule also clarifies, in 48 CFR 1652.216–70(b), how community-rated carriers must develop their FEHB rates. Previously, this section erroneously stated that carriers should ''base their rating methodology on the MLR threshold.'' The corrected language states that all community-rated plans must develop the FEHB's rates using their State-filed rating methodology or, if not required to file with the State, their standard written and established rating methodology.

Regulatory Flexibility Act

OPM certifies that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects health insurance carriers in the FEHB Program.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866. OPM has examined the impact of this proposed rule as required by Executive Order 12866 and Executive Order 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of $100 million or more in any one year. This rule is not considered a major rule because there will be no increased costs to Federal agencies, Federal Employees, or Federal retirees in their health insurance premiums.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

List of Subjects in 48 CFR Parts 1602, 1615, and 1652

Government employees, Government procurement, Health insurance, Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

For the reasons set forth in the preamble, OPM proposes to amend chapter 16 of title 48 CFR (FEHBAR) as follows:

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATION

Subchapter A—General

PART 1602—DEFINITIONS OF WORDS AND TERMS

■ 1. The authority citation for part 1602 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

■ 2. Revise 1602.170–13 to read as follows:

1602.170–13 Similarly sized subscriber groups.

(a) A *Similarly sized subscriber group* (SSSG) is a non-FEHB employer group that:

(1) As of the date specified by OPM in the rate instructions, has a subscriber enrollment closest to the FEHBP subscriber enrollment;

(2) Uses traditional community rating; and

(3) Meets the criteria specified in the rate instructions issued by OPM.

(b) Any group with which an entity enters into an agreement to provide health care services is a potential SSSG (including groups that are traditional community rated and covered by separate lines of business, government entities, groups that have multi-year contracts, and groups having point-of-service products) except as specified in paragraph (c) of this section.

(1) An entity's subscriber groups may be included as an SSSG if the entity is any of the following:

(i) The carrier;

(ii) A division or subsidiary of the carrier;

(iii) A separate line of business or qualified separate line of business of the carrier; or

(iv) An entity that maintains a contractual arrangement with the carrier to provide healthcare benefits.

(2) A subscriber group covered by an entity meeting any of the criteria under paragraph (b)(1) of this section may be included for comparison as a SSSG if the entity meets any of the following criteria:

(i) It reports financial statements on a consolidated basis with the carrier; or

(ii) Shares, delegates, or otherwise contracts with the carrier, any portion of its workforce that involves the management, design, pricing, or marketing of the healthcare product.

(c) The following groups must be excluded from SSSG consideration:

(1) Groups the carrier rates by the method of retrospective experience rating;

(2) Groups consisting of the carrier's own employees;

(3) Medicaid groups, Medicare-only groups, and groups that receive only excepted benefits as defined at section 9832(c) of title 26, United States Code;

(4) A purchasing alliance whose rate-setting is mandated by the State or local government;

(5) Administrative Service Organizations (ASOs);

(6) Any other group excluded from consideration as specified in the rate instructions issued by OPM.

(d) OPM shall determine the FEHBP rate by selecting the lowest rate derived by using rating methods consistent with those used to derive the SSSG rate.

(e) In the event that a State-mandated TCR carrier has no SSSG, then it will be subject to the FEHB specific MLR requirement.

■ 3. Revise 1602.170–14(a) to read as follows:

1602.170–14 FEHB-specific medical loss ratio threshold calculation.

Medical Loss Ratio (MLR) means the ratio of plan incurred claims, including the carrier's expenditures for activities that improve health care quality, to total premium revenue determined by OPM, as defined by the Department of Health and Human Services in 45 CFR part 158.

* * * * *

Subchapter C—Contracting Methods and Contract Types

PART 1615—CONTRACTING BY NEGOTIATION

■ 4. The authority citations for part 1615 continue to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

■ 5. In 1615.402, revise paragraphs (c)(2), (c)(3)(i)(A) and (B), and (c)(4) to read as follows:

1615.402 Pricing policy.

* * * * *

(c) * * *

(2) For contracts with fewer than 1,500 enrollee contracts for which the FEHB Program premiums for the contract term will be at or above the threshold at FAR 15.403–4(a)(1), OPM will require the carrier to submit its rate proposal, utilization data, and a certificate of accurate cost or pricing data required in 1615.406–2. In addition, OPM will require the carrier to complete the proposed rates form containing cost and pricing data, and the Community-Rate Questionnaire, but will not require the carrier to send these documents to OPM. The carrier will keep the documents on file for periodic auditor and actuarial review in accordance with 1652.204–70. OPM will perform a basic reasonableness test on the data submitted. Rates that do not pass this test will be subject to further OPM review.

