



This document is scheduled to be published in the Federal Register on 11/13/2014 and available online at <http://federalregister.gov/a/2014-26779>, and on FDsys.gov

Billing Code 6325-63

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 875

RIN 3206-AN05

Federal Long Term Care Insurance Program Eligibility Changes

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The United States Office of Personnel Management (OPM) is proposing to amend the Federal Long Term Care Insurance Program (FLTCIP) regulation to expand eligibility to apply for coverage under the Program. Under the proposed regulation, the definition of "qualified relative" is expanded to cover all individuals who are domestic partners (both same-sex and opposite-sex) of Federal and U.S. Postal Service employees, annuitants, members of the uniformed services, and retired members of the uniformed services. In addition, the proposed regulation provides that adult children of domestic partners will be considered one of the types of individuals comprising the statutory term "qualified relative" who may apply for FLTCIP coverage.

DATES: Comments are due on or before [INSERT 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send written comments to Ronald Brown, Policy Analyst, Planning & Policy Analysis, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415-9700; or

deliver to OPM, Room 2309, 1900 E Street, NW, Washington, DC; or FAX to (202) 606-0636.

Comments may also be sent through the Federal eRulemaking Portal at:

http://www.regulations.gov. All submissions received through the Portal must include the agency name and docket number or the Regulation Identifier Number (RIN) for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Ronald Brown, Policy Analyst, (202)606-0004, or by e-mail to Ronald.Brown@opm.gov.

SUPPLEMENTARY INFORMATION: In support of the President's Memoranda of June 17, 2009 and June 2, 2010, concerning Federal Benefits and Non-Discrimination, OPM has identified certain benefits under FLTCIP that may be extended to additional individuals consistent with existing law, whose relationship to the workforce member is considered to constitute a family relationship. The proposed regulation enhances the ability of Federal agencies to provide for the needs of an increasingly diverse workforce. OPM changed its regulation on June 1, 2010 to allow same-sex domestic partners of employees and annuitants to apply for FLTCIP coverage as a qualified relative. OPM now proposes to expand the term "qualified relative" to include all individuals who are domestic partners (both same-sex and opposite-sex) of employees, annuitants, members of the uniformed services and retired members of the uniformed services. In addition, OPM's June 1, 2010 regulation did not include same-sex domestic partners of members of the uniformed services. This proposed regulation includes domestic partners, both same-sex and opposite-sex, of members and retired members of the uniformed services. Additionally, just as is currently required for same-sex domestic partners, newly eligible individuals (both same-sex and opposite-sex) will be required to provide documentation to establish that they meet the regulatory criteria for domestic partners.

Finally, OPM has determined that eligibility may be extended to adult children of domestic partners by defining the term "stepchild," which is one of the types of individuals comprising the statutory term "qualified relative," to include the child of a domestic partner. The definition of "stepchild" set forth in this proposed regulation appropriately encompasses and reflects the variety of parent-child relationships that exist today.

The proposed changes and clarifications are:

Changes:

(1) We propose to expand the definition of "qualified relative" under 5 U.S.C. 9001(5)(D) to include both same-sex and opposite sex domestic partners of Federal and U.S. Postal Service employees and annuitants and members and retired members of the uniformed services. This revision can be found in section 875.101 and 875.213 of the proposed rule.

(2) We propose to expand the definition of "qualified relative" to include adult children of domestic partners of Federal and U.S. Postal Service employees and annuitants, and members and retired members of the uniformed services consistent with Presidential Memoranda issued on June 17, 2009 and June 2, 2010. This revision can be found in section 875.101 of the proposed rule.

(3) We propose that the workforce member or his or her domestic partner must provide notice to the employing office if at any time between the time of application and the time coverage is scheduled to go into effect, any of the conditions for a domestic partnership are no longer met, in which case a domestic partnership is deemed terminated. Such notification must

be made as soon as possible, but in no event later than thirty calendar days after such conditions are no longer met. This change can be found in 875.101 of the proposed rule.

(4) As is currently the case for same-sex domestic partners, opposite-sex domestic partners will be required to provide documentation to establish that they meet the criteria for domestic partners. This revision can be found in section 875.101 of the proposed rule.

(5) This proposed rule makes other technical conforming amendments to the FLTCIP rules that would be amended by this proposed rule. These changes can be found in section 875.405 of the proposed rule.

Clarification:

(1) We clarify that once coverage has begun, termination of a domestic partnership does not terminate a domestic partner's insurance coverage as long as the Carrier continues to receive the required premium when due. This revision can be found in section 875.412 of the changes.

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 adds additional groups to the list of groups eligible to apply for coverage under the FLTCIP. The FLTCIP is a voluntary, self-pay, benefits program with no Government contribution.

Executive Order 12866, Regulatory Review

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

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

List of Subjects in 5 CFR Part 875

Administrative practice and procedure, Employee benefit plans, Government contracts, Government employees, health insurance, military personnel, organization and functions, Retirement.

