



Billing Code 6325-63-P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 890, 892, and 894

RIN 3206-AN34

Federal Employees Health Benefits Program and Federal Employees Dental and Vision Insurance Program: Expiration of Coverage of Children of Same-Sex Domestic Partners; Federal Flexible Benefits Plan: Pre-Tax Payment of Health Benefits Premiums: Conforming Amendments

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: On October 30, 2013, OPM published final regulations in the Federal Register to expand coverage for children of same-sex domestic partners under the Federal Employees Health Benefits (FEHB) Program and the Federal Employees Dental and Vision Insurance Program (FEDVIP). The regulation allowed children of same-sex domestic partners living in states that did not allow same-sex couples to marry to be covered family members under the FEHB and the FEDVIP. Due to a subsequent Supreme Court decision legalizing same-sex marriage in all states, OPM published an interim final regulation on December 2, 2016, that created a regulatory exception that only allowed children of same-sex domestic partners living overseas to maintain their FEHB and FEDVIP coverage until September 30, 2018. OPM recognized that there were additional requirements placed on overseas federal employees that did not apply to other civilian employees with duty stations in the United States making it difficult to travel to

the United States to marry their same-sex partners. Understanding that we have provided agencies with additional time for compliance given that overseas federal employees may not have been able to marry immediately following the Supreme Court decision, OPM is issuing a final rule removing references to domestic partners and domestic partnerships from the regulations. Based on the Supreme Court decision and the two additional year's lead time for domestic partners overseas to marry, the current language in the CFR is not needed and may be somewhat confusing. There is no change in coverage for children whose same-sex partners are married.

DATES: This rule is effective on September 30, 2018.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, Senior Policy Analyst, at Michael.Kaszynski@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 United States Code and our implementing regulations (title 5, parts 890, 892, 894 and title 48, chapter 16). The statute establishes the basic rules for benefits, enrollment, and participation in the Federal insurance programs.

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.

Effective January 1, 2014, the Office of Personnel Management (OPM) published the “Federal Employees Health Benefits Program and Federal Employees Dental and Vision Insurance Program: Expanding Coverage of Children; Federal Flexible Benefits Plan: Pre-Tax Payment of Health Benefits Premiums: Conforming Amendments” final rule (78 FR 64873) to extend FEHB and FEDVIP coverage to children of same-sex domestic partners of Federal employees and annuitants who would marry their partners but live in states that did not allow same-sex couples to marry. As the result of the June 26, 2015, Supreme Court *Obergefell v. Hodges* decision, all U.S. states now allow same-sex couples to marry. Accordingly, as of January 2016, coverage of an enrollee’s stepchild(ren) is only allowed if the couple is married. OPM also published an interim final regulation (81 FR 86905) on December 2, 2016. The rule amended §§ 890.302 and 894.101 of title 5, Code of Federal Regulations. The amendments allow an employing agency to request, and for OPM to grant, a continued coverage exception for children of an employee’s same-sex domestic partner living outside the United States. Any coverage under such an exception will not extend beyond September 30, 2018. The OPM recognized there were additional requirements placed on overseas employees (as compared to civilian employees with duty stations in the United States) making it difficult to travel to the United States to marry same-sex partners. Therefore, OPM

created the authority to allow an exception for children of Federal employees in a domestic partnership and living outside of the United States. If requested by an enrollee's agency, coverage of children of same-sex domestic partners can be continued under self and family or self plus one enrollment in the FEHB and FEDVIP Programs. This regulation removes this continued coverage exception which expires for overseas employees on September 30, 2018.

Comments Received on the Interim Rule

We received five comments on the Interim rule. All commenters were in support of the rule. No commenters recommended changes to the rule. Therefore, no changes have been made to this Final rule based on the comments received.

Expected Impact of Changes

This rule eliminates all regulatory language in FEHB, FEDVIP and FedFlex that authorizes coverage for children of same-sex domestic partners, effective September 30, 2018. This rule amends the regulations to remove the language that authorizes coverage of children of same-sex domestic partners since all enrollees now have the right to marry in the United States. The regulatory language that authorized coverage for children of same-sex domestic partners overseas is also being removed from the regulation effective September 30, 2018. There is no change to the population of children who have access to coverage based on this rule.

