

1553.232-75

1553.232-75 EPA Form 1900-68, notice of contract costs suspended and/or disallowed.

As prescribed in 1532.170(b), the Contracting Officer shall insert EPA Form 1900-68 in all cost-reimbursement type and fixed-rate type contracts.

[61 FR 29318, June 10, 1996]

1553.232-76 [Reserved]

APPENDIX I TO CHAPTER 15—ENVIRONMENTAL PROTECTION AGENCY; CLASS JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION IN ACQUISITIONS FROM THE FEDERAL PRISON INDUSTRIES AND THE GOVERNMENT PRINTING OFFICE

1. The Environmental Protection Agency (EPA) anticipates the acquisition of supplies

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from the Federal Prison Industries (UNICOR) and the acquisition of Government printing and related supplies from the Government Printing Office (GPO) to meet the needs of the Agency.

2. The Agency is authorized to make these acquisitions from the UNICOR and GPO without full and open competition under the authority in 41 U.S.C. 253(c)(5) as sources required by statute, i.e., 18 U.S.C. 4124 and 44 U.S.C. 501-504, 1121.

3. The anticipated cost of these acquisitions to the Agency will be fair and reasonable.

4. This class justification applies to any proposed acquisition made by the EPA from the UNICOR or GPO.

5. This class justification will remain in effect until April 1, 1988.

6. The undersigned certifies that this class justification is accurate and complete to the best of his knowledge and belief.

[50 FR 14361, Apr. 11, 1985]

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

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SUBCHAPTER A—GENERAL

PART 1601—FEDERAL ACQUISITION REGULATIONS SYSTEM

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1601.301 Policy.

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

SOURCE: 52 FR 16037, May 1, 1987, unless otherwise noted.

Subpart 1601.1—Purpose, Authority, Issuance

1601.101 Purpose.

(a) This subpart establishes chapter 16, Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation, within title 48, the Federal Acquisition Regulation System, of the Code of Federal Regulations. The short title of this regulation shall be FEHBAR.

(b) The purpose of the FEHBAR is to implement and supplement the Federal Acquisition Regulation (FAR) specifically for acquiring and administering contracts with health insurance carriers in the Federal Employees Health Benefits Program (FEHBP).

1601.102 Authority.

(a) The FEHBAR is issued by the Director of the Office of Personnel Management in accordance with the authority of 5 U.S.C. chapter 89 and other applicable law and regulation.

(b) The FEHBAR does not replace or incorporate regulations found at 5 CFR part 890, which provides the substantive policy guidance for administration of the FEHBP under 5 U.S.C.

Chapter 89. The following is the order of precedence in interpreting a contract provision under the FEHBP:

- (1) 5 U.S.C. Chapter 89;
- (2) 5 CFR part 890;
- (3) 48 CFR Chapters 1 and 16;
- (4) The FEHBP contract.

[52 FR 16037, May 1, 1987, as amended at 59 FR 14764, Mar. 30, 1994]

1601.103 Applicability.

The FAR is generally applicable to contracts negotiated in the FEHBP pursuant to 5 U.S.C. chapter 89. The FEHBAR implements and supplements the FAR where necessary to identify basic and significant acquisition policies unique to the FEHBP.

1601.104 Issuance.

1601.104-1 Publication and code arrangement.

(a) The FEHBAR and its subsequent changes are published in

(1) Daily issues of the FEDERAL REGISTER; and

(2) Cumulative form of the Code of Federal Regulations.

(b) The FEHBAR is issued as chapter 16 of title 48 of the Code of Federal Regulations.

1601.104-2 Arrangement of regulation.

(a) *General.* The FEHBAR conforms with the arrangement and numbering system prescribed by FAR 1.104. However, when a FAR part or subpart is adequate for use without further OPM implementation or supplementation, there will be no corresponding FEHBAR part, subpart, etc. The FEHBAR is to be used in conjunction with the FAR and the order for use is:

- (1) FAR;
- (2) FEHBAR.

(b) *Citation.* (1) In formal documents, such as legal briefs, citation of chapter 16 material that has been published in the FEDERAL REGISTER will be to title 48 of the Code of Federal Regulations.

(2) In informal documents, any section of chapter 16 may be identified as “FEHBAR” followed by the section number.

1601.106

1601.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply.

Provision	Control No.
FEHBAR 1604.705	3206-0145
FAR 9.1	3206-0145

[52 FR 16037, May 1, 1987. Redesignated at 70 FR 31378, June 1, 2005]

Subpart 1601.3—Agency Acquisition Regulation (FEHBAR)

1601.301 Policy.

(a) Procedures, contract clauses, and other aspects of the acquisition process for contracts in the FEHBP shall be consistent with the principles of the FAR. Changes to the FAR that are otherwise authorized by statute or applicable regulation, dictated by the practical realities associated with the unique nature of health care procurements, or necessary to satisfy specific needs of the Office of Personnel Management shall be implemented as amendments to the FEHBAR and published in the FEDERAL REGISTER, or as deviations to the FAR in accordance with FAR subpart 1.4.

(b) Internal procedures, instructions, and guides that are necessary to clarify or implement the FEHBAR *within* OPM may be issued by agency officials specifically designated by the Director, OPM. Normally, such designations will be specified in the OPM Administrative Manual, which is routinely available to agency employees and will be made available to interested outside parties upon request. Clarifying or implementing procedures, instructions, and guides issued pursuant to this section of the FEHBAR must—

(1) Be consistent with the policies and procedures contained in this regu-

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lation as implemented and supplemented from time to time; and

(2) Follow the format, arrangement, and numbering system of this regulation to the extent practicable.

PART 1602—DEFINITIONS OF WORDS AND TERMS

Sec.

1602.000-70 Scope of part.

Subpart 1602.1—Definitions of FEHBP Terms

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1602.170-1 Carrier.

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1602.170-15 Subcontractor.

1602.170-16 Large Provider Agreement.

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

SOURCE: 52 FR 16038, May 1, 1987, unless otherwise noted.

1602.000-70 Scope of part.

This part defines words and terms commonly used in this regulation.

Subpart 1602.1—Definitions of FEHBP Terms

1602.170 Definition of terms.

In this chapter, unless otherwise indicated, the following terms have the meaning set forth in this subpart.

1602.170-1 Carrier.

Carrier means a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, delivering, paying for, or reimbursing the cost of health care services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription

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contracts, including a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services, in consideration of premiums or other periodic charges payable to the carrier.

[62 FR 47573, Sept. 10, 1997]

1602.170-2 Community rate.

(a) *Community rate* means a rate of payment based on a per member per month capitation rate or its equivalent that applies to a combination of the subscriber groups for a comprehensive medical plan carrier. References in this subchapter to “a combination of cost and price analysis” relating to the applicability of policy and contract clauses refer to comprehensive medical plan carriers using community rates.

(b) *Adjusted community rate* means a community rate which has been adjusted for expected use of medical resources of the FEHBP group. An adjusted community rate is a prospective rate and cannot be retroactively revised to reflect actual experience, utilization, or costs of the FEHBP group, except as described in §1615.402(c)(4).

[55 FR 27414, July 2, 1990, as amended at 62 FR 47573, Sept. 10, 1997; 76 FR 38284, June 29, 2011]

1602.170-3 Comprehensive medical plan.

Comprehensive Medical Plan means a plan as defined under 5 U.S.C. 8903(4).

1602.170-4 Contractor.

Contractor means carrier.

1602.170-5 Cost or pricing data.

(a) *Experience-rated carriers*. Cost or pricing data for experience-rated carriers includes:

- (1) Information such as claims data;
- (2) Actual or negotiated benefits payments made to providers of medical services for the provision of healthcare, such as capitation not adjusted for specific groups, including mental health benefits capitation rates, per diems, and Diagnostic Related Group (DRG) payments;
- (3) Cost data;
- (4) Utilization data; and

(5) Administrative expenses and retentions, including capitated administrative expenses and retentions.

(b) *Community rated carriers*. Cost or pricing data for community rated carriers is the specialized rating data used by carriers in computing a rate that is appropriate for the Federal group and similarly sized subscriber groups (SSSGs). Such data include, but are not limited to, capitation rates; prescription drug, hospital, and office visit benefits utilization data; trend data; actuarial data; rating methodologies for other groups; standardized presentation of the carrier's rating method (age, sex, etc.) showing that the factor predicts utilization; tiered rates information; “step-up” factors information; demographics such as family size; special benefit loading capitations; and adjustment factors for capitation. After the 2012 plan year, reconciled rates for community rated carriers, other than those required by state law to use Traditional Community Rating (TCR), will be required to meet an FEHB-specific medical loss ratio threshold published annually in OPM's rate instructions to FEHB carriers.

[62 FR 47574, Sept. 10, 1997, as amended at 70 FR 31378, June 1, 2005; 76 FR 38285, June 29, 2011]

1602.170-6 Director.

Director means the Director of the Office of Personnel Management.

[52 FR 16038, May 1, 1987. Redesignated at 62 FR 47574, Sept. 10, 1997]

1602.170-7 Experience-rate.

Experience-rate means a rate for a given group that is the result of that group's actual paid claims, administrative expenses (including capitated administrative expenses), retentions, and estimated claims incurred but not reported, adjusted for benefit modifications, utilization trends, and economic trends. Actual paid claims include any actual or negotiated benefits payments made to providers of services for the provision of healthcare such as capitation not adjusted for specific groups, including mental health benefits capitation rates, per diems, and DRG payments.

[70 FR 31378, June 1, 2005]

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1602.170-8 FEHBP.

FEHBP means the Federal Employees Health Benefits Program.

[52 FR 16038, May 1, 1987. Redesignated at 62 FR 47574, Sept. 10, 1997]

1602.170-9 Health benefits plan.

Health benefits plan means a group insurance policy, contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangements provided by a carrier for the purpose of providing, arranging for, delivering, paying for, or reimbursing any of the costs of health care services.

[62 FR 47574, Sept. 10, 1997]

1602.170-10 Letter of credit.

Letter of credit means the method by which certain carriers, and their underwriters if authorized, receive recurring premium payments and contingency reserve payments by drawing against a commitment (certified by a responsible OPM official) which specifies a dollar amount available. For each carrier participating in the letter of credit arrangement for payment under this part, the terms "carrier reserves," and "special reserves" include any balance in the carrier's letter of credit account.

[53 FR 51783, Dec. 23, 1988, as amended at 57 FR 14359, Apr. 20, 1992. Redesignated at 62 FR 47574, Sept. 10, 1997]

1602.170-11 Negotiated benefits contracts.

Negotiated benefits contracts are FEHBP contracts in which benefits provided and subscription income are based on either community rating or experience rating.

[62 FR 47574, Sept. 10, 1997]

1602.170-12 OPM.

OPM means the Office of Personnel Management.

[52 FR 16038, May 1, 1987. Redesignated at 53 FR 51783, Dec. 23, 1988 and further redesignated at 62 FR 47574, Sept. 10, 1997]

1602.170-13 Similarly sized subscriber groups.

(a) *Similarly sized subscriber groups* (SSSGs) are a comprehensive medical

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plan carrier's two employer groups that:

(1) As of the date specified by OPM in the rate instructions, have a subscriber enrollment closest to the FEHBP subscriber enrollment; and,

(2) Use any rating method other than retrospective experience rating; and,

(3) Meet the criteria specified in the rate instructions issued by OPM.

(b) Any group with which an FEHB carrier enters into an agreement to provide health care services is a potential SSSG (including separate lines of business, government entities, groups that have multi-year contracts, and groups having point-of-service products).

(c) Exceptions to the general rule stated in paragraph (b) of this section are (and the following groups must be excluded from SSSG consideration):

(1) Groups the carrier rates by the method of retrospective experience rating;

(2) Groups consisting of the carrier's own employees;

(3) Medicaid groups, Medicare groups, and groups that have only a stand alone benefit (such as dental only);

(4) A purchasing alliance whose rate-setting is mandated by the State or local government.

(d) OPM shall determine the FEHBP rate by selecting the lower of the two rates derived by using rating methods consistent with those used to derive the SSSG rates.

[62 FR 47574, Sept. 10, 1997]

§ 1602.170-14 FEHB-specific medical loss ratio threshold calculation.

(a) *Medical Loss Ratio* (MLR) means the ratio of plan incurred claims, including the issuer's expenditures for activities that improve health care quality, to total premium revenue determined by OPM, as defined by the Department of Health and Human Services in 45 CFR part 158.

(b) The FEHB-specific MLR will be calculated on an annual basis. This FEHB-specific MLR will be measured against an FEHB-specific MLR threshold to be put forth by OPM no later than 12 calendar months before the beginning of plan years 2014 and beyond. OPM will publish the FEHB-specific

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MLR threshold no later than 8 months before the beginning of plan year 2013.

(c) In place of the credibility adjustment at 45 CFR 158.230–158.232, OPM will set a separate credibility adjustment to account for the special circumstances of small FEHB plans in annual rate instructions to carriers.

[77 FR 19524, Apr. 2, 2012]

1602.170–15 Subcontractor.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor, except for providers of direct medical services or supplies pursuant to the Carrier's health benefits plan.

[52 FR 16038, May 1, 1987. Redesignated at 53 FR 51783, Dec. 23, 1988, and further redesignated at 55 FR 27414, July 2, 1990; 62 FR 47574, Sept. 10, 1997 and 76 FR 38285, June 29, 2011]

1602.170–16 Large Provider Agreement.

(a) *Large Provider Agreement* means an agreement between—

(1) An FEHB carrier, at least 25 percent of which total contracts are FEHB enrollee contracts, and

(2) A vendor of services or supplies such as mail order pharmacy services, pharmacy benefit management services, mental health and/or substance abuse management services, preferred provider organization services, utilization review services, and/or large case or disease management services. This representative list includes organizations that own or contract with direct providers of healthcare or supplies, or organizations that process claims or manage patient care. A hospital is not considered to be a vendor for purposes of this chapter.

(i) Where the total costs charged to the FEHB carrier for a contract term for FEHB members, including benefits and services, are reasonably expected to exceed 5 percent of the carrier's total FEHB benefits costs, or

(ii) Where the total administrative costs charged to the FEHB carrier for the contract term for FEHB members are reasonably expected to exceed 5 percent of the carrier's total FEHB administrative costs (applicable to agreements where the provider is not responsible for FEHB benefits costs).

(3) As used in this section, the term “carrier” does not include local health plans that serve under an umbrella arrangement with an FEHB carrier.

(b) The FEHB Program Annual Accounting Statement for the FEHB Plan for the prior contract year will be used to determine the 5 percent threshold under Large Provider Agreements.

(c) Large Provider Agreements based on cost analysis are subject to the provisions of FAR 52.215–2, “Audit and Records-Negotiation.”

(d) Large Provider Agreements based on price analysis are subject to the provisions of 48 CFR 1646.301 and 1652.246–70.

[70 FR 31379, June 1, 2005. Redesignated at 76 FR 38285, June 29, 2011]

PART 1603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1603.70—Misleading, Deceptive, or Unfair Advertising

Sec.

1603.7001 Policy.

1603.7002 Additional guidelines.

1603.7003 Contract clause.

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

SOURCE: 52 FR 16039, May 1, 1987, unless otherwise noted.

Subpart 1603.70—Misleading, Deceptive, or Unfair Advertising

1603.7001 Policy.

(a) OPM prepares and distributes or makes available to Federal employees and annuitants a comparison booklet which presents summary information and a benefits brochure which details benefits, limitations, and premium rates for all participating plans. OPM does not encourage, support, or reimburse participating carriers for the costs of advertisements. However, while OPM believes that advertising is unnecessary, it recognizes that the decision to use advertising rests with each carrier.

(b) OPM discourages advertising that is misleading or deceptive. This includes advertising that is directed at other carriers' plans participating in

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the Program and which uses incomplete or inappropriate comparisons or disparaging or minimizing techniques. Such unfair practices are prejudicial to the interests of the vast majority of carriers whose advertising is fair and accurate.

(c) Failure to conform to the requirements of this subpart shall be a material breach of the contract and may result in withdrawal of approval to continue participation in the FEHB Program.

[52 FR 16039, May 1, 1987. Redesignated at 62 FR 47574, Sept. 10, 1997]

1603.7002 Additional guidelines.

Any advertisements which identify a carrier's participation in the FEHBP shall—

(a) Be limited to the merits of the carrier's FEHBP plan and shall be limited to factual statements of the benefits and rates offered by that plan. The official document for benefit and rate comparisons among FEHBP plans is the comparison chart issued by OPM.

(b) Not use the FEHBP logo.

(c) Recognize that the officially approved plan brochure is the sole contractual statement of benefits, limitations, and exclusions. All advertisements that in any way discuss plan benefits shall contain the following statement:

This is a summary (or brief description) of the features of the (plan's name). Before making a final decision, please read the plan's officially approved brochure, (brochure number). All benefits are subject to the definitions, limitations, and exclusions set forth in the official brochure.

(d) Set forth the rates for the plan, if the advertisements discuss benefits.

(e) Not give instructions on enrollment. Statements on enrollment procedures, requirements, or eligibility shall be limited to those such as:

To sign up, fill out a Health Benefits Registration Form (Standard Form 2809) from your personnel office indicating the enrollment you want:

The enrollment codes for (plan's name) are:

Self Only ☐ Enrollment Code _____

Self and Family ☐ Enrollment Code _____

The form must then be returned to your personnel office before the (date) deadline. Your (plan's name) coverage will begin the first pay period in January, (year). If you are a retired Federal employee and need forms,

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contact the Office of Personnel Management at P.O. Box 809, Washington, DC 20044.

[52 FR 16039, May 1, 1987. Redesignated at 62 FR 47574, Sept. 10, 1997]

1603.7003 Contract clause.

The clause at 1652.203–70 shall be inserted in all FEHBP contracts.

[52 FR 16039, May 1, 1987. Redesignated at 62 FR 47574, Sept. 10, 1997]

PART 1604—ADMINISTRATIVE MATTERS

Subpart 1604.7—Contractor Records Retention

Sec.

1604.703 Policy.

1604.705 Specific retention periods.

Subpart 1604.9—Taxpayer Identification Number

1604.970 Taxpayer Identification Number.

Subpart 1604.70—Coordination of Benefits

1604.7001 Coordination of benefits clause.

Subpart 1604.71—Disputed Health Benefit Claims

1604.7101 Filing health benefit claims/court review of disputed claims.

Subpart 1604.72—Large Provider Agreements

1604.7201 FEHB Program Large Provider Agreements.

1604.7202 Large Provider Agreement clause.

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

SOURCE: 52 FR 16039, May 1, 1987, unless otherwise noted.

Subpart 1604.7—Contractor Records Retention

1604.703 Policy.

In view of the unique payment schedules of FEHBP contracts and the compelling need for records retention periods sufficient to protect the Government's interest, contractors shall be required to maintain records for periods determined in accordance with the provisions of FAR 4.703(b)(1).

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1604.705 Specific retention periods.

