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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AE90

Federal Employees Health Benefits Program: Limitation on Inpatient Hospital Charges and FEHB Program Payments

AGENCY: Office of Personnel Management.

ACTION: Interim regulation with request for comments.

SUMMARY: The Officer of Personnel Management (OPM) is issuing an interim regulation that implements section 7002(f) of the Omnibus Budget Reconciliation Act of 1990 (5 U.S.C. 8904(b)). The law sets a limit on the charges and Federal Employees Health Benefits (FEHB) Program benefit payments for certain inpatient hospital services received by a retired enrolled individual. This regulation defines a retired enrolled individual and sets forth the circumstances under which the limit on charges and FEHB Program benefit payments takes effect.

DATES: This interim regulation is effective January 1, 1992. Comments must be received on or before May 26, 1992.

ADDRESSES: Written comments may be sent to Andrea S. Minniear, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 4351, 1900 E Street, NW., Wasington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606-0191.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1990 (OBRA of 1990), Public Law 101-508, was enacted on November 5, 1990. Section 7002(f) of OBRA of 1990 amended the FEHB law to limit the charges and FEHB Program benefit payments for certain inpatient hospital services received by retired enrolled individuals.

The purpose of this interim regulation is to implement section 7002(f) of Public Law 101-508. The interim regulation defines a retired enrolled individual and specifies the inpatient hospital services covered by the limitation on charges and benefit payments.

The interim regulation explains how FEHB fee-for-service plans will determine benefit payments for inpatient hospital services covered by the limitation. The limit is the amount calculated by the FEHB plan as equivalent to the Medicare Part A payment under the diagnostic related group (DRG) based prospective payment system (PPS). The limit set by the law is not what the plan must pay but the most that the plan can pay. If a plan would pay a lower amount than the limit by following the payment procedure used for all its other FEHB enrollees, the plan also will pay the lower amount for services covered by the limitation.

The interim regulation explains that the FEHB plans will determine the amount which is equivalent to the Medicare Part A payment under the DRG-based PPS. FEHB plans will receive specific operating guidelines from OPM.

The interim regulation makes an exception to the policy regarding the continuation of benefits when an individual is confined in a hospital or other institution for care or treatment on the date his or her enrollment is changed from one plan to another, or from one option of a plan to another option of that plan. If the services provided during a change in enrollment from one plan to another, or from one option of a plan to another option of that plan, are covered by the limit on charges and benefit payments specified in this regulation, the individual is entitled to a continuation of the benefits of the prior plan or option until the end of the confinement. This exception accommodates the law by ensuring that the charge and benefit payment for the entire hospital confinement are determined in compliance with the limitation on charges and benefit payments specified in this regulation.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking and making this regulation effective in less than 30 days. The notice is being waived because the limitation enacted by Public Law 101-508 addressed in this regulation was effective with respect to the contract year beginning on January 1, 1992.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 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 Public Law 101-513, 104 Stat. 2064.

2. Section 890.401 is amended by adding paragraph (b)(3) to read as follows:

§ 890.401 Temporary extension of coverage and conversion.

* * * * *

(b) * * *

(3) *Exception.* The limit on the number of confinement days allowed to be covered under the continuation of benefits specified by paragraph (b)(2) of this subpart does not apply to confinements in a hospital or other institution when the charges and benefit payments for the services provided are covered by the limit specified in subpart

I of this part. In these cases, the benefits continue until the end of the confinement.

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3. In part 890, a new subpart I, consisting of §§ 890.901 through 890.907, is added to read as follows:

Subpart I—Limit on Inpatient Hospital Charges and FEHB Benefit Payments

Sec.

890.901 Purpose.
890.902 Definition.
890.903 Covered hospital services.
890.904 Determination of FEHB benefit payment.
890.905 Effective dates.
890.906 End-of-year settlements.
890.907 Provider information.

Subpart I—Limit on Inpatient Hospital Charges and FEHB Benefit Payments

§ 890.901 Purpose.

This subpart identifies the individuals whose charges and FEHB benefit payments for inpatient hospital services may be limited and sets forth the circumstances of the limit.

§ 890.902 Definition.

