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# FEHB Program Carrier Letter

## Fee-for-Service Carriers

U.S. Office of Personnel Management  
Office of Insurance Programs

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**Letter No. 1999-038 A**

**Date:** August 18, 1999

Fee-for-service [ 32 ]    Experience-rated HMO [ n/a ]    Community-rated [ n/a ]

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**SUBJECT:    Amendments to the Standard Contracts for Fee-for-Service Carriers**

Please review the enclosed Standard Contract amendments for Fee-for-Service carriers for Contract Year 2000. New language is in **boldface** and language to be deleted is in ~~strikeout~~. So that we can consider your comments, we must receive them no later than September 3, 1999.

Section 1.22, Year 2000 Compliance, has been amended to include more specific language with regard to the technology you use to perform date/time processing involving dates later than December 31, 1999. The clause now refers to hardware, software, and firmware containing embedded chip technology. The clause also prescribes OPM's remedy in the event you are unable to provide benefits and services to enrollees as a result of non-compliant information technology. A system failure caused by the failure of hardware, software, or firmware containing embedded chip technology that results in your inability to deliver required benefits and services to FEHB enrollees is a significant event under Section 1.10, and we will take appropriate action as authorized under that clause.

Two new Sections, 1.24, Notice to Enrollees on Termination of FEHBP or Provider Contract, and 1.25, Transitional Care, implement the continuity of care provisions of the Patients= Bill of Rights. Section 1.24 requires you to make every effort to notify FEHB Program enrollees at least 90 days in advance when you terminate a specialty provider contract or a Preferred Provider Organization (PPO) or Point of Service (POS) network contract, unless you terminate them for cause. The requirement to notify enrollees also applies in the event you terminate your FEHB contract. Your prompt notice will ensure that the notification period and the transitional care period run concurrently.

Section 1.25 sets out your responsibilities when an enrollee qualifies for transitional care because you terminate your FEHB contract, a specialty provider contract, or a PPO or POS network contract, or you are enrolling a new member who involuntarily changed carriers because their former carrier is no longer available in the FEHB Program. The clause covers your responsibilities when your enrollees remain in your plan after a provider change. The clause also requires you to provide the services required at no additional cost to enrollees during the transition period. In addition, you must require the specialty provider or PPO or POS network to: (1) promptly transfer all medical records to the designated new provider; (2) provide any necessary assistance to enrollees in obtaining or amending medical records; and (3) give you all needed information from the provider for quality assurance purposes.

New Section 2.12, Continuing Requirements After Termination of the Carrier, states that when a carrier's contract is terminated, it continues to be responsible for the obligations that it agreed to under the contract. Such obligations include offering conversion contracts to enrollees during the 31-day extension of coverage so that they may convert to a private policy, providing benefits to the enrollee until the effective date of the new enrollment, and processing and paying disputed claims incurred under the contract.

We have revised Sections 3.1, Payments, and 3.2, Accounting and Allowable Cost, to include guidance for carriers designated to participate in a DoD Demonstration Project authorized by Public Law 105-261 [10 U.S.C. 1108]. The law allows certain Medicare and other eligible DoD beneficiaries to enroll in health benefit plans in certain geographic areas under the FEHB Program. On July 6, 1999, we published an interim regulation that amends the Federal Employees Health Benefits Acquisition Regulation (FEHBAR), as well as Part 890 of title 5, Code of Federal Regulations (CFR), to implement the law. The FEHBAR amendment includes the contract clauses we are amending, and you will have the opportunity to comment on them during the public comment period.

We also have updated the Payments and Accounting and Allowable Cost clauses to reflect current procedures implemented by the FEHBP Experience-Rated Carrier and Service Organization Audit Guide and to incorporate plain language concepts.

We have added a new section 3.12, Audit of Provider Contracts, to authorize OPM and the Comptroller General to audit the provider's costs when the provider contract or agreement exceeds 5 percent of your previous year's total benefit costs under the FEHBP contract. This change will enable OPM and the Comptroller General to audit the larger providers on an as-needed basis.

You will note that we are not proposing to amend Part IV of the contract to implement the Cost Accounting Standards (CAS). The Cost Accounting Standards (CAS) provision remains the same as the March 5, 1999, contract amendment. That is, your contractual responsibility is to implement the current CAS to the extent compliance is, and has been, required by the FAR and FEHBAR cost principles, Parts 31.2 and 1631.2 respectively. For this purpose only, CAS clauses 5.30, 5.31, and 5.32 will remain in Part V of the contract. We plan to request an administrative exception to CAS implementation in the FEHB Program, as we did last year, unless an extension to last year's exemption is enacted into law.

If you are a carrier participating in the DoD/FEHBP Demonstration Project, your contract amendment also includes a separate clause entitled "Participation in the DoD Demonstration Project." The clause requires you to participate in the DoD Demonstration Project and sets out reporting requirements. Bracketed language regarding our reimbursement of your costs that are in excess of premiums may be removed pending final resolution of the issue.

We have also updated the introductory language and paragraph (a)5. of Appendix D-a, FEHB Supplemental Literature Guidelines, and have included website material as supplemental marketing literature.

When we send you the final contract amendments, we will update Federal Acquisition Regulation clauses that have been revised during the past year so that the most recent version will appear in the contract. All new and revised clauses in Parts I through IV will show the date "1 JAN 2000." Revised FAR clauses in Part V will show the date of the FAR revision. You will receive the final contract amendments for signature at the same time we execute your Year 2000 rates and benefits.

