

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 890

RIN 3206-AJ36

### Suspension of CHAMPVA or TRICARE or TRICARE-for-Life Eligibles' Enrollment in the Federal Employees Health Benefits (FEHB) Program

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing a final rule to allow CHAMPVA or TRICARE or TRICARE-for-Life eligible FEHB Program annuitants, survivors, and former spouses to suspend their FEHB enrollments, and then return to the FEHB Program during the Open Season, or return to FEHB coverage immediately, if they involuntarily lose CHAMPVA or TRICARE or TRICARE-for-Life coverage. The intent of this rule is to allow these beneficiaries to avoid the expense of continuing to pay FEHB Program premiums while they are using TRICARE or TRICARE-for-Life or CHAMPVA coverage, without endangering their ability to return to the FEHB Program in the future.

**EFFECTIVE DATE:** Effective July 18, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Michael W. Kaszynski, Policy Analyst, Insurance Policy and Information Division, OPM, Room 3425, 1900 E Street, NW., Washington, DC 20415-0001. Phone: (202) 606-0004.

**SUPPLEMENTARY INFORMATION:** Effective October 1, 2001, the National Defense Authorization Act for 2001 reinstated TRICARE coverage for Medicare-eligible uniformed services retirees, their survivors and eligible dependents under the new TRICARE-for-Life program. TRICARE or TRICARE-for-Life coverage can be advantageous to many uniformed

services beneficiaries who now are covered under the FEHB Program as Federal civilian annuitants, survivors, or former spouses.

Also, recent legislation, Public Law 107-14, provides beneficiaries over age 65 of the Department of Veterans Affairs (VA) with coverage secondary to Medicare under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA). CHAMPVA provides similarly attractive benefits to VA eligible beneficiaries as those benefits provided to uniformed services beneficiaries under the TRICARE or new TRICARE-for-Life programs.

Under previous FEHB regulations, however, an annuitant, survivor, or former spouse who canceled his or her FEHB coverage to use CHAMPVA or TRICARE would not be allowed to return to FEHB coverage. Therefore, OPM is issuing these final regulations to allow these FEHB participants to suspend, rather than cancel, their FEHB coverage to use CHAMPVA or TRICARE or the new TRICARE-for-Life coverage. Under this rule, eligible individuals are allowed to return to FEHB coverage immediately if they involuntarily lose CHAMPVA or TRICARE or TRICARE-for-Life coverage or during a future FEHB Open Season.

We are also amending our regulations to clarify a similar situation involving FEHB-covered annuitants, survivors, and former spouses. The regulations allow an individual who drops FEHB coverage when he or she enrolls in a Medicare-sponsored plan, or in Medicaid or a similar State-sponsored program of medical assistance for the needy, to return to FEHB coverage during the annual Open Season or immediately upon being involuntarily disenrolled from the non-FEHB coverage.

On September 26, 2001, OPM published an interim regulation in the **Federal Register** (66 FR 49086). OPM received comments from a number of individuals as well as the Department of Veterans Affairs on the regulation. Three commenters were not sure if the regulation allowed surviving spouses of Federal annuitants to suspend their FEHB coverage to use TRICARE or TRICARE-for-Life. One commenter also wanted to know if a surviving spouse could reenroll in the FEHB Program if the annuitant passed away during the

suspension period. The regulation authorizes a surviving spouse, who is eligible for health benefits coverage as a survivor annuitant, to suspend FEHB coverage while maintaining the right to reenroll in the future. In order to qualify for health benefit coverage as a survivor annuitant, a surviving spouse must have been enrolled as a family member under the annuitant's Self and Family enrollment and qualify to receive a portion of the annuitant's annuity upon his/her death. The regulation also allows individuals who become survivor annuitants during a period of suspended FEHB coverage to reenroll even though the survivor didn't make the original decision to suspend coverage. The survivor must have been enrolled under the annuitant's Self and Family coverage immediately preceding the annuitant's suspension of FEHB coverage and otherwise qualify as a survivor annuitant.

We received a comment from the VA stating that CHAMPVA provides the same or similar benefits to VA eligible beneficiaries as those benefits provided to TRICARE beneficiaries. Because of this, the VA believes that individuals eligible for CHAMPVA should be permitted to suspend FEHB coverage under the same conditions as those individuals eligible for TRICARE or TRICARE-for-Life. We agree with the VA and have revised the regulation to allow annuitants, survivors, and former spouses to suspend FEHB coverage with the right to reenroll in the future.

