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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AG31

Federal Employees Health Benefits Program: Limitation on Physician Charges and FEHB Program Payments

AGENCY: Office of Personnel Management.

ACTION: Interim regulation with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation that amends current Federal Employee Health Benefits (FEHB) Program regulations to require that the charges and FEHB fee-for-service plans' benefit payments for certain physician services furnished to retired enrolled individuals do not exceed the limits on charges and payments established under the Medicare fee schedule for physician services. The regulation authorizes the FEHB plans, under the oversight of OPM, to notify the Secretary of Health and Human Services (HHS) of a Medicare participating hospital, physician or supplier who knowingly and willfully fails to accept, on a repeated basis, the Medicare rate as payment in full from an FEHB plan. The regulation also authorizes the FEHB plans, under the oversight of OPM, to notify the Secretary of HHS of a Medicare nonparticipating physician or supplier who knowingly and willfully charges, on a repeated basis, more than the Medicare limiting charge amount (115 percent of the Medicare Nonparticipating Physician Fee Schedule amount).

DATES: This interim regulation is effective May 18, 1995. Comments must be received on or before July 17, 1995.

ADDRESSES: Send written comments to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Robert G. Iadicicco (202) 606–0004.

SUPPLEMENTARY INFORMATION: Section 11003 of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Pub. L. 103–66, amended the FEHB law to limit the charges and FEHB fee-for-service plans' benefit payments for certain physician services (as defined in section 1848(j) of the Social Security Act) received by retired enrolled individuals.

The OBRA of 1993 provision is related to section 7002(f) of OBRA of 1990, Pub. L. 101–508. The OBRA of 1990 provision limited the charges and FEHB fee-for-service plans' benefit payments for certain inpatient hospital services received by retired enrolled individuals. OPM implemented the OBRA of 1990 provision by issuing interim and final regulations in the March 27, 1992, and July 20, 1993, issues of the **Federal Register** (57 FR 10609 and 58 FR 38661). This interim regulation amends the previous regulations.

The interim regulation expands the definition of a retired enrolled individual to include individuals who are not enrolled in Medicare part B.

The interim regulation specifies the physician services covered by the limitation on charges and benefit payments.

The interim regulation establishes how FEHB fee-for-service plans will determine benefit payments for physician services covered by the limitation. The plans will base their payment on the lower of the actual charge of the provider or the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule for Medicare participating physicians and the Medicare Nonparticipating Physician Fee Schedule for Medicare nonparticipating physicians. Retired enrolled individuals' coinsurance payments will be based on the same amount.

The interim regulation specifies the limits on what providers can collect for both inpatient hospital services and physician services.

OPM has not required fee-for-service plans with an insufficient number of affected enrollees to apply the limits on physician services. We made this determination in keeping with OBRA of 1993's primary objective of reducing expenses.

The interim regulation authorizes the FEHB plans, under the oversight of OPM, to notify the Secretary of Health and Human Services (HHS) or the Secretary's designee when a medical provider knowingly and willfully collects, on a repeated basis, more than the applicable limits for inpatient hospital services or physician services. OPM strongly encourages and supports the efforts of FEHB plans to inform retired enrolled individuals and medical providers of the limits on charges and benefit payments, monitor compliance with the limits, and, if necessary, report repeat violators to the Secretary of HHS, or the Secretary's designee.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking and making this regulation effective upon publication. The notice is being waived because the limitation on FEHB plans' benefit payments and providers' charges enacted by Pub. L. 103–66 addressed in this regulation was effective with respect to the contract year beginning on January 1, 1995.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect the health care coverage of Federal annuitants and former spouses.

E.O. 12866, Regulatory Review

This rule has been reviewed by OMB in accordance with E.O. 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

2. The heading of subpart I is revised to read as follows:

Subpart I—Limit on Inpatient Hospital Charges, Physician Charges, and FEHB Benefit Payments

3. Section 890.901 is revised to read as follows:

§ 890.901 Purpose.

This subpart identifies the individuals whose charges and FEHB benefit payments for inpatient hospital services and/or physician services may be limited and sets forth the circumstances of the limit.

4. Section 890.902 is amended by revising paragraphs (c) and (d) to read as follows:

§ 890.902 Definition.

