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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AH61

Federal Employees Health Benefits Program: Disenrollment

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations that are consistent with existing administrative procedures requiring employing offices to provide information about enrollees in the Federal Employees Health Benefits (FEHB) Program to the carriers of the FEHB plans in which they are enrolled. Carriers are also required to use the information provided by employing offices to reconcile their enrollment records. These regulations will regularize the conditions that would allow carriers to disenroll individuals when their employing office of record does not show them as enrolled in the carrier's plan and the carrier is otherwise unable to verify the enrollment. The purpose of these regulations is to facilitate reconciliation of carrier and employing office enrollment records, especially in cases where the carrier has not previously received a notice showing an enrollment no longer is valid.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Jay D. Fritz (202) 606-0004.

SUPPLEMENTARY INFORMATION: On November 28, 1997, OPM issued proposed regulations in the **Federal Register** (62 FR 63282) that would amend part 890 to allow carriers of FEHB plans to disenroll individuals when (1) the payroll office of record with the carrier is unable to provide

information about the enrollment, (2) the carrier receives reliable information that an individual with a self only enrollment has died, (3) a child survivor annuitant becomes age 22, unless the carrier has information indicating that the child is eligible for continued coverage because the child is incapable of self support due to a physical or mental disability, and (4) a former employee notifies the carrier that he or she has separated from Federal employment under circumstances that do not entitle him or her to an immediate annuity.

OPM received comments from six insurance carriers, one Government agency, and one health plan trade association. Seven of the commenters were in favor of the proposed regulations although each had specific areas of concern. One commenter was opposed to the proposed regulations. We will address the areas of concern below. We have tried to list these issues in the same order as the regulations to which they pertain.

One commenter suggested that we modify 5 CFR 890.107(a) to indicate that lawsuits filed over disenrollments are to be filed against the employing office. We believe that lawsuits involving disenrollments are the equivalent of lawsuits to compel enrollments which are adequately addressed at § 890.107(a).

One commenter requested that carriers be allowed to cancel an inactive contract in a situation where two identification numbers belong to one individual, the carrier determines which coverage should be active, and information about the incorrect enrollment is not available from the employing office. We believe this is strictly an enrollment issue that needs to be resolved between the employing office and the carrier and is outside the scope of these regulations.

Several commenters expressed concerns over the responsibilities of employing offices in responding to a carrier's request to provide documentation necessary to resolve enrollment discrepancies. Two commenters requested that employing offices be required to respond within a certain time frame to a carrier's request to provide documentation necessary to resolve an enrollment discrepancy. Two other commenters suggested the regulations indicate that if the

employing office has not responded to a carrier's request for information within a set amount of time, the carrier may proceed with issuing a disenrollment notification. We are modifying the regulations to indicate that if a carrier has not received requested information from the employing office within 31 days of the request, they may proceed with issuing the disenrollment notice.

One commenter suggested that we change § 890.308(a)(1) to indicate that an enrollee will be disenrolled 31 "calendar" days after the date of the disenrollment notice since the term "calendar" is used elsewhere in the regulations. We are making this modification in the interest of clarity.

Another commenter believes that 31 calendar days is not sufficient time for an enrollee to respond to a carrier's disenrollment notice. We feel that 31 days is enough time for an individual to either contact the employing office or supply the carrier with appropriate documentation to resolve an enrollment discrepancy. If for some reason an individual does not provide documentation within the 31 calendar day time frame and he or she is disenrolled, the disenrollment will be voided and coverage reinstated retroactively upon presentation of the documentation.

Several commenters suggested that OPM and the carriers create a standard disenrollment notification letter and a standard letter advising individuals of conversion rights and TCC eligibility when applicable. OPM agrees and will work administratively with the carriers on creating these standard letters.

Two commenters expressed concern that after an individual receives a disenrollment notice, the individual is to deliver appropriate documentation resolving the discrepancy to the carrier instead of the employing office. The commenters feel that if the employing office does not see the documentation, they will not correct their records and the discrepancy will arise again in the next reconciliation. OPM believes that appropriate documentation should be sent to the carrier instead of the employing office since the carrier is taking the action to disenroll the individual and can rescind that action. We also expect that in many cases the individual will contact the employing office for assistance upon receipt of the

disenrollment notice, resulting in correction of employing office records. In addition, the standard disenrollment letter will advise individuals to send appropriate documentation to both their carrier and their employing office.

Two commenters inquired about the effective date of an individual's disenrollment. One questioned the disenrollment date when the carrier and the employing office are unable to reconcile the enrollment, and the other questioned the disenrollment date when the carrier receives reliable evidence that an enrollee with a self only enrollment has died but the date of death is unknown. In the first case, the disenrollment date will be 31 calendar days after the disenrollment notice is sent to the enrollee as the carrier would not have any knowledge as to when the employing office of record ceased forwarding premiums for that individual. In the second case, we are modifying the regulations to indicate that disenrollment would be effective the last day of the pay period in which the carrier received notice of the death.

