Billing Code 6325-63

OFFICE OF PERSONNEL MANAGEMENT

RIN 3206–AN13

48 CFR Parts 1609, 1615, 1632, and 1652

Federal Employees Health Benefits Program: FEHB Plan Performance Assessment System

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing a final rule to amend the system for assessing the annual performance of health plans contracted under the Federal Employees Health Benefits (FEHB) Program. The purpose of this rule is to measure and assess FEHB plan performance (both experience-rated and community-rated plans) through the use of a common, objective, and quantifiable performance assessment.

DATES: This final rule is effective [INSERT 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Wenqiong Fu, Policy Analyst at (202) 606–0004.

SUPPLEMENTARY INFORMATION:

The Federal Employees Health Benefits (FEHB) Program was established in 1960 and provides health insurance to over eight million Federal employees, annuitants, and their family

members. Chapter 89 of Title 5 United States Code, which authorizes the FEHB Program, allows OPM to contract with health insurance carriers to provide coverage under certain types of plans. FEHB contracts are either community-rated or experience-rated. In community-rated contracts, the overall premium is based on the carrier's standard rating methodology, taking into account factors in the larger geographic area or "community." In experience-rated contracts, the FEHB carrier considers actual "experience" or medical costs of the group of covered lives. The two types of contracts are regulated under different sections of the FEHB Acquisition Regulation (FEHBAR). Premiums are determined according to distinct processes and plan performance is evaluated differently.

On December 15, 2014, the Office of Personnel Management (OPM) published a proposed rule inviting comments on amendments to the FEHB Program regulations to amend OPM's assessment of plan performance. The 30-day comment period ended on January 14, 2015. OPM received 8 responses containing multiple comments. The comments are summarized and discussed below.

Responses to Comments on the Proposed Rule:

OPM received several comments requesting additional information on measurement criteria such as specific weighted measurement percentages, evaluation methods, measurement criteria, and measurement timelines, and requested opportunities to comment on these criteria. Commenters requested that OPM clarify the specific weights and measures within the regulation so they can better plan for the assessment period, and to more clearly adhere to the traditional regulatory structure for a weighted guidelines structured approach. Due to the evolving nature of clinical quality measures, and OPM's need to focus performance on policy-driven measures to be determined annually, it is no longer appropriate to retain fixed weights and measures in regulation. As stated in the proposed rule-making, OPM intends to retain the weighted

guidelines structured approach as a regulatory framework and to provide applicable measurement criteria through advance carrier letter guidance with opportunity for comment, followed by incorporation of the measurement criteria as a contract amendment. Since 2014, OPM has issued three carrier letters (CL 2014-19, CL 2014-28, and CL 2015-10). Carrier Letter 2015-10 specifically addresses the types of questions about measurement criteria addressed in the comments. OPM intends to provide carriers with transparency which will allow the new performance assessment system to retain flexibility and to mature over time. A number of commenters requested reasonable lead time and turnaround times after release of measures and assigned weights that will be the subject of performance and performance assessments. OPM intends to keep plans informed in a timely manner as we identify measurement criteria for future years so plans can have sufficient time to prepare for performance that will be evaluated in the following assessment cycle. We also highly encourage feedback and communication through our mailbox at fehbperformance@opm.gov. For these reasons, OPM is not amending the rule in response to these comments.

One commenter recommended that OPM seek to improve health care quality by offering enrollees access to high quality, accredited health care networks and prescription benefit managers. Another commenter recommended that OPM add plan accreditation as an element to the clinical quality, customer service, and resource use factors. OPM addressed plan accreditation in Carrier Letter (2014-10). The vast majority of FEHB health plans already meet OPM's accreditation requirement. However, not all health plan accreditors incorporate annual measurement of clinical quality, customer service, or resource use into their accreditation framework. OPM's plan performance assessment system standardizes this component of performance measurement for all FEHB plans. Contract Officers may also take plan

performance on accreditation milestones into account in the Contract Oversight section. For these reasons, OPM is not amending the rule in response to this comment.

One commenter requested OPM consider waiving the performance adjustment if a plan exceeds a Medical Loss Ratio threshold. OPM is not amending the rule in response to this comment. We believe it would not be appropriate for OPM to waive the performance expectations for those carriers that do not achieve their margin targets due to higher than expected claim loss. While we understand the performance adjustment is a concern, using it to cover the excess of the Medical Loss Ratio threshold is not the intent of the proposed assessment system.

OPM received a comment recommending that experience rated carriers have the option for a cost plus incentive or fee contract. OPM is not amending the rule in response to this comment. OPM is not proposing to amend the types of contracts with which it contracts. For experience rated carriers, this rulemaking simply amends the performance assessment system used to determine the service charge.

One commenter recommended that the performance assessment system should provide rewards and resources to allow plans to improve. Another commenter noted its understanding that OPM was comparing the quality indicators it proposes to incorporate into its performance assessment system with quality indicators relied upon by other large purchasers to influence payments to plans, and therefore recommended that OPM consider a different performance approach similar to that of Medicare Advantage plans quality rating programs. OPM did not propose to adopt the same mechanism that others use for influencing payments to plans, and declines to adopt these recommendations.

One commenter recommended safeguards for FEHB experience rated contracts that allow them a minimum service charge payment of a negotiated percentage of the prior year's service charge, with the option to reset the minimum payment every 3 years with reference to a percentage of the average service charge paid over the prior three years. OPM is not amending the rule in response to this comment. As described in the proposed rule, we believe making adjustments to the service charge based on plan performance in the areas identified to be measured is critical in allowing the assessment system to grow, evolve, and remain flexible. However, in Carrier Letter 2015-10, we have addressed a minimum adjustment methodology for carriers that achieve a performance score that is below a threshold.

Several commenters requested additional information on Contract Oversight with concerns about specific components within this performance area and the objectivity of assessment in this performance area compared to the other three quantified performance areas. OPM has issued guidance on this issue in our Carrier Letters (2014-28) and (2015-10). Carrier Letter 2015-10 specifically addresses Contract Oversight measurement. As described in the proposed rule, OPM's purpose is to establish a program-wide assessment system that allows performance-based criteria to be linked to health plan premium disbursements. OPM will assess performance for the Contract Oversight performance area using many sources of information, most of which are used with discretion in the current processes for the service charge and incentive performance criteria. For these reasons, OPM is not amending the rule in response to these comments.

OPM received several comments that the proposed rule omitted group size as an element. The prior group size element under Contract cost risk (1615.404-70(a)(2)) was omitted because OPM is replacing the current profit analysis factors with a new framework. However, OPM has

allowed a minimum adjustment methodology for carriers that achieve a performance score that is below a threshold. The methodology is designed based on group size and is described in detail in Carrier Letter (2015-10).

One commenter requested OPM provide quarterly performance reports in order to inform carriers and allow them to make corrections or improvements to ensure better performance each year. OPM plans to use an annual evaluation cycle since many measures are collected annually, and not quarterly. Three of the new performance areas, Clinical Quality, Customer Service, and Resource Use, are based on measures contained in annual evaluation systems. OPM is committed to transparency with regard to the performance assessment system and has plans to make available a dashboard that carriers may use to view their individual performance ratings and overall scores. For these reasons, OPM declines to accept this comment.

We received one comment regarding the use of HEDIS and CAHPS measures to measure performance. The commenter stated that the health carrier does not have direct control to influence the decisions of the patient and their family or their health care providers, and recommended attributing modest weight to these measures. This commenter further asserted that CAHPS is an experience survey which measures perception rather than satisfaction, that HEDIS and CAHPS reflect successful data collection efforts and not necessarily quality improvement, and that CAHPS recently stopped its survey of members for whom Medicare is primary, which will negatively impact FEHB results. Other commenters recommended the use of other measurement tools and voiced their concerns that HEDIS and CAHPS measure the carrier's entire book of commercial business and not just the FEHB program. OPM is not amending the proposed rule in response to these comments. OPM's intention with the proposed performance assessment system is to build on already established requirements for FEHB Carriers to report

evaluations by HEDIS and CAHPS. The goal of the new performance assessment system is to build on the quality initiatives OPM has implemented in recent years, such as public reporting of HEDIS scores.

We want to incentivize carriers who achieve high performance in areas such as clinical quality, customer service and resource use. While HEDIS and CAHPS measure the carrier's entire book of business, and may be imperfect measures of customer satisfaction, they are well recognized national measurement systems in the health insurance arena. Our goal is to ensure that FEHB enrollees receive the highest quality services, and we believe the data from HEDIS and CAHPS best serves the purpose of recognizing good health plan performance. In addition, our methodologies for specific measures have been purposefully selected to prioritize those that are most actionable at the health plan level. Therefore, for the initial Performance Assessment year, we believe that using HEDIS and CAHPS reports as our evaluation best reflects our goals of evaluating plan performance against national commercial benchmarks. We welcome feedback and suggestions from carriers on other externally validated measures for consideration in future years.

We received one comment that the proposed change to 1652.232-71 was a drafting error and should be withdrawn. OPM agrees this is a drafting error and withdraws the proposed language. OPM is not changing the current procedure that allows an experience-rated plan to draw down the service charge from the Contingency Reserve through its Letter of Credit Account. We are simply changing the calculation of that service charge based on the plan's performance assessment.

