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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 890 and 892

RIN 3206-AJ34

Federal Employees Health Benefits Children's Equity

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the Federal Employees Health Benefits Children's Equity Act of 2000, which was enacted October 30, 2000. This law mandates the enrollment of a Federal employee for self and family coverage in the Federal Employees Health Benefits (FEHB) Program, if the employee is subject to a court or administrative order requiring him/her to provide health benefits for his/her child(ren) and the employee does not provide documentation of compliance with the order.

DATES: Interim rules are effective October 31, 2003. OPM must receive comments on or before December 1, 2003.

ADDRESSES: Send written comments to Abby L. Block, Senior Advisor for Employee and Family Support, Strategic Human Resources Policy Division, Office of Personnel Management, 1900 E Street NW., Washington DC 20415-3666; or deliver to OPM, Room 3425, 1900 E Street NW., Washington, DC; or FAX to (202) 606-0633.

FOR FURTHER INFORMATION CONTACT: Nataya Battle (202) 606-0004.

SUPPLEMENTARY INFORMATION: On October 30, 2000, Public Law 106-394, 114 Stat. 1629, was enacted. This law, the Federal Employees Health Benefits Children's Equity Act of 2000, mandates

compliance with court or administrative orders requiring Federal employees to provide health benefits for their children. The law was effective upon enactment.

Before the enactment of Public Law 106-394, a court or State administrative agency could issue an order for an individual to provide health benefits for his or her child(ren); however, there was nothing in the FEHB law to require compliance. While the issuance of such an order was an event that allowed an employee to enroll or to change from self only to self and family, the enrollment was voluntary on the employee's part.

The law now makes compliance with the court or administrative order mandatory. A Federal employee subject to such an order must enroll for self and family coverage in a health plan that provides full benefits in the area where the children live or provide documentation to the agency that he or she has obtained other health benefits for the children. If the employee does not do so, the agency will enroll the employee involuntarily as follows: (1) If the employee has no FEHB coverage, the agency will enroll him or her for self and family coverage in the option of the Blue Cross and Blue Shield Service Benefit Plan that provides the lower level of coverage; (2) if the employee has a self only enrollment in a fee-for-service plan or in an HMO that serves the area where the children live, the agency will change his or her enrollment to self and family in the same option of the same plan; (3) if the employee is enrolled in an HMO that does not serve the area where the children live, the agency will change his or her enrollment to self and family in the lower option of the Blue Cross and Blue Shield Service Benefit Plan.

As long as the court or administrative order is in effect, and the employee has at least one child identified in the order who is still eligible under the FEHB Program, the employee cannot cancel his or her enrollment, change to self only, or change to a plan that does not serve the area in which the child or children live, unless he or she provides documentation that he or she has other coverage for the children. If the court or administrative order is still in effect at the time the employee retires, and if at least one child is still eligible for FEHB, the employee must continue FEHB into

retirement (if eligible) and cannot make any of these changes after retirement for as long as the order remains in effect and the child continues to be eligible under 5 U.S.C. 8901(5).

If such an employee goes into a nonpay status, or if his or her salary becomes insufficient to make the premium withholdings, he or she cannot choose to terminate the enrollment. Instead, the employee must continue the coverage and either make direct premium payments or incur a debt to the Government. (By law, an employee's enrollment still terminates after 1 year in nonpay status.) If the annuity of an employee who remained subject to such a court or administrative order upon retirement becomes insufficient to make the premium withholdings, the annuitant cannot choose to terminate the enrollment. Instead, he or she must continue the coverage and make direct premium payments for as long as the order remains in effect and the child continues to be eligible under 5 U.S.C. 8901(5).

Waiver of Notice of Proposed Rulemaking

In accordance with § 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Notice is being waived to implement currently effective legislation. There is an immediate need for implementation of an interim regulation in order to expand the processing of child medical support court orders for children of Federal employees who become annuitants. Public Law 106-394 does not address what happens to the child medical support court order once the employee retires. As a result, the children of retirees are being harmed without regulation to authorize OPM to enforce the court orders that began while the parent was an employee. Public Law 106-394 has been in effect for three years and any further delay in effecting this regulation would be unnecessary and contrary to the public interest.

