

## § 890.201

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issuer offering group or individual health insurance coverage, subject to 5 U.S.C. 8902(m)(1), and the provisions of the carrier’s contract. For purposes of application of such sections, all carriers are deemed to offer health benefits in the large group market.

(b) For purposes of the provisions referenced in paragraph (a) of this section:

*Group health plan or plan* shall mean a “health benefits plan” defined at 5 U.S.C. 8901(6), which is a Federal governmental plan offered pursuant to 5 U.S.C. chapter 89.

*Health insurance issuer or issuer* shall include a carrier defined at 5 U.S.C. 8901(7). Where the carrier for a health benefits plan is a voluntary association, an association of organizations or entities, or is otherwise comprised of multiple entities, each entity is responsible for compliance in the same manner as such sections apply to group health plans and issuers. If and to the extent an entity offering a health benefits plan under 5 U.S.C. chapter 89 is licensed under state law and is properly considered an issuer as defined at section 2791 of the Public Health Service Act, the entity is considered a carrier to the extent of its FEHB health benefits plan contractual and regulatory compliance.

*Participant, beneficiary, or enrollee* shall include an “enrollee” or “covered individual” as defined by 5 CFR 890.101, as appropriate.

(c) When a complaint challenges a carrier’s action or inaction with respect to the surprise billing provisions, OPM will coordinate with the Departments of Health and Human Services, Labor, and the Treasury to resolve the complaint.

(d)(1) In addition to notification to the Department per 26 CFR 54.9816–8T(b)(2)(iii), 29 CFR 2590.716–8(b)(2)(iii), and 45 CFR 149.510(b)(2)(iii), a carrier must notify the Director of its initiation of the Federal IDR process, or its receipt of written notice that a provider, facility, or provider of air ambulance services has initiated the Federal IDR process, upon sending or receiving such notice.

(2) The Director will coordinate with the Departments in resolving matters under 26 CFR 54.9816–8T(c)(4)(vii)(A)(I),

29 CFR 2590.716–8(c)(4)(vii)(A)(I), or 45 CFR 149.510(c)(4)(vii)(A)(I) where fraud or material misrepresentation are presented, and matters involving 26 CFR 54.9816–8T(c)(4)(vii)(A)(2), 29 CFR 2590.716–8(c)(4)(vii)(A)(2), and 45 CFR 149.510(c)(4)(vii)(A)(2). The Director will coordinate with the Departments in oversight of reports submitted by certified IDR entities with respect to carriers pursuant to 26 CFR 54.9816–8T(f), 29 CFR 2590.716–8(f), or 45 CFR 149.510(f).

(e) [Reserved]

(f) The Director will coordinate with the Departments in oversight of prescription drug and health care spending with respect to FEHB carriers pursuant to 45 CFR 149.710 through 149.740.

[86 FR 36947, July 13, 2021, as amended at 86 FR 56092, Oct. 7, 2021; 86 FR 66696, Nov. 23, 2021]

### Subpart B—Health Benefits Plans

#### § 890.201 Minimum standards for health benefits plans.

(a) To qualify for approval by OPM, a health benefits plan shall meet the following standards. Once approved, a health benefits plan shall continue to meet the minimum standards. Failure on the part of the carrier’s plan to meet the standards is cause for OPM’s withdrawal of approval of the plan in accordance with 5 CFR 890.204. A health benefits plan shall:

(1) Comply with chapter 89 of title 5, United States Code, and this part, as amended from time to time.

(2) Accept the enrollment, in accordance with this part, and without regard to age, race, sex, health status, or hazardous nature of employment, of each eligible employee, annuitant, former spouse, former employee, or child, except that a plan that is sponsored or underwritten by an employee organization may not accept the enrollment of a person who is not a member of the organization, but it may not limit membership in the organization on account of the prohibited factors (age, race, sex, health status, or hazardous nature of employment). The carrier may terminate the enrollment of an enrollee other than a survivor annuitant, a former spouse continuing coverage under § 890.803, or person continuing coverage under § 890.1103(a) (2) or (3), in

a health benefits plan sponsored or underwritten by an employee organization on account of termination of membership in the organization. A carrier that wants to terminate the enrollment of an enrollee under this paragraph may do so by notifying the employing office in writing, with a copy of the notice to the enrollee. The termination is effective at the end of the pay period in which the employing office receives the notice. A comprehensive medical plan need not enroll an employee, annuitant, former employee, former spouse, or child residing outside the geographic areas specified by the plan.

(3) Provide health benefits for each enrollee and covered family member wherever they may be.

(4) Provide for conversion to a contract for health benefits regularly offered by the carrier, or an appropriate affiliate, for group conversion purposes, which must be guaranteed renewable, subject to such amendments as apply to all contracts of this class, except that it may be canceled for fraud, overinsurance, or nonpayment of periodic charges. A carrier must permit conversion within the time allowed by the temporary extension of coverage provided under §890.401 for each enrollee and covered family member entitled to convert. When an employing office gives an enrollee written notice of his or her privilege of conversion, the carrier must permit conversion at any time before 31 days after the date of notice or 91 days after the enrollment is terminated, whichever is earlier. Belated conversion opportunities as provided in §890.401(c) must also be permitted by the carrier. When OPM requests an extension of time for conversion because of delayed determination of ineligibility for immediate annuity, the carrier must permit conversion until the date specified by OPM in its request for extension. On conversion, the contract becomes effective as of the day following the last day of the temporary extension, and the enrollee or covered family member, as the case may be, must pay the entire cost thereof directly to the carrier. The nongroup contract may not deny or delay any benefit covered by the contract for a person converting from a plan approved

under this part except to the extent that benefits are continued under the health benefits plan from which he or she converts.