Please forward your comments to Mary Ann Mercer at OPM or fax them to (202) 606-0633. I look forward to working with you during contract year 2000.

Sincerely,

Frank D. Titus  
Assistant Director  
for Insurance Programs

Enclosure

**Proposed Year 2000 Amendments to the Standard Contract for  
Fee-For-Service Carriers (DoD Demonstration Project)**

(FFS-2000)

1. Redate Section 1.22, YEAR 2000 COMPLIANCE, as JAN 2000 and update and revise the clause as follows:

**SECTION 1.22**

**YEAR 2000 COMPLIANCE (JAN 1999 2000)**

(a) The Carrier shall ensure that hardware, software, and firmware it uses in the performance of its FEHB Program contract will accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) involving dates later than December 31, 1999, including leap year calculations. ~~On May 31, 1999, the Carrier shall either notify the Contracting Officer that the system will be compliant or provide the Contracting Officer with a contingency plan that will detail how the system will remain operational after December 31, 1999.~~

(b) When acquiring information technology that will be required to perform date/time processing involving dates later than December 31, 1999, the Carrier shall ensure that solicitations and contracts: ~~(1) require the information technology to be Year 2000 compliant ; or (2) require that non-compliant information technology be upgraded to be Year 2000 compliant prior to the earlier of (i) the earliest date on which the information technology may be required to perform date/time processing involving dates later than December 31, 1999, or (ii) December 31, 1999.~~

~~(c) Not later than May 31, 1999, the Carrier shall submit a copy of its company purchase policy that the hardware, software, and firmware it either contracts for or purchases is Year 2000 compliant.~~

~~(d) (c) "Year 2000 compliant" means that the information technology accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) involving dates later than December 31, 1999, including leap year calculations, to the extent that other information technology used in combination with the information technology being acquired, properly exchanges date/time data with it.~~

**(d) A system failure caused by the failure of hardware, software, or firmware covered under this clause that results in the Carrier's inability to deliver benefits and services to FEHB Program enrollees is a significant event under Section 1.10 of this contract, Notice of Significant Events, and must be reported promptly to OPM.**

2. Add new Sections 1.24, NOTICE TO ENROLLEES ON TERMINATION OF FEHBP OR PROVIDER CONTRACT, and 1.25, TRANSITIONAL CARE, to implement the continuity of care provisions of the Patient Bill of Rights, as follows:

**SECTION 1.24**

**NOTICE TO ENROLLEES ON TERMINATION OF FEHBP OR PROVIDER CONTRACT (JAN 2000)**

**(a) Enrollees who are undergoing treatment for a chronic or disabling condition or who are in the second or third trimester of pregnancy at the time a carrier terminates (1) its FEHBP contract, (2) the enrollees' specialty provider contract, or (3) a Preferred Provider Organization (PPO) or Point of Service (POS) network contract, for reasons other than cause, may be able to continue to see their specialty provider for up to 90 days or through their postpartum care.**

**(b) The Carrier shall notify its enrollees in writing of its intent to terminate its FEHBP contract, the enrollees' specialty provider contract, or a PPO or POS network contract, for reasons other than cause, in order to allow sufficient time for the enrollees to arrange for continued care after the 90-day period. The Carrier shall send the notice in time to ensure it is received by the enrollees no less than 90 days prior to the date it terminates the contract, unless the Carrier demonstrates it was prevented from doing so for reasons beyond its control. The Carrier's prompt notice will ensure that the notification period and the transitional care period run concurrently.**

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**SECTION 1.25  
TRANSITIONAL CARE (JAN 2000)**

(a) "Transitional care" is specialized care provided for up to 90 days or through the postpartum period to an enrollee who is undergoing treatment for a chronic or disabling condition or who is in the second or third trimester of pregnancy when his or her carrier terminates (1) its FEHBP contract, (2) a specialty provider contract, or (3) a Preferred Provider Organization (PPO) or Point of Service (POS) network contract for reasons other than cause. The 90-day period begins the earlier of the date the enrollee receives the notice required under Section 1.24, Notice to Enrollees on Termination of FEHBP or Provider Contract, or the date the carrier's or the provider's contract ends.

(b) Beginning January 1, 2000, the Carrier shall ensure the following:

(1) *If it terminates a specialty provider contract, or a PPO or POS network contract other than for cause, it allows enrollees who are undergoing treatment for a chronic or disabling condition or who are in the second or third trimester of pregnancy to continue treatment under the specialty provider for up to 90 days, or through their postpartum period, under the same terms and condition that existed at the beginning of the transitional care period; and*

(2) *If it enrolls a new member who involuntarily changed carriers because the enrollee's former carrier was no longer available in the FEHB Program, it provides for the transitional care under the same terms and conditions the enrollee had under the prior carrier.*

(c) In addition, the Carrier shall (1) pay for or provide the transitional care required under this clause at no additional cost to enrollees;

(2) require the specialty provider or network to promptly transfer all medical records to the designated new provider during or upon completion of the transition period, as authorized by the patient;

(3) provide assistance to enrollees who want to obtain records from the specialty provider and/or request that the provider amend or allow them to append a record they believe is inaccurate, irrelevant, or incomplete; and,

(4) require the specialty provider or network to give all necessary information to the Carrier for quality assurance purposes.

