



Billing Code 6325-63

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AN09

Federal Employees Health Benefits Program: Removal of Eligible and Ineligible Individuals from Existing Enrollments

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing a final rule amending Federal Employees Health Benefits (FEHB) Program regulations to provide a process for removal of certain identified individuals who are found not to be eligible as family members from FEHB enrollments. This process would apply to individuals for whom there is a failure to provide adequate documentation of eligibility when requested. This action also amends Federal Employees Health Benefits (FEHB) Program regulations to allow certain eligible family members to be removed from existing self and family or self plus one enrollments.

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

FOR FURTHER INFORMATION CONTACT: Marguerite Martel at marguerite.martel@opm.gov or (202) 606-0004.

SUPPLEMENTARY INFORMATION:

Authority For This Rulemaking

The Federal Employees Health Benefits (FEHB) Program is administered by the Office of Personnel Management (OPM) in accordance with Title 5, Chapter 89 of the United States Code and our implementing regulations at title 5, part 890 of the Code of Federal Regulations. The statute establishes the basic rules for benefits, enrollment, and participation. OPM contracts with health benefits plans to provide coverage under the statute. OPM is authorized to prescribe regulations to govern the time, manner and conditions under which an employee can enroll in a health benefits plan under the FEHB Program and the beginning and end dates of coverage for annuitants and family members.

I. Background

The Federal Employees Health Benefits (FEHB) Program provides health insurance to about 8.2 million Federal employees, retirees, and their dependents each year. It is the largest employer-sponsored health insurance program in the country providing more than \$53 billion in health care benefits annually. Coverage options available to eligible individuals include self only, self plus one or self and family coverage in an approved health benefits plan. Eligible family members include the spouse of an employee or annuitant and a child under 26 years of age, including adopted children, stepchildren or foster children or a child regardless of age who is incapable of self-support because of mental or physical disability which existed before age 26.

On December 1, 2016, OPM published a proposed rule (81 FR 86902) 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. Previously, under 5 CFR 890.302, all eligible family members are covered under a self and family enrollment. The regulations did not address the removal of an erroneously-covered ineligible individual from an existing self plus one or self and family enrollment.

On the same date, the Office of Personnel Management (OPM) published a Notice of Proposed Rulemaking (NPRM) (81 FR 86898) allowing certain eligible family members to be removed from self plus one and self and family enrollments in limited circumstances. This would change the current provision at 5 CFR 890.302, which provides that all family members that are eligible according to the FEHB Act (5 U.S.C. 8901) are automatically covered under a self and family enrollment.

This regulation merges and finalizes these two proposed regulations. The proposed regulations were published separately, but have now been merged for regulatory efficiency as both proposed regulations address title 5, Code of Federal Regulations, §§ 890.302, Coverage of Family Members, and 890.308, Disenrollment.

Both proposed regulations had 60-day comment periods. The regulations concerning ineligible family members received four comments: one from an interested citizen, one from an agency HR employee and one from a trade group representing FEHB Program plans with one duplicate comment. Two of the comments were supportive of the proposed rule and none objected to the proposed regulation. The proposed rule concerning eligible family members received three

comments: one from an interested citizen, one from an agency HR employee and one from a trade group representing FEHB Program plans. Two of the comments were supportive of the proposed rules and none objected to the change in policy.

II. Responses to Comments

Ineligible Family Member Regulation

One commenter requested that OPM specify whether a submission of a reconsideration request delays the effective date of the initial removal. The provisions added in § 890.308(e) and (f) mirror the processes outlined in § 890.308(a) for disenrollment of employees. That provision does not provide a delayed effective date for reconsideration and so we are not adding one to this section. If an enrollee or the removed individual seeks reconsideration and the agency or OPM finds the family member to be eligible, the family member will receive retroactive coverage.

One commenter asked whether OPM is now requesting that agencies to track family members. This regulation does not require agencies to track family members, but forthcoming sub-regulatory guidance may require agencies to collect proof of eligibility in certain circumstances. The regulations amend § 890.302 to provide that proof of family member eligibility must be provided upon request by a carrier, employing office, or OPM.