One individual recommended that the new assessment system include a measure that requires FEHB to provide services comparable to those available under Medicare. This rule-

making is intended to address plan performance, not the types of services available under health plans. All FEHB plans provide essential health benefits identified by the Affordable Care Act. Therefore, OPM is not amending the proposed rule in response to this comment.

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 affects only health insurance carriers under the Federal Employees Health Benefits Program.

Executive Orders 13563 and 12866, 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.

List of Subjects in 48 CFR Parts 1609, 1615, 1632 and 1652

Government employees, Government procurement, Health insurance.

U.S. Office of Personnel Management.

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Katherine Archuleta,
Director.

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

PART 1609—CONTRACTOR QUALIFICATIONS

1. The authority citation for part 1609 continues to read as follows:

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

Subpart 1609.71—[Removed]

2. Remove subpart 1609.71.

PART 1615—CONTRACTING BY NEGOTIATION

3. The authority citation for part 1615 continues to read as follows:

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

4. In section 1615.404–4, paragraph (a) is revised to read as follows:

1615.404–4 Profit.

(a) When the pricing of FEHB Program contracts is determined by cost analysis (experience-rated) or by a combination of cost and price analysis (community rated), OPM will determine a performance based percentage of the price using a weighted guidelines structured approach based on the profit analysis factors described in 1615.404– 70. For experience-rated plans, OPM will use the performance based percentage so determined to develop the profit or fee prenegotiation objective, which will be the total profit (service charge) negotiated for the contract. For community-rated plans, OPM will use the performance based percentage so determined to develop an adjustment to net-to-carrier premiums, (performance adjustment) to be made during the first quarter of the following contract period.

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5. Section 1615.404–70 is revised to read as follows:

1615.404–70 Profit analysis factors.

(a) OPM Contracting Officers will apply a weighted guidelines method in developing the performance based percentage for FEHB Program contracts. For experience-rated plans, the performance based percentage will be applied to projected incurred claims and allowable administrative expenses. For community-rated plans, the performance based percentage will be applied to subscription income and will be used to calculate a performance adjustment to net-to-carrier premiums, as described at 48 CFR 1632.170(a)(2), to be made during the first quarter of the following contract period. In the context of the factors outlined in FAR 15.404– 4(d), OPM will assess performance of FEHB carriers according to four factors.

(1) *Clinical quality*. OPM will consider elements within such domains as preventive care, chronic disease management, medication use, and behavioral health. This factor incorporates elements from the FAR factor ‘‘contractor effort.’’

(2) *Customer service*. OPM will consider elements within such domains as communication, access, claims, and member experience/engagement. This factor incorporates elements of the FAR factor ‘‘contractor effort.’’

(3) *Resource use*. OPM will consider elements within such domains as utilization management, administrative, and cost trends. This factor incorporates elements of the FAR factors ‘‘contractor effort,’’ ‘‘contract cost risk,’’ and ‘‘cost control and other past accomplishments.’’

(4) *Contract oversight*. OPM will consider an assessment of contract performance in specific areas such as audit findings, fraud/waste/abuse, and responsiveness to OPM, benefits/

network management, contract compliance, technology management, data security, and Federal socioeconomic programs. This factor could incorporate any of the FAR profit analysis factors listed at 15.404– 4(d)(1)(i)–(vi).

(b) The sum of the maximum scores for the profit analysis factors will be 1 percent.

PART 1632—CONTRACT FINANCING

6. The authority citation for part 1632 continues to read as follows:

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

7. In section 1632.170, paragraph (a)(2) is revised to read as follows:

1632.170 Recurring premium payments to carriers.

(a) * * *

(2) The difference between one percent and the performance based percentage of the contract price described at 1615.404–4 will be multiplied by the carrier's subscription income for the year of performance and the resulting amount (performance adjustment) will be withheld from the net-to-carrier premium disbursement during the first quarter of the following contract period unless an alternative payment arrangement is made with the carrier's Contracting Officer. Amounts withheld from a community rated plan's premium disbursement will be deposited into the plan's Contingency Reserve.

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PART 1652—CONTRACT CLAUSES

8. 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.

9. In section 1652.232–70, revise the introductory text and paragraph (a) and remove paragraph (f). The revisions read as follows:

1652.232–70 Payments—Community-rated contracts.

As prescribed in 1632.171, the following clause shall be inserted in all community-rated FEHBP contracts:

Payments (JAN 2000)

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM, amounts for obligations due pursuant to paragraph (b) of this clause and the performance adjustment described at 1615.404–4, plus any payments made by OPM from the Contingency Reserve.

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1652.232–71 [Amended]

10. In section 1652.232–71, remove paragraph (f).

[FR Doc. 2015-15988 Filed: 6/29/2015 08:45 am; Publication Date: 6/30/2015]