

United States

**Office of
Personnel Management**
The Federal Government's Human Resources Agency



Tribal Benefits Administration Letter

Number: 14-604

Date: October 9, 2014

Subject: Coverage of Children of Same-Sex Domestic Partners

On October 30, 2013, the Office of Personnel Management (OPM) released final regulations to extend Federal Employees Health Benefits (FEHB) eligibility to children of same-sex domestic partners of tribal employees who live in states that do not allow same-sex couples to marry. For purposes of this document, these children will be referred to as either “newly eligible stepchild” or “newly eligible stepchildren”. These regulations took effect on January 1, 2014.

The purpose of this letter is to provide information that will assist you in implementing this change and counseling tribal employees in FEHB. Please distribute the attached Enrollee Fact Sheet to your employees. (Attachment 2)

There are five attachments to this letter to more efficiently provide information on this change.

- Attachment 1: Step by Step Instructions for FEHB Enrollment Changes
- Attachment 2: Enrollee Fact Sheet
- Attachment 3: FEHB Declaration of Domestic Partnership
- Attachment 4: Tax Certification and List of Fair Market Value Amounts for FEHB
- Attachment 5: List of States Where Same-Sex Marriage is Allowed for Plan Year 2014

General Information

- The new regulation extends FEHB coverage to children of a tribal employee's same-sex domestic partner as "stepchild/stepchildren".
- A domestic partnership is defined as a committed relationship between two adults, of the same sex, in which the partners:
 - Are each other's sole domestic partners and intend to remain so indefinitely;
 - Maintain a common residence and intend to continue the arrangement indefinitely;
 - Are at least 18 years of age and mentally competent to consent to contract;
 - Share responsibility for a significant measure of each other's financial obligations;
 - Are not married or joined in a civil union to anyone else;
 - Are not a domestic partner of anyone else;
 - Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;
- The employee must provide a declaration establishing fulfillment of the above requirements and in which the employee certifies:
 - that they understand that falsification of the documentation may lead to disciplinary action; and
 - that they would marry but for the failure of their state of residence to permit same-sex marriage.
- The employee does not need to meet any further requirements (e.g. state law requirements for registered domestic partners) for a domestic partnership besides those listed above. The completed Declaration of Domestic Partnership establishes employee eligibility for this benefit.
- The employee must submit a FEHB Declaration of Domestic Partnership (we will refer to this document as the "Declaration of Domestic Partnership") to his/her tribal employer. Attachment 3 is a suggested form you can use for this purpose. Please make this declaration available to your employees. The receipt of this required documentation by the tribal employer (Receipt Date) is the qualifying life event (QLE) that permits employees to cover their newly eligible stepchildren.
- To cover a child under FEHB, employees must also complete an SF 2809 to identify the newly eligible stepchildren covered under the enrollment. The employee should complete the SF 2809 even if he or she is adding a newly eligible stepchild to an existing Self and Family enrollment. This is a change from current practice.

The following details the various questions, with answers, that may arise regarding this new benefit.

Federal Employees Health Benefits (FEHB) Program

What does an employee need to do to cover a stepchild who is now eligible for FEHB?

Before the newly eligible stepchild can be covered, an employee must have a current Declaration of Domestic Partnership on file with his or her tribal employer. If the employee is not enrolled

or has a Self Only enrollment, the Receipt Date of the required declaration is considered a QLE and the tribal employee will have 60 days from the Receipt Date to enroll or change the enrollment based on a change in family status. The effective date of coverage will be the first day of the pay period that includes the day the tribal employer received the Declaration of Domestic Partnership.

If the employee has a Self and Family enrollment, the child is covered once the Declaration is submitted. In both cases employees should complete a paper SF 2809 to notify the tribal employer of the name(s) of newly eligible stepchild(ren). See Attachment 1 for step by step instructions.

How can employees change enrollment so that their newly eligible stepchildren are covered under FEHB?

Employees may change their enrollment within 60 days of the Receipt Date. The date the required Declaration of Domestic Partnership is received will be considered a change in family status and will trigger a QLE. The change, executed with a completed SF 2809, will take effect on the first day of the pay period that includes the day the tribal employer received the required Declaration.

