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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AG40

Federal Employees Health Benefits Program; HMO Plan Applications

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to clarify the policy under which it invites applications from comprehensive medical plans (CMP's), commonly referred to as Health Maintenance Organizations (HMO's), to participate in the Federal Employees Health Benefits (FEHB) Program. This clarification is necessary in order to ensure that OPM and the CMP's (HMO's) are providing the best possible service to FEHB enrollees.

EFFECTIVE DATE: February 6, 1996.

FOR FURTHER INFORMATION CONTACT: Faith M. Hannon, (202) 606-0004.

SUPPLEMENTARY INFORMATION: On December 5, 1994, OPM published an interim regulation in the Federal Register (59 FR 62283) to clarify the policy under which it invites applications from comprehensive medical plans (CMP's), commonly referred to as Health Maintenance Organizations (HMO's), to participate in the FEHB Program. OPM made a determination not to invite new plan applications, with a limited exception, for contract year 1996. In addition, OPM decided neither to accept benefit change proposals from plans already in the FEHB Program nor to print new plan brochures or a comparison guide for contract year 1996.

OPM received 15 written comments and numerous phone calls concerning the regulation. All of the commenters

objected that OPM did not give HMO's sufficient notice of its determination not to accept applications and benefit change proposals for the 1996 contract year. Among other issues, they contended that many HMO's had already expended a substantial amount of time preparing applications or developing plan benefit designs and that OPM's decision, therefore, caused them undue hardship. In addition, some commenters disagreed with OPM's position that this regulation clarified existing policy and that the Director of OPM had authority to determine when plan applications would be accepted.

After careful consideration of the comments received, OPM concluded that its time frames had, in fact, been too compressed to allow for a thorough review of all the consequences of the decision not to accept applications and that it had not allowed sufficient time for comments. As a result, OPM decided to accept applications and benefit change proposals for contract year 1996 and to provide the public with a longer comment period.

Therefore, OPM published a notice in the Federal Register on March 13, 1995, (60 FR 13491), which stated that OPM would accept applications from new HMO's for participation in the FEHB Program, and benefit change proposals from plans currently participating, for contract year 1996. In this notice, OPM extended the deadline for submission of the completed applications from January 31 to March 31, 1995, and allowed for a second extension if OPM requested additional information from the applicants. OPM also published the clarification of the policy under which it invites applications from HMO's as a proposed regulation in the Federal Register, (60 FR 15074), on March 22, 1995. This issuance was in response to those commenters who objected to the length of the comment period of the interim regulation and other alleged publication technicalities under the Administrative Procedure Act (APA).

OPM received seven written responses to the proposed regulation. The primary issues mentioned by most commenters were that closing the FEHB Program for an unlimited period of time would limit health plan choices for Federal employees, and would restrict competition within the FEHB Program. Both features are considered to be hallmarks of the Program. Some

commenters also opined that this regulation contravenes OPM's obligation to contract with federally qualified HMO's and the related HMO dual choice mandate. These comments may have originated from a misunderstanding of the extent of the regulation. It was never OPM's intention to close the FEHB Program to new HMO's for unlimited periods of time. Because this misconception appears to be widespread, the final rule states that it is OPM's intention to accept new HMO applications on an annual basis except in those rare instances when the Director decides it is not in the best interest of the Federal enrollees and the FEHB Program. If this should occur, sufficient advance notice would be given to the HMO industry, i.e., an entry in the Federal Register at least seven months prior to the date applications would be due for the contract year for which applications will not be accepted, allowing for a comment period of sixty days. Generally, there is eleven months lead time between when applications are due on January 31, and the start of the contract year for which the applications are being accepted.

Several commenters stated that it is their belief that the Federal Employees Health Benefits Act (FEHBA) does not grant the Director of OPM the authority to determine when it is beneficial to the FEHB Program to accept applications from HMO's for participation in the Program. It was, and is, the conclusion of OPM that the Director has always had this authority and that this regulation simply clarifies the policy under which this authority is administered. The final rule states this conclusion.

