CLASP

CENTER FOR LAW AND SOCIAL POLICY

MEMORANDUM

TO: Interested People

FROM: Paula Roberts

DATE: November 24, 2003

RE: New Regulations on Obtaining Health Care Coverage from Non-custodial Parents Who Are Federal Employees

---

In conformance with federal law, every state has child support guidelines. These guidelines are used to establish cash child support. Pursuant to these guidelines, decision-makers address children's health care needs in some fashion. 45 CFR §302.56(c). In IV-D cases, the decision-maker is specifically required to look at health care coverage available to the non-custodial parent. If that parent has health care coverage available through employment, the decision-maker must order the non-custodial parent to enroll the children in that coverage (unless the children are already covered by some policy other than Medicaid). 45 CFR § 303.31. To facilitate enrollment, the state sends the non-custodial parent's employer a National Medical Support Notice (NMSN). That Notice tells the employer to enroll the children in the obligated parent's plan and deduct any related costs from that parent's income. 45 CFR § 303.32.

Until October 30, 2000, however, this scheme did not apply to federal employees. While decision-makers could order non-custodial parents who were federal employees to provide health care coverage for their children, unless such employees voluntarily complied, there was no way to enforce the orders. The Federal Office of Personnel Management had no authority to enroll the children or deduct premiums. This was changed by the Federal Employees Health Benefits (FEHB) Children's Equity Act of 2000 (Public Law 106-394). This Act requires federal agencies to enroll employees who are subject to a court or administrative order that requires them to provide health care coverage for their children if the employees do not voluntarily enroll in family coverage.

While the law is self-executing, there are a number of questions about its proper implementation that have kept it from being as effective as it could be. One set of issues

involves which plan to enroll the children in if the obligated parent does not voluntarily comply with the court or administrative order. Since federal employees have a number of plans to choose from, this is an important concern. Another issue is what procedure to follow if the federal employee retires while still subject to a medical support order. These concerns have been addressed in Interim Final Rules. These rules appear in 68 Fed. Reg. 56523-56525 (October 1, 2003). They became effective on October 31, 2003. Public comments are still possible, however, and will be considered if submitted by December 1, 2003. As noted below, there are some areas of concern on which public comment might be helpful.

The new regulations address a series of questions as follows:

1. *What happens when a federal employee becomes subject to a medical support order?* The court or administrative order will be transmitted to the obligated parent's "employing office" (hereafter "office").[1] That office will determine whether the employee already has self and family enrollment in a plan that provides full benefits in the geographic area in which the child or children reside. If the employee already has such coverage, it will continue (subject to the provisions described below). If the employee does not have such coverage, the office will notify the employee that a medical support order has been received and that the employee has until the end of the next pay period to enroll in appropriate coverage or provide documentation that he/she has provided other coverage for the children. 5 CFR § 890.301(g)(3)(i).

2. *What if the employee does not voluntarily enroll by the next pay period?* If the employee is not currently enrolled in any plan and does not voluntarily enroll by the next pay period, then the office will enroll him/her for self and family coverage in the Blue Cross/Blue Shield lower level coverage plan. 5 CFR § 890.301(g)(ii).

If the employee is enrolled in self coverage and does not voluntarily switch to self and family coverage, then the office will involuntarily change the employee to such coverage within the employee's current plan so long as that plan provides full benefits in the geographic area in which the children reside. If the plan does not provide comprehensive benefits in the children's geographic area, then the office will switch the employee to self and family coverage in the option of the Blue Cross/Blue Shield lower level coverage plan. 5 CFR § 890.301(g)(ii).

3. *When does the coverage become available?* If the employee does not voluntarily comply and the office has to process an involuntary enrollment, the effective date of coverage is the 1st day of the pay period that begins after the date the office completes the paperwork. There are two exceptions to this rule. *First*, if the court or administrative order requires an earlier effective date, then the effective date of coverage is the 1st day of the pay period that includes that date. However, the effective date cannot be a date that is more than two years earlier or prior to October 30, 2000 (the effective date of the

[1] Regulations define the "employing office" to be the office of an agency to which jurisdiction and responsibility for health benefits actions has been delegated. 5 CFR § 890.101(a). Thus, the entity responsible for carrying out the tasks described in this memo will vary depending on the federal agency involved.

law). 5 CFR § 890.301(g)(4)(i). *Second*, if the employee demonstrates that circumstances beyond his/her control prevented voluntary enrollment or change in coverage, then the office will allow the employee to change the coverage prospectively so long as the employee acts within 60 days of being notified of the finding that he/she is eligible to do so. 5 CFR § 890.301(g)(4)(ii).