Unless the contracting officer determines that there exists a compelling reason to include only the contract clause specified by FAR 52.215-2 “Audit & Records—Negotiation,” the contracting officer shall insert the clause at 1652.204-70 in all FEHBP contracts.

[52 FR 16039, May 1, 1987, as amended at 62 FR 47574, Sept. 10, 1997]

Subpart 1604.9—Taxpayer Identification Number

SOURCE: 65 FR 36386, June 8, 2000, unless otherwise noted.

1604.970 Taxpayer Identification Number.

Insert the clause at section 1652.204-73 in all FEHBP contracts.

Subpart 1604.70—Coordination of Benefits

1604.7001 Coordination of benefits clause.

OPM expects all FEHBP plans to coordinate benefits. Accordingly, the clause set forth at 1652.204-71 shall be inserted in all FEHBP contracts.

Subpart 1604.71—Disputed Health Benefit Claims

1604.7101 Filing health benefit claims/court review of disputed claims.

Guidelines for a Federal Employees Health Benefit (FEHB) Program covered individual to file a claim for payment or service and for legal actions on disputed health benefit claims are found at 5 CFR 890.105 and 890.107, respectively. The contract clause at 1652.204-72 of this chapter, reflecting this guidance, must be inserted in all FEHB Program contracts.

[61 FR 15198, Apr. 5, 1996]

Subpart 1604.72—Large Provider Agreements

SOURCE: 70 FR 31379, June 1, 2005, unless otherwise noted.

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

1604.7201 FEHB Program Large Provider Agreements.

The following provisions apply to all experience-rated carriers participating in the FEHB Program:

(a) *Notification and information requirements.* (1) All experience-rated carriers must provide notice to the contracting officer of their intent to enter into or to make a significant modification to a Large Provider Agreement. Significant modification means a 20% increase or more in the amount of the Large Provider Agreement:

(i) Not less than 60 days before entering into any Large Provider Agreement; and

(ii) Not less than 60 days before exercising renewals or other options, or making a significant modification.

(2) The carrier's notification to the contracting officer must be in writing and must, at a minimum:

(i) Describe the supplies and/or services the proposed provider agreement will require;

(ii) Identify the proposed basis for reimbursement;

(iii) Identify the proposed provider agreement, explain why the carrier selected the proposed provider, and, where applicable, what contracting method it used, including the kind of competition obtained;

(iv) Describe the methodology the carrier used to compute the provider's profit; and, (v) Describe the provider risk provisions.

(3) The contracting officer may request from the carrier any additional information on a proposed provider agreement and its terms and conditions prior to a Large Provider award and during the performance of the agreement.

(4) Within 30 days of receiving the carrier's notification, the contracting officer will either give the carrier written comments or written notice that there will be no comments. If the contracting officer comments, the carrier must respond in writing within 10 calendar days and explain how it intends to address any concerns.

(5) When computing the carrier's annual service charge, the contracting officer will consider how well the carrier complies with the provisions of this

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section, including the advance notification requirements, as an aspect of the carrier's performance factor.

(6) The contracting officer's review of any Large Provider agreement, option, renewal, or modification will not constitute a determination of the acceptability of terms or conditions of any provider agreement or the allowability of any costs under the carrier's contract, nor will it relieve the carrier of any responsibility for performing the contract.

(b) *Records and inspection.* The carrier must insert in all Large Provider Agreements the requirement that the provider will retain and make available to the Government all records relating to the agreement as follows:

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(1) Records that support the annual statement of operations—Retain for 6 years after the agreement term ends.

(2) Enrollee records, if applicable—Retain for 6 years after the agreement term ends.

(c) Large Provider Agreements based on cost analysis are subject to the provisions of FAR 52.215-2, "Audit and Records-Negotiation."

(d) Large Provider Agreements based on price analysis are subject to the provisions of 48 CFR 1646.301 and 1652.246-70.

1604.7202 Large Provider Agreement clause.

The contracting officer will insert the clause set forth at section 1652.204-74 in all experience-rated FEHB Program contracts.

SUBCHAPTER B—ACQUISITION PLANNING

PART 1605—PUBLICIZING CONTRACT ACTIONS

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

1605.000 Applicability.

FAR part 5 has no practical application to the FEHBP because OPM does not issue solicitations. Eligible contractors (i.e., qualified health benefits carriers) are identified in accordance with 5 U.S.C. 8903. Offerors voluntarily come forth in accordance with procedures provided in 5 CFR part 890.

[52 FR 16039, May 1, 1987]

PART 1606—COMPETITION REQUIREMENTS

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

1606.001 Applicability.

FAR part 6 has no practical application to FEHBP contracts in view of the statutory exception provided by 5 U.S.C. 8902.

[52 FR 16039, May 1, 1987]

PART 1609—CONTRACTOR QUALIFICATIONS

Subpart 1609.4—Debarment, Suspension, and Ineligibility

Sec.

1609.470 Notification of Debarment, Suspension, and Ineligibility.

1609.471 Contractor certification.

Subpart 1609.70—Minimum Standards for Health Benefits Carriers

1609.7001 Minimum standards for health benefits carriers.

Subpart 1609.71—Performance Evaluation

1609.7101 Policy.

1609.7101-1 Community-rated carrier incentive performance elements.

1609.7101-2 Community-rated carrier performance factors.

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

Subpart 1609.4—Debarment, Suspension, and Ineligibility

SOURCE: 59 FR 14764, Mar. 30, 1994, unless otherwise noted.

1609.470 Notification of Debarment, Suspension, and Ineligibility.

(FAR) 48 CFR, part 9, subpart 9.4 is supplemented as set out in the certification required in 1609.471 by converting the FAR “offeror’s” certification at (FAR) 48 CFR 52.209-5 into a carrier’s certification. This change reflects the FEHBP’s statutory exemption from competitive bidding (5 U.S.C. 8902), which obviates the issuance of solicitations.

1609.471 Contractor certification.

All FEHBP carriers and applicant carriers are required to submit the following certification. Applicant carriers must submit the certification prior to OPM’s determination on the application for approval to participate in the FEHBP. Current carriers must submit the certification once, along with their benefit and rate proposals for the 1995 contract year.

DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

The Carrier certifies, to the best of its knowledge and belief, that—

(a) The Carrier and/or any of its Principals—

(1) Are () are not () presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2) Have () have not (), within a 3-year period preceding this certification, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(3) Are () are not () presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of

1609.7001

any of the offenses enumerated in subdivision (a)(2) of this clause.

(4) The Carrier has () has not (), within a 3-year period preceding this certification, had one or more contracts terminated for default by any Federal agency.

(b) *Principals*, for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the Carrier subject to prosecution under section 1001, title 18, United States Code.

(c) The Carrier shall provide immediate written notice to the Contracting Officer if, at any time, the Carrier learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(d) A Carrier's certification that any of the actions mentioned in the certification exists will not necessarily result in termination of the contract. However, the certification, or the Carrier's failure to provide such additional information as requested by the Contracting Officer, will be considered in connection with a determination of the Carrier's responsibility under subpart 1609.70, Minimum Standards for Health Benefits Carriers.

(e) Nothing contained in the certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this section. The knowledge and information of the Carrier is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(f) The certification in this section is a material representation of fact upon which reliance is placed by the Contracting Officer. If it is later determined that the Carrier knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract for default.

Carrier Name: _____

Name of Chief Executive Officer _____

Date signed: _____

48 CFR Ch. 16 (10-1-12 Edition)

(End of certificate)

Subpart 1609.70—Minimum Standards for Health Benefits Carriers

1609.7001 Minimum standards for health benefits carriers.

(a) The carrier of an approved health benefits plan shall meet the requirements of chapter 89 of title 5, United States Code; part 890 of title 5, Code of Federal Regulations; chapter 1 of title 48, Code of Federal Regulations, and the following standards. The carrier shall continue to meet the requirements of chapter 89 of title 5, United States Code, and the standards cited in this paragraph while under contract with OPM. Failure to meet these requirements and standards is cause for OPM's withdrawal of approval of the health benefits carrier and termination of the contract in accordance with 5 CFR 890.204.

(1) It must be lawfully engaged in the business of supplying health benefits.

(2) It must have, in the judgement of OPM, the financial resources and experience in the field of health benefits to carry out its obligations under the plan.

(3) It must keep such reasonable financial and statistical records, and furnish such reasonable financial and statistical reports with respect to the plan, as may be requested by OPM.

(4) It must permit representatives of OPM and of the General Accounting Office to audit and examine its records and accounts which pertain, directly or indirectly, to the plan at such reasonable times and places as may be designated by OPM or the General Accounting Office.

(5) It must accept, subject to adjustment for error or fraud, in payment of its charges for health benefits for all enrollees in its plan, the enrollment charges received by the Employees Health Benefits (EHB) Fund less amounts set aside for the administrative and contingency reserves prescribed in 5 CFR 890.503. OPM makes available or pays the amounts within 30 days of receipt by the EHB Fund.

(6) A carrier that is an employee organization must continue coverage, without requirement of membership, of

any eligible survivor annuitants, former spouses continuing coverage with the carrier under 5 CFR 890.803, children temporarily continuing coverage with the carrier under 5 CFR 890.1103(a)(2), or former spouses temporarily continuing coverage with the carrier under 5 CFR 890.1103(a)(3).

(7) It must timely submit to OPM a properly completed and signed novation or change-of-name agreement in accordance with subpart 1642.12 of this chapter.

(b) In addition to the standards in paragraph (a) of this section, the carrier must perform the contract in accordance with prudent business practices. A carrier's sustained poor business practice in the management or administration of a health benefits plan is cause for OPM's withdrawal of approval of the health benefits carrier and termination of the carrier's contract. Prudent business practices include, but are not limited to, the following:

(1) Timely compliance with OPM instructions and directives.

(2) Legal and ethical business and health care practices.

(3) Compliance with the terms of the FEHB contract, regulations and statutes.

(4) Timely and accurate adjudication of claims or rendering of medical services.

(5) A system for accounting for costs incurred under the contract, when required, which includes segregating and pricing FEHB medical utilization and allocating indirect and administrative costs in a reasonable and equitable manner.

(6) Accurate accounting reports of actual, allowable, allocable, and reasonable costs incurred in the administration of the contract.

(7) Application of performance standards for assuring contract quality as required by 1646.270(d).

(8) Establishment and maintenance of a system of internal control that provides reasonable assurance that:

(i) The provision and payments of benefits and other expenses are in compliance with legal, regulatory, and contractual guidelines;

(ii) FEHB funds, property, and other assets are safeguarded against waste,

loss, unauthorized use, or misappropriation; and,

(iii) Data are accurately and fairly disclosed in all reports required by OPM.

(c) The following types of activities are examples of poor business practices which adversely affect the health benefits carrier's responsibility under its contract. A pattern of poor conduct or evidence of misconduct in these areas is cause for OPM to withdraw approval of the carrier:

(1) Presenting false claims by charging expenses to the contract which according to the contract terms are not chargeable to the contract;

(2) Using fraudulent or unethical business or health care practices or otherwise displaying a lack of business integrity or honesty;

(3) Repeatedly and knowingly providing false or misleading information in the rate setting process;

(4) Repeated failure to comply with OPM instructions and directives;

(5) Having an accounting system that is incapable of separately accounting for costs incurred under the contract and/or that lacks the internal controls necessary to fulfill the terms of the contract; and

(6) Failure to assure that the plan provides properly paid or denied claims, or providing medical services which are inconsistent with standards of good medical practice.

(7) Entering into contracts or employment agreements with providers, provider groups, or health care workers that include provisions or financial incentives that directly or indirectly create an inducement to limit or restrict communication about medically necessary services to any individual covered under the FEHB Program. Financial incentives are defined as bonuses, withholds, commissions, profit sharing or other similar adjustments to basic compensation (e.g., service fee, capitation, salary) which have the effect of limiting or reducing communication about appropriate medically necessary services. Providers, health care workers, or health plan sponsoring organizations are not required to discuss treatment options that they would not ordinarily discuss in their customary course of practice because such options

are inconsistent with their professional judgment or ethical, moral or religious beliefs.

(d) The Director or his or her designee will determine whether to propose withdrawal of approval and hold a hearing based on the seriousness of the carrier's actions and its proposed method to effect corrective action.

[57 FR 14359, Apr. 20, 1992. Redesignated and amended at 59 FR 14764, 14765, Mar. 30, 1994; 63 FR 42586, Aug. 10, 1998]

Subpart 1609.71—Performance Evaluation

SOURCE: 63 FR 55337, Oct. 15, 1998, unless otherwise noted.

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 car-

rier'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 pro-

vide 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

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1614—SEALED BIDDING

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

1614.000 Applicability.

FAR part 14 has no practical application to FEHBP contracts in view of the statutory exemption provided by 5 U.S.C. 8902.

[52 FR 16039, May 1, 1987]

PART 1615—CONTRACTING BY NEGOTIATION

Sec.

1615.070 Negotiation authority.

Subpart 1615.1—Source Selection Processes and Techniques

1615.170 Applicability.

Subpart 1615.2—Solicitations and Receipt of Proposals and Information

1615.270 Applicability.

Subpart 1615.3—Source Selection

1615.370 Applicability.

Subpart 1615.4—Contract Pricing

1615.402 Pricing policy.

1615.404-4 Profit.

1615.404-70 Profit analysis factors.

1615.406-2 Certificate of accurate cost or pricing data for community-rated carriers.

1615.407-1 Rate reduction for defective pricing or defective cost or pricing data.

1615.470 Carrier investment of FEHB funds.

1615.470-1 Investment income clause.

Subparts 1615.8–1615.9 [Reserved]

Subpart 1615.70—Audit and Records—Negotiation

1615.7001 Audit and records.

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

SOURCE: 52 FR 16040, May 1, 1987, unless otherwise noted.

1615.070 Negotiation authority.

The authority to negotiate FEHB contracts is conferred by 5 U.S.C. 8902.

[70 FR 31379, June 1, 2005]

Subpart 1615.1—Source Selection Processes and Techniques

1615.170 Applicability.

FAR subpart 15.1 has no practical application to the FEHB Program because prospective contractors (carriers) are considered for inclusion in the FEHB Program according to criteria in 5 U.S.C. chapter 89 and 5 CFR part 890 rather than by competition between prospective carriers.

[70 FR 31379, June 1, 2005]

Subpart 1615.2—Solicitations and Receipt of Proposals and Information

1615.270 Applicability.

FAR subpart 15.2 has no practical application to the FEHB Program because OPM does not issue formal procurement solicitations to health benefits carriers. Eligible contractors (i.e., qualified health benefits carriers) are identified in accordance with 5 U.S.C. 8903. Offerors voluntarily come forth in accordance with procedures provided in 5 CFR part 890.

[70 FR 31379, June 1, 2005]

Subpart 1615.3—Source Selection

1615.370 Applicability.

FAR subpart 15.3 has no practical application to the FEHBP because prospective contractors (carriers) are considered for inclusion in the FEHBP in accordance with criteria provided in 5 U.S.C. chapter 89 and 5 CFR part 890 rather than on the basis of competition between prospective carriers.

[52 FR 16040, May 1, 1987. Redesignated and amended at 70 FR 31380, June 1, 2005]

Subpart 1615.4—Contract Pricing

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

SOURCE: 70 FR 31380, June 1, 2005, unless otherwise noted.

1615.402 Pricing policy.

Pricing of FEHB contracts is governed by 5 U.S.C. 8902(i), 5 U.S.C. 8906, and other applicable law. FAR subpart 15.4 will be implemented by applying its policies and procedures—to the extent practicable—as follows:

(a) For both experience-rated and community-rated contracts for which the FEHB Program premiums for the contract term will be less than the threshold at FAR 15.403-4(a)(1), OPM will not require the carrier to provide cost or pricing data in the rate proposal for the following contract term.

(b) Cost analysis will be used for contracts where premiums and subscription income are determined on the basis of experience rating.

(c)(1) A combination of cost and price analysis will be used for contracts where premiums and subscription income are based on community-rates. For contracts for which the FEHB Program premiums for the contract term will be less than the threshold at FAR 15.403-4(a)(1), OPM will not require the carrier to provide cost or pricing data. The carrier is required to submit only a rate proposal and abbreviated utilization data for the applicable contract year. OPM will evaluate the proposed rates by performing a basic reasonableness test on the information submitted. Rates failing this test will be subject to further review.

(2) For contracts with fewer than 1,500 enrollee contracts for which the FEHB Program premiums for the contract term will be at or above the threshold at FAR 15.403-4(a)(1), OPM will require the carrier to submit its rate proposal, utilization data, and the certificate of accurate cost or pricing data required in 1615.406-2. In addition, OPM will require the carrier to complete the proposed rates form containing cost and pricing data, and the Community-Rate Questionnaire, but will not require the carrier to send these documents to OPM. The carrier will keep the documents on file for

periodic auditor and actuarial review in accordance with 1652.204-70. OPM will perform a basic reasonableness test on the data submitted. Rates that do not pass this test will be subject to further OPM review.

(3) For plan year 2012, plans will have the option of continuing to use the similarly sized subscriber group (SSSG) rating methodology described in paragraph (c)(3)(i) of this section or using the MLR rating methodology described in paragraph (c)(3)(ii) of this section. All non-traditional community rated (TCR) plans will be required to submit FEHB-specific MLR information for every year beginning with plan year 2011.

(i) *Similarly sized subscriber group (SSSG) methodology.* (A) For contracts with 1,500 or more enrollee contracts for which the FEHB Program premiums for the contract term will be at or above the threshold at FAR 15.403-4(a)(1), OPM will require the carrier to provide the data and methodology used to determine the FEHB Program rates. OPM will also require the data and methodology used to determine the rates for the carrier's SSSGs. The carrier will provide cost or pricing data required by OPM in its rate instructions for the applicable contract period. OPM will evaluate the data to ensure that the rate is reasonable and consistent with the requirements in this chapter. If necessary, OPM may require the carrier to provide additional documentation.

(B) Contracts will be subject to a downward price adjustment if OPM determines that the Federal group was charged more than it would have been charged using a methodology consistent with that used for the SSSGs. Such adjustments will be based on the lower of the two rates determined by using the methodology (including discounts) the carrier used for the two SSSGs.

(C) FEHB Program community-rated carriers will comply with SSSG criteria provided by OPM in the rate instructions for the applicable contract period.

(ii) *FEHB-specific medical loss ratio (MLR) threshold methodology.* (A) For contracts with 1,500 or more enrollee contracts for which the FEHB Program

premiums for the contract term will be at or above the threshold at FAR 15.403-4(a)(1), OPM will require the carrier to provide the data and methodology used to determine the FEHB Program rates. OPM will also require the data and methodology used to determine the medical loss ratio (MLR) as defined in the ACA (Pub. L. 111-148) and as defined by HHS in 45 CFR part 158 for all FEHB community rated plans other than those required by state law to use Traditional Community Rating. The carrier will provide cost or pricing data, as well as the FEHB-specific MLR threshold data required by OPM in its rate instructions for the applicable contract period. OPM will evaluate the data to ensure that the rate is reasonable and consistent with the requirements in this chapter. If necessary, OPM may require the carrier to provide additional documentation.