U.S. OFFICE OF PERSONNEL MANAGEMENT.

Katherine Archuleta,

Director, U.S. Office of Personnel Management.

Accordingly, OPM is proposing to amend 5 CFR part 875 as follows:

PART 875--FEDERAL LONG TERM CARE INSURANCE PROGRAM

1. The authority citation for part 875 continues to read as follows:

Authority: 5 U.S.C. 9008.

Subpart A--Administration and General Provisions

2. Section 875.101 is amended by revising the definitions of "domestic partner" and "domestic partnership" and by adding in alphabetical order a definition of "stepchild(ren)" to read as follows:

§ 875.101 Definitions.

* * * * *

Domestic partner is defined as a person in a domestic partnership with an employee, annuitant, member of the uniformed services, or retired member of the uniformed services.

Domestic partnership means:

(1) A committed relationship between two adults, of the opposite sex or same sex, in which the partners--

(i) Are each other's sole domestic partner and intend to remain so indefinitely;

(ii) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(iii) Are at least 18 years of age and mentally competent to consent to a contract;

(iv) Share responsibility for a significant measure of each other's financial obligations;

(v) Are not married or joined in a civil union to anyone else;

(vi) Are not a domestic partner of anyone else;

(vii) Are not related in a way that would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(viii) Provide documentation demonstrating fulfillment of the requirements of (i) through (vii) as prescribed by OPM; and

(ix) Certify that they understand that willful falsification of the documentation described in subparagraph (viii) of this section may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification and may constitute a criminal violation under 18 U.S.C. 1001.

(2) You or your domestic partner must notify the employing office if at any time between the time of application and the time coverage is scheduled to go into effect, any of the conditions listed in paragraphs (1)(i) through (vii) of this definition are no longer met, in which case a domestic partnership is deemed terminated. Such notification must be made as soon as possible, but in no event later than thirty calendar days after such conditions are no longer met.

* * * * *

Stepchild(ren), as set forth in section 9001 of title 5, United States Code, means the child(ren) of the spouse or domestic partner of an employee, annuitant, member of the uniformed services, or retired member of the uniformed services.

Subpart B—Eligibility

3. Section 875.208 is revised to read as follows:

§ 875.208 May I apply as a qualified relative if the person on whom I am basing my eligibility status has died?

You may not apply as a qualified relative if the workforce member on whom you are basing your qualified relative status died prior to the time you apply for coverage, unless you are receiving a survivor annuity as the spouse or an insurable interest annuity as the domestic partner of a deceased workforce member. In this case, your adult children and your current spouse or domestic partner are also considered to be qualified relatives.

4. In § 875.213, paragraph (a) is revised to read as follows:

§ 875.213 May I apply as a qualified relative if I am the domestic partner of a workforce member?

(a) You may apply for coverage as a qualified relative if you are a domestic partner, as described in section 875.101 of this chapter. As prescribed by OPM, you will be required to provide documentation to demonstrate that you meet these requirements, and you must submit to full underwriting requirements. However, as explained in section 875.210 of this chapter, if you

lose your status as a domestic partner, and therefore a qualified relative, before your coverage goes into effect, you are no longer eligible for FLTCIP coverage.

* * * * *

Subpart D—Coverage

5. Section 875.405 is revised to read as follows:

§ 875.405 If I marry, may my new spouse apply for coverage? If I become a domestic partner, may my new domestic partner apply for coverage? May other qualified relatives apply for coverage?

(a)(1) If you are an active workforce member and you have married, your spouse is eligible to submit an application for coverage under this section within 60 days from the date of your marriage and will be subject to the underwriting requirements in force for the spouses of active workforce members during the most recent open season. You, however, are not eligible for abbreviated underwriting because of your marriage. You, your spouse, or both you and your spouse may apply for coverage during this 60-day period, but full underwriting will be required for you. After 60 days from the date of your marriage, you and/or your spouse may still apply for coverage but will be subject to full underwriting.

(2) If you are an active workforce member and you have entered into a domestic partnership, your domestic partner is eligible to submit an application for coverage under this section at any time from the commencing date of your domestic partnership and will be subject to full underwriting requirements. You are not eligible for abbreviated underwriting because of your

domestic partnership. You, your domestic partner, or both you and your domestic partner may apply for coverage at any time, but full underwriting will be required for both of you.

(b) The new spouse or domestic partner of an annuitant or retired member of the uniformed services may apply for coverage with full underwriting at any time following the marriage or commencing date of the domestic partnership.

(c) Other qualified relative(s) of a workforce member may apply for coverage with full underwriting at any time following the marriage or commencing date of the domestic partnership.

6. In § 875.412, the introductory text is revised and paragraph (e) is added to read as follows:

§ 875.412 When will my coverage terminate?

Except as provided in paragraph (e) of this section, your coverage will terminate on the earliest of the following dates:

* * * * *

(e) Termination of a domestic partnership does not terminate insurance coverage as long as the Carrier continues to receive the required premium when due.

Billing Code 6325-63