3. Add a new Section 2.12, CONTINUING REQUIREMENTS AFTER TERMINATION, to reinforce certain existing contractual requirements as follows:

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**SECTION 2.12  
CONTINUING REQUIREMENTS AFTER TERMINATION (JAN 2000)**

(a) The Carrier shall fulfill all of the requirements agreed to under the contract that continue after termination.

(b) Requirements of the contract that extend beyond the date of the Carrier's termination include, but are not limited to, offering conversion contracts to enrollees during the 31-day extension of coverage for conversion, providing benefits to the enrollee until the effective date of the new enrollment, and processing and paying claims incurred prior to the termination date.

4. Redate Section 3.1, PAYMENTS, as JAN 2000 and add a new paragraph (f) to implement the DoD Demonstration Project authorized by 10 U.S.C. 1108, as follows:

**SECTION 3.1  
PAYMENTS (JAN 1999 2000) (FEHBAR 1652.232-71)**

(f) **Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).** The Carrier will perform a final reconciliation of revenue and costs for the demonstration project group at the end of the demonstration project. Costs in excess of the premiums will be reimbursed first from the carrier's demonstration project Contingency Reserve and then from OPM's Administrative Reserve. Any surplus after the final accounting will be paid by the Carrier to OPM's Administrative Reserve.

(End of Clause)

5. Redate Section 3.2, ACCOUNTING AND ALLOWABLE COST (FEHBAR 1652.216-71), as JAN 2000; add a new paragraph (d) to implement the DoD Demonstration Project authorized by 10 U.S.C. 1108; update the clause to reflect current procedures in the FEHBP Experience-Rated Carrier and Service Organization Audit Guide; and make clarifying changes, as follows:

**SECTION 3.2  
ACCOUNTING AND ALLOWABLE COST (FEHBAR 1652.216-71) (JAN 1999 2000)**

(a) **Annual Accounting Statements.** (1) The Carrier, ~~not later than the date specified by the contract,~~ shall furnish to OPM ~~for that contract period~~ an accounting of its operations under the contract. ~~The accounting shall be in the form prescribed by OPM and shall include, among other things, a Balance Sheet and a Summary Statement of FEHBP Financial Operations. The Summary Statement of FEHBP Financial Operations shall include the following items for each option provided by the contract:~~ **In preparing the accounting, the Carrier shall follow the reporting requirements and statement formats prescribed by OPM in the FEHBP Experience-Rated Carrier and Service Organization Audit Guide (Guide).**

- (i) ~~Subscription income received and accrued (including amounts received from the Contingency Reserve);~~
- ~~—(ii) Health Benefits charges paid and accrued;~~
- ~~—(iii) Administrative expenses and other charges paid and accrued;~~
- ~~—(iv) Income on investments;~~
- ~~—(v) Other adjustments;~~
- ~~—(vi) Sum of items (i) minus (ii) minus (iii) plus (iv) plus or minus (v).~~

(2) The Carrier shall have its **Annual Accounting Statements** ~~most recent financial statement~~ and that of its underwriter, if any, audited **in accordance with the Guide.** ~~by an accounting firm that ascribes to the standards of the~~

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~~American Institute of Certified Public Accountants. The report shall be submitted~~ Carrier shall submit the **audit report and the Annual Accounting Statements** to OPM ~~not later than 180 days after the end of the contract period in~~ accordance with the requirements of the Guide.

(3) Based on the results of either the independent audit **prescribed by the Guide** or a Government audit, ~~the Carrier's annual accounting statements may be (i) adjusted by amounts found not to constitute allowable costs; or (ii) adjusted for prior overpayments or underpayments~~ **the Carrier shall adjust its annual accounting statements (i) by amounts found not to constitute actual, reasonable, allowable, or allocable costs; or (ii) to reflect prior overpayments or underpayments.**

(4) **The Carrier shall develop corrective action plans, in accordance with and as defined by the Guide, to resolve all audit findings.**

(b) Definition of costs. ~~(1) The allowable costs chargeable to the contract for a contract period shall be the actual, necessary and reasonable amounts incurred with proper justification and accounting support, determined in accordance with the terms of this contract, subpart 31.2 of the Federal Acquisition Regulation (FAR) and subpart 1631.2 of the Federal Employees Health Benefits Program Acquisition Regulation (FEHBAR) applicable on the first day of the contract period. The Carrier may charge a cost to the contract for a contract term if the cost is actual, allowable, allocable, and reasonable. In addition, the Carrier must:~~

(i) **on request, document and make available accounting support for the cost and justify that the cost is reasonable and necessary; and**

(ii) **determine the cost in accordance with: (A) the terms of this contract, and (B) Subpart 31.2 of the Federal Acquisition Regulation (FAR) and Subpart 1631.2 of the Federal Employees Health Benefits Program Acquisition Regulation (FEHBAR) applicable on the first day of the contract period.**

~~(2) In the absence of specific contract terms to the contrary, contract costs shall be classified~~ **the Carrier shall classify** contract costs in accordance with the following criteria:

(i) Benefits. Benefit costs consist of payments made and liabilities incurred for covered health care services on behalf of FEHBP subscribers less any refunds, rebates, allowances or other credits received.

(ii) Administrative expenses. Administrative expenses consist of all actual, **allocable**, allowable and reasonable expenses incurred in the adjudication of subscriber benefit claims or incurred in the Carrier's overall operation of the business. Unless otherwise stated in the contract, administrative expenses include, in part: all taxes (excluding premium taxes, as provided in section 1631.205-41), insurance and reinsurance premiums, medical and dental consultants used in the adjudication process, concurrent or managed care review when not billed by a health care provider and other forms of utilization review, the cost of maintaining eligibility files, legal expenses incurred in the litigation of benefit payments and bank charges for letters of credit. Administrative expenses exclude the cost of Carrier personnel, equipment, and facilities directly used in the delivery of health care services, which are benefit costs, and the expense of managing the FEHBP investment program which is a reduction of investment income earned.

(iii) Investment income. **While compliance with the checks presented letter of credit methodology will minimize funds on hand, the** ~~The Carrier is required to~~ **shall** invest and reinvest all funds on hand, including any in the Special Reserve or any attributable to the reserve for incurred but unpaid claims, which are in excess of the funds needed to discharge promptly the obligations incurred under the contract. Investment income represents the net amount earned by the Carrier after deducting investment expenses ~~as a result of investing the FEHBP funds. The direct or allocable indirect expenses incurred in managing the investment program, such as consultant or management fees, are chargeable against the investment income earned.~~ **Investment expenses are those actual, allowable, allocable, and reasonable contract costs which are attributable to the investment of FEHBP funds, such as consultant or management fees.**

(iv) Other charges. (A) Mandatory statutory reserve. Charges for mandatory statutory reserves are not allowable unless specifically provided for in the contract. When the term "mandatory statutory reserve" is specifically identified as an allowable contract charge without further definition or explanation, it means a requirement imposed by State law

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upon the Carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the Carrier and which may be used only with the specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the Carrier, **the Carrier shall return to the FEHBP a pro rata share based upon FEHBP's contribution to the total Carrier's set aside shall be returned to the FEHBP** in accordance with FAR 31.201-5.

(B) **Premium taxes.** When the term "premium taxes" is used in this contract without further definition or explanation, it means a tax, ~~imposed by State or local statutes upon the Carrier's gross or net premiums received, fee, or other monetary payment directly or indirectly imposed on FEHB premiums by any State, the District of Columbia, or the Commonwealth of Puerto Rico or by any political subdivision or other governmental authority of those entities, with the sole exception of a tax on net income or profit, if that tax, fee, or payment is applicable to a broad range of business activity.~~

(c) **Certification of Accounting Statement Accuracy.** (1) The Carrier shall certify the annual accounting statement in the form set forth in paragraph (c)(3) of this clause. ~~The certificate shall be signed by the chief executive officer and the chief financial officer of the Carrier.~~ **The Carrier's chief executive officer and the chief financial officer shall sign the certificate.**

(2) The Carrier shall require an authorized agent of its underwriter, if any, also to certify the annual accounting statement.

(3) The certificate required shall be in the following form:

CERTIFICATION OF ACCOUNTING  
STATEMENT ACCURACY

This is to certify that I have reviewed this accounting statement and to the best of my knowledge and belief:

1. The statement was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this ~~contract~~ **reporting** period in conformity with those guidelines.

2. The costs included in the statement are ~~allowable and allocable~~ **actual, allowable, allocable, and reasonable** in accordance with the terms of the contract and with the cost principles of the Federal Employees Health Benefits Acquisition Regulation and the Federal Acquisition Regulation;

3. Income, rebates, allowances, refunds and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the statement;

4. If applicable, the letter of credit account was managed in accordance with 5 CFR part 890, 48 CFR chapter 16, and OPM guidelines.

Carrier Name \_\_\_\_\_ Name of Chief Executive Officer:  
(Type or Print)

\_\_\_\_\_  
Name of Chief Financial Officer:

\_\_\_\_\_  
Signature of Chief Executive Officer:

\_\_\_\_\_  
Signature of Chief Financial Officer:

\_\_\_\_\_  
Date Signed:

\_\_\_\_\_  
Date Signed:

\_\_\_\_\_  
Underwriter:

\_\_\_\_\_  
Name and Title of Responsible Corporate Official:  
(Type or Print :)

\_\_\_\_\_  
Signature of Responsible Corporate Official:

\_\_\_\_\_  
Date Signed:

(End of Certificate)

[NOTE: As required by subsection (a)(1) of this section, the Carrier, not later than 90 days after the end of the contract period, shall furnish OPM for that period an accounting of its operations under the contract.]

**(d) Exceptions for the 3-Year DoD Demonstration Project (10 U.S.C. 1108). (1) The Carrier shall draw funds from its Letter of Credit (LOC) account to pay demonstration project benefits costs in the same manner as it does for benefits costs incurred by regular FEHB members. The Carrier shall account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project shall be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the total claims processed for FEHB Program activity. This same percentage will also be used to determine the amount of the Carrier's service charge that will be allocated to the demonstration project.**

**(2) The Carrier shall submit a separate annual accounting statement and monthly incurred claims report for demonstration project experience.**

(End of Clause)

6. Add a new section 3.12, Audit of Provider Contracts, to authorize audit of certain provider contracts, as follows:

**SECTION 3.12  
AUDIT OF PROVIDER CONTRACTS  
(JAN 2000)**

**(a) Any provider contract or agreement which exceeds 5 percent of the Carrier's previous year's total benefit costs under the FEHBP contract is subject to audit by OPM and the Comptroller General of the United States or an authorized representative.**

**(b) If the Carrier enters into a contract or agreement with a provider to provide benefits for this contract and the contract with the provider meets the cost criteria in paragraph (a), the Carrier shall require the provider to make available such documentation as OPM shall require to audit the provider under this clause.**

7. Add a new clause in Section 4.1, entitled PARTICIPATION IN THE DoD DEMONSTRATION PROJECT, to implement the joint DoD/FEHBP Demonstration Project authorized by 10 U.S.C. 1108, as follows:

**SECTION 4.1  
PARTICIPATION IN THE DoD  
DEMONSTRATION PROJECT  
(JAN 2000)**

(FFS-2000)

(a) The Carrier shall participate in the DoD/FEHBP Demonstration Project authorized by 10 U.S.C. 1108 (ADoD Demonstration Project®) under the terms and conditions specified by OPM.

(b) The Carrier shall account for health benefits charges paid in accordance with Section 3.2, Accounting and Allowable Cost (FEHBAR 1652.216-71).

(c) The Carrier shall report on demonstration project revenues, health benefits charges, and administrative expenses as directed by OPM.

(d) The Carrier shall compile, maintain, and when requested by OPM, report data on the plan's experience to produce reports containing the following information and analysis:

(1) The number of eligible beneficiaries who elect to participate in the demonstration project.

(2) The number of eligible beneficiaries who elected to participate in the demonstration project and did not have Medicare Part B coverage before electing to participate.

(3) The costs of health benefits charges and the costs (direct and indirect) of administering the benefits and services provided to eligible beneficiaries who elect to participate in the demonstration project as compared to similarly situated enrollees in the FEHB Program.

(4) Prescription drug costs for demonstration project beneficiaries.

8. Update the introductory paragraph and paragraph (a)(5) of Appendix D-a to include website material under supplemental literature, as follows:

APPENDIX D-a  
FEHB SUPPLEMENTAL LITERATURE GUIDELINES

This is the primary guide a Carrier should use to assess whether the Carrier's supplemental marketing literature, **including website material**, complies with FEHBAR 1603.70, Misleading, Deceptive or Unfair Advertising. (Use the NAIC Guidelines for additional guidance when needed.)

a) 5. Under the FEHBP, the FEHB brochure is ~~based on text approved by OPM and is a complete statement of benefits, limitations, and exclusions~~ **the official statement of benefits**. Include the following statement (**website material should include the statement as a preface**) in all supplemental literature which in any way discusses Plan benefits:

*"This is a summary [or brief description] of the features of the [insert Plan's name]. Before making a final decision, please read the Plan's Federal brochure ([insert brochure number]). All benefits are subject to the definitions, limitations, and exclusions set forth in the Federal brochure."*

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PART IV -- SPECIAL PROVISIONS

SECTION 4.1

ALTERATIONS IN CONTRACT (JAN 1998) (FAR 52.252-4)

Portions of this contract are altered as follows:

**(a)** Section 3.2. As required by Public Law 101-508, ' 8909 of title 5, U.S.C., and Section 3.2(b)(2)(ii) of this contract are amended by the following:

(1) No tax, fee, or other monetary payment may be imposed, directly or indirectly, on a Carrier or an underwriting or plan administration subcontractor of an approved health benefits plan by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority thereof, with respect to any payment made from the Fund.

(2) Paragraph (1) shall not be construed to exempt any Carrier or subcontractor of an approved health benefits plan from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by such Carrier or underwriting or plan administration subcontractor from business conducted under this Chapter, if that tax, fee, or payment is applicable to a broad range of business activity.

**(b)** Sections 5.30, 5.31, 5.32. The Cost Accounting Standards, Part 30 and Chapter 99 of the FAR, are applicable to this contract. The Carrier shall apply the Cost Accounting Standards to the maximum extent practicable and shall adjust its cost accounting practices and procedures as necessary to conform to 48 CFR Part 30 and 48 CFR Chapter 99. The Carrier shall submit a Disclosure Statement not later than twelve months after the date an appropriate Disclosure form is provided by OPM.

**(c) PARTICIPATION IN /FEHBP DEMONSTRATION PROJECT (JAN 2000)**

**(a)** The Carrier shall participate in the DoD/FEHBP Demonstration Project authorized by 10 U.S.C. 1108 (ADoD Demonstration Project) under the terms and conditions specified by OPM.

**(b)** The Carrier shall account for health benefits charges paid in accordance with Section 3.2, Accounting and Allowable Cost (FEHBAR 1652.216-71).

**(c)** The Carrier shall report on demonstration project revenues, health benefits charges, and administrative expenses as directed by OPM.

**(d)** The Carrier shall compile, maintain, and, when requested by OPM, report data on the plan's experience to produce reports containing the following information and analysis:

**(1)** The number of eligible beneficiaries who elect to participate in the demonstration project.

**(2)** The number of eligible beneficiaries who elected to participate in the demonstration project and did not have Medicare Part B coverage before electing to participate.

**(3)** The costs of health benefits charges and the costs (direct and indirect) of administering the benefits and services provided to eligible beneficiaries who elect to participate in the demonstration project as compared to similarly situated enrollees in the FEHB Program.

**(4)** Prescription drug costs for demonstration project beneficiaries.

**Proposed Year 2000 Amendments to the Standard Contract for  
Fee-For-Service Carriers**

(FFS-2000)

1. Redate Section 1.22, YEAR 2000 COMPLIANCE, as JAN 2000 and update and revise the clause as follows:

**SECTION 1.22**

**YEAR 2000 COMPLIANCE (JAN 1999 2000)**

(a) The Carrier shall ensure that hardware, software, and firmware it uses in the performance of its FEHB Program contract will accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) involving dates later than December 31, 1999, including leap year calculations. ~~On May 31, 1999, the Carrier shall either notify the Contracting Officer that the system will be compliant or provide the Contracting Officer with a contingency plan that will detail how the system will remain operational after December 31, 1999.~~

(b) When acquiring information technology that will be required to perform date/time processing involving dates later than December 31, 1999, the Carrier shall ensure that solicitations and contracts: ~~(1) require the information technology to be Year 2000 compliant ; or (2) require that non-compliant information technology be upgraded to be Year 2000 compliant prior to the earlier of (i) the earliest date on which the information technology may be required to perform date/time processing involving dates later than December 31, 1999, or (ii) December 31, 1999.~~

~~(c) Not later than May 31, 1999, the Carrier shall submit a copy of its company purchase policy that the hardware, software, and firmware it either contracts for or purchases is Year 2000 compliant.~~

~~(d) (c) "Year 2000 compliant" means that the information technology accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) involving dates later than December 31, 1999, including leap year calculations, to the extent that other information technology used in combination with the information technology being acquired, properly exchanges date/time data with it.~~

**(d) A system failure caused by the failure of hardware, software, or firmware covered under this clause that results in the Carrier's inability to deliver benefits and services to FEHB Program enrollees is a significant event under Section 1.10 of this contract, Notice of Significant Events, and must be reported promptly to OPM.**

2. Add new Sections 1.24, NOTICE TO ENROLLEES ON TERMINATION OF FEHBP OR PROVIDER CONTRACT, and 1.25, TRANSITIONAL CARE, to implement the continuity of care provisions of the Patient Bill of Rights, as follows:

**SECTION 1.24**

**NOTICE TO ENROLLEES ON TERMINATION OF FEHBP OR PROVIDER CONTRACT (JAN 2000)**

**(a) Enrollees who are undergoing treatment for a chronic or disabling condition or who are in the second or third trimester of pregnancy at the time a carrier terminates (1) its FEHBP contract, (2) the enrollees' specialty provider contract, or (3) a Preferred Provider Organization (PPO) or Point of Service (POS) network contract, for reasons other than cause, may be able to continue to see their specialty provider for up to 90 days or through their postpartum care.**

**(b) The Carrier shall notify its enrollees in writing of its intent to terminate its FEHBP contract, the enrollees' specialty provider contract, or a PPO or POS network contract, for reasons other than cause, in order to allow sufficient time for the enrollees to arrange for continued care after the 90-day period. The Carrier shall send the notice in time to ensure it is received by the enrollees no less than 90 days prior to the date it terminates the contract, unless the Carrier demonstrates it was prevented from doing so for reasons beyond its control. The Carrier's prompt notice will ensure that the notification period and the transitional care period run concurrently.**

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**SECTION 1.25  
TRANSITIONAL CARE (JAN 2000)**

(a) “Transitional care” is specialized care provided for up to 90 days or through the postpartum period to an enrollee who is undergoing treatment for a chronic or disabling condition or who is in the second or third trimester of pregnancy when his or her carrier terminates (1) its FEHBP contract, (2) a specialty provider contract, or (3) a Preferred Provider Organization (PPO) or Point of Service (POS) network contract for reasons other than cause. The 90-day period begins the earlier of the date the enrollee receives the notice required under Section 1.24, Notice to Enrollees on Termination of FEHBP or Provider Contract, or the date the carrier’s or the provider’s contract ends.

(b) Beginning January 1, 2000, the Carrier shall ensure the following:

(1) *If it terminates a specialty provider contract, or a PPO or POS network contract other than for cause, it allows enrollees who are undergoing treatment for a chronic or disabling condition or who are in the second or third trimester of pregnancy to continue treatment under the specialty provider for up to 90 days, or through their postpartum period, under the same terms and conditions that existed at the beginning of the transitional care period; and*

(2) *If it enrolls a new member who involuntarily changed carriers because the enrollee’s former carrier was no longer available in the FEHB Program, it provides for the transitional care under the same terms and conditions the enrollee had under the prior carrier.*

(c) In addition, the Carrier shall (1) pay for or provide the transitional care required under this clause at no additional cost to enrollees;

(2) require the specialty provider or network to promptly transfer all medical records to the designated new provider during or upon completion of the transition period, as authorized by the patient;

(3) provide assistance to enrollees who want to obtain records from the specialty provider and/or request that the provider amend or allow them to append a record they believe is inaccurate, irrelevant, or incomplete; and,

(4) require the specialty provider or network to give all necessary information to the Carrier for quality assurance purposes.

3. Add a new Section 2.12, CONTINUING REQUIREMENTS AFTER TERMINATION, to reinforce certain existing contractual requirements as follows:

**SECTION 2.12  
CONTINUING REQUIREMENTS AFTER TERMINATION (JAN 2000)**

(a) The Carrier shall fulfill all of the requirements agreed to under the contract that continue after termination.

(b) Requirements of the contract that extend beyond the date of the Carrier's termination include, but are not limited to, offering conversion contracts to enrollees during the 31-day extension of coverage for conversion, providing benefits to the enrollee until the effective date of the new enrollment, and processing and paying claims incurred prior to the termination date.

4. Redate Section 3.1, PAYMENTS, as JAN 2000 and add a new paragraph (f) to implement the DoD Demonstration Project authorized by 10 U.S.C. 1108, as follows:

**SECTION 3.1  
PAYMENTS (JAN 1999 2000) (FEHBAR 1652.232-71)**

(f) **Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).** The Carrier will perform a final reconciliation of revenue and costs for the demonstration project group at the end of the demonstration project. Costs in excess of the premiums will be reimbursed first from the carrier's demonstration project Contingency Reserve and then from OPM's Administrative Reserve. Any surplus after the final accounting will be paid by the Carrier to OPM's Administrative Reserve.

