OFFICE OF PERSONNEL
MANAGEMENT
RIN 3206–AN13

48 CFR Parts 1609, 1615, 1632, and
1652

Federal Employees Health Benefits
Program: FEHB Plan Performance
Assessment System

AGENCY: Office of Personnel
Management.

ACTION: Final rule.

SUMMARY: The United States Office of
Personnel Management (OPM) is issuing
a final rule to amend the system for
assessing the annual performance of
health plans contracted under the
Federal Employees Health Benefits
(FEHB) Program. The purpose of this
rule is to measure and assess FEHB plan
performance (both experience-rated and
community-rated plans) through the use
of a common, objective, and quantifiable
performance assessment.

DATES: This final rule is effective July
30, 2015.

FOR FURTHER INFORMATION CONTACT:
Wenqiong Fu, Policy Analyst at (202)
606–0004.

SUPPLEMENTARY INFORMATION: The
Federal Employees Health Benefits
(FEHB) Program was established in 1960
and provides health insurance to over
eight million Federal employees,
annuities, and their family members.
Chapter 89 of Title 5 United States
Code, which authorizes the FEHB
Program, allows OPM to contract with
health insurance carriers to provide
coverage under certain types of plans.
FEHB contracts are either community-
rated or experience-rated. In
community-rated contracts, the overall
premium is based on the carrier’s
standard rating methodology, taking
into account factors in the larger
graphic area or “community.” In
experience-rated contracts, the FEHB
carrier considers actual “experience” or
medical costs of the group of covered
lives. The two types of contracts are
regulated under different sections of the
FEHB Acquisition Regulation
(FEHBAR). Premiums are determined
according to distinct processes and plan
performance is evaluated differently.

On December 15, 2014, the Office of
Personnel Management (OPM)
published a proposed rule inviting
comments on amendments to the FEHB
Program regulations to amend OPM’s
assessment of plan performance. The
30-day comment period ended on
January 14, 2015. OPM received 8
responses containing multiple
comments. The comments are
summarized and discussed below.

Responses to Comments on the
Proposed Rule

OPM received several comments
requesting additional information on
measurement criteria such as specific
weighted measurement percentages,
evaluation methods, measurement
criteria, and measurement timelines,
and requested opportunities to comment
on these criteria. Commenters requested
that OPM clarify the specific weights
and measures within the regulation so
they can better plan for the assessment
period, and to more clearly adhere to
the traditional regulatory structure for a
weighted guidelines structured
approach. Due to the evolving nature of
clinical quality measures, and OPM’s
need to focus performance on policy-
driven measures to be determined
annually, it is no longer appropriate to
retain fixed weights and measures in
regulation. As stated in the proposed
rule-making, OPM intends to retain the
weighted guidelines structured
approach as a regulatory framework and
to provide applicable measurement
criteria through advance carrier letter
guidance with opportunity for
comment, followed by incorporation of
the measurement criteria as a contract
amendment. Since 2014, OPM has
issued three carrier letters (CL 2014–19,
Letter 2015–10 specifically addresses
the types of questions about
measurement criteria addressed in the
comments. OPM intends to provide
carriers with transparency which will
allow the new performance assessment
system to retain flexibility and to
mature over time. A number of
commenters requested reasonable lead
time and turnaround times after release
of measures and assigned weights that
will be the subject of performance and
performance assessments. OPM intends
to keep plans informed in a timely
manner as we identify measurement
criteria for future years so plans can
have sufficient time to prepare for
performance that will be evaluated in
the following assessment cycle. We also
highly encourage feedback and
communication through our mailbox at
fehbarperformance@opm.gov. For these
reasons, OPM is not amending the rule
in response to these comments.

One commenter recommended that
OPM seek to improve health care
city by offering enrollees access to
high quality, accreditation health care
networks and prescription benefit
managers. Another commenter
recommended that OPM add plan
accreditation as an element to the
clinical quality, customer service, and
resource use factors. OPM addressed
plan accreditation in Carrier Letter
(2014–10). The vast majority of FEHB
health plans already meet OPM’s
accreditation requirement. However, not
all health plan accreditors incorporate
annual measurement of clinical quality,
customer service, or resource use into
their accreditation framework. OPM’s
plan performance assessment system
standardizes this component of
performance measurement for all FEHB
plans. Contract Officers may also take
plan performance on accreditation
milestones into account in the Contract
Oversight section. For these reasons,
OPM is not amending the rule in
response to this comment.

One commenter requested OPM
consider waiving the performance
adjustment if a plan exceeds a Medical
Loss Ratio threshold. OPM is not
amending the rule in response to this
comment. We believe it would not be
appropriate for OPM to waive the
performance expectations for those
carriers that do not achieve their margin
targets due to higher than expected
claim loss. While we understand the
performance adjustment is a concern,
using it to cover the excess of the
Medical Loss Ratio threshold is not the
intent of the proposed assessment
system.