Executive Order 13563 and 12866 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 not significant regulatory action under Executive Order 12866.

Paperwork Reduction Act Requirements

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. With this rule there is no change to an existing OMB approved collection of information subject to the PRA -- OMB No. 3206-0160, Health Benefits Election Form. The system 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>.

Regulatory Flexibility Act

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

Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866.

List of Subjects

5 CFR Part 890

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

5 CFR Part 892

Administrative practice and procedure, Government employees' health insurance, Pre-tax payment of health benefits premiums, Taxes, Wages.

5 CFR Part 894

Administrative practice and procedure, Government employees, Health insurance, Taxes, Wages.

U.S. Office of Personnel Management.

Jeff T.H. Pon,

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; Pub. L. 111-148, as amended by Pub. L. 111-152.

2. In §890.302, revise paragraphs (a)(2)(iii) and (b)(2) and remove paragraphs (b)(3) through (7) to read as follows:

§890.302 Coverage of family members.

(a)***

(2) ***

(iii) Children are entitled to receive benefits under only one enrollment regardless of whether the children qualify as family members under the enrollment of both parents or of a parent and a stepparent and regardless of whether the parents are married, unmarried, divorced, or legally separated. To ensure that no person receives benefits under more than one enrollment, each enrollee must promptly notify the insurance carrier as to which family members will be covered under his or her enrollment. These individuals are not covered under the other enrollment.

(b)***

(2) For purposes of this part, the term “stepchild” refers to the child of an enrollee's spouse and shall continue to refer to such child after the enrollee's divorce from the spouse or death of the spouse, so long as the child continues to live with the enrollee in a regular parent-child relationship.

PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENT OF HEALTH BENEFITS PREMIUMS

3. The authority citation for part 892 continues to read as follows:

Authority: 5 U.S.C. 8913; 5 U.S.C. 1103(a)(7); 26 U.S.C. 125.

4. In §892.101, the definition of a “Qualifying life event” is amended by revising the introductory text to read as follows:

§892.101 Definitions.

* * * * *

Qualifying life (QLE) event means an event that may permit changes to your FEHB enrollment as well as changes to your premium conversion election as described in Treasury regulations at 26 CFR 1.125-4. Such events include the following:

5. Section 892.102 is revised to read as follows:

§ 892.102 What is premium conversion and how does it work?

Premium conversion is a method of reducing your taxable income by the amount of your contribution to your FEHB insurance premium. If you are a participant in the premium conversion plan, Section 125 of the Internal Revenue Code allows you to reduce your

salary (through an employer allotment) and provide that portion of your salary back to your employer. Instead of being paid to you as taxable income, this allotted amount is used to purchase your FEHB insurance for you. The effect is that your taxable income is reduced. Because taxable income is reduced, the amount of tax you pay is reduced. You save on Federal income tax, Social Security and Medicare tax and in most States and localities, State and local income taxes.

PART 894—FEDERAL EMPLOYEES DENTAL AND VISION INSURANCE PROGRAM

6. The authority citation for part 894 continues to read as follows:

Authority: 5 U.S.C. 8962; 5 U.S.C. 8992; Subpart C also issued under section 1 of Pub. L. 110-279, 122 Stat. 2604.

7. In §894.101, the definitions for “Domestic partner” and “Domestic partnership” are removed and the definition for “Stepchild” is revised to read as follows:

§894.101 Definitions.

Stepchild means your spouse's child born within or outside marriage or his or her adopted child. The child of your spouse shall continue to be considered your stepchild after your divorce from your spouse or the death of your spouse so long as the child continues to live with you in a regular parent-child relationship.

8. In §894.403, paragraph (a) is revised to read as follows:

§894.403 Are FEDVIP premiums paid on a pre-tax basis?

(a) Your FEDVIP premiums are paid on a pre-tax basis (called premium conversion) if you are an active employee, your salary is sufficient to make the premium allotments, and your agency will be able to make pre-tax allotments.

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