(End of Clause)

5. Redate Section 3.2, ACCOUNTING AND ALLOWABLE COST (FEHBAR 1652.216-71), as JAN 2000; add a new paragraph (d) to implement the DoD Demonstration Project authorized by 10 U.S.C. 1108; update the clause to reflect current procedures in the FEHBP Experience-Rated Carrier and Service Organization Audit Guide; and make clarifying changes, as follows:

**SECTION 3.2  
ACCOUNTING AND ALLOWABLE COST (FEHBAR 1652.216-71) (JAN 1999 2000)**

(a) **Annual Accounting Statements.** (1) The Carrier, ~~not later than the date specified by the contract,~~ shall furnish to OPM ~~for that contract period~~ an accounting of its operations under the contract. ~~The accounting shall be in the form prescribed by OPM and shall include, among other things, a Balance Sheet and a Summary Statement of FEHBP Financial Operations. The Summary Statement of FEHBP Financial Operations shall include the following items for each option provided by the contract:~~ **In preparing the accounting, the Carrier shall follow the reporting requirements and statement formats prescribed by OPM in the FEHBP Experience-Rated Carrier and Service Organization Audit Guide (Guide).**

- ~~(i) Subscription income received and accrued (including amounts received from the Contingency Reserve);~~
- ~~—(ii) Health Benefits charges paid and accrued;~~
- ~~—(iii) Administrative expenses and other charges paid and accrued;~~
- ~~—(iv) Income on investments;~~
- ~~—(v) Other adjustments;~~
- ~~—(vi) Sum of items (i) minus (ii) minus (iii) plus (iv) plus or minus (v).~~

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(2) The Carrier shall have its **Annual Accounting Statements** ~~most recent financial statement~~ and that of its underwriter, if any, audited **in accordance with the Guide**. ~~by an accounting firm that ascribes to the standards of the American Institute of Certified Public Accountants. The report shall be submitted~~ Carrier shall submit the **audit report and the Annual Accounting Statements** to OPM ~~not later than 180 days after the end of the contract period in accordance with the requirements of the Guide.~~

(3) Based on the results of either the independent audit **prescribed by the Guide** or a Government audit, ~~the Carrier's annual accounting statements may be (i) adjusted by amounts found not to constitute allowable costs; or (ii) adjusted for prior overpayments or underpayments~~ **the Carrier shall adjust its annual accounting statements (i) by amounts found not to constitute actual, reasonable, allowable, or allocable costs; or (ii) to reflect prior overpayments or underpayments.**

**(4) The Carrier shall develop corrective action plans, in accordance with and as defined by the Guide, to resolve all audit findings.**

(b) Definition of costs. ~~(1) The allowable costs chargeable to the contract for a contract period shall be the actual, necessary and reasonable amounts incurred with proper justification and accounting support, determined in accordance with the terms of this contract, subpart 31.2 of the Federal Acquisition Regulation (FAR) and subpart 1631.2 of the Federal Employees Health Benefits Program Acquisition Regulation (FEHBAR) applicable on the first day of the contract period. The Carrier may charge a cost to the contract for a contract term if the cost is actual, allowable, allocable, and reasonable. In addition, the Carrier must:~~

(i) **on request, document and make available accounting support for the cost and justify that the cost is reasonable and necessary; and**

(ii) **determine the cost in accordance with: (A) the terms of this contract, and (B) Subpart 31.2 of the Federal Acquisition Regulation (FAR) and Subpart 1631.2 of the Federal Employees Health Benefits Program Acquisition Regulation (FEHBAR) applicable on the first day of the contract period.**

(2) In the absence of specific contract terms to the contrary, ~~contract costs shall be classified~~ **the Carrier shall classify** contract costs in accordance with the following criteria:

(i) Benefits. Benefit costs consist of payments made and liabilities incurred for covered health care services on behalf of FEHBP subscribers less any refunds, rebates, allowances or other credits received.

(ii) Administrative expenses. Administrative expenses consist of all actual, **allocable**, allowable and reasonable expenses incurred in the adjudication of subscriber benefit claims or incurred in the Carrier's overall operation of the business. Unless otherwise stated in the contract, administrative expenses include, in part: all taxes (excluding premium taxes, as provided in section 1631.205-41), insurance and reinsurance premiums, medical and dental consultants used in the adjudication process, concurrent or managed care review when not billed by a health care provider and other forms of utilization review, the cost of maintaining eligibility files, legal expenses incurred in the litigation of benefit payments and bank charges for letters of credit. Administrative expenses exclude the cost of Carrier personnel, equipment, and facilities directly used in the delivery of health care services, which are benefit costs, and the expense of managing the FEHBP investment program which is a reduction of investment income earned.

