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Health Benefits for Members of Congress and Designated Congressional Staff

Ada S. Cornell

Information Research Specialist

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Summary

The federal government, as an employer, offers health benefits to its employees, including Members of Congress and congressional staff. Prior to 2014, Members and staff had access to many of the same health benefits as other federal employees. For example, Members and staff were eligible to voluntarily enroll in employer-sponsored health insurance through the Federal Employees Health Benefits (FEHB) Program, and they could choose to participate in other health benefit programs, such as the Federal Flexible Spending Account Program (FSAFEDS).

Section 1312(d)(3)(D) of the Patient Protection and Affordable Care Act (ACA; P.L. 111-148, as amended) generally specifies that the only health plans that the federal government may make available to Members and designated congressional staff (with respect to their service as Members or staff) are either created under the ACA or offered through an exchange established under the ACA. A final rule issued by the Office of Personnel Management (OPM) amends FEHB eligibility regulations to comply with Section 1312(d)(3)(D) of the ACA. Under the final rule, beginning January 1, 2014, Members and designated congressional staff are no longer able to purchase FEHB plans as active employees; however, if they enroll in a health plan offered through a small business health options program (SHOP) exchange, they remain eligible for an employer contribution toward coverage. Additionally, the final rule allows Members and designated congressional staff who are eligible for retirement to enroll in a FEHB plan upon retirement.

This report summarizes the provisions of the final rule and describes how it affects current and retired Members and congressional staff. OPM has indicated that Members and congressional staff are still eligible for other health benefits related to federal employment, and these additional health benefits are outlined in this report. These health benefits include FSAFEDS, the Federal Employees Dental and Vision Insurance Program (FEDVIP), the Federal Long Term Care Insurance Program (FLTCIP), the Office of the Attending Physician, and treatment in military facilities. This report also discusses Members' and staff's eligibility for Medicare, which does not appear to be affected by the final rule.

For information about the health benefits received by other federal employees (i.e., those who are not affected by the aforementioned final rule), see CRS Report R43922, *Federal Employees Health Benefits (FEHB) Program: An Overview*.

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Introduction

Many private- and public-sector firms offer employer-sponsored health insurance to their employees and contribute toward the cost of that insurance as part of an employee's compensation package. Among large employers in the United States (those with 200 or more employees), 98% offered health insurance coverage to their employees in 2014.¹ On average, large employers contributed 81% of the cost of self-only coverage and 73% of the cost of family coverage.² Twenty-three percent of large employers that offer health benefits to their employees offer retiree coverage. Among firms with 5,000 or more workers, 49% offer retiree coverage.³

The federal government, as an employer, also offers health benefits to its employees and retirees.⁴ The federal government offers employer-sponsored health insurance and contributes toward the cost of that coverage through the Federal Employees Health Benefits (FEHB) Program, administered by the Office of Personnel Management (OPM). Prior to 2014, Members of Congress and congressional staff were eligible to participate in FEHB in the same way that most other federal employees and retirees are eligible to participate.⁵ That is, Members and staff could purchase a health plan offered under FEHB, receive an employer contribution toward the coverage, and carry the coverage into retirement (provided they were eligible to do so).

However, Section 1312(d)(3)(D) of the Patient Protection and Affordable Care Act (ACA; P.L. 111-148, as amended) states,

(i) Requirement.—Notwithstanding any other provision of law, after the effective date of this subtitle, 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).

(ii) Definitions.—In this section:

(I) Member of Congress.—The term “Member of Congress” means any member of the House of Representatives or the Senate.

(II) Congressional Staff.—The term “congressional staff” means 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.

¹ Kaiser Family Foundation and the Health Research & Educational Trust, *Employer Health Benefits*, 2014 Annual Survey, Menlo Park, CA, September 10, 2014, <http://kff.org/health-costs/report/2014-employer-health-benefits-survey/>.

² Ibid.

³ Ibid.

⁴ In the statute, retirees are referred to as *annuitants*. In this report, the term *retirees* will be used.

⁵ For more information about how FEHB works for most federal employees, see CRS Report R43922, *Federal Employees Health Benefits (FEHB) Program: An Overview*.

