

Pub. L. 95-454, §906(c)(2)(F), (G), substituted “3401” for “3391” in par. (3).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

CHAPTER 89—HEALTH INSURANCE

Sec.	
8901.	Definitions.
8902.	Contracting authority.
8902a.	Debarment and other sanctions.
8903.	Health benefits plans.
8903a.	Additional health benefits plans.
8903b.	Authority to readmit an employee organization plan.
8904.	Types of benefits.
8905.	Election of coverage.
8905a.	Continued coverage.
8906.	Contributions.
8906a.	Temporary employees.
8907.	Information to individuals eligible to enroll.
8908.	Coverage of restored employees and survivor or disability annuitants.
8909.	Employees Health Benefits Fund.
8909a.	Postal Service Retiree Health Benefits Fund. ¹
8910.	Studies, reports, and audits.
8911.	Advisory committee.
8912.	Jurisdiction of courts.
8913.	Regulations.
8914.	Effect of other statutes.

AMENDMENTS

2006—Pub. L. 109-435, title VIII, §803(a)(2), Dec. 20, 2006, 120 Stat. 3252, added item 8909a.

1998—Pub. L. 105-266, §6(a)(2), Oct. 19, 1998, 112 Stat. 2369, added item 8903b.

1988—Pub. L. 100-654, title I, §101(b), title II, §201(a)(2), title III, §301(b), Nov. 14, 1988, 102 Stat. 3841, 3845, 3846, added items 8902a, 8905a, and 8906a.

Pub. L. 100-238, title I, §108(a)(3)(B), Jan. 8, 1988, 101 Stat. 1748, added item 8914.

1985—Pub. L. 99-53, §§1(b)(2), 3(a)(2)(B), June 17, 1985, 99 Stat. 94, 95, added item 8903a and inserted “or disability” after “and survivor” in item 8908.

1984—Pub. L. 98-615, §3(8), Nov. 8, 1984, 98 Stat. 3204, substituted “Information to individuals eligible to enroll” for “Information to employees” in item 8907.

1976—Pub. L. 94-342, §1(b), July 6, 1976, 90 Stat. 808, substituted “employees and survivor annuitants” for “employee” in item 8908.

§ 8901. Definitions

For the purpose of this chapter—

(1) “employee” means—

(A) an employee as defined by section 2105 of this title;

(B) a Member of Congress as defined by section 2106 of this title;

(C) a Congressional employee as defined by section 2107 of this title;

(D) the President;

(E) an individual first employed by the government of the District of Columbia before October 1, 1987;

(F) an individual employed by Gallaudet College;¹

(G) an individual employed by a county committee established under section 590h(b) of title 16;

(H) an individual appointed to a position on the office staff of a former President

under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);

(I) an individual appointed to a position on the office staff of a former President, or a former Vice President under section 4 of the Presidential Transition Act of 1963, as amended (78 Stat. 153), who immediately before the date of such appointment was an employee as defined under any other subparagraph of this paragraph; and

(J) an individual who is employed by the Roosevelt Campobello International Park Commission and is a citizen of the United States,

but does not include—

(i) an employee of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;

(ii) an individual who is not a citizen or national of the United States and whose permanent duty station is outside the United States, unless the individual was an employee for the purpose of this chapter on September 30, 1979, by reason of service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area which was then known as the Canal Zone;

(iii) an employee of the Tennessee Valley Authority; or

(iv) an employee excluded by regulation of the Office of Personnel Management under section 8913(b) of this title;

(2) “Government” means the Government of the United States and the government of the District of Columbia;

(3) “annuitant” means—

(A) an employee who retires—

(i) on an immediate annuity under subchapter III of chapter 83 of this title, or another retirement system for employees of the Government, after 5 or more years of service;

(ii) under section 8412 or 8414 of this title;

(iii) for disability under subchapter III of chapter 83 of this title, chapter 84 of this title, or another retirement system for employees of the Government; or

(iv) on an immediate annuity under a retirement system established for employees described in section 2105(c), in the case of an individual who elected under section 8347(q)(2) or 8461(n)(2) to remain subject to such a system;

(B) a member of a family who receives an immediate annuity as the survivor of an employee (including a family member entitled to an amount under section 8442(b)(1)(A), whether or not such family member is entitled to an annuity under section 8442(b)(1)(B)) or of a retired employee described by subparagraph (A) of this paragraph;

(C) an employee who receives monthly compensation under subchapter I of chapter 81 of this title and who is determined by the Secretary of Labor to be unable to return to duty; and

¹ So in original. Does not conform to section catchline.

¹ See Change of Name note below.

(D) a member of a family who receives monthly compensation under subchapter I of chapter 81 of this title as the surviving beneficiary of—

(i) an employee who dies as a result of injury or illness compensable under that subchapter; or

(ii) a former employee who is separated after having completed 5 or more years of service and who dies while receiving monthly compensation under that subchapter and who has been held by the Secretary to have been unable to return to duty;

(4) “service”, as used by paragraph (3) of this section, means service which is creditable under subchapter III of chapter 83 or chapter 84 of this title;

(5) “member of family” means the spouse of an employee or annuitant and an unmarried dependent child under 22 years of age, including—

(A) an adopted child or recognized natural child; and

(B) a stepchild or foster child but only if the child lives with the employee or annuitant in a regular parent-child relationship;

or such an unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability which existed before age 22;

(6) “health benefits plan” means a group insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangement provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for health services;

(7) “carrier” means a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee organization and an association of organizations or other entities described in this paragraph sponsoring a health benefits plan;

(8) “employee organization” means—

(A) an association or other organization of employees which is national in scope, or in which membership is open to all employees of a Government agency who are eligible to enroll in a health benefits plan under this chapter and which, after December 31, 1978, and before January 1, 1980, applied to the Office for approval of a plan provided under section 8903(3) of this title; and

(B) an association or other organization which is national in scope, in which membership is open only to employees, annuitants, or former spouses, or any combination thereof, and which, during the 90-day period beginning on the date of enactment of section 8903a of this title, applied to the Of-

fice for approval of a plan provided under such section;

(9) “dependent”, in the case of any child, means that the employee or annuitant involved is either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office shall prescribe;

(10) “former spouse” means a former spouse of an employee, former employee, or annuitant—

(A) who has not remarried before age 55 after the marriage to the employee, former employee, or annuitant was dissolved,

(B) who was enrolled in an approved health benefits plan under this chapter as a family member at any time during the 18-month period before the date of the dissolution of the marriage to the employee, former employee, or annuitant, and

(C)(i) who is receiving any portion of an annuity under section 8345(j) or 8467 of this title or a survivor annuity under section 8341(h) or 8445 of this title (or benefits similar to either of the aforementioned annuity benefits under a retirement system for Government employees other than the Civil Service Retirement System or the Federal Employees’ Retirement System),

(ii) as to whom a court order or decree referred to in section 8341(h), 8345(j), 8445, or 8467 of this title (or similar provision of law under any such retirement system other than the Civil Service Retirement System or the Federal Employees’ Retirement System) has been issued, or for whom an election has been made under section 8339(j)(3) or 8417(b) of this title (or similar provision of law), or

(iii) who is otherwise entitled to an annuity or any portion of an annuity as a former spouse under a retirement system for Government employees,

except that such term shall not include any such unremarried former spouse of a former employee whose marriage was dissolved after the former employee’s separation from the service (other than by retirement); and

(11) “qualified clinical social worker” means an individual—

(A) who is licensed or certified as a clinical social worker by the State in which such individual practices; or

(B) who, if such State does not provide for the licensing or certification of clinical social workers—

(i) is certified by a national professional organization offering certification of clinical social workers; or

(ii) meets equivalent requirements (as prescribed by the Office).

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 600; Pub. L. 90-83, §1(95), Sept. 11, 1967, 81 Stat. 219; Pub. L. 91-418, §§2, 3(b), Sept. 25, 1970, 84 Stat. 869; Pub. L. 93-160, §1(b), Nov. 27, 1973, 87 Stat. 635; Pub. L. 95-368, §2, Sept. 17, 1978, 92 Stat. 606; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-583, §2, Nov. 2, 1978, 92 Stat. 2482; Pub. L. 96-54, §2(a)(52), Aug. 14, 1979, 93 Stat. 384; Pub. L. 96-70, title I, §1209(c), Sept. 27, 1979, 93 Stat. 463; Pub. L. 96-179, §2, Jan. 2, 1980,

93 Stat. 1299; Pub. L. 98-615, §3(1), Nov. 8, 1984, 98 Stat. 3202; Pub. L. 99-53, §1(a), June 17, 1985, 99 Stat. 93; Pub. L. 99-251, title I, §105(a), Feb. 27, 1986, 100 Stat. 15; Pub. L. 99-335, title II, §207(l), June 6, 1986, 100 Stat. 598; Pub. L. 99-556, title V, §503, Oct. 27, 1986, 100 Stat. 3141; Pub. L. 100-679, §13(c), Nov. 17, 1988, 102 Stat. 4071; Pub. L. 101-508, title VII, §7202(l), Nov. 5, 1990, 104 Stat. 1388-339; Pub. L. 102-378, §2(75), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 105-266, §3(a), Oct. 19, 1998, 112 Stat. 2366; Pub. L. 110-74, §1, Aug. 9, 2007, 121 Stat. 723.)

HISTORICAL AND REVISION NOTES 1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3001.	Sept. 28, 1959, Pub. L. 86-382, §2, 73 Stat. 709. July 8, 1963, Pub. L. 88-59, §1, 77 Stat. 76. Mar. 17, 1964, Pub. L. 88-284, §1(1)-(4), 78 Stat. 164. Aug. 31, 1964, Pub. L. 88-531, §1, 78 Stat. 737.
.....	5 U.S.C. 3002(f) (1st sentence, less words between 1st and 2d commas).	July 1, 1960, Pub. L. 86-568, §115(d) "(f) (1st sentence, less words between 1st and 2d commas)", 74 Stat. 303.

The definition of "employee" in section 2105 of this title is broad enough to cover the officers and employees covered by former section 3001 with the exception of a Member of Congress, the President, an individual employed by the government of the District of Columbia, an individual employed by Gallaudet College, a United States commissioner, and an Official Reporter of Debates of the Senate and an individual employed by him. The first five have been added in paragraphs (1)(B), (D), (E), (F), and (G). The latter are covered by the definition of "Congressional employee" in section 2107 of this title and are included by the addition of a Congressional employee in paragraph (1)(C).

In paragraph (1)(ii), the words "the United States" are substituted for "a State of the United States or the District of Columbia".

Paragraph (1)(iv) is added for clarity.

In paragraph (8), the words "before January 1, 1964" are substituted for "on or before December 31, 1963".

The definition of "Commission" in former section 3001(h) is omitted as unnecessary as the full title "Civil Service Commission" is set forth the first time it is used in a section.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8901(5)	5 App.: 3001(d).	July 18, 1966, Pub. L. 89-504, §601, 80 Stat. 303.

REFERENCES IN TEXT

Section 1(b) of the Act of August 25, 1958 (72 Stat. 838), referred to in par. (1)(H), is section 1(b) of Pub. L. 85-745 which is set out as a note under section 102 of Title 3, The President.

Section 4 of the Presidential Transition Act of 1963, referred to in par. (1)(I), is section 4 of Pub. L. 88-277, which is set out as a note under section 102 of Title 3.

The date of enactment of section 8903a of this title, referred to in par. (8)(B), means the date of enactment of Pub. L. 99-53, which enacted section 8903a and which was approved June 17, 1985.

AMENDMENTS

2007—Par. (1)(J). Pub. L. 110-74 added subpar. (J).

1998—Par. (7). Pub. L. 105-266 substituted "organization and an association of organizations or other entities described in this paragraph sponsoring a health benefits plan;" for "organization;".

1992—Par. (3)(A)(iv). Pub. L. 102-378, §2(75)(A), substituted "8347(q)(2)" for "8347(p)(2)".

Par. (10)(C)(ii). Pub. L. 102-378, §2(75)(B), inserted comma after "8341(h)".

1990—Par. (3)(A)(iv). Pub. L. 101-508 added cl. (iv).

1988—Par. (1)(H), (I). Pub. L. 100-679 added subpars. (H) and (I).

1986—Par. (1)(E). Pub. L. 99-335, §207(l)(1), amended subpar. (E) generally, substituting "first employed" for "employed" and inserting "before October 1, 1987".

Par. (3)(A). Pub. L. 99-335, §207(l)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "an employee who retires on an immediate annuity under subchapter III of chapter 83 of this title or another retirement system for employees of the Government, after 5 or more years of service or for disability".

Par. (3)(B). Pub. L. 99-556 inserted "(including a family member entitled to an amount under section 8442(b)(1)(A), whether or not such family member is entitled to an annuity under section 8442(b)(1)(B))".

Par. (4). Pub. L. 99-335, §207(l)(3), inserted "or chapter 84".

Par. (10)(C)(i). Pub. L. 99-335, §207(l)(4), inserted "or 8467", "or 8445", and "or the Federal Employees' Retirement System".

Par. (10)(C)(ii). Pub. L. 99-335, §207(l)(5), substituted "8345(j), 8445, or 8467" for "or 8345(j)" and inserted "or the Federal Employees' Retirement System" and "or 8417(b)".

Par. (11). Pub. L. 99-251 added par. (11).

1985—Par. (8). Pub. L. 99-53 amended par. (8) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

1984—Par. (10). Pub. L. 98-615 added par. (10).

1980—Par. (5). Pub. L. 96-179, §2(1), inserted "dependent" after "unmarried" in provisions preceding subpar. (A) and in provisions following subpar. (B), inserted "or recognized natural child" after "child" in subpar. (A), and substituted "or foster child but only if the child;" for "foster child, or recognized natural child who" in subpar. (B).

Par. (9). Pub. L. 96-179, §2(2)-(4), added par. (9).

1979—Par. (1). Pub. L. 96-70 in cl. (ii) substituted provisions relating to an individual who was an employee for the purpose of this chapter on Sept. 30, 1979, by reason of service in an Executive agency, United States Postal Service, or Smithsonian Institution in area which was then known as Canal Zone for provisions relating to Panama Canal Zone.

Pub. L. 96-54 struck out cl. (G) which related to coverage of a United States Commissioner as an "employee", and redesignated cl. (H) as (G).

1978—Par. (1)(iv). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

Par. (3)(A). Pub. L. 95-583 reduced period of service to 5 from 12 years.

Par. (8). Pub. L. 95-454 substituted "Office" for "Commission".

Pub. L. 95-368 substituted "after December 31, 1978, and before January 1, 1980" for "before January 1, 1964".

1973—Par. (1)(ii). Pub. L. 93-160 excluded from definition of "employee" persons who are not nationals of United States and whose permanent duty station is outside United States and Panama Canal Zone.

1970—Par. (1)(ii). Pub. L. 91-418, §3(b), excluded from definition of "employee" a noncitizen employee whose permanent duty station is outside Panama Canal Zone.

Par. (3)(B). Pub. L. 91-418, §2(a), redefined "annuitant" to be a member of a family who receives an immediate annuity as the survivor of an employee rather

than as the survivor of an employee who dies after completing 5 or more years of service.

Par. (3)(D)(i). Pub. L. 91-418, §2(b), redefined “annuitant” to be a member of a family who receives monthly compensation as the surviving beneficiary of an employee who dies as a result of a compensable injury or illness rather than as the survivor of an employee who, having completed 5 or more years of service, so dies.

CHANGE OF NAME

Gallaudet College, referred to in par. (1)(F), was redesignated Gallaudet University by section 101(a) of Pub. L. 99-371, which is classified to section 4301(a) of Title 20, Education.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 2(75)(A) of Pub. L. 102-378 effective Nov. 5, 1990, and amendment by section 2(75)(B) of Pub. L. 102-378 effective Oct. 2, 1992, see section 9(a), (b)(6) of Pub. L. 102-378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101-508, set out as a note under section 2105 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

Section 105(c) of Pub. L. 99-251 provided that: “The amendments made by subsections (a) and (b) [amending this section and section 8902 of this title] shall be effective with respect to contracts entered into or renewed for calendar years beginning after December 31, 1986.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-179 effective Jan. 2, 1980, except that no benefits under this chapter that are made available by reason of amendment of this section and section 8341 of this title by Pub. L. 96-179 shall be payable for any period before Oct. 1, 1979, see section 5(a) of Pub. L. 96-179, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96-70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96-70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-583 effective Nov. 2, 1978, see section 3 of Pub. L. 95-583, set out as a note under section 8706 of this title.

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-394, §1, Oct. 30, 2000, 114 Stat. 1629, provided that: “This Act [amending sections 8421a and 8905 of this title and enacting provisions set out as a note under section 8421a of this title] may be cited as the ‘Federal Employees Health Benefits Children’s Equity Act of 2000’.”

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-266, §1, Oct. 19, 1998, 112 Stat. 2363, provided that: “This Act [enacting section 8903b of this title, amending this section and sections 5948, 8902 to 8903, and 8909 of this title, and enacting provisions set out as notes under this section and sections 5948, 8902, 8902a, 8903b, and 8909 of this title] may be cited as the ‘Federal Employees Health Care Protection Act of 1998’.”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-654, §1, Nov. 14, 1988, 102 Stat. 3837, provided that: “This Act [enacting sections 8440a, 8902a, 8905a, and 8906a of this title, amending sections 8902, 8903, 8905, 8909, and 8913 of this title, and enacting provisions set out as notes under sections 8902, 8902a, and 8906a of this title] may be cited as the ‘Federal Employees Health Benefits Amendments Act of 1988’.”

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99-251 provided that: “This Act [amending this section, sections 1103, 3502, 5334, 5924, 6312, 8332, 8339 to 8342, 8345, 8902, 8903, 8905, and 8909 of this title, and section 35 of Title 24, Hospitals and Asylums, enacting provisions set out as notes under this section and sections 7901, 8339, 8341, 8345, 8902, 8904, 8905, and 8909 of this title, and amending provisions set out as notes under sections 8341 and 8902 of this title] may be cited as the ‘Federal Employees Benefits Improvement Act of 1986’.”

CONTINUATION OF HEALTH BENEFITS COVERAGE FOR INDIVIDUALS ENROLLED IN A PLAN ADMINISTERED BY THE OVERSEAS PRIVATE INVESTMENT CORPORATION

Pub. L. 107-304, §4, Nov. 27, 2002, 116 Stat. 2364, provided that:

“(a) ENROLLMENT IN CHAPTER 89 PLAN.—For purposes of the administration of chapter 89 of title 5, United States Code, any period of enrollment under a health benefits plan administered by the Overseas Private Investment Corporation before the effective date of this Act [probably means Nov. 27, 2002, the date of enactment of Pub. L. 107-304] shall be deemed to be a period of enrollment in a health benefits plan under chapter 89 of such title.

“(b) CONTINUED COVERAGE.—

“(1) IN GENERAL.—Any individual who, as of the enrollment eligibility date, is covered by a health benefits plan administered by the Overseas Private Investment Corporation may enroll in an approved health benefits plan described under section 8903 or 8903a of title 5, United States Code—

“(A) either as an individual or for self and family, if such individual is an employee, annuitant, or former spouse as defined under section 8901 of such title; and

“(B) for coverage effective on and after such date.

“(2) INDIVIDUALS CURRENTLY UNDER CONTINUED COVERAGE.—An individual who, as of the enrollment eligibility date, is entitled to continued coverage under a health benefits plan administered by the Overseas Private Investment Corporation—

“(A) shall be deemed to be entitled to continued coverage under section 8905a of title 5, United States Code, for the same period that would have been permitted under the plan administered by the Overseas Private Investment Corporation; and

“(B) may enroll in an approved health benefits plan described under section 8903 or 8903a of such title in accordance with section 8905a of such title for coverage effective on and after such date.

“(3) UNMARRIED DEPENDENT CHILDREN.—An individual who, as of the enrollment eligibility date, is covered as an unmarried dependent child under a health benefits plan administered by the Overseas Private Investment Corporation and who is not a member of family as defined under section 8901(5) of title 5, United States Code—

“(A) shall be deemed to be entitled to continued coverage under section 8905a of such title as though the individual had ceased to meet the requirements for being considered an unmarried dependent child under chapter 89 of such title as of such date; and

“(B) may enroll in an approved health benefits plan described under section 8903 or 8903a of such title in accordance with section 8905a for continued coverage effective on and after such date.

“(c) TRANSFERS TO THE EMPLOYEES HEALTH BENEFITS FUND.—

“(1) IN GENERAL.—The Overseas Private Investment Corporation shall transfer to the Employees Health Benefits Fund established under section 8909 of title 5, United States Code, amounts determined by the Director of the Office of Personnel Management, after consultation with the Overseas Private Investment Corporation, to be necessary to reimburse the Fund for the cost of providing benefits under this section not otherwise paid for by the individuals covered by this section.

“(2) AVAILABILITY OF FUNDS.—The amounts transferred under paragraph (1) shall be held in the Fund and used by the Office in addition to amounts available under section 8906(g)(1) of title 5, United States Code.

“(d) ADMINISTRATION AND REGULATIONS.—The Office of Personnel Management—

“(1) shall administer this section to provide for—

“(A) a period of notice and open enrollment for individuals affected by this section; and

“(B) no lapse of health coverage for individuals who enroll in a health benefits plan under chapter 89 of title 5, United States Code, in accordance with this section; and

“(2) may prescribe regulations to implement this section.

