

Subject: OPM Issue Papers for Tribal FEHB

Attached please find two sets of papers discussing various issues involved in the Federal Employees Health Benefit (FEHB) and the Federal Employees' Group Life Insurance (FEGLI) programs for tribes, tribal organizations and urban Indian organizations.

The first set of papers was presented at the NCAI mid-year conference on June 14, 2011. Both sets of these issue papers will be discussed at a break out session at the Northwest Portland Area Indian Health Board and California Rural Indian Health Board joint meeting. The session will be hosted by OPM representatives and will take place on Thursday, July 21st at 9 PM. We hope to see you there.

Please respond with any comments to the attached papers. We will carefully consider your comments and suggestions.

Feel free to pass this information on to others that may be interested. If others would like to be added to our email list, please have them email TribalPrograms@opm.gov. More information about these programs can be found on our website: www.opm.gov/TribalPrograms.

Tribal employer access to FEHB and FEGLI

In March 2010, President Obama signed the Patient Protection and Affordable Care Act, commonly known as health care reform. Among other changes to our nation's health care system, this law allows certain Indian tribes, tribal organizations, and urban Indian organizations to purchase Federal Employees Health Benefits (FEHB) and Federal Employees' Group Life Insurance (FEGLI) for their employees.

The Office of Personnel Management (OPM) administers FEHB and FEGLI for Federal employees. OPM has entered into consultation with tribes, tribal organizations, and urban Indian organizations to determine how tribal employers can access FEHB and FEGLI coverage on behalf of their employees.

This is set 1 of 2 sets of issue papers. These cover eligibility, enrollment, termination of coverage/disenrollment, and Tribal employer and employee contributions.

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Tribal Benefits paper # 01:

Eligibility for Federal Employee Health Benefits (FEHB)
and Federal Employees' Group Life Insurance (FEGLI)

Purpose:

This paper discusses the determination of eligibility for health benefits and life insurance benefits through programs administered by the Office of Personnel Management (OPM). OPM's goal is to implement these programs for tribal employees and to administer them as closely as possible to the way they are administered for Federal employees.

Which tribal employers will be eligible to purchase FEHB and FEGLI coverage on behalf of their employees?

The healthcare reform law states that employees of: (1) urban Indian organizations carrying out programs under Title V of the Indian Health Care Improvement Act; and (2) tribes or tribal organizations carrying out programs under the Indian Self-Determination and Education Assistance Act are entitled to purchase coverage, rights, and benefits for their employees, so long as the necessary contributions are paid into the appropriate trust fund.

Using the Departments of Interior (DOI) and Health and Human Services (HHS) lists of established tribal entities as a basis for contacts, OPM will reach out to these tribal entities to explain the FEHB and FEGLI enrollment opportunity. OPM will request a preliminary response from tribes about whether they plan to participate in these programs.

OPM understands that new tribal entities are recognized by the United States Government periodically. We will make every effort to work with DOI and HHS to be inclusive, including tribal entities that are in the process of receiving Federal recognition.

Tribal employers should note the following in making a decision about participation:

- The benefits will be fully funded by tribal employer and employee contributions with no contribution from the United States Government.
- The benefits will be available to full time and part-time workers and their families, but not retirees.
- There are two important requirements in order to maintain the stability of the FEHB and FEGLI risk pools:
 - At a minimum, Tribal employers must contribute the "Government share" to the cost of FEHB coverage. The Government share is approximately 70% of average premiums under the program.
 - At a minimum, Tribal employers must contribute the "Government share" to the cost of Basic Life Insurance under the FEGLI Program, with the employees contributing the rest of the cost, and the full cost for any Optional insurance elected. The Government share is approximately 33 1/3% of Basic insurance premiums.

- Tribal employers that offer FEHB and FEGLI benefits may not offer alternative health and life insurance products to employees eligible for FEHB and FEGLI.

Which tribal employees will be eligible to enroll in FEHB and FEGLI benefits?

