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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AN54

Federal Employees Health Benefits Program Flexibilities

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: To correct an asymmetry in the insurance market for Federal employees and annuitants, this Final regulation provides all Federal Employees Health Benefits (FEHB) Program carriers the ability to offer the same number and types of plan options. Currently, OPM regulations defining minimum standards for health benefits plans allow certain plans to have two options and a high deductible health plan, while other plans may have three options of any type or two options and a high deductible health plan, creating an asymmetry between the potential offerings of health benefits plans. We have revised the regulations so all health benefits plans are able to offer three options or two options and a high deductible health plan. This final rule will give FEHB enrollees more choices in selecting a health plan that best meets their family's health care needs.

DATES: This rule is effective April 27, 2018.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, Senior Policy Analyst, at *Michael.Kaszynski@opm.gov* or (202) 606–0004.

SUPPLEMENTARY INFORMATION: To correct an asymmetry in the insurance market for Federal employees and annuitants, this Final regulation provides all Federal Employees Health Benefits (FEHB) Program carriers the ability to offer the same number and types of plan options. Currently, OPM regulations at 5 CFR 890.201 on minimum standards for health benefits plans allow plan types under 5 U.S.C. 8903(1) and (2) to have two options and a high deductible health plan, but plan types under 5 U.S.C. 8903(3) and (4) may have three options or two options and a high deductible health plan, creating an asymmetry between the potential offerings of types of health benefits plans. We have revised the regulations so all health benefits plans under 5 U.S.C. 8903 have the language that includes three options or two options and a high deductible health plan. This will give enrollees additional options when considering which health plan is best suited for them, for example, using a variety of variables such as premium, co-pay, and deductible costs, provider networks, and referral and pre-authorization policies. Since all health plans must compete annually for enrollees, the availability of additional options could create an incentive for plans to keep premiums as low as possible to attract enrollees. This regulation fully aligns with the Administration's goal of promoting quality and affordable health plan choices.

Response to Comments

On December 19, 2017, OPM published this as a proposed rule in the **Federal Register** (82 FR 60126) and the 60 day comment period ended on February 20, 2018. OPM received comments from a citizen, several FEHB carriers, and a bankers' association.

All the commenters were supportive of the regulation's goal to increase choice, competition and affordability. One FEHB carrier, the citizen and the bankers' association expressed agreement with the proposed regulatory change, while all commenting carriers supported OPM's stated purpose. However, some of the commenting carriers expressed the concern that the proposed adjustment to section § 890.201 will not increase competition in the FEHB Program because the regulatory change only affects the offerings of the Service Benefit Plan (SBP) carrier [since there is no current carrier contracted to offer the Indemnity Benefit Plan (IBP)]. The carriers noted that the Service Benefit Plan currently provides health insurance coverage to a significant portion of FEHB enrollees, dominating the FEHB insurance market. Two of the carriers proposed alternate statutory and regulatory changes to increase competition in the Program.

OPM understands the concerns expressed by these FEHB carriers and appreciates the alternate proposals to increase competition, some of which would require legislative action to implement. However, OPM declines to adjust the proposed regulatory language based on these comments. OPM's primary objective for the FEHB Program, as detailed in the agency's strategic plan, is to enhance the quality and affordability of FEHB insurance offerings. In order to achieve that objective, this regulation's goal is to allow increased competition among FEHB Program plans. OPM considers a competitive environment as one in which all carriers conduct business under the same set of rules, meaning no carrier has the advantage of offering products that another carrier cannot. While plan benefits vary, OPM wants all carriers to be able to offer the same number and types of plan options. Carriers in the FEHB Program compete on price, quality, providers, and coverage levels. All carriers have the ability to adjust their premiums, focus on quality, recruit providers and promote their brand to compete with the largest insurer in the FEHB Program. That some carriers attract more enrollment than others is not evidence of an anti-competitive environment. The new option now available to be offered by the Service Benefit Plan may encourage carriers to make changes to their existing third products or add a new third product, creating more competition in the Program.

Several carriers also asserted that the proposed rule exceeds OPM's authority under the FEHB Act and recommended that OPM withdraw the proposed rule. OPM declines to withdraw the proposed rule on this basis.

OPM asserts that the statute allows both the SBP and the IBP to have more than two options of benefits. The legislative history of the FEHB Act (FEHBA) supports this conclusion. In designing the FEHB Program, Congress intended for employees to have free choice among health benefits plans in four major categories and the legislative history notes that the SBP and the IBP would each include ''at least'' two levels of benefits; H.R. Rep. No. 957, 86th Cong., 1st Sess. 1959, 1959 U.S.C.C.A.N. 2913, 2915; 1959 WL 3975. OPM's

interpretation of the FEHBA allows for carriers to have no fewer than two options, and supports the Agency's position on competition, quality and affordability in the FEHB Program. The precedent for adding additional options to the SBP was set in 2010 at 75 FR 76615. Additional innovative options can help the government compete with private employers for talented employees.

