

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AN43

Removal of Eligible Family Members From Existing Self and Family Enrollments

AGENCY: Office of Personnel
Management (OPM).

ACTION: Proposed rule.

SUMMARY: This action would amend Federal Employees Health Benefits (FEHB) Program rules. This proposed rule is in response to enrollee requests to remove family members from existing enrollments. The intended effect of this action is to allow certain eligible family members to be removed from self and family or self plus one enrollments.

DATES: Comments are due on or before January 30, 2017.

ADDRESSES: Send written comments to Padma Shah, Senior Policy Analyst, Planning and Policy Analysis, U.S. Office of Personnel Management, Room 4316, 1900 E Street NW., Washington, DC. You may also submit comments identified by the RIN number stated above using the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT:
Padma Shah at (202) 606-0004.

SUPPLEMENTARY INFORMATION:

I. Background

Currently under 5 CFR 890.302, all eligible family members are covered under a self and family enrollment. Subject to a temporary extension of coverage and conversion, a family member's coverage terminates on the day he or she ceases to be an eligible family member, as provided by 5 CFR 890.304. Existing regulations allow enrollees to change enrollment from self and family to self plus one or self only based on a qualifying life event or during Open Season. However, there is no provision in the existing regulations addressing the voluntary removal of an eligible covered family member under an existing self and family or self plus one enrollment.

The Office of Personnel Management has experienced a number of requests to remove eligible family members since OPM implemented FEHB coverage for children up to age 26 for plan year 2011 pursuant to the Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act, Public

Law 111-152 (the Affordable Care Act). In accordance with this law, OPM issued guidance to FEHB carriers in Carrier Letter No. 2010-18 and to agency benefit officers in Benefits Administration Letter No. 2010-201. In these guidance documents, OPM advised that for the upcoming plan year and beyond married children were eligible for coverage without dependency requirements, residency requirements, or requirements that a child be a student or have prior or current insurance coverage under their parent's FEHB Program enrollment. On October 30, 2013, OPM published a final rule codifying this change in eligibility in 5 CFR 890.302 (78 FR 64873).

With the extension of FEHB coverage to children up to age 26, including the addition of coverage for married and non-dependent children, there are more circumstances where eligible family members have their own coverage and are either not in need of coverage under a parent's FEHB self and family enrollment or do not wish to be covered under that enrollment. In addition, some FEHB-enrolled parents do not wish to provide health insurance coverage for their adult children. In light of the number of FEHB enrollees who have communicated to us that they do not wish to maintain coverage for their adult child and adult children who have communicated that they want to be removed from their parent's FEHB self and family enrollment, OPM has re-examined its previous policy not to allow removal of eligible family members under any circumstances. Our review of this issue also indicated that there may be circumstances where covered spouses would also seek to be removed from an existing enrollment. Accordingly, this proposed change attempts to provide appropriate removal opportunities for covered family members, including spouses and adult children. Though the availability of the new self plus one enrollment type will alleviate this issue somewhat, we anticipate that enrollees may still wish to remove family members from existing enrollments, especially in situations where there are more than three family members covered under a self and family enrollment.

II. Discussion of the Proposed Rule

The Office of Personnel Management proposes to add a new paragraph, 5 CFR 890.308(h), that allows eligible family members to be removed from a self and family or a self plus one enrollment in certain limited circumstances. A request for removal under this proposed rule can be submitted and effectuated

anytime during the plan year if the individual provides all needed documentation. The proposed rule also includes amendments to § 890.302 requiring that proof of family member eligibility must be provided upon request by a carrier, employing office, or OPM and updating paragraph numbering. For more information on these changes, see proposed rule Federal Employees Health Benefits Program: Removal of Ineligible Individuals from Existing Enrollments, publishing elsewhere in this issue of the **Federal Register**.