(iii) Investment income. **While compliance with the checks presented letter of credit methodology will minimize funds on hand, the** ~~The Carrier is required to~~ **shall** invest and reinvest all funds on hand, including any in the Special Reserve or any attributable to the reserve for incurred but unpaid claims, which are in excess of the funds needed to discharge promptly the obligations incurred under the contract. Investment income represents the net amount earned by the Carrier after deducting investment expenses ~~as a result of investing the FEHBP funds. The direct or allocable indirect expenses incurred in managing the investment program, such as consultant or management fees, are chargeable against the investment income earned.~~ **Investment expenses are those actual, allowable, allocable, and reasonable contract costs which are attributable to the investment of FEHBP funds, such as consultant or management fees.**

(iv) Other charges. (A) Mandatory statutory reserve. Charges for mandatory statutory reserves are not allowable

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unless specifically provided for in the contract. When the term "mandatory statutory reserve" is specifically identified as an allowable contract charge without further definition or explanation, it means a requirement imposed by State law upon the Carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the Carrier and which may be used only with the specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the Carrier, **the Carrier shall return to the FEHBP a pro rata share based upon FEHBP's contribution to the total Carrier's set aside shall be returned to the FEHBP in accordance with FAR 31.201-5.**

(B) Premium taxes. When the term "premium taxes" is used in this contract without further definition or explanation, it means a tax, ~~imposed by State or local statutes upon the Carrier's gross or net premiums received. fee, or other monetary payment directly or indirectly imposed on FEHB premiums by any State, the District of Columbia, or the Commonwealth of Puerto Rico or by any political subdivision or other governmental authority of those entities, with the sole exception of a tax on net income or profit, if that tax, fee, or payment is applicable to a broad range of business activity.~~

(c) Certification of Accounting Statement Accuracy. (1) The Carrier shall certify the annual accounting statement in the form set forth in paragraph (c)(3) of this clause. ~~The certificate shall be signed by the chief executive officer and the chief financial officer of the Carrier.~~ **The Carrier's chief executive officer and the chief financial officer shall sign the certificate.**

(2) The Carrier shall require an authorized agent of its underwriter, if any, also to certify the annual accounting statement.

(3) The certificate required shall be in the following form:

CERTIFICATION OF ACCOUNTING  
STATEMENT ACCURACY

This is to certify that I have reviewed this accounting statement and to the best of my knowledge and belief:

1. The statement was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this ~~contract~~ **reporting** period in conformity with those guidelines.

2. The costs included in the statement are ~~allowable and allocable~~ **actual, allowable, allocable, and reasonable** in accordance with the terms of the contract and with the cost principles of the Federal Employees Health Benefits Acquisition Regulation and the Federal Acquisition Regulation;

3. Income, rebates, allowances, refunds and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the statement;

4. If applicable, the letter of credit account was managed in accordance with 5 CFR part 890, 48 CFR chapter 16, and OPM guidelines.

Carrier Name \_\_\_\_\_ Name of Chief Executive Officer:  
(Type or Print)

\_\_\_\_\_  
Name of Chief Financial Officer:

\_\_\_\_\_  
Signature of Chief Executive Officer:

\_\_\_\_\_  
Signature of Chief Financial Officer:

\_\_\_\_\_  
Date Signed:

Date Signed:

\_\_\_\_\_  
Underwriter:

**Name and Title of Responsible Corporate Official:**

(Type or Print :)

\_\_\_\_\_  
Signature of Responsible Corporate Official:

Date Signed: \_\_\_\_\_

(End of Certificate)

~~[NOTE: As required by subsection (a)(1) of this section, the Carrier, not later than 90 days after the end of the contract period, shall furnish OPM for that period an accounting of its operations under the contract.]~~

**(d) Exceptions for the 3-Year DoD Demonstration Project (10 U.S.C. 1108). (1) The Carrier shall draw funds from its Letter of Credit (LOC) account to pay demonstration project benefits costs in the same manner as it does for benefits costs incurred by regular FEHB members. The Carrier shall account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project shall be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the total claims processed for FEHB Program activity. This same percentage will also be used to determine the amount of the Carrier’s service charge that will be allocated to the demonstration project.**

**(2) The Carrier shall submit a separate annual accounting statement and monthly incurred claims report for demonstration project experience.**

(End of Clause)

- 6. Add a new section 3.12, Audit of Provider Contracts, to authorize audit of certain provider contracts, as follows:

**SECTION 3.12  
AUDIT OF PROVIDER CONTRACTS  
(JAN 2000)**

**(a) Any provider contract or agreement which exceeds 5 percent of the Carrier’s previous year’s total benefit costs under the FEHBP contract is subject to audit by OPM and the Comptroller General of the United States or an authorized representative.**

**(b) If the Carrier enters into a contract or agreement with a provider to provide benefits for this contract and the contract with the provider meets the cost criteria in paragraph (a), the Carrier shall require the provider to make available such documentation as OPM shall require to audit the provider under this clause.**

- 7. Update the introductory paragraph and paragraph (a)5. of Appendix D-a to include website material under supplemental literature, as follows:

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APPENDIX D-a  
FEHB SUPPLEMENTAL LITERATURE GUIDELINES

This is the primary guide a Carrier should use to assess whether the Carrier's supplemental marketing literature, **including website material**, complies with FEHBAR 1603.70, Misleading, Deceptive or Unfair Advertising. (Use the NAIC Guidelines for additional guidance when needed.)

a) 5. Under the FEHBP, the FEHB brochure is ~~based on text approved by OPM and is a complete statement of benefits, limitations, and exclusions~~ **the official statement of benefits**. Include the following statement (**website material should include the statement as a preface**) in all supplemental literature which in any way discusses Plan benefits:

*"This is a summary [or brief description] of the features of the [insert Plan's name]. Before making a final decision, please read the Plan's Federal brochure ([insert brochure number]). All benefits are subject to the definitions, limitations, and exclusions set forth in the Federal brochure."*