



OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AN03

Federal Employees Health Benefits Program Miscellaneous Changes:

Medically Underserved Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Direct final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a direct final rule to discontinue the annual determination of the Medically Underserved Areas (MUAs) for the Federal Employees Health Benefits (FEHB) Program.

DATES: Effective January 1, 2015. Comments due [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send written comments to Lynelle T. Frye, Policy Analyst, Planning and Policy Analysis, U.S. Office of Personnel Management, Room 4312, 1900 E Street NW, Washington, DC; or FAX to (202) 606-4640 Attn: Lynelle T. Frye. You may also submit comments using the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Lynelle T. Frye, Policy Analyst, at (202) 606-0004 or e-mail: lynelle.frye@opm.gov.

SUPPLEMENTARY INFORMATION: Due to the enactment of Section 2706(a) of the Public Health Service Act (PHSA), OPM has concluded that the annual determination of Medically Underserved Areas (MUAs) for the FEHB Program is no longer required. Section 2706(a) of the PHSA requires that a health insurance issuer or group health plan offering coverage shall not

discriminate with respect to coverage against any health care provider who performs covered services when acting within the scope of their license or certification under applicable state law in any area of a state.

Background

The Federal Employees Health Benefits (FEHB) law (5 U.S.C. 8902(m)(2)) requires that a State be designated as a Medically Underserved Area if 25% or more of the population lives in an area identified by the Department of Health and Human Services (HHS) as a primary medical care manpower shortage area.

It is intended to provide special consideration for enrollees who obtain health services in states with critical shortages of primary care physicians. As such, FEHB fee-for-service plans are required to provide benefits for covered services (subject to their contract terms) provided by any licensed provider practicing within the scope of his/her license, such as physician assistants or nurse midwives, which otherwise may not be considered as covered providers by the fee-for-service plan.

After the enactment of Section 2706(a) of the Public Health Service Act (PHSA) the Department of Labor offered guidance to health plans and health insurance issuers that, to the extent an item or service is a covered benefit under the plan or coverage, and consistent with reasonable medical management techniques specified under the plan with respect to the frequency, method, treatment or setting for an item or service, a plan or issuer shall not discriminate based on a provider's license or certification, to the extent the provider is acting within the scope of the

provider's license or certification under applicable state law. This provision does not require plans or issuers to accept all types of providers into a network. This provision also does not govern provider reimbursement rates, which may be subject to quality, performance, or market standards and considerations.

The effect of Section 2706(a) of the PHSA is to expand the geographic area of coverage for all licensed providers offering covered services within the scope of their license to all areas of all States rather than the only those areas designated as Medically Underserved under 5 U.S.C 8902(m)(2).

OPM has concluded that Section 2706(a) of the PHSA renders the annual determination of the MUAs for FEHB no longer required. It serves a similar purpose, since this Section is to expand the geographic area of coverage for all licensed providers offering covered services within the scope of their license to all areas of all States rather than the only those areas designated as Medically Underserved under 5 U.S.C 8902(m)(2).

With this change, we are not seeking a comment period since we feel it serves the same purpose as MUA.

Regulatory Impact Analysis

OPM has examined the impact of this proposed rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that

maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of \$100 million or more in any one year. This rule is not considered a major rule because there will be a minimal impact on costs to Federal agencies.

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 benefits of Federal employees and annuitants.

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.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; see 5 CFR part 1320) requires that the U.S. Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to

respond to any collection of information unless it displays a current valid OMB control number.
OPM is not proposing any additional collections in this rule.

List of Subjects in 5 CFR Part 890

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

U.S. Office of Personnel Management.

Kathleen Archuleta,
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; Sec. 890.301 also issued under sec. 311 of Pub. L. 111-03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104-106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110-279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 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; Sec. 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; Pub. L. 111-148, as amended by Pub. L. 111-152.

Subpart G—[Removed and Reserved]

1. Remove and Reserve subpart G, consisting of §§890.701 and 890.702.

BILLING CODE 6325-63

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