

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN: 3206-AM66

Federal Employees Health Benefits Program Coverage for Certain Firefighters

AGENCY: Office of Personnel Management.

ACTION: Interim final rule.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing an interim final rule to amend the Federal Employees Health Benefits Program (FEHB) regulations to make certain firefighters hired under a temporary appointment eligible to be enrolled in a health benefits plan under the FEHB.

DATES: This rule is effective July 17, 2012. OPM must receive comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Send written comments to Michael W. Kaszynski, Senior Policy Analyst, Planning and Policy Analysis, U.S. Office of Personnel Management, Room 3415, 1900 E Street NW, Washington, DC; or FAX to (202) 606-4640 Attn: Michael Kaszynski. You may also submit comments using the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski at Michael.Kaszynski@opm.gov or (202) 606-0004.

SUPPLEMENTARY INFORMATION: This interim final rule immediately extends eligibility for health insurance coverage under the Federal Employees Health Benefits (FEHB) program to temporary firefighters and fire protection personnel. The federal government has a critical need to hire and quickly deploy qualified firefighters and other fire protection personnel to areas of the country where disasters caused by man or nature require their services. The federal agencies that routinely deploy firefighters to respond to these disasters, including the Departments of Agriculture and Interior, have used temporary appointment authorities to bring firefighting personnel on board, as these authorities provide the flexibility they need to quickly increase their firefighting workforce to address wildfire emergencies and then to decrease the workforce when the emergencies are resolved.

Pursuant to 5 U.S.C. 8913(b), OPM has broad authority to prescribe the conditions under which employees are eligible to enroll in the FEHB program and is empowered to include or exclude employees on the basis of the nature and type of their employment or conditions pertaining to their appointments, including the duration of the appointment. Under current OPM regulations, individuals serving under temporary appointments have generally been excluded from coverage, with limited exceptions not relevant here. Accordingly, the only circumstances under which temporary employees previously could secure coverage under the FEHB program are those set forth in 5 U.S.C. 8906a, which allows temporary employees who have completed one full year of continuous employment to secure coverage at their own expense. Temporary firefighters and fire protection personnel do not generally qualify for coverage under 5 U.S.C. 8906a because they do not work for full one-year periods. Thus, they are not eligible for coverage under the FEHB program at all. This regulation would for the first time provide FEHB coverage to these firefighters and fire protection personnel, as well as their families, pursuant to

OPM's broad regulatory authority under 5 U.S.C. 8913(b), allowing them to obtain health insurance through their employer.

OPM believes that the extension of this coverage is appropriate because firefighters face unique hazards and risks to their health. The day-to-day job of a firefighter involves frequent exposure to environmental risk factors that can precipitate the onset of severe and life-threatening diseases like cancer. Guidotti TL, *Evaluating causality for occupational cancers: the example of firefighters*. *Occup. Med. (Lond)*. 2007;57;466-71. The nature of this work necessarily involves intense physical stress that can result in potentially fatal cardiac events, job-related injuries, and an adverse psychological impact. U.S. Dep't of Homeland Sec., U.S. Fire Admin., *Fire-Related Firefighter Injuries Reported to NFIRS*, Topical Fire Report Series, Vol. 11, Issue 7, February 2011, *available at* <http://www.usfa.fema.gov/downloads/pdf/statistics/v11i7.pdf>; Kales SN, Soteriades ES, Christoudias SG, Christiani DC, *Firefighters and on-duty deaths from coronary heart disease: a case control study*. *Environ. Health*. 2003;2(1):14; Carey MG, Al-Zaiti SS, Dean GE, Sessanna L, Finnell DS, *Sleep Problems, Depression, Substance Use, Social Bonding, and Quality of Life in Professional Firefighters*. *J. Occup. Environ. Med*. 2011;53(8):928-33.

Although firefighters are eligible for worker's compensation for injuries suffered on the job, they nonetheless have a heightened need for health insurance coverage, so that they can obtain preventive care and benefit from early detection of the chronic and life-threatening conditions from which they face increased risk, in addition to receiving treatment for illnesses and injuries from which they are currently suffering. Providing firefighters coverage under the FEHB program acknowledges the unique hazards and increased risks they face for their Federal service and enhances the quality of their lives by ensuring they have access to the medical

benefits necessary to promote prevention and early intervention and treatment for diseases that cannot be prevented.