“(e) ENROLLMENT ELIGIBILITY DATE.—For purposes of this section, the term ‘enrollment eligibility date’ means the last day on which coverage under a health benefits plan administered by the Overseas Private Investment Corporation is available. Such date shall be determined by the Office of Personnel Management in consultation with the Overseas Private Investment Corporation.”

CONTINUED COVERAGE FOR INDIVIDUALS ENROLLED IN PLAN ADMINISTERED BY FEDERAL DEPOSIT INSURANCE CORPORATION OR FOR EMPLOYEES OF BOARD OF GOVERNORS OF FEDERAL RESERVE SYSTEM

Pub. L. 105-266, §4, Oct. 19, 1998, 112 Stat. 2367, provided that:

“(a) ENROLLMENT IN CHAPTER 89 PLAN.—For purposes of chapter 89 of title 5, United States Code, any period of enrollment—

“(1) in a health benefits plan administered by the Federal Deposit Insurance Corporation before the termination of such plan on or before January 2, 1999; or

“(2) subject to subsection (c), in a health benefits plan (not under chapter 89 of such title) with respect to which the eligibility of any employees or retired employees of the Board of Governors of the Federal Reserve System terminates on or before January 2, 1999,

shall be deemed to be a period of enrollment in a health benefits plan under chapter 89 of such title.

“(b) CONTINUED COVERAGE.—(1) Subject to subsection (c), any individual who, on or before January 2, 1999, is enrolled in a health benefits plan described in subsection (a)(1) or (2) may enroll in an approved health benefits plan under chapter 89 of title 5, United States Code, either as an individual or for self and family, if, after taking into account the provisions of subsection (a), such individual—

“(A) meets the requirements of such chapter for eligibility to become so enrolled as an employee, annuitant, or former spouse (within the meaning of such chapter); or

“(B) would meet those requirements if, to the extent such requirements involve either retirement system under such title 5, such individual satisfies similar requirements or provisions of the Retirement Plan for Employees of the Federal Reserve System.

Any determination under subparagraph (B) shall be made under guidelines which the Office of Personnel Management shall establish in consultation with the Board of Governors of the Federal Reserve System.

“(2) Subject to subsection (c), any individual who, on or before January 2, 1999, is entitled to continued coverage under a health benefits plan described in subsection (a)(1) or (2) shall be deemed to be entitled to continued coverage under section 8905a of title 5, United States Code, but only for the same remaining period as would have been allowable under the health benefits plan in which such individual was enrolled on or before January 2, 1999, if—

“(A) such individual had remained enrolled in such plan; and

“(B) such plan did not terminate, or the eligibility of such individual with respect to such plan did not terminate, as described in subsection (a).

“(3) Subject to subsection (c), any individual (other than an individual under paragraph (2)) who, on or before January 2, 1999, is covered under a health benefits plan described in subsection (a)(1) or (2) as an unmarried dependent child, but who does not then qualify for coverage under chapter 89 of title 5, United States Code, as a family member (within the meaning of such chapter) shall be deemed to be entitled to continued coverage under section 8905a of such title, to the same extent and in the same manner as if such individual had, on or before January 2, 1999, ceased to meet the requirements for being considered an unmarried dependent child of an enrollee under such chapter.

“(4) Coverage under chapter 89 of title 5, United States Code, pursuant to an enrollment under this section shall become effective on January 3, 1999 or such earlier date as established by the Office of Personnel Management after consultation with the Federal Deposit Insurance Corporation or the Board of Governors of the Federal Reserve System, as appropriate.

“(c) ELIGIBILITY FOR FEHBP LIMITED TO INDIVIDUALS LOSING ELIGIBILITY UNDER FORMER HEALTH PLAN.—Nothing in subsection (a)(2) or any paragraph of subsection (b) (to the extent such paragraph relates to the plan described in subsection (a)(2)) shall be considered to apply with respect to any individual whose eligibility for coverage under such plan does not involuntarily terminate on or before January 2, 1999.

“(d) TRANSFERS TO THE EMPLOYEES HEALTH BENEFITS FUND.—The Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System shall transfer to the Employees Health Benefits Fund under section 8909 of title 5, United States Code, amounts determined by the Director of the Office of Personnel Management, after consultation with the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System, to be necessary to reimburse the Fund for the cost of providing benefits under this section not otherwise paid for by the individuals covered by this section. The amounts so transferred shall be held in the Fund and used by the Office of Personnel Management in addition to amounts available under section 8906(g)(1) of such title.

“(e) ADMINISTRATION AND REGULATIONS.—The Office of Personnel Management—

“(1) shall administer the provisions of this section to provide for—

“(A) a period of notice and open enrollment for individuals affected by this section; and

“(B) no lapse of health coverage for individuals who enroll in a health benefits plan under chapter 89 of title 5, United States Code, in accordance with this section; and

“(2) may prescribe regulations to implement this section.”

CONTINUED COVERAGE FOR INDIVIDUALS ENROLLED IN PLAN ADMINISTERED BY FARM CREDIT ADMINISTRATION

Pub. L. 104-37, title VI, §601, Oct. 21, 1995, 109 Stat. 328, provided that:

“(a) For purposes of the administration of chapter 89 of title 5, United States Code, any period of enrollment under a health benefits plan administered by the Farm Credit Administration prior to the effective date of this Act [Oct. 21, 1995] shall be deemed to be a period of enrollment in a health benefits plan under chapter 89 of such title.

“(b)(1) An individual who, on September 30, 1995, is covered by a health benefits plan administered by the Farm Credit Administration may enroll in an approved health benefits plan described under section 8903 or 8903a of title 5, United States Code—

“(A) either as an individual or for self and family, if such individual is an employee, annuitant, or former spouse as defined under section 8901 of such title; and

“(B) for coverage effective on and after September 30, 1995.

“(2) An individual who, on September 30, 1995, is entitled to continued coverage under a health benefits plan administered by the Farm Credit Administration—

“(A) shall be deemed to be entitled to continued coverage under section 8905a of title 5, United States Code, for the same period that would have been permitted under the plan administered by the Farm Credit Administration; and

“(B) may enroll in an approved health benefits plan described under sections 8903 or 8903a of such title in accordance with section 8905A of such title for coverage effective on and after September 30, 1995.

“(3) An individual who, on September 30, 1995, is covered as an unmarried dependent child under a health benefits plan administered by the Farm Credit Administration and who is not a member of family as defined under section 8901(5) of title 5, United States Code—

“(A) shall be deemed to be entitled to continued coverage under section 8905a of such title as though the individual had, on September 30, 1995, ceased to meet the requirements for being considered an unmarried dependent child under chapter 89 of such title; and

“(B) may enroll in an approved health benefits plan described under section 8903 or 8903a of such title in accordance with section 8905a for continued coverage on and after September 30, 1995.

“(c) The Farm Credit Administration shall transfer to the Federal Employees Health Benefits Fund established under section 8909 of title 5, United States Code, amounts determined by the Director of the Office of Personnel Management, after consultation with the Farm Credit Administration, to be necessary to reimburse the Fund for the cost of providing benefits under this section not otherwise paid for by the individuals covered by this section. The amount so transferred shall be held in the Fund and used by the Office in addition to the amounts available under section 8906(g)(1) of such title.

“(d) The Office of Personnel Management—

“(1) shall administer the provisions of this section to provide for—

“(A) a period of notice and open enrollment for individuals affected by this section; and

“(B) no lapse of health coverage for individuals who enroll in a health benefits plan under chapter 89 of title 5, United States Code, in accordance with this section; and

“(2) may prescribe regulations to implement this section.”

CONTINUED COVERAGE FOR INDIVIDUALS ENROLLED IN PLAN ADMINISTERED BY OFFICE OF THE COMPTROLLER OF THE CURRENCY OR OFFICE OF THRIFT SUPERVISION

Pub. L. 103-409, §5, Oct. 25, 1994, 108 Stat. 4232, provided that:

“(a) ENROLLMENT IN CHAPTER 89 PLAN.—For purposes of the administration of chapter 89 of title 5, United States Code, any period of enrollment under a health benefits plan administered by the Office of the Comptroller of the Currency or the Office of Thrift Supervision before the termination of such plans on January 7, 1995, shall be deemed to be a period of enrollment in a health benefits plan under chapter 89 of such title.

“(b) CONTINUED COVERAGE.—(1) Any individual who, on January 7, 1995, is covered by a health benefits plan administered by the Office of the Comptroller of the Currency or the Office of Thrift Supervision may enroll in an approved health benefits plan described under section 8903 or 8903a of title 5, United States Code—

“(A) either as an individual or for self and family, if such individual is an employee, annuitant, or former spouse as defined under section 8901 of such title; and

“(B) for coverage effective on and after January 8, 1995.

“(2) An individual who, on January 7, 1995, is entitled to continued coverage under a health benefits plan administered by the Office of the Comptroller of the Currency or the Office of Thrift Supervision—

“(A) shall be deemed to be entitled to continued coverage under section 8905a of title 5, United States Code, for the same period that would have been permitted under the plan administered by the Office of the Comptroller of the Currency or the Office of Thrift Supervision; and

“(B) may enroll in an approved health benefits plan described under section 8903 or 8903a of such title in accordance with section 8905a of such title for coverage effective on and after January 8, 1995.

“(3) An individual who, on January 7, 1995, is covered as an unmarried dependent child under a health benefits plan administered by the Office of the Comptroller of the Currency or the Office of Thrift Supervision and who is not a member of family as defined under section 8901(5) of title 5, United States Code—

“(A) shall be deemed to be entitled to continued coverage under section 8905a of such title as though the individual had, on January 7, 1995, ceased to meet the requirements for being considered an unmarried dependent child under chapter 89 of such title; and

“(B) may enroll in an approved health benefits plan described under section 8903 or 8903a of such title in accordance with section 8905a for continued coverage effective on and after January 8, 1995.

“(c) TRANSFERS TO THE EMPLOYEES HEALTH BENEFITS FUND.—The Office of the Comptroller of the Currency and the Office of Thrift Supervision shall transfer to the Employees Health Benefits Fund established under section 8909 of title 5, United States Code, amounts determined by the Director of the Office of Personnel Management, after consultation with the Office of the Comptroller of the Currency and the Office of Thrift Supervision, to be necessary to reimburse the Fund for the cost of providing benefits under this section not otherwise paid for by the individuals covered by this section. The amounts so transferred shall be held in the Fund and used by the Office in addition to amounts available under section 8906(g)(1) of such title.

“(d) ADMINISTRATION AND REGULATIONS.—The Office of Personnel Management—

“(1) shall administer the provisions of this section to provide for—

“(A) a period of notice and open enrollment for individuals affected by this section; and

“(B) no lapse of health coverage for individuals who enroll in a health benefits plan under chapter 89 of title 5, United States Code, in accordance with this section; and

“(2) may prescribe regulations to implement this section.”

CONTINUED COVERAGE UNDER CERTAIN FEDERAL EMPLOYEE BENEFIT PROGRAMS FOR CERTAIN EMPLOYEES OF SAINT ELIZABETHS HOSPITAL

For provisions relating to treatment of certain Federal employees of Saint Elizabeths Hospital under cer-

tain Federal employee benefit programs, see section 207(o) of Pub. L. 99-335, set out as a note under section 8331 of this title.

§ 8902. Contracting authority

(a) The Office of Personnel Management may contract with qualified carriers offering plans described by section 8903 or 8903a of this title, without regard to section 6101(b) to (d) of title 41 or other statute requiring competitive bidding. Each contract shall be for a uniform term of at least 1 year, but may be made automatically renewable from term to term in the absence of notice of termination by either party.

(b) To be eligible as a carrier for the plan described by section 8903(2) of this title, a company must be licensed to issue group health insurance in all the States and the District of Columbia.

(c) A contract for a plan described by section 8903(1) or (2) of this title shall require the carrier—

(1) to reinsure with other companies which elect to participate, under an equitable formula based on the total amount of their group health insurance benefit payments in the United States during the latest year for which the information is available, to be determined by the carrier and approved by the Office; or

(2) to allocate its rights and obligations under the contract among its affiliates which elect to participate, under an equitable formula to be determined by the carrier and the affiliates and approved by the Office.

(d) Each contract under this chapter shall contain a detailed statement of benefits offered and shall include such maximums, limitations, exclusions, and other definitions of benefits as the Office considers necessary or desirable.

(e) The Office may prescribe reasonable minimum standards for health benefits plans described by section 8903 or 8903a of this title and for carriers offering the plans. Approval of a plan may be withdrawn only after notice and opportunity for hearing to the carrier concerned without regard to subchapter II of chapter 5 and chapter 7 of this title. The Office may terminate the contract of a carrier effective at the end of the contract term, if the Office finds that at no time during the preceding two contract terms did the carrier have 300 or more employees and annuitants, exclusive of family members, enrolled in the plan.

(f) A contract may not be made or a plan approved which excludes an individual because of race, sex, health status, or, at the time of the first opportunity to enroll, because of age.

(g) A contract may not be made or a plan approved which does not offer to each employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title whose enrollment in the plan is ended, except by a cancellation of enrollment, a temporary extension of coverage during which he may exercise the option to convert, without evidence of good health, to a nongroup contract providing health benefits. An employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title who exercises this option shall pay the full periodic charges of the nongroup contract.

(h) The benefits and coverage made available under subsection (g) of this section are noncancelable by the carrier except for fraud, over-insurance, or nonpayment of periodic charges.

(i) Rates charged under health benefits plans described by section 8903 or 8903a of this title shall reasonably and equitably reflect the cost of the benefits provided. Rates under health benefits plans described by section 8903(1) and (2) of this title shall be determined on a basis which, in the judgment of the Office, is consistent with the lowest schedule of basic rates generally charged for new group health benefit plans issued to large employers. The rates determined for the first contract term shall be continued for later contract terms, except that they may be readjusted for any later term, based on past experience and benefit adjustments under the later contract. Any readjustment in rates shall be made in advance of the contract term in which they will apply and on a basis which, in the judgment of the Office, is consistent with the general practice of carriers which issue group health benefit plans to large employers.

(j) Each contract under this chapter shall require the carrier to agree to pay for or provide a health service or supply in an individual case if the Office finds that the employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title is entitled thereto under the terms of the contract.

(k)(1) When a contract under this chapter requires payment or reimbursement for services which may be performed by a clinical psychologist, optometrist, nurse midwife, nursing school administered clinic, or nurse practitioner/clinical specialist, licensed or certified as such under Federal or State law, as applicable, or by a qualified clinical social worker as defined in section 8901(11), an employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title covered by the contract shall be free to select, and shall have direct access to, such a clinical psychologist, qualified clinical social worker, optometrist, nurse midwife, nursing school administered clinic, or nurse practitioner/nurse clinical specialist without supervision or referral by another health practitioner and shall be entitled under the contract to have payment or reimbursement made to him or on his behalf for the services performed.

(2) Nothing in this subsection shall be considered to preclude a health benefits plan from providing direct access or direct payment or reimbursement to a provider in a health care practice or profession other than a practice or profession listed in paragraph (1), if such provider is licensed or certified as such under Federal or State law.

(3) The provisions of this subsection shall not apply to comprehensive medical plans as described in section 8903(4) of this title.

(l) The Office shall contract under this chapter for a plan described in section 8903(4) of this title with any qualified health maintenance carrier which offers such a plan. For the purpose of this subsection, “qualified health maintenance carrier” means any qualified carrier which is a qualified health maintenance organization with-

in the meaning of section 1310(d)(1)¹ of title XIII of the Public Health Service Act (42 U.S.C. 300c-9(d)).

(m)(1) The terms of any contract under this chapter which relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to health insurance or plans.

(2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, if a contract under this chapter provides for the provision of, the payment for, or the reimbursement of the cost of health services for the care and treatment of any particular health condition, the carrier shall provide, pay, or reimburse up to the limits of its contract for any such health service properly provided by any person licensed under State law to provide such service if such service is provided to an individual covered by such contract in a State where 25 percent or more of the population is located in primary medical care manpower shortage areas designated pursuant to section 332 of the Public Health Service Act (42 U.S.C. 254e).

(B) The provisions of subparagraph (A) shall not apply to contracts entered into providing prepayment plans described in section 8903(4) of this title.

(n) A contract for a plan described by section 8903(1), (2), or (3), or section 8903a, shall require the carrier—

(1) to implement hospitalization-cost-containment measures, such as measures—

(A) for verifying the medical necessity of any proposed treatment or surgery;

(B) for determining the feasibility or appropriateness of providing services on an outpatient rather than on an inpatient basis;

(C) for determining the appropriate length of stay (through concurrent review or otherwise) in cases involving inpatient care; and

(D) involving case management, if the circumstances so warrant; and

(2) to establish incentives to encourage compliance with measures under paragraph (1).

(o) A contract may not be made or a plan approved which includes coverage for any benefit, item, or service for which funds may not be used under the Assisted Suicide Funding Restriction Act of 1997.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 601; Pub. L. 93-246, § 3, Jan. 31, 1974, 88 Stat. 4; Pub. L. 93-363, § 1, July 30, 1974, 88 Stat. 398; Pub. L. 94-183, § 2(43), Dec. 31, 1975, 89 Stat. 1059; Pub. L. 94-460, title I, § 110(b), Oct. 8, 1976, 90 Stat. 1952; Pub. L. 95-368, § 1, Sept. 17, 1978, 92 Stat. 606; Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-179, § 3, Jan. 2, 1980, 93 Stat. 1299; Pub. L. 98-615, § 3(2), Nov. 8, 1984, 98 Stat. 3203; Pub. L. 99-53, § 2(a), June 17, 1985, 99 Stat. 94; Pub. L. 99-251, title I, §§ 105(b), 106(a)(3), Feb. 27, 1986, 100 Stat. 15, 16; Pub. L. 100-202, § 101(m) [title VI, § 626], Dec. 22, 1987, 101 Stat. 1329-390, 1329-430; Pub. L. 100-654, title II, §§ 201(b), 202(a), Nov. 14, 1988, 102 Stat. 3845; Pub. L. 101-508, title VII, § 7002(a), Nov. 5, 1990, 104 Stat. 1388-329; Pub.

L. 101-509, title IV, § 1, Nov. 5, 1990, 104 Stat. 1421; Pub. L. 102-393, title V, § 537(a), (b), Oct. 6, 1992, 106 Stat. 1765; Pub. L. 105-12, § 9(g), Apr. 30, 1997, 111 Stat. 27; Pub. L. 105-266, §§ 3(c), 8, Oct. 19, 1998, 112 Stat. 2366, 2370; Pub. L. 111-350, § 5(a)(15), Jan. 4, 2011, 124 Stat. 3842.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3005.	Sept. 28, 1959, Pub. L. 86-382, § 6, 73 Stat. 712. Mar. 17, 1964, Pub. L. 88-284, § 1(7)-(9), 78 Stat. 165.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 1310(d)(1) of title XIII of the Public Health Service Act (42 U.S.C. 300c-9(d)), referred to in subsec. (l), probably is intended as a reference to section 300e-9(d) of Title 42, The Public Health and Welfare. Section 300e-9(d) of Title 42 was redesignated section 300e-9(c) of Title 42 by Pub. L. 100-517, § 7(b), Oct. 24, 1988, 102 Stat. 2580.

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (o), is Pub. L. 105-12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§ 14401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of Title 42 and Tables.

CODIFICATION

Another section 1 of title IV of Pub. L. 101-509, 104 Stat. 1416, enacted sections 2701 to 2706 of Title 44, Public Printing and Documents, and provisions set out as a note under section 2102 of Title 44.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111-350 substituted “section 6101(b) to (d) of title 41” for “section 5 of title 41”.

1998—Subsec. (k)(2), (3). Pub. L. 105-266, § 8, added par. (2) and redesignated former par. (2) as (3).

Subsec. (m)(1). Pub. L. 105-266, § 3(c), added par. (1) and struck out former par. (1) which read as follows: “The provisions of any contract under this chapter which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to health insurance or plans to the extent that such law or regulation is inconsistent with such contractual provisions.”

1997—Subsec. (o). Pub. L. 105-12 added subsec. (o).

1992—Pub. L. 102-393 amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows:

“(1) When a contract under this chapter requires payment or reimbursement for services which may be performed by a clinical psychologist, optometrist, nurse midwife, or nurse practitioner/clinical specialist, licensed or certified as such under Federal or State law, as applicable, or by a qualified clinical social worker as defined in section 8901(11), an employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title covered by the contract shall be free to select, and shall have direct access to, such a clinical psychologist, qualified clinical social worker, optometrist, nurse midwife, or nurse practitioner/nurse clinical specialist without supervision or referral by another health practitioner and shall be entitled under the contract to have payment or reimbursement made to him or on his behalf for the services performed.

“(2) The provisions of this subsection shall not apply to group practice prepayment plans.”

¹ See References in Text note below.

1990—Subsec. (k)(1). Pub. L. 101-509 substituted “performed by a clinical psychologist, optometrist, nurse midwife, or nurse practitioner/clinical specialist” for “performed by a clinical psychologist or optometrist” and “qualified clinical social worker, optometrist, nurse midwife, or nurse practitioner/nurse clinical specialist” for “qualified clinical social worker or optometrist”.

Subsec. (n). Pub. L. 101-508 added subsec. (n).

1988—Subsecs. (g), (j), (k)(1). Pub. L. 100-654 substituted “former spouse, or person having continued coverage under section 8905a of this title” for “or former spouse” wherever appearing.

1987—Subsec. (k)(1). Pub. L. 100-202, §101(m) [title VI, §626(1), (2)], inserted “or by a qualified clinical social worker as defined in section 8901(1),” after “as applicable,” and “, qualified clinical social worker” after “such a clinical psychologist”.

