

paragraph (e) of this section, and increased by \$1.00. On July 1, 2000, and in each subsequent year, this amount shall be adjusted by the inflation factor computed under paragraph (e) of this section, and increased by \$1.00.

(2) If the maximum monthly PICC for non-primary residential subscriber lines is determined using paragraph (d)(1)(i) of this section, the maximum monthly PICC for multi-line business subscriber lines shall equal the maximum monthly PICC of non-primary residential subscriber lines. Otherwise, the maximum monthly PICC for multi-line business lines shall be the lower of:

(i) \* \* \*

(ii) \$2.75. On July 1, 1999, this amount shall be adjusted by the inflation factor computed under paragraph (e) of this section, and increased by \$1.50. On July 1, 2000, and in each subsequent year, this amount shall be adjusted by the inflation factor computed under paragraph (e) of this section, and increased by \$1.50.

(e) For the PICC ceiling for primary residential subscriber lines and single-line business subscriber lines under paragraph (c)(2) of this section, non-primary residential subscriber lines under paragraph (d)(1)(ii) of this section, and multi-line business subscriber lines under paragraph (d)(2)(ii) of this section:

(1) On July 1, 1999, the ceiling will be adjusted to reflect inflation as measured by the change in GDP-PI for the 18 months ending March 31, 1999.

(2) On July 1 of each subsequent year, the ceiling will be adjusted to reflect inflation as measured by the change in GDP-PI for the 12 months ending on March 31 of the year the adjustment is made.

(3) On July 1 of each subsequent year, the ceiling will be adjusted to reflect inflation as measured by the change in GDP-PI for the 12 months ending on March 31 of the year the adjustment is made.

\* \* \* \* \*

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## OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1609, 1632 and 1652

RIN 3206-A116

### Federal Employees Health Benefits Program Improving Carrier Performance; Conforming Changes

AGENCY: Office of Personnel  
Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a final regulation that implements OPM's initiative to ensure high quality customer service to its enrollees in the Federal Employees Health Benefits (FEHB) Program by establishing a performance evaluation program that will hold community-rated carriers accountable for their performance. The regulation would enable OPM to better manage carriers' performance in key contract areas, including customer service measures, information and reporting requirements, and significant events that might affect service to enrollees.

**EFFECTIVE DATE:** November 16, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Mercer (202) 606-0004.

**SUPPLEMENTARY INFORMATION:** On July 16, 1998, OPM issued a proposed regulation in the **Federal Register** (63 FR 38360) that would amend the Federal Employees Health Benefits Acquisition Regulation (FEHBAR) to underscore accountability for customer service and contractual compliance among the Federal Employees Health Benefits (FEHB) Program community-rated carriers. Such a program is already in place for experience-rated carriers. OPM has identified certain carrier obligations that, when unmet, can delay or keep customer service goals from being met. Percentage factors will be assigned to two overall categories, Customer Service and Critical Contract Compliance Requirements. The Contracting Officer will assign a percentage factor for each category based on the carrier's record in meeting its obligations during the contract year. The percentage factor will be applied to each community-rated carrier's total annual FEHB premium. The total amount withheld from a carrier cannot exceed one percent of premium paid for any contract year. Accurate and timely performance by carriers will facilitate the Program meeting its customer service standards.

OPM received comments from sixteen insurance carriers, one Government agency, and one health plan trade association. The majority of the commenters were in favor of the proposed regulations, although each had specific areas of concern, which are addressed below.

Comments focused on uncertainty regarding the amount of money at potential risk; subjectivity of the FEHB Program Carrier Evaluation rating system; the percentage of premium used; the absence of weights for each

category; the rating of performance elements when there is a nonoccurrence of an event; and other sources than total premium for the withhold. Some commenters had the perception that the withhold is a penalty rather than an incentive or that OPM might unilaterally withhold amounts for items not previously agreed to by contract. Others were more concerned about the absence of notification to carriers of withdrawal of funds, and the lack of an appeals process.

Numerous carriers felt the rating categories outlined in the proposed regulation and provided in detail in draft separately to carriers as the FEHB Program Carrier Evaluation form were subjective and had no assigned weights to the items of the performance standards. OPM considered the comments and made the following changes to the FEHB Program Carrier Evaluation form. Each item of the performance standard was ranked and assigned a weight, and components within such elements were reviewed and streamlined to make the form more functional and objective. The total Customer Service and Critical Contract Compliance Requirements percentage factors remain unchanged at a maximum of one percent of total premium.

Items of the standard, Meeting Customer Service Performance Standards, were ranked as follows: (1) Timely Closure on Rates and Benefits Consistent with Policy Guidelines; (2) Customer Information; (3) Meeting Customer Service Performance Standards; (4) Cooperation in Surveys; (5) Paperless Enrollment/Enrollment Reconciliation, and; (6) Reconsideration/Disputed Claims. The Critical Contract Compliance Requirements were ranked: (1) Timeliness of Submissions; (2) Notification of Changes in Contract Administrators, and; (3) Notification of Changes in Name or Ownership or Transfer of Assets, and Notification of Other Significant Events.

One commenter expressed concern about how carriers would be rated for the nonoccurrence of an event, such as would likely occur in the Critical Contract Compliance Requirements. Carriers will be evaluated on each item of the performance category and it is expected that, in most cases, the performance factor percentage applied to carriers' total premium will be substantially less than one percent. If an event does not occur, no deduction will be taken.

OPM has considered the carriers' comments about using contingency reserves as the source of the withhold,

but we do not believe such reserve is the appropriate vehicle. The clause has been amended to allow the carrier 60 days in which to rebate the FEHB Program before OPM will take action to withhold the amount owed from the carrier's total premiums. Carriers are also assured that OPM will not apply the withhold provision in the Payments clause to matters not previously agreed to as a program or contract requirement between OPM and the carriers.

Two commenters stated that the performance regulation does not comport with the Debt Collection Act, 5 U.S.C. 5514. The Debt Collection Act referenced by this commenter does not apply to the government contracts affected by this regulation. Rather, that Act relates to actions of the United States in collecting debts owed by employees or members of the Armed Services by offset from certain authorized sources of pay. The Act does not apply with respect to the collection or offset of monies owed to the United States by an insurance carrier under contract with the government.

The same commenters stated that the performance regulation does not comport with "Contract Debts," Part 32.6 of the FAR. It is OPM's view that the contract debt provisions harmonize with and support the implementation of the performance regulation. Assuming that the performance failure were considered a contract debt, Part 32.6 of the FAR contains provisions that contemplate liquidation of the debt by credit against existing unpaid bills due the contractor, or offset of the debt in place of demand for payment so long as an explanation of the offset is provided. In the event that a performance amount is withheld from premium payment to a carrier, OPM intends to provide full information and explanation with respect to the offset. Thus, we do not believe that the performance regulation fails to comport with Part 32.6 of the FAR.

Numerous commenters stated that the performance regulation constitutes a penalty and not an incentive. In the private sector various purchasing groups use comparable performance factors as incentives. Such programs frequently require a rebate by the carrier when certain purchaser set requirements are not met. Incentive by definition is neither positive or negative. Nevertheless, we have changed the term from performance incentive to performance clause.

In response to concerns about a carrier's right to appeal a performance determination, OPM seeks to assure carriers that the appeals process will be consistent with the appeals process for

other issues of contract administration. In the event that a performance factor is applied against a carrier, OPM will inform the carrier of the amount due and will provide documentation supporting the reasons for the performance finding. The carrier may seek reconsideration of the finding, and may contest the Contracting Officer's final decision by asserting a claim against the government in the same manner that the carrier would pursue any other administrative claim under the contract.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because in no case will it affect more than one percent of a carrier's premium.

### List of Subjects in 48 CFR Parts 1609, 1632, and 1652

Administrative practice and procedure, Government employees, Government procurement, Health facilities, Health insurance, Health professions, Reporting and record keeping requirements, Retirement.

Office of Personnel Management.

**Janice R. Lachance,**  
*Director.*

Accordingly, OPM is amending title 48 CFR Parts 1609, 1632, and 1652 as follows:

### CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATION

1. The authority citation for 48 CFR Parts 1609, 1632, and 1652 continue to read as follows:

**Authority:** 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

### PART 1609—CONTRACTOR QUALIFICATIONS

2. Subpart 1609.71 is added to read as follows:

#### Subpart 1609.71—Performance Evaluation Sec.

1609.7101 Policy.

1609.7101-1 Community-rated carrier incentive performance elements.

