Office of Personnel Management

5 CFR Part 890
48 CFR Parts 1602, 1615, and 1652
Federal Employees Health Benefits Program; Proposed Rules
SUPPLEMENTARY INFORMATION:

For Further Information Contact:

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Supplementary Information: The U.S. Office of Personnel Management is issuing a Notice of Proposed Rulemaking to update the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). These changes would:

Define which subscriber groups may be included for consideration as similarly sized subscriber groups (SSSGs); require the SSSG to be traditional community rated; establish that traditional community-rated Federal Employees Health Benefits (FEHB) plans must select only one rather than two SSSGs; and make conforming changes to FEHB contract language to account for the new medical loss ratio (MLR) standard for most community-rated FEHB plans.

DATES: Comments are due on or before March 9, 2015.


Conforming Changes Due to MLR-Based FEHB Rate Requirements

The FEHBAR contains language required in all FEHB contracts with health insurance carriers. In the April 2, 2012 final rule, OPM did not update all of the FEHBAR contract language to account for the new FEHB-specific MLR requirement. Omitted from that regulation were some changes, described below, to 48 CFR 1602.215–70, “Rate Reduction for Defective Pricing or Defective Cost or Pricing Data,” to account for the new rules.

48 CFR 1602.215–70 describes how a contracting officer at OPM may make an offset from premiums if pricing or cost and pricing data are defective. This proposed rule adds a provision stating that such an offset can be made if a Carrier, which is not mandated by the State to use traditional community rating, has developed FEHB rates inconsistent with the FEHB-specific MLR requirement. This proposed rule also adds a provision that simple interest must be paid to the government when an MLR penalty is assessed as a result of an audit finding by the OPM Office of the Inspector General (OIG).

This is not a policy change, but a conforming change so all FEHB...
contracts account for the new FEHB-specific MLR requirement.

The April 2, 2012 final rule included two different “Certificates of accurate cost or pricing data” in 48 CFR 1615.406-2: One for SSSG pricing, and one for MLR pricing. Previously there was only one certificate for all carriers. This proposed rule changes some references from “certificate” to “certificates” to reflect this change.

Technical Corrections

This proposed rule includes two technical corrections that correct inadvertent errors from earlier amendments to chapter 16 of the FEHBAR.

In the June 2011 interim final rule, the word “issuer” was used erroneously in place of the word “carrier” in two places. Per chapter 89 title 5 U.S. Code, OPM is authorized to contract with carriers. This technical correction is made in 48 CFR 1602.170-14(a) and 1652.216-70(b)(2)(i).

This proposed rule also clarifies, in 48 CFR 1652.216-70(b), how community-rated carriers must develop their FEHB rates. Previously, this section erroneously stated that carriers should “base their rating methodology on the MLR threshold.” The corrected language states that all community-rated plans must develop the FEHB’s rates using their State-filed rating methodology or, if not required to file with the State, their standard written and established rating methodology.

Regulatory Flexibility Act

OPM certifies that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects health insurance carriers in the FEHB Program.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866. OPM has examined the impact of this proposed rule as required by Executive Order 12866 and Executive Order 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of $100 million or more in any one year. This rule is not considered a major rule because there will be no increased costs to Federal agencies, Federal Employees, or Federal retirees in their health insurance premiums.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

List of Subjects in 48 CFR Parts 1602, 1615, and 1652

Government employees, Government procurement, Health insurance, Reporting and recordkeeping requirements.


Katherine Archuleta,

Director.

For the reasons set forth in the preamble, OPM proposes to amend chapter 16 of title 48 CFR (FEHBAR) as follows:

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATION

Subchapter A—General

PART 1602—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for part 1602 continues to read as follows:


2. Revise 1602.170–13 to read as follows:

1602.170–13 Similarly sized subscriber groups.

(a) A Similarly sized subscriber group (SSSG) is a non-FEHB employer group that:

(1) As of the date specified by OPM in the rate instructions, has a subscriber enrollment closest to the FEHBP subscriber enrollment;

(2) Uses traditional community rating; and

(3) Meets the criteria specified in the rate instructions issued by OPM.

(b) Any group with which an entity enters into an agreement to provide health care services is a potential SSSG (including groups that are traditional community rated and covered by separate lines of business, government entities, groups that have multi-year contracts, and groups having point-of-service products) except as specified in paragraph (c) of this section.

