

Department of Veterans Affairs
Washington, DC

Worklife and Benefits Service (058)

FLYER

Please provide your local payroll office a copy of this flyer.

Benefits 05-58
November 2, 2005

TO: Chief, HRMS

SUBJ: "Extension to 24 months" for Federal Employees Health Benefits (FEHB) Coverage and Premium Payments for Civilian Employees Called to Active Duty In Support of a Contingency Operation.

On September 17, 2001, VA implemented a policy for the payment of FEHB premiums for enrolled VA Federal civilian employees who entered a leave-without-pay (LWOP) status in order to perform active military duty in excess of 30 days in support of a contingency operation (see Flyer 051-306, dated September 24, 2001). Currently, for eligible employees, VA pays the employee share of their FEHB premiums for a maximum of 18 months.

Section 1101 of the National Defense Authorization Act (NDAA) for Fiscal Year 2005, Public Law (P.L.) 108-375 amended section 8905a of title 5, United States Code (U.S.C.) to provide for an extension of continued coverage under the FEHB Program for up to 24 months. This provision also amended 5 U.S.C. 8906(e)(3) allowing agencies to pay the employee's share, in addition to the government's share, of the FEHB premium for 24 months. These amendments apply to employees called or ordered to active duty on or after September 14, 2001.

The following guidance updates information provided in Flyer 051-335 dated October 28, 2002, to incorporate the amended provisions of 5 U.S.C. 8905a and 8906(e)(3) providing for continued coverage and payment of FEHB premiums up to 24 months.

To be eligible to continue FEHB coverage under 5 U.S.C. 8905a and for payment of the employee's share of the FEHB premium under 5 U.S.C. 8906(e)(3) the employee must:

- a. Be enrolled in FEHB and elect to continue that enrollment.
- b. Be a member of a Reserve component of the armed forces. The Reserve components are: The Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, and the Coast Guard Reserve.
- c. Be called or ordered to active duty (voluntarily or involuntarily) in support of a contingency operation as defined in 10 U.S.C. 101(a)(13).

- d. Be placed on LWOP or separated from service to perform active duty.
- e. Serve on active duty for a period of more than 30 consecutive days.

The beginning date for continued coverage and agency full premium payments provided by P.L. 108-375 is the date the employee is no longer serving in his or her civilian position (the first day of absence from the civilian position) due to being called to active duty, which typically is the same as the reporting date on the military orders. The maximum period of eligibility for each period of active duty is 24 months.

The contingencies and operations covered are provided in the following chart. Due to mission changes, this list may not be comprehensive over time.

Contingency	Authority	Effective Date	Status
Bosnia <ul style="list-style-type: none"> • Operation Joint Endeavor • Operation Joint Guard • Operation Joint Forge 	Executive Order 12982	Dec. 8, 1995	Ongoing
Iraqi Crisis <ul style="list-style-type: none"> • Operation Southern Watch • Operation Northern Watch 	Executive Order 13076	Feb. 24, 1998	Ongoing
Kosovo <ul style="list-style-type: none"> • Operation Allied Force 	Executive Order 13120	Apr. 27, 1999	Ongoing
9/11 Terrorist Attacks <ul style="list-style-type: none"> • Operation Enduring Freedom • Operation Noble Eagle • Operation Iraqi Freedom 	Executive Order 13223	Sept. 14, 2001	Ongoing

Employees who are put in a non-pay status while on military duty **not in support of a contingency operation** can keep their FEHB coverage for up to 24 months. This coverage is covered under title 38 U.S.C. 4317(a)(1)(A), the Uniformed Service Employment and Reemployment Rights Act (USERRA) and provides for continued health coverage for employees called to duty under title 32 or title 10 (whether or not they are called in support of a contingency operation). These are:

- a. Members of the Army National Guard or Air National Guard performing Full-Time National Guard Duty (FTNGD) under title 32, U.S.C., or any provision of state, territorial, or District of Columbia code.
- b. Employees called to active duty under title 10, U.S.C., but not in support of a contingency operation.

