was enrolled or another health plan of his or her choice retroactively within 90-days after OPM advises the annuitant of the new enrollment;

(v) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, an annuitant must change the enrollment within 60 days of the disaster, as announced by OPM. If an annuitant does not change the enrollment within the time frame announced by OPM, the annuitant will be enrolled in the lowest-cost nationwide plan option, as defined in § 890.301(n). The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(vi) An annuitant who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in § 890.301(n), may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section.

* * * * *

■ 4. Amend § 890.806 by revising paragraphs (j)(4)(ii), (iii), and (iv) and adding paragraph (j)(4)(v) to read as follows:

§ 890.806 When can former spouses change enrollment or reenroll and what are the effective dates?

* * * * *

(j) * * *

(4) * * *

(ii) If the whole plan is discontinued, a former spouse who does not change the enrollment within the time set will be enrolled in the lowest-cost nationwide plan option, as defined in § 890.301(n);

(iii) If one or more options of a plan are discontinued, a former spouse who does not change the enrollment will be enrolled in the remaining option of the plan, or in the case of a plan with two or more options remaining, the lowest-cost remaining option that is not a High Deductible Health Plan (HDHP);

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, the former spouse must change the enrollment within 60 days of the disaster, as announced by OPM. If a former spouse does not change the enrollment within the time frame announced by OPM, the former spouse will be enrolled in the lowest-cost nationwide plan option, as defined in § 890.301(n). The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(v) A former spouse who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in § 890.301(n), may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section.

* * * * *

■ 5. Amend § 890.1108 by revising paragraphs (h)(4)(ii), (iii), and (iv) and adding paragraph (h)(4)(v) to read as follows:

§ 890.1108 Opportunities to change enrollment; effective dates.

* * * * *

(h) * * *

(4) * * *

(ii) If the whole plan is discontinued, an enrollee who does not change the enrollment within the time set will be enrolled in the lowest-cost nationwide plan option, as defined in § 890.301(n);

(iii) If one or more options of a plan are discontinued, an enrollee who does not change the enrollment will enrolled in the remaining option of the plan, or in the case of a plan with two or more options remaining, the lowest-cost remaining option that is not a High Deductible Health Plan (HDHP);

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, the enrollee must change the enrollment within 60 days of the disaster, as announced by OPM. If the enrollee does not change the enrollment within the time frame announced by OPM, the enrollee will be enrolled in the lowest-cost nationwide plan option, as defined in § 890.301(n). The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(v) An enrollee who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in § 890.301(n), may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section.

* * * * *

[FR Doc. 2014–30636 Filed 1–6–15; 8:45 am]

BILLING CODE 6325–63–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AN14

Federal Employees Health Benefits Program; Subrogation and Reimbursement Recovery

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing a proposed rule to amend the Federal Employees Health Benefits (FEHB) Program regulations to clarify the conditional nature of FEHB Program benefits and benefit payments under the plan's coverage as subject to a carrier's entitlement to subrogation and reimbursement recovery, and therefore, that such entitlement falls within the preemptive scope of the U.S.C. FEHB contracts must include a provision incorporating the carrier's subrogation and reimbursement rights and FEHB plan brochures must explain the carrier's subrogation and reimbursement policy.

DATES: Comments are due on or before February 6, 2015.

ADDRESSES: Send written comments to Marguerite Martel, Senior Policy Analyst, Planning and Policy Analysis, U.S. Office of Personnel Management, Room 4312, 1900 E Street NW., Washington, DC; or FAX to (202) 606–4640 Attn: Marguerite Martel. You may also submit comments using the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Marguerite Martel at *Marguerite.Martel@opm.gov* or (202) 606–0004.

SUPPLEMENTARY INFORMATION: The FEHB Act, as codified at 5 U.S.C. 8902(m)(1) provides: ''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.'' This proposed regulation reaffirms that a covered individual's entitlement to FEHB benefits and benefit payments is conditioned upon, and limited by, a carrier's entitlement to subrogation and reimbursement recoveries pursuant to a subrogation or reimbursement clause in the FEHB contract. This proposed regulation also reaffirms that a FEHB carrier's rights and responsibilities

pertaining to subrogation and reimbursement relate to the nature, provision and extent of coverage or benefits and benefit payments provided under title 5, United States Code Chapter 89, and therefore are effective notwithstanding any state or local law or regulation relating to health insurance or plans. This interpretation comports with longstanding Federal policy, lowers the cost of benefits, and creates greater uniformity in benefits and benefits administration.

