

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 collec-

tion 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 an Indian Tribe or tribal organization carrying out at least one program under the Indian Self-Determination and Education Assistance Act (ISDEAA) or Tribally Controlled Schools Act of 1988 (TCSA), or an urban Indian organization carrying out at least one program under title V of the Indian Health Care Improvement Act (IHCIA), the tribal employer may purchase FEHB for other billing units without regard to its programs.

*Paymaster* is the entity or entities 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.

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

*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