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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AK95

Federal Employees Health Benefits Program: Discontinuance of Health Plan in an Emergency

AGENCY: Office of Personnel Management.

ACTION: Final Regulation.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to amend the Federal Employees Health Benefits (FEHB) regulations regarding discontinuance of a health plan to include situations in which a health plan becomes incapacitated, either temporarily or permanently, as the result of a disaster.

EFFECTIVE DATE: February 16, 2007.

FOR FURTHER INFORMATION CONTACT: For further information contact Edward M. DeHarde, Center for Employee and Family Support Policy, Strategic Human Resources Policy Division, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415; or call him at 202-606-0004.

SUPPLEMENTARY INFORMATION: OPM currently has regulations dealing with the discontinuance of a health plan in whole or part. The regulations apply when a plan goes out of business or withdraws from the FEHB Program. Enrollees in such plans are notified that they need to change plans. The regulations also allow the automatic transfer of the enrollment of annuitants who do not change plans.

In light of the devastation wrought by Hurricane Katrina, OPM has expanded the discontinuance of a health plan to include situations in which a plan becomes incapable of providing services, either on a permanent or temporary basis, because of a disaster.

In such a situation enrollees are now allowed to change health plans. However, depending on the nature of the disaster, it may not be possible to locate enrollees to notify them of the need to change health plans. To ensure there is no loss of coverage, any enrollee who is not able to make a change in these circumstances will be transferred automatically to the standard option of the nationwide Blue Cross and Blue Shield Service Benefit Plan. To the extent practical, OPM will work together with carriers and agencies to notify affected individual employees, and OPM will make general notification or announcement on its Web site.

Invoking the provisions of these final regulations will be at OPM's discretion. OPM will provide whatever notification is feasible, if a disaster necessitates enrollment changes under these provisions.

It should be noted that, although one of the regulatory sections being amended, § 890.301, refers to employees who do not participate in premium conversion, under the premium conversion regulations at § 892.207 these provisions would also apply to employees who do participate in premium conversion.

A proposed rule was published to amend 5 CFR part 890 in the **Federal Register** at 71 FR 11287, March 7, 2006. OPM requested comments by May 8, 2006. We received one comment by that date, from an FEHB Program carrier. The issues raised by this commenter are discussed below.

The commenter suggested the regulations are unfair to affected carriers as it could force them to incur lost revenue; the commenter indicated that the proposed regulations do not define terms such as incapacitated, discontinuance, and disaster; the commenter suggested that the regulations do not provide a clear process for OPM to make determinations, enforce rules or communicate with members and plans; and the commenter suggested that the regulations give overly broad discretion to OPM.

The intent of the regulations is that Federal employees can receive coverage for services in the event of a disaster, even if the employee's health plan is incapable of providing coverage. The regulations do not affect any health plan that could still provide benefit coverage

to affected enrollees. Loss of coverage due to the discontinuation of a health plan is a longstanding part of FEHB Program regulations. The proposed rule adds discontinuation due to disaster to the list of possible causes for the discontinuation of a health plan.

Under existing regulations, annuitants who do not change health plans when a plan is discontinued are deemed to have enrolled in the nationwide Blue Cross and Blue Shield Service Benefit Plan; however, employees who do not change health plans are deemed to have cancelled their coverage. Under the new rule, employees receive the same protection as annuitants when their health plan is discontinued due to disaster. This will ensure that no enrollee loses coverage because of a disaster. The rule requires wide latitude in its application since no one can accurately predict disaster or its aftermath. OPM is committed to protecting the health and safety of the Federal workforce. Therefore, for the reasons supplied in the proposed rule, we are adopting the proposed rule as the final rule without change.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects health benefits of Federal employees and retirees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Lists of Subjects in 5 CFR Part 890

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

U.S. Office of Personnel Management.

Linda M. Springer,
Director.

