



**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:** Final rule.

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

**DATES:** This rule is effective January 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Chelsea Ruediger at [Chelsea.Ruediger@opm.gov](mailto:Chelsea.Ruediger@opm.gov) or (202) 606-0004.

**SUPPLEMENTARY INFORMATION:** The U.S. Office of Personnel Management (OPM) issued a Notice of Proposed Rulemaking on January 7, 2015 to amend Title 5 of the Code of Federal Regulations Part 890 to update enrollment options following the termination of a plan or plan option in the Federal Employees Health Benefits (FEHB) Program. During the public comment period on the proposed rule, OPM received five comments including three from FEHB health plan carriers and two from citizens. These comments are summarized and addressed below.

One commenter asked if an annuitant who fails to make a health plan enrollment election following a plan or plan option termination and is involuntarily enrolled into the lowest cost

nationwide plan will have an opportunity to change his or her enrollment before the next annual Open Season. The final rule provides belated enrollment opportunities for annuitants who, for reasons beyond their control, were unable to make an enrollment election during the allowed time following the termination of a plan or plan option.

One commenter requested information about a specific FEHB plan and whether or not it would leave the FEHB Program. The specific answer to that question is outside the scope of this final regulation. Each year in advance of the annual Open Season, OPM announces any plans and plan options that intend to leave the Program. If a plan or plan option leaves the Program mid-plan year, OPM will make a timely announcement. The carrier will also notify its enrollees.

One commenter asked for clarification concerning the enrollment type (self only, self plus one, or self and family) of automatic enrollments into the lowest-cost nationwide plan. Though it is not specifically addressed in this final regulation, OPM will follow current standard procedures for enrollments to be of the enrollment type that the enrollee carried before the plan or plan option terminated.

One commenter asked that the final rule include provisions to automatically enroll enrollees into the lowest-cost plan available with the same carrier. In the event that an entire plan is terminated from the FEHB Program, this is not possible. However, in the event of a plan option termination, the final rule does include provisions to automatically enroll enrollees into the lowest-cost remaining available option of their current plan that is not a High Deductible Health Plan (HDHP).

One carrier requested that OPM identify the lowest-cost nationwide plan available for each enrollment type: self only, self plus one and self and family. Another requested that OPM consider identifying lowest-cost local plans as the default plans for automatic enrollments following a plan or plan option termination. This commenter asserted that local plans may be better equipped to provide access to care for enrollees living in their service area. OPM declines to adopt these suggestions. OPM's intent in this regulation is to ensure that all enrollees with terminating plans have adequate access to affordable health insurance coverage while maintaining a procedure that is reasonable to administer and communicate. Enrollees will have opportunities to change plans according to existing rules if they feel a better plan would meet their needs.

One commenter suggested that OPM clarify whether or not a plan that normally requires a membership or association fee would be considered as the lowest-cost nationwide plan if that plan agreed to waive the fee for any individuals who are automatically enrolled following a plan or plan option termination. OPM declines to make this change as no supporting comments were received for this suggestion.

One commenter suggested that OPM include an additional criterion for selecting the lowest-cost nationwide plan to address actual capability to assume the risk for an influx of new enrollees. Nationwide FEHB plans have adequate networks and system capabilities to accommodate enrollees in any region of the US.

One commenter asked that OPM define nationwide plan as “any plan that provides coverage in all fifty states for which any employee and annuitant is eligible” in the final rule. The final rule is not amended to adopt this definition. Health benefits plans with which OPM may contract are defined in 5 USC §8903.

One commenter requested that OPM hold any remaining contingency reserve funds in an account earmarked for the lowest-cost nationwide plan. The commenter suggested that if the account accrued to a certain amount, OPM could use the balance to reduce the administrative load. OPM declines to make this change. Currently, OPM does not have the legal authority to create an additional contingency reserve for the lowest-cost nationwide plan nor to use excess funds at the end of a year to reduce administrative costs. 890.503(c)(5) allows carriers to request special transfers from their contingency reserves for “unexpected claims experience and variations from expected community rates.”

One commenter suggested that OPM reserve the right to change the plan to be used for automatic enrollments following the termination of a plan or plan option in the event that the selected plan is unable to accommodate new enrollees. §890.301(n) has been updated in the final rule to allow OPM, at its sole discretion, to designate an alternate plan for automatic enrollments.

In order to maintain consistency among program participants, OPM has updated §890.306(l)(4)(iv) to clarify that annuitants who wish to change their enrollment following an involuntary enrollment due to a plan or plan option termination may do so prospectively, rather than retroactively, within 90-days after OPM advises the annuitant of the new enrollment.

### **Paperwork Reduction Act (PRA)**

OPM has reviewed this proposed rule for PRA implications and have determined that it does not apply to this action.

### **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. After completing this analysis, OPM has determined that this rule is not considered a major rule.

### **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 impacts options available for FEHB enrollees when the plan or plan option in which they are enrolled terminates.

### **Executive Order 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 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 5 CFR Part 890**

Administration and general provisions; Health benefits plans; Enrollment, Temporary extension of coverage and conversion; Contributions and withholdings; Transfers from retired FEHB Program; Benefits in medically underserved areas; Benefits for former spouses; Limit on inpatient hospital charges, physician charges, and FEHB benefit payments; Administrative sanctions imposed against health care providers; Temporary continuation of coverage; Benefits for United States hostages in Iraq and Kuwait and United States hostages captured in Lebanon; Department of Defense Federal Employees Health Benefits Program demonstration project; Administrative practice and procedure, Employee benefit plans, Government employees, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

---

Beth F. Cobert,

Acting Director.

