



Tribal Benefits Administration Letter

Number: 14-605

Date: October 20, 2014

Subject: Federal Employees Health Benefits (FEHB) Program Modification of Eligibility to Certain Employees on Temporary Appointments and Certain Employees on Seasonal and Intermittent Schedules

Background

To further the goal of providing affordable health insurance to Federal employees and other employees enrolled in the Federal Employees Health Benefits (FEHB) Program, the United States Office of Personnel Management (OPM) has issued a final rule modifying coverage under the FEHB Program to include certain temporary, seasonal, and intermittent employees who are identified as full-time employees. This regulation makes FEHB coverage available to these newly eligible employees no later than January 2015, and includes an opportunity for a tribal employer participating in FEHB to provide written notification to the Director that it has chosen not to apply this expansion of eligibility for its workforce.

This regulatory modification of eligibility is intended to ensure, to the greatest extent practicable, that full-time employees, within the meaning of section 4980H of the Internal Revenue Code (IRC) and Treasury regulations thereunder (79 FR 8544, February 12, 2014) are eligible to enroll in FEHB. Under this regulation, a full-time employee is defined as an employee who is employed on average 130 hours in a calendar month.

The final regulation is available here:

<http://www.gpo.gov/fdsys/pkg/FR-2014-10-17/pdf/2014-24652.pdf>

OPM recognizes that tribal employers who are entitled to participate in FEHB may not want or need to modify coverage to temporary, seasonal, and intermittent employees. Some of these tribal employers may have fewer than 50 employees, or some may have made other arrangements to provide health insurance for their full-time temporary, seasonal, and intermittent employees. **As such, the final rule allows tribal employers to provide a written notification to the Director of OPM that it has chosen not to apply this expansion of eligibility to its workforce.**

Prior to this final regulation, most employees on temporary appointments became eligible for FEHB coverage after completing one year of current continuous employment and, once eligible, did not receive an employer contribution to premium. Employees working on seasonal schedules for less than six months in a year and those working intermittent schedules were excluded regardless of the work hours for which they were expected to be scheduled. Some limited exceptions were made to these exclusions for temporary firefighters and emergency response workers in 2012 in 5 CFR 890.102(h) and (i).

Under this final regulation, employees on temporary appointments, employees on seasonal schedules who will be working a schedule of less than six months per year, and intermittent employees who are expected to work 130 hours per month or more for at least 90 days will be eligible to enroll in an FEHB plan. Those temporary employees working for 12 consecutive months who are already eligible to enroll in the FEHB Program and who are expected to work for 130 hours per month for at least 90 days will now be eligible to receive a full employer contribution toward the FEHB premium.

This final rule follows a notice of proposed rulemaking published July 29, 2014. During the 30 day comment period for that proposed rule we received questions from Federal agencies, shared service providers, and tribal organizations. Many of those questions were addressed in the preamble to the final rule. Please review the final rule carefully in case your question is not addressed here.

Additional information

We have included with this letter an informational Q&A that will help tribal employers as they consider this FEHB modification. Please distribute this information promptly to staff that may need it.

For questions about the FEHB Program and this regulation, please contact Marguerite Martel, Senior Policy Analyst at 202-606-0004 or email at Marguerite.Martel@opm.gov.

Tribal employers may also send questions concerning interpretation and technical guidance on FEHB law, regulations and policy to tribalprograms@opm.gov.

Employees should direct questions to their Human Resources Office.

Sincerely,

John O' Brien
Director
Healthcare and Insurance

Operational Questions and Answers for Implementing the FEHB Eligibility Modification

When can newly eligible employees enroll and when are they effective?

Enrollments for newly eligible employees will be accepted during a 60 day period after the employing office notifies employees of their eligibility to enroll in a FEHB health plan. Coverage will become effective as provided for by 5 C.F.R. 890.301 (the first day of the first pay period that begins after the date the employing office receives an appropriate request and that follows a pay period during any part of which the employee is in pay status). Employing offices should determine eligibility of existing temporary, seasonal, and intermittent employees, and upon determining eligibility, promptly offer employees an opportunity to enroll in the FEHB Program so that coverage becomes effective no later than January 2015. Employing offices will continue to determine eligibility of individuals first employed after the effective date of this regulation.