For purposes of this subpart, *Retired enrolled individual* means an individual who:

(a)(1) Is covered by a Federal Employees Health Benefits plan (including individuals covered under 5 U.S.C. 8905a) described by 5 U.S.C. 8903(1), (2) and (3), or 5 U.S.C. 8903a and is:

(i) An annuitant as defined in 5 U.S.C. 8901(3); or

(ii) A former spouse as defined in 5 U.S.C. 8901(10) or enrolled for continued coverage under 5 U.S.C. 8905a(f); or

(2) Is a family member covered by the family enrollment of an annuitant or former spouse as defined in 5 U.S.C. 8901, or a former spouse enrolled for continued coverage under 5 U.S.C. 8905a(f); and

(b) Is not employed in a position which confers FEHB coverage; and

(c) Is age 65 or older or becomes age 65 while receiving inpatient hospital services; and

(d) Is not covered by Medicare part A.

§ 890.903 Covered hospital services.

The limitation on the charges and FEHB benefit payments for inpatient hospital services apply to inpatient hospital services which are:

(a) Covered under both Medicare part A and the retired enrolled individual's FEHB plan; and

(b) Provided by hospital providers who have in force participation agreements with the Secretary of Health and Human Services consistent with sections 1814(a) and 1866 of the Social Security Act, and receive Medicare part A payments in accordance with the diagnostic related group (DRG) based prospective payment system (PPS).

§ 890.904 Determination of FEHB benefit payment.

The FEHB benefit payment under this subpart is the lowest of the following:

(a) The amount calculated by the FEHB plan, using guidelines specified by OPM, as equivalent to the Medicare part A payment under the DRG-based PPS (that is, the amount payable before the Medicare deductible, coinsurance and lifetime limits are applied).

(b) The amount payable by the retired enrolled individual's FEHB plan under its benefit structure (that is, the amount payable before the FEHB plan's deductible, coinsurance, lifetime limits and other maximums are applied).

(c) The actual billed charges.

§ 890.905 Effective dates.

The limitation specified in this subpart applies to inpatient hospital admissions commencing on or after January 1, 1992.

§ 890.906 End-of-year settlements.

Neither OPM, nor the FEHB plans, will perform end-of-year settlements with, or make retroactive adjustments as a result of retroactive changes in the Medicare payment calculation information to, hospital providers who have received FEHB benefit payments under this subpart.

§ 890.907 Provider information.

The hospital provider information used to calculate the amount equivalent to the Medicare part A payment will be updated on an annual basis.

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5 CFR Part 890

RIN 3206-AE44

Federal Employees Health Benefits Program: Continuation of Coverage During a Period of Military Furlough in Support of Operation Desert Shield and/or Desert Storm

AGENCY: Office of Personnel Management (OPM).

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations that waive the employee share of the health benefits premium for employees whose coverage under the Federal Employees Health Benefits (FEHB) Program continues while they are on leave without pay because of military service in support of Operation Desert Shield and/or Desert Storm. These regulations finalize interim regulations that were issued to make sure that employees who performed active military duty during this period would be able to leave their employment termporarily with the knowledge that their affairs were in order and their rights protected.

EFFECTIVE DATE: April 27, 1992.

SUPPLEMENTARY INFORMATION: On September 25, 1990, OPM issued interim regulations (55 FR 39131) that waived the employee share of the health benefits premium for employees who continue FEHB coverage while they are on military furlough (leave without pay) because of military service in support of Operation Desert Shield.

On August 22, 1990, the President signed Executive Order 12727, by which he ordered certain Armed Forces reservists to active military duty. Under OPM's regulations in effect at that time, Federal employees who entered on a leave-without-pay (LWOP) status could continue their FEHB coverage if they paid their share of the FEHB premium. By continuing FEHB coverage while in leave-without-pay status, employees can ensure that their families are able to maintain established relationships with health care providers for up to 12 months of LWOP.

The call to active military service initiated a difficult period in the lives of affected employees and their families. In order to make sure that employees who performed active military duty during this period would be able to leave their employment termporarily with the knowledge that their affairs were in order and their rights protected, OPM issued regulations waiving the employee's share of the FEHB premiums for employees who continued their FEHB coverage while in a LWOP status because they were performing active military service in support of Operation Desert Shield.

We received two written comments from Federal agencies and several telephone responses from agency personnel directors. We also received one written comment from an organization of health professionals, one from an employee-related organization, and five from health insurance carriers and organizations representing health insurance carriers.