Two commenters asked how an FEHB Program carrier would be aware of an initial determination of ineligibility under proposed § 890.308(f)(1) and requested further guidance on all required methods of notification to FEHB Program carriers. Section 890.308(f)(1) states that the employing office or OPM, as applicable, will direct the carrier to remove the individual if proof of eligibility is not provided by the enrollee. OPM will publish a Benefits Administration Letter (available at <https://www.opm.gov/healthcare-insurance/healthcare/reference-materials/#url=BALs>) and a Carrier Letter (available at <https://www.opm.gov/healthcare-insurance/healthcare/carriers/#url=Carrier-Letters>) following the publication of this regulation to carriers and to agencies providing a specific process to notify carriers and/or employing offices of any coverage changes effectuated under this regulation. One commenter further added that the carrier should receive the reasoning behind the removal of the individual. Accordingly, the final rule provides that the employing office or OPM shall provide a copy of the letter sent to the enrollee concerning removal under § 890.308(f)(1) to the carrier.

One commenter suggested that OPM add an effective date for a removal under § 890.308(f)(3) and (e)(3) where fraud or intentional misrepresentation are found. OPM has updated the final regulation to specify that if fraud or intentional misrepresentation of material fact is found, the effective date of the removal is the date of loss of eligibility.

One commenter suggested that OPM add examples to § 890.308(g) to clarify how temporary continuation of coverage (TCC), conversion and extension of coverage rules will operate under the regulations. An example has been added to clarify that an individual will not be eligible to

receive TCC, conversion or an extension of coverage unless the removal is effectuated within the time limit currently required under existing regulations.

Removal of Eligible Family Members from Existing Enrollment Regulation

One commenter asked who will be responsible for collecting documentation and determining proof of eligibility status and whether that information will need to be forwarded to FEHB Program carriers. The proposed rule provided and the final rule maintains that employing offices will be responsible for collecting documentation and determining proof of eligibility status and that the information will be sent to FEHB Program carriers. Two commenters asked that OPM specify how this information should be provided to carriers and how it should be maintained and tracked. OPM plans to publish a Benefits Administration Letter and a Carrier Letter to employing offices and FEHB Program carriers following the publication of this regulation including a process for agencies to inform carriers of changes in covered family members and documentation that needs to be collected to effectuate a change.

One commenter requested that OPM change the proposed effective date of removals. The proposed rule makes the removal effective on the first day of the pay period following a notarized request received from the family member at issue and on the first day of the second pay period following a request to remove a child received from the enrollee. The commenter requested that the effective date be the first day of the third pay period for enrollees who pay premiums bi-weekly and the second pay period for enrollees who pay premiums monthly as the effective date for either type of family member removal. OPM agrees that this avoids

unnecessary benefit overpayments and ensures that a family member has sufficient time to obtain replacement health benefits coverage. The final rule makes this change.

We have also made minor, non-substantive editorial changes to the regulation for editorial consistency and to improve clarity. In addition, we have updated the regulation to clarify that either the enrollee or the removed individual can provide proof of eligibility or request reconsideration of the initial decision.

Expected Impact of Changes Based on the Rule

The FEHB Program currently has a total of 262 health plan options for employees to choose from for their health benefits coverage. Historically, about 18,000 of FEHB participants switch health care plans in any given year. There are approximately 4 million family members covered under FEHB Program. While this rule may lower costs to the FEHB Program by reducing the number of eligible and ineligible family members, OPM does not have data available to calculate specific rates. However, OPM has found anecdotal evidence which estimates between 1-3 percent of spouses and 4-12 percent of children in commercial health plans are ineligible for coverage. So, we anticipate this rule will not have widespread applicability across the Program.

Executive Order Requirements

Executive Orders 13563 and 12866 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” under Executive Order 12866.

This final rule is not subject to the requirements of EO 13771 (82 FR 9339, February 3, 2017) because it is related to agency organization, management, or personnel.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

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. This rule involves an OMB approved collection of information subject to the PRA -- OMB No. 3206-0160, Health Benefits Election Form. The public reporting burden for this collection is estimated to average

30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this form is 9,000 hours. The systems of record notice for this collection is: OPM/Central 1 Civil Service Retirement and Insurance Records, available at <https://www.opm.gov/information-management/privacy-policy/sorn/opm-sorn-central-1-civil-service-retirement-and-insurance-records.pdf>.

List of Subjects on 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance.

U.S. Office of Personnel Management.

Kathleen M. McGettigan,
Acting Director.

For the reasons set forth in the preamble, OPM amends 5 CFR part 890 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. Revise § 890.302(a)(1) to read as follows:

§890.302 Coverage of family members.

(a)(1) *Enrollment*. 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 § 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.

3. Amend § 890.308 by:

- a. Revising the section heading;
- b. Adding headings to paragraphs (a), (b), (c), and (d); and
- c. Adding paragraphs (e), (f), (g), and (h).

