



Benefits Administration Letter

Number: 13-206

Date: August 28, 2013

Subject: The Federal Employees Health Benefits (FEHB) Program and the Affordable Care Act:

- Health Insurance Marketplace
- Notice to Employees about the New Health Insurance Marketplace
- Minimum Value Standard

The Health Insurance Marketplace does not affect the FEHB Program.

The following Federal employees may wish to review the coverage options in the Health Insurance Marketplace at www.healthcare.gov:

- a Federal employee who is ineligible to enroll in the FEHB Program,
- a Federal employee who is eligible to enroll in the FEHB Program but is not enrolled due to affordability issues or concerns, or
- a Federal employee who is enrolled in the FEHB Program and has affordability issues or concerns.

Please be sure that your employees know the following if they apply to and are covered under a plan in the Health Insurance Marketplace:

- there is no government or employer contribution to the premiums for plans in the Health Insurance Marketplace, and
- premiums are paid on an after-tax basis for plans in the Health Insurance Marketplace.

In addition, please be sure that your employees know that if they are eligible to enroll in the FEHB Program but they do not enroll or if they cancel their FEHB enrollment, they should be aware of the consequences of such actions including the following but not limited to:

- If an employee dies, he/she will not have an FEHB Self and Family enrollment for his/her survivors to continue, even if he/she is eligible for a survivor annuity.
- If an employee retires, he/she will not have an FEHB enrollment to continue into retirement. Also, to be eligible to continue FEHB coverage after retirement, a retiring employee must be enrolled or covered under the FEHB Program for the five years of service immediately before retirement, or, if less than five years, for all service since the first opportunity to enroll. An employee can count his/her coverage under TRICARE toward meeting this requirement. However, the employee must be enrolled in an FEHB health plan on the date of retirement to continue coverage.

Background

The Patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (collectively, the Affordable Care Act) establishes the Health Insurance Marketplace under Section 1311(b).

Section 1512 of the Affordable Care Act created a new Fair Labor Standards Act (FLSA) section 18B requiring a notice from employers to employees of coverage options available through the Health Insurance Marketplace. This includes Federal agencies.

The U.S. Department of Labor (DOL) issued their Technical Release 2013-02 on May 8, 2013 entitled *Guidance on the Notice to Employees of Coverage Options Under Fair Labor Standards Act § 18B and Updated Model Election Notice Under the Consolidated Omnibus Budget Reconciliation Act of 1985*. This guidance is located at www.dol.gov/ebsa/newsroom/tr13-02.html.

The DOL's Model Notice to Employees of Coverage Options

The DOL Technical Release 2013-02 located at www.dol.gov/ebsa/newsroom/tr13-02.html provides temporary guidance regarding the notice requirement under FLSA 18B and announces the availability of the Model Notice to Employees of Coverage Options located at www.dol.gov/ebsa/pdf/FLSAwithplans.pdf.

OPM has modified this Notice for Federal agencies and their employees by shortening it from 3 pages to 1 page. The attached Notice entitled “New Health Insurance Marketplace Coverage Options and Your Health Coverage” (Attachment 1) contains the necessary information that DOL requires employers to provide employees as indicated in their Technical Release 2013-02. We have included a cover letter (Attachment 2) to accompany the required Health Insurance Marketplace Notice.

According to the DOL Technical Release 2013-02:

Beginning October 1, 2013, employers are required to provide the Health Insurance Marketplace Notice to each new employee at the time of hiring. For 2014, the Department of Labor will consider a Notice to be provided at the time of hiring if the Notice is provided within 14 days of an employee's start date.

By October 1, 2013, employers are required to provide the Health Insurance Marketplace Notice to all their current employees.

The Notice is required to be provided automatically, free of charge. The Notice must be provided in writing in a manner calculated to be understood by the average employee. It may be provided by first-class mail. Alternatively, it may be provided electronically if the requirements of the Department of Labor's electronic disclosure safe harbor at 29 CFR 2520.104b-1(c) are met.

29 CFR 2520.104b-1(c) is located at www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=997d3b593ae3a66e6c13e82ebda0ee6d&n=29y9.1.3.3.3&r=PART&ty=HTML#29:9.1.3.3.3.1.10.1

The Health Insurance Marketplace Notice refers to the “minimum value standard.”

The Affordable Care Act establishes a minimum value standard of benefits for employer- sponsored health plans. All FEHB health plans are eligible employer-sponsored plans. An employer-sponsored health plan meets the "minimum value standard" if the plan's share of the total allowed benefit costs covered by the plan is no less than 60 percent of such costs. Therefore, the minimum value standard is 60% (actuarial value).

All FEHB health plans are eligible employer-sponsored plans. The health coverage of all the plans in the FEHB Program meets the Affordable Care Act’s minimum value standard for the benefits that each FEHB plan provides.¹

Temporary Continuation of Coverage (TCC) Notices to Separating Employees, Former Spouses, and Children who Cease Being Eligible for Coverage

In light of the DOL Technical Release 2013-02 guidance for the model COBRA election notice, OPM will be adding the following information to the three sample TCC notices in the FEHB Handbook:

We also want to inform you that the Patient Protection and Affordable Care Act did not eliminate TCC or change the TCC rules. If you would like to learn more about the Affordable Care Act including the health insurance marketplace, please visit www.healthcare.gov.

Please incorporate this information into your TCC Notices for separating employees, former spouses, and children who cease being eligible for coverage now. For your convenience, we have attached the three TCC sample notices (Attachments 3, 4, and 5).

This information will be added to the Standard Form (SF) 2810, the Notice of Change in Health Benefits Enrollment. We will inform you when this additional information has been added to the SF 2810.

Please work with the appropriate offices in your agency to ensure that your agency provides every employee with the required Health Insurance Marketplace Notice as indicated in the DOL Technical Release 2013-02.

If you would like more information regarding the Health Insurance Marketplace, please visit, www.healthcare.gov and www.cms.gov/CCIIO/Programs-and-Initiatives/Insurance-Programs/index.html.

¹ As a comparison point, the actuarial value of most FEHB plans meets or exceeds the actuarial value of the silver plan on the health insurance marketplace exchanges.

If you have questions, please contact your agency's Headquarters Benefits Officer. If you do not know who this person is, please go to <http://apps.opm.gov/abo/> where you will find a list of agencies and their Headquarters Benefits Officers. Headquarters Benefits Officers should contact Ellen Gay at Maryellen.Gay@opm.gov with any questions.

Sincerely,

John O'Brien
Director
Healthcare and Insurance

Enclosures