One commenter stated that an employee who is in LWOP status may continue coverage only if he or she pays both the Government and employee's

share of the premiums and asked a number of questions based on this premise. However, this is a misconception—the employing agency pays the Government's share under the interim regulations, just as it does when employees are on LWOP under more normal circumstances. Therefore, the commenter's questions based on this premise are not relevant.

Five commenters were concerned about the effect of waiving the employee share of the premium on the health insurance carriers since they would not be receiving the premiums they expected for these enrollees under their contracts with OPM. They were also concerned about the effect on future contract negotiations.

OPM does not anticipate any adverse effect on carriers to result from the interim regulations. The overall effect of waiving the employee's share of premiums for reservists is that there are potential cost reductions to balance out the reduction in revenue. Since the military provides health care for individuals on active military duty, FEHB enrollments affected by the regulations actually cover one less person than before the LWOP began. For self-only enrollments, no one actually receives benefits in most cases. At the same time, the plans continue to receive the Government share of the premium (approximately 70% of the total amount).

The difference in income per covered individual, if any, is not a problem for experience-rated plans becuase such differences are worked out in the normal rate-setting process. However, HMO's that pay capitation must make capitation payments even though the individual will not be seeking services while he or she is on active military duty. Therefore, we are looking at each HMO on an individual basis during the reconciliation process so that we can make appropriate adjustments.

During the reconciliation process, OPM is allowing a net adjustment for employees in LWOP status because of military service in support of Operations Desert Shield and/or Desert Storm, whereby plans may show losses or gains that the plan incurred due to the Operation Desert Shield/Storm absentees. To facilitate this process, OPM has informed affected plans of the number of their enrollees who were in this category in 1990 and, in early 1992, will provide 1991 information. Therefore, no FEHB plan will suffer a loss as a result of these regulations.

Two commenters said that under OPM's contracts with the carriers, OPM is obligated to obtain advance approval of FEHB carriers of any regulatory change that increases the liability of the carriers. However, the contract clause to which the commenter was referring does not apply in this case since there will be no liability, as explained in the preceding paragraphs.

One commenter cited the experience of an employee who was called up for two periods of active military service, each of which was limited to 30 days or less; therefore, neither period qualified for a waiver of the employee share of premiums under these regulations. The commenter suggested that we remove the requirement that the military service not be limited to 30 days or less. Periods of service that are limited to 30 days or less are usually intended for training purposes and are usually served while the individual is in a military leave status (which is paid leave). In addition, for the regulation waiving the employee premiums during LWOP to have any effect, the period of military service would have to result in at least one pay period during which there was insufficient pay to make the health insurance withholdings. Therefore, it is quite unusual for employees to be called into military service under circumstances that would meet the requirements of this regulation, except that the military service is limited to 30 days or less, and for the employees to actually experience at least one pay period without pay as a result. Isolated occurrences of this kind are not properly addresed by removing regulatory limitations that are appropriate to the vast majority of circumstances. While an employee with a brief period of LWOP might be inconvenienced by having to pay the employee share of the FEHB premium, the requirement would not constitute a hardship such as that experienced by employees who remain in military service for many months. It is this latter employee who needs the relief that this regulation was intended to bring.

Several callers asked whether the Government share of the FEHB premium was waived. The interim regulation amended the provisions related to the employee share of the premium. No changes were made to the provision related to the Government's share of the premiums. Therefore, the employing office continues to be responsible for paying the Government's share of the premiums for the individual affected by these regulations.

We are updating the regulations to include reference to Operation Desert Storm and additional sections in title 10, U.S. Code, that have been used in calling up employees to serve in connection with the Persian Gulf war.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance.

Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, the interim regulations under part 890 published by OPM on September 25, 1990, (55 FR 39131) are made final with the following change:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; 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.

2. In § 890.502, paragraph (g) is revised to read as set forth below:

§ 890.502 Employee withholdings and contributions.

* * * * *

(g) *Military furlough.* Payment of the employee's share of the cost of enrollment is waived in the case of an employee whose coverage continues under § 890.303(e) following furlough or placement on leave of absence in accordance with the provisions of part 353 of this chapter or other similar authority for the purpose of performing duty not limited to 30 days or less in a uniformed service, if ordered to active duty under section 672, 673, 673b, 674, 675, or 688 of title 10, United States Code, in support of Operations Desert Shield and/or Desert Storm.

[FR Doc. 92–7089 Filed 3–26–92; 8:45 am]

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