The revisions and additions read as follows:

§ 890.308 Disenrollment and removal from enrollment.

(a) *Carrier disenrollment: Enrollment reconciliation.* ***

(b) *Carrier disenrollment: Death of enrollee.* ***

(c) *Carrier disenrollment: Child survivor annuitant.* ***

(d) *Carrier disenrollment: Separation from Federal employment.* ***

(e) *Carrier removal from enrollment: Ineligible individuals.* (1) A carrier may request verification of eligibility from the enrollee at any time 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 of record. 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, the carrier shall remove the individual from the enrollment and shall provide written notice of removal to the enrollee, with a copy to the employing office, including an explanation of the process for seeking reconsideration. The carrier may extend the time limit to provide appropriate documentation if the enrollee or the removed individual shows to the carrier that he or she was 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 removed individual has committed fraud or made an intentional misrepresentation of

material fact as prohibited by the terms of the plan. If fraud or intentional misrepresentation of material fact is found, the effective date of the removal is the date of loss of eligibility.

(4) A request for reconsideration of the carrier's initial decision must be filed by the enrollee or the removed individual with the enrollee's employing office within 60 calendar days after the date of the carrier's 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 if the enrollee or the removed 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, individual's name, the name of the enrollee's carrier, reason(s) for the request, and, if applicable, the enrollee's 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 the removed 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 removal from enrollment: Ineligible individuals.* (1) An enrollee's employing office or OPM may request verification of eligibility from the enrollee at any time of an individual who is covered as a family member of the enrollee in accordance with § 890.302. To verify eligibility, the employing office or OPM shall send the enrollee a request for

appropriate documentation of the individual's relationship 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, as applicable, 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, as applicable, shall direct the carrier to remove the individual from the enrollment and the employing office or OPM, as applicable, shall provide written notice of the removal to the enrollee, with a copy to the carrier, including an explanation of the process for seeking reconsideration. The time limit to provide appropriate documentation may be extended if the enrollee or the removed individual shows to the employing office or OPM, as appropriate, that he or she was 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 removed individual has committed fraud or made an intentional misrepresentation of material fact as prohibited by the terms of the plan. If fraud or intentional misrepresentation of material fact is found, the effective date of the removal is the date of loss of eligibility.

(4) The enrollee or the removed individual may request reconsideration of an employing office or OPM's decision to remove the individual from the enrollment within 60 days of an employing office or OPM's initial decision. The enrollee or the removed individual may request

reconsideration of an employing office decision to the employing office or an OPM decision to OPM. The employing office or OPM, as applicable, 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 if the enrollee or the removed individual 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 individual's name, the name of the enrollee's carrier, reason(s) for the request, and, if applicable, the enrollee's retirement claim number.

(5) The employing office or OPM, as applicable, 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 the removed 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.

(g) Temporary extension of coverage, conversion and/or temporary continuation of coverage.

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 opportunity to enroll under § 890.401 and subparts H and K shall not extend beyond

the date that opportunity would have ended if the individual had been removed on the date of loss of eligibility.

(1) *Example.* An enrollee and his spouse divorce on May 4, 2017. The enrollee does not remove the former spouse from the enrollee's self and family enrollment, so the former spouse is receiving coverage but is not eligible. In this example, the former spouse is not eligible to receive an annuity listed in § 890.805(2). If the employing office later discovers the divorce, and removes the spouse from the enrollment on June 20, 2018, the former spouse is not eligible for a 31-day extension of coverage, conversion and/or temporary continuation of coverage because the regulatory window for election of 60 days outlined in § 890.805(1) has passed. The sixty-day window began on the final date of the divorce, May 4, 2017 and ended on July 3, 2017.

(2) [Reserved]

(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 enrollee's employing office for approval at any time during the plan year 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 as described under § 890.302(b). 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 to the employing office.
- (2) For removals under paragraph (h)(1) of this section the effective date is the first day of the third pay period following the date the request is approved by the employing office for employees who pay bi-weekly and the second pay period following the date that the request is approved by the employing office for enrollees who pay premiums monthly.
- (3) The family member's removal under this paragraph (h) is considered a cancellation under § 890.304(d) and removed family members are not eligible for temporary extension of coverage and conversion under § 890.401 or temporary continuation of coverage under § 809.1103.
- (4) If an eligible family member is removed under this paragraph (h), 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 to the employing office.
- (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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