OPM received a comment
recommendation that experience rated
carriers have the option for a cost plus
incentive or fee contract. OPM is not
amending the rule in response to this
comment. OPM is not proposing to
amend the types of contracts with
which it contracts. For experience rated
 carriers, this rulemaking simply amends
the performance assessment system
used to determine the service charge.

One commenter recommended that
the performance assessment system
should provide rewards and resources
to allow plans to improve. Another
commenter noted its understanding that
OPM was comparing the quality
indicators it proposes to incorporate
into its performance assessment system
with quality indicators relied upon by
other large purchasers to influence
payments to plans, and therefore
recommended that OPM consider a
different performance approach similar
to that of Medicare Advantage plans
quality rating programs. OPM did not
propose to adopt the same mechanism
that others use for influencing payments
to plans, and declines to adopt these
recommendations.

One commenter recommended
safeguards for FEHB experience rated
contracts that allow them a minimum
service charge payment of a negotiated
percentage of the prior year’s service charge, with the option to reset the minimum payment every 3 years with reference to a percentage of the average service charge paid over the prior three years. OPM is not amending the rule in response to this comment. As described in the proposed rule, we believe making adjustments to the service charge based on plan performance in the areas identified to be measured is critical in allowing the assessment system to grow, evolve, and remain flexible. However, in Carrier Letter 2015–10, we have addressed a minimum adjustment methodology for carriers that achieve a performance score that is below a threshold.

Several commenters requested additional information on Contract Oversight with concerns about specific components within this performance area and the objectivity of assessment in this performance area compared to the other three quantified performance areas. OPM has issued guidance on this issue in our Carrier Letters (2014–28) and (2015–10). Carrier Letter 2015–10 specifically addresses Contract Oversight measurement. As described in the proposed rule, OPM’s purpose is to establish a program-wide assessment system that allows performance-based criteria to be linked to health plan premium disbursements. OPM will assess performance for the Contract Oversight performance area using many sources of information, most of which are used with discretion in the current processes for the service charge and incentive performance criteria. For these reasons, OPM is not amending the rule in response to these comments.

OPM received several comments that the proposed rule omitted group size as an element. The prior group size element under Contract cost risk (1615.404–70(a)(2)) was omitted because OPM is replacing the current profit analysis factors with a new framework. However, OPM has allowed a minimum adjustment methodology for carriers that achieve a performance score that is below a threshold. The methodology is designed based on group size and is described in detail in Carrier Letter (2015–10).

One commenter requested OPM provide quarterly performance reports in order to inform carriers and allow them to make corrections or improvements to ensure better performance each year. OPM plans to use an annual evaluation cycle since many measures are collected annually, and not quarterly. Three of the new performance areas—Clinical Quality, Customer Service, and Resource Use—are based on measures contained in annual evaluation systems. OPM is committed to transparency with regard to the performance assessment system and has plans to make available a dashboard that carriers may use to view their individual performance ratings and overall scores. For these reasons, OPM declines to accept this comment.

We received one comment regarding the use of HEDIS and CAHPS measures to measure performance. The commenter stated that the health carrier does not have direct control to influence the decisions of the patient and their family or their health care providers, and recommended attributing modest weight to these measures. This commenter further asserted that CAHPS is an experience survey which measures perception rather than satisfaction, that HEDIS and CAHPS reflect successful data collection efforts and not necessarily quality improvement, and that CAHPS recently stopped its survey of members for whom Medicare is primary, which will negatively impact FEHB results. Other commenters recommended the use of other measurement tools and voiced their concerns that HEDIS and CAHPS measure the carrier’s entire book of commercial business and not just the FEHB program. OPM is not amending the proposed rule in response to these comments. OPM’s intention with the proposed performance assessment system is to build on already established requirements for FEHB Carriers to report evaluations by HEDIS and CAHPS. The goal of the new performance assessment system is to build on the quality initiatives OPM has implemented in recent years, such as public reporting of HEDIS scores.

We want to incentivize carriers who achieve high performance in areas such as clinical quality, customer service and resource use. While HEDIS and CAHPS measure the carrier’s entire book of business, and may be imperfect measures of customer satisfaction, they are well recognized national measurement systems in the health insurance arena. Our goal is to ensure that FEHB enrollees receive the highest quality services, and we believe the data from HEDIS and CAHPS best serves the purpose of recognizing good health plan performance. In addition, our methodologies for specific measures have been purposefully selected to prioritize those that are most actionable at the health plan level. Therefore, for the initial Performance Assessment year, we believe that using HEDIS and CAHPS reports as our evaluation best reflects our goals of evaluating plan performance against national commercial benchmarks. We welcome feedback and suggestions from carriers on other externally validated measures for consideration in future years.

We received one comment that the proposed change to 1652.232–71 was a drafting error and should be withdrawn. OPM agrees this is a drafting error and withdraws the proposed language. OPM is not changing the current procedure that allows an experience-rated plan to draw down the service charge from the Contingency Reserve through its Letter of Credit Account. We are simply changing the calculation of that service charge based on the plan’s performance assessment.