■ Accordingly, OPM is amending part 890 of title 5, Code of Federal Regulations 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; § 890.303 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c-1; subpart L also issued under sec. 599 C of Pub. L. 101-513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105-33, 111 Stat. 251; and section 721 of Pub. L. 105-261, 112 Stat. 2061 unless otherwise noted.

■ 2. In § 890.301 add new paragraph (i)(4)(iv) to read as follows:

§ 890.301 Opportunities for employees who are not participants in premium conversion to enroll or change enrollment; effective dates.

* * * * *

- (i) * * *
- (4) * * *

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, an employee must change the enrollment within 60 days of the disaster, as announced by OPM. If an employee does not change the enrollment within the time frame announced by OPM, the employee will be considered to be enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes.

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■ 3. In § 890.306 add new paragraph (1)(4)(v) to read as follows:

§ 890.306 When can annuitants or survivor annuitants change enrollment or reenroll and what are the effective dates?

* * * * *

- (1) * * *
- (4) * * *

(v) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, an annuitant must change the enrollment within 60 days of the disaster, as announced by OPM. If an annuitant does not change the enrollment within the time frame announced by OPM, the annuitant will be considered to be enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes.

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■ 4. In § 890.806 add new paragraph (j)(4)(iv) to read as follows:

§ 890.806 When can former spouses change enrollment or reenroll and what are the effective dates?

* * * * *

- (j) * * *
- (4) * * *

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, the former spouse must change the enrollment within 60 days of the disaster, as announced by OPM. If the former spouse does not change the enrollment within the time frame announced by OPM, the former spouse will be considered to be enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes.

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■ 5. In § 890.1108 add new paragraph (h)(4)(iv) to read as follows:

§ 890.1108 Opportunities to change enrollment; effective dates.

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- (h) * * *
- (4) * * *

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, the enrollee must change the enrollment within 60 days of the disaster, as announced by OPM. If the enrollee does not change the enrollment within the time frame announced by OPM, the enrollee will be considered to be enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes.

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[FR Doc. E7-533 Filed 1-16-07; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2006-0117]

Pine Shoot Beetle; Additions to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the pine shoot beetle

regulations by adding counties in Illinois, Indiana, Iowa, New Jersey, New York, and Ohio to the list of quarantined areas and by designating the States of Michigan, Minnesota, and Pennsylvania, in their entirety, as quarantined areas based on their decision not to enforce intrastate movement restrictions. The interim rule also added the States of Connecticut and Rhode Island, in their entirety, to the list of quarantined areas based on projections of the natural spread of pine shoot beetle that make it reasonable to believe that the pest is present in those States. The interim rule was necessary to prevent the spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

DATES: Effective on January 17, 2007, we are adopting as a final rule the interim rule published at 71 FR 58243-58246 on October 3, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1231; (301) 734-5705.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.50 through 301.50-10 (referred to below as the regulations) restrict the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle (PSB) into noninfested areas of the United States.

In an interim rule¹ effective and published in the **Federal Register** on October 3, 2006 (71 FR 58243-58246, Docket No. APHIS-2006-0117), we amended the regulations by adding Jo Daviess and Stark Counties, IL; Dearborn County, IN; Dubuque and Scott Counties, IA; Bergen, Hunterdon, Passaic, Sussex, and Warren Counties, NJ; Columbia, Orange, and Ulster Counties, NY; and Highland, Jackson, Ross, and Scioto Counties, OH, to the list of quarantined areas in § 301.50-3(c). In addition, we designated the States of Michigan, Minnesota, and Pennsylvania, in their entirety, as quarantined areas based on their decision not to enforce intrastate movement restrictions. Finally, we added the States of Connecticut and Rhode Island, in their entirety, to the

¹ To view the interim rule, go to <http://www.regulations.gov>, click on the "Advanced Search" tab, and select "Docket Search." In the Docket ID field, enter APHIS-2006-0117, then click "Submit." Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.