Subsec. (k)(2), (3). Pub. L. 100-202, §101(m) [title VI, §626(3)], redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “When a contract under this chapter requires payment or reimbursement for services which may be performed by a qualified clinical social worker, an employee, annuitant, family member, or former spouse covered by the contract shall be entitled under the contract to have payment or reimbursement made to him or on his behalf for the services performed. As a condition for the payment or reimbursement, the contract—

“(A) may require that the services be performed pursuant to a referral by a psychiatrist; but

“(B) may not require that the services be performed under the supervision of a psychiatrist or other health practitioner.”

Subsec. (m)(2)(A). Pub. L. 100-202, §101(m) [title VI, §626(4)], struck out “This paragraph shall apply with respect to a qualified clinical social worker covered by subsection (k)(2) of this section without regard to whether such contract contains the requirement authorized by clause (i) of the second sentence of subparagraph (A) of such subsection (k)(2).”

1986—Subsec. (k). Pub. L. 99-251, §105(b), designated existing provisions as par. (1), struck out last sentence providing that the provisions of this subsection shall not apply to group practice prepayment plans, and added pars. (2) and (3).

Subsec. (m)(2)(A). Pub. L. 99-251, §106(a)(3), inserted last sentence relating to applicability of this paragraph with respect to a qualified clinical social worker covered by subsection (k)(2) of this section.

1985—Subsecs. (a), (e), (i). Pub. L. 99-53 inserted reference to section 8903a of this title.

1984—Subsec. (g). Pub. L. 98-615, §3(2)(A), substituted “employee, annuitant, family member, or former spouse” for “employee or annuitant” in two places.

Subsecs. (j), (k). Pub. L. 98-615, §3(2)(B), substituted “family member, or former spouse” for “or family member”.

1980—Subsec. (m)(2)(A). Pub. L. 96-179 substituted “in a State where 25 percent or more of the population is located in primary medical care manpower shortage areas designated pursuant to section 332 of the Public Health Service Act (42 U.S.C. 254e)” for “who is a member of a medically underserved population (within the meaning of section 1302(7) of the Public Health Service Act (42 U.S.C. 300e-17))”.

1978—Subsecs. (a), (c) to (e), (i), (j), (l). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission” wherever appearing.

Subsec. (m). Pub. L. 95-368 added subsec. (m).

1976—Subsec. (l). Pub. L. 94-460 added subsec. (l).

1975—Subsecs. (j), (k). Pub. L. 94-183 redesignated subsec. (j), added by Pub. L. 93-363 and relating to services performed by a clinical psychologist or optometrist, as (k).

1974—Subsec. (j). Pub. L. 93-363 added subsec. (j) covering services performed by a clinical psychologist or optometrist.

Pub. L. 93-246 added subsec. (j) requiring the carrier to pay for or provide a health service or supply in specified cases.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105-12, set out as an Effective Date note under section 14401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 537(c) of Pub. L. 102-393 provided that: “The amendments made by this section [amending this section] shall be effective with respect to contract years beginning after the date of enactment of this Act [Oct. 6, 1992].”

EFFECTIVE DATE OF 1990 AMENDMENT

Section 7002(g) of Pub. L. 101-508 provided that: “Except as provided in subsection (f) [set out as a note under section 8904 of this title], the amendments made by this section [amending this section, sections 8904, 8909, and 8910 of this title, and provisions set out as a note under section 8906 of this title] shall apply with respect to contract years beginning on or after January 1, 1991.”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 203 of title II of Pub. L. 100-654 provided that: “(a) IN GENERAL.—The amendments made by this title [enacting section 8905a of this title and amending this section and sections 8903, 8905, and 8909 of this title] shall apply with respect to—

“(1) any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after the end of the 9-month period beginning on the date of the enactment of this Act [Nov. 14, 1988]; and

“(2) any qualifying event occurring on or after the first day of the first calendar year beginning after the end of the 9-month period referred to in paragraph (1).

“(b) DEFINITION.—For the purpose of this section, the term ‘qualifying event’ means any of the following events:

“(1) A separation from Government service.

“(2) A divorce, annulment, or legal separation.

“(3) Any change in circumstances which causes an individual to become ineligible to be considered an unmarried dependent child under chapter 89 of such title [section 8901 et seq. of this title].”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 105(b) of Pub. L. 99-251 effective with respect to contracts entered into or renewed for calendar years beginning after Dec. 31, 1986, see section 105(c) of Pub. L. 99-251, set out as a note under section 8901 of this title.

Section 106(b) of Pub. L. 99-251 provided that: “The amendments made by subsection (a) [amending this section and provisions set out as notes under this section] shall take effect with respect to services provided after December 31, 1984.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 5(b) of Pub. L. 96-179, as amended by Pub. L. 99-251, title I, §106(a)(2), Feb. 27, 1986, 100 Stat. 16, provided that: “The amendments made by section 3 [amending this section] shall apply to services provided

after December 31, 1979, under any contract entered into or renewed after December 31, 1979.”

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

Section 3 of Pub. L. 95-368, as amended by Pub. L. 99-251, title I, §106(a)(1), Feb. 27, 1986, 100 Stat. 16, provided that: “The provisions of section 8902(m)(2) of title 5, United States Code, as added by the first section of this Act, shall apply to services provided under any contract entered into or renewed after December 31, 1979.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-460 effective Oct. 8, 1976, see section 118 of Pub. L. 94-460, set out as a note under section 300e of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1974 AMENDMENTS

Section 2 of Pub. L. 93-363 provided that: “The amendment made by this Act [amending this section] shall become effective with respect to any contract entered into or renewed on or after the date of enactment of this Act [July 30, 1974].”

Section 4(c) of Pub. L. 93-246 provided that: “Section 3 [amending this section] shall become effective with respect to any contract entered into or renewed on or after the date of enactment of this Act [Jan. 31, 1974].”

FULL DISCLOSURE IN HEALTH PLAN CONTRACTS

Pub. L. 105-266, §5, Oct. 19, 1998, 112 Stat. 2368, provided that: “The Office of Personnel Management shall encourage carriers offering health benefits plans described by section 8903 or section 8903a of title 5, United States Code, with respect to contractual arrangements made by such carriers with any person for purposes of obtaining discounts from providers for health care services or supplies furnished to individuals enrolled in such plan, to seek assurance that the conditions for such discounts are fully disclosed to the providers who grant them.”

RATE REDUCTION FOR MEDICARE ELIGIBLE FEDERAL ANNUITANTS

Pub. L. 100-360, title IV, §422, July 1, 1988, 102 Stat. 810, which directed the Office of Personnel Management to reduce the rates charged medicare eligible individuals participating in health benefit plans by a prorated amount, was repealed by Pub. L. 101-234, title III, §301(a), Dec. 13, 1989, 103 Stat. 1985.

AUTHORITY OF CARRIER TO CONTRACT FOR COMPREHENSIVE MEDICAL SERVICES FROM A GROUP PRACTICE UNIT OR ORGANIZATION

Pub. L. 91-515, title IV, §401, Oct. 30, 1970, 84 Stat. 1309, authorized Secretary of Health, Education, and Welfare to permit any carrier which is a party to a contract entered into under this chapter or under the Retired Federal Employees Health Benefits Act, or which participates in carrying out of any such contract, to issue in any State contracts entitling any person as a beneficiary to receive comprehensive medical services from a group practice unit or organization with which such carrier has contracted or otherwise arranged for the provision of such services.

§ 8902a. Debarment and other sanctions

(a)(1) For the purpose of this section—

(A) the term “provider of health care services or supplies” or “provider” means a physician, hospital, or other individual or entity which furnishes health care services or supplies;

(B) the term “individual covered under this chapter” or “covered individual” means an

employee, annuitant, family member, or former spouse covered by a health benefits plan described by section 8903 or 8903a;

(C) an individual or entity shall be considered to have been “convicted” of a criminal offense if—

(i) a judgment of conviction for such offense has been entered against the individual or entity by a Federal, State, or local court;

(ii) there has been a finding of guilt against the individual or entity by a Federal, State, or local court with respect to such offense;

(iii) a plea of guilty or nolo contendere by the individual or entity has been accepted by a Federal, State, or local court with respect to such offense; or

(iv) in the case of an individual, the individual has entered a first offender or other program pursuant to which a judgment of conviction for such offense has been withheld;

without regard to the pendency or outcome of any appeal (other than a judgment of acquittal based on innocence) or request for relief on behalf of the individual or entity; and

(D) the term “should know” means that a person, with respect to information, acts in deliberate ignorance of, or in reckless disregard of, the truth or falsity of the information, and no proof of specific intent to defraud is required;¹

(2)(A) Notwithstanding section 8902(j) or any other provision of this chapter, if, under subsection (b), (c), or (d) a provider is barred from participating in the program under this chapter, no payment may be made by a carrier pursuant to any contract under this chapter (either to such provider or by reimbursement) for any service or supply furnished by such provider during the period of the debarment.

(B) Each contract under this chapter shall contain such provisions as may be necessary to carry out subparagraph (A) and the other provisions of this section.

(b) The Office of Personnel Management shall bar the following providers of health care services or supplies from participating in the program under this chapter:

(1) Any provider that has been convicted, under Federal or State law, of a criminal offense relating to fraud, corruption, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a health care service or supply.

(2) Any provider that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care service or supply.

(3) Any provider that has been convicted, under Federal or State law, in connection with the interference with or obstruction of an investigation or prosecution of a criminal offense described in paragraph (1) or (2).

(4) Any provider that has been convicted, under Federal or State law, of a criminal offense relating to the unlawful manufacture,

¹ So in original. The semicolon probably should be a period.

distribution, prescription, or dispensing of a controlled substance.

(5) Any provider that is currently debarred, suspended, or otherwise excluded from any procurement or nonprocurement activity (within the meaning of section 2455 of the Federal Acquisition Streamlining Act of 1994).

(c) The Office may bar the following providers of health care services from participating in the program under this chapter:

(1) Any provider—

(A) whose license to provide health care services or supplies has been revoked, suspended, restricted, or not renewed, by a State licensing authority for reasons relating to the provider's professional competence, professional performance, or financial integrity; or

(B) that surrendered such a license while a formal disciplinary proceeding was pending before such an authority, if the proceeding concerned the provider's professional competence, professional performance, or financial integrity.

(2) Any provider that is an entity directly or indirectly owned, or with a control interest of 5 percent or more held, by an individual who has been convicted of any offense described in subsection (b), against whom a civil monetary penalty has been assessed under subsection (d), or who has been debarred from participation under this chapter.

(3) Any individual who directly or indirectly owns or has a control interest in a sanctioned entity and who knows or should know of the action constituting the basis for the entity's conviction of any offense described in subsection (b), assessment with a civil monetary penalty under subsection (d), or debarment from participation under this chapter.

(4) Any provider that the Office determines, in connection with claims presented under this chapter, has charged for health care services or supplies in an amount substantially in excess of such provider's customary charge for such services or supplies (unless the Office finds there is good cause for such charge), or charged for health care services or supplies which are substantially in excess of the needs of the covered individual or which are of a quality that fails to meet professionally recognized standards for such services or supplies.

(5) Any provider that the Office determines has committed acts described in subsection (d).

Any determination under paragraph (4) relating to whether a charge for health care services or supplies is substantially in excess of the needs of the covered individual shall be made by trained reviewers based on written medical protocols developed by physicians. In the event such a determination cannot be made based on such protocols, a physician in an appropriate specialty shall be consulted.

(d) Whenever the Office determines—

(1) in connection with claims presented under this chapter, that a provider has charged for a health care service or supply which the provider knows or should have known involves—

(A) an item or service not provided as claimed;

(B) charges in violation of applicable charge limitations under section 8904(b); or

(C) an item or service furnished during a period in which the provider was debarred from participation under this chapter pursuant to a determination by the Office under this section, other than as permitted under subsection (g)(2)(B);

(2) that a provider of health care services or supplies has knowingly made, or caused to be made, any false statement or misrepresentation of a material fact which is reflected in a claim presented under this chapter; or

(3) that a provider of health care services or supplies has knowingly failed to provide any information required by a carrier or by the Office to determine whether a payment or reimbursement is payable under this chapter or the amount of any such payment or reimbursement;

the Office may, in addition to any other penalties that may be prescribed by law, and after consultation with the Attorney General, impose a civil monetary penalty of not more than \$10,000 for any item or service involved. In addition, such a provider shall be subject to an assessment of not more than twice the amount claimed for each such item or service. In addition, the Office may make a determination in the same proceeding to bar such provider from participating in the program under this chapter.

(e) The Office—

(1) may not initiate any debarment proceeding against a provider, based on such provider's having been convicted of a criminal offense, later than 6 years after the date on which such provider is so convicted; and

(2) may not initiate any action relating to a civil penalty, assessment, or debarment under this section, in connection with any claim, later than 6 years after the date the claim is presented, as determined under regulations prescribed by the Office.

(f) In making a determination relating to the appropriateness of imposing or the period of any debarment under this section (where such debarment is not mandatory), or the appropriateness of imposing or the amount of any civil penalty or assessment under this section, the Office shall take into account—

(1) the nature of any claims involved and the circumstances under which they were presented;

(2) the degree of culpability, history of prior offenses or improper conduct of the provider involved; and

(3) such other matters as justice may require.

(g)(1)(A) Except as provided in subparagraph (B), debarment of a provider under subsection (b) or (c) shall be effective at such time and upon such reasonable notice to such provider, and to carriers and covered individuals, as shall be specified in regulations prescribed by the Office. Any such provider that is debarred from participation may request a hearing in accordance with subsection (h)(1).

(B) Unless the Office determines that the health or safety of individuals receiving health care services warrants an earlier effective date, the Office shall not make a determination adverse to a provider under subsection (c)(5) or (d) until such provider has been given reasonable notice and an opportunity for the determination to be made after a hearing as provided in accordance with subsection (h)(1).

(2)(A) Except as provided in subparagraph (B), a debarment shall be effective with respect to any health care services or supplies furnished by a provider on or after the effective date of such provider's debarment.

(B) A debarment shall not apply with respect to inpatient institutional services furnished to an individual who was admitted to the institution before the date the debarment would otherwise become effective until the passage of 30 days after such date, unless the Office determines that the health or safety of the individual receiving those services warrants that a shorter period, or that no such period, be afforded.

(3) Any notice of debarment referred to in paragraph (1) shall specify the date as of which debarment becomes effective and the minimum period of time for which such debarment is to remain effective. In the case of a debarment under paragraph (1), (2), (3), or (4) of subsection (b), the minimum period of debarment shall not be less than 3 years, except as provided in paragraph (4)(B)(ii).

(4)(A) A provider barred from participating in the program under this chapter may, after the expiration of the minimum period of debarment referred to in paragraph (3), apply to the Office, in such manner as the Office may by regulation prescribe, for termination of the debarment.

(B) The Office may—

(i) terminate the debarment of a provider, pursuant to an application filed by such provider after the end of the minimum debarment period, if the Office determines, based on the conduct of the applicant, that—

(I) there is no basis under subsection (b), (c), or (d) for continuing the debarment; and

(II) there are reasonable assurances that the types of actions which formed the basis for the original debarment have not recurred and will not recur; or

(ii) notwithstanding any provision of subparagraph (A), terminate the debarment of a provider, pursuant to an application filed by such provider before the end of the minimum debarment period, if the Office determines that—

(I) based on the conduct of the applicant, the requirements of subclauses (I) and (II) of clause (i) have been met; and

(II) early termination under this clause is warranted based on the fact that the provider is the sole community provider or the sole source of essential specialized services in a community, or other similar circumstances.

(5) The Office shall—

(A) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of a provider barred from participation in the program

under this chapter of the fact of the debarment, as well as the reasons for such debarment;

(B) request that appropriate investigations be made and sanctions invoked in accordance with applicable law and policy; and

(C) request that the State or local agency or authority keep the Office fully and currently informed with respect to any actions taken in response to the request.

(h)(1) Any provider of health care services or supplies that is the subject of an adverse determination by the Office under this section shall be entitled to reasonable notice and an opportunity to request a hearing of record, and to judicial review as provided in this subsection after the Office renders a final decision. The Office shall grant a request for a hearing upon a showing that due process rights have not previously been afforded with respect to any finding of fact which is relied upon as a cause for an adverse determination under this section. Such hearing shall be conducted without regard to subchapter II of chapter 5 and chapter 7 of this title by a hearing officer who shall be designated by the Director of the Office and who shall not otherwise have been involved in the adverse determination being appealed. A request for a hearing under this subsection shall be filed within such period and in accordance with such procedures as the Office shall prescribe by regulation.

(2) Any provider adversely affected by a final decision under paragraph (1) made after a hearing to which such provider was a party may seek review of such decision in the United States District Court for the District of Columbia or for the district in which the plaintiff resides or has his or her principal place of business by filing a notice of appeal in such court within 60 days after the date the decision is issued, and by simultaneously sending copies of such notice by certified mail to the Director of the Office and to the Attorney General. In answer to the appeal, the Director of the Office shall promptly file in such court a certified copy of the transcript of the record, if the Office conducted a hearing, and other evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and evidence of record, a judgment affirming, modifying, or setting aside, in whole or in part, the decision of the Office, with or without remanding the case for a rehearing. The district court shall not set aside or remand the decision of the Office unless there is not substantial evidence on the record, taken as whole, to support the findings by the Office of a cause for action under this section or unless action taken by the Office constitutes an abuse of discretion.

(3) Matters that were raised or that could have been raised in a hearing under paragraph (1) or an appeal under paragraph (2) may not be raised as a defense to a civil action by the United States to collect a penalty or assessment imposed under this section.

(i) A civil action to recover civil monetary penalties or assessments under subsection (d) shall be brought by the Attorney General in the name of the United States, and may be brought in the United States district court for the district where the claim involved was presented or

where the person subject to the penalty resides. Amounts recovered under this section shall be paid to the Office for deposit into the Employees Health Benefits Fund. The amount of a penalty or assessment as finally determined by the Office, or other amount the Office may agree to in compromise, may be deducted from any sum then or later owing by the United States to the party against whom the penalty or assessment has been levied.

(j) The Office shall prescribe regulations under which, with respect to services or supplies furnished by a debarred provider to a covered individual during the period of such provider's debarment, payment or reimbursement under this chapter may be made, notwithstanding the fact of such debarment, if such individual did not know or could not reasonably be expected to have known of the debarment. In any such instance, the carrier involved shall take appropriate measures to ensure that the individual is informed of the debarment and the minimum period of time remaining under the terms of the debarment.

(Added Pub. L. 100-654, title I, §101(a), Nov. 14, 1988, 102 Stat. 3837; amended Pub. L. 105-266, §2(a), Oct. 19, 1998, 112 Stat. 2363.)

REFERENCES IN TEXT

Section 2455 of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (b)(5), is section 2455 of Pub. L. 103-355, which is set out as a note under section 6101 of Title 31, Money and Finance.

AMENDMENTS

1998—Subsec. (a)(1)(D). Pub. L. 105-266, §2(a)(1)(A), added subpar. (D).

Subsec. (a)(2)(A). Pub. L. 105-266, §2(a)(1)(B), substituted “subsection (b), (c), or (d)” for “subsection (b) or (c)”.

Subsec. (b). Pub. L. 105-266, §2(a)(2)(A), substituted “shall” for “may” in introductory provisions.

Subsec. (b)(5). Pub. L. 105-266, §2(a)(2)(B), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “Any provider—

“(A) whose license to provide health care services or supplies has been revoked, suspended, restricted, or not renewed, by a State licensing authority for reasons relating to the provider's professional competence, professional performance, or financial integrity; or

“(B) that surrendered such a license while a formal disciplinary proceeding was pending before such an authority, if the proceeding concerned the provider's professional competence, professional performance, or financial integrity.”

Subsec. (c). Pub. L. 105-266, §2(a)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105-266, §2(a)(3), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 105-266, §2(a)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “in connection with a claim presented under this chapter, that a provider of health care services or supplies—

“(A) has charged for health care services or supplies that the provider knows or should have known were not provided as claimed; or

“(B) has charged for health care services or supplies in an amount substantially in excess of such provider's customary charges for such services or supplies, or charged for health care services or supplies which are substantially in excess of the needs of the covered individual or which are of a quality that fails to meet professionally recognized standards for such services or supplies;”.

Subsec. (e). Pub. L. 105-266, §2(a)(3), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 105-266, §2(a)(3), (5), redesignated subsec. (e) as (f) and inserted “(where such debarment is not mandatory)” after “debarment under this section”. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 105-266, §2(a)(3), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (g)(1). Pub. L. 105-266, §2(a)(6)(A), added par. (1) and struck out former par. (1) which read as follows: “The debarment of a provider under subsection (b) or (c) shall be effective at such time and upon such reasonable notice to such provider, and to carriers and covered individuals, as may be specified in regulations prescribed by the Office.”

Subsec. (g)(3). Pub. L. 105-266, §2(a)(6)(B), inserted “of debarment” after “notice” and inserted at end “In the case of a debarment under paragraph (1), (2), (3), or (4) of subsection (b), the minimum period of debarment shall not be less than 3 years, except as provided in paragraph (4)(B)(ii).”

Subsec. (g)(4)(B)(i)(I). Pub. L. 105-266, §2(a)(6)(C), substituted “subsection (b), (c), or (d)” for “subsection (b) or (c)”.