Employees should submit the Tax Certification at the same time.

If an employee enrolls or changes enrollment as an open season action, what is the effective date of the newly eligible stepchild's FEHB coverage?

Please advise your employees that the effective date of coverage for newly eligible stepchildren depends on the event code used to enroll or change enrollment. An employee who uses the open season event code will not be able to cover a newly eligible stepchild until the effective date of the open season enrollment or change to Self and Family. The effective date for an employee who submits the required Declaration of Domestic Partnership and *enrolls* as an open season action will be the first day of the first pay period that begins on or after January 1 that follows a pay period during any part of which the employee is in pay status.

The effective date for an employee who submits the documentation and *changes* to Self and Family as an open season action begins January 1.

How does this affect eligibility for Temporary Continuation of Coverage (TCC)?

Former employees and formerly eligible children who are TCC enrollees can now cover children of their same-sex domestic partner as stepchildren.

If TCC enrollees have additional questions about TCC and coverage for newly eligible stepchildren, they may contact the National Finance Center at 800-242-9630 or

nfc.dprs@usda.gov.

Will employees receive information from their FEHB Program plans on these changes?

No, FEHB Program plans will not be notifying enrollees of these changes.

What are the tax implications for the employee?

The employee should submit a Tax Certification when the child is added to coverage letting the tribal employer know whether the newly eligible stepchild is considered their tax dependent. (Attachment 4).

The Tax Certification will remain in effect from year to year, unless the employee files a new Tax Certification. However, employees must be advised that the IRS test for a child's tax dependent status is an annual one, and it is up to the employee to determine every year whether the child meets the applicable test for the entire year and to file a new Tax Certification when and if the child's tax dependent status should change. Failure to submit the Tax Certification will result in taxation of the child's coverage unless and until a Certification is received by the tribal employer that establishes that the child is a tax dependent.

If the newly eligible stepchild is considered a tax dependent, there will be no changes for the employee. **If the newly eligible stepchild is not considered a tax dependent of the employee, income will be imputed based on the fair market value of the FEHB coverage provided to the newly eligible stepchild.** The imputed income for the newly eligible stepchild's FEHB coverage will be included in the employee's pay and they will be taxed on this amount as appropriate.

This tax will be automatically deducted from the employee's paycheck and most employees will not have to do anything. For the 2014 plan year, this may occur either biweekly in every paycheck or as a one-time deduction. The tribal employer should speak with their payroll office to find out when the employee will be taxed in 2014 as payroll offices will have different processes.

What must a tribal employer do to determine if a stepchild is eligible to be covered under FEHB when the enrollee seeks to add the child?

When an employee seeks to add the child of a same-sex domestic partner to their FEHB enrollment as a stepchild, the tribal employer system must first determine whether the child is eligible to be enrolled. The child is only eligible if the enrollee lives in a state that has not authorized same-sex marriage.

Mid-year changes

For employees seeking to add the child to coverage mid-year, the determination of whether a state's marriage laws render a child ineligible for coverage will be based on the law of the state

where the employee lives at the time he or she notifies the tribal employer of the intent to cover the child. The tribal employer must refer to OPM's website for a current list of states which have authorized same-sex marriage. If the employee lives in a state that is NOT on this list, this benefit will be available to them.

Can the child of a same-sex domestic partner that is covered under FEHB as a stepchild remain on the enrollment from plan year to plan year?

Once the child of a same-sex domestic partner is enrolled in FEHB as a stepchild, the employee must inform the tribal employer if the child becomes ineligible for coverage due to a change of residence or a change in state law. The determination will be based on the law of the state where the same-sex couple lives on the last day before Open Season begins for the following plan year. Employees should be advised to refer to the list found at Attachment 5, which can also be found on OPM's website at www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-211attachment5.pdf and will be updated as necessary, in order to be informed of the states in which same-sex marriage is authorized as of the day before Open Season in a given year. Only enrollees who live in states NOT on the list as of the day before Open Season may continue to cover the stepchild in the following plan year.

