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OFFICE OF PERSONNEL MANAGEMENT
5 CFR Part 890
RIN 3206-AG31

Federal Employees Health Benefits Program: Limitation on Physician Charges and FEHB Program Payments

AGENCY: Office of Personnel Management.

ACTION: Interim regulation with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation that amends current Federal Employee Health Benefits (FEHB) Program regulations to require that the charges and FEHB fee-for-service plans’ benefit payments for certain physician services furnished to retired enrolled individuals do not exceed the limits on charges and payments established under the Medicare fee schedule for physician services. The regulation authorizes the FEHB plans, under the oversight of OPM, to notify the Secretary of Health and Human Services (HHS) or the Secretary’s designee when a medical provider knowingly and willfully fails to accept, on a repeated basis, the Medicare rate as payment in full from an FEHB plan. The regulation also authorizes the FEHB plans, under the oversight of OPM, to notify the Secretary of HHS of a Medicare nonparticipating hospital, physician or supplier who knowingly and willfully fails to accept, on a repeated basis, the Medicare rate as payment in full from an FEHB plan. The regulation amends the previous definition of a retired enrolled individual to include individuals who are not enrolled in Medicare Part B. OPM implemented the OBRA of 1993 provision by issuing interim and final regulations in the March 27, 1992, and July 20, 1993, issues of the Federal Register (57 FR 10609 and 58 FR 38661). This interim regulation amends the previous regulations.

OPM has not required fee-for-service plans with an insufficient number of affected enrollees to apply the limits on physician services. We made this determination in keeping with OBRA of 1993’s primary objective of reducing expenses. The interim regulation authorizes the FEHB plans, under the oversight of OPM, to notify the Secretary of Health and Human Services (HHS) or the Secretary’s designee when a medical provider knowingly and willfully collects, on a repeated basis, more than the applicable limits for inpatient hospital services or physician services. OPM strongly encourages and supports the efforts of FEHB plans to inform retired enrolled individuals and medical providers of the limits on charges and benefit payments, monitor compliance with the limits, and, if necessary, report repeat violators to the Secretary of HHS, or the Secretary’s designee.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking and making this regulation effective upon publication. The notice is being waived because the limitation on FEHB plans’ benefit payments and providers’ charges enacted by Pub. L. 103–66 addressed in this regulation was effective with respect to the contract year beginning on January 1, 1995.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect the health care coverage of Federal annuitants and their former spouses.

E.O. 12866, Regulatory Review

This rule has been reviewed by OMB in accordance with E.O. 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.
PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

The authority citation for part 890 continues to read as follows:


The heading of subpart I is revised to read as follows:

Subpart I—Limit on Inpatient Hospital Charges, Physician Charges, and FEHB Benefit Payments

Section 890.901 is revised to read as follows:

§ 890.901 Purpose.

This subpart identifies the individuals whose charges and FEHB benefit payments for inpatient hospital services and/or physician services may be limited and sets forth the circumstances of the limit.

Section 890.902 is amended by revising paragraphs (c) and (d) to read as follows:

§ 890.902 Definition.

(c) Is age 65 or older or becomes age 65 while receiving inpatient hospital services or physician services; and
(d) Is not covered by Medicare part A and/or part B.

Section 890.903 is revised to read as follows:

§ 890.903 Covered services.

(a) The limitation on the charges and FEHB benefit payments for inpatient hospital services apply to inpatient hospital services which are:
(1) Covered under both Medicare part A and the retired enrolled individual’s FEHB plan; and
(2) Supplied to a retired enrolled individual who does not have Medicare part B.

(b) The limitation on the charges and FEHB benefit payments for physician services apply to physician services, (as defined in section 1848(I) of the Social Security Act), which are:
(1) Covered under both Medicare part B and the retired enrolled individual’s FEHB plan; and
(2) Supplied to a retired enrolled individual who does not have Medicare part B.

(b) The FEHB plan’s benefit payment for physician services under this subpart is determined to be equivalent to the Medicare deductible and coinsurance applied; or
(2) The actual billed charges; and
(3) Reducing the lower amount by any FEHB plan deductible, coinsurance, or copayment that is the responsibility of the retired enrolled individual.

Section 890.904 is revised to read as follows:

§ 890.904 Determination of FEHB benefit payment.

(a) The FEHB plan’s benefit payment for physician services under this subpart is determined to be equivalent to the Medicare deductible and coinsurance applied; or
(b) The FEHB plan’s benefit payment for physician services under this subpart is determined to be equivalent to the Medicare deductible and coinsurance applied; or
(c) Is age 65 or older or becomes age 65 while receiving inpatient hospital services or physician services; and
(d) Is not covered by Medicare part A and/or part B.

(b) The actual billed charges; and
(3) Reducing the lower amount by any FEHB plan deductible, coinsurance, or copayment that is the responsibility of the retired enrolled individual.

Section 890.905 is revised to read as follows:

§ 890.905 Limits on inpatient hospital and physician charges.

(a) Hospitals may not collect from FEHB plans and retired enrolled individuals for inpatient hospital services more than the amount determined to be equivalent to the Medicare part A payment under the DRG-based PPS.

(b) Medicare participating providers may not collect from FEHB plans and retired enrolled individuals for physician services more than the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule.

(c) Medicare nonparticipating providers may not collect from FEHB plans and retired enrolled individuals for physician services more than the amount determined to be equivalent to the Medicare limiting charge amount.

(b) The actual billed charges; and
(3) Reducing the lower amount by any FEHB plan deductible, coinsurance, or copayment that is the responsibility of the retired enrolled individual.

Section 890.906 is redesignated as § 890.907 and a new § 890.906 is added to read as follows:

§ 890.906 Retired enrolled individuals coinsurance payments.

(a) A retired enrolled individual’s coinsurance responsibility for inpatient hospital services is calculated in accordance with the plan’s contractual benefit structure and is based on the amount determined to be equivalent to the Medicare part A payment under the DRG-based PPS.

(b) A retired enrolled individual’s coinsurance responsibility for physician services is calculated in accordance with the plan’s contractual benefit structure and is based on the lower of the actual charges or the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule for Medicare participating physicians and the Medicare Nonparticipating Physician Fee Schedule for Medicare nonparticipating physicians.

9. Section 890.907 is redesignated as § 890.910 and a new § 890.907 is added to read as follows:

§ 890.907 Effective dates.

(a) The limitation specified in this subpart applies to inpatient hospital admissions commencing on or after January 1, 1992.

(b) The limitation specified in this subpart applies to physician services supplied on or after January 1, 1995.

10. Section 890.908 is added to read as follows:

§ 890.908 Notification of HHS.

An FEHB plan, under the oversight of OPM, will notify the Secretary of HHS, or the Secretary’s designee, if the plan finds that:

(a) A hospital knowingly and willfully collects, on a repeated basis, more than the amount determined to be equivalent to the Medicare part A payment under the DRG-based PPS.

(b) A Medicare participating physician or supplier knowingly and willfully collects, on a repeated basis, more than the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule.

(c) A Medicare nonparticipating physician or supplier knowingly and willfully collects, on a repeated basis, more than the amount determined to be equivalent to the Medicare limiting charge amount.

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