One commenter requested that OPM give carriers discretion to delay disenrollments in appropriate cases. It is our intention for carriers to use the disenrollment process with appropriate discretion in all cases, but especially in cases where the carrier believes an individual is eligible for coverage but needs time to forward documentation. We are modifying the regulations to allow carriers this discretion.

One commenter asked if carriers should convey an individual's disenrollment date to the employing office when the individual is disenrolled 31 days after written notification is sent. We do not believe carriers should be required to make this notification. Since prior attempts at contact by the carrier have been ineffectual, it is unlikely they would know the office of record to which to send the notification.

One commenter suggested that we clarify the procedures for an individual disputing a disenrollment notice from a carrier. We are modifying the regulations so that after a carrier receives information from an individual attempting to resolve an enrollment discrepancy, the carrier will communicate its decision on the information to both the employing office and the individual. Only at the point where the information is determined to be inadequate to resolve the enrollment discrepancy should the reconsideration process with the individual's employing office begin.

One commenter suggested that employing offices be required to notify

the carrier of a request made by an individual for reconsideration of a disenrollment decision. The commenter believes that the carrier may have information that bears on the enrollment issue. We are modifying the regulations to incorporate this requirement.

One commenter suggested that we clarify the regulations to indicate that if an employing office overturns a carrier's disenrollment determination upon reconsideration, the enrollment will be reinstated retroactively. OPM agrees and we are modifying the regulations for clarity, as all reinstatements of enrollment under these regulations will be made retroactively.

We are also revising the regulations to remove the requirement that reconsideration decisions be issued to the carriers in writing. After a reconsideration decision is made, agencies are still to issue a written notice of its final decision to the individual, however, agencies should contact the carrier by telephone with the reconsideration decision. We have made this change since currently much enrollment activity is handled between the agencies and carriers by telephone. In the case of reconsideration decisions to reinstate FEHB enrollment, we do not want individuals to remain disenrolled while a carrier waits for a written notice to be forwarded from the agency. Through use of the telephone, an individual that is eligible for FEHB coverage may be quickly reinstated.

One commenter suggested the regulations require that employing offices issue reconsideration decisions within a set time frame. We believe reconsideration should be in accordance with the existing processes developed within each individual employing office to process reconsideration requests under 5 CFR 890.104(c).

Two commenters expressed concern over retroactive enrollments in health maintenance organizations for individuals who received routine services from non-network providers during the period covered by the retroactive enrollment. When these situations arise, OPM requests that carriers review each occurrence on a case-by-case basis. In situations of true hardship, where services could not be deferred until the enrollment problem was resolved, we would expect the carriers to provide coverage for the non-network services in question.

Several commenters were concerned about our proposal allowing carriers, upon receiving from a reliable source information of the death of an enrollee with a self only enrollment, to disenroll the individual. We are modifying the regulations to include certain examples

of what OPM considers reliable information that an enrollee has died. We are also eliminating the requirement that carriers attempt to notify the affected individual or a family member of the disenrollment. Upon additional review, we have determined that an attempt to notify the affected individual or a member of their family is unnecessary. If, however, the enrollee is not deceased and attempts to receive services, we expect the carrier to cover the services, void the disenrollment and reinstate coverage retroactively.

One commenter noted that a child survivor annuitant must be a full-time student in order to continue their health benefits enrollment beyond age 18, while the regulations only address the disenrollment of child survivor annuitants who reach age 22. While we are aware of the possibility that some child survivor annuitants under age 22 would not be eligible for FEHB coverage, we do not want carriers attempting to disenroll them. Members of this segment of the population are frequently dropped from, and reinstated to, the annuity rolls. Each time they move on or off the annuity rolls, their eligibility for FEHB enrollment changes. It would be difficult, if not impossible, for carriers to determine when these individuals would lose entitlement to an annuity and, consequently, their FEHB coverage. We will rely on the retirement system to keep carriers apprised of the enrollment eligibility of members of this group.

Two commenters suggested that we require the carriers to give notice of conversion rights when a child survivor annuitant covered under a self only enrollment loses entitlement to an annuity and is disenrolled. OPM agrees that notice of conversion rights be given to these individuals. However, the notice will be included in the written notice of disenrollment and specific regulatory language is not needed. Carriers must send the written notice of disenrollment to the individual prior to the individual's 22nd birthday.

