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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 890 and 892

RIN 3206-AJ34

Federal Employees Health Benefits Children's Equity

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the Federal Employees Health Benefits Children's Equity Act of 2000, which was enacted October 30, 2000. This law mandates the enrollment of a Federal employee for self and family coverage in the Federal Employees Health Benefits (FEHB) Program, if the employee is subject to a court or administrative order requiring him/her to provide health benefits for his/her child(ren) and the employee does not provide documentation of compliance with the order.

DATES: Interim rules are effective October 31, 2003. OPM must receive comments on or before December 1, 2003.

ADDRESSES: Send written comments to Abby L. Block, Senior Advisor for Employee and Family Support, Strategic Human Resources Policy Division, Office of Personnel Management, 1900 E Street NW., Washington DC 20415-3666; or deliver to OPM, Room 3425, 1900 E Street NW., Washington, DC; or FAX to (202) 606-0633.

FOR FURTHER INFORMATION CONTACT: Nataya Battle (202) 606-0004.

SUPPLEMENTARY INFORMATION: On October 30, 2000, Public Law 106-394, 114 Stat. 1629, was enacted. This law, the Federal Employees Health Benefits Children's Equity Act of 2000, mandates

compliance with court or administrative orders requiring Federal employees to provide health benefits for their children. The law was effective upon enactment.

Before the enactment of Public Law 106-394, a court or State administrative agency could issue an order for an individual to provide health benefits for his or her child(ren); however, there was nothing in the FEHB law to require compliance. While the issuance of such an order was an event that allowed an employee to enroll or to change from self only to self and family, the enrollment was voluntary on the employee's part.

The law now makes compliance with the court or administrative order mandatory. A Federal employee subject to such an order must enroll for self and family coverage in a health plan that provides full benefits in the area where the children live or provide documentation to the agency that he or she has obtained other health benefits for the children. If the employee does not do so, the agency will enroll the employee involuntarily as follows: (1) If the employee has no FEHB coverage, the agency will enroll him or her for self and family coverage in the option of the Blue Cross and Blue Shield Service Benefit Plan that provides the lower level of coverage; (2) if the employee has a self only enrollment in a fee-for-service plan or in an HMO that serves the area where the children live, the agency will change his or her enrollment to self and family in the same option of the same plan; (3) if the employee is enrolled in an HMO that does not serve the area where the children live, the agency will change his or her enrollment to self and family in the lower option of the Blue Cross and Blue Shield Service Benefit Plan.

As long as the court or administrative order is in effect, and the employee has at least one child identified in the order who is still eligible under the FEHB Program, the employee cannot cancel his or her enrollment, change to self only, or change to a plan that does not serve the area in which the child or children live, unless he or she provides documentation that he or she has other coverage for the children. If the court or administrative order is still in effect at the time the employee retires, and if at least one child is still eligible for FEHB, the employee must continue FEHB into

retirement (if eligible) and cannot make any of these changes after retirement for as long as the order remains in effect and the child continues to be eligible under 5 U.S.C. 8901(5).

If such an employee goes into a nonpay status, or if his or her salary becomes insufficient to make the premium withholdings, he or she cannot choose to terminate the enrollment. Instead, the employee must continue the coverage and either make direct premium payments or incur a debt to the Government. (By law, an employee's enrollment still terminates after 1 year in nonpay status.) If the annuity of an employee who remained subject to such a court or administrative order upon retirement becomes insufficient to make the premium withholdings, the annuitant cannot choose to terminate the enrollment. Instead, he or she must continue the coverage and make direct premium payments for as long as the order remains in effect and the child continues to be eligible under 5 U.S.C. 8901(5).

Waiver of Notice of Proposed Rulemaking

In accordance with § 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. Notice is being waived to implement currently effective legislation. There is an immediate need for implementation of an interim regulation in order to expand the processing of child medical support court orders for children of Federal employees who become annuitants. Public Law 106-394 does not address what happens to the child medical support court order once the employee retires. As a result, the children of retirees are being harmed without regulation to authorize OPM to enforce the court orders that began while the parent was an employee. Public Law 106-394 has been in effect for three years and any further delay in effecting this regulation would be unnecessary and contrary to the public interest.

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 will only affect health benefits of certain Federal employees and retirees.