Regulatory Flexibility Act

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

Executive Order 12866, Regulatory Review

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

List of Subjects**5 CFR Part 890**

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

5 CFR Part 892

Administrative practice and procedure, Government employees, Health insurance, Taxes, Wages.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM is amending 5 CFR parts 890 and 892 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for part 890 revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.303 also issued under 50 U.S.C. 403(p), 22 U.S.C. 4069c and 4069c-1; subpart L also issued under sec. 599C of Pub. L. 101-513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105-33, 111 Stat. 251; and section 721 of Pub. L. 105-261, 112 Stat. 2061 unless otherwise noted.

■ 2. In § 890.301 revise paragraphs (e)(1) and (f)(3) and add new paragraphs (g)(3) and (g)(4) to read as follows:

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

* * * * *

(e) *Change to self only.* (1) Subject to two exceptions, an employee may change the enrollment from self and family to self only at any time.

Exceptions:

(i) An employee participating in health insurance premium conversion may change to self only during an open season or because of and consistent with a qualifying life event as defined in Part 892 of this chapter.

(ii) An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) cannot make this change as long as the court or administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless

the employee provides documentation to the agency that he or she has other coverage for the child(ren).

* * * * *

(f) * * *

(3) With one exception, during an open season, an eligible employee may enroll and an enrolled employee may change his or her existing enrollment from self only to self and family, may change from one plan or option to another, or may make any combination of these changes. *Exception:* An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) cannot cancel his or her enrollment, change to self only, or change to a comprehensive medical plan that does not serve the area where his or her child or children live as long as the court or administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation to the agency that he or she has other coverage for the child(ren).

* * * * *

(g) * * *

(3)(i) If an employing office receives a court or administrative order on or after October 30, 2000, requiring an employee to provide health benefits for his or her child or children, the employing office will determine if the employee has a self and family enrollment in a health benefits plan that provides full benefits in the area where the child or children live. If the employee does not have the required enrollment, the agency must notify him or her that it has received the court or administrative order and give the employee until the end of the following pay period to change his or her enrollment or provide documentation to the employing office that he or she has other coverage for the child or children. If the employee does not comply within these time frames, the employing office must enroll the employee involuntarily as stated in paragraph (g)(3)(ii) of this section.

(ii) If the employee is not enrolled or does not enroll, the agency must enroll him or her for self and family coverage in the option that provides the lower level of coverage in the Service Benefit Plan. If the employee has a self only enrollment, the employing office must change the enrollment to self and family in the same option and plan, as long as the plan provides full benefits in the area where the child or children live. If the employee is enrolled in a comprehensive medical plan that does not serve the area in which the child or children live, the employing office must

change the enrollment to self and family in the option that provides the lower level of coverage in the Service Benefit Plan.

(4) Subject to two exceptions, the effective date of an involuntary enrollment under paragraph (g)(3) of this section is the 1st day of the pay period that begins after the date the employing office completes the enrollment request. *Exceptions:*

(i) If the court or administrative order requires an earlier effective date, the effective date will be the 1st day of the pay period that includes that date. Retroactive effective dates cannot be to a date that is more than 2 years earlier, or prior to October 30, 2000.

(ii) If after an involuntary enrollment becomes effective and the employing office finds that circumstances beyond the employee's control prevented him or her from enrolling or changing the enrollment within the time limits in this section, the employee may change the enrollment prospectively within 60 days after the employing office advises the employee of its finding.

* * * * *

■ 3. In § 890.304 revise paragraph (d)(1) and the section heading to read as follows:

§ 890.304 Termination of enrollment.

* * * * *

(d) *Cancellation or suspension.* (1)(i) An employee who participates in health insurance premium conversion as provided in Part 892 of this chapter may cancel his or her enrollment only during an open season or because of and consistent with a qualifying life event defined in § 892.101 of this chapter.

(ii) Subject to the provisions of paragraph (d)(iii) of this section, an enrollee who does not participate in premium conversion may cancel his or her enrollment at anytime by filing an appropriate request with the employing office. The cancellation is effective at the end of the last day of the pay period in which the employing office receives the appropriate request canceling the enrollment.

(iii) An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3), or an annuitant who was subject to such a court or administrative order at the time of his or her retirement, cannot cancel or suspend his or her enrollment as long as the court or administrative order is still in effect and the enrollee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee or annuitant provides documentation to

the agency that he or she has other coverage for the child or children.

