

1652.222-70

48 CFR Ch. 16 (10-1-06 Edition)

1652.222-70 Notice of significant events.

As prescribed in 1622.103-70, the following clause shall be inserted in all FEHBP contracts.

NOTICE OF SIGNIFICANT EVENTS (JUL 2005)

(a) The Carrier agrees to notify OPM of any Significant Event within ten (10) working days after the Carrier becomes aware of it. As used in this section, a Significant Event is any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon the Carrier's ability to meet its obligations under this contract, including, but not limited to, any of the following:

- (1) Disposal of major assets;
- (2) Loss of 15% or more of the Carrier's overall membership;
- (3) Termination or modification of any contract or subcontract if such termination or modification might have a material effect on the Carrier's obligations under this contract;
- (4) Addition or termination of provider agreements;
- (5) Any changes in underwriters, reinsurers, or participating plans;
- (6) The imposition of, or notice of the intent to impose, a receivership, conservatorship, or special regulatory monitoring;
- (7) The withdrawal of, or notice of intent to withdraw, State licensing, HHS qualification, or any other status under Federal or State law;
- (8) Default on a loan or other financial obligation;
- (9) Any actual or potential labor dispute that delays or threatens to delay timely performance or substantially impairs the functioning of the Carrier's facilities or facilities used by the Carrier in the performance of the contract;
- (10) Any change in its charter, constitution, or by-laws which affects any provision of this contract or the Carrier's participation in the Federal Employees Health Benefits Program; or
- (11) Any significant changes in policies and procedures or interpretations of the contract or brochure which would affect the benefits available under the contract or the costs charged to the contract.
- (12) Any fraud, embezzlement or misappropriation of FEHB funds; or
- (13) Any written exceptions, reservations or qualifications expressed by the independent accounting firm (which ascribes to the standards of the American Institute of Certified Public Accountants) contracted with by the Carrier to provide an opinion on its annual financial statements.

(b) Upon learning of a Significant Event OPM may institute action, in proportion to the seriousness of the event, to protect the

interest of Members, including, but not limited to—

- (1) Directing the Carrier to take corrective action;
 - (2) Suspending new enrollments under this contract;
 - (3) Advising Enrollees of the Significant Event and providing them an opportunity to transfer to another plan;
 - (4) Withholding payment of subscription income or restricting access to the Carrier's Letter of Credit account.
 - (5) Terminating the enrollment of those enrollees who, in the judgment of OPM, would be adversely affected by the Significant Event; or
 - (6) Terminating this contract pursuant to section 1.15, renewal and withdrawal of approval.
- (c) Prior to taking action as described in paragraph (b) of this clause, the OPM will notify the Carrier and offer an opportunity to respond.
- (d) The carrier will insert this clause in any subcontract or subcontract modification if the amount of the subcontract or modification charged to the FEHB Program (or in the case of a community-rated carrier, applicable to the FEHB Program) equals or exceeds \$550,000 and is at least 25 percent of the total subcontract cost. The amount of the dollar charge to the FEHB Program shall be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act pursuant to 41 U.S.C. 254b(a)(7).

(End of clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27417, July 2, 1990; 70 FR 31383, June 1, 2005; 71 FR 3016, Jan. 19, 2006]

1652.224-70 Confidentiality of records.

As prescribed in 1624.104, the following clause shall be inserted in all FEHBP contracts:

CONFIDENTIALITY OF RECORDS (JAN 1991)

- (a) The Carrier shall use the personal data on employees and annuitants that is provided by agencies and OPM, including social security numbers, for only those routine uses stipulated for the data and published annually in the FEDERAL REGISTER as a part of OPM's notice of systems of records.
- (b) The Carrier shall also hold all medical records, and information relating thereto, of Federal subscribers and family members confidential except as follows:
- (1) As may be reasonably necessary for the administration of this contract;
 - (2) As authorized by the patient or his or her guardian;

(3) As disclosure is necessary to permit Government officials having authority to investigate and prosecute alleged civil or criminal actions;

(4) As necessary to audit the contract;

(5) As necessary to carry out the coordination of benefits provisions of this contract; and

(6) For bona fide medical research or educational purposes. Release of information for medical research or educational purposes shall be limited to aggregated information of a statistical nature that does not identify any individual by name, social security number, or any other identifier unique to an individual.

(c) If the carrier uses medical records for the administration of the contract, or for bona fide medical research or educational purposes, it shall so state in the plan's brochure.

(End of clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27417, July 2, 1990]

1652.229-70 Taxes—Foreign Negotiated benefits contracts.

As prescribed in section 1629.402, the following clause shall be inserted in all FEHBP contracts performed outside the United States, its possessions, and Puerto Rico:

TAXES—FOREIGN NEGOTIATED BENEFITS
CONTRACTS (JAN 1998)

(a) To the extent that this contract provides for performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) "Contract date," as used in this clause, means the effective date of this contract or modification.

"Country concerned," as used in this clause, means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under this contract are made.

"Tax" and "taxes," as used in this clause, include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

"All applicable taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

"After-imposed tax," as used in this clause, means any new or increased tax or

duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions covered by this contract that the Carrier is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

"After-relieved tax," as used in this clause, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions covered by this contract, but which the Carrier is not required to pay or bear, or for which the Carrier obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"Excepted tax," as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales covered by this contract, or any tax assessed on the Carrier's possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(d) The contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Carrier is required to pay or bear, including any interest or penalty, if the Carrier states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Carrier's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Carrier incident to a refund of taxes to the extent that such interest was earned after the Carrier was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the Carrier to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an