Subsec. (g)(6). Pub. L. 105-266, §2(a)(6)(D), struck out par. (6) which read as follows: “The Office shall, upon written request and payment of a reasonable charge to defray the cost of complying with such request, furnish a current list of any providers barred from participating in the program under this chapter, including the minimum period of time remaining under the terms of each provider's debarment.”

Subsec. (h). Pub. L. 105-266, §2(a)(3), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (h)(1), (2). Pub. L. 105-266, §2(a)(7), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

“(1) The Office may not make a determination under subsection (b) or (c) adverse to a provider of health care services or supplies until such provider has been given written notice and an opportunity for a hearing on the record. A provider is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the provider in any such hearing.

“(2) Notwithstanding section 8912, any person adversely affected by a final decision under paragraph (1) may obtain review of such decision in the United States Court of Appeals for the Federal Circuit. A written petition requesting that the decision be modified or set aside must be filed within 60 days after the date on which such person is notified of such decision.”

Subsec. (i). Pub. L. 105-266, §2(a)(3), (8), redesignated subsec. (h) as (i), substituted “subsection (d)” for “subsection (c)”, and inserted at end “The amount of a penalty or assessment as finally determined by the Office, or other amount the Office may agree to in compromise, may be deducted from any sum then or later owing by the United States to the party against whom the penalty or assessment has been levied.” Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 105-266, §2(a)(3), redesignated subsec. (i) as (j).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-266, §2(b), Oct. 19, 1998, 112 Stat. 2366, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 19, 1998].

“(2) EXCEPTIONS.—(A) Paragraphs (2), (3), and (5) of section 8902a(c) of title 5, United States Code, as amended by subsection (a)(3), shall apply only to the extent that the misconduct which is the basis for debarment under paragraph (2), (3), or (5), as applicable, occurs after the date of the enactment of this Act.

“(B) Paragraph (1)(B) of section 8902a(d) of title 5, United States Code, as amended by subsection (a)(4), shall apply only with respect to charges which violate section 8904(b) of such title for items or services furnished after the date of the enactment of this Act.

“(C) Paragraph (3) of section 8902a(g) of title 5, United States Code, as amended by subsection (a)(6)(B), shall apply only with respect to debarments based on convictions occurring after the date of the enactment of this Act.”

EFFECTIVE DATE; PRIOR CONDUCT

Section 102 of title I of Pub. L. 100-654 provided that: “(a) APPLICABILITY.—The amendments made by this title [enacting this section] shall be effective with respect to any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after the date of the enactment of this Act [Nov. 14, 1988].

“(b) PRIOR CONDUCT NOT TO BE CONSIDERED.—In carrying out section 8902a of title 5, United States Code, as added by this title, no debarment, civil monetary penalty, or assessment may be imposed under such section based on any criminal or other conduct occurring before the beginning of the first calendar year which begins after the date of the enactment of this Act [Nov. 14, 1988].”

§ 8903. Health benefits plans

The Office of Personnel Management may contract for or approve the following health benefits plans:

(1) **SERVICE BENEFIT PLAN.**—One Government-wide plan, which may be underwritten by participating affiliates licensed in any number of States, offering two levels of benefits, under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services for benefits of the types described by section 8904(1) of this title given to employees, annuitants, members of their families, former spouses, or persons having continued coverage under section 8905a of this title, or, under certain conditions, payment is made by a carrier to the employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title.

(2) **INDEMNITY BENEFIT PLAN.**—One Government-wide plan, offering two levels of benefits, under which a carrier agrees to pay certain sums of money, not in excess of the actual expenses incurred, for benefits of the types described by section 8904(2) of this title.

(3) **EMPLOYEE ORGANIZATION PLANS.**—Employee organization plans which offer benefits of the types referred to by section 8904(3) of this title, which are sponsored or underwritten, and are administered, in whole or substantial part, by employee organizations described in section 8901(8)(A) of this title, which are available only to individuals, and members of their families, who at the time of enrollment are members of the organization.

(4) **COMPREHENSIVE MEDICAL PLANS.**—

(A) **GROUP-PRACTICE PREPAYMENT PLANS.**—Group-practice prepayment plans which offer health benefits of the types referred to by section 8904(4) of this title, in whole or in substantial part on a prepaid basis, with professional services thereunder provided by physicians practicing as a group in a common center or centers. The group shall include at least 3 physicians who receive all or a substantial part of their professional income from the prepaid funds and who represent 1 or more medical specialties appropriate and necessary for the population proposed to be served by the plan.

(B) **INDIVIDUAL-PRACTICE PREPAYMENT PLANS.**—Individual-practice prepayment plans which offer health services in whole or substantial part on a prepaid basis, with professional services thereunder provided by individual physicians who agree, under certain conditions approved by the Office, to accept the payments provided by the plans as full payment for covered services given by them including, in addition to in-hospital services, general care given in their offices and the patients' homes, out-of-hospital diagnostic procedures, and preventive care, and which plans are offered by organizations which have successfully operated similar plans before approval by the Office of the plan in which employees may enroll.

(C) **MIXED MODEL PREPAYMENT PLANS.**—Mixed model prepayment plans which are a combination of the type of plans described in subparagraph (A) and the type of plans described in subparagraph (B).

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 602; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 98-615, §3(3), Nov. 8, 1984, 98 Stat. 3203; Pub. L. 99-53, §2(b), June 17, 1985, 99 Stat. 94; Pub. L. 99-251, title I, §§102, 111, Feb. 27, 1986, 100 Stat. 14, 19; Pub. L. 100-654, title II, §202(b), Nov. 14, 1988, 102 Stat. 3845; Pub. L. 105-266, §3(b), Oct. 19, 1998, 112 Stat. 2366.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3003.	Sept. 28, 1959, Pub. L. 86-382, §4, 73 Stat. 711. July 8, 1963, Pub. L. 88-59, §1(b), 77 Stat. 77.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1998—Par. (1). Pub. L. 105-266 substituted “plan, which may be underwritten by participating affiliates licensed in any number of States,” for “plan.”

1988—Par. (1). Pub. L. 100-654 substituted “former spouses, or persons having continued coverage under section 8905a of this title,” for “or former spouses,” and “former spouse, or person having continued coverage under section 8905a of this title.” for “or former spouse.”

1986—Par. (4)(A). Pub. L. 99-251, §102, amended second sentence generally, substituting “at least 3 physicians” for “physicians representing at least three major medical specialties” and inserted “and who represent 1 or more medical specialties appropriate and necessary for the population proposed to be served by the plan”.

Par. (4)(C). Pub. L. 99-251, §111, added subpar. (C).

1985—Par. (3). Pub. L. 99-53 inserted “described in section 8901(8)(A) of this title” after “employee organizations”.

1984—Par. (1). Pub. L. 98-615, §3(3), substituted “employees, annuitants, members of their families, or former spouses” for “employees or annuitants, or members of their families” and “employee, annuitant, family member, or former spouse” for “employee or annuitant or member of his family”.

1978—Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-654 applicable with respect to any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after end of 9-month period beginning Nov. 14, 1988, and with respect to any qualifying event occurring on or after first day of first calendar year beginning after end of such 9-month period, see section 203 of Pub. L. 100-654, set out as a note under section 8902 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 8903a. Additional health benefits plans

(a) In addition to any plan under section 8903 of this title, the Office of Personnel Management may contract for or approve one or more health benefits plans under this section.

(b) A plan under this section may not be contracted for or approved unless it—

(1) is sponsored or underwritten, and administered, in whole or substantial part, by an employee organization described in section 8901(8)(B) of this title;

(2) offers benefits of the types named by paragraph (1) or (2) of section 8904 of this title or both;

(3) provides for benefits only by paying for, or providing reimbursement for, the cost of such benefits (as provided for under paragraph (1) or (2) of section 8903 of this title) or a combination thereof; and

(4) is available only to individuals who, at the time of enrollment, are full members of the organization and to members of their families.

(c) A contract for a plan approved under this section shall require the carrier—

(1) to enter into an agreement approved by the Office with an underwriting subcontractor licensed to issue group health insurance in all the States and the District of Columbia; or

(2) to demonstrate ability to meet reasonable minimum financial standards prescribed by the Office.

(d) For the purpose of this section, an individual shall be considered a full member of an organization if such individual is eligible to exercise all rights and privileges incident to full membership in such organization (determined without regard to the right to hold elected office).

(Added Pub. L. 99-53, §1(b)(1), June 17, 1985, 99 Stat. 93.)

§ 8903b. Authority to readmit an employee organization plan

(a) In the event that a plan described by section 8903(3) or 8903a is discontinued under this chapter (other than in the circumstance described in section 8909(d)), that discontinuation shall be disregarded, for purposes of any deter-

mination as to that plan's eligibility to be considered an approved plan under this chapter, but only for purposes of any contract year later than the third contract year beginning after such plan is so discontinued.

(b) A contract for a plan approved under this section shall require the carrier—

(1) to demonstrate experience in service delivery within a managed care system (including provider networks) throughout the United States; and

(2) if the carrier involved would not otherwise be subject to the requirement set forth in section 8903a(c)(1), to satisfy such requirement.

(Added Pub. L. 105-266, §6(a)(1), Oct. 19, 1998, 112 Stat. 2368.)

EFFECTIVE DATE

Pub. L. 105-266, §6(a)(3), Oct. 19, 1998, 112 Stat. 2369, provided that:

“(A) IN GENERAL.—The amendments made by this subsection [enacting this section] shall apply as of the date of the enactment of this Act [Oct. 19, 1998], including with respect to any plan which has been discontinued as of such date.

“(B) TRANSITION RULE.—For purposes of applying section 8903b(a) of title 5, United States Code (as amended by this subsection) with respect to any plan seeking to be readmitted for purposes of any contract year beginning before January 1, 2000, such section shall be applied by substituting ‘second contract year’ for ‘third contract year’.”

§ 8904. Types of benefits

(a) The benefits to be provided under plans described by section 8903 of this title may be of the following types:

(1) SERVICE BENEFIT PLAN.—

(A) Hospital benefits.

(B) Surgical benefits.

(C) In-hospital medical benefits.

(D) Ambulatory patient benefits.

(E) Supplemental benefits.

(F) Obstetrical benefits.

(2) INDEMNITY BENEFIT PLAN.—

(A) Hospital care.

(B) Surgical care and treatment.

(C) Medical care and treatment.

(D) Obstetrical benefits.

(E) Prescribed drugs, medicines, and prosthetic devices.

(F) Other medical supplies and services.

(3) EMPLOYEE ORGANIZATION PLANS.—Benefits of the types named under paragraph (1) or (2) of this subsection or both.

(4) COMPREHENSIVE MEDICAL PLANS.—Benefits of the types named under paragraph (1) or (2) of this subsection or both.

All plans contracted for under paragraphs (1) and (2) of this subsection shall include benefits both for costs associated with care in a general hospital and for other health services of a catastrophic nature.

(b)(1)(A) A plan, other than a prepayment plan described in section 8903(4) of this title, may not provide benefits, in the case of any retired enrolled individual who is age 65 or older and is not covered to receive Medicare hospital and insurance benefits under part A of title XVIII of

the Social Security Act (42 U.S.C. 1395c et seq.), to pay a charge imposed by any health care provider, for inpatient hospital services which are covered for purposes of benefit payments under this chapter and part A of title XVIII of the Social Security Act, to the extent that such charge exceeds applicable limitations on hospital charges established for Medicare purposes under section 1886 of the Social Security Act (42 U.S.C. 1395ww). Hospital providers who have in force participation agreements with the Secretary of Health and Human Services consistent with sections 1814(a) and 1866 of the Social Security Act (42 U.S.C. 1395f(a) and 1395cc), whereby the participating provider accepts Medicare benefits as full payment for covered items and services after applicable patient copayments under section 1813 of such Act (42 U.S.C. 1395e) have been satisfied, shall accept equivalent benefit payments and enrollee copayments under this chapter as full payment for services described in the preceding sentence. The Office of Personnel Management shall notify the Secretary of Health and Human Services if a hospital is found to knowingly and willfully violate this subsection on a repeated basis and the Secretary may invoke appropriate sanctions in accordance with section 1866(b)(2) of the Social Security Act (42 U.S.C. 1395cc(b)(2)) and applicable regulations.

(B)(i) A plan, other than a prepayment plan described in section 8903(4), may not provide benefits, in the case of any retired enrolled individual who is age 65 or older and is not entitled to Medicare supplementary medical insurance benefits under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.), to pay a charge imposed for physicians' services (as defined in section 1848(j) of such Act, 42 U.S.C. 1395w-4(j)) which are covered for purposes of benefit payments under this chapter and under such part, to the extent that such charge exceeds the fee schedule amount under section 1848(a) of such Act (42 U.S.C. 1395w-4(a)).

(ii) Physicians and suppliers who have in force participation agreements with the Secretary of Health and Human Services consistent with section 1842(h)(1) of such Act (42 U.S.C. 1395u(h)(1)), whereby the participating provider accepts Medicare benefits (including allowable deductible and coinsurance amounts) as full payment for covered items and services shall accept equivalent benefit and enrollee cost-sharing under this chapter as full payment for services described in clause (i). Physicians and suppliers who are nonparticipating physicians and suppliers for purposes of part B of title XVIII of such Act shall not impose charges that exceed the limiting charge under section 1848(g) of such Act (42 U.S.C. 1395w-4(g)) with respect to services described in clause (i) provided to enrollees described in such clause. The Office of Personnel Management shall notify a physician or supplier who is found to have violated this clause and inform them of the requirements of this clause and sanctions for such a violation. The Office of Personnel Management shall notify the Secretary of Health and Human Services if a physician or supplier is found to knowingly and willfully violate this clause on a repeated basis and the Secretary of Health and Human Services

may invoke appropriate sanctions in accordance with sections 1128A(a) and 1848(g)(1) of such Act (42 U.S.C. 1320a-7a(a), 1395w-4(g)(1)) and applicable regulations.

(C) If the Secretary of Health and Human Services determines that a violation of this subsection warrants excluding a provider from participation for a specified period under title XVIII of the Social Security Act, the Office shall enforce a corresponding exclusion of such provider for purposes of this chapter.

(2) Notwithstanding any other provision of law, the Secretary of Health and Human Services and the Director of the Office of Personnel Management, and their agents, shall exchange any information necessary to implement this subsection.

(3)(A) Not later than December 1, 1991, and periodically thereafter, the Secretary of Health and Human Services (in consultation with the Director of the Office of Personnel Management) shall supply to carriers of plans described in paragraphs (1) through (3) of section 8903 the Medicare program information necessary for them to comply with paragraph (1).

(B) For purposes of this paragraph, the term "Medicare program information" includes (i) the limitations on hospital charges established for Medicare purposes under section 1886 of the Social Security Act (42 U.S.C. 1395ww) and the identity of hospitals which have in force agreements with the Secretary of Health and Human Services consistent with section 1814(a) and 1866 of the Social Security Act (42 U.S.C. 1395f(a) and 1395cc), and (ii) the fee schedule amounts and limiting charges for physicians' services established under section 1848 of such Act (42 U.S.C. 1395w-4) and the identity of participating physicians and suppliers who have in force agreements with such Secretary under section 1842(h) of such Act (42 U.S.C. 1395u(h)).

(4) The Director of the Office of Personnel Management shall enter into an arrangement with the Secretary of Health and Human Services, to be effective before the first day of the fifth month that begins before each contract year, under which—

(A) physicians and suppliers (whether or not participating) under the Medicare program will be notified of the requirements of paragraph (1)(B);

(B) enforcement procedures will be in place to carry out such paragraph (including enforcement of protections against overcharging of beneficiaries); and

(C) Medicare program information described in paragraph (3)(B)(ii) will be supplied to carriers under paragraph (3)(A).

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 603; Pub. L. 101-508, title VII, §7002(f)(1), Nov. 5, 1990, 104 Stat. 1388-330; Pub. L. 102-378, §2(76), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 103-66, title XI, §11003(a), Aug. 10, 1993, 107 Stat. 409.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3004.	Sept. 28, 1959, Pub. L. 86-382, §5, 73 Stat. 712.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Parts A and B of title XVIII of the Act are classified generally to part A (§1395c et seq.) and part B (§1395j et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103-66, §11003(a)(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (b)(3)(B). Pub. L. 103-66, §11003(a)(2), inserted cl. (i) designation and added cl. (ii).

Subsec. (b)(4). Pub. L. 103-66, §11003(a)(3), added par. (4).

1992—Subsec. (a). Pub. L. 102-378 substituted “this subsection” for “this section” in pars. (3) and (4) and in last sentence.

1990—Pub. L. 101-508 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 11003(b) of Pub. L. 103-66 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to contract years beginning on or after January 1, 1995.”

EFFECTIVE DATE OF 1990 AMENDMENT

Section 7002(f)(2) of Pub. L. 101-508 provided that: “The amendments made by this subsection [amending this section] shall apply with respect to contract years beginning on or after January 1, 1992.”

MENTAL HEALTH, ALCOHOLISM, AND DRUG ADDICTION BENEFITS; CONGRESSIONAL FINDINGS; SENSE OF CONGRESS

Pub. L. 99-251, title I, §107, Feb. 27, 1986, 100 Stat. 16, provided that:

“(a) FINDINGS.—The Congress finds that—

“(1) the treatment of mental illness, alcoholism, and drug addiction are basic health care services which are needed by approximately 40,000,000 Americans each year;

“(2) treatment of mental illness, alcoholism, and drug addiction is increasingly successful;

“(3) timely and appropriate treatment of mental illness, alcoholism, and drug addiction is cost effective in terms of restored productivity, reduced utilization of other health services, and reduced social dependence; and

“(4) mental illness is a problem of grave concern to the people of the United States and is widely but unnecessarily feared and misunderstood.

“(b) SENSE OF THE CONGRESS.—It is the sense of the Congress—

“(1) that participants in the Federal employees health benefits program should receive adequate benefits coverage for treatment of mental illness, alcoholism, and drug addiction; and

“(2) that the Office of Personnel Management should encourage participating health benefits plans to provide adequate benefits relating to treatment of mental illness, alcoholism, and drug addiction (including benefits relating to coverage for inpatient and outpatient treatment and catastrophic protection benefits).”

§ 8905. Election of coverage

(a) An employee may enroll in an approved health benefits plan described by section 8903 or

8903a of this title either as an individual or for self and family.

(b) An annuitant who at the time he becomes an annuitant was enrolled in a health benefits plan under this chapter—

(1) as an employee for a period of not less than—

(A) the 5 years of service immediately before retirement;

(B) the full period or periods of service between the last day of the first period, as prescribed by regulations of the Office of Personnel Management, in which he is eligible to enroll in the plan and the date on which he becomes an annuitant; or

(C) the full period or periods of service beginning with the enrollment which became effective before January 1, 1965, and ending with the date on which he becomes an annuitant;

whichever is shortest; or

(2) as a member of the family of an employee or annuitant;

may continue his enrollment under the conditions of eligibility prescribed by regulations of the Office. The Office may, in its sole discretion, waive the requirements of this subsection in the case of an individual who fails to satisfy such requirements if the Office determines that, due to exceptional circumstances, it would be against equity and good conscience not to allow such individual to be enrolled as an annuitant in a health benefits plan under this chapter¹

(c)(1) A former spouse may—

(A) within 60 days after the dissolution of the marriage, or

(B) in the case of a former spouse of a former employee whose marriage was dissolved after the employee's retirement, within 60 days after the dissolution of the marriage or, if later, within 60 days after an election is made under section 8339(j)(3) or 8417(b) of this title for such former spouse by the retired employee,

enroll in an approved health benefits plan described by section 8903 or 8903a of this title as an individual or for self and family as provided in paragraph (2) of this subsection, subject to agreement to pay the full subscription charge of the enrollment, including the amounts determined by the Office to be necessary for administration and reserves pursuant to section 8909(b) of this title. The former spouse shall submit an enrollment application and make premium payments to the agency which, at the time of divorce or annulment, employed the employee to whom the former spouse was married or, in the case of a former spouse who is receiving annuity payments under section 8341(h), 8345(j), 8445, or 8467 of this title, to the Office of Personnel Management.

(2) Coverage for self and family under this subsection shall be limited to—

(A) the former spouse; and

(B) unmarried dependent natural or adopted children of the former spouse and the employee who are—

(i) under 22 years of age; or

¹ So in original. Probably should be followed by a period.

(ii) incapable of self-support because of mental or physical disability which existed before age 22.

(d) An individual whom the Secretary of Defense determines is an eligible beneficiary under subsection (b) of section 1108 of title 10 may enroll, as part of the demonstration project under such section, in a health benefits plan under this chapter in accordance with the agreement under subsection (a) of such section between the Secretary and the Office and applicable regulations under this chapter.

(e) If an employee, annuitant, or other individual eligible to enroll in a health benefits plan under this chapter has a spouse who is also eligible to enroll, either spouse, but not both, may enroll for self and family, or each spouse may enroll as an individual. However, an individual may not be enrolled both as an employee, annuitant, or other individual eligible to enroll and as a member of the family.

(f) An employee, annuitant, former spouse, or person having continued coverage under section 8905a of this title enrolled in a health benefits plan under this chapter may change his coverage or that of himself and members of his family by an application filed within 60 days after a change in family status or at other times and under conditions prescribed by regulations of the Office.

(g)(1) Under regulations prescribed by the Office, the Office shall, before the start of any contract term in which—

(A) an adjustment is made in any of the rates charged or benefits provided under a health benefits plan described by section 8903 or 8903a of this title,

(B) a newly approved health benefits plan is offered, or

(C) an existing plan is terminated,

provide a period of not less than 3 weeks during which any employee, annuitant, former spouse, or person having continued coverage under section 8905a of this title enrolled in a health benefits plan described by such section shall be permitted to transfer that individual's enrollment to another such plan or to cancel such enrollment.

