

# Rules and Regulations

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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:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is making final its interim regulation that amends current Federal Employees Health Benefits (FEHB) Program regulations. The final regulation requires 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.

**EFFECTIVE DATE:** This final regulation is effective October 28, 1996.

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

**SUPPLEMENTARY INFORMATION:** On May 18, 1995, OPM issued interim regulations in the Federal Register [60 FR 26667] that amended part 890 to implement section 11003 of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Public Law 103-66, which was enacted on August 10, 1993. Section 11003 of OBRA of 1993 amended the FEHB law at 5 U.S.C. 8904(b) 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.

We received three written comments from two FEHB fee-for-service plans and one retiree organization. One FEHB plan

wrote that the interim regulation, though generally comprehensive, did not address coverage situations in which the FEHB plan is secondary to another group health plan. Since the limits on physician charges apply only to FEHB plans, if retired enrolled individuals have primary coverage under another group health plan, the primary plan cannot limit physician charges to the applicable Medicare limits.

The plan stated that it has determined the plan's secondary benefit payment under its coordination of benefits provision will not exceed the Medicare limits on virtually all claims arising under this coverage situation. Consequently, the plan believed that it will achieve time and administrative expense savings, and avoid customer service disputes, if the Medicare limits are not applied to these claims.

OBRA of 1993 was a deficit reduction measure, and the overriding goal of its FEHB provision was to reduce the Program's costs. When FEHB plans are secondary payers, it costs them more to apply the Medicare limits than they save by applying the limits. We do not believe this is the result intended by the law. Therefore, FEHB plans are not required to apply the Medicare limits when paying the claims of retired enrolled individuals who have primary coverage under another group health plan. The plans must pay these claims under their coordination of benefits provision.

Another FEHB plan noted that section 890.808 of the interim regulation states that plans, under the oversight of OPM, will notify the Department of Health and Human Services (HHS) of health care providers who knowingly, willfully, and repeatedly violate the Medicare limits. The plan requested that OPM provide the mailing address of a contact at HHS to forward member complaints about providers who violate the Medicare limits.

We agree that it is important to have a contact at HHS to whom FEHB plans can report providers who are violating the Medicare limits. We are working with HHS to select an appropriate contact. Once an HHS contact is selected, we will notify the FEHB plans.

The retiree organization noted that the FEHB plans are crucial to the success of the enforcement of the Medicare limits. The commenter expressed concern that

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the plans do not have an adequate incentive to vigorously pursue providers who overcharge retirees. In fact, the plans have a powerful incentive to enforce the charge limits. If a plan fails to protect its members from overcharges, the members will soon consider choosing another plan that will protect them.

### 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, their spouses, 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.

U.S. Office of Personnel Management  
James B. King,  
*Director.*

Accordingly, under the authority of 5 U.S.C. 8913, OPM is adopting its interim regulation under 5 CFR part 890 as published on May 18, 1995, [60 FR 26667], as a final rule without change.

[FR Doc. 96-24831 Filed 9-26-96; 8:45 am]  
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## OFFICE OF GOVERNMENT ETHICS

### 5 CFR Part 2635

RIN 3209-AA04

#### Standards of Ethical Conduct for Employees of the Executive Branch; Exception for Gifts From a Political Organization

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Government Ethics is amending the Standards of Ethical Conduct for Employees of the Executive Branch to conform with the Hatch Act Reform Amendments of 1993.