One commenter requested that we make the regulation retroactive to the effective date of the TRICARE-for-Life legislation. The commenter stated that many eligible individuals canceled rather than suspended their FEHB enrollments because that was the only option available at the time. The actual date that the new TRICARE-for-Life program became effective for medical, hospital, and surgical coverage was October 1, 2001. Our interim regulation was published and effective on September 26, 2001. Therefore, the authority to suspend, rather than cancel, was available to annuitants and former spouses on the effective date of TRICARE-for-Life coverage. We see no need to make further changes to the regulation's effective date.

One commenter requested that OPM give spouses of living civilian annuitants the opportunity to enroll in

Self-Only coverage under the FEHB Program while allowing annuitants the opportunity to suspend FEHB coverage for TRICARE or TRICARE-for-Life. Another commenter requested that OPM give spouses of living annuitants the opportunity to suspend their FEHB enrollment with the right to reenroll in the FEHB Program in the future. Existing FEHB law does not authorize spouses of living employees or annuitants to enroll in the FEHB Program on their own behalf. Therefore, we cannot create this authority through regulation.

One commenter asked if active civil service employees could suspend their FEHB coverage to use TRICARE or TRICARE-for-Life. The regulation does not allow employees to suspend their coverage. This is because employees have always had the option of canceling their coverage with the right to reenroll in the FEHB Program during a future Open Season, or immediately if they involuntarily lose TRICARE coverage. In the past, annuitants, survivors, and former spouses never had the option to reenroll in the FEHB Program after leaving for TRICARE. Our new regulation creates this authority.

We have clarified the period for submitting suspension documentation to OPM and the effective date of suspensions. In the case of an involuntary disenrollment from non-FEHB coverage, if an eligible individual does not request to reenroll in the FEHB Program within the time period specified by the regulation, he or she must wait until the next Open Season to reenroll.

**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 carriers under the Federal Employees Health Benefits Program.

**Executive Order 12866, Regulatory Review**

This regulation 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.

U.S. Office of Personnel Management.  
**Kay Coles James,**  
*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 continues 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.

2. The section heading in § 890.304 and paragraph (d)(2) are revised to read as follows:

**§ 890.304 When do enrollments terminate, cancel or suspend?**

(d) \* \* \*

(2) An annuitant or survivor annuitant may suspend enrollment in FEHB for the purpose of enrolling in a Medicare-sponsored plan under sections 1833, 1876, or 1851 of the Social Security Act, or to enroll in the Medicaid program or a similar State-sponsored program of medical assistance for the needy, or to use CHAMPVA or TRICARE (including coverage provided by the Uniformed Services Family Health Plan) or TRICARE-for-Life instead of FEHB coverage. To suspend FEHB coverage, documentation of eligibility for coverage under the non-FEHB program must be submitted to the retirement system. If the documentation is received within the period beginning 31 days before and ending 31 days after the effective date of the enrollment in the Medicare-sponsored plan, or the Medicaid or similar program, or within 31 days before or after the day designated by the annuitant or survivor annuitant as the day he or she wants to suspend FEHB coverage to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life instead of FEHB coverage, then suspension will be effective at the end of the day before the effective date of the enrollment or the end of the day before the day designated. Otherwise, the suspension is effective the first day of the first pay period that begins after the date the retirement system receives the documentation.

\* \* \* \* \*

3. The section heading in § 890.306 and paragraph (f)(1)(ii) are revised,

paragraphs (f)(1)(iii) and (f)(1)(iv) are removed, paragraph (h) is revised, and paragraph (i) is removed and reserved to read as follows:

**§ 890.306 When can annuitants or survivor annuitants change enrollment or reenroll and what are the effective dates?**

\* \* \* \* \*

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

(ii) An annuitant or survivor annuitant who suspended enrollment under this part to enroll in a Medicare-sponsored plan under sections 1833, 1876, or 1851 of the Social Security Act, or to enroll in a Medicaid or similar State-sponsored program of medical assistance for the needy, or to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life coverage instead of FEHB coverage, may reenroll.

\* \* \* \* \*

(h) *Reenrollment of annuitants or survivor annuitants who suspended enrollment to enroll in a Medicare-sponsored plan, or a Medicaid or similar State-sponsored program; or to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life coverage instead of FEHB coverage.*

(1) An annuitant or survivor annuitant who had been enrolled (or was eligible to enroll) for coverage under this part and suspended the enrollment for the purpose of enrolling in a Medicare sponsored plan under sections 1833, 1876, or 1851 of the Social Security Act, or to enroll in the Medicaid program or a similar State-sponsored program of medical assistance for the needy, or to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life coverage instead of the FEHB Program (as provided by § 890.304(d)), and who subsequently involuntarily loses coverage under one of these programs, may immediately reenroll in any available FEHB plan under this part at any time beginning 31 days before and ending 60 days after the loss of coverage. A reenrollment under this paragraph (h) of this section takes effect on the date following the effective date of the loss of coverage as shown on the documentation from the non-FEHB coverage. If the request to reenroll is not received by the retirement system within the time period specified, the annuitant must wait until the next available Open Season to reenroll.