* * * * *

(3) * * *

(i) * * *

(A) For contracts with 1,500 or more enrollee contracts for which the FEHB Program premiums for the contract term will be at or above the threshold at FAR 15.403–4(a)(1), OPM will require the carrier to provide the data and methodology used to determine the FEHB Program rates. OPM will also require the data and methodology used to determine the rates for the carrier's SSSG. The carrier will provide cost or pricing data required by OPM in its rate instructions for the applicable contract period. OPM will evaluate the data to ensure that the rate is reasonable and consistent with the requirements in this chapter. If necessary, OPM may require the carrier to provide additional documentation.

(B) Contracts will be subject to a downward price adjustment if OPM determines that the Federal group was charged more than it would have been charged using a methodology consistent with that used for the SSSG. Such adjustments will be based on the rate determined by using the methodology (including discounts) the carrier used for the SSSG.

* * * * *

(4) Contracts will be subject to a downward price adjustment if OPM determines that the Federal group was charged more than it would have been charged using a methodology consistent with that used for the similarly-sized subscriber group (SSSG). Such adjustments will be based on the rate determined by using the methodology (including discounts) the carrier used for the SSSG.

* * * * *

■ 6. In 1615.406–2, revise the section heading and the first certificate to read as follows:

1615.406–2 Certificates of accurate cost or pricing data for community-rated carriers.

* * * * *

(Beginning of first certificate)

Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers (SSSG methodology)

This is to certify that, to the best of my knowledge and belief: (1) The cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting officer or the Contracting officer's representative or designee, in support of the ____* FEHB Program rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHB Program contract and are accurate, complete, and current as of the date this certificate is executed; and (2) the methodology used to determine the FEHB Program rates is consistent with the methodology used to determine the rates for the carrier's Similarly Sized Subscriber Group.

* Insert the year for which the rates apply.

Firm: _____

Name: _____

Signature: _____

Date of Execution: _____

(End of first certificate)

* * * * *

Subchapter H—Clauses and Forms

PART 1652—CONTRACT CLAUSES

■ 7. The authority citation for part 1652 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

■ 8. In 1652.215–70, revise paragraphs (a) and (c) to read as follows:

1652.215–70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

* * * * *

(a) If any rate established in connection with this contract was increased because:

(1) The Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not complete, accurate, or current as certified in one of the Certificates of Accurate Cost or Pricing Data (FEHBAR 1615.406–2);

(2) The Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not accurate as represented in the rate reconciliation documents or MLR Calculation;

(3) The Carrier developed FEHBP rates for traditional community-rated plans with a rating methodology and structure inconsistent with that used to develop rates for a similarly sized subscriber group (see FEHBAR 1602.170–13) as certified in the Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers;

(4) The Carrier, who is not mandated by the State to use traditional community rating, developed FEHBP rates with a rating methodology and structure inconsistent with its State-filed rating methodology (or if not required to file with the State, their standard written and established rating methodology) or inconsistent with the FEHB specific medical loss ratio (MLR) requirements (see FEHBAR 1602.170–13); or

(5) The Carrier submitted or, kept in its files in support of the FEHBP rate, data or information of any description that were not complete, accurate, and current—then, the rate shall be reduced in the amount by which the price was increased because of the defective data or information.

* * * * *

(c) When the Contracting Officer determines that the rates shall be reduced and the Government is thereby entitled to a refund or that the Government is entitled to a MLR penalty, the Carrier shall be liable to and shall pay the FEHB Fund at the time the overpayment is repaid or at the time the MLR penalty is paid—

(1) Simple interest on the amount of the overpayment from the date the overpayment was paid from the FEHB Fund to the Carrier until the date the overcharge is liquidated. In calculating the amount of interest due, the quarterly rate determinations by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods the overcharge was retained by the Carrier shall be used;

(2) A penalty equal to the amount of overpayment, if the Carrier knowingly

submitted cost or pricing data which was incomplete, inaccurate, or noncurrent; and

(3) Simple interest on the MLR penalty from the date on which the penalty should have been paid to the FEHB Fund to the date on which the penalty was or will be actually paid to the FEHB fund. The interest rate shall be calculated as specified in paragraph (c)(1) of this clause.

■ 9. In 1652.216–70, revise paragraphs (b)(2), (3), (7), and (8) to read as follows:

1652.216–70 Accounting and price adjustment.

* * * * *

(b) * * *

(2) Effective January 1, 2013 all community-rated plans must develop the FEHBP's rates using their State-filed rating methodology or, if not required to file with the State, their standard written and established rating methodology. A carrier who mandated by the State to use traditional community rating will be subject to paragraph (b)(2)(ii) of this clause. All other carriers will be subject to paragraph (b)(2)(i) of this clause.