* * * * *

■ 4. In § 890.306 revise paragraphs (e)(1) and (f)(1)(i) to read as follows:

§ 890.306 Opportunities for annuitants to change enrollment or to reenroll; effective dates.

* * * * *

(e) *Enrollment change to self only.* (1) With one exception, an annuitant may change the enrollment from self and family to self only at any time.

Exception: An annuitant who, as an employee, was subject to a court or administrative order as discussed in § 890.301(g)(3) at the time he or she retired cannot change to self only after retirement as long as the court or administrative order is still in effect and the annuitant has at least one child identified in the order who is still eligible under the FEHB Program, unless the annuitant provides documentation to the retirement system that he or she has other coverage for the child or children.

* * * * *

(f) * * *
(1) * * *

(i) With one exception, an enrolled annuitant may change the enrollment from self only to self and family, may change from one plan or option to another, or may make any combination of these changes. *Exception:* An annuitant who, as an employee, was subject to a court or administrative order as discussed in § 890.301(g)(3) at the time he or she retired cannot cancel or suspend his or her enrollment, change to self only, or change to a comprehensive medical plan that does not serve the area where his or her children live after retirement as long as the court or administrative order is still in effect and the annuitant has at least one child identified in the order who is still eligible under the FEHB Program, unless the annuitant provides documentation to the retirement system that he or she has other coverage for the child or children.

* * * * *

■ 5. In § 890.502 add a new sentence after the first sentence in paragraph (b)(2), redesignate paragraph (b)(4) as paragraph (b)(4)(i), and add a new paragraph (b)(4)(ii) to read as follows:

§ 890.502 Employee withholdings and contributions.

* * * * *

(b) * * *

(2) * * * *Exception:* An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) cannot elect to terminate

his or her enrollment as long as the court/administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation that he or she has other coverage for the child or children. * * *

* * * * *

(4)(ii) If the employee is subject to a court or administrative order as discussed in § 890.301(g)(3), the coverage cannot terminate. If the employee does not return the signed form, the coverage will continue and the employee will incur a debt to the Government as discussed in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

* * * * *

PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENT OF HEALTH BENEFITS PREMIUMS

■ 6. The authority citation for part 892 continues to read as follows:

Authority: 5 U.S.C. 8913; 26 U.S.C. 125.

■ 7. Amend by revising § 892.207 to read as follows:

§ 892.207 Can I make changes to my FEHB enrollment while I am participating in premium conversion?

(a) Subject to the exceptions described in paragraphs (b) and (c) of this section, you can make changes to your FEHB enrollment for the same reasons and with the same effective dates listed in § 890.301 of this chapter.

(b) However, if you are participating in premium conversion there are two exceptions: you must have a qualifying life event to change from self and family enrollment to self only enrollment or to drop FEHB coverage entirely. (See § 892.209 and § 892.210.) Your change in enrollment must be consistent with and correspond to your qualifying life event as described in § 892.101. These limitations apply only to changes you may wish to make outside open season.

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, your employing agency can limit a change to your enrollment as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children. See also § 892.208 and § 892.209.

■ 8. Revise the section heading and add a new paragraph (c) to § 892.208 to read as follows:

§ 892.208 Can I change my enrollment from self and family to self only at any time?

* * * * *

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, you cannot change your enrollment to self only as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children. See also § 892.207 and § 892.209.

■ 9. Add a new paragraph (c) to § 892.209 to read as follows:

§ 892.209 Can I cancel FEHB coverage at any time?

* * * * *

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, you cannot cancel your coverage as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children.

[FR Doc. 03–24792 Filed 9–30–03; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 892

RIN 3206–AJ17

Health Insurance Premium Conversion

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on health benefits premium conversion. Premium conversion enables employees to pay Federal Employees Health Benefits (FEHB) premiums with pre-tax dollars, as provided in the Internal Revenue Code.

EFFECTIVE DATE: October 31, 2003.

FOR FURTHER INFORMATION CONTACT: Laurie Bodenheimer, (202) 606–0004, or e-mail to lrbodenh@opm.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 19, 2000, OPM issued interim final regulations in the **Federal Register**