In a majority of cases, there appears to be no detriment to an eligible family member covered under a self and family or a self plus one enrollment, even if the family member has other coverage. Health insurance plans can coordinate coverage and provide what, in most cases, amounts to more generous benefits to a family member who has double coverage. However, in a minority of circumstances, it may be beneficial for a family member to be removed from an enrollment. For example, if a family member covered under an FEHB enrollment is eligible for their own employer's high deductible health plan with a health savings account, under Internal Revenue Service (IRS) regulations, the family member may not be able to take advantage of the employer's offer unless he or she is not covered under another health plan. Accordingly, the regulation proposes to allow spouses and adult children to be removed from a self and family or a self plus one enrollment if certain requirements are met.

In the case of a self plus one enrollment, it would, in most cases, be beneficial for the enrollee to decrease his or her enrollment to a self only enrollment or cancel the enrollment in accordance with § 890.302 for a family member to no longer be covered. Similarly, in the case of a self and family enrollment with two eligible family members, it would in most cases be beneficial for the enrollee to decrease to a self plus one enrollment. However, if the enrollee is enrolled in premium conversion, IRS rules would prohibit the decrease in or cancellation of the enrollment mid-year in the absence of a qualifying life event. Therefore, the regulation allows an enrollee or a family member to choose removal with no decrease in enrollment at any time mid-year.

This regulation also addresses situations where an enrollee has more than two eligible family members covered under a self and family enrollment, and one of the eligible family members may wish to no longer

be covered under the enrollment. For example, a self and family enrollment may cover an enrollee's spouse, one minor child and one adult child. The adult child may wish to stop coverage under the enrollee's self and family enrollment due to the availability of other employer-sponsored coverage, while the enrollee's spouse and minor child have no other access to coverage. In this example, the adult child can be removed from the existing self and family enrollment.

In contemplating circumstances for removal, OPM sought to balance the interests of eligible family members with the interests of FEHB enrollees. For example, under this proposed rule, spouses may be removed if both the enrollee and the spouse provide a notarized request for removal to their agency. This ensures that both the enrollee and family member are aware of and agree to the request and avoids agencies receiving conflicting requests as to whether a spouse should be covered where the spouses disagree, for instance where they are nearing or seeking divorce.

Adult children may be removed from a self plus one or self and family enrollment by the enrollee without the consent of the child if the enrollee provides proof that the child is no longer a dependent. Consistent with the Affordable Care Act, the proposed rule "continue[s] to make [FEHB] coverage available for an adult child" but permits an enrollee to reject the offer of coverage for adult children who are no longer dependents. OPM plans to provide subregulatory guidance defining how an individual may demonstrate that a child is no longer a dependent.

Adult children who request removal from a self and family or self plus one enrollment will be removed if the child submits a notarized request for removal. OPM recognizes that with the extension of coverage to married and non-dependent children to age 26, there are more eligible adult children covered under the program who have their own independent means for obtaining health insurance coverage or who wish for other reasons, such as an interest in privacy, not to be covered under their parent's enrollment. However, under the proposed rule, minor children may not be removed from an enrollment without a court order to protect the interests of children who are not yet at an age where they are ready to be responsible for their own health insurance coverage.

Submissions of Requests

To submit a notarized request for removal, the proposed rule instructs that the request must be submitted to

the employing agency and that the effective date of the removal be the first day of the pay period following the agency's approval of the request. When an enrollee requesting removal of an adult child has submitted proof that the adult child is no longer a dependent, the proposed effective date is the first day of the second pay period following the agency's approval of the request. This proposed effective date gives a child being removed without his or her consent a pay period to receive notice of the removal and to procure other health coverage.

If an eligible family member is removed from an enrollment, he or she may only regain coverage under the applicable self plus one or self and family enrollment during the annual Open Season or within 60 days of the eligible family member losing other coverage. Enrollees must provide the written consent of the family member and demonstrate their continued eligibility as a spouse or child under this section. This proposed policy avoids family members making multiple changes throughout the plan year and allows FEHB carriers to properly administer needed services. OPM will publish subregulatory guidance through a Benefits Administration Letter providing specific guidance to agencies on processes for removals.

