



Benefits Administration Letter

Number: 13-210

Date: November 12, 2013

Subject: Coverage of Children of Same-Sex Domestic Partners under FEHB and FEDVIP

On October 30, 2013, the Office of Personnel Management (OPM) released final regulations to extend Federal Employees Health Benefits (FEHB) and Federal Employee Dental and Vision Insurance Program (FEDVIP) eligibility to children of same-sex domestic partners of Federal employees and annuitants.

Under these new regulations, employees and annuitants in same-sex domestic partnerships who would marry but live in states that do not allow same-sex couples to marry may enroll the child of their same-sex domestic partner as a stepchild under FEHB and FEDVIP. These regulations will take effect on January 1, 2014.

The purpose of this letter is 1) to provide a list of current states where same-sex couples are allowed to marry and thus will not be permitted to enroll the child of a same-sex domestic partner to whom they are not married; 2) to provide information on the tax treatment of children newly eligible for FEHB and FEDVIP coverage as a result of this regulatory change; and 3) to inform you that step-by-step guidance on how to cover these children under FEHB and FEDVIP will be forthcoming.

Agencies will need to follow the guidance that will be available soon for all employees and annuitants wishing to cover these newly eligible stepchildren. These enrollment changes do not need to be made during the upcoming Federal Benefits Open Season to be effective for plan year 2014. Employees may enroll or change enrollment as a qualifying life event (QLE) or cover children under an existing FEHB self and family enrollment at any time proper documentation is submitted.

Employees may change enrollment or cover children under an existing FEDVIP enrollment as a qualifying life event (QLE). Employees not currently enrolled in FEDVIP and who wish to elect FEDVIP coverage for the child of their same-sex domestic partner for the 2014 plan year will need to enroll during this upcoming Open Season. We will allow belated FEDVIP Open Season enrollments for 3 months after the Open Season ends for those individuals who wish to enroll and cover children of same-sex domestic partners but are unable to do so during Open Season.

Tax Treatment and Imputed Income

If the newly eligible stepchild is considered a tax dependent under the Internal Revenue Code (IRC) there will be no tax consequences for the employee/annuitant. **However, if the newly eligible stepchild is not considered a tax dependent of the employee/annuitant under the IRC, income will be imputed for the fair market value of the coverage provided to the newly eligible stepchild, as required by law.** The imputed income for the newly eligible stepchild's coverage will be included in the employee/annuitant's pay/annuity and he or she will be taxed as appropriate on that amount. In other words, for employees, the estimated fair market value of the government's financial contribution towards the non-dependent child's coverage must be reported as taxable wages earned. In addition, for those employees paying their portion of the premium pre-tax (receiving "premium conversion"), the allotment that is attributable to a stepchild not considered a tax dependent will be considered imputed income.

Note that there are no tax consequences for annuitants who cover a newly eligible stepchild under FEDVIP, because there is no Government contribution toward premium and annuitants are not permitted to enroll in premium conversion and therefore the annuitant's contribution toward premium is paid with after-tax dollars.

Additional information regarding how employees will be able to inform their home agencies about whether the newly eligible stepchild is a tax dependent will be part of future guidance.

OPM has calculated the fair market value for coverage of children under plans in the FEHB Program and FEDVIP for those receiving and not receiving premium conversion which will be imputed as income for each child covered for plan year 2014. (See Attachment 1). This amount will change annually and be published on OPM's website.

Eligibility Shall Depend on Availability of Marriage in State of Residence

Under the final regulation, employees and annuitants must certify that they are in a domestic partnership (under the criteria in the regulation) and would marry but for the failure of their state of residence to permit same-sex marriage. OPM is providing a list of states where same-sex marriage is allowed. An employee or annuitant wishing to cover the child of his or her same-sex domestic partner as a result of this regulatory change may only do so if he or she does not live in one of the states that authorize same-sex marriage. Enrollees living in states that authorize same-sex marriage who wish to cover the child of their same-sex domestic partner on their FEHB or FEDVIP enrollment must be legally married to their same-sex domestic partner (i.e., the child's other parent).

The list of states that authorize same-sex marriage has been included as Attachment 2 to this document. It will also be posted on OPM's website and will be updated as needed to reflect developments in state law.

Additional guidance on how to cover children of same-sex domestic partners will be published in the next few weeks.

If you have any questions regarding this Benefits Administration Letter, please contact Marguerite Martel at 202.606.0004 or Marguerite.Martel@opm.gov.

Sincerely,

John O'Brien
Director for Healthcare and Insurance