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FAMILY ADVOCATE

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- Government benefits



From Civil Servants to Soldiers

A wealth of government insurance benefits
are waiting to be divided.
They must not be overlooked or forgotten

BY STEPHEN C. GLASSMAN

The United States Congress is a potent, if not always consistent, force of change in family law. Over the past decade, Congress has created complex and sometimes ambiguous statutory schemes relating to military and civil-service pensions, and federal health and life insurance. The waters are murky, but a practitioner representing either party in a divorce involving a member of the military or an employee of the federal government, current or former, must jump in.

Health benefits

Military personnel and their dependents are eligible for medical care

in both government and civilian facilities. The same holds true for former spouses, but only those who fall into certain categories.

The first of these is sometimes referred to as the 20/20/20 category: This means that the former spouse was married to a member who served at least 20 years in the military; that the former spouse was married to the member for at least 20 years; and that the years of the marriage and time of military service overlapped for at least 20 years. As long as the former spouse does not remarry, he or she will qualify for both inservice medical care and medical care in civilian facilities. How-

ever, if the former spouse is covered under an employer-sponsored health plan, he or she will not qualify for care under a government plan.

If this spouse has remarried but is over the age of 65, he or she may still qualify if a letter of disallowance for Medicare, Part A, has been issued by the Social Security Administration.

The next category of former spouse is the 20/20/15. In this circumstance, the member or former member performed 20 years of service before the divorce, and the parties were married for at least 20 years, 15 of which occurred during the period the military member was on active duty.

If the marriage ends in divorce or annulment before April 1, 1985, the former spouse will receive the same coverage as 20/20/20's, as long as they don't remarry. If the marriage ends after April 1, 1985, the former spouse receives full benefits, but for only two years.

The last category of former spouses includes all other former spouses, as well as the 20/20/15's who were divorced after April 1, 1985. These former spouses are eligible to purchase coverage through the Uniformed Services Voluntary Insurance Plan (USVIP), which is currently underwritten by Mutual of Omaha Insurance Company. This program, which is designed to replace current military medical benefits, is in the nature of a group policy. Enrollment should occur within 90 days after the divorce or other qualifying event.

(It should be noted that retired reservists and their families are eligible for benefits when the reservist reaches age 60. Therefore, the practitioner should consider a reservist's health-insurance and life-insurance benefits in the divorce process.)

Civilian health care in civilian facilities is also available to former spouses through the Civilian Health and Medical Program of the Uniform Services, or CHAMPUS. CHAMPUS is a participatory program in which a predetermined percentage of the health care that is deemed medically necessary is covered; the covered party contributes 20 to 25 percent of the approved costs and CHAMPUS provides the balance. If the cost of a particular pro-

cedure exceeds the approved cost, then the percentages no longer apply and the covered party must pay the entire uncovered amount. Though CHAMPUS functions much like a private health-care plan, the statute proclaims that:

CHAMPUS is not an insurance program in that it does not involve a contract guarantying the indemnification of an insured party against a specified loss in return for a premium paid. Further, CHAMPUS is not subject to those state regulatory



A service member may decline or modify the coverage, but this must be done in writing



bodies or agencies that control the insurance business generally. (10 U.S.C. §§ 1076(a), 1079, 1086; 5 U.S.C. § 301 and 32 C.F.R., 199.1(d).)

CHAMPUS has one twist: If the covered party lives within certain zip codes around a military hospital, the party must attempt to use the military facility for nonemergency in-patient care. If the hospital cannot provide the in-patient care, then the covered party must obtain a nonavailability statement from that hospital before CHAMPUS will share in the costs.

Life insurance

The concept of life insurance provided by the government for its mili-

tary members dates back to the War Risk Insurance Act of October 6, 1917. The present program, Servicemen's Group Life Insurance, was established in 1965. SGLI provides term insurance, which has no cash, loan, paid-up, or extended insurance value. It does not provide coverage for accidental death or disability. It is an addition to any coverage the service member may have under any other government policy. It is automatically provided to any service member on active duty, in the maximum amount authorized, with premiums automatically deducted.

A service member may decline or modify coverage, but this must be done in writing. The government is not the insurer; Prudential Insurance Company is the primary insurer, with multiple private insurance companies participating as reinsurers. The Veterans Administration has supervisory responsibility for the program.

