

and all family members will be terminated. If an enrolled eligible beneficiary moves to an area located within a demonstration area, he or she will continue to be eligible to participate in the demonstration project. If the eligible beneficiary was enrolled prior to the move in an HMO that does not serve the new demonstration area, the eligible beneficiary will have an opportunity to select a new health plan offered by a carrier participating in the demonstration project in the new area. If the eligible beneficiary was enrolled in a fee-for-service plan prior to the move and moves to another area that is within an existing demonstration area, the eligible beneficiary can maintain his or her current coverage.

(b) If an enrolled eligible beneficiary disenrolls, cancels, or terminates enrollment for any reason, he or she will not be eligible to reenroll in the demonstration project. Once coverage ends, eligible beneficiaries and all family members have the right to resume all of the benefits to which they are entitled to under title 10 of the United States Code. Medicare-covered eligible beneficiaries and their eligible family members who had Medigap policies prior to their enrollment in the demonstration project are entitled to reinstate that coverage under the conditions stated in section 1108(l) of title 10, United States Code.

(c) Eligible beneficiaries and their family members are eligible for Temporary Continuation of Coverage (TCC) under the conditions and for the durations described in subpart K or until the end of the demonstration project, whichever occurs first. The effective date of TCC for eligible beneficiaries or their eligible family members will be the day after other coverage under this subpart ends. Eligible beneficiaries or their eligible family members selecting TCC must enroll in a health plan offered by a carrier participating in the demonstration project. If an eligible beneficiary or eligible family member enrolled in DoD TCC moves from a demonstration project area, coverage ends. DoD TCC enrollees will be responsible for paying the entire DoD premium rate (OPM's approved net-to-carrier DoD rate plus 4 percent for contingency and administration reserves)

plus 2 percent of this premium rate for administration of the program. DoD will make arrangements to collect premiums plus the 2 percent administrative charge from eligible beneficiaries and forward them to OPM's Employees Health Benefits Fund. OPM will establish procedures for receiving the 2 percent administrative payment into the Employees Health Benefits Fund and making this amount available to DoD for administration of the program.

(d) Enrolled eligible beneficiaries are not eligible for the temporary extension of coverage and conversion opportunities described in subpart D of this part.

§ 890.1306 Government premium contributions.

The Secretary of Defense is responsible for the government contribution for enrolled eligible beneficiaries and family members. The government contribution toward demonstration project premium rates will be determined in accordance with subpart E of this part.

§ 890.1307 Data collection.

Each carrier will compile, maintain, and when requested by OPM or DoD, report data on its plan's experience necessary to produce reports containing the following information and analysis:

(a) The number of eligible beneficiaries who elect to participate in the demonstration project.

(b) The number of eligible beneficiaries who elected to participate in the demonstration project and did not have Medicare Part B coverage before electing to participate.

(c) The costs of health benefits charges and the costs (direct and indirect) of administering the benefits and services provided to eligible beneficiaries who elect to participate in the demonstration project as compared to similarly situated enrollees in the FEHB Program.

(d) Prescription drug costs for demonstration project beneficiaries.

§ 890.1308 Carrier participation.

(a) All carriers who participate in the FEHB Program and provide benefits to

enrollees in the geographic areas selected as demonstration project areas must participate in the demonstration project, except as provided for in paragraphs (b), (c), and (d) of this section.

(b) Carriers who have less than 300 FEHB enrollees may, but are not required to, participate in the demonstration project.

(c) Carriers may, but are not required to, participate in the demonstration project if their service area overlaps a small portion (as determined by OPM) of a demonstration project geographic area.

(d) Carriers offering fee-for-service plans with enrollment limited to specific groups will not participate in the demonstration project.

Subpart N—Federal Employees Health Benefits For Employees of Certain Indian Tribal Employers

SOURCE: 81 FR 95405, Dec. 28, 2016, unless otherwise noted.

§ 890.1401 Purpose.

This subpart sets forth the conditions for coverage, rights, and benefits under Chapter 89 of title 5, United States Code, according to the provisions of 25 U.S.C. 1647b.

§ 890.1402 Definitions and deemed references.

(a) In this subpart—

Billing unit is a subdivision of the tribal employer's workforce that aligns tribal employees for purposes of administering FEHB enrollment and collection of payment. A billing unit may be either governmental or commercial or a combination of both. So long as a tribal employer purchases FEHB for at least one billing unit that is carrying out at least one program under ISDEAA or IHCA, the tribal employer may purchase FEHB for other billing units without regard to its programs.

Pay period is the interval of time for which a paycheck is issued by the tribal employer for work performed by the tribal employee.

Paymaster is the entity designated by OPM as responsible for receiving FEHB premiums from the tribal employer,

forwarding premiums to the Employees Health Benefits Fund, and maintaining enrollment records for all participating tribal employers.

Payment is the sum of the tribal employer's share of premium plus the tribal employees' share of premium plus any administrative fees or costs required under this subpart, due for the enrollment, in the aggregate, of the tribal employer's tribal employees.

Tribal employee is a full-time or part-time common law employee of a tribal employer. An individual is a common law employee if, based on all the facts and circumstances, the tribal employer has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. This determination is based on all facts and circumstances and shall be guided by the factors described by the Internal Revenue Service in Rev. Rul. 87-41, 1987-1 C.B. 296 and referenced in Joint Committee on Taxation report JCX-26-07 *Present Law and Background Relating to Worker Classification for Federal Tax Purposes*, dated May 7, 2007, and the determination shall be consistent with the tribal employer's determination of common law employee status for Federal employment tax purposes, if any. For purposes of this subpart, tribal employees do not include retirees or annuitants of a tribal employer, volunteers of a tribal employer, or others who are not common law employees of a tribal employer. Categories of excluded tribal employees are described at § 890.1405(b). FEHB benefits available to tribal employees are set forth in this subpart and to the extent there exists any ambiguity or inconsistency between this subpart and other subparts of part 890, the terms of this subpart will govern FEHB benefits available to tribal employees.

Tribal employer is an Indian tribe or tribal organization (as those terms are defined in 25 U.S.C. Chapter 18, "Indian Health Care") carrying out at least one program under the Indian Self-Determination and Education Assistance Act or an urban Indian organization (as that term is defined in 25 U.S.C. Chapter 18, "Indian Health Care") carrying out at least one program under the