On October 2, 2013, OPM issued a final rule that amends FEHB eligibility to comply with Section 1312(d)(3)(D) of the ACA.⁶ Under the rule, Members and designated congressional staff were no longer able to purchase a health plan offered under FEHB beginning January 1, 2014; however, if they enroll in a health plan offered through an appropriate small business health options program (SHOP) exchange,⁷ they remain eligible for an employer contribution toward coverage. Additionally, Members and staff who obtain coverage through a SHOP exchange under this arrangement may purchase a FEHB plan upon retirement from the federal government, provided they otherwise meet the criteria to do so. This report summarizes the provisions of the final rule and discusses how they affect current and retired Members and designated congressional staff.

OPM has indicated that the final rule only pertains to Members' and staff's access to health insurance plans offered by the federal government under FEHB.⁸ The final rule and the ACA do not require Members and staff to enroll in a health plan offered through a SHOP exchange; rather, SHOP plans are the only plans that will be made available to them with respect to their federal service. This report also describes other health benefits available to Members and staff for which eligibility is not affected by the final rule, including the Federal Flexible Spending Account Program (FSAFEDS); the Federal Employees Dental and Vision Insurance Program (FEDVIP); the Federal Long Term Care Insurance Program (FLTCIP); the Office of the Attending Physician; and treatment in military facilities.

Although some of the health benefits described in this report may also be available to federal employees who are not Members or congressional staff, this report does not focus on their health benefits and does not provide a comprehensive picture of the health benefits available to them. For information about what is available to federal employees who are not current Members or congressional staff, see CRS Report R43922, *Federal Employees Health Benefits (FEHB) Program: An Overview*.

Health Insurance Coverage

Coverage for Members and Staff

As of January 1, 2014, Members of Congress and designated congressional staff must obtain health insurance coverage through a SHOP exchange in order to receive a government contribution toward the coverage. Section 1312(d)(3)(D) of the ACA defines the terms “Members of Congress” and “congressional staff” as follows:

The term “Member of Congress” means any member of the House of Representatives or the Senate.

⁶ OPM, “Federal Employees Health Benefits Program: Members of Congress and Congressional Staff,” 78 *Federal Register* 60653, October 2, 2013, <http://www.gpo.gov/fdsys/pkg/FR-2013-10-02/pdf/2013-23565.pdf>

⁷ For more information about SHOP exchanges, see CRS Report R43771, *Small Business Health Options Program (SHOP) Exchange*, by Annie L. Mach.

⁸ OPM, “Federal Employees Health Benefits Program: Members of Congress and Congressional Staff,” 78 *Federal Register* 60653, October 2, 2013, <http://www.gpo.gov/fdsys/pkg/FR-2013-10-02/pdf/2013-23565.pdf>

The term “congressional staff” means 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.

The final rule delegates to the employing office of the Member the responsibility to make the determination as to whether a congressional staff member meets the statutory definition of being employed by an “official office.” OPM indicates that it will not interfere in the process by which a Member or his or her designee determines the designations of his or her staff. Additionally, OPM notes, “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.”⁹

The employing office of a Member (or its designee) was required to designate its staff prior to November 2013 for the plan year effective January 1, 2014; for subsequent plan years, the designations must be made during the month of September of the preceding year (or at the time of hiring for individuals whose employment begins during the year).¹⁰ The designation is made annually, and individuals maintain their designations for the entire FEHB plan year, so long as they continue to be employed by the same Member.¹¹ Congressional staff who do not receive a designation of being employed by an official office retain the ability to enroll in a health plan offered under FEHB.

Coverage for Retirees

OPM indicates that Members and congressional staff designated as working for an official office of a Member (hereinafter “staff” or “designated staff”) who purchase coverage through an exchange will have the ability to enroll in plans offered through FEHB in retirement, provided they meet the eligibility criteria to do so under 5 U.S.C. Section 8905.¹² The eligibility criteria are generally the same criteria that all other federal employees must meet to continue FEHB coverage in retirement. The criteria are (1) eligibility for retirement from the federal government,¹³ and (2) continuous enrollment in a health plan offered under FEHB (or in the case of Members and staff, offered through a SHOP exchange) for the five years of service immediately prior to retirement. To be clear, OPM has indicated that Members’ and staff’s SHOP exchange coverage counts toward the five-year requirement. The final rule does not apply to Members or staff who retired *before* December 31, 2013. If these retirees were enrolled in a plan under FEHB, nothing would prohibit them from continuing their coverage under a FEHB plan.

