



Tribal Benefits Administration Letter

Number: 13-601

Date: July 19, 2013

Subject: Coverage of Same-Sex Spouses

Section 3 of the Defense of Marriage Act (DOMA) provided that, when used in a Federal law, the term “marriage” would mean only a legal union between one man and one woman as husband and wife, and that the term “spouse” referred only to a person of the opposite-sex who is a husband or a wife. Because of DOMA, the Federal government has been prohibited from recognizing the legal marriages of same-sex couples for purposes of Federal benefit programs.

On June 26, 2013, the Supreme Court ruled that Section 3 of DOMA is unconstitutional. As a result of this decision, the United States Office of Personnel Management is now able to extend benefits to legally married same-sex spouses of FEHB eligible Tribal employees. For purposes of benefits coverage, you must follow the same procedures you currently follow when enrolling an opposite-sex spouse or child(ren) of an opposite-sex marriage. The purpose of this letter is to provide information that will assist you in implementing this change and counseling employees.

General Information

- Because existing same-sex marriages were not recognized by the Federal government before this Supreme Court decision, all same-sex marriages that predate the decision are being treated as new marriages; **Tribal employees will have 60 days from June 26, 2013 (i.e., until August 26, 2013) for enrollment actions.**
- Benefits coverage is now available to a legally married same-sex spouse of an FEHB eligible Tribal employee, regardless of the Tribal employee’s State of residency.
- Legal same-sex marriages entered into following the Supreme Court’s decision will be treated in the same manner as opposite-sex marriages, regardless of the Tribal employee’s state of residency.
- We encourage Tribal employing offices to exercise flexibility in the use of their belated enrollments authority for enrollment actions following the 60 day time period.
- FEHB carriers will be instructed to follow the same procedures they follow when adding or providing coverage for an opposite-sex spouse or child(ren) of opposite-sex marriages.
- The Supreme Court’s decision addressed the constitutionality of a statute that defined “marriage” and “spouse” for purposes of federal law to include only opposite-sex couples. Therefore, same-sex couples who are in a civil union or other forms of domestic partnership other than marriage will remain ineligible coverage under the FEHB Program.

- From this point forward, the word “spouse” in any OPM documentation pertaining to the programs discussed in this BAL refers to both same and opposite-sex spouses, the word “marriage” refers to both same and opposite-sex marriages, and the word “child” refers to children of both same and opposite-sex marriages. If there is a need to differentiate between same and opposite-sex spouses or their marriages or child(ren), OPM will do so explicitly.
- OPM will work with the National Finance Center to ensure that the Tribal Insurance Processing System (TIPS) is updated to allow for these changes in eligibility. In the meantime, please follow the alternative procedures provided in the list serv released on July 8, 2013. The FEHB plans have been notified of these alternative procedures.

What are the changes to FEHB Program family member eligibility rules?

As a result of the Supreme Court’s decision, legally married same-sex spouses will now be eligible family members under a Self and Family enrollment. **Coverage is available to a legally married same-sex spouse of an FEHB eligible Tribal employee, regardless of their State of residency.** This decision does not extend coverage to registered domestic partners or individuals in civil unions.

In addition, the children of same-sex marriages will be treated just as those of opposite-sex marriages and will be eligible family members according to the same eligibility guidelines. This includes coverage for children of same-sex spouses as stepchildren.

***Example:** Tonya is an FEHB enrollee. She and her same-sex spouse, Sally, have two children together but Tonya is not biologically related to the children nor has she adopted them. Based on the eligibility changes, Tonya can cover Sally and their children under her Self and Family enrollment. If Tonya already has a Self and Family enrollment, she may contact her carrier directly to notify them of her newly eligible family members. If Tonya has a Self Only enrollment, she will need to complete an SF 2809 to change her enrollment to Self and Family.*

These changes to family member eligibility are effective immediately.

When will new enrollments and enrollment changes based on the Court’s decision be effective?

OPM will consider the date of the Court’s decision as the date of the event that permits the enrollment or change. Tribal employees will have 60 days from June 26, 2013 until August 26, 2013, to make changes to their FEHB enrollment or to newly enroll in FEHB. Specific effective dates are as follows:

- If a Tribal employee enrolls or changes from Self Only to Self and Family to cover a spouse, the enrollment or change is effective on the first day of the first pay period that begins after the date the employing office receives the appropriate request and that follows a pay period during any part of which the Tribal employee is in pay status.