Currently, and consistent with longstanding practice, FEHB Program contracts and the applicable statement of benefits (brochures) generally require carriers to seek reimbursement and/or subrogation recoveries, and covered individuals to reimburse the plan in the event of a third party recovery, in accordance with the terms of their FEHB contracts. The funds received by experience-rated carriers from these recoveries are required to be credited to the Employees Health Benefits Fund established by 5 U.S.C. 8909, held by the Treasury of the United States. For experience-rated carriers and most community-rated carriers, subrogation and reimbursement recoveries serve to lower subscription charges for individuals enrolled in the Federal Employees Health Benefits Program. These recoveries occur when an enrollee who is injured obtains benefits from his or her FEHB Program plan and either (1) the carrier recovers payment for those benefits from a third party as a subrogee of the enrollee or (2) the enrollee recovers payment for those benefits from a third party and the terms of the plan require the enrollee, as a result of recovery, to reimburse the carrier for benefits initially paid.

As OPM explained in carrier letter 2012–18 (June 18, 2012), and as this proposed regulation would reaffirm, the carrier's right to subrogation and/or reimbursement recovery is a condition of the payments that enrollees are eligible to receive for benefits, and a limitation on their entitlement to the provision of these benefits. Subrogation and reimbursement clauses in turn relate to the nature, provision, and extent of coverage or benefits (and the payment of benefits) by making those payments conditional upon a right to subrogation or reimbursement of equivalent amounts, either from a third-party, or from the enrollee, in the event a third party is obligated to pay for the same injury or illness. The carrier's right to pursue these recoveries therefore falls within the purview of 5 U.S.C. 8902(m)(1), and supersedes state laws that relate to health insurance or health plans.

Interpreting subrogation and reimbursement clauses to fall within Section 8902(m)(1) is consistent with the definition of subrogation and reimbursement described above and their relationship to benefits and the payment of benefits. This interpretation also furthers Congress's goals of reducing health care costs and enabling uniform, nationwide application of FEHB contracts. The FEHB program insures approximately 8.2 million federal employees, annuitants, and their families, a significant proportion of whom are covered through nationwide fee-for-service plans with uniform rates. The government pays on average approximately 70% of Federal employees' plan premiums. 5 U.S.C. 8906(b), (f). The government's share of FEHB premiums in 2014 was approximately $33 billion, a figure that tends to increase each year. OPM estimates that FEHB carriers were reimbursed by approximately $126 million in subrogation recoveries in that year. Subrogation recoveries translate to premium cost savings for the federal government and FEHB enrollees. These cost savings are consistent with Congress's intent as expressed in the legislative history of the 1998 amendment to 5 U.S.C. 8902(m)(1), indicating that Congress intended 5 U.S.C. 8902(m)(1) to ''prevent carriers' cost-cutting initiatives from being frustrated by State laws,'' H. Rept. No. 105–374 at 9, 105th Cong., 1st Sess. (1997), and with uniform administration and cost-savings principles first envisioned as major goals of Congress as it initially enacted the FEHBA in 1959. See, H.R. Rep No. 86–957, 86th Cong. 1st Sess. (1959).

In addition to its cost-savings goals, OPM recognizes a strong federal interest in national uniformity in coverage and benefits to include uniform administration of the FEHB program across state lines. This principle encompasses the need to apply uniform rules that affect the rights and obligations of enrollees in a given plan without regard to where they live. Disuniform application of FEHB contract terms as they apply to enrollees in different states is administratively burdensome, gives rise to uncertainty and litigation, and results in treating enrollees differently, although enrolled in the same plan and paying the same premium. It is OPM's understanding that Congress enacted the preemption provision to avoid such disparities, and to enhance the ability of the Federal Government to offer its employees a program of health benefits governed by a uniform set of legal rules.

This proposed rule also clarifies that where a covered individual challenges a carrier's right of subrogation and reimbursement, that challenge is not a ''claim,'' which current OPM regulations define as ''a request for payment of a health-related bill'' or the ''provision of a health-related service or supply.'' 5 CFR 890.101. Because subrogation and reimbursement challenges are not claims, they are not subject to the disputed claims process set forth at 5 CFR 890.105, 890.107.

The proposed rule adds definitions of subrogation and reimbursement to 5 CFR 890.101. In addition, the regulation replaces the current section 890.106, which is no longer needed due to creation of the Civilian Board of Contract Appeals. The proposed section 890.106 defines an FEHB carrier's right to subrogation and reimbursement in accordance with this part. As the Federal agency with regulatory authority over the FEHB Program, OPM has consistently taken the position that the FEHB Act preempts state laws that restrict or prohibit FEHB Program carrier reimbursement and/or subrogation recovery efforts, and we continue to maintain this position.

OPM is issuing proposed rule-making that further clarifies this provision of law.

Regulatory Impact Analysis

OPM has examined the impact of this proposed rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of $100 million or more in any one year. This rule is not considered a major rule because there will be a minimal impact on costs to Federal agencies.

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 only affects health insurance benefits of Federal employees and annuitants. Executive Order 12866.

Regulatory Review

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

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule restates existing rights, roles and responsibilities of State, local, or tribal governments.

List of Subjects in 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.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

Accordingly, OPM proposes to amend title 5, Code of Federal Regulations, part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

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

Authority: 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 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; Sec. 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; Pub. L. 111–148, as amended by Pub. L. 111–152.

■ 2. In § 890.101(a), add definitions for ''Reimbursement'' and ''Subrogation'' in alphabetical order to read as follows:

§ 890.101 Definitions; time computations.

(a) * * *

Reimbursement means a carrier's pursuit of a recovery if a covered individual has been injured and has received a payment from a responsible third party and the terms of the plan require the covered individual, as a result of recovery, to pay the carrier out of the recovery to the extent of the benefits initially paid or provided.

* * * * *

Subrogation means a carrier's pursuit of a recovery from a responsible third party as successor to the rights of an injured covered individual who has obtained benefits from that health benefits plan.

* * * * *

■ 3. Section 890.106 is revised to read as follows:

§ 890.106 Carrier entitlement to pursue subrogation and reimbursement recoveries.

(a) All health benefit plan contracts shall provide that the Federal Employees Health Benefits (FEHB) carrier is entitled to pursue subrogation and reimbursement recoveries, and shall have a policy to pursue such recoveries in accordance with the terms of this section.

(b) In any health benefits plan that contains a subrogation or reimbursement clause, including contracts entered into before the effective date of this regulation, benefits and benefit payments are extended to a covered individual on the condition that the FEHB carrier may pursue and receive subrogation and reimbursement recoveries if such benefits or benefit payments are for an injury or illness that is the responsibility of a third party. FEHB carriers' right to pursue and receive subrogation and reimbursement recoveries constitutes a condition of and a limitation on the nature of benefits or benefit payments and on the provision of benefits under the plan's coverage.

(c) Contracts shall provide that the FEHB carriers' rights to pursue and receive subrogation or reimbursement recoveries arise upon the occurrence of the following:

(1) The covered individual has received benefits or benefit payments as a result of an illness or injury; and

(2) The covered individual has accrued a right of action against a third party for causing that illness or injury; or has received a judgment, settlement or other recovery on the basis of that illness or injury; or is entitled to receive compensation or recovery on the basis of the illness or injury, including from insurers of individual (non-group) policies of liability insurance that are issued to and in the name of the enrollee or a covered family member.

(d) A FEHB carrier's exercise of its right to pursue and receive subrogation or reimbursement recoveries does not give rise to a claim within the meaning of § 890.101 and is therefore not subject to the disputed claims process set forth at § 890.105.

(e) Any subrogation or reimbursement recovery on the part of a FEHB carrier shall be effectuated against the recovery first (before any of the rights of any other parties are effectuated) and is not impacted by how the judgment, settlement, or other recovery is characterized, designated, or apportioned.

(f) Pursuant to a subrogation or reimbursement clause, the FEHB carrier may recover directly from the covered individual all amounts received by or on behalf of the covered individual by judgment, settlement, or other recovery from any third party or its insurer, or the covered individual's insurer, to the extent of the amount of benefits that have been paid or provided by the carrier.

(g) Any contract must contain a provision incorporating the carrier's subrogation and reimbursement rights as a condition of and a limitation on the nature of benefits or benefit payments and on the provision of benefits under the plan's coverage. The corresponding health benefits plan brochure must contain an explanation of the carrier's subrogation and reimbursement policy.

(h) A carrier's rights and responsibilities pertaining to subrogation and reimbursement under a FEHB contract relate to the nature, provision, and extent of coverage or benefits (including payments with respect to benefits) within the meaning of 5 U.S.C. 8902(m)(1). These rights and responsibilities are therefore effective notwithstanding any state or local law, or any regulation issued thereunder, which relates to health insurance or plans.

[FR Doc. 2014–30638 Filed 1–6–15; 8:45 am]

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