⁹ Ibid.

¹⁰ 5 CFR §890.102(c)(9)(ii).

¹¹ Ibid.

¹² The final rule allows Members and staff to transfer to coverage offered under FEHB on becoming annuitants (retirees), but the proposed rule did not. Under the proposed rule, Members and staff were unable to return to FEHB upon becoming annuitants; instead, they could continue to receive the government contribution toward an exchange plan on becoming annuitants. In the preamble to the final rule, OPM notes (page 60654), “Section 1312 only addresses the health benefits plans that the federal government may offer Members of Congress and congressional staff employed by the official office of a member of Congress while they are employed in those positions. This provision neither amended any of the sections of Chapter 89 relating to annuitant health benefits nor otherwise indicated that the provision applies to annuitants. Because we agree with the central premise of these comments, we have deleted the proposed language in § 890.501(h)(1) and (2) referring to annuitants.”

¹³ For information about retirement eligibility, see CRS Report RL30631, *Retirement Benefits for Members of Congress*, by Katelin P. Isaacs.

Election of Coverage and Plan Choices

Under the final rule, all Members of Congress, including representatives of the U.S. Territories, and their designated staff must purchase “health plans offered by an appropriate SHOP as determined by the Director [of OPM] ...” in order to receive an employer contribution toward the coverage.¹⁴ OPM has indicated that Members and staff must use the District of Columbia’s SHOP exchange, known as DC Health Link (hereinafter the “DC SHOP”).¹⁵

The open enrollment period for Members and designated staff coincides with the FEHB open enrollment period, running mid-November to mid-December each year.¹⁶ For the 2015 plan year, the open enrollment period was November 10, 2014 through December 10, 2014, with 68 plan options offered in the gold tier on the DC SHOP.¹⁷ For those Members and staff who selected a plan during the initial open enrollment period (November 11, 2013, through December 9, 2013), coverage began on January 1, 2014.¹⁸

Members and staff can select individual coverage or family coverage. OPM notes that, “Under FEHB rules, eligible dependents are limited to your spouse, your children (including step-children and adopted children) and foster children. Regardless of the dependent relationships listed on the DC SHOP webpage when enrolling, these are the only dependents you may enroll.”¹⁹ OPM indicates that enrollment in a SHOP plan lasts for one year, unless an employment change occurs (such as a move to a different federal agency). Once Members and staff enroll in a SHOP plan, enrollment in the plan will automatically renew for the next calendar year if the enrollee does not take action during the open enrollment period.

Coverage through the DC SHOP terminates once Members and staff separate from federal service, but Members, staff and eligible family members may have the option to enroll in a FEHB plan under Temporary Continuation of Coverage (TCC), under the same rules for other federal employees.²⁰ TCC is similar to COBRA coverage offered to individuals in the private sector, and is also available to FEHB enrollees.²¹ TCC enrollees may initially enroll in any FEHB plan and

¹⁴ 5 CFR §890.102(c).

¹⁵ In addressing the question as to whether individuals who reside outside the DC region will be able to obtain a health plan through the DC SHOP exchange that provides in-network coverage outside the DC region, OPM notes that the DC SHOP offers health plans that have “in-network access to medical providers across the nation and overseas.” OPM, Insurance FAQs: Members of Congress & Staff, <http://www.opm.gov/healthcare-insurance/insurance-faqs/?cid=6bf9dd32-d3b9-4fc7-9416-431e535f933a/>.

¹⁶ OPM, Insurance FAQs: Members of Congress & Staff, <http://www.opm.gov/healthcare-insurance/insurance-faqs/?cid=6bf9dd32-d3b9-4fc7-9416-431e535f933a/>.