Full and part-time employees of tribal employers that have elected to participate in FEHB and/or FEGLI benefits can enroll for coverage. All tribal employees that are considered common law employees will be eligible to enroll in FEHB and FEGLI. (For details on the common law standard see pages two and three of: <http://www.irs.gov/pub/irs-utl/x-26-07.pdf>) Contract employees, retirees, and volunteers will not be eligible to enroll in FEHB and FEGLI. In keeping with United States tax law, all required employment taxes must be paid for employees to be eligible for FEHB and FEGLI.

OPM will accommodate scenarios that are unique to tribal employment when appropriate.

FEHB and FEGLI premiums will be deducted from an employee's paycheck. These payments, as well as employer contributions, must be current to continue enrollment.

Can an employee's family be covered by FEHB and FEGLI?

Tribal employees can choose one of two available FEHB coverage levels: self only and self and family. Self only enrollments cover the employee, but no family members. Self and family enrollments cover the employee, spouse, and any children under the age of 26, including adopted children and stepchildren. Foster children under age 26 will be covered if they meet the additional requirements described at <http://www.opm.gov/insure/health/reference/handbook/fehb28.asp#FosterChildren>. Under these Federal programs, same-sex partners are not eligible family members. These are the same coverage options available to Federal employees.

Under FEGLI, tribal employees can elect Family Option-C coverage. Option C insures a spouse and eligible dependent children, and is a benefit paid to the tribal employee in the event of the death of a family member. To be eligible, dependent children must be unmarried and under age 22 or, if age 22 or over, incapable of self-support because of a mental or physical disability that existed before the child reached age 22. Eligible children also include adopted children, stepchildren, and foster children if they meet certain criteria

How will FEHB coverage interact with Federal health coverage, such as Medicare, Medicaid, VA, and IHS?

FEHB coverage for tribal employees will work the same way it does for Federal employees. In most cases, employees who are eligible for other Federal health coverage can enroll in those programs, but coordination of benefits rules would determine which coverage is primary and would pay first for covered health care services.

How will the introduction of the State Health Insurance Exchanges affect a tribal employee or tribal employer's decision to participate in FEHB?

The State Health Insurance Exchanges, also authorized by the health care reform law, will begin in 2014 as a new marketplace for individuals and small employers to purchase health insurance coverage. Generally, a tribal employer with fewer than 101 employees may need to make a decision about whether to elect FEHB coverage or purchase coverage in a State Health Insurance Exchange.

Similarly, a tribal employee may have to decide whether to participate with FEHB or purchase an individual insurance product on a State Health Insurance Exchange.

Since the Health Insurance Exchanges are still being developed, we do not know how benefits, premiums, and provider networks will compare to FEHB.

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Tribal Benefits paper # 02:

Enrollment in Federal Employee Health Benefits (FEHB) and Federal Employees' Group Life Insurance (FEGLI)

Purpose:

This paper discusses the process of enrollment in health benefits and life insurance benefits through programs administered by the Office of Personnel Management (OPM).

How will tribal employers offer FEHB and FEGLI benefits to employees?

In order to maintain the stability of the risk pool for both FEHB and FEGLI, tribal employers may not offer alternative major medical coverage to employees eligible for FEHB or life insurance coverage to employees eligible for FEGLI. Therefore, tribal employers will need to decide whether or not to offer FEHB and FEGLI benefits to their eligible employees. OPM will reach out to tribal employers and ask for a decision about participation.

Tribal employers must commit to paying their share of the premiums for their employees enrolled in FEHB. They will be required to pay, at minimum, the same percentage as Federal agencies are required to pay for active non-postal employees, which is approximately 70% of average premiums. This will maintain the stability of the FEHB risk pool and avoid the potential for adverse risk selection which would increase costs for current members of the FEHB risk pool.

Tribal employers must also commit to paying their share of premium for employees who elect to enroll for FEGLI Basic coverage, which is about 33 1/3% of premiums. (Please see discussion of FEGLI below.)

What options will tribal employees have for FEHB and FEGLI coverage?

