Member of Congress means a member of the Senate or of the House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner of Puerto Rico.

Option means a level of benefits. It does not include distinctions as to whether the members of the family are covered.

OWCP means the Office of Workers' Compensation Programs, U.S. Department of Labor, which administers subchapter I of chapter 81 of title 5, United States Code.

Pay period means the biweekly pay period established pursuant to section 5504 of title 5, United States Code, for the employees to whom that section applies and the regular pay period for employees not covered by that section. *Pay period,* as it relates to a former spouse or annuitant who is not actively receiving an annuity, including surviving spouses receiving a basic employee death benefit, and enrollees temporarily continuing coverage under subpart K of this part, means any regular pay period for employees of the agency to which jurisdiction and responsibility for health benefits actions for the enrollee have been delegated as provided under the definition of ''employing office'' in this section. *Pay period* for annuitants in active receipt of annuity means the period for which a single installment of annuity is customarily paid.

Reconsideration means the final level of administrative review of an employing office's initial decision to determine if the employing office correctly applied the law and regulations.

Reimbursement means a carrier's pursuit of a recovery if a covered individual has suffered an illness or injury and has received, in connection with that illness or injury, a payment from any party that may be liable, any applicable insurance policy, or a workers' compensation program or insurance policy, and the terms of the carrier's health benefits plan require the covered individual, as a result of such payment, to reimburse the carrier out of the payment to the extent of the benefits initially paid or provided. The right of reimbursement is cumulative with and not exclusive of the right of subrogation.

Self and family enrollment means an enrollment that covers the enrollee and all eligible family members.

Self only enrollment means an enrollment that covers only the enrollee.

Self plus one enrollment means an enrollment that covers the enrollee and one eligible family member.

SHOP has the meaning given in 45 CFR 155.20.

Subrogation means a carrier's pursuit of a recovery from any party that may be liable, any applicable insurance policy, or a workers' compensation program or insurance policy, as successor to the rights of a covered individual who suffered an illness or injury and has obtained benefits from that carrier's health benefits plan.

Switch a covered family member means, under a self plus one enrollment, to terminate or cancel the enrollment of the designated covered family member and designate another eligible family member for coverage.

Underdeduction means a failure to withhold the required amount of health benefits contributions from an individual's pay, annuity, or compensation. This definition includes both nondeductions (when none of the required amounts was withheld) and partial deductions (when only part of the required amount was withheld). Though FEHB contributions are required to cover a period of nonpay status, the nonpayment of contributions during such period does not result in an underdeduction.

(b) Whenever, in this part, a period of time is stated as a number of days or a number of days from an event, the period is computed in calendar days, excluding the day of the event. Whenever, in this part, a period of time is defined by beginning and ending dates, the period includes the beginning and ending dates.

[33 FR 12510, Sept. 4, 1968]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 890.101, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov.*

§ 890.102 Coverage.

(a) Each employee, other than those excluded by paragraph (c) of this section, is eligible to be enrolled in a

health benefits plan at the time and under the conditions prescribed in this part.

(b) An employee who serves in cooperation with non-Federal agencies and is paid in whole or in part from non-Federal funds may register to be enrolled within the period prescribed by OPM for the group of which the employee is a member following approval by OPM of arrangements providing that (1) the required withholdings and contributions will be made from Federally-controlled funds and timely deposited into the Employees Health Benefits Fund, or (2) the cooperating non-Federal agency will, by written agreement with the Federal agency, make the required withholdings and contributions from non-Federal funds and transmit them for timely deposit into the Employees Health Benefits Fund.

(c) The following employees are not eligible:

(1) An employee (other than an acting postmaster, a Presidential appointee appointed to fill an unexpired term, and an appointee whose appointment meets the definition of provisional appointment set out in §§ 316.401 and 316.403 of this chapter) who is serving under an appointment limited to 1 year or less and who has not completed 1 year of current continuous employment, excluding any break in service of 5 days or less.