¹⁷ The DC SHOP exchange also offers plans in the other metal tiers—bronze, silver, and platinum—but OPM has indicated that Members and designated staff must purchase plans offered in the gold tier to retain the employer contribution. The plans offered in the gold tier must have an actuarial value around 80%. This means that, on average, the plan is responsible for 80% of the cost of all covered benefits and the enrollee is responsible for 20%.

¹⁸ For Members and staff previously covered by a plan offered under FEHB, their coverage under that plan terminated December 31, 2013.

¹⁹ OPM, Insurance FAQs: Members of Congress & Staff, <http://www.opm.gov/healthcare-insurance/insurance-faqs/?cid=6bf9dd32-d3b9-4fc7-9416-431e535f933a/>.

²⁰ Ibid.

²¹ COBRA generally applies to group health plans maintained by private-sector employers, or by state or local governments, and requires most group health plans to provide a temporary continuation of group health coverage that otherwise might be terminated. For more information, see Department of Labor, FAQs about COBRA Continuation Health Coverage, <http://www.dol.gov/ebsa/faqs/faq-consumer-cobra.html>.

may also change plans during open season, but they must pay the full premium for the plan they select (that is, both the employee and government shares of the premium) plus a 2% administrative charge. In general, TCC coverage is available to separating employees and their families for up to 18 months after the date of separation.

Employer Contributions

Members and staff are able to receive an employer contribution toward coverage purchased through the DC SHOP. The employer contribution is calculated using the statutory formula for health plans offered under FEHB.²² The percentage of premiums paid by the federal government is calculated separately for individual and family coverage, but each uses the same formula. According to the formula, the employer contribution is set at 72% of the weighted average of all FEHB plan premiums, not to exceed 75% of any given plan's premium.²³ The employer contribution to a plan for a part-time worker is generally prorated, following FEHB program guidelines. OPM indicates that Member and staff contributions to premiums are collected by payroll deduction and the contributions are tax preferred, as they are for FEHB enrollees.²⁴ OPM has a "Premium Contribution Calculator" to help Members and staffs estimate their share of the premium, available at <http://www.opm.gov/healthcare-insurance/changes-in-health-coverage/eligibility-enrollment/#url=Members-of-CongressStaff>.

Cost of Coverage

Plans offered under large group coverage arrangements typically offer the same premium to all enrollees. This is the case for plans offered under FEHB—the premium for any particular plan for self or family coverage is the same for any individual who enrolls in the plan, regardless of the individual's characteristics (e.g., age) or health status. In contrast, plans offered in the small group market, such as those available through the SHOP exchanges, including the DC SHOP, are allowed to vary premiums based on an individual's age, geographic location, and whether the individual uses tobacco products. This means that two individuals who have different characteristics (e.g., one is 25 years old and the other is 56 years old) who select the same plan in an exchange could be charged different premiums because of the rating allowances, unlike FEHB where they would be charged the same premium. Plans offered through the DC SHOP only vary premiums based on an enrollee's age.²⁵ Detailed information on the plans and premiums available through the DC SHOP is at <http://www.dchealthlink.com>.²⁶

²² 5 CFR §890.501(h).

²³ 5 U.S.C. §8906.

²⁴ OPM, Insurance FAQs: Members of Congress & Staff, <http://www.opm.gov/healthcare-insurance/insurance-faqs/?cid=6bf9dd32-d3b9-4fc7-9416-431e535f933a>.

²⁵ Under ACA, state may also allow insurers to vary premiums by geographic rating area and whether an enrollee uses tobacco products; however, DC only has one geographic rating area and has decided not to allow insurers to vary premiums based on tobacco use.

²⁶ Sample premiums for 2015 SHOP plans are available at "January 2015 Rates for Health Insurance Products to be Sold in DC Health Link - SHOP," at <http://disb.dc.gov/sites/default/files/dc/sites/disb/publication/attachments/9-15-14-Small-Business-SHOP-Approved-Rates-for-Health-Insurance-Products-Sold-on-DC-Health-Link-for-2015.pdf>.