(1) An entity’s subscriber groups may be included as a SSSG if the entity is any of the following:

(i) The carrier;

(ii) A division or subsidiary of the carrier;

(iii) A separate line of business or qualified separate line of business of the carrier; or

(iv) An entity that maintains a contractual arrangement with the carrier to provide healthcare benefits.

(2) A subscriber group covered by an entity meeting any of the criteria under paragraph (b)(1) of this section may be included for comparison as a SSSG if the entity meets any of the following criteria:

(i) It reports financial statements on a consolidated basis with the carrier; or

(ii) Shares, delegates, or otherwise contracts with the carrier, any portion of its workforce that involves the management, design, pricing, or marketing of the healthcare product.

(c) The following groups must be excluded from SSSG consideration:

(1) Groups the carrier rates by the method of retrospective experience rating;

(2) Groups consisting of the carrier’s own employees;

(3) Medicaid groups, Medicare-only groups, and groups that receive only excepted benefits as defined at section 9832(c) of title 26, United States Code;

(4) A purchasing alliance whose rate-setting is mandated by the State or local government;

(5) Administrative Service Organizations (ASOs);

(6) Any other group excluded from consideration as specified in the rate instructions issued by OPM.

(d) OPM shall determine the FEHBP rate by selecting the lowest rate derived by using rating methods consistent with those used to derive the SSSG rate.

(e) In the event that a State-mandated TCR carrier has no SSSG, then it will be subject to the FEHBP specific MLR requirement.

3. Revise 1602.170–14(a) to read as follows:

1602.170–14 FEHBP-specific medical loss ratio threshold calculation.

Medical Loss Ratio (MLR) means the ratio of plan incurred claims, including the carrier’s expenditures for activities that improve health care quality, to total premium revenue determined by OPM, as defined by the Department of Health and Human Services in 45 CFR part 158.

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Subchapter C—Contracting Methods and Contract Types

PART 1615—CONTRACTING BY NEGOTIATION

4. The authority citations for part 1615 continue to read as follows:


5. In 1615.402, revise paragraphs (c)(2), (c)(3)(i)(A) and (B), and (c)(4) to read as follows:

1615.402 Pricing policy.

(a) If any rate established in connection with this contract was increased because:

(1) The Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not complete, accurate, or current as certified in one of the Certificates of Accurate Cost or Pricing Data (FEHBAR 1615.406–2);

(2) The Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not accurate as represented in the rate reconciliation documents or MLR Calculation;

(3) The Carrier developed FEHBP rates for traditional community-rated plans with a rating methodology and structure inconsistent with that used to develop rates for a similarly sized subscriber group (see FEHBAR 1602.170–13) as certified in the Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers;

(4) The Carrier, who is not mandated by the State to use traditional community rating, developed FEHBP rates with a rating methodology and structure inconsistent with its State-filed rating methodology (or if not required to file with the State, their standard written and established rating methodology) or inconsistent with the FEHBP specific medical loss ratio (MLR) requirements (see FEHBAR 1602.170–13); or

(5) The Carrier submitted or, kept in its files in support of the FEHBP rate, data or information of any description that were not complete, accurate, and current—then, the rate shall be reduced in the amount by which the price was increased because of the defective data or information.

(c) When the Contracting Officer determines that the rates shall be reduced and the Government is thereby entitled to a refund or that the Government is entitled to a MLR penalty, the Carrier shall be liable to and shall pay the FEHB Fund at the time the overpayment is repaid or at the time the MLR penalty is paid—

(1) Simple interest on the amount of the overpayment from the date the overpayment was paid from the FEHB Fund to the Carrier until the date the overcharge is liquidated. In calculating the amount of interest due, the quarterly rate determinations by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods the overcharge was retained by the Carrier shall be used;

(2) A penalty equal to the amount of overpayment, if the Carrier knowingly...
submitted cost or pricing data which was incomplete, inaccurate, or noncurrent; and

(3) Simple interest on the MLR penalty from the date on which the penalty should have been paid to the FEHB Fund to the date on which the penalty was or will be actually paid to the FEHB fund. The interest rate shall be calculated as specified in paragraph (c)(1) of this clause.

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1652.216–70 Accounting and price adjustment.

(b) * * *

(2) Effective January 1, 2013 all community-rated plans must develop the FEHBP’s rates using their State-filed rating methodology or, if not required to file with the State, their standard written and established rating methodology. A carrier who mandated by the State to use traditional community rating will be subject to paragraph (b)(2)(ii) of this clause. All other carriers will be subject to paragraph (b)(2)(i) of this clause.

