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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