What if the state changes its law mid-year regarding same-sex marriages?

A child's eligibility for coverage as a newly eligible stepchild in a particular plan year will not be affected by a mid-year change to a state's marriage law or by the couple's relocation to a different state. However, it should be noted that if the enrollee marries his or her same-sex partner mid-year after the state authorizes same-sex marriage or after a mid-year move to a state in which same-sex marriage is authorized, the enrollee should notify his or her tribal employer; the child will automatically be considered the enrollee's tax dependent and there will no longer be any potential tax consequences associated with coverage of the child.

Examples

Joan lives in State X and wishes to cover Annie, the daughter of her same-sex domestic partner.

Change effective in January 2014

Joan files a Declaration of Domestic Partnership with her employing office along with an SF 2809 changing her enrollment to Self and Family on December 27, 2013 and Annie is covered on January 1, 2014. In March of 2014, Pennsylvania authorizes same-sex marriage. Annie can remain covered under Joan's FEHB enrollment as a stepchild for the remainder of 2014. However, she will not be eligible for FEHB as a stepchild for the 2015 plan year since on the day before the start of Open Season for 2015, same-sex marriage is allowed in State X. In order for Annie to be covered under Joan's enrollment for the 2015 plan year, Joan and her same-sex domestic partner must be married. (Please also note that if Joan marries her same-sex domestic partner in 2014 after State X authorizes same-sex marriage and the tribal employer is notified, Annie would automatically be considered Joan's tax dependent and thus the coverage provided

to Annie would not be taxed).

Change effective mid-year

On March 1, 2014, State X authorizes same-sex marriage. Joan notifies her tribal employer that she wants to change her enrollment to Self and Family in June 2014 to cover Annie as a stepchild. Annie is not eligible for FEHB as a stepchild since State X authorizes same-sex marriage at the time that Joan notifies the tribal employer that she desires to enroll Annie.

Are newly eligible stepchildren eligible for TCC when they lose eligibility under a Self and Family enrollment?

Yes, newly eligible stepchildren have the same rights to TCC coverage as all other children eligible for FEHB coverage.

What information does the tribal employer system need to communicate to the payroll provider and FEHB carrier?

OPM recommends that the tribal employer send an SF 2809 with information on the number of non-tax dependents to the payroll provider. See Attachment 1 for more detailed information. We understand that different payroll providers may need to use other methods to receive this information from the tribal employer. We encourage you to speak with your payroll office to discuss the preferred method of communication.

OPM is providing payroll providers with other necessary information for proper taxation of benefits.

The tribal employer should also use the SF 2809 to inform the employee's FEHB carrier of the newly covered child(ren).

If the tribal employer is using a paper SF 2809 to communicate tax dependency status with the payroll office, the SF 2809 should only be transmitted to the payroll office if the child is NOT a tax dependent. The tribal employer will indicate in the Remarks section: "code A (# of children)." For example, if the employee is adding one child who is not a tax dependent the tribal employer will indicate "A1", if the employee is adding two children who are not tax dependents, the tribal employer will indicate "A2" and so on.

If the employee has not submitted a Tax Certification the tribal employer must inform the payroll office that the newly eligible stepchild(ren) is not a tax dependent.

If an employee completes a Declaration of Domestic Partnership and/ or SF 2809 and does not live in a state where this coverage is available, how should the tribal employer notify the employee that his or her child is ineligible?

The tribal employer should notify the employee using the same procedures used to notify employees of all ineligibility determinations. Employees may seek reconsideration of the

eligibility determination as described here: <http://www.opm.gov/healthcare-insurance/healthcare/reference-materials/reference/eligibility-for-health-benefits/> (which is currently available for all ineligibility determinations under FEHB).

Please visit www.opm.gov/insure for the most up-to-date information. We appreciate your assistance in informing employees of these changes to benefits.

If you have any questions regarding this Benefits Administration Letter, please contact Amber Tribal Programs at 202-606-2530 or email tribalprograms@opm.gov.

Sincerely,

John O'Brien
Director for Healthcare and Insurance