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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206 AI63

Federal Employees Health Benefits (FEHB) Program and Department of Defense (DoD) Demonstration Project

AGENCY: Office of Personnel
Management.

ACTION: Interim regulation.

SUMMARY: OPM is issuing an interim regulation to implement the portion of the Defense Authorization Act for 1999 that establishes authority for a demonstration project under which certain Medicare and other eligible DoD beneficiaries can enroll in health benefit plans in certain geographic areas under the Federal Employees Health Benefits (FEHB) Program. The demonstration project will run for a period of three years from January 1, 2000, through December 31, 2002. This regulation specifies only the requirements that differ from existing FEHB Program regulations because of unique aspects of the demonstration project.

DATES: The effective date of this regulation is July 6, 1999. Comments must be received on or before September 7, 1999.

ADDRESSES: Comments must be sent to Abby L. Block, Chief, Insurance Policy and Information Division, OPM, Room 3425, 1900 E Street, NW., Washington, DC 20415-0001.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, (202) 606-0004. You may submit comments and data by sending electronic mail (E-mail) to: mwkaszyn@opm.gov.

SUPPLEMENTARY INFORMATION: The purpose of this regulation is to implement the portion of the Defense Authorization Act for 1999, Public Law 105-261, that amended chapter 55 of

title 10, United States Code, and chapter 89 of title 5, United States Code, to establish a demonstration project under which certain Medicare and other eligible DoD beneficiaries can enroll in health benefit plans under the FEHB Program. The legislation was signed into law on October 17, 1998. The demonstration project will run for a period of three years from January 1, 2000, through December 31, 2002. DoD, with OPM concurrence, has selected eight geographic areas to serve as demonstration areas. The legislation requires that between 6 and 10 geographic areas be selected. No more than 66,000 individuals can participate in the demonstration project at any one time. Beneficiaries who are provided coverage under the demonstration project will not be eligible to receive care at a military medical treatment facility or to enroll in a health care plan under DoD's TRICARE program. Individuals who disenroll or cancel enrollment from the demonstration project are not eligible to reenroll in the demonstration project. OPM will establish separate risk pools for developing demonstration project enrollee premium rates. The Government contribution for demonstration enrollees will be paid by DoD and cannot exceed the amount that the Government would have contributed had the enrollee been enrolled as a regular FEHB enrollee in the same health benefits plan and level of benefits.

The legislation requires OPM and DoD to jointly produce and submit two reports to Congress designed to assess the viability of expanding access to the FEHB Program to certain Medicare and other eligible DoD beneficiaries permanently. The first report is due by April 1, 2001; the second is due by December 31, 2002. The reports will focus on enrollee participation levels, impact on Medicare Part B enrollment, impact on premium rates and costs as compared to regular FEHB enrollees, impact on accessibility of care in military treatment facilities, impact on medical readiness and training in military treatment facilities, impact on the cost, accessibility, and availability of prescription drugs for DoD beneficiaries, and recommendations on eligibility and enrollment.

OPM has determined it necessary to specify certain differences from existing

FEHB Program regulations because of the unique features of the demonstration project. This regulation amends Part 890 of title 5, Code of Federal Regulations (CFR) to authorize these differences. Should the program be extended beyond the three year demonstration project period, we will regulate to address any necessary changes to these provisions.

Waiver of Notice of Proposed Rule Making

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because FEHB Program carriers need the information contained in these regulations now to define policy parameters and operational requirements for the demonstration project in order to prepare and submit benefit and rate proposals. Carriers need sufficient time to implement changes necessary for enrollments to be effective January 1, 2000, as required by Public Law 105-261.

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 insurance carriers under the Federal Employees Health Benefits Program.

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 in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professionals, Hostages, Iraq, Kuwait, Lebanon, Reporting and record keeping requirements, Retirement.

Office of Personnel Management.

Janice R. Lachance,
Director.

For the reasons set forth in the preamble, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 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), 11246 (b) and (c) of Pub. L. 105-33, 111 Stat. 251; and section 721 of Pub. L. 105-261, 112 Stat. 2061.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

2. A new Subpart M is added to read as follows:

Subpart M—Department of Defense Federal Employees Health Benefits Program Demonstration Project

Sec.

- 890.1301 Purpose.
- 890.1302 Duration.
- 890.1303 Eligibility.
- 890.1304 Enrollment.
- 890.1305 Termination and cancellation.
- 890.1306 Government premium contributions.
- 890.1307 Data collection.
- 890.1308 Carrier participation.

Subpart M—Department of Defense Federal Employees Health Benefits Program Demonstration Project

§ 890.1301 Purpose.