(B) Contracts will be subject to a subsidization penalty if OPM determines that the FEHB group did not meet the FEHB-specific MLR threshold specified in the annual rate instruction to carriers. Such a subsidization penalty will be deposited into a Subsidization Penalty Account held at the U.S. Treasury. This Subsidization Penalty Account will be held in common with all community rated carriers and will be annually distributed to the contingency reserve accounts of all non-TCR community rated plans on a pro-rata basis.

(C) FEHB Program community-rated carriers will comply with the MLR criteria, including the FEHB-specific MLR threshold provided by OPM in the rate instructions for the applicable contract period. FEHB plans that are required by state law to use TCR are exempt from this requirement and will use the SSSG methodology outlined in paragraph (c)(3)(i) of this section.

(4) Contracts will be subject to a downward price adjustment if OPM determines that the Federal group was charged more than it would have been charged using a methodology consistent with that used for the similarly-sized subscriber groups (SSSGs). Such adjustments will be based on the lower of the two rates determined by using the methodology (including dis-

counts) the carrier used for the two SSSGs.

(5) FEHB Program community-rated carriers will comply with SSSG criteria provided by OPM in the rate instructions for the applicable contract period.

(d) The application of FAR 15.402(b)(2) should not be construed to prohibit the consideration of preceding year surpluses or deficits in carrier-held reserves in the rate adjustments for subsequent year renewals of contracts based, in whole or in part, on cost analysis.

[70 FR 31380, June 1, 2005, as amended at 76 FR 38285, June 29, 2011; 77 FR 19524, Apr. 2, 2012]

1615.404-4 Profit.

(a) When the pricing of FEHB Program contracts is determined by cost analysis, OPM will determine the profit or fee prenegotiation objective (service charge) portion of the contracts by use of a weighted guidelines structured approach. The service charge so determined will be the total service charge that may be negotiated for the contract and will encompass any service charge (whether entitled service charge, profit, fee, contribution to reserves or surpluses, or any other title) that may have been negotiated by the prime contractor with any subcontractor or underwriter.

(b) OPM will not guarantee a minimum service charge.

1615.404-70 Profit analysis factors.

(a) OPM contracting officers will apply a weighted guidelines method in developing the service charge prenegotiation objective for FEHB Program contracts. The following factors, as defined in FAR 15.404-4(d), will be applied to projected incurred claims and allowable administrative expenses:

(1) *Contractor performance.* OPM will consider such elements as the accurate and timely processing of benefit claims and the volume and validity of disputed claims as measures of economical and efficient contract performance. This factor will be judged apart from the contractor's basic responsibility for contract performance and will be a measure of the extent and nature of the contractor's contribution to the

FEHB Program through the application of managerial expertise and effort. Evidence of effective contract performance will receive a plus weight, and poor performance or failure to comply with contract terms and conditions a negative weight. Innovations of benefit to the FEHB Program will generally result in a positive weight; documented inattention or indifference to cost control will generally result in a negative weight.

(2) *Contract cost risk.* In assessing the degree of cost responsibility and associated risk assumed by the contractor as a factor to be considered in negotiating profit, OPM will consider such underwriting elements as the availability of margins, group size, enrollment demographics and fluctuation, and the probability of conversion and adverse selection, as well as the extent of financial assistance the carrier renders to the contract. However, the "loss carry forward basis" of experience-rated group insurance practices, which mitigates contract risk, will likely serve to diminish this profit analysis factor in an overall determination of profit. This factor is intended to provide profit opportunities commensurate with the contractor's share of cost risks only, taking into account elements such as the adequacy and reliability of data for estimating costs.

(3) *Federal socioeconomic programs.* OPM will consider documented evidence of successful, contractor-initiated efforts to support Federal socioeconomic programs such as drug and substance abuse deterrents and concerns of the type enumerated in FAR 15.404-4(d)(iii), as a factor in negotiating profit. This factor will be assessed by considering the quality of the contractor's policies and procedures and the extent of unusual effort or achievement demonstrated. Evidence of effective support of Federal socioeconomic programs will receive a positive weight; poor support will receive a negative weight.

(4) *Capital investments.* This factor is generally not applicable to FEHB Program contracts because facilities capital cost of money may be an allowable administrative expense. Generally, this factor will be given a weight of zero.

However, special purpose facilities or investment costs of direct benefit to the FEHB Program that are not recoverable as allowable or allocable administrative expenses may be taken into account in assigning a positive weight.

(5) *Cost control.* OPM will consider contractor-initiated efforts such as improved benefit design, cost-sharing features, innovative peer review, or other professional cost containment efforts as a factor in negotiating profit. OPM will use this factor to reward contractors with additional profit opportunities for self-initiated efforts to control contract costs.

(6) *Independent development.* OPM will consider any profit opportunities that may be directly related to relevant independent efforts such as the development of a unique and enhanced customer support system that is of demonstrated value to the FEHB Program and for which developmental costs have not been recovered directly or indirectly through allowable administrative expenses. OPM will use this factor to provide additional profit opportunities based upon an assessment of the contractor's investment and risk in developing techniques, methods, and practices having viability to the program at large. OPM will not consider improvements and innovations recognized and rewarded under any of the other profit factors.

(b) The following weight ranges for each factor are used in the weighted guidelines approach:

Profit factor	Weight ranges (percent)
1. Contractor performance	-.2 to +.45
2. Contract cost risk *	+.02 to +.2
3. Federal socioeconomic programs	-.05 to +.05
4. Capital investments	0 to +.02
5. Cost control	0 to +.35
6. Independent development	0 to +.03

*The contract cost risk factor is subdivided into two parts: group size (.02 to .10) and other risk elements (0 to .10). With respect to the group size element, subweights should be assigned as follows:

Enrollment	Weight (percent)
10,000 or less	.06 to .10
10,001-50,000	.05 to .09

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Enrollment	Weight (percent)
50,001-200,000	.04 to .07
200,001-500,000	.03 to .06
500,001 and over	.02 to .04

§ 1615.406-2 Certificates of accurate cost or pricing data for community rated carriers.

(a) The contracting officer will require a carrier with a contract meeting the requirements in 1615.402(c)(2) or (3) to execute one or more of the Certificates contained in this section. A carrier with a contract meeting the requirements in 1615.402(c)(2) will complete the appropriate Certificate(s) and keep such on file at the carrier's place of business in accordance with 1652.204-70. A carrier with a contract meeting the requirements in 1615.402(c)(3) will complete and submit the appropriate certificate(s) to OPM.

(b) A carrier using the SSSG methodology described in 1615.402(c)(3)(i) will submit the "Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers (SSSG methodology)" along with its rate reconciliation during the first quarter of the applicable contract year. A carrier using the MLR methodology described in 1615.402(c)(3)(ii) will submit two forms. The "Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers (MLR methodology)" will be submitted along with the rate reconciliation during the first quarter of the applicable contract year. The "Certificate of Accurate MLR Calculation" will be submitted when the carrier submits its FEHB-specific MLR calculation to OPM.

(Beginning of first certificate)

Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers (SSSG methodology)

This is to certify that, to the best of my knowledge and belief: (1) The cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting officer or the Contracting officer's representative or designee, in support of the _____*FEHB Program rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHB Program contract and are accurate, complete, and current as of the date this certificate is executed;

and (2) the methodology used to determine the FEHB Program rates is consistent with the methodology used to determine the rates for the carrier's Similarly Sized Subscriber Groups.

*Insert the year for which the rates apply.

Firm:

Name:

Signature:

Date of Execution:

(End of first certificate)

(Beginning of second certificate)

Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers (MLR methodology)

This is to certify that, to the best of my knowledge and belief: (1) The cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting officer or the Contracting officer's representative or designee, in support of the _____*FEHB Program rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHB Program contract and are accurate, complete, and current as of the date this certificate is executed;

*Insert the year for which the rates apply.

Firm:

Name:

Signature:

Date of Execution:

(End of second certificate)

(Beginning of third certificate)

Certificate of Accurate MLR Calculation

This is to certify that, to the best of my knowledge and belief: the determination of the carrier's FEHB-specific medical loss ratio for * is accurate, complete, and consistent with the methodology as stated in § 1615.402(c)(3)(ii).

*Insert the year for which the MLR calculation applies.

Firm:

Name:

Signature:

Date of Execution:

(End of certificate)

[77 FR 19524, Apr. 2, 2012]

Office of Personnel Management

1616.7002

1615.407-1 Rate reduction for defective pricing or defective cost or pricing data.

The clause set forth in section 1652.215-70 will be inserted in FEHB Program contracts, at or above the threshold in FAR 15.403-4(a)(1), that are based on a combination of cost and price analysis (community-rated).

1615.470 Carrier investment of FEHB funds.

(a) Except for contracts based on a combination of cost and price analysis (community-rated), the carrier is required to invest and reinvest all funds on hand, including any attributable to the special reserve or the reserve for incurred but unpaid claims, exceeding the funds needed to discharge promptly the obligations incurred under the contract.

(b) The carrier is required to credit income earned from its investment of FEHB funds to the special reserve on behalf of the FEHB Program. If a carrier, for any reason, fails to invest excess FEHB funds or to credit any income due to the contract, it will return or credit any investment income lost to OPM or the special reserve.

(c) Investment income. Investment income is the net amount earned by the carrier after deducting investment expenses.

1615.470-1 Investment income clause.

The clause set forth in 1652.215-71 will be inserted in all FEHB contracts based on cost analysis.

Subparts 1615.8-1615.9 [Reserved]

Subpart 1615.70—Audit and Records—Negotiation

1615.7001 Audit and records.

The Contracting officer will modify 52.215-2 in all FEHB Program experience-rated contracts by amending paragraph (g) of that section to replace the words “exceed the simplified acquisition threshold” with “equals or exceeds \$550,000.” This amount shall be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth

in Negotiations Act pursuant to 41 U.S.C. 254b(a)(7).

[70 FR 31381, June 1, 2005]

PART 1616—TYPES OF CONTRACTS

Subpart 1616.1—Selecting Contract Types

Sec.

1616.102 Policies.

1616.105 Solicitation provision.

Subpart 1616.70—Negotiated Benefits Contracts

1616.7001 Clause—contracts based on a combination of cost and price analysis (community rated).

1616.7002 Clause—contracts based on cost analysis (experience rated).

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

SOURCE: 52 FR 16041, May 1, 1987, unless otherwise noted.

Subpart 1616.1—Selecting Contract Types

1616.102 Policies.

All FEHBP contracts shall be negotiated benefits contracts.

[62 FR 47575, Sept. 10, 1997]

1616.105 Solicitation provision.

FAR 16.105 has no practical application because the statutory provisions of 5 U.S.C. chapter 89 obviate the issuance of solicitations.

Subpart 1616.70—Negotiated Benefits Contracts

SOURCE: 62 FR 47575, Sept. 10, 1997, unless otherwise noted.

1616.7001 Clause—contracts based on a combination of cost and price analysis (community rated).

The clause at section 1652.216-70 shall be inserted in all FEHBP contracts based on a combination of cost and price analysis (community rated).

1616.7002 Clause—contracts based on cost analysis (experience rated).

The clause at section 1652.216-71 shall be inserted in all FEHBP contracts based on cost analysis (experience rated).

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1622.1—Basic Labor Policies

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

1622.103–70 Contract clause.

The clause at 1652.222–70 shall be inserted in all FEHBP contracts.

[55 FR 27415, July 2, 1990]

PART 1624—PROTECTION OF PRI- VACY AND FREEDOM OF INFOR- MATION

Subpart 1624.1—Protection of Individual Privacy

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

1624.104 Contract clause.

Records retained by FEHBP carriers on Federal subscribers and members of their families serve the carriers' own commercial function of paying health benefits claims and are not maintained to accomplish an agency function of OPM. Consequently, the records do not fall within the provisions of the Privacy Act. Nevertheless, OPM recognizes the need for carriers to keep certain records confidential. The clause at 1652.224–70 shall be inserted in all FEHBP contracts.

[52 FR 16041, May 1, 1987]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1629—TAXES

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

SOURCE: 62 FR 47575, Sept. 10, 1997, unless otherwise noted.

Subpart 1629.4—Contract Clauses

1629.402 Foreign contracts.

The clause set forth in section 1652.229-70 shall be inserted in all FEHBP contracts performed outside the United States, its possessions, and Puerto Rico.

PART 1631—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1631.1—Definitions

Sec.

1631.1 Definitions.

Subpart 1631.2—Contracts With Commercial Organizations

1631.200 Scope of subpart.

1631.201-70 Credits.

1631.203 Indirect costs.

1631.203-70 Allocation techniques.

1631.203-71 Business unit General and Administrative (G&A) expenses.

1631.203-72 Home office expense.

1631.205 Selected costs.

1631.205-10 Cost of money.

1631.205-41 Taxes.

1631.205-70 FEHBP public relations and advertising costs.

1631.205-71 FEHBP bad debts.

1631.205-72 FEHBP compensation for personal services.

1631.205-73 FEHBP interest expense.

1631.205-74 FEHBP losses on other contracts.

1631.205-75 Selling costs.

1631.205-76 Trade, business, technical and professional activity costs.

1631.205-77 FEHBP start-up and other non-recurring costs.

1631.205-78 FEHBP printed material costs.

1631.205-79 Mandatory statutory reserves.

1631.205-80 Major subcontractor service charges.

1631.205-81 Inferred reasonableness.

1631.205-82 Audits.

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

SOURCE: 52 FR 16041, May 1, 1987, unless otherwise noted.

Subpart 1631.1—Definitions

1631.1 Definitions.

The definitions in FAR 31.001 are applicable to this section unless otherwise noted.

[70 FR 31390, June 1, 2005]

Subpart 1631.2—Contracts With Commercial Organizations

1631.200 Scope of subpart.

The cost principles under this subpart apply only to contracts in which premiums and subscription income are determined on the basis of experience rating, in which cost analysis is performed, or in which price is determined on the basis of actual costs incurred.

1631.201-70 Credits.

The provisions of FAR 31.201-5 shall apply to income, rebates, allowances, and other credits resulting from benefit payments. Examples of such credits include:

- (a) Coordination of benefit refunds, including subrogation settlements;
- (b) Hospital year-end settlements and other applicable provider discounts;
- (c) Uncashed and returned checks;
- (d) Utilization review refunds;
- (e) Contract prescription drug rebates;
- (f) Volume discounts;
- (g) Refunds and other payments or recoveries attributable to litigation with subscribers or providers of health services; and,
- (h) Erroneous benefit payment, overpayment, and duplicate payment recoveries.

[70 FR 31390, June 1, 2005]

1631.203 Indirect costs.

For the purposes of applying FAR 31.203(g)(2) to FEHB Program contracts, OPM considers the monthly rates used by some carriers to be a general practice in the insurance industry.

[70 FR 31391, June 1, 2005]

1631.203-70 Allocation techniques.

(a) Carriers shall use the following methods for allocating groupings of business unit indirect costs. Carriers shall consistently apply the methods and techniques established to classify direct and indirect costs, to group indirect costs and to allocate indirect costs to cost objectives.

(1) *Input method.* The preferred allocation technique is one that shows the consumption of resources in performance of the activities (input) for the function(s) represented by the cost grouping. This allocation technique should be used in circumstances where there is a direct and definitive relationship between the function(s) and the benefiting cost objectives. Measures of input ordinarily may be expressed in terms such as labor hours or square footage. This means costs may be allocated by use of a rate, such as a rate per labor hour or cost per square foot.

(2) *Output method.* Where input measures are unavailable or impractical to determine, the basis for allocation may be a measure of the output of the function(s) represented by the cost grouping. The output becomes a substitute measure for the use of resources and is a reasonable alternative when a direct measure of input is impractical. Output may be measured in terms of units of end product produced by the function(s). Examples of output measures include number of claims processed by a claims processing center, number of pages printed in a print shop, number of purchase orders processed by a purchasing department, or number of hires by a personnel office.

(3) *Surrogate method.* Where neither activity (input) nor output of the function(s) can be measured practically, a surrogate must be used to measure the resources utilized. Surrogates used to represent the relationship generally measure the benefit to the cost objectives receiving the service and should vary in proportion to the services received. For example, if a personnel department provides various services that cannot be measured practically on an activity (input) or output basis, number of personnel served might reasonably represent the use of resources of the personnel function for the cost

objectives receiving the service, where this base varies in proportion to the services performed.

(4) *Other method.* Some cost groupings cannot readily be allocated on measures of specific beneficial or causal relationships under paragraph (a)(1), (a)(2), or (a)(3) of this section. Such costs do not have a direct and definitive relationship to the benefiting cost objectives. Generally, the cost of overall management activities falls in this category. Overall management costs should be grouped in relation to the activities managed. The base selected to measure the allocation of these indirect costs to cost objectives should be a base representative of the entire activity being managed. For example, the total operating expenses of activities managed might be a reasonable base for allocating the general indirect costs of a business unit. Another reasonable method for allocating general indirect costs might be to base them on a percentage of contracts. These examples are not meant to be exhaustive, but rather are examples of allocation methods that may be acceptable under individual circumstances. See also General and Administrative (G&A) expenses, FEHBAR 1631.203-71.

(b) Carriers that use multiple cost centers to accumulate and allocate costs shall apply the techniques in paragraph (a) of this section at each step of the allocation process. Accordingly, the allocation of costs among cost centers at the initial entry into the cost accounting system shall be made in compliance with paragraph (a) of this section. Likewise, the allocation of the cost of interim cost centers to final cost centers is subject to paragraph (a) of this section. If costs of final cost centers are allocated among final cost objectives, the allocation shall also be made in accordance with paragraph (a) of this section. It is possible that carriers using multiple cost centers to accumulate and allocate costs may not have any direct costs, i.e., costs identified specifically with a final cost objective.

(c) The allocation of business unit general and administrative expenses and the allocation of home office expenses to segments are also subject to

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FEHBAR 1631.203-71 and FEHBAR 1631.203-72, respectively.

[70 FR 31391, June 1, 2005]

1631.203-71 Business unit General and Administrative (G&A) expenses.

G&A expenses shall be allocated to final cost objectives by a base or method that represents the total activity of the business unit.

[70 FR 31391, June 1, 2005]

1631.203-72 Home office expense.

A carrier's practices for allocating home office expenses to the segments of the carrier will be acceptable for purposes of FAR 31.203 if they are allocated on the basis of the beneficial or causal relationship between the home office activities and the segments to which the expenses are allocated. Expenses that cannot be allocated on the basis of a more specific beneficial or causal relationship should be allocated on a basis representative of the entire activity being managed. The compliance of such allocations with FAR 31.203 shall be determined on the basis of the facts and circumstances of each situation.

[70 FR 31391, June 1, 2005]

1631.205 Selected costs.

1631.205-10 Cost of money.

For the purposes of FAR 31.205-10(b)(3), the estimated facilities capital cost of money is specifically identified if it is identified in the prior year's Annual Accounting Statement or, for new experience-rated carriers, the supplemental information supporting submitted costs (such as the Supplemental Schedule of Administrative Expenses).