Tribal employees will have the same choices for FEHB coverage as Federal employees in the same geographic area, including ten fee for service plan options with nationwide coverage. Most employees will also have a choice of Health Maintenance Organizations (HMOs) which operate in specific geographic service areas. All FEHB plans offer comprehensive major medical coverage, including inpatient and outpatient hospital care, primary care and specialist office visits, and pharmacy coverage, among other benefits. Some FEHB plans offer limited vision and dental coverage. Fee for service plans also offer benefits coverage for individuals who travel or reside overseas. A tribe, tribal organization or urban Indian organization may not direct its employees toward a single plan option among the FEHB choices; the choice of plan is an individual enrollee decision.

Basic FEGLI coverage is not automatic for Tribal employees. An election must be made by employees to enroll in FEGLI Basic insurance coverage. Tribal employees can choose to enroll in Basic and/or Optional FEGLI coverage (to elect any optional coverage, an employee must have Basic insurance). Basic FEGLI coverage consists of: (1) term life insurance in the amount of the employee's annual salary rounded up to the next \$1000 plus \$2000 payable upon the employee's death; and (2) accidental death and dismemberment (AD&D) insurance in the same amount as term life insurance payable in the event of a fatal accident or an accident resulting in the loss of a limb or eyesight. An additional Basic FEGLI amount is payable for employees under the age of 45.

There are three forms of Optional FEGLI coverage: A, B, and C. Option A is \$10,000 worth of life insurance, and \$10,000 of AD&D. Option B is additional life insurance equal to one, two, three, four, or

five times the employee's actual rate of annual basic pay rounded to the next \$1,000. Option C is insurance to cover eligible family members, including spouses and unmarried dependent children under age 22. The coverage amount is an amount equal to up to five multiples of \$5,000 for a spouse and up to five multiples of \$2,500 for each eligible child. Employees pay the full cost for optional coverage.

When can tribal employees enroll in FEHB and FEGLI benefits?

A new employee may enroll in any available plan, option, and type of enrollment within 60 days after the start of employment. Tribal employees will also be able to enroll in FEHB during the annual Open Season, usually held between mid-November and mid-December each year. Coverage elections made during Open Season will be effective for the following calendar year. New enrollments can also be made within 60 days of a qualifying life event such as a marriage, divorce, or birth or adoption of a child. These are the same enrollment opportunities available to Federal employees.

Tribal employees will be eligible to enroll in FEGLI for [90] days after the benefit becomes available. Enrollment changes can be made within 60 days of a qualifying life event (see <http://www.opm.gov/insure/health/reference/handbook/fehb10.asp#qle>). A qualifying life event is defined as a marriage, divorce, death of spouse, or acquisition of an eligible dependent child. There is no annual open season for FEGLI enrollment.

How will eligible tribal employees enroll in FEHB and FEGLI benefits?

Eligible employees of participating tribal employers will receive information about FEHB plan choices and premiums. Employees who wish to enroll will complete an election form indicating which plan, option, and enrollment status they would like. For those who enroll during open season, coverage and paycheck deductions will begin on January 1. For those who enroll due to a qualifying life event, coverage will begin the first day of the next pay period.

Tribal Benefits paper # 03:

Termination of Coverage and Disenrollment from Federal Employees' Health Benefits (FEHB) and Federal Employees' Group Life Insurance (FEGLI) for Tribal Employees

Purpose:

This paper discusses the termination of coverage and disenrollment for health benefits and life insurance benefits through programs administered by the Office of Personnel Management (OPM).

Background:

This document outlines the key questions for determining when FEHB and FEGLI coverage ends for both tribes and tribal employees. OPM plans to implement these programs for tribal employees and to administer the program as closely as possible to the way the programs are administered for Federal employees.

When can a tribe, tribal organization, or urban Indian organization disenroll in FEHB and FEGLI?

Once a tribe, tribal organization or urban Indian organization elects to participate in FEHB and/or FEGLI programs, they may only disenroll at the next Open Season. Tribes should notify OPM whether they intend to voluntarily withdraw from the Federal program(s) by September 30 of each year. Withdrawal shall be effective on January 1st of the next year.