During the first 365 days, the employee is responsible for paying the “regular” employee amount of the premium; they can either pay the premiums on a current basis, or they can incur a debt to the Government and repay it when they return to active Federal service. During the remainder of the 24 months, employees are responsible for the full premium (employee share, plus the Government share),

plus a 2 percent administrative fee; these premiums must be paid on a current basis. At the end of the 24 months, FEHB coverage terminates. Employees get a free 31-day extension of coverage during which they can convert to a non-group policy.

Approval Procedures

Employees must provide written notification to the supporting Human Resources (HR) office of their election to retain FEHB coverage during the period of LWOP or separation to perform active duty. The employee must submit proof of qualifying service by providing a copy of written orders to the supporting HR office that specify he or she has been called to active duty in support of a contingency operation. Examples of acceptable written orders include:

- a. If the statutory authority listed on the orders is 10 U.S.C. 12301(a), 12303, or 12304, the employee has provided proof of qualifying service. It is not necessary for the orders to specifically state the words “contingency operation” when any of these statutory authorities are shown; or
- b. If the orders do not specifically provide one of the three statutory authorities shown above, the orders must state that the duty is in support of one of the named contingencies/operations and the statutory authority is a provision of 10, U.S.C. for proof of qualifying service.

Human Resources office will:

- a. Notify employees concerning the benefit and the eligibility requirements.
- b. Give eligible employees the opportunity to elect to continue FEHB coverage and submit the required documents. We recommend that employees be encouraged to keep their FEHB coverage, especially if the VA will be paying the employee’s share of the premium for up to 24 months.
- c. Review military orders provided and employee records to determine eligibility.
- d. Follow documentation procedures stated in Workforce Information Systems Team (WIST) Bulletin 04-14 for approved requests.
- e. Employees who have requested full FEHB premium payment, but are determined by the supporting HR office to be ineligible, should be notified and provided counseling regarding their FEHB options.
- f. HR offices will need to track the 24 months of LWOP for these employees. WIST will provide additional instructions regarding the use of follow-up codes for tracking purposes.
- g. For employees whose coverage terminated at the end of 18 months, HR offices must counsel these returning employees of the option to have their FEHB coverage reinstated and terminated at the end of their eligibility period, not to exceed 24 months. HR offices must stress that the retroactive reinstatement could have a detrimental affect on the employee, since FEHB will become the primary provider, thus allowing TRICARE providers to seek reimbursement from the employee for claims previously paid. The employee must also understand that they would then be responsible for filing a claim with their FEHB provider for this reinstated period of coverage.

The FEHB provider could feasibly pay a lower amount than the TRICARE provider for the same claim. Employees who have already returned from active duty should also be given the option to retroactively reinstate their FEHB coverage up to the 24 months while deployed.

The only time eligible employees will be responsible for their share of the FEHB premium is when they receive a full bi-weekly paycheck during this period. Employees who reach 24 months in a LWOP status will have a free 31-day extension of coverage and the right to convert to an individual policy. These employees are not eligible for temporary continuation of coverage (TCC).

This policy is in keeping with the VA standard to set the example as a model employer in support of Federal employees called or ordered to active duty. These actions exemplify our continuing commitment to provide the greatest possible assistance to these deserving individuals and their families.

The following pages contain some questions and answers that further address this policy and can be used as an employee handout for employees who leave employment to undertake military service and it may also be posted in a prominent place at your facility.

Questions regarding this notice may be directed to Therese Kilgore at (202) 273-8258, Elizabeth White at (202) 273-9801, Christopher Morris at (202) 273-9886, Donna Taylor at (202) 273-7668 or Deborah K. Brodbeck via Outlook.

**Office of Human Resources and Administration
Office of Human Resources Management and Labor Relations**

**Federal Employees Health Benefits (FEHB) Coverage and Premium Payments for Civilian
Employees Called to Active Duty in support of Contingency Operations
Questions and Answers
November 2005**

Q1. When does the 24-month period of eligibility begin if an employee uses paid leave before being placed on leave without pay (LWOP)?