- If the Tribal employee chooses to enroll or change to Self and Family based on acquiring a child, the change is effective on the first day of the pay period in which the child became a an eligible family member for FEHB purposes, June 26, 2013.
Note: The Self and Family premium begins on the effective date of the change to Self and Family, but coverage for the child and spouse cannot begin until the actual date of the decision (when the child becomes an eligible family member) or date of the marriage (if after the decision). There is no pay status requirement under this circumstance.
- Tribal employing offices are encouraged to use exercise flexibility in the use of their belated enrollment authority for enrollment actions following the 60-day time period. When a belated enrollment is allowed, tribal employing offices should provide an additional 60 days for up to 6 months following the release of the decision to make enrollment changes. When processing a late election, indicate the reason for doing so in the Remarks section of the 2809. Coverage will be effective the first day of the first pay period that begins after the date the enrollment change is received.

What does an individual need to do to cover a spouse or a child who is now eligible?

If a Tribal FEHB enrollee currently has a Self and Family enrollment, his/her newly eligible spouse or child(ren) will be automatically covered as of June 26, 2013. Enrollees should notify their FEHB Program plan carrier about their newly eligible spouse and child(ren). Enrollees must also notify their Tribal employing office. Family member information must be input into TIPS and an informational SF 2809 produced. Just like any other newly eligible family member, carriers may ask for documentation such as a valid marriage license or birth certificate to confirm eligibility but carriers will be instructed to follow the same procedures they currently follow when adding a spouse or child to a Self and Family enrollment. Carriers will be cautioned against imposing any new rules in response to the Supreme Court’s decision that could be seen as having either the purpose or effect of creating barriers to enrollment for legally married same-sex couples.

If a Tribal FEHB enrollee currently has a Self Only enrollment and would like to change to a Self and Family enrollment, in order to add his/her same-sex spouse or newly eligible child(ren), he/she must do so by August 26, 2013. Tribal Benefits Officers must process these enrollment actions using the Tribal Insurance Processing System “TIPS” (while TIPS is being updated, please follow the procedures provided in the list serv sent on July 8, 2013). The life event code to use on the SF 2809 is ‘1C’ for employees participating in premium conversion, and ‘5C’ for employees not participating in premium conversion. If an enrollee misses the 60-day window and is not allowed a belated enrollment, he/she must wait until the annual Open Season to change enrollment.

If a Tribal employee is not currently enrolled in the FEHB Program and would like to enroll in a Self and Family plan to cover his/her newly eligible family members, he/she must do so by August 26, 2013. Individuals notify their tribal employer and tribal benefits officers must process these enrollment actions using TIPS (while TIPS is being updated, please follow the procedures provided in the list serv released on July 8, 2013). The QLE code is ‘1C’ for employees participating in premium conversion and ‘5C’ for employees not participating in

premium conversion.

If an enrollee misses the 60-day window and is not granted a belated enrollment, he/she must wait until the annual Open Season or another Qualifying Life Event to enroll in a plan. Open Season will begin in November 2013. Changes made during Open Season will be effective on the first day of the first pay period in January and that follows a pay period during any part of which the Tribal employee is in pay status.

For Tribal employees who participate in premium conversion, cancellation of an FEHB enrollment will only be allowed in order to avoid dual enrollments. If two tribal FEHB enrollees who are employed by the same tribe, tribal organization, or urban Indian organization are married and newly eligible as spouses based on the Supreme Court decision, the Tribal employees may consolidate their FEHB enrollments into one Self and Family enrollment by cancelling one enrollment and making changes, if needed, to the other. FEHB enrollees are encouraged to notify their FEHB carrier of any newly eligible family members under a Self and Family enrollment. This applies even in cases when the spouses are employed by different Tribal employers.

Note: Cancellation is allowed at any time by Tribal employees who do not participate in premium conversion.

How will same-sex marriages entered into following the issue of this letter be treated?

For purposes of FEHB coverage, same-sex marriages entered into after the issue date of this letter will be treated in the same manner as opposite-sex marriages and will trigger a QLE. Benefits coverage will be available to a legally married same-sex spouse of an FEHB eligible Tribal employee, regardless of their State of residency.

How will same-sex divorces be treated following the issue of this letter?

For purposes of FEHB coverage, same-sex divorces following the issue date of this letter will be treated in the same manner as opposite-sex divorces and will trigger a QLE.

If you have any questions, please contact the Tribal Desk at 202-606-2530 or tribalprograms@opm.gov.

Sincerely,

John O'Brien
Director
Healthcare and Insurance