Generally, a Tribal employee may cancel FEGLI coverage at any time. Opportunities to reenroll later are limited.

When do FEHB and FEGLI benefits automatically terminate for tribes, tribal organizations or urban Indian organizations?

If a tribe or tribal organization loses its Indian Self-Determination and Education Assistance Act (ISDEAA) contract with the United States Department of Health and Human Service or the United States Department of the Interior, FEHB and/or FEGLI benefits for their employees will automatically terminate. Each employee will receive a 31 day extension of coverage.

If an urban Indian organization loses their grant or contract with the Indian Health Service pursuant to Title V of the Indian Health Care Improvement Act, FEHB and/or FEGLI benefits for their employees will automatically terminate. Each employee will have a mandatory 31 day extension of coverage.

When are a tribal employee's FEHB and FEGLI benefits automatically terminated?

A tribal employee's FEHB and/or FEGLI benefits will automatically terminate, subject to a 31 day extension, on the earliest of the following dates:

- the last day of the pay period in which they separate from the tribal employer;
- the last day of the pay period in which they change to a position that is excluded from coverage;
- the last day of the pay period in which they die;
- the day they are separated, furloughed, or placed on leave of absence to serve in the uniformed services for duty over 30 days, if they elect in writing to have their enrollment terminated.

When does coverage end for the eligible family members of a tribal employee?

An eligible family member's coverage terminates (subject to a 31-day extension of coverage), at midnight on the earlier of the following dates:

- the day the tribal employee changes enrollment to Self Only or enrollment terminates;
- the day the person no longer an eligible family member.
- the last day the Tribe, Tribal organization, or urban Indian organization is eligible to offer FEHB/FEGLI benefits to its employees

Do tribal employees have a right to convert to a private life insurance contract or health benefits contract with their own health plan?

Yes, tribal employees have conversion rights and can convert to these types of contracts. If a tribal employee's enrollment terminates, they are entitled to convert to an individual policy offered by the carrier of his or her plan. The tribal employee will not be required to provide evidence of insurability.

If a tribal employee voluntarily cancels enrollment or the plan was discontinued, the tribal employee will not be eligible to convert.

Do employees have the right to purchase temporary continuation of coverage for their health insurance if they lose FEHB coverage?

Yes, if tribal employees lose their FEHB coverage because they separate from the tribal employer, they may enroll under the Temporary Continuation of Coverage (TCC) provision of the FEHB law to continue their coverage for up to 18 months. TCC is also available for former spouses and children that no longer meet the definition of eligible family member.

Tribal Benefits paper # 04:

Tribal Contributions to Federal Employee Health Benefits (FEHB) and Federal Employees' Group Life Insurance (FEGLI)

Purpose:

This paper discusses the Tribal contribution requirement related to access to health benefits and life insurance benefits through programs administered by the Office of Personnel Management (OPM).

Why are Tribes required to pay a portion of their employees' FEHB insurance premium payments?

Federal employees have approximately 70 percent of the weighted average of the FEHB premiums paid by their employer as the "Government share" of premiums. As the "employing office" for individuals eligible for coverage under this new provision, Tribal employers will be required to pay at least this amount of the premium for their tribal employees. This minimum contribution is required to avoid the potential for adverse selection and to protect the FEHB risk pool.

How much will Tribal employers be required to contribute to their employees' insurance premium payments?

At a minimum, the Tribal employer contribution will be set at the same contribution rate for non-postal employees, which is currently about 70 percent of the weighted average of all FEHB plans. This amount changes yearly and is calculated by OPM. The OPM calculated employer contribution is a minimum standard; the tribal employer may contribute a greater amount if they choose to.

May Tribes segment their employee population or choose which FEHB plans they will and will not contribute to?