(2) An employee who is expected to work less than 6 months in each year, except for an employee who receives an appointment of at least 1 year's duration as an Intern under § 213.3402(a) of this chapter and who is expected to be in a pay status for at least one-third of the total period of time from the date of the first appointment to the completion of the Internship Program.

(3) An intermittent employee—a non-full-time employee without a prearranged regular tour of duty.

(4) A beneficiary or patient employee in a Government hospital or home.

(5) An employee paid on a contract or fee basis, except an employee who is a citizen of the United States who is appointed by a contract between the employee and the Federal employing authority which requires his personal service and is paid on the basis of units of time.

(6) An employee paid on a piecework basis, except one whose work schedule provides for full-time service or part-time service with a regular tour of duty.

(7) An individual first employed by the government of the District of Columbia on or after October 1, 1987. However, this exclusion does not apply to:

(i) Employees of St. Elizabeths Hospital who accept offers of employment with the District of Columbia government without a break in service, as provided in section 6 of Pub. L. 98–621 (98 Stat. 3379);

(ii) The Corrections Trustee and the Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee and employees of these Trustees who accept employment with the District of Columbia government within 3 days after separating from the Federal Government; and

(iii) Effective October 1, 1997, judges and nonjudicial employees of the District of Columbia Courts, as provided by Pub. L. 105–33 (111 Stat. 251).

(8) An individual first employed by the government of the District of Columbia on or after October 1, 1987. However, this exclusion does not apply to:

(i) Employees of St. Elizabeths Hospital who accept offers of employment with the District of Columbia government without a break in service, as provided in section 6 of Pub. L. 98–621 (98 Stat. 3379);

(ii) The Corrections Trustee and the Pretrial Services, Parole, Adult Probation and Offender Supervision Trustee and employees of these Trustees who accept employment with the District of Columbia government within 3 days after separating from the Federal Government;

(iii) Effective October 1, 1997, judges and nonjudicial employees of the District of Columbia Courts, as provided by Pub. L. 105–33 (111 Stat. 251); and

(iv) Effective April 1, 1999, employees of the Public Defender Service of the District of Columbia, as provided by Pub. L. 105–274 (112 Stat. 2419).

(9) The following employees are not eligible to purchase a health benefit plan for which OPM contracts or which OPM approves under this paragraph (c), but may purchase health benefit plans, as defined in 5 U.S.C. 8901(6), that are

offered by an appropriate SHOP as determined by the Director, pursuant to section 1312(d)(3)(D) of the Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care and Education Reconciliation Act, Public Law 111–152 (the Affordable Care Act or the Act):

(i) A Member of Congress.

(ii) A congressional staff member, if the individual is determined by the employing office of the Member of Congress to meet the definition of congressional staff member in § 890.101 as of January 1, 2014, or in any subsequent calendar year. Designation as a congressional staff member shall be an annual designation made prior to November 2013 for the plan year effective January 1, 2014 and October of each year for subsequent years or at the time of hiring for individuals whose employment begins during the year. The designation shall be made for the duration of the year during which the staff member works for the Member of Congress beginning with the January 1st following the designation and continuing to December 31st of that year.

(d) Paragraph (c) of this section does not deny coverage to:

(1) An employee appointed to perform ''part-time career employment,'' as defined in section 3401(2) of title 5, United States Code, and 5 CFR part 340, subpart B; or

(2) An employee serving under an interim appointment established under § 772.102 of this chapter.

(e) With the exception of those employees or groups of employees listed in paragraph (e)(1) of this section, the Office of Personnel Management makes the final determination of the applicability of this section to specific employees or groups of employees.

(1) Employees identified in paragraph (c)(9)(i) and (ii) of this section.