We are removing the specific regulatory requirement that an enrollee who notifies the carrier that he or she has separated from Federal employment be notified of their right to convert to a non-group contract and possible eligibility to enroll under temporary continuation of coverage. In its place, we are requiring that the carrier provide the enrollee with a written notice of disenrollment prescribed or approved by OPM. This notice will contain the information on conversion and temporary continuation of coverage.

One commenter expressed concern that the regulations do not specify any

grounds under which a child survivor annuitant might request reconsideration of a carrier's decision to disenroll the individual. The grounds that an individual would have for requesting reconsideration would be that the person is over age 22, but is incapable of self-support. In cases where the retirement system is provided with evidence of the situation stated above, they would order the carrier to reinstate coverage retroactively.

One commenter suggested that we change the regulations to allow child survivor annuitants 60 calendar days from the date of the carrier's disenrollment notice to file a request for reconsideration. To provide consistency among the time frames for filing reconsideration requests, we are modifying the regulations to allow 60 calendar days instead of the current 30 calendar days.

One commenter asserted that by allowing carriers to disenroll individuals, OPM is relinquishing its responsibilities in administering the FEHB Program and increasing the workload burden on the employing offices. OPM disagrees. The regulations will facilitate reconciliation of carrier and employing office enrollment records. Under these regulations, carriers may disenroll individuals only if the carrier has not received a notice terminating the enrollment or the individual has died, lost eligibility, or left Federal employment. We are modifying the regulations to give the carriers more discretion so they are not forced to disenroll an individual if they feel it would not be appropriate. We expect that few individuals would either reach the end of the disenrollment process without their enrollment status becoming clear or be otherwise incorrectly disenrolled. As a result, there would be few reconsideration requests filed with employing offices. However, if an employing office should find that it is receiving a large number of reconsideration requests, it may find that its training and procedures on transmitting enrollment transactions and performing enrollment reconciliations need to be reviewed and strengthened.

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 administrative procedures for Federal agencies and health benefit carriers that participate in the FEHB 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 professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Janice R. Lachance,

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; § 890.102 also issued under sections 11202(f), 11232(e), and 11246 (b) and (c) of Pub. L. 105-33, 111 Stat. 251.

2. In subpart A, § 890.110 is added to read as follows:

§ 890.110 Enrollment reconciliation.

(a) Each employing office must report to each carrier or its surrogate on a quarterly basis the names of the individuals who are enrolled in the carrier's plan in a format and containing such information as required by OPM.

(b) The carrier must compare the data provided with its own enrollment records. When the carrier finds in its aggregate enrollment records individuals whose names do not appear in the report from the employing office of record, the carrier must request the employing office to provide the documentation necessary to resolve the discrepancy.

3. In subpart C, § 890.308 is added to read as follows:

§ 890.308 Disenrollment.

(a)(1) Except as otherwise provided in this section, a carrier that cannot reconcile its record of an individual's enrollment with agency enrollment records or does not receive documentation necessary to resolve the discrepancy from the employing office within 31 days of a request must provide written notice to the individual that the employing office of record does not show him or her as enrolled in the carrier's plan and that he or she will be

disenrolled 31 calendar days after the date of the notice unless the enrollee provides appropriate documentation to resolve the discrepancy. Appropriate documentation includes, but is not limited to, a copy of the Standard Form 2809 (basic enrollment document) (or a letter confirming an electronic transaction), the Standard Form 2810 transferring the enrollment into the gaining employing office (or the equivalent electronic submission), copies of earnings and leave statements or annuity statements showing withholdings for the health benefits plan, or a document or other credible information from the enrollee's employing office stating that the individual is entitled to continued enrollment in the plan and that the premiums are being paid. After receiving documentation from the enrollee, the carrier must notify both the enrollee and the employing office of record of their decision on the information.

(2) If the carrier does not receive documentation required under paragraph (a)(1) of this section within the specified time frame, the carrier should disenroll the individual, without further notice.

(3) The enrollee may request his or her employing office to reconsider the carrier's decision to disenroll the individual. The request for reconsideration must be made in writing and must include the enrollee's name, address, Social Security Number or other personal identification number, name of carrier, reason(s) for the request, and, if applicable, retirement claim number. The employing office must notify the carrier when a request for reconsideration of the decision to disenroll the individual is made.

(4) A request for reconsideration of the carrier's decision must be filed within 60 calendar days after the date of the carrier's disenrollment notice. The time limit on filing may be extended when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

(5) After reconsideration, the employing office must issue a written notice of its final decision to the individual and notify the carrier of the decision. The notice must fully set forth the findings and conclusions on which the decision was based. If upon reconsideration the employing office determines the individual is entitled to continued enrollment in the plan, the disenrollment under paragraph (a)(2) of

this section is void and coverage is reinstated retroactively.

