



Association of Federal Health Organizations

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Established 1983



August 8, 2011

BY ELECTRONIC MAIL

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RE: Submission for Review: Health Benefits Election Form
(OPM 2809)

Dear Ms. Bradford:

The Association of Federal Health Organizations ("AFHO") appreciates this opportunity to provide comments on the OPM 2809 form dated April 2011 in response to the notice published at 76 Fed. Reg. 32,996 (June 7, 2011). AFHO is a national association of Federal Employees Health Benefits ("FEHB") carriers. AFHO's member organizations sponsor FEHB plans that cover over three million federal and postal employees and annuitants.¹

We are aware that OPM has developed an SF 2809 form dated August 2011 that has been posted at http://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=201106-3206-005&icID=33632 and is pending Office of Management and Budget review. We strongly believe that members, OPM, and carriers would be best served if the various 2809 forms request the same core information and differ only when necessary to accommodate the needs of their targeted audience. Accordingly, we urge and expect that OPM will conform the OPM 2809 form to the later dated and more accurate SF 2809 form once the SF 2809 form has received OMB approval. Consequently, our comments are based on the SF 2809 form, not the OPM 2809 form. Please accept these comments as applying to both forms.

1. Affordable Care Act issues

The first and second paragraphs of the section captioned "Family Members Eligible for Coverage" found on page 2 of the SF 2809 form read as follows:

Unless you are a former spouse or survivor annuitant, family members eligible for coverage under your Self and Family enrollment include your spouse and your children under age 26.

Eligible children include your legitimate or adopted children; stepchildren; recognized natural children; or foster children who live with you in a regular parent child relationship.

The Item 15 Chart shown on page 2 of the SF 2809 form above this section identifies "Child under age 26," "Adopted Child," "Stepchild," "Foster Child,"

¹ AFHO members reserve the right to comment individually on these forms.

and "Disabled child age 26 or older who is incapable of self-support because of a physical or mental disability that began before his/her 26th birthday" in the Family Relationship categories.

Based on the Department of Health and Human Services' ("HHS") implementing regulation published at 75 Fed. Reg. 27,122 (May 13, 2010) and subsequent guidance (see Q&A 14 to the First Set of FAQs about the Affordable Care Act), we suggest that OPM do away with the distinction between legitimate and recognized natural children drawn in the above quoted section of the SF 2809 form (and corresponding instructions in the OPM 2809) in favor of the term "natural children." We also point out that this HHS regulation prohibits a plan from conditioning otherwise eligible child coverage on any the existence of any status other than a legal relationship as follows:

With respect to a child who has not attained age 26, a plan or issuer may not define dependent for purposes of eligibility for dependent coverage of children other than in terms of a relationship between a child and the participant. Thus, for example, a plan or issuer may not deny or restrict coverage for a child who has not attained age 26 based on the presence or absence of the child's financial dependency (upon the participant or any other person), residency with the participant or with any other person, student status, employment, or any combination of those factors.

45 C.F.R. § 147.120(b). Consequently, OPM must extend foster child coverage to children placed with the enrollee based on a court order or placement agency directive. OPM certainly may broaden the foster child definition beyond that legal relationship to include certain children who live in a regular parent-child relationship with the enrollee without a formal legal decision. See OPM Benefit Administration Letter No. 11-203 (March 11, 2011); *see also* Q&A 14 to the First Set of FAQs about the Affordable Care Act):

Q14: Will a group health plan or issuer fail to satisfy section 2714 of the Public Health Service Act (PHS Act) and its implementing interim final regulations merely because it conditions health coverage on support, residency, or other dependency factors for individuals under age 26 who are not described in section 152(f)(1) of the Internal Revenue Code (Code)? (That section of the Code defines children to include only sons, daughters, stepchildren, adopted children (including children placed for adoption), and foster children.)