Tribes will be required to pay a portion of their employees' insurance premiums, and will not be able to segment their employee population (by age, health status, etc.). Like Federal agencies, tribes must provide all of their eligible employees the opportunity to enroll in the FEHB plan of their choosing. As is the case with Federal employees, a tribal employee will have the ability to select any eligible health plan, or to opt out of FEHB coverage should they choose to do so.

FEGLI Basic option –33 1/3 percent contribution

At a minimum, the tribal employer contribution will be set at the same contribution rate for non-postal employees, which is about 33 1/3 percent. It is possible that the 33 1/3 percent will serve only as a base line contribution, and the employing tribe may contribute a greater amount if they choose to do so. As the "employing office" for individuals eligible for coverage under this provision, tribal employers will be required to pay at least this amount of the premium for their employees.

How will Tribal contributions and premium payments be processed?

Eligible employees who enroll for FEHB and/or FEGLI will continue to receive coverage so long as the necessary premium payments are made during the period of employment with the eligible employer and so long as the tribe remains eligible to purchase coverage for their employees. Premium payments must be made to the appropriate trust fund for each program (FEHB/FEGLI) held at the United States Treasury. Federal agencies provide payroll deduction services for their employees and transmit premiums to the applicable FEHB or FEGLI trust fund held at Treasury. We expect Tribes have the capacity to handle payroll deduction services for their employees, and a paymaster system will need to be created to perform billing and premium collection functions. Employer and Employee contributions to premiums will be collected by the tribal payroll center, or other entity handling paycheck deductions

for the tribal employer. The contributions will be aggregated and reconciled by the paymaster system, and deposited into the appropriate FEHB and FEGLI Treasury trust funds.

May a Tribe contribute to non-FEHB and non-FEGLI insurance products while their employees are enrolled in FEHB and FEGLI?

FEHB and FEGLI are the only health and life insurance products for which the Federal government makes an employer contribution. Federal employees may purchase non-FEHB/FEGLI health or life insurance coverage for themselves with their own funds, but cannot receive employer contributions for these products. If a Tribe chooses to purchase FEHB/FEGLI insurance, those are the only health and life insurance products they may offer to their eligible employees and provide an employer contribution for. This is necessary to avoid the potential for adverse selection, and to protect the FEHB/FEGLI risk pools.

If a Tribe chooses to purchase FEHB coverage, it must offer employees the same choices currently provided to Federal employees. A Tribe may not opt to select a single product for all employees, or different products for different sub-units of its organization. Tribal employees may choose not to participate in FEHB and/or FEGLI on an individual basis, and may purchase non-FEHB/FEGLI health or life insurance coverage for themselves, using their own funds.

Will there be a Federal government contribution to tribal employees enrolled in FEHB/FEGLI?

No. An employee of an eligible Indian Tribe, tribal organization or urban Indian organization insurance is not a Federal Government employee, and is not eligible to receive a Federal Government contribution. The Government contribution represents the employing agency's share of premium for its own employees. By allowing for a tribal employer to contribute at the same weighted average of approximately 70% for FEHB, and 33 1/3% for the cost of Basic life insurance under the FEGLI Program, tribal employees are being treated consistent with Federal employees.

Tribal Employer Access to FEHB and FEGLI Papers - Set 2 of 2

In March 2010, President Obama signed the Patient Protection and Affordable Care Act, commonly known as health care reform. Among other changes to our nation's health care system, this law allows certain Indian tribes, tribal organizations, and urban Indian organizations to purchase Federal Employees Health Benefits (FEHB) and Federal Employees' Group Life Insurance (FEGLI) coverage for their employees.

The Office of Personnel Management (OPM) administers FEHB and FEGLI for Federal employees. OPM has entered into consultation with tribes, tribal organizations, and urban Indian organizations to determine the details about how tribal employers can access FEHB and FEGLI coverage on behalf of their employees.

OPM will issue two sets of papers. Paper set 2 of 2 is attached. These papers cover the enrollment and premium collection system and appeals process.

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Enrollment and Premium Collection System for Access to FEHB and FEGLI

Purpose:

This paper discusses the establishment and operation of an enrollment and premium collection system. In order to provide coverage for employees, tribes, tribal organizations and urban Indian organizations will need a system to facilitate the enrollment of employees in the Federal health insurance and life insurance programs administered by OPM.

