



Benefits Administration Letter

Number: 13-211

Date: 12/11/2013

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) and Federal Employee Dental and Vision Insurance Program (FEDVIP) eligibility to children of same-sex domestic partners of Federal employees and annuitants who would marry their partners but 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 a “newly eligible stepchild” or “newly eligible stepchildren”). These regulations will take effect on January 1, 2014.

The purpose of this letter is to provide information that will assist you in implementing this change and counseling employees and annuitants for FEHB and FEDVIP. Please distribute the attached Enrollee Fact Sheet to your employees and annuitants. (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 and FEDVIP Enrollment Changes
- Attachment 2: Enrollee Fact Sheet
- Attachment 3: FEHB/FEDVIP Declaration of Domestic Partnership
- Attachment 4: Tax Certification and List of Fair Market Value Amounts for FEHB and FEDVIP
- Attachment 5: List of States Where Same-Sex Marriage is Allowed for Plan Year 2014

General Information

- The new regulation extends FEHB and FEDVIP coverage to children of an employee/annuitant'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/annuitant must provide a declaration establishing fulfillment of the above requirements and in which the employee/annuitant 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 or annuitant 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 or annuitant eligibility for this benefit.
- The employee or annuitant must submit a FEHB/FEDVIP Declaration of Domestic Partnership (we will refer to this document as the "Declaration of Domestic Partnership") to his/her employing office or retirement system. Attachment 3 is a suggested form you can use for this purpose. Please make this declaration available to your employees/annuitants. The receipt of this required documentation by the employing office or retirement system (Receipt Date) is the qualifying life event (QLE) that permits employees and annuitants to cover their newly eligible stepchildren.
- To cover a child under FEHB, employees and annuitants must also complete an SF 2809 to identify the newly eligible stepchildren covered under the enrollment. The employee or annuitant 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 necessary to document the enrollment of the stepchild for tax purposes.
- Employees and annuitants must also contact BENEFEDS at <https://www.benefeds.com/> to cover newly eligible stepchildren under FEDVIP.
- Employees and annuitants (except annuitants enrolled only in FEDVIP, as there are no tax consequences for an annuitant who covers a newly eligible stepchild under FEDVIP) should also submit a Tax Certification (see Attachment 4 for a suggested form) at the same time as the Declaration of Domestic Partnership. A Tax Certification is not a requirement for covering the stepchild, however, failure to submit a Tax Certification will result in taxation of the coverage provided to the newly eligible stepchild. The term "tax dependent" as used in this document means a dependent as defined in Internal Revenue Code Section 152 (determined without regard to subsections (b)(1) (b)(2) and (d)(1)(B)) or a stepchild as defined under state law who, as of the end of the taxable year, has not attained age 27, whether or not that stepchild can be claimed as a dependent on the

employee's or annuitant's tax return. You should counsel employees and annuitants to seek advice from a competent tax professional before certifying as to the tax status of the stepchild. Employees and annuitants need to submit a new Tax Certification to the employing office or retirement system if the child's tax dependent status changes.

- If appropriate, the employing office/ retirement system should use the SF 2809 to inform the FEHB plan and/ or payroll office of the name(s) of a newly eligible stepchild and whether each newly eligible stepchild identified in the SF 2809 is a tax dependent. See Attachment 1 for more detailed information. Certain agencies and payroll offices (such as DFAS) may need to use a different method of notification.
- The employee/annuitant has up to 60 days from the Receipt Date to change enrollment to add the newly eligible stepchild to FEHB and FEDVIP. For FEHB, the change will take effect on the first day of the pay period that includes the day the employing office/retirement system receives the Declaration of Domestic Partnership after 1/1/2014. For FEDVIP, the change will take effect on the first day of the pay period following the day the employee/annuitant notifies BENEFEDS. As premiums will be due on this date, it is to the employee's advantage to submit the required documentation and enrollment change request at the same time.
- If the employee/annuitant has already completed a declaration of domestic partnership for Federal Long Term Care Insurance Program (FLTCIP), they must still file a new declaration for FEHB or FEDVIP as the declarations are different.

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/annuitant need to do to cover a stepchild who is now eligible for FEHB?

Before the newly eligible stepchild can be covered, an employee or annuitant must have a current Declaration of Domestic Partnership on file with his or her employing office/retirement system. If the employee/annuitant is not enrolled or has a Self Only enrollment, the Receipt Date of the required declaration is considered a QLE and the employee/annuitant 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 employing office or retirement system received the Declaration of Domestic Partnership.

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

Note that annuitants and compensationers who are not enrolled in FEHB will not be allowed to enroll; they can only make changes to an existing enrollment.

How can employees enroll or change enrollment so that their newly eligible stepchildren

are covered under FEHB on January 1, 2014?

For most Federal agencies, an employee must submit a Declaration of Domestic Partnership to the employing office so that it is received by January 11, 2014, and complete the steps outlined in Attachment 1 (including submitting an SF 2809) for the newly eligible stepchild's coverage to begin on January 1, 2014. Employees also should submit a Tax Certification at this time. The employee must complete the steps outlined in Attachment 1 for the newly eligible stepchild's coverage to begin on January 1, 2014.

Employing agencies should notify the FEHB plan and the payroll provider that coverage will become effective on January 1, 2014, in most cases, using the SF 2809. If the employing office is using an 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 employing office 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 employing office will indicate "A1", if the employee is adding two children who are not tax dependents, the employing office will indicate "A2" and so on. The employee will begin paying premiums on December 29, 2013, (the first day of the pay period that includes January 1, 2014) but coverage will not be effective until January 1, 2014.

Note: Some agencies may have different pay period dates.

How can annuitants and compensationers change enrollment so that their newly eligible stepchildren are covered under FEHB on January 1, 2014?

For a newly eligible stepchild to be covered on January 1, 2014, the annuitant's or compensationer's Self and Family enrollment must be in effect on or before that date. For CSRS and FERS retirees, the retirement system must receive the Declaration of Domestic Partnership no later than January 31, 2014, for the child's coverage to begin January 1, 2014. Annuitants must also submit the Tax Certification at this time. The annuitant or compensationer must complete the steps outlined in Attachment 1 for the newly eligible stepchild's coverage to begin on January 1, 2014.

Note: For annuitants of other retirement systems (including the Office of Workers' Compensation Programs) the declaration must be received by the end of the pay period that includes January 1, 2014. The change to Self and Family will be effective on the first day of the pay period that includes January 1, 2014, and the child's coverage will begin on January 1, 2014.

The retirement system/OWCP should notify the FEHB plan and the payroll provider, in most cases, using the SF 2809, that the newly eligible stepchild's coverage is effective on January 1, 2014. If OWCP/retirement system is using an SF 2809 to communicate tax dependency status to the payroll office, the SF 2809 should be transmitted to the payroll office only if the child is NOT a tax dependent. OWCP/retirement system 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 OWCP/retirement system will indicate "A1", if the employee is adding two children who are not tax dependents, OWCP/retirement system will indicate "A2" and so on.

How can employees/annuitants change enrollment so that their newly eligible stepchildren are covered under FEHB after January 1, 2014?

After January 1, 2014, employees/annuitants 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 employing office/retirement system received the required Declaration.

Employees and annuitants 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 in January and that follows a pay period during any part of which the employee is in pay status. For most Federal agencies, this will be January 12, 2014.

The effective date for an employee who submits the documentation and *changes* to Self and Family as an open season action is the first day of the first pay period that begins in January.

If an annuitant or compensationner changes enrollment as an open season action, what is the effective date of their FEHB coverage?

The effective date for an annuitant who submits the required documentation and changes to Self and Family as an open season action is the first day of the first pay period in January. For CSRS and FERS annuitants, this will be January 1, 2014.

For annuitants of other retirement systems, including the Office of Workers' Compensation Programs, this date may be different.

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/annuitants 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/annuitant?

The employee/annuitant should submit a Tax Certification when the child is added to coverage letting the employing office or retirement system know whether the newly eligible stepchild is considered their tax dependent.

The Tax Certification will remain in effect from year to year, unless the employee or annuitant files a new Tax Certification. Note, however, that the test for determining a child's tax dependent status is an annual one, and it is up to the employee or annuitant to determine every year whether the child meets the applicable test for the entire year and to file a new Tax Certification if the child's tax dependent status changes. Failure to submit the Tax Certification will result in taxation of the child's coverage. If the newly eligible stepchild is considered a tax dependent, there will be no changes for the employee/annuitant.

If the newly eligible stepchild is not considered a tax dependent of the employee/annuitant, 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/annuitant's pay/annuity and will be taxed.