(6) If, at any time after the disenrollment has occurred, the employing office or OPM determines that another section of this part applies to the individual's enrollment or the carrier discovers or receives appropriate documentation showing that another section of this part applies to the individual's enrollment, the disenrollment under paragraph (a)(2) of this section is void and coverage is reinstated retroactively.

(b) When a carrier receives, from any reliable source, information of the death of an enrollee with a self only enrollment, the carrier may take action to disenroll the individual on the date set forth in § 890.304(a)(1)(iv) or § 890.304(b)(4), as appropriate. When the date of death is unknown, the carrier may take action to disenroll the individual on the date which is the last day of the pay period in which information of the death is received. Reliable sources include, but are not limited to, claims for hospital or physician costs incurred at time of death and correspondence returned from the Postal Service noting that the addressee is deceased. If, at any time after the disenrollment has occurred, the employing office or OPM determines that another section of this part applies to the individual's enrollment or the carrier discovers or receives appropriate documentation showing that another section of this part applies to the individual's enrollment, the disenrollment under this paragraph (b) is void and coverage is reinstated retroactively.

(c)(1) When a child survivor annuitant covered under a self only enrollment reaches age 22, the carrier may take action to disenroll the individual effective with the date set forth in § 890.304(c)(1) unless records with the carrier indicate that the child is incapable of self support due to a physical or mental disability. The carrier must provide the enrollee with a written notice of disenrollment prescribed or approved by OPM prior to the date set forth in § 890.304(c)(1).

(2) The child survivor annuitant may request the retirement system to reconsider the carrier's decision to disenroll the individual. The request for reconsideration must be made in writing and include the enrollee's name, address, Social Security Number or other identifier, name of carrier, reason(s) for the request, and the survivor annuity claim number. The retirement system must notify the carrier when a request for

reconsideration of the carrier's decision to disenroll the individual is made.

(3) A request for reconsideration of the carrier's decision must be filed with the retirement system within 60 calendar days from the date of the carrier's disenrollment notice. The time limit on filing may be extended when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

(4) After reconsideration, the retirement system must issue a written notice of its final decision to the child survivor annuitant and notify the carrier of the decision. The notice must fully set forth the findings and conclusions on which the decision was based. If upon reconsideration the retirement system determines that he or she is entitled to continued enrollment in the plan, the disenrollment under paragraph (c)(1) of this section is void and coverage is reinstated retroactively.

(5) If, at any time after the disenrollment has occurred, the employing office or OPM determines that another provision of this part applies to the individual's enrollment or the carrier discovers or receives appropriate documentation showing that another section of this part applies to the individual's enrollment, the disenrollment under paragraph (c)(1) of this section is void and coverage is reinstated retroactively.

(d) When an enrollee notifies the carrier that he or she has separated from Federal employment and is no longer eligible for enrollment, the carrier must disenroll the individual on the last day of the pay period in which the separation occurred, if known, otherwise the carrier must disenroll the employee on the date the employee provides as the date of separation. The carrier must provide the enrollee with a written notice of disenrollment prescribed or approved by OPM.

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BILLING CODE 6325-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-138-AD; Amendment 39-10865; AD 98-23-02]

RIN 2120-AA64

Airworthiness Directives; Cessna Aircraft Company 180 and 185 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 80-10-01, which applies to certain Cessna Aircraft Company (Cessna) 180 and 185 series airplanes that have either Airglas Engineering Company, Inc., (AECI) Model LW3600-180 (single position) or Model LW3600-180A (two position) fixed penetration wheel skis installed in accordance with Supplemental Type Certificate (STC) SA213AL. AD 80-10-01 requires modifying the ski bungee assemblies, safety cables, and check cables, and their attachments to the airplane and the skis; limiting the maximum airspeed to 160 knots with skis installed; and installing an airspeed limitation placard. This AD is the result of field reports of incidents occurring on the affected airplanes that were in compliance with AD 80-10-01, and the fact that Cessna Model 180K airplanes were inadvertently left out of the existing AD. This AD retains the actions required by AD 80-10-01; requires re-marking the airspeed indicator to display the reduced airspeed limits and placing a certain airplane flight manual (AFM) supplement in the cockpit; and adds Cessna Model 180K airplanes to the Applicability section of the AD. The actions specified by this AD are intended to prevent one or both wheel skis from rotating into a nose-down position during flight, which could result in loss of control of the airplane and/or possible airplane damage during flight or landing operations.

DATES: Effective December 22, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 22, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Airglas Engineering Company, Inc., P.O. Box 190107, Anchorage, Alaska 99519-0107; telephone: (907) 344-1450; facsimile: (907) 349-4938. This information may also be examined at