Other Health Benefits Related to Federal Employment

Section 1312(d)(3)(D) of the ACA and the final rule only affect the health insurance coverage the federal government may make available to Members and designated congressional staff as part of their federal employment. Members and staff (hereinafter, “staff” refers to all congressional staff), as well as other federal employees, have access to other health benefits, and their access to these benefits does not appear to be affected by Section 1312(d)(3)(D) and the final rule.²⁷ Some of these health benefits are available to all federal employees and retirees, while others are only available to active employees, Members, and staff.

Federal Flexible Spending Account Program

OPM administers a Flexible Spending Account (FSA) program, FSAFEDS. Active federal employees eligible for FEHB (including current Members and staff eligible for SHOP coverage) are also eligible to participate in FSAFEDS, whether enrolled in FEHB or not. There are three types of FSAs:

- The **Health Care Flexible Spending Account (HCFSA)** reimburses eligible health care expenses that are not covered or reimbursed by other insurance coverage, including copayments, over-the-counter drugs, eyeglasses, dental care, hearing aids, and infertility treatments. Employees can choose to deposit between \$100 and \$2,550 each year.
- The **Dependent Care Flexible Spending Account (DCFSA)** reimburses eligible non-medical child day care and elder care expenses. A \$5,000 limit applies.
- The **Limited Expense HCFSA (LEX HCFSA)** is for those enrolled in a high-deductible health plan (HDHP) with a Health Savings Account, and it reimburses only eligible dental and vision expenses that are not covered or reimbursed by other insurance coverage.

The accounts are funded by the employee from pre-tax salary dollars, with no government contribution. Participants may carryover up to \$500 of unspent funds into the following year when re-enrolling in a HCFSA or LEX HCFSA. The DCFSA does not allow carryover, but there is a grace period through March 15 of the following year to incur for expenses against the prior year’s account. During the annual FEHB open season, employees may change the amount to set aside in the upcoming year or may choose not to deposit money in their FSA.²⁸

Federal Employees Dental and Vision Insurance Program

Dental and vision benefits are available to active federal employees and retirees (including current and retired Members and staff) through the Federal Employees Dental and Vision

²⁷ OPM, Insurance FAQs: Members of Congress & Staff, <http://www.opm.gov/healthcare-insurance/insurance-faqs/?cid=6bf9dd32-d3b9-4fc7-9416-431e535f933a>.

²⁸ OPM, *Flexible Spending Accounts (FSAFEDS) FastFacts*, <http://www.opm.gov/insure/fastfacts/fsafeds.pdf>.

Insurance Program administered by OPM. FEDVIP enrollees are not required to enroll in FEHB. Enrollees are responsible for 100% of the premiums, and employees' salary contributions are paid with pre-tax dollars. To continue or obtain FEDVIP coverage in retirement, an employee does not have to participate in FEDVIP prior to retirement.

For dental coverage, enrollees have a choice of six nationwide and four regional dental plans covering a variety of preventive and major services, as well as orthodontics for dependents under the age of 19.²⁹ For vision coverage, enrollees can choose from four nationwide vision plans that cover routine eye exams and glasses or contact lenses. Plans vary in the other types of services they cover, such as discounts on Lasik surgery.³⁰

Federal Long Term Care Insurance Program

Federal employees and retirees (including current and retired Members and staff) are eligible to apply for long-term care coverage through the Federal Long Term Care Insurance Program, administered by OPM. Long-term care includes services and assistance for those who can no longer perform activities of daily living, such as bathing and dressing, due to chronic illness, injury, disability, or aging. Most health insurance plans do not include coverage for long-term care services. To apply for coverage under FLTCIP, employees must answer questions about their medical history. Some medical conditions will prevent employees from being approved for coverage. Premiums for FLTCIP may be deducted from an individual's salary or annuity, but they are not pre-tax contributions, and employees pay 100% of the premiums.³¹

Office of the Attending Physician

Current Members are eligible to receive limited services from the Office of the Attending Physician in the U.S. Capitol for an annual fee. Services include routine exams, consultations, and certain diagnostic tests. The office does not provide vision or dental care, and prescriptions can be written but not dispensed.³²

Military Treatment Facilities

Current Members are also authorized to receive medical and emergency dental care at military treatment facilities. There is no charge for outpatient care if it is provided in the National Capital Region.³³ For inpatient care, Members are billed at full reimbursement based on rates set by the Department of Defense. Outside the National Capital Region, charges are at full reimbursement

²⁹ OPM, *FastFacts for Dental Insurance*, <http://www.opm.gov/insure/fastfacts/dental.pdf>.