Family members removed under this proposed regulation will not be eligible for temporary extension of coverage and conversion under § 890.401 or temporary continuation of coverage (TCC) under § 890.1103. The FEHB governing statute does not allow removed family members to be eligible for TCC or a temporary extension of coverage and conversion as such removal does not result in the child ceasing to meet the requirements for being considered a child within the meaning of 5 U.S.C. 8905a and 8901(1).

Regulatory Impact Analysis: OPM has examined the impact of this proposed rule as required by Executive Order 12866 and Executive Order 13563, which directs 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 it provides a process for removal of erroneously enrolled eligible family members from self and family

enrollments, which we do not estimate to have widespread applicability under the FEHB Program.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a widerange of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects health insurance benefits of Federal employees and annuitants.

Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Orders 13563 and 12866.

Federalism

The Office of Personnel Management has examined this proposed rule in accordance with Executive Order 13132, Federalism. The agency has determined that this proposed rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or Tribal governments.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3507(d); see 5 CFR part 1320) requires that the U.S. Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. OPM is not proposing any additional collections in this rule.

List of Subjects on 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance.

U.S. Office of Personnel Management.

Beth F. Cobert,
Acting Director.

For the reasons set forth in the preamble, OPM proposes to amend Part 890 of Title 5 of the Code of Federal Regulations as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of 101, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061; Pub. L. 111–148, as amended by Pub. L. 111–152.

■ 2. Amend § 890.302 by revising paragraph (a)(1) to read as follows:

§ 890.302 Coverage of family members.

(a)(1) An enrollment for self plus one includes the enrollee and one eligible family member. An enrollment for self and family includes all family members who are eligible to be covered by the enrollment except as provided in section 890.308(h). Proof of family

member eligibility may be required, and must be provided upon request, to the carrier, the employing office or OPM. Except as provided in paragraph (a)(2) of this section, no employee, former employee, annuitant, child, or former spouse may enroll or be covered as a family member if he or she is already covered under another person's self plus one or self and family enrollment in the FEHB Program.

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■ 3. Amend § 890.308 by adding paragraph (h) to read as follows:

§ 890.308 Disenrollment.

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(h) *Removal from Enrollment: Eligible Family Members.* (1) An eligible family member may be removed from a self plus one or a self and family enrollment if a request is submitted to the employing office for approval in the following circumstances:

(i) In the case of a spouse, if the enrollee and his or her spouse provide a notarized request for removal.

(ii) In the case of a child who has reached the age of majority in the child's state of residence (the enrollee's state of residence if the child's is not known), if the enrollee provides proof that the child is no longer his or her dependent. The enrollee shall also provide the last known contact information for the child.

(iii) In the case of a child who has reached the age of majority in the child's state of residence, if the child provides a notarized request for removal.

(2) For removals under paragraphs (h)(1)(i) and (h)(1)(iii) of this section, the

effective date is the first day of the pay period following the date that the request is approved by the employing office. For removals under paragraph (h)(1)(ii), the effective date is the first day of the second pay period following the date the request is approved by the employing office.

(3) The family member's removal under this paragraph is considered a cancellation under § 890.304(d) and removed family members are not eligible for temporary extension of coverage and conversion under section 890.401 or temporary continuation of coverage under § 809.1103 of this chapter.

(4) If an eligible family member is removed under this paragraph, he or she may only regain coverage under the applicable self plus one or self and family enrollment if requested by the enrollee during the annual open season or within 60 days of the family member losing other health insurance coverage. The enrollee must also provide written consent to reinstatement of coverage from the family member and demonstrate eligibility of the spouse or child as a family member.

(5) If an employing office approves a request for removal, the employing office must notify the enrollee and the carrier of the removal immediately. For removals under paragraph (h)(1)(ii) of this section, the employing office must also immediately notify the child of the removal using the last known contact provided by the enrollee.

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