[70 FR 31391, June 1, 2005]

1631.205-41 Taxes.

5 U.S.C. 8909(f)(1) prohibits the imposition of taxes, fees, or other monetary payment, directly or indirectly, on FEHB premiums by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority of those entities. Therefore, FAR 31.205-41 is modified to include those taxes as unallowable costs. The

prohibited payments, referred to elsewhere in these regulations as "premium taxes," applies to all payments directed by States or municipalities, regardless of how they may be titled, to whom they must be paid, or the purpose for which they are collected, and it applies to all forms of direct and indirect measurements on FEHBP premiums, however modified, to include cost per contract or enrollee, with the sole exception of a tax on net income or profit, if that tax, fee, or payment is applicable to a broad range of business activity.

[56 FR 57496, Nov. 12, 1991]

1631.205-70 FEHBP public relations and advertising costs.

(a) The cost of media messages that are directed at advising current FEHBP subscribers on how to obtain benefits shall be an allowable expense within the meaning of FAR 31.205-1 because this service is directly related to performance of the FEHBP contract. If there is any question about the allowability of such a cost, the carrier may request advance approval regarding the content and cost of the message.

(b) Costs of media messages not provided for in paragraph (a) of this section are allowable if the content is specifically approved by the contracting officer and all of the following criteria are met:

(1) The primary effect of the message is to disseminate information on health care cost containment or preventive health care;

(2) The costs of the carrier's messages are allocated to all underwritten and non-underwritten lines of business; and

(3) The contracting officer approves the total dollar amount of the carrier's messages to be charged to the FEHBP in advance of the contract year.

(c) Costs of messages that are intended to, or which have the primary effect of, calling favorable attention to the carrier (or subcontractor) for the purpose of enhancing its overall image or selling its health plan are not allowable.

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1631.205-71 FEHBP bad debts.

Erroneous benefit payments are not automatically disallowed by FAR 31.205-3.

1631.205-72 FEHBP compensation for personal services.

(a) Overtime on an FEHBP contract would normally meet the condition specified in FAR 22.103. Premiums for overtime, extra-pay shifts, and multi-shifts meeting the specified conditions shall be allowed without prior approval.

(b)(1) The costs of compensated personal absence shall be assigned to the cost accounting period or periods in which entitlement was earned. Entitlement means an employee's right, whether conditional or unconditional, to receive a determinable amount of compensated personal absence, or pay in lieu thereof.

(2) If at the beginning of the 1st year a carrier subject to paragraph (b)(1) of this section has a liability for accrued but unpaid expenses for compensated personal absences that would otherwise be allocable to FEHB contracts, the carrier may include such costs in a suspense account. The suspense account may be amortized and included in government contract costs at a rate not exceeding 20 percent per year.

[52 FR 16041, May 1, 1987, as amended at 70 FR 31391, June 1, 2005]

1631.205-73 FEHBP interest expense.

(a) Interest charges incurred in the administration of FEHBP contracts are not allowable in accordance with FAR 31.205-20. However, interest charges that are associated with the carrier's investment of FEHBP account funds are not considered administrative costs and may be allowable under very limited circumstances if all of the following criteria are met:

(1) Borrowing is limited to the positive balance of the carrier's entire FEHBP investment portfolio;

(2) FEHBP funds are tied up in long-term securities;

(3) Liquidation of long-term securities would cost more than the cost of the interest;

(4) The interest rates charged are at or below current market rates; and

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(5) Advance written approval of the contracting officer is obtained before such costs are incurred.

(b) The carrier must demonstrate on a case-by-case basis that borrowing rather than cashing in long-term investments shall actually result in cost savings to the FEHB Program. Satisfactory demonstration of cost savings is a prerequisite to contracting officer approval of the interest cost as a charge to the contract.

(c) If the interest charge is allowed, the risk factor in the service charge will be adjusted downward so that the carrier does not recover interest costs through both the service charge and an allowance under this paragraph.

1631.205-74 FEHBP losses on other contracts.

FAR 31.205-23 shall not be construed to prohibit the application of the normal "loss carry forward" principle that is fundamental to continuing insurance contracts that are based on experience rating.

1631.205-75 Selling costs.

(a) FAR 31.205-38 is modified to eliminate from allowable costs those costs related to sales promotion and the payment of sales commissions fees or salaries to employees or outside commercial or selling agencies for enrolling Federal subscribers in a particular FEHB plan.

(b) Selling costs are allowable costs to FEHBP contracts to the extent that they are necessary for conducting annual contract negotiations with the Government and for liaison activities necessary for ongoing contract administration. Personnel and related travel costs are allowable for attendance at Open Season Health fairs and other similar activities at which carriers give enrollees information about their choices among health plans (but see FAR 31.205-1 'Public relations and advertising costs', and The Federal Employees Health Benefits Handbook for Personnel and Payroll Offices, Subchapter S2-3(f) 'Controlling contacts between employees and carriers').

[52 FR 16041, May 1, 1987, as amended at 62 FR 47575, Sept. 10, 1997]

1631.205-76 Trade, business, technical, and professional activity costs.

(a) FEHBP participating plans, carriers, and underwriters shall seek the advance written approval of the contracting officer for allowability of all or part of the costs associated with trade, business, technical, and professional activities (FAR 31.205-43) when the allocable costs of such participation to the FEHBP will exceed \$1,000 annually and when the carrier or underwriter allocates more than 50% of the membership cost of a trade, business, technical, or professional organization to the FEHBP.

(b) When approval of costs for membership in an organization is required, the carrier or underwriter must demonstrate conclusively that membership in such an organization and participation in its activities extend beyond the contractual relationship with OPM, have a reasonable relationship to providing care and services to FEHBP enrollees, and that the organization is not engaged in activities such as those cited in FAR 31.205-22 (lobbying costs) for which costs are not allowable.

1631.205-77 FEHBP start-up and other nonrecurring costs.

Precontract costs (FAR 31.205-32) shall be allowed only to the extent provided for by advance agreement in accordance with FAR 31.109.

1631.205-78 FEHBP printed material costs.

Unless OPM determines that it is in the best interest of the FEHBP to do otherwise, if a carrier orders printed material that is available from the Government Printing Office (GPO) under the "rider system" from another source, the allowable contract charges shall be the lesser of the amount actually paid or the cost that would have been incurred had the carrier ridden OPM's GPO order.

1631.205-79 Mandatory statutory reserves.

Charges for mandatory statutory reserves are not allowed unless provided for in the contract. When the term "mandatory statutory reserve" is specifically identified as an allowable contract charge without further definition

or explanation, it means a requirement imposed by State law upon the carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the carrier and which may be used only with the specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the carrier, a pro rata share based upon FEHBP's contribution to the total carrier's set aside shall be returned to the FEHBP in accordance with FAR 31.201-5.

1631.205-80 Major subcontractor service charges.

In a subcontract for enrollment and eligibility determinations, administration of claims and payment of benefits, and payment or provision of actual health services, and/or assumption of insurance risk or underwriting, when costs are determined on the basis of actual costs incurred or experience rating, any amount that exceeds the allowable cost of the subcontract (whether entitled service charge, profit, fee, contribution to reserve, surplus, or any other title) is not allowable under the contract. Amounts which exceed allowable costs may be paid to a major subcontractor only from the service charge negotiated between OPM and the Carrier.

1631.205-81 Inferred reasonableness.

If the carrier follows the notification and consent requirements of paragraphs (a), (b) and (c) of 1652.244-70, and subsequently obtains the Contracting officer's consent or ratification, then the reasonableness of the subcontract's costs shall be inferred.

[70 FR 31382, June 1, 2005]

1631.205-82 Audits.

Carriers should ensure that the public accounting firms with which they contract for audits of FEHB accounts

are registered with the Public Company Accounting Oversight Board (PCAOB).

[71 FR 3015, Jan. 19, 2006]

PART 1632—CONTRACT FINANCING

Subpart 1632.1—General

Sec.

1632.170 Recurring premium payments to carriers.

1632.171 Clause—community-rated contracts.

1632.172 Clause—experience-rated contracts.

Subpart 1632.6—Contract Debts

1632.607 Tax credit.

1632.617 Contract clause.

Subpart 1632.7—Contract Funding

1632.770 Contingency reserve payments.

1632.771 Non-commingling of FEHBP funds.

1632.772 Contract clause.

Subpart 1632.8—Assignment of Claims

1632.806–70 Contract clause.

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

SOURCE: 52 FR 16043, May 1, 1987, unless otherwise noted.

Subpart 1632.1—General

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.

(3) Any subsidization penalty levied against a community rated plan as outlined in 48 CFR 1615.402(c)(3)(ii)(B) must be paid within 60 days from notification. If payment is not received within the 60 day period, OPM will withhold from the community rated carriers the periodic premium payment payable until fully recovered. OPM will deposit the withheld funds in the subsidization penalty reserve described in 5 CFR 890.503(c)(6).

(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.

(2) Withdrawals from the LOC account will be made on a checks-presented basis. Under a checks-presented basis, drawdown on the LOC is delayed until the checks issued for FEHB Program disbursements are presented to the carrier's bank for payment.

(3) OPM may grant a waiver of the restriction of LOC disbursements to a checks-presented basis if the carrier requests the waiver in writing and demonstrates to OPM's satisfaction that the checks-presented basis of LOC disbursements will result in significantly increased liability under the contract, or that the checks-presented basis of LOC disbursements is otherwise clearly and significantly detrimental to the operation of the plan. Payments to carriers that have been granted a waiver

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may be made by an alternative payment methodology, subject to OPM approval.

[57 FR 14360, Apr. 20, 1992, as amended at 63 FR 55338, Oct. 15, 1998; 64 FR 36272, July 6, 1999; 65 FR 36386, June 8, 2000; 70 FR 31382, June 1, 2005; 76 FR 38286, June 29, 2011]

1632.171 Clause—community-rated contracts.

The clause at 1652.232-70 shall be inserted in all community-rated FEHBP contracts.

[57 FR 14360, Apr. 20, 1992]

1632.172 Clause—experience-rated contracts.

The clause at 1652.232-71 shall be inserted in all experience-rated FEHBP contracts.

[57 FR 14360, Apr. 20, 1992]

Subpart 1632.6—Contract Debts

1632.607 Tax credit.

FAR 32.607 has no practical application to FEHBP contracts. The statutory provisions at 5 U.S.C. 8906(c) and (d) authorize joint enrollee and Government contributions to the FEHBP Fund. Because the Fund is comprised of contributions by enrollees as well as the Government, carriers may not offset debts to the Fund by a tax credit which is solely a Government obligation.

1632.617 Contract clause.

The clause at (FAR) 48 CFR 52.232-17 will be modified in all FEHBP contracts to exclude the words “net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481).”

[59 FR 14765, Mar. 30, 1994]

Subpart 1632.7—Contract Funding

1632.770 Contingency reserve payments.

(a) Payments from the contingency reserve shall be made in accordance with 5 CFR 890.503.

(b) A carrier for an FEHB plan may apply to OPM at any time for a payment from the contingency reserve that is in addition to those amounts, if any, paid under 5 CFR 890.503(c)(1)

through (c)(4), if the carrier can show good cause, such as, unexpected adverse claims experience. OPM will decide whether to allow the request in whole or in part and will advise the carrier of its decision. However, OPM shall not unreasonably withhold approval for amounts requested that exceed the plan's preferred minimum balance for the contingency reserve.

1632.771 Non-commingling of FEHBP funds.

(a) This section applies to contracts based on cost analysis.

(b) Carrier or underwriter commingling of FEHBP funds with those from other sources makes it difficult to precisely determine FEHBP cash balances at any given time or to precisely determine investment income attributable to FEHBP invested assets.

(c) FEHBP funds shall be maintained separately from other cash and investments of the carrier or underwriter. Cash and investment balances reported on FEHBP Annual Accounting Statements must agree with the carrier's books and records.

(d) This requirement may be waived by the contracting officer in accordance with the clause at 1652.232-72 when adequate accounting and other controls are in effect. If the requirement is waived, the waiver will remain in effect until it is withdrawn by OPM. The waiver shall be withdrawn if OPM determines that the accounting controls are no longer adequate to properly account for FEHBP funds.

[52 FR 16043, May 1, 1987, as amended at 70 FR 31382, June 1, 2005]

1632.772 Contract clause.

The clause at 1652.232-72 shall be included in all contracts that are based on cost analysis.

[52 FR 16043, May 1, 1987, as amended at 70 FR 31382, June 1, 2005]

Subpart 1632.8—Assignment of Claims

1632.806-70 Contract clause.

The clause set forth in 1652.232-73 shall be inserted in all FEHBP contracts.

[55 FR 27415, July 2, 1990]

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PART 1633 [RESERVED]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1642—CONTRACT ADMINISTRATION

Subpart 1642.12—Novation and Change-of-Name Agreements

Sec.

1642.1201 Definitions.

1642.1204 Agreement to recognize a successor in interest (novation agreement).

1642.1205 Agreement to recognize carrier's change of name.

Subpart 1642.70—Management Agreement (in Lieu of Novation Agreement)

1642.7001 Management agreement.

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

SOURCE: 59 FR 14765, Mar. 30, 1994, unless otherwise noted.

Subpart 1642.12—Novation and Change-of-Name Agreements

1642.1201 Definitions.

The definitions at (FAR) 48 CFR 42.1201 shall have the same meaning for this subpart.

1642.1204 Agreement to recognize a successor in interest (novation agreement).

(a) (FAR) 48 CFR 42.1204 shall be implemented as provided in this section. The contracting officer shall insert the following agreement in all FEHBP contracts for use when the contractor's assets or the entire portion of the assets pertinent to the performance of the contract, as determined by the Government, are transferred.

NOVATION AGREEMENT

The (*insert corporate name*) (Transferor), a corporation duly organized and existing under the laws of (*insert State*) with its principal office in (*insert city, state*); the (*insert corporate name*) (Transferee), (if appropriate add "formerly known as the _____ Corporation") a corporation duly organized and existing under the laws of (*insert State*) with its principal office in (*insert city*); and the UNITED STATES OF AMERICA (Government) enter into this Agreement effective (*insert date transfer of assets became effective under applicable State law*).

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the Office of Personnel Management (OPM), has entered into Contract Number _____ with the Transferor. The term *contracts*, as used in this Agreement, means the contract cited in this paragraph and all other contracts and purchase orders, including any and all amendments and modifications made between the Government and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) As of _____, 19____ (insert date transfer of assets became effective under applicable State law), the Transferor has transferred to the Transferee all the assets of the Transferor, or the entire portion of the Transferor's assets pertinent to performing the contract, as determined by OPM, by virtue of a(an) (*insert term describing the legal transaction involved*) between the Transferor and the Transferee.

(3) The Transferee has acquired all the assets of the Transferor, or the entire portion of the Transferor's assets pertinent to performing the contract, as determined by OPM, by virtue of the transfer in paragraph (a)(1).

(4) The Transferee has assumed all obligations and liabilities of the Transferor pertinent to performing the contract, as determined by OPM, by virtue of the transfer in paragraph (a)(1).

(5) The Transferee is in a position to fully perform all obligations that may exist under the contract.

(6) It is consistent with the Government's interest to recognize the Transferee as the successor party to the contract.

(7) Evidence of the transfer in paragraph (a)(1) has been filed with the Government.

(8) [If applicable:] A certificate dated _____, 9____, signed by the Secretary of State of (*insert State*), to the effect that the corporate name of (*insert old corporate name*) was changed to (*insert new corporate name*) on _____, 19____, has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT BY THIS AGREEMENT—

(1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government or the Federal Employees Health Benefits Fund that it now has or may have in the future in connection with the contract.

(2) The Transferee agrees to be bound by and to perform the contract in accordance with the conditions contained in the contract. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor pertinent to the contract, as determined by OPM, as if the Transferee were the original party to the contract.

(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contract, with the same force and effect as if the action had been taken by the Transferee.

(4) The Government recognizes the Transferee as the Transferor's successor in interest in and to the contract. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contract as if the Transferee were the original party to the contract. Following the effective date of this Agreement, the terms *Carrier* and *Contractor* as used in the contract, shall refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Government against the Transferor.

(6) All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the contract, shall be considered to have discharged those parts of the Government's obligations under the contract. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the contract, to the extent of the amounts paid or reimbursed.

(7) The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer of this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contract.

(8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee (i) assumes under this Agreement or (ii) may undertake in the future should this contract be modified under its terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

(9) The contract shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement effective (*insert the date transfer of as-*

sets became effective under applicable State law).

UNITED STATES OF AMERICA,

By _____

Date _____

Title _____

(Enter Transferor's name)

By _____)

Date _____

Title _____

(Corporate Seal)

(Enter Transferee's name)

By _____

Title _____

(Corporate Seal)

CERTIFICATE

I,

_____,
certify that I am the Secretary of
(*insert name of Transferor*); that
_____, who
signed this Agreement for this corpora-
tion, was then _____
of this corporation; and that this
Agreement was duly signed for and on
behalf of this corporation by authority
of its governing body and within the
scope of its corporate powers.

Witness my hand and the seal of this
corporation this ____ day of _____
_____, 19____.

By _____

(Corporate Seal)

CERTIFICATE

I,

_____,
certify that I am the Secretary of (insert
name of Transferee); that

_____,
who signed this Agreement for this corpora-
tion, was then _____
of this corporation; and that this Agreement
was duly signed for and on behalf of this cor-
poration by authority of its governing body
and within the scope of its corporate powers.

Witness my hand and the seal of this cor-
poration this ____ day of _____
19____.

By _____

(Corporate Seal)

(End of agreement)

(b) Failure to submit the properly
completed and signed Novation Agree-
ment in a timely manner shall be cause
for termination of the contract by
OPM in accordance with FEHBAR
1652.249-70.

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(c) The Contracting Officer shall terminate the contract if it is determined not to be in the Government's interest to recognize a successor in interest to the contract. The effective date will be decided by the Contracting Officer after considering the best interests of FEHBP enrollees.

1642.1205 Agreement to recognize carrier's change of name.

(a) (FAR) 42.1205 shall be implemented as provided in this section. The Contracting Officer shall insert the following Agreement in all FEHBP contracts for use when the carrier changes its name and the Government's and contractor's rights and obligations remain unaffected.

CHANGE-OF-NAME AGREEMENT

The (insert new Carrier name), a corporation duly organized and existing under the laws of (insert State), and the UNITED STATES OF AMERICA (Government), enter into this Agreement effective (insert date when the change of name became effective under applicable State law).

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the Office of Personnel Management (OPM), has entered into Contract Number _____ with the (insert old Carrier name). The term *contracts* as used in this Agreement means the contract cited in this paragraph and all other contracts and purchase orders and all modifications thereto made by the Government and the Contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the OPM or the Carrier has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) The (insert old Carrier name), by an amendment to its certificate of incorporation, dated _____, 19____, has changed its corporate name to (insert new Carrier name).