(i) The subscription rates agreed to in this contract shall meet the FEHBP-specific MLR threshold as defined in FEHBA 162.170–14. The ratio of a plan’s incurred claims, including the carrier’s expenditures for activities that improve health care quality, to total premium revenue shall not be lower than the FEHBP-specific MLR threshold published annually by OPM in its rate instructions.

(ii) The subscription rates agreed to in this contract shall be equivalent to the subscription rates given to the carrier’s similarly sized subscriber group (SSSG) as defined in FEHBAR 1602.170–13. The subscription rates shall be determined according to the carrier’s established policy, which must be applied consistently to the FEHBP and to the carrier’s SSSG. If the SSSG receives a rate lower than that determined according to the carrier’s established policy, it is considered a discount. The FEHBP must receive a discount equal to or greater than the carrier’s SSSG discount.

(3) If subject to paragraph (b)(2)(i) of this clause, then:

(i) If, at the time of the rate reconciliation, the subscription rates are found to be higher than the equivalent rates for the SSSG, the carrier shall reimburse the Fund, for example, by reducing the FEHB rates for the next contract term to reflect the difference between the estimated rates and the rates which are derived using the methodology of the SSSG, except as noted in paragraph (b)(3)(ii) of this clause.

(ii) If, at the time of the rate reconciliation, the subscription rates are found to be higher than the equivalent rates for the SSSG, the carrier shall reimburse the Fund, for example, by reducing the FEHB rates for the next contract term to reflect the difference between the estimated rates and the rates which are derived using the methodology of the SSSG, except as noted in paragraph (b)(3)(ii) of this clause.

(iii) Carriers may provide additional guaranteed discounts to the FEHBP that are not given to the SSSG. Any such guaranteed discounts must be clearly identified as guaranteed discounts. After the beginning of the contract year for which the rates are set, these guaranteed FEHBP discounts may not be adjusted.

(7) Carriers may provide additional guaranteed discounts to the FEHBP. Any such guaranteed discounts must be clearly identified as guaranteed discounts. After the beginning of the contract year for which the rates are set, these guaranteed FEHBP discounts may not be adjusted.

(8) Carriers may not impose surcharges (loadings not defined based on an established rating method) on the FEHBP subscription rates or use surcharges in the rate reconciliation process. If the carrier is subject to the SSSG rules and imposes a surcharge on the SSSG, the carrier cannot impose the surcharge on FEHB.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AN07

Federal Employees Health Benefits Program: Enrollment Options Following the Termination of a Plan or Plan Option

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a proposed rule amending the Federal Employees Health Benefits (FEHB) Program regulations regarding enrollment options following the termination of a plan or plan option.

DATES: OPM must receive comments on or before March 9, 2015.


FOR FURTHER INFORMATION CONTACT: Chelsea Ruediger at (202) 606–0004.

SUPPLEMENTARY INFORMATION: When a plan or plan option in the Federal Employees Health Benefits (FEHB) Program terminates, OPM provides the enrollees of that plan or plan option a time period in which they may elect to enroll in a new plan or plan option. This proposed rule clarifies the actions that OPM and employing agencies may take when an enrollee fails to make an enrollment election during the time period provided.

Current regulation ends an employee’s enrollment in the FEHB Program if he or she fails to make an enrollment election during the time period provided by OPM following a plan termination. This proposed regulation amends 5 CFR 890.301 to require the employing office to enroll automatically these employees into the lowest-cost nationwide plan option based on the enrollee share of the cost of a self only enrollment. Under the proposed regulation, a plan will not be considered the lowest-cost nationwide plan option if it is a High Deductible Health Plan (HDHP) or if it requires a membership fee or an association fee.

For annuitants, current regulation provides that individuals who fail to make an enrollment election during the time period provided by OPM following a plan termination shall be considered to be enrolled in the option of the Blue Cross and Blue Shield Service Benefit Plan that OPM determines most closely approximates the terminated plan. The proposed regulation amends 5 CFR 890.306 to provide that these annuitants will be enrolled into the lowest-cost nationwide plan option that is available to the individual based on the same criteria listed above.

Current regulation provides that when a plan discontinuation occurs due to a disaster, employees and annuitants who fail to make an enrollment election within 60 days of the disaster, as announced by OPM, shall be considered to be enrolled in the Standard Option of the Blue Cross and Blue Shield Service Benefit Plan. The proposed rule amends the regulation to provide that these individuals will be enrolled into the lowest-cost nationwide plan option that is available to the individual based on the same criteria listed above. It also provides belated enrollment authority for individuals who, for causes beyond