United States
Office of Personnel Management
Retirement and Insurance Service

Benefits Administration Letter

Number: 97-208 Date: September 25, 1997

Subject: New legislation affecting the FEHB Program

Purpose

The purpose of this letter is to explain how the Health Insurance Portability and Accountability Act of 1996 (HIPAA), enacted August 21, 1996, affects the Federal Employees Health Benefits (FEHB) Program.

HIPAA regulations

The Office of Personnel Management (OPM) does not administer this new law. Regulations governing the portability and accessibility provisions were published jointly in the Federal Register on April 8, 1997, by the Departments of Treasury, Labor, and Health and Human Services (62 FR 16894).

Limitations on exclusions due to pre-existing conditions

Under HIPAA, the definition for "group health plan" applies to the FEHB Program and the definition for "health insurance issuer" applies to FEHB carriers. "Plans" and "issuers" cannot impose exclusions for preexisting conditions for more than 12 months (18 months for late enrollments). The exclusions can only be applied if the person had services or treatment related to the condition in the previous 6 months. Also, if the person had prior health coverage, the length of the exclusion period is reduced by the length of the prior "creditable coverage." If there is a break in coverage of 63 days or more, any coverage before the break is not "creditable coverage." (State law can provide a longer break.)

Currently, the FEHB Program has only some very minor preexisting condition exclusions, and will have none beginning in 1998. Therefore, the limitations on exclusions affect FEHB enrollees mainly when they leave Federal service for private sector employment. Family members who lose FEHB coverage

may also be affected.

Certification requirements

The HIPAA law and regulations provide for certifications of old coverage so that the plan/issuer extending new coverage will know whether the person is subject to an exclusion (if the plan/issuer imposes one) and, if so, how long the exclusion can last.

Under HIPAA, either the plan or the issuer may make the certifications. The Office of Personnel Management (OPM) is requiring the FEHB carriers to make the certifications of coverage when an enrollee or family member loses FEHB coverage. (See attached Carrier Letter 97-31.) These certifications must certify the ending date of coverage and either that the person has been covered for 18 months or give date coverage began if there is less than 18 months of coverage.

OPM is requiring carriers to issue the certifications whenever coverage terminates or is cancelled, whether it is regular coverage, or coverage under the TCC (temporary continuation of coverage) or spouse equity provisions. Carriers are not required to issue certificates when an enrollee changes to another FEHB plan. However, if the enrollment terminates in less than 18 months, the carrier may need to contact the old plan in order to certify FEHB Program coverage.

Enrollees and family members may request a certification even if they have already received one. The carriers must respond to such requests for up to 2 years after the date coverage was lost.

Effective dates

Although HIPAA is not fully effective for the FEHB Program until January 1, 1998, certification requirements apply to loss of coverage occurring after June 30, 1996. For losses of coverage occurring July 1, 1996, through September 30, 1996, certifications are required upon written request. For losses of coverage occurring from October 1, 1996, through May 31, 1997, carriers may, instead of sending certifications, notify enrollees and family members that they may have a certification upon request. For losses of coverage occurring on and after June 1, 1997, automatic certifications are required.

Waiting periods

Under HIPAA, health benefits coverage before a "significant break in coverage" (generally 63 days) is not counted as "creditable coverage" for reducing a pre-existing condition exclusion period. "Waiting periods" (that is, any period that must pass before a newly-eligible employee can participate in an

employer's health plan) are not counted in determining the length of a break in coverage. However, a "waiting period" is not "creditable coverage" in itself. Instead, the new carrier looks back from the first day of the "waiting period" to determine whether there is additional coverage ending not more than 62 days earlier. Therefore, the HIPAA certificates showing less than 18 months of coverage must include waiting period information.

In the FEHB Program, an employee is eligible to enroll the day he or she enters on duty in a position that is not excluded from coverage; however, the election to enroll does not become effective until the first day of the pay period after the employing office receives it. The period from the day the employee was eligible to enroll until the day before the effective date of the enrollment is a "waiting period" for this purpose.

Under the FEHB Program, a "waiting period" occurs when an employee enrolls--

- during the initial enrollment period based on a new appointment;
- upon reappointment following a break in service exceeding 3 days, or
- upon return to pay status following a termination of coverage related to leave without pay.

If an employee chooses not to enroll at that time and later enrolls based on some other event (such as an open season), there is no waiting period for the purpose of HIPAA certification.