(3) This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and the Carrier under the contract are unaffected by this change.

(4) Documentary evidence of this change of corporate name has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT:

(1) The contract is amended by substituting the name “ (insert new Carrier name)” for the name “(insert old Carrier

name)” wherever it appears in the contract; and

(2) Each party has executed this Agreement effective the day and year stated in paragraph (a)(2).

UNITED STATES OF AMERICA,

By _____ Date _____

Title _____
(Enter new Carrier name)

By _____ Date _____

Title _____
(Corporate Seal)

CERTIFICATE

I, _____, certify that I am the Secretary of (insert new Carrier name); _____ that _____, who signed this Agreement for this corporation, was then (insert position held) of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this _____ day of _____, 19____.

By _____
(Corporate Seal)

(End of agreement)

(b) Failure to submit the properly completed and signed Change-of-Name Agreement in a timely manner may be cause for termination of the contract by OPM in accordance with FEHBP 1652.249-70.

Subpart 1642.70—Management Agreement (in Lieu of Novation Agreement)

1642.7001 Management agreement.

When it is in the best interest of FEHBP enrollees to continue a contract for an interim period after the carrier discontinues its operations and has entered into a Purchase and Sale Agreement (or other descriptive term), but before a successor in interest has been recognized by OPM, the carrier may submit for OPM approval a Management Agreement that enables it to continue a contract through an agreement with a third party to administer the day-to-day performance of the contract. Examples of situations in which

a Management Agreement may be accepted by OPM are:

(a) When a transfer of assets does not meet the criteria for a novation;

(b) While a request for a novation is pending;

(c) While awaiting a decision on a request for a novation;

(d) As an interim measure, when the timing of a transfer of assets or the timing of a carrier's withdrawal make administration of the contract inconvenient;

(e) When it is not in the interests of the Government to either recognize a successor in interest or to immediately terminate the existing FEHBP contract.

PART 1643—CONTRACT MODIFICATIONS

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

SOURCE: 62 FR 47575, Sept. 10, 1997, unless otherwise noted.

Subpart 1643.2—Changes

1643.205–70 Contract clause.

The clause set forth in section 1652.243–70 shall be inserted in all FEHB Program contracts.

PART 1644—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1644.1—General

Sec.

1644.170 Policy for FEHB Program subcontracting.

Subpart 1644.2—Consent to Subcontracts

1644.270 FEHBP contract clause.

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

SOURCE: 52 FR 16043, May 1, 1987, unless otherwise noted.

Subpart 1644.1—General

1644.170 Policy for FEHB Program subcontracting.

(a) *General policy.* Carriers must follow commercially reasonable procurement procedures that comply, when re-

quired, with the Federal Acquisition Regulations (FAR) policies and procedures relating to competition and contract pricing for the acquisition of both commercial and noncommercial items.

(b) *Consent.* For all experience-rated contracts, carriers will notify the Contracting officer in writing at least 30 days in advance of entering into any subcontract or subcontract modification, or as otherwise specified by the contract, if: the amount of the subcontract or the amount of the subcontract and modification charged to the FEHB Program equals or exceeds \$550,000 and is at least 25 percent of the total subcontract's costs. The amount of the dollar charge to the FEHB Program shall be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act pursuant to 41 U.S.C. 254b(a)(7). Failure to provide advance notice may result in a Contracting officer's disallowance of subcontract costs or a penalty when considering the performance aspect of the carriers' service charge.

(1) All subcontracts or subcontract modifications that equal or exceed the threshold are subject to audit under FAR 52.215–2 “Audit and Records-Negotiations” if based on cost analysis, and subject to the provisions of 48 CFR 1646.301 and 1652.246–70 “FEHB Inspection” if based on price analysis.

(2) In determining whether the amount chargeable to the FEHB Program contract for a given subcontract or modification equals or exceeds the \$550,000 threshold, the following rules apply:

(i) For initial advance notification, the carrier shall provide the total cost/price for the base year.

(ii) The carrier shall provide advance notification of any modifications, options, including quantity or service options and option periods, and renewals of “evergreen contracts” that cause the total price to equal or exceed the threshold. OPM's review will be of the modification(s), itself, but documentation for the original subcontract will be required to perform the review.

(iii) The \$550,000 threshold will be adjusted by the same amount and at the

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same time as any change to the threshold for application of the Truth in Negotiations Act.

[70 FR 31382, June 1, 2005, as amended at 71 FR 3016, Jan. 19, 2006]

Subpart 1644.2—Consent to Subcontracts

1644.270 FEHBP contract clause.

The clause set forth at section 1652.244–70 shall be inserted in all experience rated FEHBP contracts.

[62 FR 47576, Sept. 10, 1997]

PART 1645—GOVERNMENT PROPERTY

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

SOURCE: 62 FR 47576, Sept. 10, 1997, unless otherwise noted.

Subpart 1645.3—Providing Equipment

1645.303–70 Contract clause.

The clause set forth in section 1652.245–70 shall be inserted in all FEHB Program contracts.

PART 1646—QUALITY ASSURANCE

Subpart 1646.2—Contract Quality Requirements

Sec.

1646.201 Contract Quality Policy.

Subpart 1646.3—Contract Clauses

1646.301 Contractor inspection requirements.

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

Subpart 1646.2—Contract Quality Requirements

1646.201 Contract Quality Policy.

(a) This section prescribes general policies and procedures to ensure that services acquired under the FEHB contract conform to the contract's quality and audit requirements.

(b) OPM will periodically evaluate the contractor's system of internal

controls under the quality assurance program required by the contract and will acknowledge in writing whether or not the system is consistent with the requirements set forth in the contract. After the initial review, subsequent reviews may be limited to changes in the contractor's internal control guidelines. However, a limited review does not diminish the contractor's obligation to apply the full internal control system.

(c) OPM will issue specific quality performance standards for the FEHB contracts and will inform carriers of the applicable standards prior to negotiations for the contract year. OPM will benchmark its standards against standards generally accepted in the insurance industry. The contracting officer may authorize nationally recognized standards to be used to fulfill this requirement. FEHB carriers will comply with the performance standards issued by OPM.

(d) In addition to reviewing carriers' quality assurance programs, OPM will periodically audit contractors, subcontractors and Large Providers' books and records to assure compliance with FEHB law, regulations, and the contract.

[70 FR 31382, June 1, 2005]

Subpart 1646.3—Contract Clauses

1646.301 Contractor inspection requirements.

The clause set forth at 1652.246–70 shall be inserted in all FEHBP contracts.

[52 FR 16044, May 1, 1987]

PART 1649—TERMINATION OF CONTRACTS

Sec.

1649.002–70 Applicability of the FAR to FEHB acquisitions.

Subpart 1649.1—General Principles

1649.101–70 FEHBP renewal and withdrawal of approval clause.

1649.101–71 FEHBP termination for convenience clause.

1649.101–72 FEHBP termination for default clause.

1649.002-70

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

SOURCE: 52 FR 16044, May 1, 1987, unless otherwise noted.

1649.002-70 Applicability of the FAR to FEHB acquisitions.

(a) Termination of FEHB contracts because of withdrawal of approval is controlled by 5 U.S.C. 8902(e) and 5 CFR 890.204.

(b) Termination of FEHB contracts because of nonrenewal of the contract at the end of the contract term is controlled by 5 U.S.C. 8902(a) and 5 CFR 890.205.

(c) The procedures for settlement of contracts after they are terminated shall be those contained in FAR part 49.

[57 FR 19387, May 6, 1992]

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Subpart 1649.1—General Principles

1649.101-70 FEHBP renewal and withdrawal of approval clause.

The clause in 1652.249-70 shall be inserted in all FEHBP contracts.

1649.101-71 FEHBP termination for convenience clause.

The clause set forth in 1652.249-71 shall be inserted in all FEHBP contracts.

[62 FR 47576, Sept. 10, 1997]

1649.101-72 FEHBP termination for default clause.

The clause set forth in 1652.249-72 shall be inserted in all FEHBP contracts.

[62 FR 47576, Sept. 10, 1997]

SUBCHAPTER H—CLAUSES AND FORMS

PART 1652—CONTRACT CLAUSES

Sec.

1652.000 Applicable clauses.

Subpart 1652.2—Texts of FEHBP Clauses

1652.203-70 Misleading, deceptive, or unfair advertising.
 1652.204-70 Contractor records retention.
 1652.204-71 Coordination of Benefits.
 1652.204-72 Filing health benefit claims/court review of disputed claims.
 1652.204-73 Taxpayer Identification Number.
 1652.204-74 Large provider agreements.
 1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.
 1652.215-71 Investment Income.
 1652.216-70 Accounting and price adjustment.
 1652.216-71 Accounting and Allowable Cost.
 1652.222-70 Notice of significant events.
 1652.224-70 Confidentiality of records.
 1652.229-70 Taxes—Foreign Negotiated benefits contracts.
 1652.232-70 Payments—community-rated contracts.
 1652.232-71 Payments—experience-rated contracts.
 1652.232-72 Non-commingling of FEHBP funds.
 1652.232-73 Approval for the Assignment of Claims.
 1652.243-70 Changes—Negotiated benefits contracts.
 1652.244-70 Subcontracts.
 1652.245-70 Government property (negotiated benefits contracts).
 1652.246-70 FEHB Inspection.
 1652.249-70 Renewal and withdrawal of approval.
 1652.249-71 FEHBP termination for convenience of the government—negotiated benefits contracts.
 1652.249-72 FEHBP termination for default—negotiated benefits contracts.

Subpart 1652.3—FEHBP Clause Matrix

1652.370 Use of the matrix.

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

SOURCE: 52 FR 16044, May 1, 1987, unless otherwise noted.

1652.000 Applicable clauses.

The clauses of FAR subpart 52.2 shall be applicable to FEHBP contracts as specified in the FEHBP Clause Matrix in subpart 1652.3.

Section and Clause Title

52.202-1 Definitions.
 52.203-3 Gratuities.
 52.203-5 Covenant Against Contingent Fees.
 52.203-7 Anti-Kickback Procedures.
 52.203-12 Limitation on Payments to Influence Certain Federal Transactions.
 52.209-6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.
 52.215-2 Audit and Records—Negotiation.
 52.215-22 Price Reduction for Defective Cost or Pricing Data.
 52.215-24 Subcontractor Cost or Pricing Data.
 52.215-27 Termination of Defined Benefit Pension Plans.
 52.215-30 Facilities Capital Cost of Money.
 52.215-31 Waiver of Facilities Capital Cost of Money.
 52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).
 52.219-8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.
 52.222-1 Notice to the Government of Labor Disputes.
 52.222-3 Convict Labor.
 52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General.
 52.222-21 Certification of Nonsegregated Facilities.
 52.222-26 Equal Opportunity.
 52.222-28 Equal Opportunity Preaward Clearance of Subcontracts.
 52.222-29 Notification of Visa Denial.
 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans.
 52.222-36 Affirmative Action for Handicapped Workers.
 52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
 52.223-2 Clean Air and Water.
 52.223-6 Drug-Free Workplace.
 52.227-1 Authorization and Consent.
 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.
 52.229-3 Federal, State, and Local Taxes.
 52.229-4 Federal, State, and Local Taxes (Noncompetitive Contract).
 52.229-5 Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.
 52.230-2 Cost Accounting Standards.
 52.230-3 Disclosure and Consistency of Cost Accounting Practices.
 52.230-5 Administration of Cost Accounting Standards.
 52.232-8 Discounts for Prompt Payment.
 52.232-17 Interest.

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- 52.232-23 Assignment of Claims.
- 52.232-33 Mandatory Information For Electronic Funds Transfer Payment.
- 52.233-1 Disputes.
- 52.242-1 Notice of Intent to Disallow Costs.
- 52.242-3 Penalties for Unallowable Costs.
- 52.242-13 Bankruptcy.
- 52.244-5 Competition in Subcontracting.
- 52.244-6 Subcontracts for Commercial Items and Commercial Components.
- 52.246-25 Limitation of Liability—Services.
- 52.247-63 Preference for U.S.-Flag Air Carriers.
- 52.251-1 Government Supply Sources.
- 52.232-2 Clauses Incorporated by Reference.
- 52.252-4 Alterations in Contract.
- 52.252-6 Authorized Deviations in Clauses.

[62 FR 47576, Sept. 10, 1997]

Subpart 1652.2—Texts of FEHBP Clauses

1652.203-70 Misleading, deceptive, or unfair advertising.

As prescribed in 1603.7003, the following clause shall be inserted in all FEHBP contracts:

MISLEADING, DECEPTIVE, OR UNFAIR ADVERTISING (JAN 1991)

(a) The Carrier agrees that any advertising material, including that labeled promotional material, marketing material, or supplemental literature, shall be truthful and not misleading.

(b) Criteria to assess compliance with paragraph (a) of this clause are available in the FEHB Supplemental Literature Guidelines which are developed by OPM and should be used, along with the additional guidelines set forth in FEHBP 1603.702, as the primary guide in preparing material; further guidance is provided in the NAIC “Rules Governing Advertising of Accident and Sickness Insurance With Interpretive Guidelines.” Guidelines are periodically updated and provided to the Carrier by OPM.

(c) Failure to conform to paragraph (a) of this clause may result in a reduction in the service charge, if appropriate, and corrective action to protect the interest of Federal Members. Corrective action will be appropriate to the circumstances and may include, but is not limited to the following actions by OPM:

- (1) Directing the Carrier to cease and desist distribution, publication, or broadcast of the material;
- (2) Directing the Carrier to issue corrections at the Carrier’s expense and in the same manner and media as the original material was made; and
- (3) Directing the Carrier to provide, at the Carrier’s expense, the correction in writing by certified mail to all enrollees of the

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Plan(s) that had been the subject of the original material.

(d) Egregious or repeated offenses may result in the following action by OPM:

- (1) Suspending new enrollments in the Carrier’s Plan(s);
- (2) Providing Enrollees an opportunity to transfer to another plan; and
- (3) Terminating the contract in accordance with Section 1.15, Renewal and Withdrawal of Approval.

(e) Prior to taking action as described in paragraphs (c) and (d) of this clause, the OPM will notify the Carrier and offer an opportunity to respond.

(f) The Carrier shall incorporate this clause in subcontracts with its underwriter, if any, and other subcontractors directly involved in the preparation or distribution of such advertising material and shall substitute “Contractor” or other appropriate reference for the term “Carrier.”

(End of clause)

[55 FR 27415, July 2, 1990, as amended at 62 FR 47576, Sept. 10, 1997]

1652.204-70 Contractor records retention.

As prescribed in 1604.705 the following clause will be inserted in all FEHB Program contracts.

CONTRACTOR RECORDS RETENTION (JUL 2005)

Notwithstanding the provisions of Section 5.7 (FAR 52.215-2(f)) “Audit and Records—Negotiation” the carrier will retain and make available all records applicable to a contract term that support the annual statement of operations and, for contracts that equal or exceed the threshold at FAR 15.403-4(a)(1), the rate submission for that contract term for a period of six years after the end of the contract term to which the records relate. This includes all records of Large Provider Agreements and subcontracts that equal or exceed the threshold requirements. In addition, individual enrollee and/or patient claim records will be maintained for six years after the end of the contract term to which the claim records relate. This clause is effective prospectively as of the 2005 contract year.

(End of clause)

[70 FR 31382, June 1, 2005, as amended at 71 FR 3016, Jan. 19, 2006]

1652.204-71 Coordination of Benefits.

As prescribed in 1604.7001, the following clause shall be inserted in all FEHBP contracts:

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COORDINATION OF BENEFITS (JAN 1991)

(a) The Carrier shall coordinate the payment of benefits under this contract with the payment of benefits under Medicare, other group health benefits coverages, and the payment of medical and hospital costs under no-fault or other automobile insurance that pays benefits without regard to fault.

(b) The Carrier shall not pay benefits under this contract until it has determined whether it is the primary carrier or unless permitted to do so by the Contracting Officer.

(c) In coordinating benefits between plans, the Carrier shall follow the order of precedence established by the NAIC Model Guidelines for Coordination of Benefits (COB) as specified by OPM.

(d) Where (1) the Carrier makes payments under this contract which are subject to COB provisions; (2) the payments are erroneous, not in accordance with the terms of the contract, or in excess of the limitations applicable under this contract; and (3) the Carrier is unable to recover such COB overpayments from the Member or the providers of services or supplies, the Contracting Officer may allow such amounts to be charged to the contract; the Carrier must be prepared to demonstrate that it has made a diligent effort to recover such COB overpayments.

(e) COB savings shall be reported by experience rated carriers each year along with the Carrier's annual accounting statement in a form specified by OPM.

(f) Changes in the order of precedence established by the NAIC Model Guidelines implemented after January 1 of any given year shall be required no earlier than the beginning of the following contract term.

(End of clause)

[55 FR 27415, July 2, 1990]

1652.204-72 Filing health benefit claims/court review of disputed claims.

As prescribed in 1604.7101 of this chapter, the following clause must be inserted in all FEHB Program contracts.

FILING HEALTH BENEFIT CLAIMS/COURT REVIEW OF DISPUTED CLAIMS (MAR 1995)

(a) *General.* (1) The Carrier resolves claims filed under the Plan. All health benefit claims must be submitted initially to the Carrier. If the Carrier denies a claim (or a portion of a claim), the covered individual may ask the Carrier to reconsider its denial. If the Carrier affirms its denial or fails to respond as required by paragraph (b) of this clause, the covered individual may ask OPM to review the claim. A covered individual must exhaust both the Carrier and OPM re-

view processes specified in this clause before seeking judicial review of the denied claim.

(2) This clause applies to covered individuals and to other individuals or entities who are acting on the behalf of a covered individual and who have the covered individual's specific written consent to pursue payment of the disputed claim.

(b) *Time limits for reconsidering a claim.* (1) The covered individual has 6 months from the date of the notice to the covered individual that a claim (or a portion of a claim) was denied by the Carrier in which to submit a written request for reconsideration to the Carrier. The time limit for requesting reconsideration may be extended when the covered individual shows that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

(2) The Carrier has 30 days after the date of receipt of a timely-filed request for reconsideration to:

(i) Affirm the denial in writing to the covered individual;

(ii) Pay the bill or provide the service; or

(iii) Request from the covered individual or provider additional information needed to make a decision on the claim. The Carrier must simultaneously notify the covered individual of the information requested if it requests additional information from a provider. The Carrier has 30 days after the date the information is received to affirm the denial in writing to the covered individual or pay the bill or provide the service. The Carrier must make its decision based on the evidence it has if the covered individual or provider does not respond within 60 days after the date of the Carrier's notice requesting additional information. The Carrier must then send written notice to the covered individual of its decision on the claim. The covered individual may request OPM review as provided in paragraph (b)(3) of this clause if the Carrier fails to act within the time limit set forth in this paragraph.

(3) The covered individual may write to OPM and request that OPM review the Carrier's decision if the Carrier either affirms its denial of a claim or fails to respond to a covered individual's written request for reconsideration within the time limit set forth in paragraph (b)(2) of this clause. The covered individual must submit the request for OPM review within the time limit specified in paragraph (e)(1) of this clause.