1609.7101-2 Community-rated carrier performance factors.

#### 1609.7101 Policy.

At the end of each contract period, the contracting officer will determine each community-rated carrier's responsiveness to the Program requirements in 1609.7101-1.

### 1609.7101-1 Community-rated carrier incentive performance elements.

(a) Customer Service. This element is intended to assist OPM in achieving the goal of providing customer service that meets or exceeds the expectations of Federal enrollees. The Customer Service category will represent 70 percent of the total calculation and will be based on the carrier's compliance with the following items:

(1) *Timely Closure on Rates and Benefits Consistent with Policy Guidelines.* In order for information to be available to our customers in time for the annual Open Season, carriers must work with OPM to conclude benefits and rate negotiations by the established time frames. The contracting officer will evaluate this item based on the carrier's demonstrated record in providing its rate reconciliation and benefits information within the time frames prescribed by and in the format required by OPM.

(2) *Customer Information.* Enrollees must have accurate information and adequate time to make informed Open Season choices in selecting a health plan. In evaluating this item, the contracting officer will consider the carrier's timeliness and accuracy of information.

(3) *Meeting Customer Service Performance Standards.* Compliance with this item is essential so that OPM can ensure that the carrier is providing quality health care and other services to enrollees. The contracting officer will evaluate this item based on the carrier's submission of the Consumer Assessment of Health Plans Study (CAHPS) survey results and other measures as required contractually between OPM and the carrier. (This element will be implemented beginning with contract year 2000).

(4) *Cooperation in Surveys.* FEHB enrollees rely on feedback from the consumer assessment survey in selecting a health plan. The contracting officer will evaluate this item based on the carrier's record in cooperating with OPM and/or its designated representative in administering a consumer assessment survey or providing comparable survey results as specified in the FEHB contract and OPM guidance.

(5) *Paperless Enrollment/Enrollment Reconciliation—(i) Paperless Enrollment.* The requirement to cooperate in the OPM designated system for paperless enrollment is under the section entitled "Enrollment Instructions" in the FEHB Supplemental Literature Guidelines in the FEHB contract. The contracting officer will evaluate this item based on the carrier's

ability to accept electronic data transmission from the OPM designated electronic enrollment system and issue ID cards timely.

(ii) *Enrollment Reconciliation.* The requirement for carriers to reconcile their enrollment records on a quarterly basis with those provided by Federal Government agencies is in the *Records and Information to be Furnished by OPM* clause of the contract, as well as 5 CFR 890.110 and 5 CFR 890.308. The contracting officer will evaluate this item based on the carrier's demonstrated record of initiating reconciliation procedures with applicable agency payroll offices on a quarterly basis in accordance with OPM guidance on reconciling enrollments and resolving enrollment discrepancies, as well as on the carrier's demonstrated record of following disenrollment procedures in accordance with 5 CFR 890.110 and 890.308.

(6) *Reconsideration/Disputed Claims.* The requirement for carriers to reconsider disputed health benefits claims is in 5 CFR 890.105. An incomplete explanation of denied benefits by the carrier places a burden on enrollees, causing them to seek reconsideration because the carrier did not fully explain its denial. Late carrier responses to OPM's requests for the carrier's reconsideration file delays OPM's response to enrollees. The contracting officer will evaluate this item based on whether the carrier provided OPM a complete reconciliation file within the time frame specified.

(b) *Critical Contract Compliance Requirements.* This performance category will represent 30 percent of the total computation and will be based on the carrier's compliance with the following items:

(1) *Timely Submissions.* The reports specified in the *Statistics and Special Studies and FEHB Quality Assurance* clauses of the contract and are essential for tracking enrollment, finances, rates, etc. In evaluating this item, the contracting officer will consider the carrier's timely submission of the contract, signed by the contracting official, to OPM, and on its demonstrated record in providing timely and accurate reports as required.

(2) *Notification of Changes in Contract Administrators.* OPM must be able to reach the person responsible for managing the carrier's FEHB contract without delay when an enrollee calls OPM in need of urgent medical treatment, an ID card, or other service. Each carrier's designated contact must maintain telephone and electronic communications with OPM so that

issues can be resolved quickly. The contracting officer will evaluate this item based on the carrier's compliance with the *Notice* clause and *Contract Administration Data* sheet in the contract, and will consider the carrier's record in notifying OPM promptly of changes in its carrier representative or contracting official, mailing or electronic address, telephone or FAX number.