Accordingly, OPM is amending title 5, 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 Pub. L. 101–513, 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.

2. Amend § 890.301 by revising paragraphs (i)(4)(ii) through (iv) and adding paragraphs (i)(4)(v) and (n) to read as follows:

**§890.301 Opportunities for employees who are not participants in premium conversion to enroll or change enrollment; effective dates.**

\* \* \* \* \*

(i) \* \* \*

(4) \* \* \*

(ii) If the whole plan is discontinued, an employee who does not change the enrollment within the time set in (i)(4)(i) of this section will be enrolled in the lowest-cost nationwide plan option, as defined in paragraph (n) of this section;

(iii) If one or more options of a plan are discontinued, an employee who does not change the enrollment will be enrolled in the remaining option of the plan, or in the case of a plan with two or more options remaining, the lowest-cost remaining option that is not a High Deductible Health Plan (HDHP).

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, an employee must change the enrollment within 60 days of the disaster, as announced by OPM. If an employee does not change the enrollment within the time frame announced by OPM, the employee will be enrolled in the lowest-cost nationwide plan option, as defined in paragraph (n) of this section. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(v) An employee who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in paragraph (n) of this section, may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section;

\*\*\*\*\*

(n) OPM will annually determine the lowest-cost nationwide plan option calculated based on the enrollee share of the cost of a self only enrollment. The plan option identified may not be a High Deductible Health Plan (HDHP) or an option from a health benefits plan that charges an association or membership fee. OPM reserves the right to designate an alternate plan for automatic enrollments if OPM determines circumstances dictate this.

3. Amend § 890.306 by revising paragraphs (l)(4)(ii) through (v) and adding paragraph (l)(4)(vi) to read as follows:

**§ 890.306 When can annuitants or survivor annuitants change enrollment or reenroll and what are the effective dates?**

\* \* \* \* \*

(1) \* \* \*

(4) \* \* \*

(ii) If a plan discontinues all of its existing options, an annuitant who does not change his or her enrollment is deemed to have enrolled in the lowest-cost nationwide plan option, as defined in §890.301(n); except when the annuity is insufficient to pay the withholdings, then paragraph (q) of this section applies.

(iii) If one or more options of a plan are discontinued, an annuitant who does not change the enrollment will be enrolled in the remaining option of the plan, or in the case of a plan with two or more options remaining, the lowest-cost remaining option that is not a High Deductible Health Plan (HDHP). In the event that the annuity is insufficient to pay the withholdings, then paragraph (q) of this section applies;

(iv) After an involuntary enrollment under paragraph (1)(4)(ii) or (iii) of this section becomes effective, the annuitant may change the enrollment to another option of the plan into which he or she was enrolled or another health plan of his or her choice prospectively within 90-days after OPM advises the annuitant of the new enrollment;

(v) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, an annuitant must change the enrollment within 60 days of the disaster, as announced by OPM. If an annuitant does not change the enrollment within the time frame announced by OPM, the annuitant will be enrolled in the lowest-cost nationwide plan option, as defined in §

890.301(n). The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(vi) An annuitant who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in §890.301(n), may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section.

\*\*\*\*\*

4. Amend § 890.806 by revising paragraphs (j)(4)(ii) through (iv) and adding paragraph (j)(4)(v) to read as follows:

**§ 890.806 When can former spouses change enrollment or reenroll and what are the effective dates?**

\*\*\*\*\*

(j) \*\*\*

(4) \*\*\*

(ii) If the whole plan is discontinued, a former spouse who does not change the enrollment within the time set will be enrolled in the lowest-cost nationwide plan option, as defined in §890.301(n);

(iii) If one or more options of a plan are discontinued, a former spouse who does not change the enrollment will be enrolled in the remaining option of the plan, or in the case of a plan with two or more options remaining, the lowest-cost remaining option that is not a High Deductible Health Plan (HDHP);

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, the former spouse must change the enrollment within 60 days of the disaster, as announced by OPM. If a former spouse does not change the enrollment within the time frame announced by OPM, the former spouse will be enrolled in the lowest-cost nationwide plan option, as defined in §890.301(n) of this section. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(v) A former spouse who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in §890.301(n), may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section.

\*\*\*\*\*

5. Amend § 890.1108 by revising paragraphs (h)(4)(ii) through (iv) and adding paragraph (h)(4)(v) to read as follows:

**§ 890.1108 Opportunities to change enrollment; effective dates.**

\*\*\*\*\*

(h) \*\*\*

(4) \*\*\*

(ii) If the whole plan is discontinued, an enrollee who does not change the enrollment within the time set will be enrolled in the lowest-cost nationwide plan option, as defined in §890.301(n);

(iii) If one or more options of a plan are discontinued, an enrollee who does not change the enrollment will enrolled in the remaining option of the plan, or in the case of a plan with two or

more options remaining, the lowest-cost remaining option that is not a High Deductible Health Plan (HDHP);

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, the enrollee must change the enrollment within 60 days of the disaster, as announced by OPM. If the enrollee does not change the enrollment within the time frame announced by OPM, the enrollee will be enrolled in the lowest-cost nationwide plan option, as defined in §890.301(n). The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(v) An enrollee who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in §890.301(n), may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section.

\*\*\*\*\*

**Billing Code 6325-63**

[FR Doc. 2015-27378 Filed: 10/27/2015 8:45 am; Publication Date: 10/28/2015]