* * * * *

(c) Is age 65 or older or becomes age 65 while receiving inpatient hospital services or physician services; and

(d) Is not covered by Medicare part A and/or part B.

5. Section 890.903 is revised to read as follows:

§ 890.903 Covered services.

(a) The limitation on the charges and FEHB benefit payments for inpatient hospital services apply to inpatient hospital services which are:

(1) Covered under both Medicare part A and the retired enrolled individual's FEHB plan; and

(2) Supplied to a retired enrolled individual who does not have Medicare part A; and

(3) Provided by hospital providers who have in force participation agreements with the Secretary of Health and Human Services (HHS) consistent with sections 1814(a) and 1866 of the Social Security Act, and receive Medicare part A payments in accordance with the diagnosis related group (DRG) based prospective payment system (PPS).

(b) The limitation on the charges and FEHB benefit payments for physician services apply to physician services, (as defined in section 1848(j) of the Social Security Act), which are:

(1) Covered under both Medicare part B and the retired enrolled individual's FEHB plan; and

(2) Supplied to a retired enrolled individual who does not have Medicare part B.

6. Section 890.904 is amended by designating the current paragraph as paragraph (a), amending newly designated paragraph (a) by adding the words ''for inpatient hospital services'' after the words ''FEHB plan's benefit payment'', and by adding paragraph (b) to read as follows:

§ 890.904 Determination of FEHB benefit payment.

* * * * *

(b) The FEHB plan's benefit payment for physician services under this subpart is determined by taking the lower of the following amounts:

(1) The amount determined by the FEHB plan, which is equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule for Medicare participating physicians and the Medicare Nonparticipating Physician Fee Schedule for Medicare nonparticipating physicians (the amount payable before the Medicare deductible and coinsurance are applied); or

(2) The actual billed charges; and

(3) Reducing the lower amount by any FEHB plan deductible, coinsurance, or copayment that is the responsibility of the retired enrolled individual.

7. Section 890.905 is revised to read as follows:

§ 890.905 Limits on inpatient hospital and physician charges.

(a) Hospitals may not collect from FEHB plans and retired enrolled individuals for inpatient hospital services more than the amount determined to be equivalent to the Medicare part A payment under the DRG-based PPS.

(b) Medicare participating providers may not collect for FEHB plans and retired enrolled individuals for physician services more than the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule.

(c) Medicare nonparticipating providers may not collect from FEHB plans and retired enrolled individuals for physician services more than the amount to be equivalent to the Medicare limiting charge amount.

8. Section 890.906 is redesignated as § 890.909 and a new § 890.906 is added to read as follows:

§ 890.906 Retired enrolled individuals coinsurance payments.

(a) A retired enrolled individual's coinsurance responsibility for inpatient hospital services is calculated in accordance with the plan's contractual benefit structure and is based on the amount determined to be equivalent to the Medicare part A payment under the DRG-based PPS.

(b) A retired enrolled individual's coinsurance responsibility for physician services is calculated in accordance with the plan's contractual benefit structure and is based on the lower of the actual charges or the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule for Medicare participating physicians and the Medicare Nonparticipating Physician Fee Schedule for Medicare nonparticipating physicians.

9. Section 890.907 is redesignated as § 890.910 and a new § 890.907 is added to read as follows:

§ 890.907 Effective dates.

(a) The limitation specified in this subpart applies to inpatient hospital admissions commencing on or after January 1, 1992.

(b) The limitation specified in this subpart applies to physician services supplied on or after January 1, 1995.

10. Section 890.908 is added to read as follows:

§ 890.908 Notification of HHS.

An FEHB plan, under the oversight of OPM, will notify the Secretary of HHS, or the Secretary's designee, if the plan finds that:

(a) A hospital knowingly and willfully collects, on a repeated basis, more than the amount determined to be equivalent to the Medicare part A payment under the DRG-based PPS.

(b) A Medicare participating physician or supplier knowingly and willfully collects, on a repeated basis, more than the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule.

(c) A Medicare nonparticipating physician or supplier knowingly and willfully charges, on a repeated basis, more than the amount determined to be equivalent to the Medicare limiting charge amount.

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