The purpose of this subpart is to implement the portion of the Defense Authorization Act for 1999, Public Law 105-261, that amended chapter 55 of title 10, United States Code, and chapter 89 of title 5, United States Code, to establish a demonstration project under which certain Medicare and other eligible Department of Defense (DoD) beneficiaries can enroll in health benefit plans in certain geographic areas under the Federal Employees Health Benefits (FEHB) Program. The legislation was signed into law on October 17, 1998. The demonstration project will run for a period of three years. The legislation requires the Office of Personnel Management (OPM) and DoD to jointly produce and submit two reports to Congress designed to assess the viability of expanding access to the FEHB Program to certain Medicare and other eligible DoD beneficiaries permanently. OPM is authorizing certain differences from regular FEHB Program practices in order to ensure the successful implementation of the demonstration project. This subpart authorizes those differences.

§ 890.1302 Duration.

The demonstration project will run from January 1, 2000, through December 31, 2002.

§ 890.1303 Eligibility.

(a) Eligible enrollees must live within one of the demonstration areas and meet the definition of an eligible beneficiary

in 10 U.S.C. 1108 (b). An eligible beneficiary under this subpart is—

(1) A member or former member of the uniformed services described in section 1074(b) of title 10, United States Code, who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c *et seq.*);

(2) An individual who is an unremarried former spouse of a member or former member described in section 1072(2)(F) or section 1072(2)(G) of title 10, United States Code;

(3) An individual who is—

(i) A dependent of a deceased member or former member described in section 1076(b) or 1076(a)(2)(B) of title 10, United States Code, or of a member who died while on active duty for a period of more than 30 days; and

(ii) A “member of family” as defined in section 8901(5) of title 5, United States Code; or

(4) An individual who is—

(i) A dependent of a living member or former member described in section 1076(b)(1) of title 10, United States Code, who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act, regardless of the member’s or former member’s eligibility for such hospital insurance benefits; and

(ii) A “member of family” as defined in section 8901(5) of title 5, United States Code.

(b) An eligible beneficiary may enroll in an FEHB plan under chapter 89 of title 5, United States Code, for self-only coverage or for self and family coverage. A self and family enrollment will include coverage of a dependent of the military member or former member who meets the definition of a “member of family” in section 8901(5) of title 5, United States Code. A self and family enrollment will not cover a person related to the beneficiary that does not qualify as a “member of family” (as defined in section 8901(5) of title 5, United States Code) of the military member or former member.

(c) A person eligible for coverage under this subpart shall not be required to satisfy any eligibility criteria specified in chapter 89 of title 5, United States Code, or in other subparts of this part (except as provided in paragraphs (a)(3), (a)(4), and (b) of this section) as a condition for enrollment in health benefit plans offered through the FEHB Program under the demonstration project.

(d) For purposes of determining whether an individual is a “member of family” under section 8901(5) of title 5, United States Code, for purposes of paragraph (a)(3) and (a)(4) of this

section, a DoD member or former member described in section 1076(b) or 1076(a)(2)(B) of title 10, United States Code, shall only be deemed to be an employee under 8901(5) of title 5, United States Code, for the purpose of determining enrollment eligibility of a demonstration project dependent beneficiary.

(e) A person who is eligible to enroll in the FEHB Program as an employee as defined in section 8901(1) of title 5, United States Code, is not eligible to enroll in an FEHB plan under the demonstration project.

§ 890.1304 Enrollment.

(a) The 1999 health benefits open season for demonstration enrollees will be held concurrent with the open season for regular FEHB enrollees. Open seasons also will be held during the same period in the years 2000 and 2001. Eligible beneficiaries will be able to enroll for coverage, change enrollment tiers (e.g., self-only or self and family), or change health benefit plans or plan options during these periods.

(b) Demonstration project enrollees are required to pay associate membership dues if they enroll in open employee organization sponsored plans that are participating in the demonstration project.

(c) DoD will deny enrollment of eligible beneficiaries when the total number of beneficiaries and family members enrolled in the demonstration project reaches 66,000.

(d) Eligible beneficiaries can enroll only in health plans offered by health benefit carriers who are participating in the demonstration project.

(e) Beneficiaries and family members enrolled in the demonstration project are not eligible to obtain services from military treatment facilities or to enroll in a health care plan under the TRICARE Program.

(f) An eligible beneficiary enrolled in an FEHB plan under the demonstration project may change health benefits plans and coverage in the same manner as any other FEHB Program enrollee, except as provided for in this subpart.

§ 890.1305 Termination and cancellation.

(a) If a DoD enrolled beneficiary moves out of a demonstration area, the enrollment of the beneficiary and all family members will be terminated. If a beneficiary moves to an area located within a demonstration area, he or she will continue to be eligible to participate in the demonstration project. If the beneficiary was enrolled prior to the move in an HMO that does not serve the new demonstration area, the beneficiary will have an opportunity to

select a new health plan offered by a carrier participating in the demonstration project in the new area. If the beneficiary was enrolled in a fee-for-service plan prior to the move and moves to another area that is within an existing demonstration area, the beneficiary can maintain his or her current coverage.