(2) In addition to any opportunity afforded under paragraph (1) of this subsection, an employee, annuitant, former spouse, or person having continued coverage under section 8905a of this title enrolled in a health benefits plan under this chapter shall be permitted to transfer that individual's enrollment to another such plan, or to cancel such enrollment, at such other times and subject to such conditions as the Office may prescribe in regulations.

(3)(A) In addition to any informational requirements otherwise applicable under this chapter, the regulations shall include provisions to ensure that each employee eligible to enroll in a health benefits plan under this chapter (whether actually enrolled or not) is notified in writing as to the rights afforded under section 8905a of this title.

(B) Notification under this paragraph shall be provided by employing agencies at an appropriate point in time before each period under paragraph (1) so that employees may be aware of

their rights under section 8905a of this title when making enrollment decisions during such period.

(h)(1) An unenrolled employee who is required by a court or administrative order to provide health insurance coverage for a child who meets the requirements of section 8901(5) may enroll for self and family coverage in a health benefits plan under this chapter. If such employee fails to enroll for self and family coverage in a health benefits plan that provides full benefits and services in the location in which the child resides, and the employee does not provide documentation showing that such coverage has been provided through other health insurance, the employing agency shall enroll the employee in a self and family enrollment in the option which provides the lower level of coverage under the Service Benefit Plan.

(2) An employee who is enrolled as an individual in a health benefits plan under this chapter and who is required by a court or administrative order to provide health insurance coverage for a child who meets the requirements of section 8901(5) may change to a self and family enrollment in the same or another health benefits plan under this chapter. If such employee fails to change to a self and family enrollment and the employee does not provide documentation showing that such coverage has been provided through other health insurance, the employing agency shall change the enrollment of the employee to a self and family enrollment in the plan in which the employee is enrolled if that plan provides full benefits and services in the location where the child resides. If the plan in which the employee is enrolled does not provide full benefits and services in the location in which the child resides, or, if the employee fails to change to a self and family enrollment in a plan that provides full benefits and services in the location where the child resides, the employing agency shall change the coverage of the employee to a self and family enrollment in the option which provides the lower level of coverage under the Service Benefits Plan.

(3) The employee may not discontinue the self and family enrollment in a plan that provides full benefits and services in the location in which the child resides for so long as the court or administrative order remains in effect and the child continues to meet the requirements of section 8901(5), unless the employee provides documentation showing that such coverage has been provided through other health insurance.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 603; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 98-615, §3(4), Nov. 8, 1984, 98 Stat. 3203; Pub. L. 99-53, §2(a), (c), June 17, 1985, 99 Stat. 94; Pub. L. 99-251, title I, §§103, 104(a), Feb. 27, 1986, 100 Stat. 14; Pub. L. 99-335, title II, §207(m), June 6, 1986, 100 Stat. 598; Pub. L. 100-654, title II, §§201(c), (d), 202(c), Nov. 14, 1988, 102 Stat. 3845; Pub. L. 102-378, §2(77), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 105-261, div. A, title VII, §721(b)(1), Oct. 17, 1998, 112 Stat. 2065; Pub. L. 106-394, §2, Oct. 30, 2000, 114 Stat. 1629.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3002(a) (1st sentence, less words between 1st and 4th commas), (b)–(e).	Sept. 28, 1959, Pub. L. 86-382, §3(a) (1st sentence, less words between 1st and 4th commas), (b)–(e), 73 Stat. 710. Mar. 17, 1964, Pub. L. 88-284, §1(5), 78 Stat. 164.

In subsection (b)(1), the words “as an employee” are inserted for clarity.

In subsection (b)(1)(C), the words “before January 1, 1965” are substituted for “not later than December 31, 1964”.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

2000—Subsec. (h). Pub. L. 106-394 added subsec. (h).
1998—Subsecs. (d) to (g). Pub. L. 105-261 added subsec. (d) and redesignated former subsecs. (d) to (f) as (e) to (g), respectively.

1992—Subsec. (b). Pub. L. 102-378, §2(77)(A), substituted “this chapter” for “this subchapter.” at end.

Subsec. (c)(1). Pub. L. 102-378, §2(77)(B), inserted comma after “8341(h)” in last sentence.

1988—Subsec. (d). Pub. L. 100-654, §202(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “If an employee has a spouse who is an employee, either spouse, but not both, may enroll for self and family, or each spouse may enroll as an individual. However, an individual may not be enrolled both as an employee or annuitant and as a member of the family.”

Subsecs. (e), (f)(1), (2). Pub. L. 100-654, §201(c), (d)(1), substituted “former spouse, or person having continued coverage under section 8905a of this title” for “or former spouse”.

Subsec. (f)(3). Pub. L. 100-654, §201(d)(2), added par. (3).

1986—Subsec. (b). Pub. L. 99-251, §103, inserted last sentence relating to waiver of the requirements of this subsection if it would be against equity to prohibit enrollment.

Subsec. (c)(1). Pub. L. 99-335 inserted in subpar. (B) “or 8417(b)” and substituted in provision following subpar. (B) “8345(j), 8445, or 8467” for “or 8345(j)”.

Subsec. (f). Pub. L. 99-251, §104(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “An employee, annuitant, or former spouse enrolled in a health benefits plan under this chapter may change his coverage or that of himself and members of his family by an application filed within 60 days after a change in family status or at other times and under conditions prescribed by regulations of the Office.”

1985—Subsecs. (a), (c)(1). Pub. L. 99-53, §2(a), inserted reference to section 8903a of this title.

Subsec. (f). Pub. L. 99-53, §2(a), (c), inserted reference to section 8903a of this title and substituted “such plan” for “plan described by that section”.

1984—Subsec. (c). Pub. L. 98-615, §3(4)(A), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98-615, §3(4)(A), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98-615, §3(4), redesignated former subsec. (d) as (e) and substituted “An employee, annuitant, or former spouse” for “An employee or annuitant”. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 98-615, §3(4), redesignated former subsec. (e) as (f) and substituted “An employee, annuitant, or former spouse” for “An employee or annuitant”.

1978—Subsecs. (b), (d), (e). Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-654 applicable with respect to any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after end of 9-month period beginning Nov. 14, 1988, and with respect to any qualifying event occurring on or after first day of first calendar year beginning after end of such 9-month period, see section 203 of Pub. L. 100-654, set out as a note under section 8902 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

Section 104(b) of Pub. L. 99-251 provided that: “The amendment made by subsection (a) [amending this section] shall be effective with respect to contracts entered into or renewed for calendar years beginning after December 31, 1986.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

ELECTION OF HEALTH BENEFITS COVERAGE AND ENTITLEMENT TO HEALTH BENEFITS UNDER THIS CHAPTER RATHER THAN UNDER RETIRED FEDERAL EMPLOYEES HEALTH BENEFITS ACT

Pub. L. 93-246, §§2, 4(b), Jan. 31, 1974, 88 Stat. 4, provided that:

“SEC. 2. (a) Notwithstanding any other provision of law, an annuitant, as defined under section 8901(3) of title 5, United States Code, who is participating or who is eligible to participate in the health benefits program offered under the Retired Federal Employees Health Benefits Act (74 Stat. 849; Public Law 86-724), may elect, in accordance with regulations prescribed by the United States Civil Service Commission, to be covered under the provisions of chapter 89 of title 5, United States Code [this chapter], in lieu of coverage under such Act.

“(b) An annuitant who elects to be covered under the provisions of chapter 89 of title 5, United States Code [this chapter], in accordance with subsection (a) of this section, shall be entitled to the benefits under such chapter 89.

“[Sec. 4] (b) Section 2 [set out above] shall take effect on the one hundred and eightieth day following the date of enactment [Jan. 1, 1974] or on such earlier date as the United States Civil Service Commission may prescribe.”

§ 8905a. Continued coverage

(a) Any individual described in subsection (b) may elect to continue coverage under this chapter in accordance with the provisions of this section.

(b) This section applies with respect to—

(1) any employee who—

(A) is separated from service, whether voluntarily or involuntarily, except that if the separation is involuntary, this section shall not apply if the separation is for gross misconduct (as defined under regulations which the Office of Personnel Management shall prescribe); and

(B) would not otherwise be eligible for any benefits under this chapter (determined

without regard to any temporary extension of coverage and without regard to any benefits available under a nongroup contract);

(2) any individual who—

(A) ceases to meet the requirements for being considered an unmarried dependent child under this chapter;

(B) on the day before so ceasing to meet the requirements referred to in subparagraph (A), was covered under a health benefits plan under this chapter as a member of the family of an employee or annuitant; and

(C) would not otherwise be eligible for any benefits under this chapter (determined without regard to any temporary extension of coverage and without regard to any benefits available under a nongroup contract); and

(3) any employee who—

(A) is enrolled in a health benefits plan under this chapter;

(B) is a member of a reserve component of the armed forces;

(C) is called or ordered to active duty in support of a contingency operation (as defined in section 101(a)(13) of title 10);

(D) is placed on leave without pay or separated from service to perform active duty; and

(E) serves on active duty for a period of more than 30 consecutive days.

(c)(1) The Office shall prescribe regulations and provide for the inclusion of appropriate terms in contracts with carriers to provide that—

(A) with respect to an employee who becomes (or will become) eligible for continued coverage under this section as a result of separation from service, the separating agency shall, before the end of the 30-day period beginning on the date as of which coverage (including any temporary extensions of coverage) would otherwise end, notify the individual of such individual's rights under this section; and

(B) with respect to a child of an employee or annuitant who becomes eligible for continued coverage under this section as a result of ceasing to meet the requirements for being considered a member of the employee's or annuitant's family—

(i) the employee or annuitant may provide written notice of the child's change in status (complete with the child's name, address, and such other information as the Office may by regulation require)—

(I) to the employee's employing agency; or

(II) in the case of an annuitant, to the Office; and

(ii) if the notice referred to in clause (i) is received within 60 days after the date as of which the child involved first ceases to meet the requirements involved, the employing agency or the Office (as the case may be) must, within 14 days after receiving such notice, notify the child of such child's rights under this section.

(2) In order to obtain continued coverage under this section, an appropriate written elec-

tion (submitted in such manner as the Office by regulation prescribes) must be made—

(A) in the case of an individual seeking continued coverage based on a separation from service, before the end of the 60-day period beginning on the later of—

(i) the effective date of the separation; or

(ii) the date the separated individual receives the notice required under paragraph (1)(A); or

(B) in the case of an individual seeking continued coverage based on a change in circumstances making such individual ineligible for coverage as an unmarried dependent child, before the end of the 60-day period beginning on the later of—

(i) the date as of which such individual first ceases to meet the requirements for being considered an unmarried dependent child; or

(ii) the date such individual receives notice under paragraph (1)(B)(ii);

except that if a parent fails to provide the notice required under paragraph (1)(B)(i) in timely fashion, the 60-day period under this subparagraph shall be based on the date under clause (i), irrespective of whether or not any notice under paragraph (1)(B)(ii) is provided.

(d)(1)(A) Except as provided in paragraphs (4), (5), and (6), an individual receiving continued coverage under this section shall be required to pay currently into the Employees Health Benefits Fund, under arrangements satisfactory to the Office, an amount equal to the sum of—

(i) the employee and agency contributions which would be required in the case of an employee enrolled in the same health benefits plan and level of benefits; and

(ii) an amount, determined under regulations prescribed by the Office, necessary for administrative expenses, but not to exceed 2 percent of the total amount under clause (i).

(B) Payments under this section to the Fund shall—

(i) in the case of an individual whose continued coverage is based on such individual's separation, be made through the agency which last employed such individual; or

(ii) in the case of an individual whose continued coverage is based on a change in circumstances referred to in subsection (c)(2)(B), be made through—

(I) the Office, if, at the time coverage would (but for this section) otherwise have been discontinued, the individual was covered as the child of an annuitant; or

(II) if, at the time referred to in subclause (I), the individual was covered as the child of an employee, the employee's employing agency as of such time.

(2) If an individual elects to continue coverage under this section before the end of the applicable period under subsection (c)(2), but after such individual's coverage under this chapter (including any temporary extensions of coverage) expires, coverage shall be restored retroactively, with appropriate contributions (determined in accordance with paragraph (1), (4), or (5), as the case may be) and claims (if any), to the same ex-

tent and effect as though no break in coverage had occurred.

(3)(A) An individual making an election under subsection (c)(2)(B) may, at such individual's option, elect coverage either as an individual or, if appropriate, for self and family.

(B) For the purpose of this paragraph, members of an individual's family shall be determined in the same way as would apply under this chapter in the case of an enrolled employee.

(C) Nothing in this paragraph shall be considered to limit an individual making an election under subsection (c)(2)(A) to coverage for self alone.

(4)(A) If the basis for continued coverage under this section is an involuntary separation from a position, or a voluntary separation from a surplus position, in or under the Department of Defense due to a reduction in force, or the Department of Energy due to a reduction in force resulting from the establishment of the National Nuclear Security Administration—

(i) the individual shall be liable for not more than the employee contributions referred to in paragraph (1)(A)(i); and

(ii) the agency which last employed the individual shall pay the remaining portion of the amount required under paragraph (1)(A).

(B) This paragraph shall apply with respect to any individual whose continued coverage is based on a separation occurring on or after the date of enactment of this paragraph and before—

(i) December 31, 2011; or

(ii) February 1, 2012, if specific notice of such separation was given to such individual before December 31, 2011.

(C) For the purpose of this paragraph, “surplus position” means a position which is identified in pre-reduction-in-force planning as no longer required, and which is expected to be eliminated under formal reduction-in-force procedures.

(5)(A) If the basis for continued coverage under this section is an involuntary separation from a position in or under the Department of Veterans Affairs due to a reduction in force or a title 38 staffing readjustment, or a voluntary or involuntary separation from a Department of Energy position at a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 4421 of the Atomic Energy Defense Act—

(i) the individual shall be liable for not more than the employee contributions referred to in paragraph (1)(A)(i); and

(ii) the agency which last employed the individual shall pay the remaining portion of the amount required under paragraph (1)(A).

(B) This paragraph shall only apply with respect to individuals whose continued coverage is based on a separation occurring on or after the date of the enactment of this paragraph.

(6)(A) If the basis for continued coverage under this section is, as a result of the termination of the Space Shuttle Program, an involuntary separation from a position due to a reduction-in-force or declination of a directed reassignment or transfer of function, or a voluntary separation from a surplus position in the National Aeronautics and Space Administration—

(i) the individual shall be liable for not more than the employee contributions referred to in paragraph (1)(A)(i); and

(ii) the National Aeronautics and Space Administration shall pay the remaining portion of the amount required under paragraph (1)(A).

(B) This paragraph shall only apply with respect to individuals whose continued coverage is based on a separation occurring on or after the date of enactment of this paragraph and before December 31, 2010.

(C) For purposes of this paragraph, “surplus position” means a position which is—

(i) identified in pre-reduction-in-force planning as no longer required, and which is expected to be eliminated under formal reduction-in-force procedures as a result of the termination of the Space Shuttle Program; or

(ii) encumbered by an employee who has received official certification from the National Aeronautics and Space Administration consistent with the Administration's career transition assistance program regulations that the position is being abolished as a result of the termination of the Space Shuttle Program.

(e)(1) Continued coverage under this section may not extend beyond—

(A) in the case of an individual whose continued coverage is based on separation from service, the date which is 18 months after the effective date of the separation;

(B) in the case of an individual whose continued coverage is based on ceasing to meet the requirements for being considered an unmarried dependent child, the date which is 36 months after the date on which the individual first ceases to meet those requirements, subject to paragraph (2); or

(C) in the case of an employee described in subsection (b)(3), the date which is 24 months after the employee is placed on leave without pay or separated from service to perform active duty.

(2) In the case of an individual who—

(A) ceases to meet the requirements for being considered an unmarried dependent child;

(B) as of the day before so ceasing to meet the requirements referred to in subparagraph (A), was covered as the child of a former employee receiving continued coverage under this section based on the former employee's separation from service; and

(C) so ceases to meet the requirements referred to in subparagraph (A) before the end of the 18-month period beginning on the date of the former employee's separation from service,

extended coverage under this section may not extend beyond the date which is 36 months after the separation date referred to in subparagraph (C).

(f)(1) The Office shall prescribe regulations under which, in addition to any individual otherwise eligible for continued coverage under this section, and to the extent practicable, continued coverage may also, upon appropriate written application, be afforded under this section—

(A) to any individual who—

(i) if subparagraphs (A) and (C) of paragraph (10) of section 8901 were disregarded, would be eligible to be considered a former spouse within the meaning of such paragraph; but

(ii) would not, but for this subsection, be eligible to be so considered; and

(B) to any individual whose coverage as a family member would otherwise terminate as a result of a legal separation.

(2) The terms and conditions for coverage under the regulations shall include—

(A) consistent with subsection (c), any necessary notification provisions, and provisions under which an election period of at least 60 days' duration is afforded;

(B) terms and conditions identical to those under subsection (d), except that contributions to the Employees Health Benefits Fund shall be made through such agency as the Office by regulation prescribes;

(C) provisions relating to the termination of continued coverage, except that continued coverage under this section may not (subject to paragraph (3)) extend beyond the date which is 36 months after the date on which the qualifying event under this subsection (the date of divorce, annulment, or legal separation, as the case may be) occurs; and

(D) provisions designed to ensure that any coverage pursuant to this subsection does not adversely affect any eligibility for coverage which the individual involved might otherwise have under this chapter (including as a result of any change in personal circumstances) if this subsection had not been enacted.

(3) In the case of an individual—

(A) who becomes eligible for continued coverage under this subsection based on a divorce, annulment, or legal separation from a person who, as of the day before the date of the divorce, annulment, or legal separation (as the case may be) was receiving continued coverage under this section for self and family based on such person's separation from service; and

(B) whose divorce, annulment, or legal separation (as the case may be) occurs before the end of the 18-month period beginning on the date of the separation from service referred to in subparagraph (A),

extended coverage under this section may not extend beyond the date which is 36 months after the date of the separation from service, as referred to in subparagraph (A).

(Added Pub. L. 100-654, title II, §201(a)(1), Nov. 14, 1988, 102 Stat. 3841; amended Pub. L. 102-484, div. D, title XLIV, §4438(a), Oct. 23, 1992, 106 Stat. 2725; Pub. L. 103-337, div. A, title III, §341(d), Oct. 5, 1994, 108 Stat. 2720; Pub. L. 104-106, div. A, title X, §1036, Feb. 10, 1996, 110 Stat. 431; Pub. L. 106-65, div. A, title XI, §1104(c), div. C, title XXXII, §3244, Oct. 5, 1999, 113 Stat. 777, 965; Pub. L. 106-117, title XI, §1106, Nov. 30, 1999, 113 Stat. 1598; Pub. L. 107-314, div. A, title XI, §1103, Dec. 2, 2002, 116 Stat. 2661; Pub. L. 107-314, div. D, title XLVI, §4603(h), formerly Pub. L. 106-398, §1 [div. C, title XXXI, §3136(h)], Oct. 30, 2000, 114 Stat. 1654, 1654A-459, renu-

bered §4603(h) of Pub. L. 107-314 by Pub. L. 108-136, div. C, title XXXI, §3141(i)(4)(A)-(C), Nov. 24, 2003, 117 Stat. 1777; Pub. L. 108-136, div. C, title XXXI, §3141(m)(3), Nov. 24, 2003, 117 Stat. 1787; Pub. L. 108-375, div. A, title XI, §1101(a), Oct. 28, 2004, 118 Stat. 2072; Pub. L. 109-163, div. A, title XI, §1101, Jan. 6, 2006, 119 Stat. 3447; Pub. L. 110-422, title VI, §615, Oct. 15, 2008, 122 Stat. 4800; Pub. L. 111-242, §151, as added Pub. L. 111-322, title I, §1(a)(2), Dec. 22, 2010, 124 Stat. 3519.)

REFERENCES IN TEXT

The date of enactment of this paragraph, referred to in subsec. (d)(4)(B), is the date of enactment of Pub. L. 102-484, which was approved Oct. 23, 1992.

Section 4421 of the Atomic Energy Defense Act, referred to in subsec. (d)(5)(A), is classified to section 2601 of Title 50, War and National Defense.

The date of the enactment of this paragraph, referred to in subsec. (d)(5)(B), is the date of enactment of Pub. L. 106-117, which was approved Nov. 30, 1999.

The date of enactment of this paragraph, referred to in subsec. (d)(6)(B), is the date of enactment of Pub. L. 110-422, which was approved Oct. 15, 2008.

AMENDMENTS

2010—Subsec. (d)(4)(B)(i). Pub. L. 111-242, §151(1), as added by Pub. L. 111-322, substituted “December 31, 2011” for “October 1, 2010”.

Subsec. (d)(4)(B)(ii). Pub. L. 111-242, §151(2), as added by Pub. L. 111-322, substituted “February 1, 2012” for “February 1, 2011” and “December 31, 2011” for “October 1, 2010”.

2008—Subsec. (d)(1)(A). Pub. L. 110-422, §615(b), substituted “(4), (5), and (6)” for “(4) and (5)” in introductory provisions.

Subsec. (d)(6). Pub. L. 110-422, §615(a), added par. (6).

2006—Subsec. (d)(4)(B)(i). Pub. L. 109-163, §1101(1), substituted “October 1, 2010” for “October 1, 2006”.