(4) The Carrier may extend the time limit for a covered individual's submission of additional information to the Carrier when the covered individual shows he or she was not notified of the time limit or was prevented by circumstances beyond his or her control from submitting the additional information.

(c) *Information required to process requests for reconsideration.* (1) The covered individual

must put the request to the Carrier to reconsider a claim in writing and give the reasons, in terms of applicable brochure provisions, that the denied claim should have been approved.

(2) If the Carrier needs additional information from the covered individual to make a decision, it must:

(i) Specifically identify the information needed;

(ii) State the reason the information is required to make a decision on the claim;

(iii) Specify the time limit (60 days after the date of the Carrier's request) for submitting the information; and

(iv) State the consequences of failure to respond within the time limit specified, as set out in paragraph (b)(2) of this section.

(d) *Carrier determinations.* The Carrier must provide written notice to the covered individual of its determination. If the Carrier affirms the initial denial, the notice must inform the covered individual of:

(1) The specific and detailed reasons for the denial;

(2) The covered individual's right to request a review by OPM; and

(3) The requirement that requests for OPM review must be received within 90 days after the date of the Carrier's denial notice and include a copy of the denial notice as well as documents to support the covered individual's position.

(e) *OPM review.* (1) If the covered individual seeks further review of the denied claim, the covered individual must make a request to OPM to review the Carrier's decision. Such a request to OPM must be made:

(i) Within 90 days after the date of the Carrier's notice to the covered individual that the denial was affirmed; or

(ii) If the Carrier fails to respond to the covered individual as provided in paragraph (b)(2) of this clause, within 120 days after the date of the covered individual's timely request for reconsideration by the Carrier; or

(iii) Within 120 days after the date the Carrier requests additional information from the covered individual, or the date the covered individual is notified that the Carrier is requesting additional information from a provider. OPM may extend the time limit for a covered individual's request for OPM review when the covered individual shows he or she was not notified of the time limit or was prevented by circumstances beyond his or her control from submitting the request for OPM review within the time limit.

(2) In reviewing a claim denied by the Carrier, OPM may:

(i) Request that the covered individual submit additional information;

(ii) Obtain an advisory opinion from an independent physician;

(iii) Obtain any other information as may in its judgment be required to make a determination; or

(iv) Make its decision based solely on the information the covered individual provided with his or her request for review.

(3) When OPM requests information from the Carrier, the Carrier must release the information within 30 days after the date of OPM's written request unless a different time limit is specified by OPM in its request.

(4) Within 90 days after receipt of the request for review, OPM will either:

(i) Give a written notice of its decision to the covered individual and the Carrier; or

(ii) Notify the individual of the status of the review. If OPM does not receive requested evidence within 15 days after expiration of the applicable time limit in paragraph (e)(3) of this clause, OPM may make its decision based solely on information available to it at that time and give a written notice of its decision to the covered individual and to the Carrier.

(f) OPM, upon its own motion, may reopen its review if it receives evidence that was unavailable at the time of its original decision.

(g) *Court review.* (1) A suit to compel enrollment under §890.102 of Title 5, Code of Federal Regulations, must be brought against the employing office that made the enrollment decision.

(2) A suit to review the legality of OPM's regulations under this part must be brought against the Office of Personnel Management.

(3) Federal Employees Health Benefits (FEHB) carriers resolve FEHB claims under authority of Federal statute (chapter 89, title 5, United States Code). A covered individual may seek judicial review of OPM's final action on the denial of a health benefits claim. A legal action to review final action by OPM involving such denial of health benefits must be brought against OPM and not against the Carrier or the Carrier's subcontractors. The recovery in such a suit shall be limited to a court order directing OPM to require the Carrier to pay the amount of benefits in dispute.

(4) An action under paragraph (3) of this clause to recover on a claim for health benefits:

(i) May not be brought prior to exhaustion of the administrative remedies provided in paragraphs (a) through (f) of this clause;

(ii) May not be brought later than December 31 of the 3rd year after the year in which the care or service was provided; and

(iii) Will be limited to the record that was before OPM when it rendered its decision affirming the Carrier's denial of benefits.

(End of clause)

[61 FR 15198, Apr. 5, 1996, as amended at 62 FR 47576, Sept. 10, 1997]

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1652.204-74

1652.204-73 Taxpayer Identification Number.

As prescribed in 1604.970, insert the following clause.

TAXPAYER IDENTIFICATION NUMBER (JAN 2000)

(a) *Definitions. Common parent*, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Carrier is a member.

Taxpayer Identification Number (TIN), as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Carrier in reporting income tax and other returns.

(b) The Carrier must submit the information required in paragraphs (d) through (f) of this clause to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. The Carrier is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904. The Carrier's failure or refusal to furnish the information will result in payment being withheld until the TIN number is provided.

(c) The Government may use the TIN to collect and report on any delinquent amounts arising out of the Carrier's relationship with the Government (31 U.S.C. 7701(c)(3)). The TIN provided hereunder may be matched with IRS records to verify its accuracy.

(d) Taxpayer Identification Number (TIN).
TIN: _____

(e) Type of organization.

- ☐ Sole proprietorship;
☐ Partnership;
☐ Corporate entity (not tax-exempt);
☐ Corporate entity (tax-exempt);
☐ Other _____.

(f) Common parent.

- ☐ Carrier is not owned or controlled by a common parent as defined in paragraph (a) of this clause.

☐ Name and TIN of common parent:

Name _____
TIN _____

(End of clause)

[65 FR 36386, June 8, 2000]

1652.204-74 Large provider agreements.

As prescribed by 1604.7202, the contracting officer will insert the following clause in all FEHB Program

contracts based on cost analysis (experience-rated):

LARGE PROVIDER AGREEMENTS (OCT 2005)

(a) *Notification and Information Requirements.* (1) The experience-rated Carrier must provide notice to the contracting officer of its intent to enter into or to make a significant modification of a Large Provider Agreement:

(i) Not less than 60 days before entering into any Large Provider Agreement; and

(ii) Not less than 60 days before exercising a renewal or other option, or significant modification to a Large Provider Agreement, when such action would result in total costs to the FEHB Program of an additional 20 percent or more above the existing contract. However, if a carrier is exercising a simple renewal or other option contemplated by a Large Provider Agreement that OPM previously reviewed, and there are no significant changes, then a statement to the effect that the renewal or other option is being exercised along with the dollar amount is sufficient notice.

(2) The carrier's notification to the contracting officer must be in writing and must, at a minimum:

(i) Describe the supplies and/or services the proposed provider agreement will require;

(ii) Identify the proposed basis for reimbursement;

(iii) Identify the proposed provider agreement, explain why the carrier selected the proposed provider, and what contracting method it used, where applicable, including the kind of competition obtained;

(iv) Describe the methodology the carrier used to compute the provider's profit; and,

(v) Describe provider risk provisions.

(3) The Contracting officer may request from the carrier any additional information on a proposed provider agreement and its terms and conditions prior to a provider award and during the performance of the agreement.

(4) Within 30 days of receiving the carrier's notification, the Contracting officer will give the carrier either written comments or written notice that there will be no comments. If the Contracting officer comments, the carrier must respond in writing within 10 calendar days, and explain how it intends to address any concerns.

(5) When computing the carrier's service charge, the Contracting officer will consider how well the carrier complies with the provisions of this section, including the advance notification requirements, as an aspect of the carrier's performance factor.

(6) The Contracting officer's review of any Large Provider Agreement, option, renewal, or modification will not constitute a determination of the acceptability of the terms and conditions of any provider agreement or

of the allowability of any costs under the carrier's contract, nor will it relieve the carrier of any responsibility for performing the contract.

(b) *Records and Inspection.* The carrier must insert in all Large Provider Agreements the requirement that the provider will retain and make available to the Government all records relating to the agreement that support the annual statement of operations and enrollee records—Retain for 6 years after the agreement term ends.

(c) *Audit and Records—Negotiation.* The provisions of FAR 52.215-2, "Audit and Records—Negotiation," when required, or FEHBP 1652.246-70, "FEHB Inspection" apply to all experience-rated Carriers' Large Provider Agreements. The Carrier will insert the clauses at FAR 52.215-2, when applicable, or FEHBP 1652.246-70 in all Large Provider Agreements. In FAR 52.215-2 the carrier will substitute:

(1) The term "Large Provider" for the term "Contractor" throughout the clause, and

(2) The term "Large Provider Agreement" for the term "Subcontracts" in paragraph (g) of FAR 52.215-2. The term "Contracting officer" will mean the FEHB Program Contracting officer at OPM. The carrier will be responsible for ensuring the Large Provider complies with the provisions set forth in the clause.

(d) *Prohibited Agreements.* No provider agreement made under this contract will provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The carrier will insert this clause, 1652.204-74, in all Large Provider Agreements.

(End of clause)

[70 FR 31382, June 1, 2005, as amended at 71 FR 3016, Jan. 19, 2006]

1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

As prescribed in 1615.407-1, the following clause shall be inserted in FEHBP contracts exceeding the threshold at FAR 15.403-4(a)(1) that are based on a combination of cost and price analysis (community rated):

RATE REDUCTION FOR DEFECTIVE PRICING OR DEFECTIVE COST OR PRICING DATA (JAN 2004)

(a) If any rate established in connection with this contract was increased because (1) the Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not complete, accurate, or current as certified in the Certificate of Accurate Cost or Pricing Data (FEHBP 1615.406-2); (2) the Carrier submitted, or kept

in its files in support of the FEHBP rate, cost or pricing data that were not accurate as represented in the rate proposal documents; (3) the Carrier developed FEHBP rates with a rating methodology and structure inconsistent with that used to develop rates for similarly sized subscriber groups (see FEHBP 1602.170-13) as certified in the Certificate of Accurate Cost or Pricing Data for Community Rated Carriers; or (4) the Carrier submitted or, or kept in its files in support of the FEHBP rate, data or information of any description that were not complete, accurate, and current—then, the rate shall be reduced in the amount by which the price was increased because of the defective data or information.

(b)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Carrier agrees not to raise the following matters as a defense:

(i) The Carrier was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted or maintained and identified.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Carrier took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Carrier did not submit or keep in its files a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (b)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Carrier certifies to the Contracting Officer that, to the best of the Carrier's knowledge and belief, the Carrier is entitled to the offset in the amount requested; and

(B) The Carrier proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Carrier to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset

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even if the available data had been submitted before the date of agreement on price.

(c) When the Contracting Officer determines that the rates shall be reduced and the Government is thereby entitled to a refund, the Carrier shall be liable to and shall pay the FEHB Fund at the time the overpayment is repaid—

(1) Simple interest on the amount of the overpayment from the date the overpayment was paid from the FEHB Fund to the Carrier until the date the overcharge is liquidated. In calculating the amount of interest due, the quarterly rate determinations by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods the overcharge was retained by the Carrier shall be used; and,

(2) A penalty equal to the amount of overpayment, if the Carrier knowingly submitted cost or pricing data which was incomplete, inaccurate, or noncurrent.

(End of clause)

[62 FR 47576, Sept. 10, 1997, as amended at 64 FR 36273, July 6, 1999; 65 FR 36387, June 8, 2000; 70 FR 31383, June 1, 2005]

1652.215-71 Investment Income.

As prescribed in 1615.470-1, the following clause shall be inserted in all FEHBP contracts based on cost analysis:

INVESTMENT INCOME (JAN 1998)

(a) The Carrier shall invest and reinvest all FEHB funds on hand that are in excess of the funds needed to promptly discharge the obligations incurred under this contract. The Carrier shall seek to maximize investment income with prudent consideration to the safety and liquidity of investments.

(b) All investment income earned on FEHB funds shall be credited to the Special Reserve on behalf of the FEHBP.

(c) When the Contracting Officer concludes that the Carrier failed to comply with paragraph (a) or (b) of this clause, the Carrier shall credit the Special Reserve with investment income that would have been earned, at the rate(s) specified in paragraph (f) of this clause, had it not been for the Carrier's noncompliance. "Failed to comply with paragraph (a) or (b)" means: (1) Making any charges against the contract which are not allowable, allocable, or reasonable; or (2) failing to credit any income due the contract and/or failing to place excess funds, including subscription income and payments from OPM not needed to discharge promptly the obligations incurred under the contract, refunds, credits, payments, deposits, investment income earned, uncashed checks, or

other amounts owed the Special Reserve, in income producing investments and accounts.

(d) Investment income lost as a result of unallowable, unallocable, or unreasonable charges against the contract shall be paid from the 1st day of the contract term following the contract term in which the unallowable charge was made and shall end on the earlier of: (1) The date the amounts are returned to the Special Reserve (or the Office of Personnel Management); (2) the date specified by the Contracting Officer; or, (3) the date of the Contracting Officer's Final Decision.

(e) Investment income lost as a result of failure to credit income due the contract or failure to place excess funds in income producing investments and accounts shall be paid from the date the funds should have been invested or appropriate income was not credited and shall end on the earlier of: (1) The date the amounts are returned to the Special Reserve (or the Office of Personnel Management); (2) the date specified by the Contracting Officer; or, (3) the date of the Contracting Officer's Final Decision.

(f) The Carrier shall credit the Special Reserve for income due in accordance with this clause. All lost investment income payable shall bear simple interest at the quarterly rate determined by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods in which the amount becomes due, as provided in paragraphs (d) and (e) of this clause.

(g) The Carrier shall incorporate this clause into agreements with underwriters of the Carrier's FEHB plan and shall substitute "underwriter" or other appropriate reference for the term "Carrier."

(End of clause)

[55 FR 27416, July 2, 1990, as amended at 62 FR 47577, Sept. 10, 1997; 70 FR 31383, June 1, 2005]

1652.216-70 Accounting and price adjustment.

As prescribed in section 1616.7001, the following clause shall be inserted in all FEHBP contracts based on a combination of cost and price analysis (community rated).

ACCOUNTING AND PRICE ADJUSTMENT (JAN 2003)

(a) *Annual Accounting Statement.* The Carrier, not later than 90 days after the end of each contract period, shall furnish to OPM for that contract period an accounting of its operations under the contract. The accounting shall be in the form prescribed by OPM.

(b) *Adjustment.* (1) This contract is community rated as defined in FEHBP 1602.170-2.

(2) The subscription rates agreed to in this contract shall be based on paragraphs (b)(2)(i) or (ii) of this clause. Effective January 1, 2013 all community rated plans must base their rating methodology on the medical loss ratio (MLR) threshold described in paragraph (b)(2)(i) of this clause unless traditional community rating is mandated in the state where they are domiciled:

(i) The subscription rates agreed to in this contract shall meet the FEHB-specific MLR threshold as defined in FEHBP 1602.170-14. The ratio of a plan's incurred claims, including the issuer's expenditures for activities that improve health care quality, to total premium revenue shall not be lower than the FEHB-specific MLR threshold published annually by OPM in its rate instructions.

(ii) The subscription rates agreed to in this contract shall be equivalent to the subscription rates given to the carrier's similarly sized subscriber groups (SSSGs) as defined in FEHBP 1602.170-13. The subscription rates shall be determined according to the carrier's established policy, which must be applied consistently to the FEHBP and to the carrier's SSSGs. If an SSSG receives a rate lower than that determined according to the carrier's established policy, it is considered a discount. The FEHBP must receive a discount equal to or greater than the carrier's largest SSSG discount.

(3) If the rates are determined by SSSG comparison, then:

(i) If, at the time of the rate reconciliation, the subscription rates are found to be lower than the equivalent rates for the lower of the two SSSGs, the carrier may include an adjustment to the Federal group's rates for the next contract period, except as noted in paragraph (b)(3)(iii) of this clause.

(ii) If, at the time of the rate reconciliation, the subscription rates are found to be higher than the equivalent rates for the lower of the two SSSGs, the carrier shall reimburse the Fund, for example, by reducing the FEHB rates for the next contract term to reflect the difference between the estimated rates and the rates which are derived using the methodology of the lower rated SSSG, except as noted in paragraph (b)(3)(iii) of this clause.

(iii) Carriers may provide additional guaranteed discounts to the FEHBP that are not given to SSSGs. Any such guaranteed discounts must be clearly identified as guaranteed discounts. After the beginning of the contract year for which the rates are set, these guaranteed FEHBP discounts may not be adjusted.

(4) If rates are determined by comparison with the FEHB-specific MLR threshold, then if the MLR for the carrier's FEHB plan is found to be lower than the published FEHB-specific MLR threshold, the carrier must pay a subsidization penalty equal to the difference into a subsidization penalty account.

(5) The following apply to community rated plans, regardless of the rating methodology:

(i) No upward adjustment in the rate established for this contract will be allowed or considered by the Government or will be made by the Carrier in this or in any other contract period on the basis of actual costs incurred, actual benefits provided, or actual size or composition of the FEHBP group during this contract period.

(ii) For contract years beginning on or after January 1, 2009, in the event this contract is not renewed, the final rate reconciliation will be performed. The carrier must promptly pay any amount owed to OPM. Any amount recoverable by the carrier is limited to the amount in the contingency reserve for the terminating plan as of December 31 of the terminating year.

(iii) Carriers may not impose surcharges (loadings not defined based on an established rating method) on the FEHBP subscription rates or use surcharges in the rate reconciliation process in any circumstance.

(6) For contract years beginning on or after January 1, 2009, in the event this contract is not renewed, the final rate reconciliation will be performed. The carrier must promptly pay any amount owed to OPM. Any amount recoverable by the carrier is limited to the amount in the contingency reserve for the terminating plan as of December 31 of the terminating year.

(7) Carriers may provide additional guaranteed discounts to the FEHBP that are not given to SSSGs. Any such guaranteed discounts must be clearly identified as guaranteed discounts. After the beginning of the contract year for which the rates are set, these guaranteed FEHBP discounts may not be adjusted.

(8) Carriers may not impose surcharges (loadings not defined based on an established rating method) on the FEHBP subscription rates or use surcharges in the rate reconciliation process irrespective of whether surcharges are applied to the SSSGs.

(End of clause)

[62 FR 47577, Sept. 10, 1997, as amended at 64 FR 36273, July 6, 1999; 65 FR 36387, June 8, 2000; 70 FR 31383, June 1, 2005; 74 FR 7824, Feb. 20, 2009; 76 FR 38286, June 29, 2011; 77 FR 19525, Apr. 2, 2012]

1652.216-71 Accounting and Allowable Cost.

As prescribed in section 1616.7002, the following clause shall be inserted in all FEHBP contracts based on cost analysis (experience rated).

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ACCOUNTING AND ALLOWABLE COST (FEHBAR 1652.216-71) (JAN 2003)

(a) *Annual Accounting Statements.* (1) The Carrier shall furnish to OPM an accounting of its operations under the contract. In preparing the accounting, the Carrier shall follow the reporting requirements and statement formats prescribed by OPM in the OPM Annual and Fiscal Year Financial Reporting Instructions.