One individual recommended that the new assessment system include a measure that requires FEHB to provide services comparable to those available under Medicare. This rule-making is intended to address plan performance, not the types of services available under health plans. All FEHB plans provide essential health benefits identified by the Affordable Care Act. Therefore, OPM is not amending the proposed rule in response to this comment.

**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 affects only health insurance carriers under the Federal Employees Health Benefits Program.

**Executive Orders 13563 and 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Orders 13563 and 12866.

**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 1609, 1615, 1632 and 1652**

Government employees, Government procurement, Health insurance. 

**Katherine Archuleta,**

Director.

For the reasons set forth in the preamble, OPM amends chapter 16 of title 48 CFR (FEHBAR) as follows:
PART 1609—CONTRACTOR QUALIFICATIONS

1. The authority citation for part 1609 continues to read as follows:
   * * *
   * * *

Subpart 1609.71—[Removed]

2. Remove subpart 1609.71.

PART 1615—CONTRACTING BY NEGOTIATION

3. The authority citation for part 1615 continues to read as follows:
   * * *
   * * *

4. In section 1615.404–4, paragraph (a) is revised to read as follows:
   1615.404–4 Profit.
   (a) When the pricing of FEHB Program contracts is determined by cost analysis (experience-rated) or by a combination of cost and price analysis (community rated), OPM will determine a performance based percentage of the price using a weighted guidelines structured approach based on the profit analysis factors described in 1615.404–70. For experience-rated plans, OPM will use the performance based percentage so determined to develop the profit or fee renegotiation objective, which will be the total profit (service charge) negotiated for the contract. For community-rated plans, OPM will use the performance based percentage so determined to develop an adjustment to net-to-carrier premiums, (performance adjustment) to be made during the first quarter of the following contract period.

5. Section 1615.404–70 is revised to read as follows:
   1615.404–70 Profit analysis factors.
   (a) OPM Contracting Officers will apply a weighted guidelines method in developing the performance based percentage for FEHB Program contracts. For experience-rated plans, the performance based percentage will be applied to projected incurred claims and allowable administrative expenses. For community-rated plans, the performance based percentage will be applied to subscription income and will be used to calculate a performance adjustment to net-to-carrier premiums, as described at 48 CFR 1632.170(a)(2), to be made during the first quarter of the following contract period. In the context of the factors outlined in FAR 15.404–4(d), OPM will assess performance of FEHB carriers according to four factors.
   (1) Clinical quality. OPM will consider elements within such domains as preventive care, chronic disease management, medication use, and behavioral health. This factor incorporates elements from the FAR factor “contractor effort.”
   (2) Customer service. OPM will consider elements within such domains as communication, access, claims, and member experience/engagement. This factor incorporates elements of the FAR factor “contractor effort.”
   (3) Resource use. OPM will consider elements within such domains as utilization management, administrative, and cost trends. This factor incorporates elements of the FAR factors “contractor effort,” “contract cost risk,” and “cost control and other past accomplishments.”
   (4) Contract oversight. OPM will consider an assessment of contract performance in specific areas such as audit findings, fraud/waste/abuse, and responsiveness to OPM, benefits/ network management, contract compliance, technology management, data security, and Federal socioeconomic programs. This factor could incorporate any of the FAR profit analysis factors listed at 15.404–4(d)(1)(i)–(vi).
   (b) The sum of the maximum scores for the profit analysis factors will be 1 percent.

PART 1632—CONTRACT FINANCING

6. The authority citation for part 1632 continues to read as follows:
   * * *
   * * *

7. In section 1632.170, paragraph (a)(2) is revised to read as follows:
   1632.170 Recurring premium payments to carriers.
   (a) * * *
   (2) The difference between one percent and the performance based percentage of the contract price described at 1615.404–4 will be multiplied by the carrier’s subscription income for the year of performance and the resulting amount (performance adjustment) will be withheld from the net-to-carrier premium disbursement during the first quarter of the following contract period unless an alternative payment arrangement is made with the carrier’s Contracting Officer. Amounts withheld from a community rated plan’s premium disbursement will be deposited into the plan’s Contingency Reserve.
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PART 1652—CONTRACT CLAUSES

8. The authority citation for part 1652 continues to read as follows:
   * * *
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9. In section 1652.232–70, revise the introductory text and paragraph (a) and remove paragraph (f). The revisions read as follows:
   1652.232–70 Payments—Community-rated contracts.
   As prescribed in 1632.171, the following clause shall be inserted in all community-rated FEHBP contracts:
   * * *

1652.232–71 [Amended]

10. In section 1652.232–71, remove paragraph (f).

BILLING CODE 6325–63–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0907271173–0629–03]

RIN 0648–XE003

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2015 Commercial Accountability Measure and Closure for South Atlantic Snowy Grouper

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for commercial snowy grouper in the exclusive economic zone (EEZ) of the South Atlantic. NMFS projects...