

## **When others are responsible for injuries**

The “When others are responsible for injuries” provision outlines the Plan’s right to pursue reimbursement and subrogation recoveries. These rights are defined below and throughout this recovery provision.

*Reimbursement* means a carrier’s pursuit of a recovery if a covered individual has suffered an illness or injury and has received, in connection with that illness or injury, a payment from any party that may be liable, any applicable insurance policy, or a workers’ compensation program or insurance policy, and the terms of the carrier’s health benefits plan require the covered individual, as a result of such payment, to reimburse the carrier out of the payment to the extent of the benefits initially paid or provided. The right of reimbursement is cumulative with and not exclusive of the right of subrogation.

*Subrogation* means a carrier’s pursuit of a recovery from any party that may be liable, any applicable insurance policy, or a workers’ compensation program or insurance policy, as successor to the rights of a covered individual who suffered an illness or injury and has obtained benefits from that carrier’s health benefits plan.

Many states have laws that do not allow health insurers to reimburse or subrogate against recoveries the insured receives from a negligent third party or other party responsible for payment in the event of an accident. This health plan for federal employees, however, is not subject to those state laws or any regulation issued thereunder, which relates to health insurance or plans.

The Plan’s rights to recover in these situations are based on the terms of this health plan contract, as well as the provisions of the Federal statutes governing the FEHB Program. The rights set forth in this section of the health benefit contract are a condition of, and a limitation on, your eligibility for benefits.

The provisions of this section apply to all current or former plan participants and also to the parents, guardian, or other representative of a dependent child who incurs claims and is or has been covered by the Plan. The Plan’s right to recover (whether by subrogation or reimbursement) shall apply to the personal representative of your estate, your decedents, minors, and incompetent or disabled persons. “You” or “your” includes anyone on whose behalf the plan pays benefits. No adult covered person hereunder may assign any rights that it may have to recover medical expenses from any tortfeasor or other person or entity to any minor child or children of said adult covered person without the prior express written consent of the Plan. Benefits are extended to a covered individual on the condition that the FEHB carrier may pursue and receive reimbursement and subrogation recoveries pursuant to the contract.

The FEHB Plan’s rights to pursue reimbursement and subrogation recoveries arise upon the occurrence of the following:

- The covered individual has received benefits or benefit payments as a result of an illness or injury; and
- The covered individual has accrued a right of action against a third party for causing that illness or injury; or has received a judgment, settlement or other recovery on the basis of that illness or injury; or is entitled to receive compensation or recovery on the basis of the illness or injury, including from insurers of individual (non-group) policies of liability insurance that are issued to and in the name of the enrollee or a covered family member.

Your FEHB plan coverage is always secondary to any payment made or reasonably expected to be made by any party that may be liable for an illness or injury. In addition, the Plan’s right of reimbursement and subrogation extend to all amounts available to or received by or on behalf of the covered individual by judgment, settlement, or other recovery, to the extent of the amount of benefits that have been paid or provided by the carrier. The Plan’s sources of recovery include, but are not limited to:

- A workers compensation program or insurance policy,
- Any non-fault based insurance, including automobile and non-automobile no-fault and medical payments insurance,

- Any liability insurance policy or plan (including a self-insured plan) issued under an automobile or other type of policy or coverage,
- Personal umbrella coverage,
- The covered individual, and
- Any automobile insurance policy or plan (including a self-insured plan), including, but not limited to, uninsured and underinsured motorist, and umbrella coverages.

Since your FEHB plan is always secondary to any automobile no-fault (Personal Injury Protection) or medical payments coverage, you should review your automobile insurance policies to ensure that appropriate policy provisions have been selected to make your automobile coverage primary for your medical treatment arising from an automobile accident.

As outlined herein, in these situations, your FEHB plan may make payments on your behalf for this medical care, subject to the conditions set forth in this provision for the plan to recover these payments from you or from other parties. Immediately upon making any conditional payment, your FEHB plan shall be subrogated to (stand in the place of) all rights of recovery you have against any person, entity or insurer responsible for causing your injury, illness or condition or against any person, entity or insurer listed as a primary payer above.

In addition, if you receive payment from any person, entity or insurer responsible for causing your injury, illness or condition or you receive payment from any person, entity or insurer listed as a primary payer above, your FEHB plan has the right to recover from, and be reimbursed by you for all conditional payments the plan has made or will make as a result of that injury, illness or condition. You and your legal representative agree to hold any such funds in trust until you have confirmed the amount that we are owed and make arrangements to repay us.

Your FEHB plan will automatically have a lien, to the extent of benefits it paid for the treatment of the injury, illness or condition, upon any recovery whether by settlement, judgment or otherwise. The lien may be enforced against any party who possesses funds or proceeds representing the amount of benefits paid by the Plan including, but not limited to, you, your representatives or agents, any person, entity or insurer responsible for causing your injury, illness or condition or any person, entity or insurer listed as a primary payer above.

By accepting benefits (whether the payment of such benefits is made to you or made on your behalf to any health care provider) from your FEHB plan, you acknowledge that the plan's recovery rights are a first priority claim and are to be paid to the plan before any other claim for your damages. The plan shall be entitled to full reimbursement on a first-dollar basis from any payments, even if such payment to the plan will result in a recovery to you which is insufficient to make you whole or to compensate you in part or in whole for the damages you sustained. Your FEHB plan is not required to participate in or pay court costs or attorney fees to any attorney hired by you to pursue your damage claims.

Your FEHB plan is entitled to full recovery regardless of whether any liability for payment is admitted by any person, entity or insurer responsible for causing your injury, illness or condition or by any person, entity or insurer listed as a primary payer above. The Plan is entitled to full recovery regardless of whether the settlement or judgment received by you identifies the medical benefits the plan provided or purports to allocate any portion of such settlement or judgment to payment of expenses other than medical expenses. The FEHB plan is entitled to recover from any and all settlements, judgments or other recoveries and is not impacted by how the recovery is characterized, designated or apportioned (including those designated as for pain and suffering, non-economic damages and/or general damages only).

You, and your legal representatives, shall fully cooperate with the plan's efforts to recover its benefits paid. It is your duty to notify the plan within 30 days of the date when notice is given to any party, including an insurance company or attorney, of your intention to pursue or investigate a claim to recover damages or obtain compensation due to your injury, illness or condition. You and your agents or representatives shall provide all information requested by the plan or its representatives. You shall do nothing to prejudice your

FEHB plan's subrogation or recovery interest or to prejudice the plan's ability to enforce the terms of this provision. This includes, but is not limited to, refraining from making any settlement or recovery that attempts to reduce or exclude the full cost of all benefits provided by the Plan.

Failure to provide requested information or failure to assist your FEHB plan in pursuit of its subrogation or recovery rights may result in you being personally responsible for reimbursing the plan for benefits paid relating to the injury, illness or condition as well as for the Plan's reasonable attorney fees and costs incurred in obtaining reimbursement from you.