Subsec. (d)(4)(B)(ii). Pub. L. 109-163, §1101(2), substituted “February 1, 2011” for “February 1, 2007” and “October 1, 2010” for “October 1, 2006”.

2004—Subsec. (a). Pub. L. 108-375, §1101(a)(1), struck out “paragraph (1) or (2) of” after “Any individual described in”.

Subsec. (b)(3). Pub. L. 108-375, §1101(a)(2), added par. (3).

Subsec. (e)(1)(C). Pub. L. 108-375, §1101(a)(4), added subpar. (C).

2003—Subsec. (d)(5)(A). Pub. L. 108-136, §3141(m)(3), substituted “section 4421 of the Atomic Energy Defense Act” for “section 3143 of the National Defense Authorization Act for Fiscal Year 1997 (42 U.S.C. 7274n)”.

2002—Subsec. (d)(4)(B)(i). Pub. L. 107-314, §1103(1), substituted “2006” for “2003”.

Subsec. (d)(4)(B)(ii). Pub. L. 107-314, §1103(2), substituted “2007” and “2006” for “2004” and “2003”, respectively.

2000—Subsec. (d)(5)(A). Pub. L. 107-314, §4603(h), formerly Pub. L. 106-398, §1 [div. C, title XXXI, §3136(h)], as renumbered by Pub. L. 108-136, §3141(i)(4)(A)-(C), in introductory provisions, inserted “, or a voluntary or involuntary separation from a Department of Energy position at a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 3143 of the National Defense Authorization Act for Fiscal Year 1997 (42 U.S.C. 7274n)” after “readjustment”.

1999—Subsec. (d)(1)(A). Pub. L. 106-117, §1106(1), substituted “paragraphs (4) and (5)” for “paragraph (4)” in introductory provisions.

Subsec. (d)(2). Pub. L. 106-117, §1106(2), substituted “(1), (4), or (5)” for “(1) or (4)”.

Subsec. (d)(4)(A). Pub. L. 106-65, §3244, inserted “, or the Department of Energy due to a reduction in force resulting from the establishment of the National Nuclear Security Administration” after “reduction in force” in introductory provisions.

Subsec. (d)(4)(B). Pub. L. 106-65, § 1104(c), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

“(i) October 1, 1999; or

“(ii) February 1, 2000, if specific notice of such separation was given to such individual before October 1, 1999.”

Subsec. (d)(5). Pub. L. 106-117, § 1106(3), added par. (5). 1996—Subsec. (d)(4)(A). Pub. L. 104-106, § 1036(1), inserted “, or a voluntary separation from a surplus position,” after “an involuntary separation from a position” in introductory provisions.

Subsec. (d)(4)(C). Pub. L. 104-106, § 1036(2), added subpar. (C).

1994—Subsec. (d)(4)(B). Pub. L. 103-337 substituted “October 1, 1999” for “October 1, 1997” in cls. (i) and (ii) and “February 1, 2000” for “February 1, 1998” in cl. (ii).

1992—Subsec. (d)(1)(A). Pub. L. 102-484, § 4438(a)(1), substituted “Except as provided in paragraph (4), an individual” for “An individual”.

Subsec. (d)(2). Pub. L. 102-484, § 4438(a)(2), substituted “in accordance with paragraph (1) or (4), as the case may be” for “in accordance with paragraph (1)”.

Subsec. (d)(4). Pub. L. 102-484, § 4438(a)(3), added par. (4).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-375, div. A, title XI, § 1101(c), Oct. 28, 2004, 118 Stat. 2072, provided that: “The amendments made by this section [amending this section and section 8906 of this title] shall apply with respect to Federal employees called or ordered to active duty on or after September 14, 2001.”

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 3244 of Pub. L. 106-65 effective Mar. 1, 2000, see section 3299 of Pub. L. 106-65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

EFFECTIVE DATE

Section applicable with respect to any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after the end of the 9-month period beginning Nov. 14, 1988, and with respect to any qualifying event occurring on or after the first day of the first calendar year beginning after the end of such 9-month period, see section 203 of Pub. L. 100-654, set out as an Effective Date of 1988 Amendment note under section 8902 of this title.

SOURCE OF PAYMENTS

Section 4438(b)(1) of Pub. L. 102-484 provided that: “Any amount which becomes payable by an agency as a result of the enactment of subsection (a) [amending this section] shall be paid out of funds or appropriations available for salaries and expenses of such agency.”

§ 8906. Contributions

(a)(1) Not later than October 1 of each year, the Office of Personnel Management shall determine the weighted average of the subscription charges that will be in effect during the following contract year with respect to—

(A) enrollments under this chapter for self alone; and

(B) enrollments under this chapter for self and family.

(2) In determining each weighted average under paragraph (1), the weight to be given to a particular subscription charge shall, with respect to each plan (and option) to which it is to apply, be commensurate with the number of enrollees enrolled in such plan (and option) as of March 31 of the year in which the determination is being made.

(3) For purposes of paragraph (2), the term “enrollee” means any individual who, during the contract year for which the weighted average is to be used under this section, will be eligible for a Government contribution for health benefits.

(b)(1) Except as provided in paragraphs (2), (3), and (4), the biweekly Government contribution for health benefits for an employee or annuitant enrolled in a health benefits plan under this chapter is adjusted to an amount equal to 72 percent of the weighted average under subsection (a)(1)(A) or (B), as applicable. For an employee, the adjustment begins on the first day of the employee’s first pay period of each year. For an annuitant, the adjustment begins on the first day of the first period of each year for which an annuity payment is made.

(2) The biweekly Government contribution for an employee or annuitant enrolled in a plan under this chapter shall not exceed 75 percent of the subscription charge.

(3) In the case of an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title), the biweekly Government contribution shall be equal to the percentage which bears the same ratio to the percentage determined under this subsection (without regard to this paragraph) as the average number of hours of such employee’s regularly scheduled workweek bears to the average number of hours in the regularly scheduled workweek of an employee serving in a comparable position on a full-time career basis (as determined under regulations prescribed by the Office).

(4) In the case of persons who are enrolled in a health benefits plan as part of the demonstration project under section 1108 of title 10, the Government contribution shall be subject to the limitation set forth in subsection (i) of that section.

(c) There shall be withheld from the pay of each enrolled employee and (except as provided in subsection (i) of this section) the annuity of each enrolled annuitant and there shall be contributed by the Government, amounts, in the same ratio as the contributions of the employee or annuitant and the Government under subsection (b) of this section, which are necessary for the administrative costs and the reserves provided for by section 8909(b) of this title.

(d) The amount necessary to pay the total charge for enrollment, after the Government contribution is deducted, shall be withheld from the pay of each enrolled employee and (except as provided in subsection (i) of this section) from the annuity of each enrolled annuitant. The withholding for an annuitant shall be the same as that for an employee enrolled in the same health benefits plan and level of benefits.

(e)(1)(A) An employee enrolled in a health benefits plan under this chapter who is placed in a leave without pay status may have his coverage and the coverage of members of his family continued under the plan for not to exceed 1 year under regulations prescribed by the Office.

(B) During each pay period in which an enrollment continues under subparagraph (A)—

(i) employee and Government contributions required by this section shall be paid on a current basis; and

(ii) if necessary, the head of the employing agency shall approve advance payment, recoverable in the same manner as under section 5524a(c), of a portion of basic pay sufficient to pay current employee contributions.

(C) Each agency shall establish procedures for accepting direct payments of employee contributions for the purposes of this paragraph.

(2) An employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8901 of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to continue his health benefits enrollment and arrange to pay currently into the Employees Health Benefits Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the enrollment charges so paid to the Fund. If the employee does not so elect, his enrollment will continue during nonpay status and end as provided by paragraph (1) of this subsection and implementing regulations.

(3)(A) An employing agency may pay both the employee and Government contributions, and any additional administrative expenses otherwise chargeable to the employee, with respect to health care coverage for an employee described in subparagraph (B) and the family of such employee.

(B) An employee referred to in subparagraph (A) is an employee who—

- (i) is enrolled in a health benefits plan under this chapter;
- (ii) is a member of a reserve component of the armed forces;
- (iii) is called or ordered to active duty in support of a contingency operation (as defined in section 101(a)(13) of title 10);
- (iv) is placed on leave without pay or separated from service to perform active duty; and
- (v) serves on active duty for a period of more than 30 consecutive days.

(C) Notwithstanding the one-year limitation on coverage described in paragraph (1)(A), payment may be made under this paragraph for a period not to exceed 24 months.

(f) The Government contribution, and any additional payments under subsection (e)(3)(A), for health benefits for an employee shall be paid—

- (1) in the case of employees generally, from the appropriation or fund which is used to pay the employee;
- (2) in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment;
- (3) in the case of an employee of the legislative branch who is paid by the Chief Administrative Officer of the House of Representatives, from the applicable accounts of the House of Representatives; and
- (4) in the case of an employee in a leave without pay status, from the appropriation or fund which would be used to pay the employee if he were in a pay status.

(g)(1) Except as provided in paragraphs (2) and (3), the Government contributions authorized by

this section for health benefits for an annuitant shall be paid from annual appropriations which are authorized to be made for that purpose and which may be made available until expended.

(2)(A) The Government contributions authorized by this section for health benefits for an individual who first becomes an annuitant by reason of retirement from employment with the United States Postal Service on or after July 1, 1971, or for a survivor of such an individual or of an individual who died on or after July 1, 1971, while employed by the United States Postal Service, shall through September 30, 2016, be paid by the United States Postal Service, and thereafter shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service.

(B) In determining any amount for which the Postal Service is liable under this paragraph, the amount of the liability shall be prorated to reflect only that portion of total service which is attributable to civilian service performed (by the former postal employee or by the deceased individual referred to in subparagraph (A), as the case may be) after June 30, 1971, as estimated by the Office of Personnel Management.

(3) The Government contribution for persons enrolled in a health benefits plan as part of the demonstration project under section 1108 of title 10 shall be paid as provided in subsection (i) of that section.

(h) The Office shall provide for conversion of biweekly rates of contribution specified by this section to rates for employees and annuitants paid on other than a biweekly basis, and for this purpose may provide for the adjustment of the converted rate to the nearest cent.

(i) An annuitant whose annuity is insufficient to cover the withholdings required for enrollment in a particular health benefits plan may enroll (or remain enrolled) in such plan, notwithstanding any other provision of this section, if the annuitant elects, under conditions prescribed by regulations of the Office, to pay currently into the Employees Health Benefits Fund, through the retirement system that administers the annuitant's health benefits enrollment, an amount equal to the withholdings that would otherwise be required under this section.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 604; Pub. L. 90-83, §1(96), Sept. 11, 1967, 81 Stat. 219; Pub. L. 91-418, §1(a), Sept. 25, 1970, 84 Stat. 869; Pub. L. 93-246, §1, Jan. 31, 1974, 88 Stat. 3; Pub. L. 94-310, §3(a), June 15, 1976, 90 Stat. 687; Pub. L. 95-437, §4(c)(2)(A), Oct. 10, 1978, 92 Stat. 1059; Pub. L. 95-454, title IX, §906(a)(15), (c)(2)(F), Oct. 13, 1978, 92 Stat. 1226, 1227; Pub. L. 96-54, §2(a)(53), Aug. 14, 1979, 93 Stat. 384; Pub. L. 99-272, title XV, §15202(b), Apr. 7, 1986, 100 Stat. 334; Pub. L. 101-239, title IV, §4003(a), Dec. 19, 1989, 103 Stat. 2135; Pub. L. 101-303, §1(a), (b), May 29, 1990, 104 Stat. 250; Pub. L. 101-508, title VII, §7102(a), (b), Nov. 5, 1990, 104 Stat. 1388-333; Pub. L. 102-378, §2(78), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 104-186, title II, §215(19), Aug. 20, 1996, 110 Stat. 1747; Pub. L. 104-208, div. A, title I, §101(f) [title IV, §422], Sept. 30, 1996, 110 Stat. 3009-314, 3009-343; Pub. L. 105-33, title VII, §7002(a), Aug. 5, 1997, 111 Stat. 662; Pub. L. 105-261, div. A, title VII, §721(b)(2),

(3), Oct. 17, 1998, 112 Stat. 2065; Pub. L. 107-107, div. A, title V, § 519(a), (b), Dec. 28, 2001, 115 Stat. 1096; Pub. L. 108-375, div. A, title XI, § 1101(b), Oct. 28, 2004, 118 Stat. 2072; Pub. L. 109-435, title VIII, § 803(a)(1)(A), Dec. 20, 2006, 120 Stat. 3251.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3006.	Sept. 28, 1959, Pub. L. 86-382, § 7, 73 Stat. 713. Mar. 17, 1964, Pub. L. 88-284, § 1(10), (11), 78 Stat. 165.

In subsection (f)(1), the words “in the case of employees generally” are inserted for clarity.

In subsection (h), the word “biweekly” is inserted for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8906(a)	5 App.: 3006(a)(1).	July 18, 1966, Pub. L. 89-504, § 406(b), 602, 80 Stat. 298, 303.
8906(b)	5 App.: 3006(a)(2).	
8906(e)(2) ...	5 App.: 3006(b)(2).	

In subsection (a), the words “subsection (b) of this section”, “this chapter”, and “subsection (c) of this section” are substituted for “paragraph (2) of this subsection”, “this Act”, and “paragraph (3)”, respectively, to reflect the codification of title 5, United States Code.

In subsection (e)(2), the words “as defined by section 8901 of this title” are substituted for “as defined in section 2 of this Act” to reflect the codification of that section in 5 U.S.C. 8901. The words “Employees Health Benefits Fund” and “Fund” are substituted for “fund” and “fund”, respectively. In the penultimate sentence, the words “will continue during nonpay status and end” are substituted for “will terminate” for clarity and on authority of 5 U.S.C. 8906(e)(1).

AMENDMENTS

2006—Subsec. (g)(2)(A). Pub. L. 109-435 substituted “shall through September 30, 2016, be paid by the United States Postal Service, and thereafter shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service” for “shall be paid by the United States Postal Service”.

2004—Subsec. (e)(3)(C). Pub. L. 108-375 substituted “24 months” for “18 months”.

2001—Subsec. (e)(3). Pub. L. 107-107, § 519(a), added par. (3).

Subsec. (f). Pub. L. 107-107, § 519(b), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: “The Government contributions for health benefits for an employee shall be paid—”.

1998—Subsec. (b)(1). Pub. L. 105-261, § 721(b)(2)(A), substituted “paragraphs (2), (3), and (4)” for “paragraphs (2) and (3)”.

Subsec. (b)(4). Pub. L. 105-261, § 721(b)(2)(B), added par. (4).

Subsec. (g)(1). Pub. L. 105-261, § 721(b)(3)(A), substituted “paragraphs (2) and (3)” for “paragraph (2)”.

Subsec. (g)(3). Pub. L. 105-261, § 721(b)(3)(B), added par. (3).

1997—Subsec. (a). Pub. L. 105-33 added subsec. (a) and struck out former subsec. (a) which read as follows: “The Office of Personnel Management shall determine the average of the subscription charges in effect on the

beginning date of each contract year with respect to self alone or self and family enrollments under this chapter, as applicable, for the highest level of benefits offered by—

“(1) the service benefit plan;

“(2) the indemnity benefit plan;

“(3) the two employee organization plans with the largest number of enrollments, as determined by the Office; and

“(4) the two comprehensive medical plans with the largest number of enrollments, as determined by the Office.”

Subsec. (b)(1). Pub. L. 105-33 added par. (1) and struck out former par. (1) which read as follows: “Except as provided by paragraphs (2) and (3) of this subsection, the biweekly Government contribution for health benefits for an employee or annuitant enrolled in a health benefits plan under this chapter is adjusted to an amount equal to 60 percent of the average subscription charge determined under subsection (a) of this section. For an employee, the adjustment begins on the first day of the employee’s first pay period of each year. For an annuitant, the adjustment begins on the first day of the first period of each year for which an annuity payment is made.”

1996—Subsec. (e)(1). Pub. L. 104-208 struck out at end “The regulations may provide for the waiving of contributions by the employee and the Government.”, inserted subpar. (A) designation, and added subpars. (B) and (C).

Subsec. (f)(3). Pub. L. 104-186 substituted “Chief Administrative Officer of the House of Representatives, from the applicable accounts of the House of Representatives” for “Clerk of the House of Representatives, from the contingent fund of the House”.

1992—Subsec. (b)(3). Pub. L. 102-378, § 2(78)(A), inserted period after “Office”.

Subsec. (c). Pub. L. 102-378, § 2(78)(B), substituted “and (except)” for “and except”.

1990—Subsec. (c). Pub. L. 101-303, § 1(b)(1), inserted “except as provided in subsection (i) of this section)” after “enrolled employee and”.

Subsec. (d). Pub. L. 101-303, § 1(b)(2), inserted “(except as provided in subsection (i) of this section)” after “enrolled employee and”.

Subsec. (g)(2). Pub. L. 101-508 designated existing provisions as subpar. (A), substituted “July 1, 1971,” for “October 1, 1986,” in two places, and added subpar. (B).

Subsec. (i). Pub. L. 101-303, § 1(a), added subsec. (i).

1989—Subsec. (g)(2). Pub. L. 101-239 inserted “or for a survivor of such an individual or of an individual who died on or after October 1, 1986, while employed by the United States Postal Service,” after “1986.”.

1986—Subsec. (g). Pub. L. 99-272 designated existing provisions as par. (1) and added par. (2).

1979—Subsec. (b)(1). Pub. L. 96-54 substituted provisions setting forth adjustment amount of the Government contribution of equal to 60 percent of the average subscription charge under subsec. (a) and determinations respecting the commencement date of the adjustment, for provisions setting forth adjustment amounts of the Government contribution of equal to 50 percent of the average subscription charge under subsec. (a) for applicable pay periods beginning in 1974, and equal to 60 percent for pay periods beginning in 1975 and after, and determinations respecting the commencement date of the adjustment.

1978—Subsec. (a). Pub. L. 95-454, § 906(a)(15), substituted “Office of Personnel Management” for “Commission” in introductory material, and “Office” for “Commission” in cls. (3) and (4).

Subsec. (b)(1). Pub. L. 95-437, § 4(c)(2)(A)(i), substituted “paragraphs (2) and (3)” for “paragraph (2)”.

Subsec. (b)(3). Pub. L. 95-454, § 906(a)(15), (c)(2)(F), substituted “Office” for “Commission”, and “3401” for “3391”.

Pub. L. 95-437, § 4(c)(2)(A)(ii), added par. (3).

Subsecs. (e)(1), (h). Pub. L. 95-454, § 906(a)(15), substituted “Office” for “Commission”.

1976—Subsec. (g). Pub. L. 94-310 provided for payment of Government contributions from annual appropriations which may be made available until expended.

1974—Subsec. (a). Pub. L. 93-246, §1(a), struck out introductory text “Except as provided by subsection (b) of this section, the biweekly Government contribution for health benefits for employees or annuitants enrolled in health benefits plans under this chapter shall be adjusted”, now incorporated in subsec. (b)(1) of this section, required Commission determination of average of subscription charges, and reenacted remainder of existing provisions, substituting “beginning date of each contract year” for “beginning date of the adjustment”.

Subsec. (b)(1). Pub. L. 93-246, §1(a), incorporated introductory text of former subsec. (a) reading “Except as provided by subsection (b) of this section, the biweekly Government contribution for health benefits for employees or annuitants enrolled in health benefits plans under this chapter shall be adjusted”, as initial text of provisions designated as subsec. (b)(1), substituted provision for amount of biweekly Government contribution equal to 50 percent of average subscription charge for applicable pay periods commencing in 1974 and 60 percent for applicable pay periods commencing in 1975, and annually thereafter, for former subsec. (a) provision for an amount equal to 40 percent of average of subscription charges and former subsec. (b) provision for 50 percent of subscription charge where the biweekly subscription charge was less than twice the Government contribution.

Subsec. (b)(2). Pub. L. 93-246, §1(a), added par. (2).

Subsec. (c). Pub. L. 93-246, §1(b), struck out reference to subsec. (a).

Subsec. (g). Pub. L. 93-246, §1(c), substituted “by this section” for “by subsection (a) of this section”.

1970—Subsec. (a). Pub. L. 91-418, in increasing the Government contribution to the cost of health benefits insurance, substituted provision for adjustment of such contribution, beginning on the first day of the first pay period of each year, to an amount equal to 40 percent of the adjustment, with respect to self alone or self and family enrollments, as applicable, for the highest level of benefits offered by the service benefit plan, the indemnity benefit plan, the two employee organization plans, and the two comprehensive medical plans, for prior provision for a contribution, in addition to requirement of subsec. (c) of this section, of \$1.62 if the enrollment is for self or \$3.94 if the enrollment is for self and family.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-435 effective Oct. 1, 2006, see section 805(a) of Pub. L. 109-435, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-375 applicable with respect to Federal employees called or ordered to active duty on or after Sept. 14, 2001, see section 1101(c) of Pub. L. 108-375, set out as a note under section 8905a of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title V, §519(c), Dec. 28, 2001, 115 Stat. 1096, provided that: “The amendments made by this section [amending this section] apply with respect to employees called to active duty on or after December 8, 1995, and an agency may make retroactive payments to such employees for premiums paid on or after such date.”