In addition, in order to protect the public health and safety, the Departments of Agriculture and Interior have a critical need this year, as in many years, for experienced firefighting personnel. They wish not only to recruit experienced firefighters this year, but also to maintain their interest in returning to serve during subsequent fire seasons. Offering health insurance coverage will provide additional assurances that these Departments will continue to successfully recruit and retain qualified firefighters and fire protection personnel for this and future fire seasons. OPM is committed to making the process for signing up for FEHB coverage simple and streamlined so that the firefighters covered by this rule can secure their new benefits with minimal burden. We are working closely with the Departments of Agriculture and Interior to ensure firefighters are able to promptly enroll for FEHB coverage.

OPM recognizes that there may be other groups of employees not currently covered by the FEHB program because of the temporary nature of their appointments, but who are similarly situated to firefighting personnel in that they perform emergency response services. Accordingly, OPM has also added a new subsection (i) to its regulations that permits agencies to request that OPM extend FEHB coverage to such employees. OPM intends to construe this subsection narrowly, applying it only to employees who are engaged in emergency response services similar to the services being performed by those responding to the wildfires, and only when requested by their employing agencies. OPM will issue guidance to assist agencies in implementing this provision. Agencies may submit requests to OPM under this provision after OPM issues its guidance.

Finally, OPM is also soliciting comments from the public regarding whether it should explicitly provide FEHB coverage under subsection (h) to additional employees who are currently ineligible under the provisions of subsection (c), but who perform similar emergency response services, including certain employees who are appointed pursuant to Section 306(b)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5149(b)(1)) to respond to major disasters and emergencies declared by the President.

Waiver of Proposed Rulemaking

OPM is issuing this regulation as an interim final rule. Under section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 et seq.), an agency may issue a final rule without first publishing a general notice of proposed rulemaking when it determines, for good cause, that notice and public comment are impracticable, unnecessary, or contrary to the public interest. We have determined that this standard is satisfied.

The United States is experiencing an active wildfire season. Not only are tens of thousands of acres in Western states being blackened, but the wildfires are creating significant environmental damage and health hazards. Water quality, for example, is being compromised up to 100 miles from the burn. Big fires have significant consequences, especially for air quality. A series of large wildfires in Canada in 1995 created massive plumes of carbon monoxide that drifted south through Boston, New York and Washington. The 2003 wildfire season in California caused such a substantial increase in particulate matter, carbon monoxide and nitrous oxide that the fires polluted the air quality outside and inside homes as well. Forest fires can also result in large releases of sediment into rivers and streams, which can clog reservoirs and undermine the quality of drinking water. Therefore, the federal government has a critical need to hire and deploy qualified firefighters to serve the American people.

Moreover, the firefighters and fire protection personnel are putting their lives on the line and voluntarily exposing themselves to hazardous working conditions every day. They have an immediate need for health insurance coverage to obtain preventive care and to allow for early detection of potentially serious conditions, in addition to addressing any health issues that arise during this fire season. Allowing these men and women the opportunity to obtain health insurance coverage will help them to protect themselves and their families.

Because of these conditions, OPM has determined that it would be impracticable, unnecessary, and contrary to the public interest to delay putting the provisions of this interim final regulation in place until a public notice and comment process has been completed. We find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We will accept public comments on this interim final rule for 60 days.

We are also dispensing with the usual requirement that a new rule not take effect until 30 days after it is issued. Instead, this rule is effective immediately upon public display. Immediate effectiveness is authorized because this is a substantive rule granting an exception to the prohibition on providing health insurance coverage to temporary employees. *See* 5 U.S.C. 553(d)(1). Moreover, for the reasons set forth above, there is good cause to make this rule effective immediately.

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 for coverage under FEHB.

Executive Orders 13563 and 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Orders 13563 and 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 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.

John Berry,
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.

2. Section 890.102 to be amended by adding paragraphs (h) and (i) to read as follows:

§ 890.102 Coverage.

* * * * *

(h) Notwithstanding paragraphs (c)(1) and (2) of this section, an employee who is in a position identified by OPM that provides emergency response services for wildland fire protection is eligible to be enrolled in a health benefits plan under this part.

(i) Notwithstanding paragraphs (c)(1) and (2) of this section, upon request by the employing agency, OPM may grant eligibility to employees performing similar types of emergency response services to enroll in a health benefits plan under this part.

[FR Doc. 2012-17623 Filed 07/17/2012 at 8:45 am; Publication Date: 07/19/2012]