At present, carriers do not have information about when the waiting period for an enrollee began. Therefore, until the Standard Form (SF) 2809 (Health Benefits Registration Form) can be revised, carriers must contact the employing office for that information in those few instances where a person has less than 18 months of FEHB coverage. The carrier may request the information by telephone or email, and the employing office may respond in the same manner.

Example

You reinstated Bruce Benefit 90 days after he resigned from OPM (in the middle of a pay period) where he had been employed (and covered under the FEHB Program) for 8 months.

Bruce didn't sign up for FEHB coverage until 4 weeks after his reinstatement. Six months later, Bruce resigns to accept a job in the private sector. His new employer's health benefit plan has exclusions for pre-existing conditions. Is he subject to them because he had a break in coverage of 63 days?

No, Bruce is not subject to the exclusions. First, his FEHB coverage extended to the end of the pay period at OPM plus 31 days. Second, the 4 weeks that passed before he signed up for FEHB coverage (plus the time it took for his election to be effective) are considered a waiting period and don't count toward a break in coverage. Note, however, that the waiting period does not count toward the 12-month coverage requirement. (A requirement that Bruce met by virtue of combining his coverage at OPM and your agency.

What HIPAA doesn't do

HIPAA doesn't require plans/issuers to offer any particular benefits. Therefore, individuals are not guaranteed the same level of benefits when they move from one employer to another.

HIPAA doesn't affect the waiting periods that some employers impose before new employees may participate in their health benefits plans. These waiting periods may be as long as 6 months or more. However, the waiting periods do not count when determining whether there has been a "significant break" in coverage.

Individual contracts

Not all Federal employees who leave Federal service and family members who lose family member status go to work for an employer who offers group insurance. Some of these former employees and family members may consider purchasing an individual insurance contract (other than the conversion contract that the FEHB law requires carriers to offer to individuals who lose FEHB coverage involuntarily). Individuals who lose FEHB coverage can get individual contracts without preexisting condition exclusion provisions if they:

- have had health coverage for at least 18 months and have lost *group* coverage:
- did not have their group coverage terminated because of fraud or nonpayment of premiums;
- aren't eligible for TCC (temporary continuation of coverage) or spouse equity or have exhausted their TCC coverage; and

- aren't eligible for coverage under any other group health plan, including Medicare.

NOTE: The conversion contracts that the FEHB law requires FEHB carriers to provide have never had exclusion provisions and are not affected by the HIPAA limitations on exclusions. However, conversion contracts aren't group coverage; therefore, a former employee or family member who chooses to convert FEHB coverage may be subject to exclusions if he or she later drops the conversion contract and purchases another individual contract.

Employing office role

The employing office role is small, but important. First, when former employees and family members ask for certifications, refer them to their carriers. Second, when carriers ask for information about an employee's waiting period, respond promptly.

Inquiries

Neither the Office of Personnel Management nor the employing offices are the source of definitive information about how HIPAA may affect an individual. Because the law gives enforcement authority to the States and allows States to impose more generous conditions than provided by HIPAA, we believe that the best source of information for an individual is the State Insurance Commissioner.

Abby L. Block, Chief
Insurance Policy and
Information Division

Attachment

FEHBP Letter
All Carriers

SUBJECT: Certifications of health benefits coverage.

The purpose of this letter is to alert all carriers to the certification requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and to explain how these requirements are to be met for losses of health benefits coverage under the FEHB Program that occur through December 31, 1997.

Regulations governing these requirements were published jointly in the Federal Register on April 8, 1997, by the Departments of the Treasury, Labor, and Health and Human Services (62 FR 16894). These regulations apply to the FEHB Program just as they do to other group insurance programs. The Office of Personnel Management (OPM) issued the draft amendments to the 1998 contracts regarding this legislation with Carrier Letters 97-15A (for fee-for-service carriers), 97-15B (for community rated carriers), and 97-15C (for experience-rated HMO's), all dated April 15, 1997. These draft amendments require FEHB carriers to issue the certificates for the 1998 contract year, which begins January 1, 1998.

Carriers also must issue certifications required under the regulations for losses of coverage occurring before 1998. Generally, the certification requirements apply to loss of coverage occurring after June 30, 1996. However, certifications are not required on an automatic basis until June 1, 1997. For losses of coverage occurring July 1, 1996, through September 30, 1996, certifications are required upon written request. For losses of coverage occurring from October 1, 1996, through May 31, 1997, carriers may, instead of sending certifications, notify enrollees and family members that they may have a certification upon request. These notices should have been issued no later than June 1, 1997. For losses of coverage occurring on and after June 1, 1997, automatic certifications are required.