(2) [Reserved]

(f) An employee of the District of Columbia Financial Responsibility and Management Assistance Authority (the Authority) who makes an election under the Technical Corrections to Financial Responsibility and Management Assistance Act (section 153 of Pub. L. 104–134, 110 Stat. 1321) to be considered a Federal employee for health benefits and other benefit purposes is subject to this part. If the employee is eligible to make an election to enroll under § 890.301, such election must be made within 60 days after the later of either the date the employment with the Authority begins or the date the Authority receives his or her election to be considered a Federal employee. Employees of the Authority who are former Federal employees are subject to the provisions of § 890.303(a), except that a former Federal employee employed by the Authority before October 26, 1996, and within 3 days following the termination of the Federal employment may make an election to enroll under § 890.301(c). Annuitants who have continued their coverage under this part as annuitants are not eligible to enroll under this paragraph. An election to enroll under this part is effective under the provisions of § 890.306(a) unless the employee requests the Authority to make the enrollment effective on the first day of the first pay period following the date the employee entered on duty in a pay status with the Authority.

(g) Notwithstanding any other provision in this part, the hiring of a Federal employee, whether in pay status or nonpay status, for a temporary, intermittent position with the decennial census has no effect on the withholding or Government contribution for his/her coverage or the determination of when 365 days in nonpay status ends.

(h) Notwithstanding paragraphs (c)(1) and (2) of this section, an employee who is in a position identified by OPM that provides emergency response services for wildland fire protection is eligible to be enrolled in a health benefits plan under this part.

(i) Notwithstanding paragraphs (c)(1) through (3) of this section, upon request by the employing agency, OPM may grant eligibility to employees performing similar types of emergency response services to enroll in a health benefits plan under this part. In granting eligibility requests, OPM may limit the coverage of intermittent employees under a health benefits plan to the periods of time during which they are in a pay status.

(j)(1) Notwithstanding paragraphs (c)(1), (2), and (3) of this section, a non-

Postal employee working on a temporary appointment, a non-Postal employee working on a seasonal schedule of less than 6 months in a year, or a non-Postal employee working on an intermittent schedule, for whom the employing office expects the total hours in pay status (including overtime hours) plus qualifying leave without pay hours to be at least 130 hours per calendar month, is eligible to enroll in a health benefits plan under this part as follows:

(i) If the employing office expects the employee to work at least 90 days, the employee is eligible to enroll upon notification of the employee's eligibility by the employing office, and

(ii) If the employing office expects the employee to work for fewer than 90 days and the employee actually works for fewer than 90 days, the employee will generally be ineligible to enroll in FEHB because the employee will not be employed at the end of the waiting period applicable to these employees. However, if the expectation changes and the employee is expected to work for 90 days or more, that individual is eligible to enroll upon notification by the employing office, but enrollment (including the effective date of coverage) must be no later than the end of the waiting period ending the 91st day after the first day of employment.

(2) An employee working on a temporary appointment, an employee working on a seasonal schedule of less than 6 months in a year, or an employee working on an intermittent schedule for whom the employing office expects the total hours in pay status (including overtime hours) plus qualifying leave without pay hours to be less than 130 hours per calendar month is generally ineligible to enroll in a health benefits plan under this part. If the expectation of hours of employment changes to 130 hours or more per month for a non-Postal employee, that employee is eligible to enroll in a health benefits plan under this part as described in paragraph (j)(1)(i) of this section.

(3) Once an employee is enrolled under this paragraph (j), eligibility will not be revoked, regardless of his or her actual work schedule or employer expectations in subsequent years, unless the employee separates from Federal service, receives a new appointment (in which case eligibility will be determined by the rules applicable to the new appointment), or exceeds 365 days in nonpay status in accordance with §890.303(e) (subject to extension, if applicable, for qualifying leave without pay as defined at paragraph (j)(4) of this section).

(4) For purposes of this paragraph (j), ''qualifying leave without pay hours'' means hours of leave without pay for purposes of taking leave under the Family and Medical Leave Act, for performance of duty in the uniformed services under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301 et seq., for receiving medical treatment under Executive Order 5396 (Jul. 7 1930), and for periods during which workers compensation is received under the Federal Employees Compensation Act, 5 U.S.C. chapter 81.