(3) *Notification of Changes in Name or Ownership; or Transfer of Assets, and Notification of Other Significant Events.* OPM must be able to assess the viability of the carrier and its ability to provide health care to enrollees so that they do not experience difficulty obtaining treatment and other services. Additionally, with regard to notification to OPM of other significant events, the carrier must notify OPM of such events as lawsuits, strikes, and natural disasters so that OPM can assess the carrier's ability to pay claims and provide services to enrollees. The contracting officer will evaluate this item based on the carrier's compliance with FEHBAR Subparts 1642.12, Novation and Change-of-Name Agreements, 1642.70, Management Agreement (in Lieu of Novation Agreement), and 1652.222-70, including timely notification and explanation of all significant events that may have a material effect on the carrier's ability to perform the contract.

#### **1609.7101-2 Community-rated carrier performance factors.**

OPM will apply the Customer Service and Critical Contract Compliance Requirements percentage factors specified by the contracting officer when a community-rated carrier does not provide the information, payment, or service, perform the function, or otherwise meet its obligations as stated in 1609.7101-1. The total premium will be multiplied by the sum of all the factors and the resulting amount will be withheld from the carrier's periodic premium payments payable during the first quarter of the following contract period, unless an alternative payment arrangement is made with the carrier's contracting officer.

The factors for each basic element are set forth as follows:

#### **COMMUNITY-RATED CARRIER PERFORMANCE FACTORS**

Element	Performance factor (to be multiplied by premium and withheld from carrier's payments)
I. Customer Service (70% of Total) .....	.007
II. Critical Contract Compliance Requirements (30% of Total) .....	.003
Maximum Aggregate Performance Factor .....	.01

#### **PART 1632—CONTRACT FINANCING**

3. In section 1632.170, paragraphs (a) and (b)(1) are revised to read as follows:

#### **1632.170 Recurring premium payments to carriers.**

(a)(1) *Recurring payments to carriers of community-rated plans.* OPM will pay to carriers of community-rated plans the premium payments received for the plan less the amounts credited to the contingency and administrative reserves, amounts assessed under paragraph (a)(2) of this section, and amounts due for other contractual obligations. Premium payments will be due and payable not later than 30 days after receipt by the Federal Employees Health Benefits (FEHB) Fund.

(2) The sum of the two performance factors applicable under 1609.7101-2 will be multiplied by the carrier's total net-to-carrier premium dollars paid for the preceding contract period. The amount obtained after the total premium is multiplied by the sum of the factors will be withheld from the carrier's periodic premium payment payable during the first quarter of the following contract period unless an alternative payment arrangement is made with the carrier's contracting officer. OPM will deposit the withheld funds in the carrier's contingency reserve for the plan. The aggregate amount withheld annually for performance for any carrier will not exceed one percent of premium for any contract period.

(b)(1) *Recurring payments to carriers of experience-rated plans.* OPM will make payments on a letter of credit (LOC) basis. Premium payments received for the plan, less the amounts credited to the contingency and administrative reserves and amounts for other obligations due under the contract, will be made available for carrier drawdown not later than 30 days after receipt by the FEHB Fund.

\* \* \* \* \*

**PART 1652—CONTRACT CLAUSES**

4. In 1652.232–70 the clause date is revised, and paragraphs (b), (c), and (d) are redesignated as (c), (d), and (e) respectively, paragraph (a) is revised, and a new paragraph (b) is added to read as follows:

**1652.232–70 Payments—community-rated contracts.**

\* \* \* \* \*

**PAYMENTS (JAN 1999)**

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM, amounts assessed under FEHBP 1609.7101–2, and amounts for obligations due pursuant to paragraph (b) of this clause, plus any payments made by OPM from the Contingency Reserve.

(b) OPM will notify the Carrier of amounts due for outstanding obligations under the contract. Not later than 60 days after the date of written notice from OPM, the Carrier shall reimburse OPM. If payment is not received within the prescribed time frame, OPM shall withhold the amount due from the subscription charges owed the Carrier under paragraph (a) of this clause.