³⁰ OPM, *FastFacts for Vision Insurance*, <http://www.opm.gov/healthcare-insurance/fastfacts/vision.pdf>

³¹ Individuals under age 65 can deduct long-term care insurance premiums as medical expenses if total qualified medical expenses exceed 10% of annual adjusted gross income (AGI). Prior to 2017, individuals aged 65 and older can deduct long term care insurance premiums as medical expenses if total qualified medical expenses exceed 7.5% of annual AGI (beginning in 2017 the threshold increases to 10%). The amount of long-term care insurance premiums an individual can deduct is subject to Internal Revenue Service (IRS) limits. For more information, see http://www.ltfefds.com/start/aboutltci_taxqual.html.

³² For background information on the Office of the Attending Physician, see CRS Report RS20305, *The Office of Attending Physician in the U.S. Congress*.

³³ The National Capital Region includes Washington, DC and nearby jurisdictions in Maryland and Virginia.

rates for both inpatient and outpatient care provided to current Members of Congress. Members pay out of pocket for expenses not covered by insurance. Dependents and former Members are not eligible for care at military treatment facilities.³⁴

Medicare

Medicare is the nation's health insurance program for individuals aged 65 and over and certain disabled persons. Medicare consists of four distinct parts: Part A, or Hospital Insurance (HI); Part B, or Supplementary Medical Insurance (SMI); Part C, or Medicare Advantage (MA); and Part D, the prescription drug benefit.³⁵ Workers, including all federal employees, Members, and congressional staff, must pay a tax on their wages for Medicare Part A.³⁶ Workers and their employers each pay a tax of 1.45% of earnings.³⁷

Participation in Part B, Medicare Advantage, and Part D is voluntary, and each requires that enrollees pay a monthly premium to participate. Medicare beneficiaries may also choose to purchase a Medigap policy, which provides supplemental coverage in the private sector if one enrolls in Medicare Part A and B.

With respect to Members and designated congressional staff, Section 1312(d)(3)(D) and the final rule do not appear to affect their eligibility for any Medicare programs. Additionally, OPM indicates that eligibility for Medicare does not affect Members' and staff's ability to obtain coverage through a SHOP exchange:

SHOP coverage is not subject to the same limitation as the individual Exchange which precludes an individual from carrying both Medicare and an individual Exchange policy. You can continue to have Medicare coverage in addition to your employer-sponsored DC SHOP plan.³⁸

This information indicates that Members and designated staff who become eligible for Medicare while actively employed can have SHOP coverage and Medicare coverage concurrently. For those Members and designated staff who carry their federally sponsored health insurance coverage into retirement, they would switch to a plan offered under FEHB, and their FEHB coverage would interact with Medicare coverage in the ways outlined for the programs.³⁹

³⁴ 32 C.F.R. §728.77.

³⁵ For more detail on Medicare eligibility and benefits, see CRS Report R40425, *Medicare Primer*.

³⁶ This tax was established for federal employees under the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248, effective January 1, 1983).

³⁷ For a full discussion of wage taxes, see CRS Report 94-28, *Social Security and Medicare Taxes and Premiums: Fact Sheet*.

³⁸ OPM, Insurance FAQs: Members of Congress & Staff, <http://www.opm.gov/healthcare-insurance/insurance-faqs/?cid=6bf9dd32-d3b9-4fc7-9416-431e535f933a/>.

³⁹ For more information about how FEHB interacts with Medicare, see CRS Report R43922, *Federal Employees Health Benefits (FEHB) Program: An Overview*.

Author Contact Information

Ada S. Cornell
Information Research Specialist
acornell@crs.loc.gov, 7-3742

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