A1. The 24-month period begins the date the employee is no longer serving in his or her civilian position (the first day of absence from the civilian position) due to being called to active duty, which typically is the same as the reporting date on the military orders. For example, an employee is called to active duty on December 1st and uses a combination of paid military and annual leave for 30 days. The LWOP action is prepared with an effective date of January 1st, however, the period of eligibility begins December 1st and continues for no more than 24 months.

Q2. When does the VA pay the employee's share of the FEHB premiums?

A2. VA pays the employee share of the FEHB premium whenever the employee does not receive a "full" biweekly pay check (some of the pay period is in a LWOP status). For example, the employee could be in a pay status for 79 ½ hours during the pay period and still be eligible for VA to pay the employee share of the FEHB premiums.

Q3. Does the use of paid leave intermittently following the date of the LWOP or separation date extend the 24-month period of eligibility?

A3. No. The maximum period of eligibility ends 24 months from the date the employee is no longer serving in his or her civilian position (the first day of absence from the civilian position) due to being called to active duty, which typically is the same as the reporting date on the military orders. Use of intermittent paid leave during a period of military service does not extend the 24-month period.

Q4. Are there any restrictions on the 24-month period for continuing FEHB enrollment when an employee is called to active military service? For example, could an employee serve on active duty for 14 months, exercise restoration rights under part 353 of title 5 of the Code of Federal Regulations, return as a civilian for 2 weeks, and then return to active military service and be entitled to continue FEHB for up to 24 additional months coverage and premium payment? (The 4-month rule requires that the employee have at least 4 consecutive months in a pay status to begin a new 24-month period).

A4. No. There are no restrictions and the 4-month rule does not apply. Therefore, in the example given above, the employee would be eligible to begin a new period of continued FEHB coverage and agency payment of the full premium for up to 24 months. The submission of new or amended orders will begin a new 24-month period of eligibility.

Q5. Should the HR office automatically take corrective actions to void terminations of FEHB coverage at 18 months (the maximum length of time previously permitted) for those employees who are retroactively eligible for 24 months of coverage and full agency premiums due to the retroactive effective date of September 14, 2001, established in Public Law 108-375?

A5. No, the HR office should not take any automatic actions. The employee could be detrimentally affected by a reinstatement of FEHB coverage since FEHB will become the primary provider, thus allowing TRICARE providers to seek reimbursement from the employee for claims previously paid. The employee would then be responsible for filing a claim with their FEHB provider for this reinstated period of coverage. The FEHB provider could feasibly pay a lower amount than the TRICARE provider for the same claim.

Q6. Can employees request that the FEHB coverage previously terminated at 18 months be reinstated for a period up to 24 months?

A6. Employees called to active duty on or after September 14, 2001, who meet all other eligibility requirements, may request in writing that the FEHB coverage terminated at the end of 18 months be reinstated and terminated at the end of their eligibility period, not to exceed 24 months. If the HR office requires documentation to support the request, such as military orders or other proof that their eligibility period continued, the employee is responsible for providing the proof of qualification as appropriate. However, before submitting a request, employees should consider the potentially negative effect reinstatement of FEHB might have on TRICARE claims previously paid.

Q7. Can employees request to be allowed to retroactively reenroll in FEHB coverage if they elected the coverage be terminated at the time of the call to active duty or at anytime prior to reaching the maximum time limit for continued coverage?

A7. No. The amendments to 5 U.S.C., Section 8905a and Section 8906(e)(3)(C) do not provide an event that will allow reinstatement of coverage terminated at the request of the employee.

Q8. What are the tax consequences of this benefit?

A8. The FEHB premiums paid currently and prospectively on behalf of employees serving in support of contingency operations are not considered taxable wages and will have no additional tax withholding liability.

Q9. What happens to the FEHB coverage and full agency premium payment when an eligible employee dies while on active duty during the 24-month period?

A9. The full premium will be paid from current employing agency funds through the date of death. The HR office should notify the designated payroll office contact of the death as soon as possible after receiving notification.