The maximum amount of coverage is \$50,000, although, pursuant to 30 U.S.C. 767(a), as amended, the military member may elect a lesser amount.

Retired reservists of any service and persons who would be eligible for assignment to the retired reserve are also eligible for coverage. However, retired-reserve coverage is not automatic; a member must apply for it within 120 days after qualifying. Retired-reserve coverage terminates on the reservist's 61st birthday or when he or she receives retired pay, whichever comes first.

The statute must be consulted with care when coverage for reservists is being explored, because there are a number of very specific provisions delineating the scope of the program. For example, certain coverage of part-time reservists stops after each period of qualifying duty, including travel time, and resumes at the start of the next period of duty. If death should occur in the interim there would be no SGLI coverage. Other reservists, because of their status, have SGLI coverage all the time.

A member of the armed services

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who is released from active duty may continue group coverage under the Veterans' Group Life Insurance program, or VGLI. This coverage is not available to retired reservists; however, ready reservists who may be uninsurable at standard rates as a result of disability incurred during a period of active duty or training may avail themselves of the VGLI program. 38 U.S.C., §§ 777(a) and 767(a).

An insured person whose VGLI has been in force for more than five years has a right to an individual policy of permanent insurance equivalent to VGLI coverage, without examination and at standard rates, regardless of his or her health. The insurer may be any private insurance company participating in the VGLI program.

Civil Service health benefits

The federal civil servant, unlike his or her brother or sister in the military, has neither an in-service health-care facility nor a no-premium program underwriting health care in civilian facilities. The civil servant, the foreign-service officer, the CIA employee, and, with some variation, the postal worker, have two broad types of health-care plans. The first is a fee-for-service plan. Within this category are the service-benefit plan, which is a Blue Cross/Blue Shield program that typically provides benefits through direct payment to doctors and hospitals; and the employee-organization plan, in which employee organizations provide services to their membership. In both programs the government normally pays about 60 percent of the average high-option premium.

The second broad category of health-care plans is the prepaid plan, in which a Comprehensive Medical Plan (CMP) or Health Maintenance Organization (HMO) provides or arranges for health care by designated physicians, hospitals, and other providers. Usually CMPs and HMOs are open to all federal employees who live within the plan's enrollment area.

A former spouse may enroll in a government health-benefit plan under certain rather limited conditions. Under the statutory and regulatory scheme, a former spouse who quali-



A former spouse's enrollment ends when the qualifying court order ceases to provide that spouse with a portion of the employee's annuity or a survivor annuity under any of the retirement programs for government employees



fies for health coverage may apply for such coverage within 60 days after the dissolution of the marriage.

In the case of a former employee whose marriage was dissolved after the employee's retirement, application may be made 60 days after dissolution of the marriage, or within 60 days after the retired employee makes an election for the former spouse pursuant to the pension or survivor-benefit programs.

The rules permitting enrollment by a former spouse require the former spouse to have been married to an employee of the federal government, a former employee of the federal government who is receiving an annuity,

or a former CIA or foreign-service employee.

The former spouse may not have remarried before age 55. Additionally, the former spouse must have been enrolled as a family member under the employee's health program during the 18 months preceding the divorce, and the former spouse must be receiving or have a right to receive a portion of the federal employee's retirement or survivor annuity benefits pursuant to a qualifying court order under federal law. Should an employee leave federal service before being eligible for an immediate annuity, the employee's former spouse is eligible for enrollment only if the divorce occurred before the employee left federal service.

Former spouses who meet the foregoing requirements may elect individual coverage or coverage for themselves and the family. In this regard, the family is limited to unmarried, dependent natural or adopted children of both the former spouse and the employee or former employee. An unmarried dependent child must be under age 22 or incapable of self-support because of a mental or physical disability existing before age 22.

A former spouse's enrollment terminates when the qualifying court order ceases to provide that spouse with a portion of the employee's annuity or a survivor annuity under any of the retirement programs for government employees. Likewise, termination occurs if the former spouse remarries before age 55, or dies, or the employee dies leaving no survivor annuity payable to the former spouse. If the former federal employee obtains a refund of retirement money incident to being separated, enrollment by the former spouse is also foreclosed.