(2) An annuitant or survivor annuitant who suspended enrollment in the FEHB Program to enroll in a Medicare sponsored plan or the Medicaid or similar State-sponsored program of

medical assistance for the needy, or to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life, but now wants to reenroll in the FEHB Program for any reason other than an involuntary loss of coverage, may do so during the next available Open Season (as provided by paragraph (f) of this section).

(i) [Reserved]

\* \* \* \* \*

4. The section heading in § 890.806 and paragraphs (f)(1)(ii) are revised, paragraphs (f)(1)(iii) and (f)(1)(iv) are removed, paragraph (h) is revised, and paragraph (i) is removed and reserved to read as follows:

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

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(ii) A former spouse who suspended the enrollment under this part for the purpose of enrolling in a Medicare sponsored plan under sections 1833, 1876, or 1851 of the Social Security Act, or to enroll in the Medicaid program or a similar State-sponsored program of medical assistance for the needy, or to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life coverage instead of FEHB coverage, may reenroll.

\* \* \* \* \*

(h) *Reenrollment of former spouses who suspended enrollment to enroll in a Medicare sponsored plan, or the Medicaid or similar State-sponsored program, or to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life coverage instead of FEHB coverage.*

(1) A former spouse who had been enrolled for coverage under this part and suspended enrollment for the purpose of enrolling in a Medicare sponsored plan under sections 1833, 1876, or 1851 of the Social Security Act, or to enroll in Medicaid or similar State-sponsored program of medical assistance for the needy, or to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life coverage instead of FEHB (as provided in § 890.807(e)), or who meets the eligibility requirements of § 890.803 and the application time limitation requirements of § 890.805, but postponed enrollment in the FEHB Program for the purpose of enrolling in one of these non-FEHB programs, and who subsequently involuntarily loses coverage under one of these programs, may immediately reenroll in any

available FEHB plan under this part at any time beginning 31 days before and ending 60 days after the loss of coverage. A reenrollment under this paragraph (h) of this section takes effect on the date following the effective date of the loss of coverage as shown on the documentation from the non-FEHB coverage. If the request to reenroll is not received by the employing office or retirement system within the time period specified, the former spouse must wait until the next available Open Season to reenroll.

(2) A former spouse who suspended enrollment in the FEHB Program to enroll in a Medicare sponsored plan, or the Medicaid program or a similar State-sponsored program of medical assistance for the needy, or to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or the TRICARE-for-Life program, but now wants to reenroll in the FEHB Program for any reason other than an involuntary loss of coverage, may do so during the next available Open Season (as provided by paragraph (f) of this section).

(i) [Reserved]

\* \* \* \* \*

5. The section heading in § 890.807 and paragraphs (e)(2) and (e)(4) are revised to read as follows:

**§ 890.807 When do enrollments terminate, cancel or suspend?**

\* \* \* \* \*

(e) \* \* \*

(2) A former spouse may suspend enrollment in FEHB for the purpose of enrolling in a Medicare sponsored plan under sections 1833, 1876, or 1851 of the Social Security Act, or to enroll in the Medicaid program or a similar State-sponsored program of medical assistance for the needy, or to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life coverage instead of FEHB coverage. To suspend FEHB coverage, documentation of eligibility for coverage under the non-FEHB Program must be submitted to the employing office or retirement system. If the documentation is received within the period beginning 31 days before and ending 31 days after the effective date of the enrollment in the Medicare sponsored plan, or the Medicaid or similar program, or within 31 days before or after the day designated by the former spouse as the day he or she wants to suspend FEHB coverage to use CHAMPVA or TRICARE (including the Uniformed Services Family Health Plan) or TRICARE-for-Life coverage instead of FEHB coverage, then the suspension will be effective at the end of the day

before the effective date of the enrollment or the end of the day before the day designated. Otherwise, the suspension is effective the first day of the first pay period that begins after the date the employing office or retirement system receives the documentation.

\* \* \* \* \*

(4) A former spouse who cancels his or her enrollment for any reason may not later reenroll in the FEHB Program.

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 301**

[Docket No. 02-017-1]

**Pine Shoot Beetle; Addition to Quarantined Areas**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the pine shoot beetle regulations by adding 11 counties in Illinois, Indiana, Maine, Michigan, Ohio, and Wisconsin to the list of quarantined areas. This action is necessary to prevent the spread of pine shoot beetle, a pest of pine products, into noninfested areas of the United States.

**DATES:** This interim rule is effective June 18, 2002. We will consider all comments that we receive on or before August 19, 2002.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-017-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-017-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-017-1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue