



Healthcare  
and Insurance

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

November 20, 2014

Dear Tribal Leader,

Purpose

We are writing with an update on the implementation of Section 409 of the Indian Health Care Improvement Act (IHCIA) (25 U.S.C. § 1647b), referred to in this letter as “Section 409”. Section 409 authorizes tribes and tribal organizations operating programs under the Indian Self-Determination and Education Assistance Act (ISDEAA) and urban Indian organizations operating a program under Title V of the Indian Health Care Improvement Act (IHCIA) to purchase coverage under the Federal Employees Health Benefits (FEHB) Program. The rationale for the passage of this provision is that since tribes were receiving grants and contracts to perform activities that the federal government should do, those employees of the tribe should also receive federal benefits as well. For purposes of this document, tribes, tribal organizations and urban Indian organizations are referred to as “tribal employers” and their employees as “tribal employees”.

The U.S. Office of Personnel Management (OPM) opened enrollment to FEHB for tribal employers on May 1, 2012. We are pleased to report that there are approximately 11,500 tribal employees covered under FEHB representing 62 tribal employers across the country.

OPM strives to constantly improve this program and respond to the unique needs of Indian Country. Based on these goals as well as feedback we have heard from tribal employers, OPM is making several changes to the eligibility policies and procedures for the FEHB for tribal employers.

Background

In implementing Section 409, OPM considered several approaches to define the scope of eligibility for tribal employees since this area was not specifically covered in the law. Based on response to feedback from tribal employers, OPM extended FEHB to all tribal employers with an ISDEAA or IHCIA contract, compact, grant, or funding agreement. If a tribal employer elects FEHB, all employees of the tribe, tribal organization, or urban Indian organization are eligible for FEHB. OPM also adopted an “all or nothing” policy, which required that a tribal employer could only participate in FEHB if they purchased coverage for all of the tribal employer’s common law employees. OPM required that a tribal employer must have their name listed on an ISDEAA or IHCIA contract, compact, grant, or funding agreement to participate in the FEHB Program.

Changes to “All or Nothing” Eligibility Policy

As OPM began to implement the program, we heard from many tribal employers that the “all or nothing policy” was a major deterrent to their selection of FEHB coverage for their employees. Based on this feedback and knowledge OPM has gained in the two years since enrollment

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opened, OPM is now amending the eligibility policy to accommodate the unique situations of tribal employers.

Rather than requiring enrollment of tribal employees within all lines of business (billing units) of a tribal employer, a tribal employer with a federal ISDEAA or IHCIA contract, compact, grant, or funding agreement may now enroll one or more billing units carrying out programs or activities under the contract, compact, grant, or funding agreement. Once a tribal employer has enrolled at least one billing unit carrying out programs or activities under a federal ISDEAA or IHCIA contract, compact, grant, or funding agreement in FEHB, the tribal employer may enroll one or more billing units that are not carrying out programs or activities under the tribal employer's ISDEAA or IHCIA contract, compact, grant, or funding agreement.

For example, Tribal Employer X has a valid ISDEAA contract in its name to provide medical services to its members. Tribal Employer X has several billing units. Tribal Employer X runs a health clinic that provides medical services to its members. Tribal Employer X offers enrollment to employees working for their health clinic, a line of business that carries out programs under their ISDEAA contract. Since Tribal Employer X has enrolled the health clinic, Tribal Employer X can now enroll employees that perform transportation services for the tribe, a commercial line of business.

A billing unit that is part of a tribe, tribal organization, or urban Indian organization and that has its own ISDEAA or IHCIA contract, compact, grant, or funding agreement may participate in the FEHB Program in its own right and enroll the tribal employees of the billing unit in the FEHB Program, whether or not its parent tribe, tribal organization, or urban Indian organization participates in the FEHB Program. A billing unit enrolling under this paragraph may not enroll any additional billing units of the tribe, tribal organization, or urban Indian organization in the FEHB Program.

For example, Tribal Employer X has a valid ISDEAA contract in its name and runs a health clinic that provides medical services to its members. The health clinic also has an ISDEAA contract in the name of the health clinic. The health clinic may enroll its employees in the FEHB Program without the participation of Tribal Employer X because the health clinic has their own ISDEAA contract, but they would not be able to enroll other lines of business, such as transportation services employees, because the transportation employees are employees of Tribal Employer X and not employees of the health clinic.

A participating tribal employer must offer FEHB coverage to all common law tribal employees of each billing unit the tribal employer chooses to enroll in FEHB.

#### Additional Changes

Based on our understanding of the business processes of tribal employers, OPM is no longer requiring that the tribal employer's name be on the ISDEAA or IHCIA contract, compact, grant, or funding agreement. A tribal employer may now enroll its tribal employees for FEHB benefits in any of the following situations:

- 1) **Tribal Employer Name Listed:** The tribal employer has a valid ISDEAA or IHCIA contract, compact, grant, or funding agreement in its own name;

- 2) **Tribal Employer is Part of a Consortium:** The tribal employer is named in a valid ISDEAA or IHCIA contract, compact, grant or funding agreement as part of a consortium of tribal employers;
- 3) **Tribal Employer Performs Specific Work for Tribal Employer Named in Contract:** The tribal employer is carrying out ISDEAA or IHCIA programs on behalf of a tribal employer named in a valid ISDEAA or IHCIA contract, compact, grant, or funding agreement and has written authorization from the named tribal employer;
  - a) For example, Tribal Employer X has a valid ISDEAA contract, compact, grant, or funding agreement in its name to provide medical services to its members. Tribal Employer X creates Tribal Employer Y for purposes of managing a medical clinic to serve Tribal Employer X members. Tribal Employer X provides OPM with a letter that Tribal Employer Y is serving these purposes. Tribal Employer Y may purchase FEHB for its tribal employees.
- 4) **Tribal Employer Delegates Authority:** The tribal employer delegates another tribal employer named in a valid ISDEAA or IHCIA contract, compact, grant, or funding agreement to carry out programs on behalf of the original tribal employer pursuant to written authorization to carry out the programs;
  - a) For example, Tribal Employer X passes a resolution that delegates Tribal Employer Y to provide health services on its behalf. Tribal Employer Y obtains a valid ISDEAA contract, compact, grant, or funding agreement in its name to provide these health services. Without the authorizing resolution, Tribal Employer Y would not be able to obtain an ISDEAA or IHCIA contract, compact, grant, or funding agreement. Tribal Employer X provides OPM with the resolution. Tribal Employer X may purchase FEHB for its tribal employees.

We believe these changes will be beneficial to tribes, tribal organizations and urban Indian organizations and we are committed to continuing to strengthen our tribal partnerships. Please feel free to contact the Tribal Desk at 202.606.2530 with any questions.

Sincerely,



John O'Brien  
Director  
Healthcare and Insurance