FEHBA was enacted in 1959 with the recognition that competition was essential to maintain good benefits at low cost. Congress, however, did not seek to burden the Government with the administrative complexities of doing business with a large number of carriers throughout the nation competing for Federal enrollees. Recognizing that unrestricted competition could make the program administratively unwieldy and ineffective, competition was contemplated as occurring between and among the industry groups offering the various plan types. See testimony from the hearing before the House Committee on Post Office and Civil Service (Testimony) at 89–93; S Rept 498, 86th Cong 1st Sess 1959 at 8–9. In considering the plan descriptions and types, it was clear that Congress valued and anticipated evolution in the health benefits services industry and intentionally left certain aspects of the law vague in order for the carriers and/or the Civil Service Commission (CSC) to apply discretion. Indeed, the Senate Report identifies, in its prefatory discussion of governing principles related to the Government as an employer, that the Federal Government has an opportunity to ''influence soundly the development of health services and ways of financing their costs, and that all responsible and promising efforts should be encouraged and not arbitrarily limited to any single approach. Reasonable competition among different types of programs will provide Federal employees with a better program.'' It appears clear from the legislative history of the FEHB Program that Congress intended the CSC and its successor OPM to reasonably interpret the law in a way that supports and encourages competition among the different categories of plans. Where the law as it presently reads, refers to ''at least'' in other places, it does so in an unrelated context, not necessarily related to OPM's discretion in establishing competition. Where the law does not speak to the number of levels or options, it is implicit that OPM has authority to restrict or encourage a carrier's addition of options in those plans. The need for a baseline of at least two options was intended to ensure sufficient choice to serve enrollees, given that the purpose of the law was to recruit and retain employees by establishing a program with a variety of offerings consisting of good coverage at low cost. The notion that OPM may in some way be constrained by language that does not expressly preclude more than two levels, mandating the agency to fail or refuse to modernize its thinking or react responsively to change engendered by transformations in the marketplace and in the arena of FEHB competition, is antithetical to the foundational premise of the program. Given the ongoing evolution of competition in the health care industry, OPM has now taken the view that the statute need not be read to require exactly two levels for SBP and IBP. We believe that so long as there are ''at least'' two levels of benefits, permitting additional levels of benefits does not contravene the statute; the goal of ensuring adequate competition while avoiding undue administrative complexity is satisfied.

Carriers noted in their comments that OPM has asserted in the past that the SBP and the IBP are limited to offering only 2 options. While this may be relevant historical context, the current regulation allows both the SBP and the IBP to have 3 options, though one must be a high deductible health plan (HDHP). In other words, under the current regulation the SBP and the IBP are able to offer more than two levels of benefits. This regulation merely broadens carriers' ability to offer competitive options beyond HDHPs. Therefore, no changes have been made to the regulation based on these comments.

Expected Impact of Final Changes

The FEHB Program currently contracts with 83 health plan carriers which offer a total of 262 health plan options. These changes are projected to create two additional plan options in the FEHB Program. OPM expects that this regulatory change allowing an increase in the number of plan options will have a positive effect on the market dynamics in the FEHB Program by potentially increasing competition between health plans. This regulatory change will allow health plans under 5 U.S.C. 8903(1) and (2) to offer a greater variety of lower cost, higher quality options to better serve FEHB Program enrollee interests. OPM will ensure that any new options are distinct and meet enrollee interests and that enrollees have access to adequate information to understand the available plan options.

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.

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.

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.*

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 FEHB participants switch health care plans in any given year. This regulation has the potential to add two new enrollment codes representing new plan options and is not anticipated to significantly change the burden associated with this collection. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to *formsmanager@opm.gov.*

Regulatory Flexibility Act

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

E.O. 13771: Reducing Regulation and Controlling Regulatory Costs

This Final rule is expected to be an E.O. 13771 deregulatory action as it addresses an asymmetry in the Federal Employees Health Benefits (FEHB) Program market by allowing all carriers to offer three plan options. Additional information can be found in the ''Expected Impact of Final Changes'' section of the rule.

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.

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. Amend § 890.201 by revising paragraph (b)(3)(i) and removing and reserving paragraph (b)(3)(ii).

The revision reads as follows:

§ 890.201 Minimum standards for health benefits plans.

* * * * *

(b) * * *

(3)(i) Have either more than three options, or more than two options and a high deductible health plan (26 U.S.C. 223(c)(2)(A)) if the plan is described under 5 U.S.C. 8903(1), (2), (3) or (4).

* * * * *

[FR Doc. 2018–08933 Filed 4–26–18; 8:45 am]

BILLING CODE 6325–63–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 31192; Amdt. No. 539]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective 0901 UTC, May 24, 2018.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on April 20, 2018.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, May 24, 2018.