(b) If a DoD beneficiary disenrolls, cancels, or terminates enrollment for any reason, he or she will not be eligible to reenroll in the demonstration project. Once coverage ends, members have the right to revert back to all of the benefits to which they were entitled to under title 10 of the United States Code. Medicare covered members who had a Medigap policy prior to their enrollment in the demonstration project are entitled to reinstate that coverage under the conditions stated in section 1108(l) of title 10 United States Code.

(c) Demonstration project beneficiaries and members of family are eligible for Temporary Continuation of Coverage (TCC) under the conditions and for the durations described in subpart K or until the end of the demonstration project, whichever occurs first. The effective date of TCC for demonstration project beneficiaries or members of family will be the day after other coverage under this subpart ends. Beneficiaries or members of family selecting TCC must enroll in a health plan offered by a carrier participating in the demonstration project. If an individual enrolled in DoD TCC moves from a demonstration project area, coverage ends. Beneficiaries will be responsible for paying the entire DoD premium rate (OPM's approved net-to-carrier DoD rate plus 4 percent for contingency and administration reserves) plus 2 percent of this premium rate for administration of the program. DoD will make arrangements to collect premiums plus the 2 percent administrative charge from beneficiaries and forward them to OPM's Health Benefits Fund. OPM will establish procedures for receiving the 2 percent administrative payment into the Health Benefits Fund and making this amount available to DoD for administration of the program.

(d) Enrolled demonstration project beneficiaries are not eligible for the temporary extension of coverage and conversion opportunities described in subpart D of this part.

§ 890.1306 Government premium contributions.

The Secretary of Defense is responsible for the Government contribution for demonstration project enrolled beneficiaries. The Government

contribution toward demonstration project premium rates will be determined in accordance with subpart E of this part.

§ 890.1307 Data collection.

Carriers will compile, maintain, and when requested by OPM or DoD report data on their plan's experience necessary to produce reports containing the following information and analysis:

- (a) The number of eligible beneficiaries who elect to participate in the demonstration project.
- (b) The number of eligible beneficiaries who elected to participate in the demonstration project and did not have Medicare Part B coverage before electing to participate.
- (c) The costs of health benefits charges and the costs (direct and indirect) of administering the benefits and services provided to eligible beneficiaries who elect to participate in the demonstration project as compared to similarly situated enrollees in the FEHB Program.
- (d) Prescription drug costs for demonstration project beneficiaries.

§ 890.1308 Carrier participation.

(a) All carriers who participate in the FEHB Program and provide benefits to enrollees in the geographic areas selected as demonstration project areas must participate in the demonstration project, except as provided for in paragraphs (b), (c), and (d) of this section.

(b) Carriers who have less than 300 FEHB enrollees may, but are not required to, participate in the demonstration project.

(c) Carriers may, but are not required to, participate in the demonstration project if their service area overlaps a small portion (as determined by OPM) of a demonstration project geographic area.

(d) Carriers offering fee-for-service plans with enrollment limited to specific groups will not participate in the demonstration project.

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RAILROAD RETIREMENT BOARD

20 CFR Part 220

Determining Disability

CFR Correction

In Title 20 of the Code of Federal Regulations, parts 1 to 399, revised as of Apr. 1, 1999, page 337, part 220, Appendix 3 is corrected by revising the second entry, in the second column

under "JOB TITLE: MACHINIST" to read "<40 degrees abduction".

[FR Doc. 99-55521 Filed 7-2-99; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01-99-093]

Drawbridge Operation Regulations: Harlem River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Triborough (125th Street) Bridge, mile 1.3, across the Harlem River in New York City, New York. This deviation from the regulations authorizes the bridge owner to keep the bridge in the closed position from August 2, 1999, through August 31, 1999, and from September 7, 1999, through October 6, 1999. This action is necessary to facilitate the removal and replacement of the bridge counterweight lift cables.

DATES: This deviation is effective from August 2, 1999, through August 31, 1999, and from September 7, 1999, through October 6, 1999.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668-7165.

SUPPLEMENTARY INFORMATION: The Triborough (125th Street) Bridge, mile 1.3, across the Harlem River has vertical clearances of 54 feet at mean high water, and 59 feet at mean low water in the closed position. The current operating regulations listed at 33 CFR § 117.789(d) require the bridge to open on signal from 10 a.m. to 5 p.m., if at least four hours notice is given.

The bridge owner, the Triborough Bridge and Tunnel Authority (TBTA), requested a temporary deviation from the operating regulations for the Triborough (125th Street) Bridge in order to remove and replace the counterweight lift cables. During the process of this work the bridge can not be opened. Vessels that can pass under the bridge without an opening may do so at all times during the closed periods. This work is essential for public safety and the continued operation of the bridge. In accordance with 33 CFR § 117.35(c), this work will be performed