(i) The subscription rates agreed to in this contract shall meet the FEHB-specific MLR threshold as defined in FEHBAR 162.170–14. The ratio of a plan's incurred claims, including the carrier's expenditures for activities that improve health care quality, to total premium revenue shall not be lower than the FEHB-specific MLR threshold published annually by OPM in its rate instructions.

(ii) The subscription rates agreed to in this contract shall be equivalent to the subscription rates given to the carrier's similarly sized subscriber group (SSSG) as defined in FEHBAR 1602.170–13. The subscription rates shall be determined according to the carrier's established policy, which must be applied consistently to the FEHBP and to the carrier's SSSG. If the SSSG receives a rate lower than that determined according to the carrier's established policy, it is considered a discount. The FEHBP must receive a discount equal to or greater than the carrier's SSSG discount.

(3) If subject to paragraph (b)(2)(ii) of this clause, then:

(i) If, at the time of the rate reconciliation, the subscription rates are found to be lower than the equivalent rates for the SSSG, the carrier may include an adjustment to the Federal group's rates for the next contract period, except as noted in paragraph (b)(3)(iii) of this clause.

(ii) If, at the time of the rate reconciliation, the subscription rates are found to be higher than the equivalent rates for the SSSG, the carrier shall reimburse the Fund, for example, by reducing the FEHB rates for the next contract term to reflect the difference between the estimated rates and the rates which are derived using the methodology of the SSSG, except as noted in paragraph (b)(3)(iii) of this clause.

(iii) Carriers may provide additional guaranteed discounts to the FEHBP that are not given to the SSSG. Any such guaranteed discounts must be clearly identified as guaranteed discounts. After the beginning of the contract year for which the rates are set, these guaranteed FEHBP discounts may not be adjusted.

* * * * *

(7) Carriers may provide additional guaranteed discounts to the FEHBP. Any such guaranteed discounts must be clearly identified as guaranteed discounts. After the beginning of the contract year for which the rates are set, these guaranteed FEHBP discounts may not be adjusted.

(8) Carriers may not impose surcharges (loadings not defined based on an established rating method) on the FEHBP subscription rates or use surcharges in the rate reconciliation process. If the carrier is subject to the SSSG rules and imposes a surcharge on the SSSG, the carrier cannot impose the surcharge on FEHB.

* * * * *

[FR Doc. 2014–30633 Filed 1–6–15; 8:45 am]

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AN07

Federal Employees Health Benefits Program: Enrollment Options Following the Termination of a Plan or Plan Option

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a proposed rule to amend the Federal Employees Health Benefits (FEHB) Program regulations regarding enrollment options following the termination of a plan or plan option.

DATES: OPM must receive comments on or before March 9, 2015.

ADDRESSES: Send written comments to Chelsea Ruediger, Planning and Policy Analysis, U.S. Office of Personnel Management, Room 4312, 1900 E Street NW., Washington, DC 20415. You may also submit comments using the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Chelsea Ruediger at (202) 606–0004.

SUPPLEMENTARY INFORMATION: When a plan or plan option in the Federal Employees Health Benefits (FEHB) Program terminates, OPM provides the enrollees of that plan or plan option a time period in which they may elect to enroll in a new plan or plan option. This proposed rule clarifies the actions that OPM and employing agencies may take when an enrollee fails to make an enrollment election during the time period provided.

Current regulation ends an employee's enrollment in the FEHB Program if he or she fails to make an enrollment election during the time period provided by OPM following a plan termination. This proposed regulation amends 5 CFR 890.301 to require the employing office to enroll automatically these employees into the lowest-cost nationwide plan option based on the enrollee share of the cost of a self only enrollment. Under the proposed regulation, a plan will not be considered the lowest-cost nationwide plan option if it is a High Deductible Health Plan (HDHP) or if it requires a membership fee or an association fee.

For annuitants, current regulation provides that individuals who fail to make an enrollment election during the time provided by OPM following a plan termination shall be considered to be enrolled in the option of the Blue Cross and Blue Shield Service Benefit Plan that OPM determines most closely approximates the terminated plan. The proposed regulation amends 5 CFR 890.306 to provide that these annuitants will be enrolled into the lowest-cost nationwide plan option that is available to the individual based on the same criteria listed above.

Current regulation provides that when a plan discontinuation occurs due to a disaster, employees and annuitants who fail to make an enrollment election within 60 days of the disaster, as announced by OPM, shall be considered to be enrolled in the Standard Option of the Blue Cross and Blue Shield Service Benefit Plan. The proposed rule amends the regulation to provide that these individuals will be enrolled into the lowest-cost nationwide plan option that is available to the individual based on the same criteria listed above. It also provides belated enrollment authority for individuals who, for causes beyond