(5) Provide that each enrollee receive an identification card or cards or other evidence of enrollment.

(6) Provide a standard rate structure that contains, for each option, one standard self only rate, one standard self plus one rate and one standard self and family rate.

(7) Maintain statistical records regarding the plan, separately from those of any other activities conducted or benefits offered by the carrier sponsoring or underwriting the plan.

(8) Provide for a special reserve for the plan. The carrier shall account for amounts retained by it as reserves for the plan separately from reserves maintained by it for other plans. The carrier shall invest the special reserve and income derived from the investment of the special reserve shall be credited to the special reserve. If the contract is terminated or approval of the plan is withdrawn, the carrier shall return the special reserve to the Employees Health Benefits Fund. However, in the case of a comprehensive medical plan, the carrier, without regard to the foregoing provisions of this paragraph, shall follow such financial procedures as are mutually agreed on by the carrier and OPM.

(9) Provide for continued enrollment to the end of the current pay period, or termination date, if earlier, of each enrollee enrolled at the effective date of termination of a contract. The carrier is entitled to subscription charges for this continued enrollment.

(10) Provide that any covered expenses incurred from January 1 to the effective date of an open season change count toward the losing carrier's prior year deductible. If the prior year deductible or family limit on deductibles of the losing carrier had previously been met, the enrolled individual (and eligible family members) shall be eligible for reimbursement by the losing carrier for covered expenses incurred during the current year. Reimbursement of covered expenses shall apply only to covered expenses incurred from January 1 to the effective date of the open season change. This section shall

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not apply to any other permissible changes made during a contract year.

(1) Except where OPM determines otherwise, have 300 or more employees and annuitants, exclusive of family members, enrolled in the plan at some time during the preceding two contract terms.

(b) To be qualified to be approved by OPM and, once approved, to continue to be approved, a health benefits plan shall not:

(1) Deny a covered person a benefit provided by the plan for a service performed on or after the effective date of coverage solely because of a pre-existing physical or mental condition.

(2) Require a waiting period for any covered person for benefits which it provides.

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

(ii) [Reserved]

(4) Have an initiation, service, enrollment, or other fee or charge in addition to the rate charged for the plan, except that a comprehensive medical plan may impose an additional charge to be paid directly by the enrollee for certain medical supplies and services, if the supplies and services on which additional charges are imposed are clearly set forth in advance and are applicable to all enrollees. This subparagraph does not apply to charges for membership in employee organizations sponsoring or underwriting plans.

(5) Paragraphs (b)(1) and (2) of this section do not preclude a plan offering benefits for dentistry or cosmetic surgery, or both, limited to conditions arising after the effective date of coverage.

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

(d) Nothing in this part shall limit or prevent a health insurance plan purchased through an appropriate SHOP as determined by the Director, pursuant to section 1312(d)(3)(D) of the Patient Protection and Affordable Care

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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), by an employee otherwise covered by 5 U.S.C. 8901(1)(B) and (C) from being considered a “health benefit plan under this chapter” for purposes of 5 U.S.C. 8905(b) and 5 U.S.C. 8906.

[33 FR 12510, Sept. 4, 1968, as amended at 43 FR 52460, Nov. 13, 1978; 47 FR 14871, Apr. 6, 1982; 49 FR 48905, Dec. 17, 1984; 52 FR 10217, Mar. 31, 1987; 54 FR 52336, Dec. 21, 1989; 55 FR 9108, Mar. 12, 1990; 55 FR 22891, June 5, 1990; 69 FR 31721, June 7, 2004; 75 FR 76616, Dec. 9, 2010; 78 FR 60656, Oct. 2, 2013; 80 FR 55734, Sept. 17, 2015; 83 FR 18401, Apr. 27, 2018]

### § 890.202 Minimum standards for health benefits carriers.

The minimum standards for health benefits carriers for the FEHB Program shall be those contained in 48 CFR subpart 1609.70.

[57 FR 14324, Apr. 20, 1992]

### § 890.203 Application for approval of, and proposal of amendments to, health benefit plans.

(a) *New plan applications.* (1) The Director of OPM shall consider applications to participate in the FEHB Program from comprehensive medical plans (CMP's) at his or her discretion. CMP's are automatically invited to submit applications annually to participate in the FEHB Program unless otherwise notified by OPM. If the Director should determine that it is not beneficial to the enrollees and the Program to consider applications for a specific contract year, OPM will publish a notice with a 60 day comment period in the FEDERAL REGISTER no less than 7 months prior to the date applications would be due for the specific contract year for which applications will not be accepted.

(2) When applications are considered, CMP's should apply for approval by writing to the Office of Personnel Management, Washington, DC 20415. Application letters must be accompanied by any descriptive material, financial data, or other documentation required by OPM. Plans must submit the letter and attachments in the OPM-specified format by January 31, or another date specified by OPM, of the year preceding