\* \* \* \* \*

5. In 1652.232–71 the clause date is revised, paragraphs (b), (c), and (d) are redesignated as (c), (d), and (e) respectively, paragraph (a) is revised, and a new paragraph (b) is added to read as follows:

**1652.232–71 Payments—experience-rated contracts.**

\* \* \* \* \*

**PAYMENTS (JAN 1999)**

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the Plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM and amounts for obligations due pursuant to paragraph (b) of this clause, plus any payments made by OPM from the Contingency Reserve.

(b) OPM will notify the Carrier of amounts due for outstanding obligations under the contract. Not later than 60 days after the date of written notice from OPM, the Carrier shall reimburse OPM. If payment is not received within the prescribed time frame, OPM shall withhold the amount due from the subscription charges owed the Carrier under paragraph (a) of this clause.

\* \* \* \* \*

**1652.244–70 [Amended]**

6. In section 1652.244–70, in paragraph (f), the FAR reference “15.903(d)” is removed and the FAR reference “15.404–4(c)(4)(i)” is added in its place.

7. The following clauses and Text references in the FEHBP Clause Matrix at 1652.3 are revised as follows: FAR 52.215–22 and FAR 15.804–8(a) are revised to read 52.215–10 and 15.408(b) respectively; 52.215–24 and 15.804–8(c) are revised to read 52.215–12 and 15.408(d) respectively; 52.215–27 and 15.804–8(e) are revised to read 52.215–15 and 15.408(g) respectively; 52.215–30 and 15.904(a) are revised to read 52.215–16 and 15.408(h) respectively; 52.215–31 and 15.904(b) are revised to read 52.215–17 and 15.408(i) respectively; and 52.215–39 and 15.804–8(f) are revised to read 52.215–18 and 15.408(j) respectively; FAR 52.215–70 is revised to read 1652.215–70.

8. In Subpart 1652.3, FEHBP Clause Matrix, clause number 52.222–36 is revised to read Affirmative Action for Workers with Disabilities.

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 285**

[I.D. 100798C]

**Atlantic Tuna Fisheries; Atlantic Bluefin Tuna General Category**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Reopening of New York Bight fishery.

**SUMMARY:** NMFS has determined that the Atlantic Bluefin Tuna (BFT) General category New York Bight set-aside has not been reached. Therefore, NMFS reopens the BFT General category New York Bight fishery. This action is being taken to provide for General category fishing opportunities in the New York Bight area only and to ensure additional collection of biological assessment and monitoring data.

**DATES:** Effective October 9, 1998, 1 a.m. local time until December 31, 1998, or until the date that the set-aside quota is determined to have been taken, which will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, 301–713–2347, or Pat Scida, 978–281–9260.

**SUPPLEMENTARY INFORMATION:**

Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Implementing regulations at 50 CFR 285.22 subdivide the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

Section 285.22(a)(3) was amended on May 21, 1998 (63 FR 27862), to permit implementation of the set-aside for the traditional fall New York Bight fishery when the coast-wide General category fishery has been closed in any quota period. The New York Bight set-aside area is defined as the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W. long. (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. lat. (Delaware Bay). The regulatory amendment allowed NMFS more flexibility in making the quota of 10 mt set aside for this area available to coincide with the presence of BFT in the Mud Hole area. During the previous opening of the New York Bight fishery, effective September 16–30, no landings of large medium or giant BFT were reported. Therefore, all 10 mt of the set-aside remain. NMFS closed the coastwide General category fishery for October through December effective October 5, 1998 (63 FR 54078, October 8, 1998).

The New York Bight fishery will reopen effective Friday, October 9, 1998, 1 a.m. local time until December 31, 1998, or until the date that the set-aside quota is determined to have been taken, which will be published in the **Federal Register**. Upon the effective date of the New York Bight reopening, persons aboard vessels permitted in the General category may fish for, retain, possess, or land large medium and giant BFT only in the New York Bight set-aside area specified here, until the set-aside quota for that area has been harvested. BFT harvested from waters outside the defined set-aside area may not be brought into the set-aside area. Vessels permitted in the Charter/Headboat category, when fishing for large medium and giant BFT, are subject to the same rules as General category vessels when the General category is open.

The announcement of the closure date of the New York Bight fishery will be filed with the Office of the Federal