Often the estrangement between the federal employee and his or her former spouse is such that the spouse does not have notice of the circumstances of the departure of the federal employee from service. Where a former employee leaves federal service without establishing a right to an immediate or deferred annuity, and dies before meeting the requirements for deferred annuity, the Office of Personnel Management may authorize a temporary extension of coverage for

the former spouse.

The cost to the former spouse of health-care benefits is the full subscription charge for enrollment, including amounts determined to be necessary for administration and certain reserves. Normally, the full subscription charge will be withheld from the former spouse's annuity check. If that is insufficient to cover the amount, the provisions will be made for payment of the premium directly to the retirement system.

Frequently, in negotiating a property-settlement agreement the federal employee will seek to preserve his or her entire pension, and negotiate to avoid electing a survivor-benefit annuity. Because the nonemployee spouse cannot participate in health benefits without some interest in the annuity, counsel may want to preserve a small interest in the pension or survivor benefit—even when these have been waived for other considerations. Of course, if the court order as required by 5 U.S.C. § 8347 and 5 C.F.R. § 831.1701, *et seq.*, is technically inadequate to effect an award of an annuity to a former spouse, the right to health benefits will be lost.

Civil Service life insurance

The Federal Employee's Group Life Insurance statute and regulations (FEGLI) outline the coverage available to federal employees. 5 U.S.C. § 8701, *et seq.*, and 5 C.F.R. §§ 870.101 through 870.902. A FEGLI policy builds no cash or loan value or paid-up or extended insurance. It cannot be assigned to anyone prior to loss. The basic insurance amount is the greater sum of \$10,000 or the employee's basic annual pay rounded to the next \$1,000 plus \$2,000. The maximum basic pay that may be used for the basic insurance amount is the annual rate payable for positions at level two of the Executive Schedule under 5 U.S.C. § 5313. Presently, this amounts to about \$92,000.

There is an extra benefit for employees under the age of 45. The policy pays double if the employee is 35 or younger at the time of death. Beginning on the employee's 36th birthday, the extra benefit decreases 10 percent each year until the employee



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reaches age 45.

FEGLI includes an accidental death and dismemberment (AD&D) benefit, as well as three options to the basic insurance. Option A, referred to as the standard option, increases coverage by \$10,000. Option B, which is sometimes referred to as additional coverage, allows an amount equal to one, two, three, or five times the employee's basic pay. The maximum amount of basic pay to be used for this option is, again, level two of the Executive Schedule, or about \$92,000. Option C is family coverage of \$5,000 for the employee's spouse and \$2,500 for each dependent child.

The cost of basic insurance is shared

by the government and the employee. At present, the employee's cost is about 40.01 cents per month for each \$1,000 of basic insurance coverage. Options A, B, and C are additional charges to the employee.

Coverage of the basic insurance may continue upon retirement. However, an employee must meet certain conditions to carry the insurance into retirement. The employee must be immediately eligible to receive an annuity at the time he or she leaves government service. He or she must have had basic life-insurance coverage under the government program for the entire period during which coverage was available, or for the last five years of service. And the employee must not have converted his or her insurance to an individual policy. No AD&D coverage is available upon retirement.

Beneficiaries under federal insurance are specifically defined under federal law. 5 U.S.C. § 8705. This statute governs precedence of death benefits in a manner similar to a state descent and distribution statute. However, federal law does not prohibit specific designation of a person, firm, corporation, or other legal entity not set forth in the statute as a designated beneficiary. Therefore, a federal employee's life-insurance package is available for consideration as a tool in resolving domestic relations disputes.

Litigation involving federal life insurance, be it under FEGLI or SGLI, usually comes down to questions of entitlement to insurance proceeds. In some cases there is no specifically designated beneficiary. In others there is ambiguity about a particular individual's entitlement.

These cases are numerous, but are not relevant to this discussion and normally are not pertinent to effective planning in a domestic-relations context. The most important duty for the family-law attorney in terms of federal life insurance is to assure that appropriate government forms required to effect a change in beneficiary are completed as part of the initial resolution of the case. This should not be deferred until later. If designation of beneficiary is not accomplished in accordance with federal regulations, it will not be recognized. ■