

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AN09

Federal Employees Health Benefits Program: Removal of Ineligible Individuals From Existing Enrollments

AGENCY: Office of Personnel
Management.

ACTION: Proposed rule.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing a notice of proposed rulemaking to amend Federal Employees Health Benefits (FEHB) Program regulations to provide a process for removal from FEHB enrollments of certain identified individuals who are found not to be eligible as family members. This process would apply to individuals for whom there is a failure to provide adequate documentation of eligibility when requested.

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 4312, 1900 E Street NW., Washington, DC; or FAX to (202) 606-0004 Attn: Padma Shah. You may also submit comments 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: OPM is proposing to amend the Federal Employees Health Benefits (FEHB) Program regulations to (1) provide that proof of family member eligibility may be required for coverage under an FEHB Program self plus one or self and family enrollment and (2) to establish the circumstances under which individuals covered under an existing self plus one or self and family FEHB enrollment will be removed from such enrollment and the processes for removal, where the enrollee does not provide adequate documentation of eligibility. Currently, under § 890.302 of title 5, all eligible family members are covered under a self and family enrollment. A family member's coverage terminates, subject to a temporary extension of coverage, on the day he or she ceases to be an eligible family member, as provided by § 890.304. For example, if an enrollee's child reaches age 26, coverage terminates. Currently, the regulations do not address the removal of an

erroneously-covered ineligible individual from an existing self plus one or self and family enrollment.

The proposed regulation amends § 890.302 to provide that proof of family member eligibility must be provided upon request by a carrier, employing office, or OPM. OPM plans to provide further guidance on requirements for proof of family member eligibility through sub-regulatory guidance, including Benefits Administration Letters and Carrier Letters.

The proposed regulation also updates § 890.308 of title 5 to provide processes for removal of individuals who are determined to be ineligible as family members. This change reflects OPM's enhanced effort to ensure that individuals covered under existing FEHB enrollments meet legal and regulatory eligibility requirements.

The proposed process for removal of erroneously-covered ineligible family members from an existing enrollment is modeled on the process for removal of ineligible enrollees in § 890.308(a). The proposed regulation allows the removal to be initiated by the FEHB insurance carrier that operates the enrollee's plan, OPM as administrator of the FEHB Program, or the enrollee's employing office. If an enrollee disagrees with an initial determination of ineligibility, the enrollee may request reconsideration and submit appropriate documentation of eligibility to either the employing office or OPM depending on the circumstances.

In the case of a carrier-initiated removal, an enrollee's reconsideration request must be filed with the enrollee's employing office. The proposed rule provides that the employing office shall provide notice to the carrier that the enrollee is seeking reconsideration of the carrier's initial determination.

The proposed regulation provides that if OPM, the employing office, or the carrier, as applicable, finds the documentation to establish eligibility, the individual will continue to be covered as a family member under the enrollment without a gap in coverage, as appropriate. The proposed regulation provides that appropriate documentation of an enrollment includes, but is not limited to, copies of birth certificates, marriage certificates and, if applicable, other proof such as that the individual lives with and is supported by the enrollee. OPM plans to provide more specific information on what constitutes adequate documentation in forthcoming sub-regulatory guidance. OPM solicits comments on what may constitute appropriate documentation of family member eligibility.

If the enrollee does not submit appropriate documentation within the required timeframe, or the documentation is determined to be inadequate to establish eligibility, the removal of the family member will be prospective with limited exceptions. The proposed regulation provides that in the case of fraud or intentional misrepresentation of material fact on the part of the enrollee as prohibited by the terms of the FEHB plan, removals may be retroactive to the date of ineligibility.

The regulation also provides that temporary extension of coverage and conversion and temporary continuation of coverage will be administered in accordance with § 890.401 and Subparts H and K of this part and that any eligibility under these regulations will not extend beyond the date the entitlement would have ended if the individual had been removed on the date of loss of eligibility. Subparts H and K state that family members have 60 days from the date of the event causing the loss of coverage to enroll. Those timeframe are applicable to individuals who are removed from an enrollment under this regulation.

The regulation also provides that if acceptable proof of eligibility of an individual removed under this regulation is subsequently provided and a family member is found to have been eligible, coverage will be reinstated retroactively so that there is no gap in coverage, as appropriate.

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 1 year. This rule is not considered a major rule because it provides a process for removal of erroneously enrolled ineligible and eligible family members from self and family enrollments, which we do not estimate to have widespread applicability under the FEHB Program.

Regulatory Flexibility Act

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

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.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; 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 Public Law 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Public Law 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Public Law 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 Public Law 105–33, 111 Stat. 251; and section 721 of Public Law 105–261, 112 Stat. 2061; Public Law 111–148, as amended by Public Law 111–152.

■ 2. In § 890.302 revise 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. 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 revising the section heading, adding headings to paragraphs (a), (b), (c), (d) and adding paragraphs (e), (f), and (g) to read as follows:

§ 890.308 Disenrollment and removal from enrollment.

