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Room 3415  
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Ms. Martel:

Family Equality Council is the national organization that connects, supports, and represents the one million parents who are lesbian, gay, bisexual, and transgender (LGBT) and their two million children. We would like to thank the Office of Personnel Management for taking bold steps to extend coverage of Federal Employee Health Insurance Benefits (FEHB) and Federal Employees Dental and Vision Insurance Program to the children of federal employee’s same-sex domestic partners. This proposed expansion will provide vital access to healthcare coverage for many children of federal employees who have gone unrecognized for too long. We appreciate the opportunity to comment on the proposed rule and hope that our recommendations can be incorporated into the final rule to provide strong protections for federal employees and their children accessing crucial healthcare coverage.

This proposed expansion will benefit thousands of federal employees whose children are not eligible for coverage under FEHB and FEDVIP because they do not have a legal or biological relationship. Thirty-seven states either restrict or completely prohibit children from obtaining legal relationships with both of their same-sex parents. OPM’s proposed rule allows the children of federal employees to access vital insurance coverage despite the patchwork of state laws that often result in children being under- or uninsured.

We have two recommendations that we hope will strengthen protections for families accessing FEHB. First, in order to protect children whose parents’ domestic partnership has dissolved, we recommend that the Office incorporate the interpretations found in the FEHBP handbook that allow step-children to remain on their federal employee parent’s insurance after a divorce. Second, we recommend that OPM include explicit instruction as to when a child’s coverage will be imputed into the federal employee’s income. With these changes, we are confident that the final rule will allow all federal employees to appropriately cover their children.

Coverage of All Qualified Children after Dissolution

The proposed rule adds a definition of “domestic partner” to the FEHB regulations and redefines “step-child” to include the children of a federal employee’s domestic partner. We applaud OPM for...
understanding that federal employees’ families come in many formations. We are concerned, however, that redefining “step-child” relies on an employee’s relationship with his or her domestic partner to cover their child, instead of relying on the relationship between the employee and the child. Access to adoption for same-sex parents is far from universally accessible—in fact only sixteen states and the District of Columbia expressly allow a person in a same-sex relationship to adopt his or her partner’s child by statute or binding precedent. In the absence of fair adoption laws, thousands of same-sex parents across the country remain legal strangers to the children they are raising. Basing coverage on the relationship between the parents, rather than the direct parent-child relationship leaves these children vulnerable to loss of coverage if the domestic partnership between their parents dissolves.

The FEHB Program Handbook provides that a “stepchild remains a stepchild and an eligible family member after . . . divorce from, or death of, the natural parent, provided that the stepchild continues to live with [the employee] in a regular parent-child relationship.”¹ We strongly encourage OPM to treat the dissolution of a domestic partnership similarly. When a domestic partnership is dissolved, a covered child must be able to remain on the federal employee’s insurance as long as the child continues to live with the federal employee in a “regular parent-child relationship.” We encourage OPM to interpret “regular parent child relationship” for same-sex couples to include substantial support of the child, in lieu of any strict residency requirement. For school-age children, it is impractical to require the child to split time equally between his or her parents. We believe requiring that the covered employee provide “substantial ongoing support” for the child meets the requirement of a “regular parent-child relationship.”

According to the FEHB Program Handbook, a step-child may not remain on the federal employee’s insurance after dissolution if the former spouse is eligible to enroll under Spouse Equity coverage. Similarly, if a former spouse is eligible for temporary continuing coverage (TCC), a step-child may also apply for TCC but may not remain on the employee’s regular insurance. Only “the natural or adopted children of [the employee and the employee’s spouse] are covered under . . . Self and Family enrollment.”² This is troubling for same-sex partners and their children. Because same-sex parents frequently cannot adopt their own children, many children of LGBT federal employees will only ever qualify as step-children, even if they were born to the employee and the employee’s same-sex partner and even if the child’s parents have both raised the child from birth. We therefore strongly encourage OPM to allow all qualified step-children of federal employees who have dissolved their same-sex domestic partnership to remain on the federal employee’s Self and Family enrollment if the child is living with the employee in a parent-child relationship or if the employee is providing “substantial ongoing support” for the child.

**Imputation of Child’s Coverage as Income**

Under the proposed rule, if the child of a domestic partner does not qualify under IRS regulations for favorable tax treatment, the value of that child’s coverage will be imputed to the federal employee’s

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² *Id.*
income. There are two interpretations under which the child of an employee’s domestic partner may be given favorable tax treatment. We encourage the Office to explicitly state that under each interpretation, the value of the child’s coverage would not be imputed to the employee’s income.

1) The employee can be considered the child’s step-parent under state law. According to guidance released by the IRS in June of 2012: “if a same-sex partner is the stepparent of his or her partner’s child under the laws of the state in which the partners reside, then the same-sex partner is the stepparent of the child for federal income tax purposes.” Given this guidance, it is clear that if a child of a same-sex couple is considered the qualifying child based on this guidance the child’s coverage should not be imputed to the federal employee’s income.

2) The child can be considered the employee’s qualifying relative. If a child is not a qualifying child of the employee and the employee cannot be considered the child’s step-parent under state law, the child may still be considered the employee’s qualifying relative. If an employee’s child is eligible for qualifying relative status, that child’s coverage should not be imputed to that employee’s income.

These criteria are complicated and may not be readily understandable to the average federal employee and his or her family. We recommend additional guidance for parents regarding favorable tax status and when income must be imputed. We also encourage OPM to provide more detailed explanation for parents in an updated version of the FEHB Program handbook.

Again, we would like to thank the Office for proposing this rule and for the opportunity to offer comments. Please contact Heron Greenesmith, Legislative Counsel, with any questions or concerns, at heron.greenesmith@familyequality.org or 202-496-1285.

Thank you,

Jennifer Chrisler
Executive Director
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