EFFECTIVE DATE OF 1997 AMENDMENT

Section 7002(b) of Pub. L. 105-33 provided that: “This section [amending this section] shall take effect on the first day of the contract year that begins in 1999. Nothing in this subsection shall prevent the Office of Personnel Management from taking any action, before such first day, which it considers necessary in order to ensure the timely implementation of this section.”

EFFECTIVE DATE OF 1990 AMENDMENTS

Section 7102(c) of Pub. L. 101-508 provided that: “The amendments made by this section [amending this sec-

tion] shall take effect on October 1, 1990, and shall apply with respect to amounts payable for periods beginning on or after that date.”

Section 1(c) of Pub. L. 101-303 provided that: “The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [May 29, 1990]. Any annuitant whose enrollment was terminated at any time before such date on account of such annuitant’s annuity being insufficient to cover the amount of the required withholdings may, under regulations prescribed by the Office of Personnel Management, be prospectively reinstated in any available health benefits plan upon application of the annuitant.”

EFFECTIVE DATE OF 1989 AMENDMENT

Section 4003(b) of Pub. L. 101-239 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1989, and shall apply with respect to amounts payable for periods beginning on or after that date.”

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-310 effective Oct. 1, 1976, see section 4 of Pub. L. 94-310, set out as a note under section 130b of Title 2, The Congress.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 4(a) of Pub. L. 93-246 provided that: “The first section of this Act [amending this section] shall take effect on the first day of the first applicable pay period which begins on or after January 1, 1974.”

Section 4(d) of Pub. L. 93-246 provided that: “The determination of the average of subscription charges and the adjustment of the Government contributions for 1973, under section 8906 of title 5, United States Code, as amended by the first section of this Act [amending this section], shall take effect on the first day of the first applicable pay period which begins on or after the thirtieth day following the date of enactment of this Act [Jan. 31, 1974].”

EFFECTIVE DATE OF 1970 AMENDMENT

Section 1(b) of Pub. L. 91-418 provided that: “The amendment made by subsection (a) of this section [amending this section] shall become effective at the beginning of the first applicable pay period which commences after December 31, 1970.”

PAYMENTS BY POSTAL SERVICE RELATING TO CORRECTED CALCULATIONS FOR PAST HEALTH BENEFITS

Pub. L. 103-66, title XI, §11101(b), Aug. 10, 1993, 107 Stat. 413, provided that: “In addition to any other payments required under section 8906(g)(2) of title 5, United States Code, or any other provision of law, the United States Postal Service shall pay into the Employees Health Benefits Fund a total of \$348,000,000, of which—

“(1) at least one-third shall be paid not later than September 30, 1996;

“(2) at least two-thirds shall be paid not later than September 30, 1997; and

“(3) any remaining balance shall be paid not later than September 30, 1998.”

COMPUTATION OF GOVERNMENT CONTRIBUTIONS TO FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM FOR 1990 THROUGH 1993

Pub. L. 101-76, Aug. 11, 1989, 103 Stat. 556, as amended by Pub. L. 101-508, title VII, §7002(e), Nov. 5, 1990, 104

Stat. 1388-330; Pub. L. 103-66, title XI, §11005, Aug. 10, 1993, 107 Stat. 412, provided: "That (a)(1) in the administration of chapter 89 of title 5, United States Code, for each of contract years 1990 through 1998 (inclusive), in order to compute the average subscription charges under section 8906(a) of such title for such contract years, the subscription charges in effect for the indemnity benefit plan on the beginning date of each such contract year—

"(A) shall be deemed to be the subscription charges which were in effect for such plan on the beginning date of the preceding contract year as adjusted under paragraph (2); or

"(B) if subparagraph (A) does not apply, shall be deemed to be—

"(i) the subscription charges which were deemed under this Act to have been in effect for such plan with respect to the preceding contract year as adjusted under paragraph (2), except as provided in clause (ii); or

"(ii) for each of contract years 1997 and 1998, the subscription charges which would be derived by applying the terms of clause (i), reduced by 1 percent.

"(2) The subscription charges under paragraph (1) shall be increased or decreased (as appropriate) by the average percentage by which the respective subscription charges taken into account under paragraphs (1), (3), and (4) of such section 8906(a) for that contract year increased or decreased from the subscription charges taken into account under such paragraphs (1), (3), and (4) for the preceding contract year.

"(b) Separate percentages shall be computed under subsection (a)(2) with respect to enrollments for self alone and enrollments for self and family, respectively.

"(c) The provisions of this Act shall not apply to a contract year (or any period thereafter), if comprehensive reform legislation is enacted to amend section 8906 of title 5, United States Code, and such amendment is required to be implemented by the commencement of negotiations pertaining to rates and benefits for such contract year.

"(d) Any reference in this Act to a 'contract year' shall be considered to be a reference to a contract year under chapter 89 of title 5, United States Code.

"(e) No later than 180 days after the date of the enactment of this Act [Aug. 11, 1989], the Director of the Office of Personnel Management shall transmit recommendations to the Congress for comprehensive reform of the Federal Employee Health Benefits Program."

CONTRIBUTIONS BY UNITED STATES POSTAL SERVICE TO EMPLOYEES HEALTH BENEFITS FUND

Pub. L. 100-203, title VI, §6003, Dec. 22, 1987, 101 Stat. 1330-277, directed Postal Service to pay \$160,000,000 in fiscal year 1988 and \$270,000,000 in fiscal year 1989 into Employee Health Benefits Fund in addition to any amount deposited into Fund pursuant to this section in each such fiscal year.

EMPLOYEES SERVING ON PART-TIME CAREER EMPLOYMENT BASIS ON OCTOBER 10, 1978

Section 4(c)(2)(B) of Pub. L. 95-437 provided that: "The amendments made by subparagraph (A) [amending subsec. (b)(1) and (3) of this section] shall not apply with respect to any employee serving in a position on a part-time career employment basis on the date of the enactment of this Act [Oct. 10, 1978] for such period as the employee continues to serve without a break in service in that or any other position on such part-time basis."

CALCULATION AND PAYMENT BY GOVERNMENT OF CONTRIBUTIONS TO CONTINGENCY RESERVES OF ALL HEALTH BENEFIT PLANS

Pub. L. 97-346, §4, Oct. 15, 1982, 96 Stat. 1650, directed Office of Personnel Management to determine amount by which Government contribution under 5 U.S.C. 8906(b) for the 1983 contract year was less than the Government contribution which would have been deter-

mined under such section for such contract year if Government contribution had been calculated by using the two employee organization plans which in 1981 satisfied the standard set forth in 5 U.S.C. 8906(a)(3) directed Government to pay amount of difference thus determined to contingency reserves of all health benefits plans for contract year 1983 in proportion to estimated number of individuals enrolled in such plans during 1983, and directed such payments be paid by appropriate agencies (including Postal Service and Postal Rate Commission) from appropriations referred to in 5 U.S.C. 8906(f) and (g) in same manner as if such payments were Government contributions, and in amounts determined appropriate by Office of Personnel Management.

ELECTION OF HEALTH BENEFITS DURING PERIOD OF SERVICE AS OFFICER OR EMPLOYEE OF AN EMPLOYEE ORGANIZATION; CONTRIBUTIONS INTO EMPLOYEES HEALTH BENEFITS FUND; NON-ELECTION; REGULATIONS

Election of health benefits within sixty days after July 18, 1966, by certain employees on leave without pay for service as officer or employee of an employee organization, contributions into Fund, effect of non-election of benefits, and regulations, see note set out under section 8706 of this title.

§ 8906a. Temporary employees

(a)(1) The Office of Personnel Management shall prescribe regulations to provide for offering health benefits plans to temporary employees (who meet the requirements of paragraph (2)) under the provisions of this chapter.

(2) To be eligible to participate in a health benefits plan offered under this section a temporary employee shall have completed 1 year of current continuous employment, excluding any break in service of 5 days or less.

(b) Notwithstanding the provisions of section 8906—

(1) any temporary employee enrolled in a health benefits plan under this section shall have an amount withheld from the pay of such employee, as determined by the Office of Personnel Management, equal to—

(A) the amount withheld from the pay of an employee under the provisions of section 8906; and

(B) the amount of the Government contribution for an employee under section 8906; and

(2) the employing agency of any such temporary employee shall not pay the Government contribution under the provisions of section 8906.

(Added Pub. L. 100-654, title III, §301(a), Nov. 14, 1988, 102 Stat. 3846.)

EFFECTIVE DATE

Section 301(d) of Pub. L. 100-654 provided that: "The amendments made by this section [enacting this section and amending section 8913 of this title] shall be effective 120 days after the date of enactment of this section [Nov. 14, 1988]."

§ 8907. Information to individuals eligible to enroll

(a) The Office of Personnel Management shall make available to each individual eligible to enroll in a health benefits plan under this chapter such information, in a form acceptable to the Office after consultation with the carrier, as

may be necessary to enable the individual to exercise an informed choice among the types of plans described by sections 8903 and 8903a of this title.

(b) Each enrollee in a health benefits plan shall be issued an appropriate document setting forth or summarizing the—

- (1) services or benefits, including maximums, limitations, and exclusions, to which the enrollee or the enrollee and any eligible family members are entitled thereunder;
- (2) procedure for obtaining benefits; and
- (3) principal provisions of the plan affecting the enrollee and any eligible family members.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 605; Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 98-615, § 3(5), Nov. 8, 1984, 98 Stat. 3204; Pub. L. 99-53, § 2(d), June 17, 1985, 99 Stat. 94.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3009(d).	Sept. 28, 1959, Pub. L. 86-382, § 10(d), 73 Stat. 715.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-53 inserted reference to section 8903a of this title.

1984—Pub. L. 98-615, § 3(5)(C), substituted “individuals eligible to enroll” for “employees” in section catchline.

Subsec. (a). Pub. L. 98-615, § 3(5)(A), substituted “individual” for “employee” in two places.

Subsec. (b). Pub. L. 98-615, § 3(5)(B)(i), substituted “enrollee” for “employee enrolled” in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98-615, § 3(5)(B)(ii), substituted “enrollee or the enrollee and any eligible family members” for “employee or the employee and members of his family”.

Subsec. (b)(3). Pub. L. 98-615, § 3(5)(B)(iii), substituted “the enrollee and any eligible family members” for “the employee or members of his family”.

1978—Subsec. (a). Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 8908. Coverage of restored employees and survivor or disability annuitants

(a) An employee enrolled in a health benefits plan under this chapter who is removed or suspended without pay and later reinstated or restored to duty on the ground that the removal or suspension was unjustified or unwarranted may, at his option, enroll as a new employee or have his coverage restored, with appropriate ad-

justments made in contributions and claims, to the same extent and effect as though the removal or suspension had not taken place.

(b) A surviving spouse whose survivor annuity under this title was terminated because of remarriage and is later restored may, under such regulations as the Office of Personnel Management may prescribe, enroll in a health benefits plan described by section 8903 or 8903a of this title if such spouse was covered by any such plan immediately before such annuity was terminated.

(c) A disability annuitant whose disability annuity under section 8337 of this title was terminated and is later restored under the second or third sentence of subsection (e) of such section may, under regulations prescribed by the Office, enroll in a health benefits plan described by section 8903 or 8903a of this title if such annuitant was covered by any such plan immediately before such annuity was terminated.

(d) A surviving child whose survivor annuity under section 8341(e) or 8443(b) was terminated and is later restored under paragraph (4) of section 8341(e) or the last sentence of section 8443(b) may, under regulations prescribed by the Office, enroll in a health benefits plan described by section 8903 or 8903a if such surviving child was covered by any such plan immediately before such annuity was terminated.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 605; Pub. L. 94-342, § 1(a), July 6, 1976, 90 Stat. 808; Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 99-53, §§ 2(a), 3(a)(1), (2)(A), June 17, 1985, 99 Stat. 94, 95; Pub. L. 104-208, div. A, title I, § 101(f) [title VI, § 633(a)(3)], Sept. 30, 1996, 110 Stat. 3009-314, 3009-363.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3009(c).	Sept. 28, 1959, Pub. L. 86-382, § 10(c), 73 Stat. 715. Mar. 17, 1964, Pub. L. 88-284, § 1 (less (1)-(13)), 78 Stat. 165.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104-208 added subsec. (d).

1985—Pub. L. 99-53, § 3(a)(2)(A), inserted “or disability” after “and survivor” in section catchline.

Subsec. (b). Pub. L. 99-53, § 2(a), inserted reference to section 8903a of this title.

Subsec. (c). Pub. L. 99-53, § 3(a)(1), added subsec. (c).

1978—Subsec. (b). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission”.

1976—Pub. L. 94-342 designated existing provisions as subsec. (a), added subsec. (b), and substituted “employees and survivor annuitants” for “employee” in section catchline.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 applicable with respect to termination of marriage taking effect before, on, or after Sept. 30, 1996, except that benefits are payable only with respect to amounts accruing for periods beginning on first day of month beginning after the later of termination of marriage or Sept. 30, 1996, see section 101(f) [title VI, § 633(b)] of Pub. L. 104-208, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2 of Pub. L. 94-342 provided that: "The amendments made by the first section of this Act [amending this section] shall take effect on October 1, 1976, or on the date of the enactment of this Act [July 6, 1976], whichever date is later. Such amendments shall apply with respect to individuals whose survivor annuities are restored before, on, or after such date."

INSURANCE COVERAGE FOR RESTORED DISABILITY ANNUITANTS

For provisions directing that subsec. (c) of this section shall apply with respect to any individual whose disability annuity is or was restored under section 8337(e) of this title after December 31, 1983, directing that the Office of Personnel Management notify each individual of any rights which such individual may have under subsec. (c) of this section, including any procedures or deadlines which might apply with respect to the exercise of those rights, directing that such notification be provided to any individual who, as of the 90th day after June 17, 1985, is receiving a disability annuity which was restored to such individual under section 8337(e) of this title after December 31, 1983, directing that nothing in subsec. (c) of this section be construed to authorize coverage under this chapter in the case of any individual who becomes enrolled in a health benefits plan under subsec. (c) of this section for any period before the date as of which such individual becomes so enrolled, and directing that such rule of construction apply with respect to any individual receiving a disability annuity which is or was restored under section 8337(e) of this title after December 31, 1983, and before the expiration of the 90-day period beginning on June 17, 1985, see section 3(c) of Pub. L. 99-53, set out as a note under section 8706 of this title.

§ 8909. Employees Health Benefits Fund

(a) There is in the Treasury of the United States an Employees Health Benefits Fund which is administered by the Office of Personnel Management. The contributions of enrollees and the Government described by section 8906 of this title shall be paid into the Fund. The Fund is available—

- (1) without fiscal year limitation for all payments to approved health benefits plans; and
- (2) to pay expenses for administering this chapter within the limitations that may be specified annually by Congress.

Payments from the Fund to a plan participating in a letter-of-credit arrangement under this chapter shall, in connection with any payment or reimbursement to be made by such plan for a health service or supply, be made, to the maximum extent practicable, on a checks-presented basis (as defined under regulations of the Department of the Treasury).

(b) Portions of the contributions made by enrollees and the Government shall be regularly set aside in the Fund as follows:

- (1) A percentage, not to exceed 1 percent of all contributions, determined by the Office to be reasonably adequate to pay the administrative expenses made available by subsection (a) of this section.
- (2) For each health benefits plan, a percentage, not to exceed 3 percent of the contributions toward the plan, determined by the Of-

fice to be reasonably adequate to provide a contingency reserve.

The Office, from time to time and in amounts it considers appropriate, may transfer unused funds for administrative expenses to the contingency reserves of the plans then under contract with the Office. When funds are so transferred, each contingency reserve shall be credited in proportion to the total amount of the subscription charges paid and accrued to the plan for the contract term immediately before the contract term in which the transfer is made. The income derived from dividends, rate adjustments, or other refunds made by a plan shall be credited to its contingency reserve. The contingency reserves may be used to defray increases in future rates, or may be applied to reduce the contributions of enrollees and the Government to, or to increase the benefits provided by, the plan from which the reserves are derived, as the Office from time to time shall determine.

(c) The Secretary of the Treasury may invest and reinvest any of the money in the Fund in interest-bearing obligations of the United States, and may sell these obligations for the purposes of the Fund. The interest on and the proceeds from the sale of these obligations become a part of the Fund.

(d) When the assets, liabilities, and membership of employee organizations sponsoring or underwriting plans approved under section 8903(3) or 8903a of this title are merged, the assets (including contingency reserves) and liabilities of the plans sponsored or underwritten by the merged organizations shall be transferred at the beginning of the contract term next following the date of the merger to the plan sponsored or underwritten by the successor organization. Each employee, annuitant, former spouse, or person having continued coverage under section 8905a of this title affected by a merger shall be transferred to the plan sponsored or underwritten by the successor organization unless he enrolls in another plan under this chapter. If the successor organization is an organization described in section 8901(8)(B) of this title, any employee, annuitant, former spouse, or person having continued coverage under section 8905a of this title so transferred may not remain enrolled in the plan after the end of the contract term in which the merger occurs unless that individual is a full member of such organization (as determined under section 8903a(d) of this title).

(e)(1) Except as provided by subsection (d) of this section, when a plan described by section 8903(3) or (4) or 8903a of this title is discontinued under this chapter, the contingency reserve of that plan shall be credited to the contingency reserves of the plans continuing under this chapter for the contract term following that in which termination occurs, each reserve to be credited in proportion to the amount of the subscription charges paid and accrued to the plan for the year of termination.

(2) Any crediting required under paragraph (1) pursuant to the discontinuation of any plan under this chapter shall be completed by the end of the second contract year beginning after such plan is so discontinued.

(3) The Office shall prescribe regulations in accordance with which this subsection shall be ap-

plied in the case of any plan which is discontinued before being credited with the full amount to which it would otherwise be entitled based on the discontinuation of any other plan.

(f)(1) No tax, fee, or other monetary payment may be imposed, directly or indirectly, on a carrier or an underwriting or plan administration subcontractor of an approved health benefits plan by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority thereof, with respect to any payment made from the Fund.

(2) Paragraph (1) shall not be construed to exempt any carrier or underwriting or plan administration subcontractor of an approved health benefits plan from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by such carrier or underwriting or plan administration subcontractor from business conducted under this chapter, if that tax, fee, or payment is applicable to a broad range of business activity.

(g) The fund described in subsection (a) is available to pay costs that the Office incurs for activities associated with implementation of the demonstration project under section 1108 of title 10.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 605; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 98-615, §3(6), Nov. 8, 1984, 98 Stat. 3204; Pub. L. 99-53, §2(e), (f), June 17, 1985, 99 Stat. 94; Pub. L. 99-251, title I, §101, Feb. 27, 1986, 100 Stat. 14; Pub. L. 100-654, title II, §202(a), Nov. 14, 1988, 102 Stat. 3845; Pub. L. 101-508, title VII, §7002(b), (c), Nov. 5, 1990, 104 Stat. 1388-330; Pub. L. 105-261, div. A, title VII, §721(b)(4), Oct. 17, 1998, 112 Stat. 2065; Pub. L. 105-266, §6(b)(1), Oct. 19, 1998, 112 Stat. 2369.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3007.	Sept. 28, 1959, Pub. L. 86-382, §8, 73 Stat. 714. Mar. 17, 1964, Pub. L. 88-284, §1(12), (13), 78 Stat. 165.
.....	5 U.S.C. 3008(b).	Sept. 23, 1959, Pub. L. 86-382, §9(b), 73 Stat. 715.

In subsection (a), the words “hereby created” are omitted as executed. The words “hereinafter referred to as the ‘Fund’” are omitted as unnecessary. The words “to reimburse the Employees Health Benefits Fund for sums expended by the Commission in administering the provisions of this chapter for the fiscal years 1960 and 1961” in former section 3008(b) are omitted as executed.

In subsection (d), the requirement that the assets and liabilities of plans of organizations that have been merged be transferred at the beginning of the contract term next following the date of the merger or enactment of this subsection is omitted as executed. The next beginning contract term referred to was November 1, 1964, and the transfers have been made. In the last sentence, the word “hereafter” is omitted as unnecessary.

In subsection (e), the word “is” is substituted for “is or has been” as this title is stated prospectively, and any existing rights and duties are preserved by technical section 8.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of the report.

AMENDMENTS

1998—Subsec. (e). Pub. L. 105-266 designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (g). Pub. L. 105-261 added subsec. (g).

1990—Subsec. (a). Pub. L. 101-508, §7002(b), inserted at end “Payments from the Fund to a plan participating in a letter-of-credit arrangement under this chapter shall, in connection with any payment or reimbursement to be made by such plan for a health service or supply, be made, to the maximum extent practicable, on a checks-presented basis (as defined under regulations of the Department of the Treasury).”

Subsec. (f). Pub. L. 101-508, §7002(c), added subsec. (f).

1988—Subsec. (d). Pub. L. 100-654 substituted “former spouse, or person having continued coverage under section 8905a of this title” for “or former spouse” in two places.

1986—Subsec. (b). Pub. L. 99-251 substituted “enrollees” for “employees” in last sentence.

1985—Subsec. (d). Pub. L. 99-53, §2(e), substituted “section 8903(3) or 8903a” for “section 8903(3)” and inserted provision directing that if the successor organization is an organization described in section 8901(8)(B) of this title, any transferred employee, annuitant, or former spouse may not remain enrolled in the plan after the end of the contract term in which the merger occurs unless the individual is a full member of such organization (as determined under section 8903a(d) of this title).

Subsec. (e). Pub. L. 99-53, §2(f), inserted “or 8903a” before “of this title”.

1984—Subsecs. (a), (b). Pub. L. 98-615, §3(6)(A), substituted “enrollees” for “employees, annuitants,” in provisions preceding par. (1).

Subsec. (d). Pub. L. 98-615, §3(6)(B), substituted “Each employee, annuitant, or former spouse” for “Each employee or annuitant”.

1978—Subsecs. (a), (b). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission” wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable with respect to contract years beginning on or after Jan. 1, 1991, see section 7002(g) of Pub. L. 101-508, set out as a note under section 8902 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-654 applicable with respect to any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after end of 9-month period beginning Nov. 14, 1988, and with respect to any qualifying event occurring on or after first day of first calendar year beginning after end of such 9-month period, see section 203 of Pub. L. 100-654, set out as a note under section 8902 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

DISPOSAL OF AMOUNTS REMAINING AS OF OCTOBER 19, 1998, IN CONTINGENCY RESERVE OF DISCONTINUED PLAN

Pub. L. 105-266, §6(b)(2), Oct. 19, 1998, 112 Stat. 2369, provided that: “In the case of any amounts remaining as of the date of the enactment of this Act [Oct. 19, 1998] in the contingency reserve of a discontinued plan, such amounts shall be disposed of in accordance with

section 8909(e) of title 5, United States Code, as amended by this subsection, by—

- “(A) the deadline set forth in section 8909(e) of such title (as so amended); or
- “(B) if later, the end of the 6-month period beginning on such date of enactment.”

AMOUNTS TO BE REFUNDED FROM CARRIERS' SPECIAL RESERVES

Pub. L. 99-272, title XV, §15202(a), Apr. 7, 1986, 100 Stat. 333, provided that:

“(1) The Office of Personnel Management—

“(A) shall determine the minimum level of financial reserves necessary to be held by a carrier for each health benefits plan under chapter 89 of such title for the purpose of ensuring the stable and efficient operation of such plan; and

“(B) shall require the carrier to refund to the Employees Health Benefits Fund (described in section 8909(a) of title 5, United States Code) any such reserves in excess of such minimum level in such amounts and at such times during fiscal years 1986 and 1987 as the Office determines appropriate.

“(2) In carrying out its responsibilities under this subsection, the Office shall ensure that the aggregate amount to be refunded to the Employees Health Benefits Fund under this subsection—

“(A) during fiscal year 1986 shall be not less than \$800,000,000; and

“(B) during fiscal year 1987 shall be not less than \$300,000,000.

“(3) No amount in the Employees Health Benefits Fund may be transferred to the general fund of the Treasury of the United States as a result of a refund made under this subsection.

“(4)(A) Subject to subparagraphs (B) and (C), any amounts refunded to the Employees Health Benefits Fund under this subsection may be used solely for the purpose of paying the Government contribution under chapter 89 of title 5, United States Code, for health benefits for annuitants, as defined by section 8901(3) of title 5, United States Code, (including the Government contribution for former employees of the United States Postal Service) enrolled in health benefits plans under such chapter.

“(B) This paragraph applies to a refund to the extent that such refund represents amounts attributable to Government contributions which were made under section 8906(b) of title 5, United States Code, (including contributions made by the United States Postal Service) as determined under regulations which the Office of Personnel Management shall prescribe.

“(C) Any part of the amount in the Employees Health Benefits Fund as a result of a refund made under this subsection may be transferred—

“(i) to the government of the District of Columbia, except that the amount of any such part so transferred shall not exceed the amount attributable to the contributions made by the government of the District of Columbia to subscription charges under this chapter (as determined by the Office of Personnel Management); and

“(ii) to the United States Postal Service, except that the amount of any such part so transferred shall not exceed the amount attributable to the contributions made by the United States Postal Service to subscription charges under this chapter (as determined by the Office).

“(5) The provisions of this subsection shall apply notwithstanding any provision of the Federal Employees Benefits Improvement Act of 1985 [probably means the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99-251, see Short Title of 1986 Amendment note set out under section 8901 of this title for classification].”

RESTRICTIONS RELATING TO AMOUNTS REFUNDED TO EMPLOYEES HEALTH BENEFITS FUND FROM CARRIERS' SPECIAL RESERVES

Section 112 of Pub. L. 99-251 provided that:

“(a) PROHIBITED TRANSFERS.—(1) No amount in the Employees Health Benefits Fund may be transferred to the general fund of the Treasury of the United States or the United States Postal Service as a result of a refund described in paragraph (2).

“(2) This subsection applies with respect to any refund made by a carrier during fiscal year 1986 or 1987 to the Employees Health Benefits Fund to the extent that such refund represents amounts in excess of the minimum level of financial reserves necessary to be held by such carrier to ensure the stable and efficient operation of its health benefits plan.

“(b) RESTRICTION RELATING TO USE OF CERTAIN AMOUNTS IN THE FUND.—(1) Any amount which is in the Employees Health Benefits Fund, and which is described in paragraph (2), may be used solely for the purpose of paying the Government contribution under chapter 89 of title 5, United States Code, for health benefits for annuitants enrolled in health benefits plans (without regard to the health benefits plan or plans from which the refunds were received).

“(2) This subsection applies with respect to any amounts—

“(A) which are referred to in subsection (a)(2); and

“(B) which are attributable to Government contributions (other than contributions by the government of the District of Columbia, which shall be returned to such government) that were made under section 8906(b) of title 5, United States Code, as determined under regulations which the Office of Personnel Management shall prescribe.

“(c) DEFINITIONS.—For the purpose of this section—

“(1) the term ‘Employees Health Benefits Fund’ refers to the fund described in section 8909(a) of title 5, United States Code;

“(2) the term ‘carrier’ has the meaning given such term by section 8901(7) of such title; and

“(3) the term ‘health benefits plan’ has the meaning given such term by section 8901(6) of such title.”

§ 8909a. Postal Service Retiree Health Benefit¹ Fund

(a) There is in the Treasury of the United States a Postal Service Retiree Health Benefits Fund which is administered by the Office of Personnel Management.

(b) The Fund is available without fiscal year limitation for payments required under section 8906(g)(2)(A).

(c) The Secretary of the Treasury shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. Such investments shall be made in the same manner as investments for the Civil Service Retirement and Disability Fund under section 8348.

(d)(1) Not later than June 30, 2007, and by June 30 of each succeeding year, the Office shall compute the net present value of the future payments required under section 8906(g)(2)(A) and attributable to the service of Postal Service employees during the most recently ended fiscal year.

(2)(A) Not later than June 30, 2007, the Office shall compute, and by June 30 of each succeeding year, the Office shall recompute the difference between—

(i) the net present value of the excess of future payments required under section 8906(g)(2)(A) for current and future United States Postal Service annuitants as of the end of the fiscal year ending on September 30 of that year; and

¹ So in original. Probably should be “Benefits”.

(ii)(I) the value of the assets of the Postal Retiree Health Benefits Fund as of the end of the fiscal year ending on September 30 of that year; and

(II) the net present value computed under paragraph (1).

(B) Not later than June 30, 2017, the Office shall compute, and by June 30 of each succeeding year shall recompute, a schedule including a series of annual installments which provide for the liquidation of any liability or surplus by September 30, 2056, or within 15 years, whichever is later, of the net present value determined under subparagraph (A), including interest at the rate used in that computation.

(3)(A) The United States Postal Service shall pay into such Fund—

(i) \$5,400,000,000, not later than September 30, 2007;

(ii) \$5,600,000,000, not later than September 30, 2008;

(iii) \$1,400,000,000, not later than September 30, 2009;

(iv) \$5,500,000,000, not later than September 30, 2010;

(v) \$5,500,000,000, not later than September 30, 2011;

(vi) \$5,600,000,000, not later than September 30, 2012;

(vii) \$5,600,000,000, not later than September 30, 2013;

(viii) \$5,700,000,000, not later than September 30, 2014;

(ix) \$5,700,000,000, not later than September 30, 2015; and

(x) \$5,800,000,000, not later than September 30, 2016.

(B) Not later than September 30, 2017, and by September 30 of each succeeding year, the United States Postal Service shall pay into such Fund the sum of—

(i) the net present value computed under paragraph (1); and

(ii) any annual installment computed under paragraph (2)(B).

(4) Computations under this subsection shall be made consistent with the assumptions and methodology used by the Office for financial reporting under subchapter II of chapter 35 of title 31.

(5)(A)(i) Any computation or other determination of the Office under this subsection shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

(ii) Upon receiving a request under clause (i), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this subparagraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

(B) Upon receiving the report under subparagraph (A), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

(6) After consultation with the United States Postal Service, the Office shall promulgate any regulations the Office determines necessary under this subsection.

(Added Pub. L. 109-435, title VIII, §803(a)(1)(B), Dec. 20, 2006, 120 Stat. 3251; amended Pub. L. 111-68, div. B, §164(a), Oct. 1, 2009, 123 Stat. 2053.)

AMENDMENTS

2009—Subsec. (d)(3)(A)(iii). Pub. L. 111-68 amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “\$5,400,000,000, not later than September 30, 2009;”.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-68, div. B, §164(b), Oct. 1, 2009, 123 Stat. 2053, provided that: “The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 803(a)(1)(B) of the Postal Accountability and Enhancement Act (Public Law 109-435; 120 Stat. 3251).”

EFFECTIVE DATE

Section effective Oct. 1, 2006, see section 805(a) of Pub. L. 109-435, set out as a Effective Date of 2006 Amendment note under section 8334 of this title.

REVIEW BY POSTAL REGULATORY COMMISSION

Pub. L. 109-435, title VIII, §803(b), Dec. 20, 2006, 120 Stat. 3252, provided that:

“(1) IN GENERAL.—

“(A) REQUEST FOR REVIEW.—Any regulation established under section 8909a(d)(5) of title 5, United States Code (as added by subsection (a)), shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

“(B) REPORT.—Upon receiving a request under subparagraph (A), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this paragraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

“(2) RECONSIDERATION.—Upon receiving the report under paragraph (1), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.”

§ 8910. Studies, reports, and audits

(a) The Office of Personnel Management shall make a continuing study of the operation and administration of this chapter, including surveys and reports on health benefits plans available to employees and on the experience of the plans.

(b) Each contract entered into under section 8902 of this title shall contain provisions requiring carriers to—

(1) furnish such reasonable reports as the Office determines to be necessary to enable it to carry out its functions under this chapter; and

(2) permit the Office and representatives of the Government Accountability Office to examine records of the carriers as may be necessary to carry out the purposes of this chapter.

(c) Each Government agency shall keep such records, make such certifications, and furnish the Office with such information and reports as may be necessary to enable the Office to carry out its functions under this chapter.

(d) The Office, in consultation with the Department of Health and Human Services, shall develop and implement a system through which the carrier for an approved health benefits plan described by section 8903 or 8903a will be able to identify those annuitants or other individuals covered by such plan who are entitled to benefits under part A or B of title XVIII of the Social Security Act in order to ensure that payments under coordination of benefits with Medicare do not exceed the statutory maximums which physicians may charge Medicare enrollees.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 606; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 101-508, title VII, §7002(d), Nov. 5, 1990, 104 Stat. 1388-330; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3010.	Sept. 28, 1959, Pub. L. 86-382, §11, 73 Stat. 716.

In subsection (b), the word “agency” is substituted for “department, agency, and independent establishment”.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts A and B of title XVIII of the Social Security Act are classified generally to parts A (§1395c et seq.) and B (§1395j et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (b)(2). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

1990—Subsec. (d). Pub. L. 101-508 added subsec. (d).

1978—Subsecs. (a) to (c). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission” wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable with respect to contract years beginning on or after Jan. 1, 1991, see section 7002(g) of Pub. L. 101-508, set out as a note under section 8902 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 8911. Advisory committee

The Director of the Office of Personnel Management shall appoint a committee composed of five members, who serve without pay, to advise the Office regarding matters of concern to employees under this chapter. Each member of the committee shall be an employee enrolled under this chapter or an elected official of an employee organization.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 607; Pub. L. 95-454, title IX, §906(a)(1), (4), Oct. 13, 1978, 92 Stat. 1224, 1225.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3012.	Sept. 28, 1959, Pub. L. 86-382, §13, 73 Stat. 716.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454 substituted “Director of the Office of Personnel Management” for “Chairman of the Civil Service Commission” and “Office” for “Commission”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to this title.

§ 8912. Jurisdiction of courts

The district courts of the United States have original jurisdiction, concurrent with the United States Court of Federal Claims, of a civil action or claim against the United States founded on this chapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 607; Pub. L. 97-164, title I, §160(a)(3), Apr. 2, 1982, 96 Stat. 48; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3014.	Sept. 28, 1959, Pub. L. 86-382, §15, 73 Stat. 716.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1992—Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1982—Pub. L. 97-164 substituted “United States Claims Court” for “Court of Claims”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 8913. Regulations

(a) The Office of Personnel Management may prescribe regulations necessary to carry out this chapter.

(b) The regulations of the Office may prescribe the time at which and the manner and conditions under which an employee is eligible to enroll in an approved health benefits plan described by section 8903 or 8903a of this title. The regulations may exclude an employee on the basis of the nature and type of his employment or conditions pertaining to it, such as short-term appointment, seasonal or intermittent employment, and employment of like nature. The Office may not exclude—

(1) an employee or group of employees solely on the basis of the hazardous nature of employment;

(2) a teacher in the employ of the Board of Education of the District of Columbia, whose pay is fixed by section 1501 of title 31, District of Columbia Code, on the basis of the fact that the teacher is serving under a temporary appointment if the teacher has been so employed by the Board for a period or periods totaling not less than two school years;

(3) an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title); or

(4) an employee who is employed on a temporary basis and is eligible under section 8906a(a).

(c) The regulations of the Office shall provide for the beginning and ending dates of coverage of employees, annuitants, members of their families, and former spouses under health benefits plans. The regulations may permit the coverage to continue, exclusive of the temporary extension of coverage described by section 8902(g) of this title, until the end of the pay period in which an employee is separated from the service, or until the end of the month in which an annuitant or former spouse ceases to be entitled to annuity, and in case of the death of an employee or annuitant, may permit a temporary extension of the coverage of members of his family for not to exceed 90 days.

(d) The Secretary of Agriculture shall prescribe regulations to effect the application and operation of this chapter to an individual named by section 8901(1)(H) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 607; Pub. L. 95-437, §4(c)(1), Oct. 10, 1978, 92 Stat. 1058; Pub. L.

95-454, title IX, §906(a)(2), (3), (c)(2)(F), (H), Oct. 13, 1978, 92 Stat. 1224, 1227; Pub. L. 98-615, §3(7), Nov. 8, 1984, 98 Stat. 3204; Pub. L. 99-53, §2(a), June 17, 1985, 99 Stat. 94; Pub. L. 100-654, title III, §301(c), Nov. 14, 1988, 102 Stat. 3846.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(a)	5 U.S.C. 3009(a).	Sept. 28, 1959, Pub. L. 86-382, §10(a), 73 Stat. 715.
(b)	5 U.S.C. 3002(a) (words between 1st and 4th commas of 1st sentence, and 2d sentence), (f) (words between 1st and 2d commas of 1st sentence).	Sept. 28, 1959, Pub. L. 86-382, §3(a) (words between 1st and 4th commas of 1st sentence, and 2d sentence), 73 Stat. 710. July 1, 1960, Pub. L. 86-568, §115(d) “(f) (words between 1st and 2d commas of 1st sentence)”, 74 Stat. 303. Oct. 6, 1964, Pub. L. 88-631, §1, 78 Stat. 1007.
(c)	5 U.S.C. 3009(b).	Sept. 28, 1959, Pub. L. 86-382, §10(b), 73 Stat. 715.
(d)	5 U.S.C. 3002(f) (2d sentence).	July 1, 1960, Pub. L. 86-568, §115(d) “(f) (2d sentence)”, 74 Stat. 303.

In subsection (b)(2), the words “section 1501 of title 31, District of Columbia Code” are substituted for “section 1 of the District of Columbia Teachers’ Salary Act of 1955 (69 Stat. 521), as amended (sec. 31-1501, D.C. Code, 1961 edition)”.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1988—Subsec. (b)(4). Pub. L. 100-654 added par. (4).

1985—Subsec. (b). Pub. L. 99-53 inserted reference to section 8903a of this title.

1984—Subsec. (c). Pub. L. 98-615, §3(7), substituted “employees, annuitants, members of their families, and former spouses” for “employees and annuitants and members of their families”, and “in which an annuitant or former spouse” for “in which an annuitant”.

1978—Subsecs. (a), (b). Pub. L. 95-454, §906(a)(2), (3), substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission” wherever appearing.

Subsec. (b)(3). Pub. L. 95-454, §906(c)(2)(F), (H), substituted “3401” for “3391”.

Pub. L. 95-437 added par. (3).

Subsec. (c). Pub. L. 95-454, §906(a)(3), substituted “Office” for “Commission”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-654 effective 120 days after Nov. 14, 1988, see section 301(d) of Pub. L. 100-654, set out as an Effective Date note under section 8906a of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 8914. Effect of other statutes

Any provision of law outside of this chapter which provides coverage or any other benefit

under this chapter to any individuals who (based on their being employed by an entity other than the Government) would not otherwise be eligible for any such coverage or benefit shall not apply with respect to any individual appointed, transferred, or otherwise commencing that type of employment on or after October 1, 1988.

(Added Pub. L. 100-238, title I, § 108(a)(3)(A), Jan. 8, 1988, 101 Stat. 1747.)

CHAPTER 89A—ENHANCED DENTAL BENEFITS

Sec.	
8951.	Definitions.
8952.	Availability of dental benefits.
8953.	Contracting authority.
8954.	Benefits.
8955.	Information to individuals eligible to enroll.
8956.	Election of coverage.
8957.	Coverage of restored survivor or disability annuitants.
8958.	Premiums.
8959.	Preemption.
8960.	Studies, reports, and audits.
8961.	Jurisdiction of courts.
8962.	Administrative functions.

§ 8951. Definitions

In this chapter:

(1) The term “employee” means an employee defined under section 8901(1) and an employee of the District of Columbia courts.

(2) The terms “annuitant”, “member of family”, and “dependent” have the meanings as such terms are defined under paragraphs (3), (5), and (9), respectively, of section 8901.

(3) The term “eligible individual” refers to an individual described in paragraph (1) or (2), without regard to whether the individual is enrolled in a health benefits plan under chapter 89.

(4) The term “Office” means the Office of Personnel Management.

(5) The term “qualified company” means a company (or consortium of companies or an employee organization defined under section 8901(8)) that offers indemnity, preferred provider organization, health maintenance organization, or discount dental programs and if required is licensed to issue applicable coverage in any number of States, taking any subsidiaries of such a company into account (and, in the case of a consortium, considering the member companies and any subsidiaries thereof, collectively).

(6) The term “employee organization” means an association or other organization of employees which is national in scope, or in which membership is open to all employees of a Government agency who are eligible to enroll in a health benefits plan under chapter 89.

(7) The term “State” includes the District of Columbia.

(Added Pub. L. 108-496, § 2, Dec. 23, 2004, 118 Stat. 4001; amended Pub. L. 109-356, title I, § 117(a)(1), Oct. 16, 2006, 120 Stat. 2027.)

AMENDMENTS

2006—Par. (1). Pub. L. 109-356, which directed insertion of “and an employee of the District of Columbia courts” at end of par. (1), was executed by making the

insertion before the period to reflect the probable intent of Congress.

EFFECTIVE DATE

Pub. L. 108-496, § 7, Dec. 23, 2004, 118 Stat. 4011, provided that: “The amendments made by this Act [enacting this chapter and chapter 89B of this title, amending section 1005 of Title 39, Postal Service, and enacting provisions set out as a note under section 101 of this title] shall take effect on the date of enactment of this Act [Dec. 23, 2004] and shall apply to contracts that take effect with respect to the calendar year 2006.”

§ 8952. Availability of dental benefits

(a) The Office shall establish and administer a program through which an eligible individual may obtain dental coverage to supplement coverage available through chapter 89.

(b) The Office shall determine, in the exercise of its reasonable discretion, the financial requirements for qualified companies to participate in the program.

(c) Nothing in this chapter shall be construed to prohibit the availability of dental benefits provided by health benefits plans under chapter 89.

(Added Pub. L. 108-496, § 2, Dec. 23, 2004, 118 Stat. 4002.)

§ 8953. Contracting authority

(a)(1) The Office shall contract with a reasonable number of qualified companies for a policy or policies of benefits described under section 8954 without regard to section 6101(b) to (d) of title 41 or any other statute requiring competitive bidding. An employee organization may contract with a qualified company for the purpose of participating with that qualified company in any contract between the Office and that qualified company.

(2) The Office shall ensure that each resulting contract is awarded on the basis of contractor qualifications, price, and reasonable competition.

(b) Each contract under this section shall contain—

(1) the requirements under section 8902(d), (f), and (i) made applicable to contracts under this section by regulations prescribed by the Office;

(2) the terms of the enrollment period; and

(3) such other terms and conditions as may be mutually agreed to by the Office and the qualified company involved, consistent with the requirements of this chapter and regulations prescribed by the Office.

(c) Nothing in this chapter shall, in the case of an individual electing dental supplemental benefit coverage under this chapter after the expiration of such individual’s first opportunity to enroll, preclude the application of waiting periods more stringent than those that would have applied if that opportunity had not yet expired.

(d)(1) Each contract under this chapter shall require the qualified company to agree—

(A) to provide payments or benefits to an eligible individual if such individual is entitled thereto under the terms of the contract; and

(B) with respect to disputes regarding claims for payments or benefits under the terms of the contract—