(a) *Carrier Disenrollment: Enrollment Reconciliation.* * * *

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(b) *Carrier Disenrollment: Death of Enrollee.* * * *

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(c) *Carrier Disenrollment: Child Survivor Annuitant.* * * *

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(d) *Carrier Disenrollment: Separation from Federal Employment.* * * *

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(e) *Carrier Removal from Enrollment: Family Members* (1) A carrier may request verification from the enrollee at any time of eligibility of an individual who is covered as a family member of the enrollee in accordance with § 890.302. To verify eligibility, the carrier shall send the enrollee a request for appropriate documentation of the individual's relationship to the enrollee with a copy to the enrollee's employing office. The request shall contain a written notice that the individual will no longer be covered 60 calendar days after the date of the notice unless the enrollee or the employing office provides appropriate documentation as requested. If the carrier does not receive the requested documentation within the specified time frame or if based on the documentation provided the individual is found not to be eligible, written notice of removal must be sent to the enrollee, with a copy to the employing office, including an explanation of the process for seeking reconsideration. The time limit may be extended when the enrollee shows that he or she is prevented by circumstances beyond his or her control from providing timely documentation.

(2) Appropriate documentation includes, but is not limited to, copies of

birth certificates, marriage certificates, and, if applicable, other proof including that the individual lives with the enrollee and the enrollee is the individual's primary source of financial support.

(3) The effective date of a removal shall be prospective unless the record shows that the enrollee or the individual has committed fraud or made an intentional misrepresentation of material fact as prohibited by the terms of the plan.

(4) A request for reconsideration of the carrier's initial decision must be filed with the enrollee's employing office within 60 calendar days after the date of the initial decision. The employing office must notify the carrier when a request for reconsideration of the decision to remove the individual from the enrollment is made. The time limit for filing may be extended when the enrollee shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit. The request for reconsideration must be made in writing and must include the enrollee's name, address, Social Security Number or other personal identification number, the family member's name, the name of carrier, reason(s) for the request, and, if applicable, retirement claim number.

(5) The employing office must issue a written notice of its final decision to the enrollee, and notify the carrier of the decision, within 30 days of receipt of the request for reconsideration. The notice must fully set forth the findings and conclusions on which the decision was based.

(6) If an enrollee or individual provides acceptable proof of eligibility of an individual subsequent to removal, coverage under the enrollment shall be reinstated retroactively so that there is no gap in coverage, as appropriate.

(f) *Employing Office and OPM.* (1) An enrollee's employing office or OPM may request verification of eligibility from the enrollee of an individual who is covered as a family member of the enrollee in accordance with § 890.302 at any time. To verify eligibility, the employing office or OPM shall send a request for appropriate documentation of the individual's status to the enrollee. The request shall contain a written notice that the individual will no longer be covered 60 calendar days after the date of the notice unless the enrollee provides appropriate documentation as requested. If the employing office or OPM does not receive the requested documentation within the specified

time frame, or if based on the documentation provided the individual is found not to be eligible, the employing office or OPM shall direct the carrier to remove the individual from the enrollment and the employing office or OPM shall provide written notice to the enrollee including an explanation of the process for seeking reconsideration. The time limit may be extended when the enrollee shows that he or she is prevented by circumstances beyond his or her control from providing timely documentation.

(2) Appropriate documentation includes, but is not limited to, copies of birth certificates, marriage certificates, and, if applicable, other proof including that the individual lives with the enrollee and that the enrollee is the individual's primary source of financial support.

(3) The effective date of the removal shall be prospective unless the record shows that the enrollee or the individual has committed fraud or made an intentional misrepresentation of material fact as prohibited by the terms of the plan.

(4) The enrollee may request reconsideration of an employing office

or OPM's decision to remove the individual from the enrollment within 60 days of the initial decision. The enrollee may request reconsideration of an employing office decision to the employing office or an OPM decision to OPM. The employing office or OPM must notify the carrier when a request for reconsideration of the decision to remove the individual from the enrollment is made. The time limit for filing may be extended when the enrollee shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit. The request for reconsideration must be made in writing and must include the enrollee's name, address, Social Security Number or other personal identification number, the family member's name, the name of carrier, reason(s) for the request, and, if applicable, retirement claim number. The employing office or OPM must notify the carrier when a request for reconsideration of the decision to remove the individual from the enrollment is made.

(5) The employing office or OPM must issue a written notice of its final decision to the enrollee, and notify the carrier of the decision, within 30 days of receipt of the request for reconsideration. The notice must fully set forth the findings and conclusions on which the decision was based.

(6) If an enrollee or family member provides acceptable proof of eligibility of an individual subsequent to removal, coverage under the enrollment shall be reinstated retroactively so that there is no gap in coverage, as appropriate.

(g) If an individual is removed from an enrollment pursuant to paragraph (e) or (f) of this section, the individual may be eligible for a 31-day temporary extension of coverage, conversion and/or temporary continuation of coverage in accordance with § 890.401 and subparts H and K of this part. Any entitlement to coverage under § 890.401 and subparts H and K shall not extend beyond the date that entitlement would have ended if the individual had been removed on the date of loss of eligibility.

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