

## 1652.203-70

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[62 FR 47576, Sept. 10, 1997]

### Subpart 1652.2—Texts of FEHBP Clauses

#### 1652.203-70 Misleading, deceptive, or unfair advertising.

As prescribed in 1603.7003, the following clause shall be inserted in all FEHBP contracts:

##### MISLEADING, DECEPTIVE, OR UNFAIR ADVERTISING (JAN 1991)

(a) The Carrier agrees that any advertising material, including that labeled promotional material, marketing material, or supplemental literature, shall be truthful and not misleading.

(b) Criteria to assess compliance with paragraph (a) of this clause are available in the FEHB Supplemental Literature Guidelines which are developed by OPM and should be used, along with the additional guidelines set forth in FEHBP 1603.702, as the primary guide in preparing material; further guidance is provided in the NAIC “Rules Governing Advertising of Accident and Sickness Insurance With Interpretive Guidelines.” Guidelines are periodically updated and provided to the Carrier by OPM.

(c) Failure to conform to paragraph (a) of this clause may result in a reduction in the service charge, if appropriate, and corrective action to protect the interest of Federal Members. Corrective action will be appropriate to the circumstances and may include, but is not limited to the following actions by OPM:

- (1) Directing the Carrier to cease and desist distribution, publication, or broadcast of the material;
- (2) Directing the Carrier to issue corrections at the Carrier’s expense and in the same manner and media as the original material was made; and
- (3) Directing the Carrier to provide, at the Carrier’s expense, the correction in writing by certified mail to all enrollees of the

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Plan(s) that had been the subject of the original material.

(d) Egregious or repeated offenses may result in the following action by OPM:

- (1) Suspending new enrollments in the Carrier’s Plan(s);
- (2) Providing Enrollees an opportunity to transfer to another plan; and
- (3) Terminating the contract in accordance with Section 1.15, Renewal and Withdrawal of Approval.

(e) Prior to taking action as described in paragraphs (c) and (d) of this clause, the OPM will notify the Carrier and offer an opportunity to respond.

(f) The Carrier shall incorporate this clause in subcontracts with its underwriter, if any, and other subcontractors directly involved in the preparation or distribution of such advertising material and shall substitute “Contractor” or other appropriate reference for the term “Carrier.”

(End of clause)

[55 FR 27415, July 2, 1990, as amended at 62 FR 47576, Sept. 10, 1997]

#### 1652.204-70 Contractor records retention.

As prescribed in 1604.705 the following clause will be inserted in all FEHB Program contracts.

##### CONTRACTOR RECORDS RETENTION (JUL 2005)

Notwithstanding the provisions of Section 5.7 (FAR 52.215-2(f)) “Audit and Records—Negotiation” the carrier will retain and make available all records applicable to a contract term that support the annual statement of operations and, for contracts that equal or exceed the threshold at FAR 15.403-4(a)(1), the rate submission for that contract term for a period of six years after the end of the contract term to which the records relate. This includes all records of Large Provider Agreements and subcontracts that equal or exceed the threshold requirements. In addition, individual enrollee and/or patient claim records will be maintained for six years after the end of the contract term to which the claim records relate. This clause is effective prospectively as of the 2005 contract year.

(End of clause)

[70 FR 31382, June 1, 2005, as amended at 71 FR 3016, Jan. 19, 2006]

#### 1652.204-71 Coordination of Benefits.

As prescribed in 1604.7001, the following clause shall be inserted in all FEHBP contracts: