

## 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.

## Editorial Notes

## REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. 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).

## Statutory Notes and Related Subsidiaries

## EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-66, title XI, §11003(b), Aug. 10, 1993, 107 Stat. 410, 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

Pub. L. 101-508, title VII, §7002(f)(2), Nov. 5, 1990, 104 Stat. 1388-331, 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.”

## COVERAGE OF TESTING FOR COVID-19: APPLICATION WITH RESPECT TO FEDERAL CIVILIANS

Pub. L. 116-127, div. F, §6006(c), Mar. 18, 2020, 134 Stat. 207, provided that: “No copayment or other cost sharing may be required for any individual occupying a position in the civil service (as that term is defined in section 2101(1) of title 5, United States Code) enrolled in a health benefits plan, including any plan under chapter 89 of title 5, United States Code, or for any other individual currently enrolled in any plan under chapter 89 of title 5 for in vitro diagnostic products described in paragraph (1) of section 6001(a) [of Pub. L. 116-127, 42 U.S.C. 1320b-5 note] (or the administration of such products) or visits described in paragraph (2) of such section furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b-5(g)) beginning on or after the date of the enactment of this Act [Mar. 18, 2020].”

## 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 in section 8903 or 8903a—

- (1) as an individual;
- (2) for self plus one; or
- (3) 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 chapter<sup>1</sup>

(c)(1) A former spouse may—

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

<sup>1</sup> So in original. Probably should be followed by a period.

(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<sup>2</sup> for self plus one or 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 plus one or for self and family under this subsection shall be limited to—

(A) the former spouse; and

(B) unmarried dependent natural or adopted children (or, in the case of self plus one coverage, not more than 1 such child) of the former spouse and the employee who are—

(i) under 22 years of age; or

(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 for a self plus one enrollment that covers the spouse, or each spouse may enroll as an individual or for a self plus one enrollment that does not cover the other spouse or a child who is covered under the enrollment of the other spouse. 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 1 or more children who meets the requirements of section 8901(5) may enroll for self plus one or self and family coverage, as necessary to provide health insurance coverage for each child who is covered under the order, in a health benefits plan under this chapter. If such employee fails to enroll for self plus one or self and family coverage, as necessary to provide health insurance coverage for each child who is covered under the order, in a health benefits plan that provides full benefits and services in the location in which the child or children reside, 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 plus one or self and family enrollment, as necessary to provide health insurance coverage for each child who is covered under the order, 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 cov-

<sup>2</sup>So in original. The word "for" probably should precede "self and family".

erage for 1 or more children who meets the requirements of section 8901(5) may change to a self plus one or self and family enrollment, as necessary to provide health insurance coverage for each child who is covered under the order, in the same or another health benefits plan under this chapter. If such employee fails to change to a self plus one or self and family enrollment, as necessary to provide health insurance coverage for each child who is covered under the order, 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 plus one or self and family enrollment, as necessary to provide health insurance coverage for each child who is covered under the order, in the plan in which the employee is enrolled if that plan provides full benefits and services in the location where the child or children reside. If the plan in which the employee is enrolled does not provide full benefits and services in the location in which the child or children reside, or, if the employee fails to change to a self plus one or self and family enrollment, as necessary to provide health insurance coverage for each child who is covered under the order, in a plan that provides full benefits and services in the location where the child or children reside, the employing agency shall change the coverage of the employee to a self plus one or self and family enrollment, as necessary to provide health insurance coverage for each child who is covered under the order, in the option which provides the lower level of coverage under the Service Benefits Plan.

(3) The employee may not discontinue the self plus one or self and family enrollment, as necessary to provide health insurance coverage for each child who is covered under the order, in a plan that provides full benefits and services in the location in which the child or children reside for so long as the court or administrative order remains in effect and the child or children continue to meet the requirements of section 8901(5), unless the employee provides documentation showing that such coverage has been provided through other health insurance.

(i) Any services by an officer or employee under this chapter relating to enrolling individuals in a health benefits plan under this chapter, or changing the enrollment of an individual already so enrolled, shall be deemed, for purposes of section 1342 of title 31, services for emergencies involving the safety of human life or the protection of property.

(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; Pub. L. 113-67, div. A, title VII, §706(a), Dec. 26, 2013, 127 Stat. 1193; Pub. L. 116-92, div. A, title XI, §1110(a), Dec. 20, 2019, 133 Stat. 1600.)

## 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.

## Editorial Notes

## AMENDMENTS

2019—Subsec. (i). Pub. L. 116-92 added subsec. (i).

2013—Subsec. (a). Pub. L. 113-67, §706(a)(1), added subsec. (a) and struck out former subsec. (a) which read as follows: “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.”

Subsec. (c)(1). Pub. L. 113-67, §706(a)(2)(A), inserted “for self plus one or” before “self and family as provided in paragraph (2) of this subsection” in concluding provisions.

Subsec. (c)(2). Pub. L. 113-67, §706(a)(2)(B)(i), inserted “for self plus one or” before “for self and family” in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 113-67, §706(a)(2)(B)(ii), inserted “(or, in the case of self plus one coverage, not more than 1 such child)” after “adopted children”.

Subsec. (e). Pub. L. 113-67, §706(a)(3), substituted “or for a self plus one enrollment that covers the spouse, or each spouse may enroll as an individual or for a self plus one enrollment that does not cover the other spouse or a child who is covered under the enrollment of the other spouse” for “or each spouse may enroll as an individual”.

Subsec. (h). Pub. L. 113-67, §706(a)(4)(A)-(C), substituted “self plus one or self and family enrollment, as necessary to provide health insurance coverage for each child who is covered under the order,” for “self and family enrollment”, “1 or more children” for “a child”, and “the child or children reside” for “the child resides” wherever appearing.

Subsec. (h)(1). Pub. L. 113-67, §706(a)(4)(D), substituted “self plus one or self and family coverage, as necessary to provide health insurance coverage for each child who is covered under the order,” for “self and family coverage” in two places.

Subsec. (h)(3). Pub. L. 113-67, §706(a)(4)(E), substituted “the child or children continue” for “the child continues”.

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.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2019 AMENDMENT

Amendment by Pub. L. 116-92 applicable to any lapse in appropriations beginning on or after Dec. 20, 2019, see section 1110(d) of Pub. L. 116-92, set out as a note under section 8702 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 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.

Pub. L. 99-251, title I, §104(b), Feb. 27, 1986, 100 Stat. 15, 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.

#### REGULATIONS

Regulations to carry out amendment by Pub. L. 116-92 to be prescribed no later than 90 days after Dec. 20, 2019, and to contain provision related to pay status for furloughed employees, see section 1110(c) of Pub. L. 116-92, set out as a note under section 8702 of this title.

#### WEIGHTED AVERAGE FOR FIRST YEAR

Pub. L. 113-67, div. A, title VII, §706(d), Dec. 26, 2013, 127 Stat. 1194, provided that: “For the first contract year for which an employee may enroll for self plus one coverage under chapter 89 of title 5, United States Code, the Office of Personnel Management shall determine the weighted average of the subscription charges that will be in effect for the contract year for enrollments for self plus one under such chapter based on an actuarial analysis.”

#### 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, 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, 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