How will eligible employees be identified?

Employing offices will be responsible for identifying newly eligible employees, as they are now. Employing offices will identify newly eligible temporary, seasonal, and intermittent employees, record their selection of FEHB coverage, and withhold the employee share of premium from wages.

What happens if employees originally expected to meet the criteria for enrollment work fewer hours?

Employing offices must make a prospective determination at time of hire, or at the time the rule becomes effective, about whether a newly eligible temporary, seasonal, or intermittent employee is likely to meet the criteria to be included in the eligibility modification. Employing offices do not have to report to OPM about how that determination is made. If the employing office determines that the individual is eligible, but that employee actually works fewer hours, coverage cannot be rescinded based on actual hours worked. For this reason, OPM expects that employers will use their best judgment in extending benefits to temporary, seasonal, and intermittent employees.

What happens if a full-time employee is expected to work for fewer than 90 days, but the employee actually works for 90 days or more?

A full-time employee who is expected to work for fewer than 90 days is considered to be in a 90 day waiting period and no offer of FEHB coverage should be made. If the expectation changes, that employee should be notified by the employing office and given an opportunity to enroll promptly, but no later than the 91st day of employment. FEHB coverage would be prospective, as it is in most circumstances, rather than retroactive to the first day of employment.

What is the earliest date a newly eligible employee could get coverage?

The effective date of this rule is November 17, 2014. Employers who are not waiving application of this rule should be prepared to offer coverage at that time. This final rule is being published now so that newly eligible full-time temporary, seasonal, and intermittent employees can be enrolled no later than January 2015.

Will the employer pay the same contribution to premium as for other FEHB enrollees?

Eligible full-time temporary, seasonal, and intermittent employees will receive a full employer contribution to premium. The Part Time Career Act allows employing offices to pro-rate the employer contribution for certain employees working between 16 and 32 hours per week. However, the Part Time Career Act specifically excludes temporary and intermittent employees. As such, employers are not authorized to pay a pro-rated premium for any temporary or intermittent employees.

Do employing offices have to count work hours for each employee during a calendar month?

To implement this FEHB eligibility modification, employing offices must make a prospective determination about how many hours each temporary, seasonal, and intermittent employee is expected to work and whether the employee is expected to work at least 90 days. That prospective determination is an estimate of the hours that the employee will work, rather than an actual count of hours worked.

Can employing offices use a pay-period based timekeeping system rather than a calendar month based system?

OPM expects that employers will continue to use their pay-period based timekeeping systems. There is no requirement that employers use a calendar month based timekeeping system in order to make the prospective determination about full-time status of newly eligible employees. The final rule references calendar month hours so that the rule's definition of full-time is consistent with the definition in the Affordable Care Act and the IRS regulations.

Do the same rules apply regarding break-in-service, continuity of coverage, and non-pay status for newly eligible employees as for those who were already eligible to participate in FEHB?

Generally, all the same rules about break-in-service, continuity of coverage, and non-pay status would apply for these newly eligible employees as for all other employees.

Will OPM issue a new form 2809?

OPM is reviewing all forms and may make changes to forms and instructions in the future. Employers can continue to use the current for 2809 to record new FEHB enrollments.

Should employers identify those already on the payroll that now qualify for enrollment?

Yes, employers should review employment records and determine which temporary, seasonal, and intermittent employees qualify for an offer of FEHB coverage. Employers should make an offer of coverage promptly so that coverage can be effective no later than January 2015.

Which employers are eligible for the waiver described in paragraph (k)?

Generally, Federal agencies would not qualify for a waiver and must take steps to implement the modification. Employers of employees not identified at 5 U.S.C. 8901(1)(A) may request a waiver. Tribal employers may notify the Director in writing if they choose not to apply this eligibility modification.