(5) Each temporary employee who is initially eligible for FEHB coverage on the basis of this paragraph (j) is entitled to enroll in accordance with §890.301(a). A temporary employee who is currently eligible under 5 U.S.C. 8906a (with no Government contribution) but who is not enrolled on November 17, 2014, and who would also meet eligibility requirements on the basis of paragraph (j), is entitled to enroll (with a Government contribution) on the basis of paragraph (j) in accordance with §890.301(h)(4)(ii). A temporary employee who is enrolled under 5 U.S.C. 8906a (with no Government contribution) on November 17, 2014, and who would also meet eligibility requirements on the basis of paragraph (j), is entitled to change enrollment (with a Government contribution) on the basis of paragraph (j) in accordance with §890.301(h)(4)(ii).

(k) The Director, upon written request of an employer of employees other than those covered by 5 U.S.C. 8901(1)(A), may, in his or her sole discretion, waive application of paragraph (j) of this section to its employees when the employer demonstrates to the Director that the waiver is necessary to avoid an adverse impact on the employer's need to manage its workforce. However, a Tribal employer

participating under 25 U.S.C. 1647b may provide a written notification to the Director that it has chosen not to apply paragraph (j) of this section for its workforce.

[33 FR 12510, Sept. 4, 1968]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 890.102, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 890.103 Correction of errors.

(a) The employing office may make prospective corrections of administrative errors as to enrollment at any time. The employing office may make retroactive corrections of administrative errors that occur after December 31, 1994.

(b) OPM may order correction of an administrative error upon a showing satisfactory to OPM that it would be against equity and good conscience not to do so.

(c) The employing office may make retroactive correction of enrollee enrollment code errors if the enrollee reports the error by the end of the pay period following the one in which he or she received the first written documentation (i.e. pay statement or enrollment change confirmation) indicating the error.

(d) OPM may order the termination of an enrollment in any comprehensive medical plan described in section 8903(4) of title 5, United States Code, and permit the individual to enroll in another health benefits plan for purposes of this part, upon a showing satisfactory to OPM that the furnishing of adequate medical care is jeopardized by a seriously impaired relationship between a patient and the comprehensive medical plan's affiliated health care providers.

(e) Retroactive corrections are subject to withholdings and contributions under the provisions of § 890.502.

[45 FR 23637, Apr. 8, 1980, as amended at 53 FR 2, Jan. 4, 1988; 54 FR 52336, Dec. 21, 1989; 55 FR 22891, June 5, 1990; 59 FR 66437, Dec. 27, 1994; 62 FR 38435, July 18, 1997]

§ 890.104 Initial decision and reconsideration on enrollment.

(a) *Who may file.* Except as provided under § 890.1112, an individual may request an agency or retirement system to reconsider an initial decision of its employing office denying coverage or change of enrollment.

(b) *Initial employing office decision.* An employing office's decision is considered an initial decision as used in paragraph (a) of this section when rendered by the employing office in writing and stating the right to an independent level of review (reconsideration) by the agency or retirement system. However, an initial decision rendered at the highest level of review available within OPM is not subject to reconsideration.

(c) *Reconsideration.* (1) A request for reconsideration must be made in writing, must include the claimant's name, address, date of birth, Social Security number, name of carrier, reason(s) for the request, and, if applicable, retirement claim number.

(2) The reconsideration review must be an independent review designated at or above the level at which the initial decision was rendered.

(d) *Time limit.* A request for reconsideration of an initial decision must be filed within 30 calendar days from the date of the written decision stating the right to a reconsideration. The time limit on filing may be extended when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit. An agency or retirement system decision in response to a request for reconsideration of an employing office's decision is a final decision as described in paragraph (e) of this section.

(e) *Final decision.* After reconsideration, the agency or retirement system must issue a final decision, which must be in writing and must fully set forth the findings and conclusions.

[59 FR 66437, Dec. 27, 1994]

§ 890.105 Filing claims for payment or service.

(a) *General.* (1) Each health benefits carrier resolves claims filed under the plan. All health benefits claims must be submitted initially to the carrier of the covered individual's health benefits plan. If the carrier denies a claim (or a