Many commenters offered to assist OPM in streamlining the application process so that OPM might utilize its resources in the most effective way to benefit Program enrollees. OPM is appreciative of these offers and is working closely with representatives of the industry and other knowledgeable organizations to improve the application process.

This Final Rule is also updating the mailing address of the Office of Insurance Programs listed in the final sentence of § 890.203(a)(5).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities

because they primarily affect OPM's administrative procedures.

List of Subjects in 5 CFR Part 890

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

U.S. Office of Personnel Management.
James B. King,
Director.

Accordingly, 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.

2. In § 890.203, paragraphs (a)(1) and (a)(2), and the last sentence in paragraph (a)(5) are revised to read as follows:

§ 890.203 Application for approval of, and proposal of amendments to, health benefits plans.

(a) *New plan applications.* (1) The Director of OPM shall consider applications to participate in the FEHB Program from comprehensive medical plans (CMP's) at his or her discretion. CMP's are automatically invited to submit applications annually to participate in the FEHB Program unless otherwise notified by OPM. If the Director should determine that it is not beneficial to the enrollees and the Program to consider applications for a specific contract year, OPM will publish a notice with a 60 day comment period in the Federal Register no less than 7 months prior to the date applications would be due for the specific contract year for which applications will not be accepted.

(2) When applications are considered, CMP's should apply for approval by writing to the Office of Personnel Management, Washington, DC 20415. Application letters must be accompanied by any descriptive material, financial data, or other documentation required by OPM. Plans must submit the letter and attachments in the OPM-specified format by January 31, or another date specified by OPM, of the year preceding the contract year for which applications are being accepted. Plans must submit evidence demonstrating they meet all requirements for approval by March 31

of the year preceding the contract year for which applications are being accepted. Plans that miss either deadline cannot be considered for participation in the next contract year. All newly approved plans must submit benefit and rate proposals to OPM by May 31 of the year preceding the contract year for which applications are being accepted in order to be considered for participation in that contract year. OPM may make counter-proposals at any time.

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(5) * * * The extent of the data and documentation to be submitted by a plan so qualified by HHS, as well as by a non-qualified plan, for a particular review cycle may be obtained by writing directly to the Office of Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, Washington, DC 20415.

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[FR Doc. 95-29882 Filed 12-7-95; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 95-072-1]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the tuberculosis regulations concerning the interstate movement of cattle and bison by reducing the designation of Wisconsin from an accredited-free State to an accredited-free (suspended) State. We have determined that Wisconsin no longer meets the criteria for designation as an accredited-free State but meets the criteria for designation as an accredited-free (suspended) State. This change is necessary to prevent the spread of tuberculosis in cattle and bison.

DATES: Interim rule effective December 8, 1995. Consideration will be given only to comments received on or before February 6, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95-072-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to

Docket No. 95-072-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737-1231, (301) 734-7727.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The tuberculosis regulations contained in 9 CFR part 77 (referred to below as the regulations), regulate the interstate movement of cattle and bison because of tuberculosis. Cattle and bison not known to be affected with or exposed to tuberculosis are eligible for interstate movement without restriction if those cattle or bison are moved from jurisdictions designated as accredited-free States, accredited-free (suspended) States, or modified accredited States. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from jurisdictions designated as nonmodified accredited States.

The status of a State is based on its freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which is incorporated by reference into the regulations.

An accredited-free State, as defined in § 77.1 of the regulations, is a State that has no findings of tuberculosis in any cattle or bison in the State for at least 5 years. The State must also comply with all the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding accredited-free States.

An accredited-free (suspended) State is defined as a State with accredited-free status in which tuberculosis has been detected in any cattle or bison in the State. A State with accredited-free (suspended) status is qualified for redesignation of accredited-free status after the herd in which tuberculosis is detected has been quarantined, an