This tax will be automatically deducted from the employee/annuitant's paycheck or annuity; employees and most annuitants will not have to do anything. For annuitants who have elected no income tax withholding, the imputed income amount will be reported on Form 1099-R but tax will not be withheld. It will be the responsibility of the annuitant to pay any income taxes owed when he or she files an income tax return. For the 2014 plan year, tax withholding may occur either biweekly in every paycheck (monthly in the case of annuitants), or as a one-time deduction. The employing office or retirement system should speak with its payroll provider to determine when taxes will be withheld in 2014 as payroll providers will have different processes.

What must an employing office or retirement system do to determine if a stepchild is eligible to be covered under FEHB when the enrollee or annuitant seeks to add the child?

When an employee or annuitant seeks to add the child of a same-sex domestic partner to their FEHB or FEDVIP enrollment as a stepchild, the employing office or retirement 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.

Changes effective in January 2014

For enrollees seeking to add a stepchild during January 2014, the determination of whether a state's marriage laws render a child ineligible for coverage will be based on the list of states in

Attachment 5. If the enrollee lives in a State that is NOT on this list, this benefit will be available to them.

Mid-year changes

For employees or annuitants 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 or annuitant lives at the time he or she notifies the employing office or retirement system of the intent to cover the child. The employing office/retirement system must refer to OPM's website for a current list of states which have authorized same-sex marriage. If the employee or annuitant 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/annuitant must inform the employing office/retirement system if the child becomes ineligible for coverage in the following plan year, which may occur 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 and annuitants should be advised to refer to the list found at Attachment 5, which can also be found on OPM's website 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. Note, however that if the enrollee marries his or her same-sex domestic 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 employing office or retirement system; 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, State X 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 employing office 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 authorized same-sex marriage. Joan notifies her employing office 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 under this regulation since State X currently permits same-sex marriage at the time that Joan notifies the employing office that she desires to enroll Annie. In order for Annie to be covered under Joan's enrollment, Joan and her same-sex domestic partner must be married.

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 employing office/retirement system need to communicate to the payroll provider and FEHB carrier?

OPM recommends that the employing office 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 employing office. 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 employing office should also use the SF 2809 to inform the employee's FEHB carrier of the newly covered child(ren).

If the employing office is using an 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 employing office 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 employing office will indicate "A1", if the employee is adding two children who are not tax dependents, the employing office will indicate "A2" and so on. The employee will begin paying

premiums on December 29, 2013, (the first day of the pay period that includes January 1, 2014) but coverage will not be effective until January 1, 2014.

If the employee/annuitant has not submitted a Tax Certification the employing office/ retirement system must inform the payroll office that the newly eligible stepchild(ren) is not a tax dependent.

If an employee or annuitant 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 employing office notify the employee or annuitant that his or her child is ineligible?

The employing office should notify the employee or annuitant using the same procedures used to notify employees or annuitants of all ineligibility determinations. Employees/ annuitants 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).

Federal Employees Dental and Vision Insurance Program (FEDVIP)

What does an employee/annuitant need to do to cover a newly eligible stepchild under FEDVIP?

Before the newly eligible stepchild can be covered, an employee or annuitant must have a current Declaration of Domestic Partnership on file with their employing office/retirement system. If the employee/annuitant has Self Only coverage, the Receipt Date is considered the QLE and the employee/annuitant will have 60 days from this date to contact BENEFEDS to make an enrollment change based on acquiring an eligible family member. If the employee/annuitant has a Self and Family enrollment, the newly eligible stepchild will not be covered until he or she contacts BENEFEDS.

For 2014, if the employee/annuitant wants to enroll in FEDVIP to cover the newly eligible child, they must enroll as an Open Season change. The employee/annuitant can enroll during Open Season from November 11-December 9, 2013 or as a 2014 belated enrollment Open Season change through March 9, 2014. Premiums will need to be paid back to January 1 if the employee or annuitant elects a belated Open Season enrollment change. If the employee or annuitant does not enroll in coverage during the Open Season or as a 2014 belated enrollment Open Season change, they must wait until Open Season for the 2015 plan year to enroll in FEDVIP and add the child to coverage.

See Attachment 1 for step by step instructions for the various changes to FEDVIP enrollment.

How can employees enroll or change enrollment so that their newly eligible stepchildren are covered under FEDVIP on January 1, 2014?

An employee must submit the Declaration of Domestic Partnership to the employing office and then make an Open Season change to their enrollment and add their newly eligible stepchild by contacting BENEFEDS. See Attachment 1 for more details. Employees should also submit the Tax Certification at the same time.

Employees who are not currently enrolled in FEDVIP MUST elect FEDVIP coverage as an Open Season change.

How can annuitants and compensationers change enrollment so that their newly eligible stepchildren are covered under FEDVIP on January 1, 2014?

An annuitant or compensationer must submit the Declaration of Domestic Partnership to the retirement system or OWCP and then make an Open Season change to their enrollment and add their newly eligible stepchild by contacting BENEFEDS. See Attachment 1 for more details.

Annuitants and compensationers who are not currently enrolled in FEDVIP MUST elect FEDVIP coverage as an Open Season change.

How can employees/annuitants enroll or change enrollment so that their newly eligible stepchildren are covered under FEDVIP after January 1, 2014?

After January 1, 2014, employees/annuitants may change their enrollment by contacting BENEFEDS within 60 days of the Receipt Date. The Receipt Date will trigger the QLE of acquiring an eligible family member. The change will take effect on the first day of the pay period following the one in which BENEFEDS receives the change request.

For employees/annuitants who are not currently enrolled in FEDVIP, they MUST elect FEDVIP coverage as an Open Season change or as a 2014 belated Open Season change.

Employees must also submit the Tax Certification at the same time.

Will employees/annuitants receive information from their FEDVIP plan on these changes?

No, FEDVIP plans will not send notices to all employee/annuitants of the dependent coverage changes.

What are the tax implications for an employee electing FEDVIP?

The employee should submit a Tax Certification when the child is added to coverage to let the employing office know whether the newly eligible stepchild is considered a tax dependent.

The Tax Certification will remain in effect from year to year, unless the employee files a new Tax Certification. Note, however, that the test for a stepchild'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 if the child's tax dependent status changes. Failure to submit the Tax Certification will result in taxation of the child's coverage.

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 will be taxed.

The tax will be automatically deducted from the employee's paycheck or annuity; employees will not have to do anything.

What are the tax implications for an annuitant electing FEDVIP?

There will be no tax consequences for annuitants.

What must an employing office or retirement system do to determine if a stepchild is eligible to be covered under FEDVIP when the enrollee or annuitant seeks to add the child?

The process is the same as with FEHB; see the corresponding answers and examples in the FEHB section on p 6.

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

The process is the same as with FEHB; see the corresponding answers and examples in the FEHB section on p 7.

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

The process is the same as with FEHB; see the corresponding answers and examples in the FEHB section on p.7.

What information does the employing office need to communicate to BENEFEDS?

If there is a newly eligible stepchild who is not a tax dependent added to the employee's FEDVIP , the employing office will need to send BENEFEDS the name of the employee and the name(s) of the newly eligible stepchildren who are not tax dependents.

The employing office must send an email to FEDVIPAdministration@ltpartners.com to notify BENEFEDS with the name of the enrollee, the state the enrollee lives in and the names of children that are NOT tax dependents.

Federal Flexible Spending Account Program (FSAFEDS)

Are there any changes to FSAFEDS as a result of this regulation?

An employee using FSAFEDS may not elect paperless reimbursement if they are covering a newly eligible stepchild that is not considered a tax dependent for the 2014 plan year. When enrolling in an FSAFEDS account for the following year, the employee will be prompted to answer a question on whether they are covering a newly eligible stepchild who is not a tax dependent. If the answer is yes, the employee will not be able to elect paperless reimbursement.

Need more information? Visit www.FSAFEDS.com or call 1-877-372-3337/ TTY 1-800-952-0450.

Premium Conversion

Are there any changes to premium conversion as a result of this regulation?

Employees enrolling the children of a same-sex domestic partner as a stepchild under FEHB and FEDVIP are still permitted to be enrolled in premium conversion and their allotment amount will not change. However, the portion of the premium allotment that is attributable to coverage of a stepchild not considered a tax dependent will be separately imputed back to the employee as income and the imputed amount will be subject to applicable taxes, with the net effect being that the portion of the employee share of premium attributable to the child's coverage is taxed.

Other Federal Benefits Programs

Other Federal benefits programs are not affected by this change in regulation.

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 Rachel Royster at 202.606.4181/Rachel.Royster@opm.gov or Marguerite Martel at 202.606.1772/Marguerite.Martel@opm.gov.

Sincerely,

John O'Brien
Director for Healthcare and Insurance