Why is there a need to establish a system beyond what is already used for FEHB and FEGLI enrollment?

OPM does not provide enrollment and premium collection services for Federal employees, except for its own employees. Individual employing agencies serve as the personnel and payroll offices for the purpose of facilitating their employees' FEHB and FEGLI enrollment, deducting the employees' share of premium from employees' paychecks and transferring the employee and employer share of premium to OPM. There is no existing system or relationship among tribes and a Federal agency which would enable the agency to perform the required enrollment and premium collection for tribal employees.

Since tribes are not federal agencies and have varying systems for enrolling employees in insurance programs and collecting premiums, an independent enrollment and premium collection system will need to be developed and maintained. This will be a new system with new costs exclusive to tribal employers and employees. To cover the costs of this new system, a small administrative load will be added to the FEHB and FEGLI premiums.

Why are tribal employees being asked to pay an administrative fee when Federal employees are not?

Federal agencies assume the administrative costs associated with enrollment and payroll deduction for employee benefits. Tribal employers purchasing FEHB and FEGLI coverage will need to assume those costs for their own employees. Since tribes are not federal agencies and have varying systems for enrolling employees in insurance programs and collecting premiums, an independent Tribal enrollment and premium collection system is needed to perform these functions.

How much is the administrative fee?

In order to pay for continuous operation and maintenance of this system, there will need to be an administrative fee added to the premiums paid by tribes and tribal employees. OPM is committed to pursuing the most cost-effective implementation options, but it is important to note that this provision of the law did not provide funding for start up and operational costs.

By way of comparison, there is a two percent administrative fee associated with Temporary Continuation of Coverage (TCC), a short term option for former Federal employees, similar to COBRA. The amount of the administrative fee for tribal employees will be based on actual cost.

When will the enrollment and premium collection system be created and available for tribes to use?

The FY 2012 President's Budget requests funding to allow for tribal employee enrollment as early as possible. However, full implementation is ultimately dependent on the availability of funding.

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Tribal Employer Access to FEHB and FEGLI Paper # 06:

Appeals Process for Tribal Employer Access to, and Tribal Employee Eligibility to Enroll in FEHB and FEGLI.

Purpose:

This paper discusses the appeals process for tribal employer access to FEHB and FEGLI and for tribal employee eligibility to enroll in health insurance and life insurance coverage through programs administered by the Office of Personnel Management (OPM).

Background:

OPM's goal is to implement these programs for tribal employees as soon as possible, and to administer the programs as closely as possible to the way the programs work for federal employees.

This paper discusses two types of appeals: 1) entitlement of a tribal employer to participate in the FEHB and/or FEGLI Programs, and 2) eligibility of a tribal employee to enroll in the FEHB and/or FEGLI Programs.

If a tribe, tribal organization or urban Indian organization is deemed not entitled to purchase FEHB and/or FEGLI benefits, can it appeal this decision?

Yes, a tribe, tribal organization or urban Indian organization may appeal this decision to OPM.

If a tribal employee is denied enrollment in FEHB or FEGLI coverage, how can he or she appeal this decision?

If a tribal employee is denied enrollment, he or she can appeal to the tribal employer in accordance with OPM regulation, 5 CFR 890.104 and 5 CFR 870.105. The tribal employers' reconsideration process must afford the tribal employee an independent level of review designated at or above the level at which the initial enrollment decision was made.

If a tribal employee is then denied coverage by his or her tribal employer, can he or she appeal the decision to OPM?

No, OPM will not hear appeals on this subject in accordance with 5 CFR 890.104 and 5 CFR 870.105. OPM does not generally review agency reconsideration decisions regarding enrollment OPM does maintain authority to correct error – see 5 C.F.R. 890.103. Consistent with this, OPM will also not review tribal employer decisions. Tribal employers will be expected to have the information necessary to make the determination on reconsideration.

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