(2) The Carrier shall have its Annual Accounting Statements and that of its underwriter, if any, audited in accordance with the FEHBP Experienced-Rated Carrier and Service Organization Audit Guide (Guide). The Carrier shall submit the audit report and the Annual Accounting Statements to OPM in accordance with the requirements of the Guide.

(3) Based on the results of either the independent audit prescribed by the Guide or a Government audit, OPM may require the Carrier adjust its annual accounting statements (i) by amounts found not to constitute actual, allowable, allocable and reasonable costs; or (ii) to reflect prior overpayments or underpayments.

(4) The Carrier shall develop corrective action plans to resolve audit findings identified in audits that were performed in accordance with the Guide. The corrective action plans will be prepared in accordance with and as defined by the Guide.

(b) *Definition of costs.* (1) The Carrier may charge a cost to the contract for a contract term if the cost is actual, allowable, allocable, and reasonable. In addition, the Carrier must:

(i) on request, document and make available accounting support for the cost to justify that the cost is actual, reasonable and necessary; and

(ii) determine the cost in accordance with: (A) the terms of this contract, and (B) subpart 31.2 of the Federal Acquisition Regulation (FAR) and subpart 1631.2 of the Federal Employees Health Benefits Program Acquisition Regulation (FEHBAR) applicable on the first day of the contract period.

(2) In the absence of specific contract terms to the contrary, the Carrier shall classify contract costs in accordance with the following criteria:

(i) *Benefits.* Benefit costs consist of payments made and liabilities incurred for covered health care services on behalf of FEHBP subscribers less any refunds, rebates, allowances or other credits received.

(ii) *Administrative expenses.* Administrative expenses consist of all actual, allowable, allocable and reasonable expenses incurred in the adjudication of subscriber benefit claims or incurred in the Carrier's overall operation of the business. Unless otherwise stated in the contract, administrative expenses include, in part: all taxes (excluding premium

taxes, as provided in section 1631.205-41), insurance and reinsurance premiums, medical and dental consultants used in the adjudication process, concurrent or managed care review when not billed by a health care provider and other forms of utilization review, the cost of maintaining eligibility files, legal expenses incurred in the litigation of benefit payments and bank charges for letters of credit. Administrative expenses exclude the cost of Carrier personnel, equipment, and facilities directly used in the delivery of health care services, which are benefit costs, and the expense of managing the FEHBP investment program which is a reduction of investment income earned.

(iii) *Investment income.* While compliance with the checks presented letter of credit methodology will minimize funds on hand, the Carrier shall invest and reinvest all funds on hand, including any in the Special Reserve or any attributable to the reserve for incurred but unpaid claims, which are in excess of the funds needed to discharge promptly the obligations incurred under the contract. Investment income represents the net amount earned by the Carrier after deducting investment expenses. Investment expenses are those actual, allowable, allocable, and reasonable contract costs that are attributable to the investment of funds, such as consultant or management fees.

(iv) *Other charges.* (A) *Mandatory statutory reserve.* Charges for mandatory statutory reserves are not allowable unless specifically provided for in the contract. When the term "mandatory statutory reserve" is specifically identified as an allowable contract charge without further definition or explanation, it means a requirement imposed by State law upon the Carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the Carrier and which may be used only with the specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the Carrier, the Carrier shall return to the FEHBP a pro rata share based upon FEHBP's contribution to the total Carrier's set aside shall be returned to the FEHBP in accordance with FAR 31.201-5.

(B) *Premium taxes.* (1) When the term "premium taxes" is used in this contract without further definition or explanation, it means a tax, fee, or other monetary payment directly or indirectly imposed on FEHB premiums by any State, the District of Columbia, or the

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Commonwealth of Puerto Rico or by any political subdivision or other governmental authority of those entities, with the sole exception of a tax on net income or profit, if that tax, fee, or payment is applicable to a broad range of business activity.

(2) For purposes of this paragraph (B), OPM has determined that the term "State" as used in 5 U.S.C. 8909(f) includes, but is not limited to, a territory or possession of the United States.

(c) *Certification of Accounting Statement Accuracy.* (1) The Carrier shall certify the annual and fiscal year accounting statements in the form set forth in paragraph (c)(3) of this clause. The Carrier's chief executive officer and the chief financial officer shall sign the certificate.

(2) The Carrier shall require an authorized agent of its underwriter, if any, also to certify the annual accounting statement.

(3) The certificate required shall be in the following form:

**CERTIFICATION OF ACCOUNTING STATEMENT
ACCURACY**

This is to certify that I have reviewed this accounting statement and to the best of my knowledge and belief:

1. The statement was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this reporting period in conformity with those guidelines.

2. The costs included in the statement are actual, allowable, allocable, and reasonable in accordance with the terms of the contract and with the cost principles of the Federal Employees Health Benefits Acquisition Regulation and the Federal Acquisition Regulation;

3. Income, rebates, allowances, refunds and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the statement;

4. If applicable, the letter of credit account was managed in accordance with 5 CFR part 890, 48 CFR chapter 16, and OPM guidelines.

Carrier Name: _____

Name of Chief Executive Officer: _____
(Type or Print)

Name of Chief Financial Officer: _____

Signature of Chief Executive Officer: _____

Signature of Chief Financial Officer: _____

Date Signed: _____

Date Signed: _____

Underwriter: _____

Name and Title of Responsible Corporate Official: _____

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(Type or Print:)

Signature of Responsible Corporate Official: _____

Date Signed: _____

(End of certificate)

(End of clause)

[55 FR 27416, July 2, 1990, as amended at 56 FR 57497, Nov. 12, 1991; 57 FR 14360, Apr. 20, 1992; 62 FR 47577, Sept. 10, 1997; 64 FR 36273, July 6, 1999; 65 FR 36387, June 8, 2000; 70 FR 31383, June 1, 2005]

1652.222-70 Notice of significant events.

As prescribed in 1622.103-70, the following clause shall be inserted in all FEHBP contracts.

NOTICE OF SIGNIFICANT EVENTS (JUL 2005)

(a) The Carrier agrees to notify OPM of any Significant Event within ten (10) working days after the Carrier becomes aware of it. As used in this section, a Significant Event is any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon the Carrier's ability to meet its obligations under this contract, including, but not limited to, any of the following:

(1) Disposal of major assets;

(2) Loss of 15% or more of the Carrier's overall membership;

(3) Termination or modification of any contract or subcontract if such termination or modification might have a material effect on the Carrier's obligations under this contract;

(4) Addition or termination of provider agreements;

(5) Any changes in underwriters, reinsurers, or participating plans;

(6) The imposition of, or notice of the intent to impose, a receivership, conservatorship, or special regulatory monitoring;

(7) The withdrawal of, or notice of intent to withdraw, State licensing, HHS qualification, or any other status under Federal or State law;

(8) Default on a loan or other financial obligation;

(9) Any actual or potential labor dispute that delays or threatens to delay timely performance or substantially impairs the functioning of the Carrier's facilities or facilities used by the Carrier in the performance of the contract;

(10) Any change in its charter, constitution, or by-laws which affects any provision of this contract or the Carrier's participation in the Federal Employees Health Benefits Program; or

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(11) Any significant changes in policies and procedures or interpretations of the contract or brochure which would affect the benefits available under the contract or the costs charged to the contract.

(12) Any fraud, embezzlement or misappropriation of FEHB funds; or

(13) Any written exceptions, reservations or qualifications expressed by the independent accounting firm (which ascribes to the standards of the American Institute of Certified Public Accountants) contracted with by the Carrier to provide an opinion on its annual financial statements.

(b) Upon learning of a Significant Event OPM may institute action, in proportion to the seriousness of the event, to protect the interest of Members, including, but not limited to—

(1) Directing the Carrier to take corrective action;

(2) Suspending new enrollments under this contract;

(3) Advising Enrollees of the Significant Event and providing them an opportunity to transfer to another plan;

(4) Withholding payment of subscription income or restricting access to the Carrier's Letter of Credit account.

(5) Terminating the enrollment of those enrollees who, in the judgment of OPM, would be adversely affected by the Significant Event; or

(6) Terminating this contract pursuant to section 1.15, renewal and withdrawal of approval.

(c) Prior to taking action as described in paragraph (b) of this clause, the OPM will notify the Carrier and offer an opportunity to respond.

(d) The carrier will insert this clause in any subcontract or subcontract modification if the amount of the subcontract or modification charged to the FEHB Program (or in the case of a community-rated carrier, applicable to the FEHB Program) equals or exceeds \$550,000 and is at least 25 percent of the total subcontract cost. The amount of the dollar charge to the FEHB Program shall be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act pursuant to 41 U.S.C. 254b(a)(7).

(End of clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27417, July 2, 1990; 70 FR 31383, June 1, 2005; 71 FR 3016, Jan. 19, 2006]

1652.224-70 Confidentiality of records.

As prescribed in 1624.104, the following clause shall be inserted in all FEHBP contracts:

CONFIDENTIALITY OF RECORDS (JAN 1991)

(a) The Carrier shall use the personal data on employees and annuitants that is provided by agencies and OPM, including social security numbers, for only those routine uses stipulated for the data and published annually in the FEDERAL REGISTER as a part of OPM's notice of systems of records.

(b) The Carrier shall also hold all medical records, and information relating thereto, of Federal subscribers and family members confidential except as follows:

(1) As may be reasonably necessary for the administration of this contract;

(2) As authorized by the patient or his or her guardian;

(3) As disclosure is necessary to permit Government officials having authority to investigate and prosecute alleged civil or criminal actions;

(4) As necessary to audit the contract;

(5) As necessary to carry out the coordination of benefits provisions of this contract; and

(6) For bona fide medical research or educational purposes. Release of information for medical research or educational purposes shall be limited to aggregated information of a statistical nature that does not identify any individual by name, social security number, or any other identifier unique to an individual.

(c) If the carrier uses medical records for the administration of the contract, or for bona fide medical research or educational purposes, it shall so state in the plan's brochure.

(End of clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27417, July 2, 1990]

1652.229-70 Taxes—Foreign Negotiated benefits contracts.

As prescribed in section 1629.402, the following clause shall be inserted in all FEHBP contracts performed outside the United States, its possessions, and Puerto Rico:

TAXES—FOREIGN NEGOTIATED BENEFITS CONTRACTS (JAN 1998)

(a) To the extent that this contract provides for performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) "Contract date," as used in this clause, means the effective date of this contract or modification.

"Country concerned," as used in this clause, means any country, other than the United States, its possessions, and Puerto

Rico, in which expenditures under this contract are made.

“Tax” and “taxes,” as used in this clause, include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

“All applicable taxes and duties,” as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

“After-imposed tax,” as used in this clause, means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions covered by this contract that the Carrier is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

“After-relieved tax,” as used in this clause, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions covered by this contract, but which the Carrier is not required to pay or bear, or for which the Carrier obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

“Excepted tax,” as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. “Excepted tax” does not include gross income taxes levied on or measured by sales or receipts from sales covered by this contract, or any tax assessed on the Carrier’s possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(d) The contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Carrier is required to pay or bear, including any interest or penalty, if the Carrier states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Carrier’s fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

cer or to comply with the provisions of paragraph (i) below.

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Carrier incident to a refund of taxes to the extent that such interest was earned after the Carrier was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the Carrier to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Carrier is required to pay or bear, or does not obtain a refund of, through the Carrier’s fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(h) If the Carrier obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Carrier shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Carrier, any subcontractor, or the transactions covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Carrier shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Carrier at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys’ fees.

(End of clause)

[62 FR 47577, Sept. 10, 1997]

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1652.232-70 Payments—community-rated contracts.

As prescribed in 1632.171, the following clause shall be inserted in all community-rated FEHBP contracts:

PAYMENTS (JAN 2000)

(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.

(c) The specific subscription rates, charges, allowances and limitations applicable to the contract are set forth in Appendix B.

(d) Recurring payments from premiums shall be due and payable not later than thirty days after receipt by the Fund. The Contracting Officer may authorize special non-recurring payments from the Contingency Reserve in accordance with OPM's regulations.

(e) In the event this contract between the Carrier and OPM is terminated or not renewed in accordance with General Provision 1.15, RENEWAL and WITHDRAWAL OF APPROVAL, the Contingency Reserve of the Carrier held by OPM shall be available to the Carrier to pay the necessary and proper charges against this contract to the extent that the reserves held by the Carrier are insufficient for that purpose.

(f) *Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).* The Carrier may, at its discretion, request funds from the Employees Health Benefits Fund to mitigate excessive costs in relation to premiums. If the Carrier requests funds from the Employees Health Benefits Fund to mitigate risk, it will be required to perform annual reconciliations for the duration of the demonstration project. OPM will reimburse the Carrier's costs significantly in excess of the premiums first from the Carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency

Reserves of all carriers continuing in the FEHB Program for the contract year following the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project.

(End of clause)

[53 FR 51784, Dec. 23, 1988, as amended at 57 FR 14360, Apr. 20, 1992; 62 FR 47578, Sept. 10, 1997; 63 FR 55339, Oct. 15, 1998; 65 FR 36388, June 8, 2000]

1652.232-71 Payments—experience-rated contracts.

As prescribed in 1632.172, the following clause shall be inserted in all experience-rated FEHBP contracts:

PAYMENTS (JAN 2000)

(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.

(c) The specific subscription rates, charges, allowances and limitations applicable to the contract are set forth in Appendix B.

(d) Recurring payments from premiums shall be made available for carrier drawdown not later than thirty days after receipt by the Fund. The Contracting Officer may authorize special non-recurring payments from the Contingency Reserve in accordance with OPM's regulations.

(e) In the event this contract between the Carrier and OPM is terminated or not renewed in accordance with General Provision 1.15, RENEWAL and WITHDRAWAL OF APPROVAL, the Contingency Reserve of the Carrier held by OPM shall be available to the Carrier to pay the necessary and proper charges against this contract to the extent that the Carrier reserves are insufficient for that purpose.

(f) *Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).* The Carrier will perform a final reconciliation of revenue and

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costs for the demonstration project group at the end of the demonstration project. OPM will reimburse the Carrier's costs in excess of the premiums first from the Carrier's demonstration project Contingency Reserve and then from the Employees Health Benefits Fund Administrative Reserve. After the final accounting, OPM will place any surplus demonstration project premiums in the regular Contingency Reserves of all carriers continuing in the FEHB Program for the contract year following the year in which the demonstration project ends. Credit will be in proportion to the amount of subscription charges paid and accrued to each carrier's plan for the last year of the demonstration project.

(End of clause)

[53 FR 51784, Dec. 23, 1988, as amended at 57 FR 14361, Apr. 20, 1992; 62 FR 47578, Sept. 10, 1997; 63 FR 55339, Oct. 15, 1998; 64 FR 36274, July 6, 1999; 65 FR 36388, June 8, 2000]

1652.232-72 Non-commingling of FEHBP funds.

As prescribed in 1632.772, the following clause shall be inserted in all contracts based on cost analysis.

NON-COMMINGLING OF FUNDS (JAN 1991)

(a) The Carrier and/or its underwriter shall keep all FEHBP funds for this contract (cash and investments) physically separate from funds obtained from other sources. Accounting for such FEHBP funds shall not be based on allocations or other sharing mechanisms and shall agree with the Carrier's accounting records.

(b) In certain instances the physical separation of FEHBP funds may not be practical or desirable. In such cases, the Carrier may request a waiver from this requirement from the Contracting Officer. The waiver shall be requested in advance and the Carrier shall demonstrate that accounting techniques have been established that will clearly measure FEHBP cash and investment income (i.e., subsidiary ledgers). Reconciliations between amounts reported and actual amounts shown in accounting records shall be provided as supporting schedules to the Annual Accounting Statements.

(c) The Carrier shall incorporate this clause in all subcontracts that exceed \$25,000 and shall substitute "contractor" or other appropriate reference for "Carrier and/or its underwriter."

(End of clause)

[52 FR 16044, May 1, 1987. Redesignated at 53 FR 51784, Dec. 23, 1988, and amended at 55 FR 27418, July 2, 1990]

48 CFR Ch. 16 (10-1-12 Edition)**1652.232-73 Approval for the Assignment of Claims.**

As prescribed in 1632.806-70, the following clause shall be inserted in all FEHBP contracts:

APPROVAL FOR ASSIGNMENT OF CLAIMS (JAN 1991)

(a) Notwithstanding the provisions of section 5.35, (FAR 52.232-23) Assignment of Claims, the Carrier shall not make any assignment under the Assignment of Claims Act without the prior written approval of the Contracting Officer.

(b) Unless a different period is specified in the Contracting Officer's written approval, an assignment shall be in force only for a period of 1 year from the date of the Contracting Officer's approval. However, assignments may be renewed upon their expiration.

(End of clause)

[55 FR 27418, July 2, 1990]

1652.243-70 Changes—Negotiated benefits contracts.

As prescribed in section 1643.205-70, the following clause shall be inserted in all FEHBP contracts.

CHANGES—NEGOTIATED BENEFITS CONTRACTS (JAN 1998)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Carrier must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Carrier from proceeding with the contract as changed.

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(End of clause)

[62 FR 47578, Sept. 10, 1997]

1652.244-70 Subcontracts.

As prescribed in section 1644.270, the following clause will be inserted in all FEHB Program contracts based on cost analysis (experience-rated):

SUBCONTRACTS (JUL 2005)

(a) The carrier will notify the Contracting officer in writing at least 30 days in advance of entering into any subcontract or subcontract modification, or as otherwise specified by this contract, if the amount of the subcontract or modification charged to the FEHB Program equals or exceeds \$550,000 and is at least 25 percent of the total subcontract cost. The amount of the dollar charge to the FEHB Program shall be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act pursuant to 41 U.S.C. 254b(a)(7). Failure to provide advance notice may result in a Contracting officer's disallowance of subcontract costs or a penalty in the performance aspect of the carrier's service charge. In determining whether the amount chargeable to the FEHB Program contract for a given subcontract or modification equals or exceeds the \$550,000 threshold, the following rules apply:

(1) For initial advance notification, the carrier shall add the total cost/price for the base year and all options, including quantity or service options and option periods.

(2) For contract modifications, options and/or renewals (e.g. evergreen contracts) not accounted for in paragraph (a)(1) of this clause, the carrier shall provide advance notification if they cause the total price to equal or exceed the threshold. OPM's review will be of the modification(s), itself, but documentation for the original subcontract will be required to perform the review. The \$550,000 threshold will be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act. All subcontracts or subcontract modifications that equal or exceed the threshold are subject to audit under FAR 52.215-2 "Audit and Records—Negotiations" if based on cost analysis or 48 CFR 1646.301 and 1552.246-70 "FEHB Inspection" if based on price analysis.

(b) The advance notification required by paragraph (a) of this clause will include the information specified below:

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the carrier's cost or price analysis;

(5) The subcontractor's current, complete, and accurate cost or pricing data and a Certificate of Current Cost or Pricing Data must be submitted to the Contracting officer if required by law, regulation, or other contract provisions.

