

**Office of
Personnel Management**
The Federal Government's Human Resources Agency



Benefits Administration Letter

Number: 13-204

Date: August 7, 2013

Subject: Federal Employees Health Benefits Program: Members of Congress and Congressional Staff

The Office of Personnel Management (OPM) has issued a proposed rule to amend the Federal Employees Health Benefits (FEHB) Program regulations regarding coverage for Members of Congress and congressional staff. This proposed rule amends FEHB Program eligibility regulations to comply with Section 1312 of the Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act, Public Law 111-152 (the Affordable Care Act or the Act).

The Affordable Care Act states, in Subparagraph 1312(d)(3)(D), that, “Notwithstanding any other provision of law . . . the only health plans that the Federal Government may make available to Members of Congress and congressional staff with respect to their service as a Member of Congress or congressional staff shall be health plans that are—(I) created under this Act (or an amendment made by this Act); or (II) offered through an Exchange established under this Act (or an amendment made by this Act).” The Act defines Member of Congress as any member of the House of Representatives or the Senate and congressional staff as all full-time and part-time employees employed by the official office of a Member of Congress, whether in Washington, DC or outside of Washington, DC.

Currently, Members of Congress (including Delegates to the House of Representatives and the Resident Commissioner from Puerto Rico) and congressional employees (which include each Member’s respective personal staffs, staffs of House and Senate leadership offices, other committee staff and administrative office staff) meet the definition of employee in 5 U.S.C. §8901 and are, therefore, eligible to enroll in the FEHB Program. The Affordable Care Act does not amend 5 U.S.C. §8901. However, its effect is to limit the ability of Members of Congress and congressional staffs to purchase health benefits plans under chapter 89 of title 5. Section 1312 of the Affordable Care Act specifies that “the only health plans that the Federal Government may make available” are those that are either “created under” the Act, or “offered through an Exchange established under” the Act. The health benefits plans currently offered by OPM under chapter 89 of title 5 are not “created under” the Act; nor are they offered through the Exchanges. Therefore, Members of Congress and their employees employed by the official office may no longer purchase the health benefits plans for which OPM contracts under chapter 89 of title 5; they are limited to purchasing plans from Exchanges. Though the Affordable Care

Act does not provide a specific effective date for transition to the Exchanges, a reasonable reading of the statute is that enrollment in FEHB plans will no longer be available to Members of Congress and their employees employed by the official office as of January 1, 2014, the date under the Act that Exchanges (also called Health Insurance Marketplaces) will be available for providing health insurance coverage.

The Affordable Care Act limits the ability of the Federal government to offer health insurance to Members of Congress and certain congressional staff to only those plans offered on Exchanges. We interpret this for 2014 to mean the individual market Exchange in each State where the Member of Congress or congressional staff reside. The Act did not, however, alter the definition of “employee” as used in 5 U.S.C. 8901(1)(B) & (C), or the definition of “health benefits plan” under 5 U.S.C. 8901(6). Health benefit plans that are offered through the Exchanges fit within the definition of “health benefit plan” under 8901(6). Because there are now Federal employees covered by Chapter 89 of title 5 who will be purchasing health benefits plans on Exchanges, we believe that it is appropriate to clarify the provisions that authorize a Government contribution for “health benefits plans under this chapter.” In order to establish that the Government contribution will continue without interruption, we have added new paragraph (h) to section 890.501 of OPM’s regulations. It should be noted that the FEHB has two enrollment categories, self only and self and family, and OPM determines Government contribution levels for each of these categories. While there are additional enrollment categories for Exchange plans, OPM intends to apply the self and family contribution level to any Exchange enrollment category other than one adult/individual.

The proposed rule defines a “Member of Congress” as a member of the Senate or of the House of Representatives, a Delegate to the House of Representatives (which includes delegates from the District of Columbia and the territories), and the Resident Commissioner of Puerto Rico.

The Affordable Care Act defines “congressional staff” to include those who work for “the official office of a Member of Congress.” Because there is not an existing statutory or regulatory definition of official office, the proposed rule gives the employing office of the Member of Congress the responsibility for the determination as to whether an employed individual meets the statutory definition.

OPM believes that Members’ offices are best equipped to make the determination as to whether an individual is employed by the “official office” of that Member, as there is no existing statutory or regulatory definition of “official office.” OPM’s proposed rule provides that a designation as a congressional staff member will be an annual designation made prior to October of each year for the following year based on expected work. The proposed rule provides that the designation must be made prior to October of the year before the coverage year so individuals know, during open enrollment, whether to participate in the appropriate state Exchange or the FEHB Program for the following year. However, OPM may extend the deadline for up to 30 days for the first year. OPM will work with the administrative offices of Members of Congress on a streamlined process for reporting on this designation.

The proposed rule also states that the designation will be effective for the entire FEHB Program plan year during which the congressional staff member works for that Member of Congress.

Individuals designated for Exchange plans will be subject to the same rules as others on the Exchanges (e.g. enrollment changes and benefit claim appeals). These individuals will remain eligible to participate in a dental and/or vision plan under the Federal Employees Dental and Vision Insurance Program (FEDVIP) as well as the FSAFEDS program.

OPM is working with the Department of Treasury on guidance clarifying that because the employer contributions for Members of Congress and congressional staff, like contributions from other employers, will continue to be tax preferred, such individuals are ineligible for premium tax credits and cost sharing reductions available to eligible individuals enrolled in qualified health plans on Exchanges.

Summary

OPM's proposed regulation implements the Affordable Care Act requirement that Members of Congress and congressional staff obtain their health benefits from the Exchanges. It is purely administrative. By issuing this proposed regulation, OPM will provide for the ease of transition of Members of Congress and staff to Exchange plans.

OPM staff will be working with relevant administrative staff in the House and Senate to assist with addressing specific issues concerning eligibility, enrollment and payment processes. Our goal is to ensure that Members of Congress and affected staff have as smooth as possible a transition to plans offered on Exchanges.

Sincerely,

John O'Brien
Director
Healthcare and Insurance