4. *What prevents the employee from switching back to self-only coverage?* A federal employee usually has the option of switching from self and family coverage to self coverage at *any time*. However, if a federal employee is subject to a medical support order, he/she will not be able to make this switch so long as the order is in effect and there is at least one child named in the order who is eligible for coverage.[2] The one exception is if the employee provides documentation that he/she has provided other coverage for the eligible child. 5 CFR § 890.301(e)(1)(ii). See, also 5 CFR § 892.208(c).

5. *What prevents the employee from later canceling the coverage?* A federal employee usually has the option of canceling coverage at *any time*. However, if a federal employee is subject to a medical support order, he/she will not be able to cancel coverage so long as the order is in effect and there is at least one child named in the order who is eligible for coverage.[3] The one exception is if the employee provides documentation that he/she has provided other coverage for the eligible child. 5 CFR § 890.304(d)(1)(iii). See, also 5 CFR § 892.209(c).

6. *What prevents the employee from changing the coverage during open season?* Federal employees have a period called "open season" during which they can change their coverage. However, if a federal employee is subject to a medical support order, he/she may not change into a plan that does not provide comprehensive services in the geographic area where the children reside during open season. This is the rule so long as the medical support order is in effect and there is at least one child named in the order who is eligible for coverage. The one exception is if the employee provides documentation that he/she has provided other coverage for the child. 5 CFR § 890.301(f)(3). See, also 5 CFR § 892.207(c).

7. *How is the coverage paid for?* Generally, the costs associated with family coverage will be withheld from the employee's paycheck. If the salary is insufficient or an employee goes into non-pay status, the employee must make direct premium payments to the government or incur a debt for the unpaid costs. 5 CFR § 890.502(b)(4)(iii).

8. *Does the child lose coverage when the federal employee retires?* If an employee subject to a medical support order retires while that order is still in effect, and there is at

[2] A child eligible for coverage as used in this memo includes 1) an unmarried, dependent, natural or adopted child under the age of 22; 2) an unmarried, dependent foster or step-child under the age of 22 who lives with the employee in a regular parent-child relationship; and 3) an unmarried dependent child of any age who is incapable of self-support due to a mental or physical disability that arose before age 22. 5 USC § 8901(5).

[3] A child eligible for coverage as used in this memo includes 1) an unmarried, dependent, natural or adopted child under the age of 22; 2) an unmarried, dependent foster or step-child under the age of 22 who lives with the employee in a regular parent-child relationship; and 3) an unmarried dependent child of any age who is incapable of self-support due to a mental or physical disability that arose before age 22. 5 USC § 8901(5).

least one child named in the order who is eligible for coverage, then the employee must continue the coverage into retirement (unless the employee documents that he/she has provided other coverage). The employee cannot cancel coverage, change to self-only coverage, or switch to a plan that does not provide comprehensive services in the geographic area where the children reside. 5 CFR §§ 890.306(e)((1) and 890.306(f)(1)(i).

9. *How is the retiree's coverage paid for?* Generally, the costs associated with family coverage will be withheld from the retiree's annuity. If the annuity is insufficient to accommodate such withholding, the retiree must make direct premium payments to the government. (This statement is contained in the discussion which accompanies the Interim Final Rule, although it is not clear that this is incorporated into the Interim Regulations themselves.)

While these regulations are helpful, there are some areas that need improvement. They include:

- The nature and extent of the documentation to be provided by an employee or annuitant who wishes to change or cancel federal coverage because he or she has provided other coverage for the children is not delineated. Some standards are needed here so that it is clear that the children are otherwise covered.

- No interface with the IV-D agency is provided. In cases where the IV-D agency has sent the medical support order to the federal office, the IV-D agency is responsible for enforcing the order. Thus, it needs to know whether the child has been enrolled or alternate coverage has been documented. With other employers, the multi-part National Medical Support Notice (NMSN) serves this function by providing a form to be returned to the IV-D agency describing what has happened. However, the NMSN is not authorized for use when the employer is the federal government. Thus, some notification process needs to be included in the regulations so IV-D knows when it needs to take further action to enforce the medical support order.

- A process for reactivating federal coverage when alternative coverage has been provided but is then cancelled or altered so that the children no longer have comprehensive, geographically accessible coverage is not provided. In addition, there should be some limit on the number of times an obligated parent can document alternative coverage and then alter/withdraw the coverage. One such instance should be sufficient to foreclose the alternate coverage option.

Those wishing to submit comments can send them to Abby 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.