



Benefits Administration Letter

Number: 13-207

Date: September 30, 2013

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

This letter is a follow up to BAL 13-204 published on August 7, 2013. The Office of Personnel Management (OPM) has issued a final rule to amend the Federal Employees Health Benefits (FEHB) Program regulations regarding coverage for Members of Congress and congressional staff. This final rule amends FEHB Program 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 final rule includes the following modifications from OPM's proposed rule (RIN3206-AM85):

- OPM has clarified that Members of Congress and designated congressional staff must enroll in an appropriate Small Business Health Options Program (SHOP) as determined by the Director in order to receive a Government contribution.
- References to annuitants purchasing coverage on the Exchange have been deleted.
- OPM has provided a one month extension for staff designations for the 2014 plan year.
- Additional non-substantive edits have been made to improve clarity.

During the comment period for the proposed rule, OPM received nearly 60,000 comments from the public. Responses to those comments are summarized below. For a more complete discussion of these and other topics, please refer to the final rule.

Grandfathering

The final rule does not allow Members of Congress and congressional staff to be grandfathered into their current FEHB coverage. While OPM acknowledges that, in general, the Affordable Care Act did not intend to disrupt existing health insurance coverage, in this context, the Act included clear and unambiguous language providing that all Members of Congress and congressional staff employed by the official office of a Member of Congress be subject to the terms of §1312 regardless of their date of employment.

Government contributions

The final rule extends a Government contribution towards health benefits plans for Members of Congress and designated congressional staff so long as the health benefits plans are purchased

via the appropriate SHOP as determined by the Director. The formula for Government contributions is set forth in 5 USC §8906 and is the same formula used for other Federal employees. Nothing in the final rule or the law prevents a Member of Congress or designated congressional staff from declining a Government contribution for him or herself by choosing a different option for their health insurance coverage.

Because a Government contribution is, in essence, an employer contribution, the final rule clarifies that Members of Congress and designated congressional staff must enroll in an appropriate SHOP as determined by the Director in order to receive a Government contribution. Given the location of Congress in the District of Columbia, OPM has determined that the DC SHOP, known as the DC Health Link Small Business Market administered by the DC Health Benefit Exchange Authority, is the appropriate SHOP from which Members of Congress and designated congressional staff will purchase health insurance in order to receive a Government contribution.

Members of Congress and designated congressional staff are subject to the same requirements as citizens purchasing insurance on the Exchanges. Access to the Government contribution through the SHOP limits their eligibility for premium tax credits available through the individual market Exchange.

Staff designations

The final rule leaves determinations of which staff are covered under §1312 of the Affordable Care Act (and therefore eligible to purchase coverage on the Exchange) to the Members or their designees. OPM will not interfere in the process by which a Member of Congress may work with the House and Senate Administrative Offices to determine which of their staff are eligible for a Government contribution towards a health benefits plan purchased through an appropriate SHOP as determined by the Director. Nothing in this regulation limits a Member's authority to delegate to the House or Senate Administrative Offices the Member's decision about the proper designation of his or her staff. The final rule has been amended to provide an extension through the month of October for staff designations affecting plan year 2014. Designations for individuals hired throughout the plan year should be made at the time of hire.

Retirement

OPM has deleted the proposed language in Section 890.501(h)(1) and (2) referring to annuitants. Members of Congress and congressional staff will be subject to the same rules of participation in the FEHB Program in retirement as other Federal annuitants. Upon retirement, Members of Congress and congressional staff will be required to choose their health plan coverage from among those plans contracted and approved by OPM for the Federal Employees Health Benefits Program to continue to receive a Government contribution.

Congressional retirees who are currently enrolled in plans contracted for and approved by OPM will not be affected and will continue enrollment in their current plan. In addition, OPM would like to clarify that time spent under a plan purchased through the appropriate SHOP as determined by the Director and purchased pursuant to §1312 of the Affordable Care Act will count towards the time requirement outlined in Chapter 89 §8905(b) to carry health plan coverage into retirement.

This final rule does nothing to affect the choices available to a reemployed annuitant. As a general matter, upon reemployment an annuitant participating in the FEHB Program may choose to either continue that coverage without premium conversion through OPM or to have their enrollment transferred to their employing office.

Coverage of Abortion Services

Under OPM's final rule, no Federal funds, including administrative funds, will be used to cover abortions or administer plans that cover abortions. Unlike the health plans for which OPM contracts pursuant to 5 U.S.C. 8902, 8903 and 8903a, OPM does not administer the terms of the health benefits plans offered on an Exchange. Consequently, while plans with such coverage may be offered on an Exchange, OPM can and will take appropriate administrative steps to ensure that the cost of any such coverage purchased by a Member of Congress or a congressional staffer from a designed SHOP is accounted for and paid by the individual rather than from a government contribution, consistent with the general prohibition on Federal funds being used for this purpose.

Effective and termination dates

Current FEHB health plan enrollment for Members of Congress and congressional staff employed by the official office of a Member of Congress will terminate at midnight on December 31, 2013. An additional 31 days of coverage is included after the termination date at no cost to the enrollee. Members of Congress and designated congressional staff who chose to purchase health insurance via the appropriate SHOP as determined by the Director may do so with an effective date of January 1, 2014. An open enrollment period for Members of Congress and designated staff will coincide with the traditional FEHB open season.

Eligibility for other Federal benefits

Section 1312 and OPM's final rule only pertain to Member's or congressional staff's health benefits plans.

Insurance coverage for representatives of U.S. Territories

OPM has determined that, like other Members of Congress and congressional staff, representatives from the U.S. Territories and their staff who want to receive a Government contribution will enroll for coverage via the appropriate SHOP as determined by the Director. The DC SHOP offers health plan options with in-network access to medical providers across the nation and overseas.

Additional guidance is forthcoming. Please refer any questions to Chelsea Ruediger at Chelsea.Ruediger@opm.gov.

Sincerely,

John O'Brien
Director, Healthcare and Insurance
Office of Personnel Management