(6) [Reserved]

(7) A negotiation memorandum reflecting—

(i) The principal elements of the subcontract price negotiations;

(ii) The most significant consideration controlling establishment of initial or revised prices;

(iii) An explanation of the reason cost or pricing data are not required, if the carrier believes that cost or pricing data are not required.

(iv) The extent, if any, to which the carrier did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent, if any, to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the carrier and the subcontractor; and the effect of any such defective data on the total price negotiated;

(vi) The reasons for any significant difference between the carrier's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan, when incentives are used. The explanation will identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The carrier will obtain the Contracting officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) of this clause. However, the Contracting officer may ratify in writing any such subcontract for which written consent was not obtained. Ratification will constitute the consent of the Contracting officer.

(d) The Contracting officer may waive the requirement for advance notification and consent required by paragraphs (a), (b) and (c) of this clause where the carrier and subcontractor submit an application or renewal as a contractor team arrangement as defined in FAR subpart 9.6 and—

(1) The Contracting officer evaluated the arrangement during negotiation of the contract or contract renewal; and

(2) The subcontractor's price and/or costs were included in the Plan's rates that were reviewed and approved by the Contracting

officer during negotiation of the contract or contract renewal.

(e) If the carrier follows the notification and consent requirements of paragraphs (a), (b) and (c) of this clause and subsequently obtains the Contracting officer's consent or ratification, then the reasonableness of the subcontract's costs will be inferred as provided for in 1631.205-81. However, consent or ratification by the Contracting officer will not constitute a determination:

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) That the carrier should be relieved of any responsibility for performing this contract.

(f) No subcontract placed under this contract will provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost reimbursement type subcontracts will not exceed the fee limitations in FAR 15.404-4(c)(4)(i). Any profit or fee payable under a subcontract will be in accordance with the provision of Section 3.7, *Service Charge*.

(g) The carrier will give the Contracting officer immediate written notice of any action or suit filed and prompt notice of any claim made against the carrier by any subcontractor or vendor that, in the opinion of the carrier, may result in litigation related in any way to this contract with respect to which the carrier may be entitled to reimbursement from the Government.

(End of clause)

[70 FR 31383, June 1, 2005, as amended at 71 FR 3016, Jan. 19, 2006]

1652.245-70 Government property (negotiated benefits contracts).

As prescribed in section 1645.303-70, the following clause shall be inserted in all FEHBP contracts.

GOVERNMENT PROPERTY (NEGOTIATED BENEFITS CONTRACTS) (JAN 1998)

(a) *Government-furnished property.* (1) The Government shall deliver to the Carrier, for use in connection with and under the terms of this contract, the Government-furnished property described in this contract together with any related data and information that the Carrier may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as-is") will be delivered to the Carrier at the times stated in this contract or, if not so

stated, in sufficient time to enable the Carrier to meet the contract's performance dates.

(3) If Government-furnished property is received by the Carrier in a condition not suitable for the intended use, the Carrier shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Carrier, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(b) *Changes in Government-furnished property.* (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Carrier for the Government, under this contract. The Carrier shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Carrier's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in this contract to make the property available for performing this contract and there is any—

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) *Title in Government property.* (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Carrier, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(d) *Use of Government property.* The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) *Property administration.* (1) The Carrier shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) subpart 45.5, as in effect on the date of this contract.

(2) The Carrier shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Carrier shall make such repairs as the Government directs. However, if the Carrier cannot effect such repairs within the time required, the Carrier shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Carrier represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Carrier is responsible shall be accomplished by the Carrier at its own expense.

(f) *Access.* The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) *Risk of loss.* Unless otherwise provided in this contract, the Carrier assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Carrier. However, the Carrier is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(h) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Carrier's exclusive remedy. The Government shall not be liable to suit for breach of contract for—

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) *Final accounting and disposition of Government property.* Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Carrier shall submit, in a form acceptable to the

Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Carrier shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) *Abandonment and restoration of Carrier's premises.* Unless otherwise provided herein, the Government—

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Carrier's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) *Communications.* All communications under this clause shall be in writing.

(l) *Overseas contracts.* If this contract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished", respectively.

(End of clause)

[62 FR 47578, Sept. 10, 1997]

1652.246-70 FEHB Inspection.

As prescribed in 1646.301, the following clause will be inserted in all FEHB contracts:

FEHB INSPECTION (JUL 2005)

(a) The Contracting officer, or an authorized representative of the Contracting officer, has the right to inspect or evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unreasonably delay the work.

(b) The Contractor shall maintain and the Contracting officer, or an authorized representative of the Contracting officer, shall have the right to examine and audit all books and records relating to the contract for purposes of the Contracting officer's determination of the carrier's subcontractor or

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Large Provider's compliance with the terms of the contract, including its payment (including rebate and other financial arrangements) and performance provisions. The Contractor shall make available at its office at all reasonable times those books and records for examination and audit for the record retention period specified in the Federal Employees Health Benefits Acquisition Regulation (FEHBAR), 48 CFR 1652.204-70. This subsection is applicable to subcontract and Large Provider Agreements with the exception of those that are subject to the "Audits and Records—Negotiation" clause, 48 CFR 52.215-2.

(c) If the Contracting officer, or an authorized representative of the Contracting officer, performs inspection, audit or evaluation on the premises of the carrier, the subcontractor, or the Large Provider, the carrier shall furnish or require the subcontractor or Large Provider to furnish all reasonable facilities for the same and convenient performance of these duties.

(d) The carrier shall insert this clause, including this subsection (d), in all subcontracts for underwriting and claim payments and administrative services and in all Large Provider Agreements and shall substitute "contractor" "Large Provider," or other appropriate reference for the term "carrier."

(End of clause)

[70 FR 31384, June 1, 2005, as amended at 71 FR 3016, Jan. 19, 2006]

1652.249-70 Renewal and withdrawal of approval.

As prescribed in 1649.101-70, the following clause shall be inserted in all FEHBP contracts:

RENEWAL AND WITHDRAWAL OF APPROVAL (JAN 1991)

(a) Pursuant to 5 U.S.C. 8902(a), the contract renews automatically for a term of 1 year each January 1st, unless written notice of intent not to renew is given either by OPM or the Carrier not less than 60 calendar days before the renewal date, or unless modified by mutual agreement.

(b) This contract also may be terminated at other times by order of OPM pursuant to 5 U.S.C. 8902(e). After OPM notifies the Carrier of its intent to terminate the contract, OPM may take action as it deems necessary to protect the interests of members, including but not limited to—

- (1) Suspending new enrollments under the contract;
- (2) Advising enrollees of the asserted deficiencies; and
- (3) Providing enrollees an opportunity to transfer to another Plan.

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(c) OPM may, after proper notice, terminate the contract at the end of the contract term if it finds that the Carrier did not have at least 300 enrollees enrolled in its plan at any time during the two preceding contract terms.

(End of clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27418, July 2, 1990; 57 FR 19388, May 6, 1992]

1652.249-71 FEHBP termination for convenience of the government—negotiated benefits contracts.

As prescribed in section 1649.101-71, the following clause shall be inserted in all FEHBP contracts.

FEHBP TERMINATION FOR CONVENIENCE OF THE GOVERNMENT—NEGOTIATED BENEFITS CONTRACTS (JAN 1998)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Carrier a Notice of Termination specifying the extent of terminating and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Carrier shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Carrier under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
- (6) As directed by the Contracting Officer, deliver to the Government any data, reports, or studies that, if the contract had been completed, would be required to be furnished to the Government.
- (7) Complete performance of the work not terminated.

(c) After termination, the Carrier shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Carrier shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Carrier within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Carrier fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Carrier because of the termination and shall pay the amount determined.

(d) Subject to paragraph (c) of this clause, the Carrier and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (d) or paragraph (e) of this clause, exclusive of costs shown in subparagraph (e)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Carrier paid the agreed amount. Paragraph (e) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(e) If the Carrier and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Carrier the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (d) above:

(1) The contract price for completed services accepted by the Government not previously paid for.

(2) The total of—

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to services paid or to be paid under paragraph (e)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (e)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (e)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal

Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(f) The cost principles and procedures of part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(g) The Carrier shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (c), (e), or (i) of this clause, except that if the Carrier failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (c) or (i), respectively, and failed to request a time extension, there is no right of appeal.

(h) In arriving at the amount due the Carrier under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Carrier under the terminated portion of this contract;

(2) Any claim which the Government has against the Carrier under this contract; and

(i) If the termination is partial, the Carrier may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Carrier for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(j)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Carrier for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Carrier will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Carrier shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Carrier to the date the excess is repaid.

(k) Unless otherwise provided in this contract or by statute, the Carrier shall maintain all records and documents relating to the terminated portion of this contract for 3

years after final settlement. This includes all books and other evidence bearing on the Carrier's costs and expenses under this contract. The Carrier shall make these records and documents available to the Government, at the Carrier's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

[62 FR 47579, Sept. 10, 1997]

1652.249-72 FEHBP termination for default—negotiated benefits contracts.

As prescribed in §1649.101-72, the following clause shall be inserted in all FEHBP contracts.

**FEHBP TERMINATION FOR DEFAULT—
NEGOTIATED BENEFITS CONTRACTS (JAN 1998)**

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Carrier, terminate this contract in whole or in part if the Carrier fails to—

(i) Perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Carrier does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or service similar to those terminated, and the Carrier will be liable to the Government for any excess costs for those supplies or services. However, the Carrier shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Carrier shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Carrier. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and

(9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Carrier.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Carrier and subcontractor, and without the fault or negligence of either, the Carrier shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Carrier to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Carrier to transfer title and deliver to the Government, as directed by the Contracting Officer, any completed or partially completed information and contract rights that the Carrier has specifically produced or acquired for the terminated portion of this contract.

(f) If, after termination, it is determined that the Carrier was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(g) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

[62 FR 47580, Sept. 10, 1997]

**Subpart 1652.3—FEHBP Clause
Matrix**

1652.370 Use of the matrix.

(a) The matrix in this section lists the FAR and FEHBP clauses to be used with contracts based on cost analysis and contracts based on a combination of cost and price analysis. Carriers shall submit initial applications and requests for renewals on the basis that the new contract or contract renewal will include the clauses indicated.

(b) Certain contract clauses are mandatory for FEHBP contracts. Other clauses are to be used only when made applicable by pertinent sections of the FAR or FEHBP. An "M" in the "Use Status" column indicates that the clause is mandatory. An "A" indicates that the clause is to be used only when the applicable conditions are met.

(c) Clauses are incorporated in the contract either in full text or by reference. If the full text is to be used, the

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matrix indicates a “T”. If the clause is incorporated by reference, the matrix indicates an “R”.

FEHB CLAUSE MATRIX

Clause No.	Text Reference	Title	Use Status	Use With Experience Rated Contracts	Use With Community Rated Contracts
FAR 52.202-1	FAR 2.201	Definitions	M	T	T
FAR 52.203-3	FAR 3.202	Gratuities	M	T	T
FAR 52.203-5	FAR 3.404	Covenant Against Contingent Fees	M	T	T
FAR 52.203-7	FAR 3.502-3	Anti-Kickback Procedures	M	T	T
FAR 52.203-12	FAR 3.808(b)	Limitation on Payments to Influence Certain Federal Transactions	M	T	T
1652.203-70	1603-7003	Misleading, Deceptive, or Unfair Advertising	M	T	T
1652.204-70	1604.705	Contractor Records Retention	M	T	T
1652.204-71	1604.7001	Coordination of Benefits	M	T	T
1652.204-72	1604.7101	Filing Health Benefit Claims/Court Review of Disputed Claims	M	T	T
1652.204-73	1604.970	Taxpayer Identification Number	M	T	T
1652.204-74	1604.7202	Large Provider Agreements	M	T	T
FAR 52.209-6	FAR 9.409(b)	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	M	T	T
FAR 52.215-2	FAR 15.209(b)	Audit & Records—Negotiation	A	T	T
FAR 52.215-10	FAR 15.408(b)	Price Reduction for Defective Cost or Pricing Data	M	T	
FAR 52.215-12	FAR 15.408(d)	Subcontractor Cost or Pricing Data	M	T	
FAR 52.215-15	FAR 15.408(g)	Pension Adjustments and Asset Reversions	M	T	
FAR 52.215-16	FAR 15.408(h)	Facilities Capital Cost of Money	M	T	
FAR 52.215-17	FAR 15.408(i)	Waiver of Facilities Capital Cost of Money	A	T	
FAR 52.215-18	FAR 15.408(j)	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions	M	T	

Clause No.	Text Reference	Title	Use Status	Use With Experience Rated Contracts	Use With Community Rated Contracts
1652.215-70	1615.407-70	Rate Reduction for Defective Pricing or Defective Cost or Pricing Data	M		T
1652.215-71	1615.407-72	Investment Income	M	T	
1652.216-70	1616.7001	Accounting and Price Adjustment	M		T
1652.216-71	1616.7002	Accounting and Allowable Cost	M	T	
FAR 52.219-8	FAR 19.708(a)	Utilization of Small Business Concerns	M	T	T
FAR 52.222-1	FAR 22.103-5(a)	Notice to the Government of Labor Disputes	M	T	T
FAR 52.222-3	FAR 22.202	Convict Labor	M	T	T
FAR 52.222-4	FAR 22.305	Contract Work Hours and Safety Standards Act—Overtime Compensation	M	T	T
FAR 52.222-21	FAR 22.810(a)(1)	Prohibition of Segregated Facilities	M	T	T
FAR 52.222-26	FAR 22.810(a)	Equal Opportunity	M	T	T
FAR 52.222-29	FAR 22.810(g)	Notification of Visa Denial	A	T	T
FAR 52.222-35	FAR 22.1308(a)	Equal Opportunity for Special Disabled Veterans, and Other Eligible Veterans	M	T	T
FAR 52.222-36	FAR 22.1408(a)	Affirmative Action for Workers With Disabilities	M	T	T
FAR 52.222-37	FAR 22.1308(b)	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	M	T	T
1652.222-70	1622.103-70	Notice of Significant Events	M	T	T
FAR 52.223-6	FAR 23.505	Drug-Free Workplace	A	T	T
1652.224-70	1624.104	Confidentiality of Records	M	T	T
FAR 52.227-1	FAR 27.201-2(a)	Authorization and Consent	M	T	T
FAR 52.227-2	FAR 27.202-2	Notice and Assistance Regarding Patent and Copyright Infringement	M	T	T
FAR 52.229-3	FAR 29.401-3	Federal, State and Local Taxes	M		T

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Clause No.	Text Reference	Title	Use Status	Use With Experience Rated Contracts	Use With Community Rated Contracts
FAR 52.229-4	FAR 29.401-4	Federal, State and Local Taxes (Noncompetitive Contract)	M	T	
FAR 52.229-5	FAR 29.401-5	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico	A	T	T
1652.229-70	FEHBP 1629.402	Taxes—Foreign Negotiated Benefits Contracts	A	T	T
FAR 52.232-8	FAR 32.111(c)(1)	Discounts for Prompt Payment	M	T	T
FAR 52.232-17	FAR 32.617(a) Modification. 1632.617	Interest	M	T	T
FAR 52.232-23	FAR 32.806(a)(1)	Assignment of Claims	A	T	T
FAR 52.232-33	FAR 32.1103(a)	Payment by Electronic Funds Transfer—Central Contractor Registration	M	T	T
1652.232-70	1632.171	Payments—Community-Rated Contracts	A	T	T
1652.232-71	1632.172	Payments—Experience-Rated Contracts	A	T	
1652.232-72	1632.772	Non-Commingling of FEHBP Funds	M	T	
1652.232-73	1632.806-70	Approval for Assignment of Claims	M	T	T
FAR 52.233-1	FAR 33.215	Disputes	M	T	T
FAR 52.242-1	FAR 42.802	Notice of Intent to Disallow Costs	M	T	
FAR 52.242-3	FAR 42.709-6	Penalties for Unallowable Costs	M	T	
FAR 52.242-13	FAR 42.903	Bankruptcy	M	T	T
1652.243-70	1643.205-70	Changes—Negotiated Benefits Contracts	M	T	T
FAR 52.244-5	FAR 44.204(c)	Competition in Subcontracting	M	T	
FAR 52.244-6	FAR 44.403	Subcontracts for Commercial Items	M	T	
1652.244-70	1644.270	Subcontracts	M	T	
1652.245-70	1645.303-70	Government Property (Negotiated Benefits Contracts)	M	T	T

Clause No	Text Reference	Title	Use Status	Use With Experience Rated Contracts	Use With Community Rated Contracts
FAR 52.246-25	FAR 46.805(a)(4)	Limitation of Liability—Services	M	T	
1652.246-70	1646.301	FEHB Inspection	M	T	T
FAR 52.247-63	FAR 47.405	Preference for U.S.-Flag Air Carriers	M	T	T
1652.249-70	1649.101-70	Renewal and Withdrawal of Approval	M	T	T
1652.249-71	1649.101-71	FEHBP Termination for Convenience of the Government—Negotiated Benefits Contracts	M	T	T
1652.249-72	1649.101-72	FEHBP Termination for Default—Negotiated Benefits Contracts	M	T	T
FAR 52.251-1	FAR 51.107	Government Supply Sources	A	T	
FAR 52.252-4	FAR 52.107(d)	Alterations in Contract	A	T	T
FAR 52.252-6	FAR 52.107(f)	Authorized Deviations in Clauses	M	T	T

[52 FR 16044, May 1, 1987, as amended at 55 FR 27418, July 2, 1990; 59 FR 14767, Mar. 30, 1994; 62 FR 47580, Sept. 10, 1997; 62 FR 50335, Sept. 25, 1997; 63 FR 55339, Oct. 15, 1998; 65 FR 63388, June 8, 2000; 70 FR 31385, June 1, 2005]

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PART 1653—FORMS

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

1653.000 FEHBP forms.

The following forms specified in FAR subparts 53.2 and 53.3 are applicable to FEHBP acquisitions:

Part 53.2	Part 53.3	Form title
53.201-1	53.301-1402	SF 1402—Certificate of Appointment.
53.203	53.301-119	SF 119—Statement of Contingent or Other Fees.
53.204-2(a)	53.301-279	SF 279 FPDS—Individual Contract Action Report (over \$10,000).
53.204-2(b)	53.301-281	SF 281 FPDS—Summary of Contract Actions of \$10,000 or less.
53.229	53.301-1094	SF 1094—U.S. Tax Exemption Certificate.

Part 53.2	Part 53.3	Form title
53.229	53.301-1094A	SF 1094A—Tax Exemption Certificates Accountability Record.

[52 FR 16048, May 1, 1987, as amended at 62 FR 47583, Sept. 10, 1997]

PART 1699—COST ACCOUNTING STANDARDS

Subpart 1699.7—Cost Accounting Standards

1699.70 Cost accounting standards.

With respect to all experience-rated contracts currently existing under the FEHB Program, the Cost Accounting Standards, found at 48 CFR part 9904, of the Code of Federal Regulations, do not apply.

[70 FR 31392, June 1, 2005]