No. A plan or issuer does not fail to satisfy the requirements of PHS Act section 2714 or its implementing regulations because the plan limits health coverage for children until the child turns 26 to only those children who are described in section 152(f)(1) of the Code. For an individual not described in Code section 152(f)(1), such as a grandchild or niece, a plan may impose additional conditions on eligibility for health coverage, such as a condition that the individual be a dependent for income tax purposes.²

AFHO therefore suggests that OPM revise the second paragraph of the "Family Members

² Internal Revenue Code Section 152(f)(1)(C), 26 U.S.C. § 152(f)(1)(C), defines the term "Eligible foster child" to mean "an individual who is placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction."

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Eligible for Coverage” section to read as follows (deleted words are struck through and added words are underlined):

Eligible children include your ~~legitimate~~ natural or adopted children; stepchildren; ~~recognized natural children~~; or foster children who have been legally placed with you or live with you in a regular parent child relationship.

Furthermore, in the interest of clarity, the second, third, fourth, and fifth family relationships in the Item 15 Table found on page 2 of the SF 2809 form (and corresponding instructions in the OPM 2809) should be revised to read as follows (added words are underlined):

Natural Child under age 26

Adopted Child under age 26

Stepchild under age 16

Foster Child under age 26

2. The Privacy Act Statement for Medicare’s mandatory reporting requirements.

We appreciate the fact that OPM adopted many of AFHO’s suggested changes to the SF 2809 form, including a request for enrollee and dependent Social Security Numbers and Medicare Claim Numbers to facilitate FEHBP carrier compliance with Medicare’s mandatory reporting requirements. We ask that OPM include the following supporting paragraph in the Privacy Act statement immediately before the current third paragraph requesting enrollee Social Security Numbers (and make a corresponding revision to the OPM 2809):

A Mandatory Insurer Reporting Law (Section 111 of Public Law No. 110-173) requires your health insurance carrier to report, as directed by the Secretary of the Department of Health and Human Services (“Secretary”), information that the Secretary requires for purposes of coordination of benefits between your health plan and Medicare. In order to properly coordinate Medicare payments with other insurance and/or workers’ compensation benefits, Medicare relies on your health insurance carrier to collect Medicare Claim Numbers or Social Security Numbers from you and your eligible dependents. We therefore request that you provide a Medicare Claim Number or a Social Security Number for yourself and each of your eligible dependents.

OPM also should update the current third paragraph of the Privacy Act statement to reflect Executive Order 13,478 (73 Fed. Reg. 70,239 (Nov. 20, 2008)), which amends the 1943 Executive Order referenced therein and continues to permit federal agencies to collect SSNs from employees and annuitants for identification purposes as follows (additional words are underscored):

We also request that you provide your Social Security Number so that it may be used as your individual identifier in the FEHB Program. Executive Order 9397 (November 22, 1943), as amended by Executive Order 13478 (November 18, 2008), allows Federal agencies to use the Social Security Number as an individual identifier to distinguish between people with the same or similar names. Failure to furnish the requested information may result in the U.S. Office of Personnel Management’s (OPM) inability to ensure the prompt payment of your and/or your family’s claims for health benefits services or supplies.

The same language should also appear in the OPM 2809.

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3. Collecting enrollee and dependent contact information

AFHO appreciates the fact that OPM has modified the SF 2809 form to collect dependent mailing and electronic mail addresses and preferred telephone numbers (Items 21, 22, 33, 34, 45, and 46). We suggest that OPM add to the SF 2809 forms blocks to collect the enrollee's electronic mail address and preferred telephone number.

We ask that OPM collect enrollee and dependent mailing and electronic mail addresses and preferred telephone numbers on the OPM 2809 form.

We also suggest that due to the fact that many people who live under the same roof have their own electronic mail addresses and cellular telephone numbers, we ask that OPM not condition the request for that information in either the SF 2809 or OPM 2809 on the fact that the dependent's home address differs from the enrollees.

Should you wish to discuss these comments, please contact me.

Sincerely,

Larry Waligora
Larry Waligora
Chairman

cc: AFHO Board of Directors
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