The supplemental information published with the regulations includes a model certification and a model notification that carriers may use in certifying coverage and providing notices under the FEHB Program. The regulations and supplemental information give detailed information about making the certifications; however, carriers need the following additional information about the application of some of the provisions to the FEHB Program:

> **Temporary continuation of coverage.** Under the regulations, certifications are required when a covered person becomes eligible for Consolidated Omnibus Budget Reconcilation Act (COBRA) continuation coverage (Part 6 of subtitle B of title I of the

Employee Retirement Income Security Act of 1974) and when COBRA continuation coverage ends. The FEHB Program is not subject to COBRA continuation coverage, although it has similar temporary continuation of coverage (TCC) provisions. We have concluded that under the FEHB Program, certifications must be made whenever coverage terminates or is cancelled, whether it is the termination or cancellation of regular FEHB coverage, coverage under the TCC provisions, or coverage under the spouse equity provisions. (We have also concluded that covered individuals must exhaust their TCC eligibility before they can qualify for the protection provided by the individual market provisions.)

Changing plans within the FEHB Program. The Office of Personnel Management (OPM) has concluded that it is not necessary for carriers to certify coverage when an enrollee changes to another plan within the FEHB Program or to automatically notify the new plan of the period of coverage under the old plan. Instead, when a carrier must certify coverage for an enrollee or family member who does not have 18 months of coverage with that carrier, but transferred to that carrier from another FEHB plan, the certifying carrier must obtain information from the previous carrier that is sufficient to certify the individual's coverage under the FEHB Program. The carrier may obtain this information from the old carrier by telephone or email. The name of the old carrier is shown on the Standard Form (SF) 2809, Health Benefits Registration Form, on which the enrollee elected the new plan or provided on the file transmitted by Employee Express.

Waiting periods. Under these regulations, health benefits coverage before a "significant break in coverage" is not considered "creditable coverage" for reducing a pre-existing condition exclusion period. Waiting periods (periods of time a new employee must wait before becoming covered under the employer's group health program), however, are not considered a break in coverage for this purpose. In the FEHB Program, an employee is eligible to enroll the day he or she enters on duty in a position that is not excluded from coverage; however, the election to enroll does not become effective until the first day of the first pay period following the agency's receipt of the election. The period from the day the employee was eligible to enroll through the day before the effective date of the enrollment is a waiting period for this purpose. At present, carriers do not have information about when the waiting period for an FEHB enrollee began. Until OPM can revise SF 2809, carriers must contact employing offices for that information when the enrollee has less than 18 months of coverage with the certifying carrier and was not covered by another FEHB Plan immediately before coverage with the certifying carrier began. Carriers may use the telephone or email to obtain this information. The SF 2809 includes a personnel office contact and telephone number.

Thirty-one day temporary extension of coverage. In preparing these certificates, please keep in mind that FEHB Program coverage includes a 31-day temporary extension of coverage after termination and after family members lose coverage due to loss of family member status or because the covering enrollment was changed to self only, but not when an enrollee voluntarily cancels the enrollment. The 31-day

temporary extension of coverage must be included as creditable coverage in the carrier's certification of coverage.

In the FEHB Program, carriers are notified of enrollment terminations by Standard Form (SF) 2810, Notice of Change in Health Benefits Enrollment. They are notified of voluntary cancellations by SF 2809. Carriers must issue certifications upon receipt of an SF 2810 terminating enrollment or an SF 2809 cancelling enrollment. When a carrier receives an SF 2809 changing an enrollment from self and family to self only, the carrier must provide certifications for family members of record who lost coverage as a result of the change in the type of enrollment. Carriers do not issue certifications when an enrollee transfers to a different payroll office or changes to a different FEHB plan.

Carriers do not generally receive any notice when a child ceases to qualify as a family member or when the enrollee and spouse divorce. Family members and their birth dates are shown on the SF 2809 that employees complete in order to enroll in a plan. Carriers may use this information to determine when a child reaches age 22; however, the information may not be a part of the automated data base at this time. The HIPAA law and regulations recognize that carriers may not have the information necessary to make certifications for family members and have special provisions for dealing with this lack of information through June 30, 1998. See 45 CFR 146.115(a)(5) at 62 FR 16964 for information about certifications for family members.

If you have questions about certifications of FEHB coverage for HIPAA purposes, you may call our Information Staff on 202-606-0191 or email us at FEHB@OPM.GOV.

Sincerely,

Frank D. Titus
Assistant Director
for Insurance Programs