

Joseph A. Beaudoin
National President

Paul H. Carew
National Vice President



Elaine C. Hughes
National Secretary

Richard G. Thissen
National Treasurer

September 4, 2013

Ms. Chelsea Ruediger
Planning and Policy Analysis
Office of Personnel Management
1900 E Street, NW
Washington, DC 20415-3200

Dear Ms. Ruediger,

Please accept the following comments from the National Active and Retired Federal Employees Association (NARFE) regarding the Office of Personnel Management's (OPM) proposed rule amending the Federal Employees Health Benefits Program (FEHBP) eligibility regulations to comply with section 1312 of the Patient Protection and Affordable Care Act (ACA), Public Law 111-148. We refer specifically to the proposed rule published on August 8, 2013, identified by the Docket ID: OPM-2013-0016, and Federal Register Number: 2013-19222.

NARFE was founded in 1921 with the mission of protecting the earned rights and benefits of America's active and retired federal workers, including those serving in the Legislative Branch. As the largest federal employee/retiree organization, NARFE has over 250,000 members spread across every congressional district in the country, and represents the retirement interests of nearly five million current and future federal annuitants, spouses and survivors.

Background

The federal government has provided employer-sponsored health insurance to its employees and annuitants through FEHBP since 1965. Today, FEHBP provides health insurance coverage to over eight million participants, inclusive of postal and federal employees, annuitants, their spouses and dependents. OPM's proposed rule would implement Section 1312(d)(3)(D) of the ACA, which imposes limitations on one discrete group of enrollees.

Section 1312 of the ACA limits the health plans that the federal government may make available to Members of Congress and the congressional staff of their official office (as defined therein, and clarified by the regulations) to health plans created under the ACA or offered through an "exchange" established under the act (or an amendment to the act). This, essentially, limits employer-sponsored health plans for Members of Congress and their congressional staff to those provided through an exchange established pursuant to the ACA.

While Section 1312 clearly assumed the continued provision of exchange-limited employer-based health insurance for Members of Congress and their personal office staff, it did not make clear, in any way, how the federal government would make exchange coverage available to them. For example, through which type of exchange (individual or small business) would

National Active and Retired Federal Employees Association

www.NARFE.org | 606 N. Washington Street, Alexandria, VA 22314 | **phone** 703-838-7760 | **fax** 703-838-7785

Federal Workers Protect America's Heartbeat



Show your support at www.PROTECTAmericasHeartbeat.org

coverage be provided and how would the federal government determine and make contributions towards premiums? The proposed regulations have answered some questions well, others inappropriately, and left others unanswered.

Our comments on the proposed rule and recommendations for changes regarding specific provisions of the regulations are as follows.

Retiree Health Insurance Coverage

Currently, federal employees, including congressional staff and Members of Congress, who retire with at least five years of continuous coverage under FEHBP carry that coverage into retirement. Section 1312 of the ACA specifically applies only to sitting Members of Congress and active congressional staff who are “full-time and part-time employees employed by the official office of a Member of Congress.” The provision does not contemplate annuitant coverage, nor should it be interpreted to do so. As such, the proposed regulations should be amended to allow all congressional staffers to obtain health insurance coverage through traditional FEHBP plans as annuitants in the same manner as it is made available to other qualifying federal annuitants.

Yet, under the proposed regulations, the coverage of an annuitant who retires from the congressional payroll will be determined by their coverage immediately preceding their retirement. Specifically, the proposed regulation provides for the continuation of exchange coverage into retirement without the option to switch to a traditional FEHBP plan.

Under 5 U.S.C. § 8905, health insurance coverage for annuitants is contingent only on enrollment in a “health benefits plan under [chapter 89 of Title 5],” which, as the proposed rule recognizes, includes health benefits plans offered to Members of Congress and their staff through an exchange. Furthermore, an annuitant’s health insurance options are not limited to the health benefit plan that s/he had at the time of retirement. Notably, 5 C.F.R. § 890.306(f)(i) allows for annuitants to switch between available plans during the annual open season. As annuitants, retired congressional staff and Members of Congress should not be prevented by Section 1312 from enrolling in traditional FEHBP plans. There is no adequate justification for excluding them from traditional FEHBP plan coverage via regulation.

Such a move is particularly unfair for civil servants who have ended their career on Capitol Hill or in a Member of Congress’ district or state office, but worked numerous years elsewhere in the federal government. Maintaining the enrollment of these career civil servants in exchange plans is an over-reading of the anomaly contained in the ACA. FEHBP, by its design, is a unitary system intended to cover both active and retired federal workers in a single cohesive class, as a matter of the federal compensation benefit system. The policy of providing retiree coverage under 5 U.S.C. § 8905 derives from the full measure of a federal employee’s career in the federal civil service. Nothing in the legislation gives any reason to interpret otherwise.

Health Insurance Coverage for Reemployed Annuitants

NARFE seeks clarification about the health insurance coverage of congressional staffers who work as reemployed annuitants; namely, whether the FEHBP coverage of an annuitant changes

upon their reemployment in the official office of a Member of Congress. Under current regulations, it would appear that a reemployed annuitant automatically has their health insurance coverage transferred from their retirement system to their employing agency. Prior to the proposed regulations, this action would appear to have no tangible effect, except to afford continued access to premium conversion for a reemployed annuitant. Under the proposed regulations, the question remains whether an FEHBP-covered annuitant would continue to have access to FEHBP upon reemployment in the official office of a Member of Congress. NARFE believes that FEHBP coverage, once vested as an annuity benefit, should remain unaffected upon reemployment, even in the official office of a Member of Congress.

Current regulations¹ suggest that, upon reemployment, health insurance enrollment is transferred from the retirement system to the “employing agency.” The proposed regulations create a gray area for those who retire and come back to work in the official office of a Member of Congress on or after January 1, 2014. NARFE believes that OPM regulations should make it clear that a reemployed annuitant does not lose (or otherwise automatically convert) his/her FEHBP coverage absent an affirmative election to do so (that is, affirmatively electing to enroll in an exchange plan as an employee in the official office of a Member of Congress, with a government contribution).

Employer Contribution

We commend OPM for its efforts in developing regulations consistent with both chapter 89 of title 5 and section 1312 of the ACA that allow for employer contributions towards health insurance premiums for congressional staff and Members of Congress. The general framework for providing employer contributions appears consistent with the intent of Congress to both limit health insurance coverage of Members of Congress and their staff to exchange-based plans, but also not to cause any individuals to lose health insurance coverage as a result of the ACA.

Nonetheless, the framework results in winners and losers, in terms of premium levels, among congressional staff and Members of Congress, in comparison to the current system. Because premiums under the exchanges are age-rated (whereas premiums for traditional FEHBP plans are not), older employees may be paying significantly more for health insurance, while younger employees may be paying significantly less. NARFE believes the basic premise of risk-sharing across ages is a basic tenet of value to all FEHBP enrollees, no matter their station in life. To fracture that system is to break what does not need to be fixed. As a matter of policy, federal employee premiums should not vary by age. However, while it breaks FEHBP precedent, the result from the proposed rule appears consistent with the congressional intent reflected by Section 1312 of the ACA.

Employer-Based Coverage & Coordination with Medicare

Under the ACA, beginning in 2014, health insurance plans will be made available through regulated, state-based marketplaces (“exchanges”) for purchase by: (i) individuals, for themselves and family members (individual exchanges); and (ii) small businesses, for their employees (Small Group Health Options Program (SHOP) exchanges). The ACA allowed

¹ See OPM Frequently Asked Questions on Premium Conversion. <http://www.opm.gov/healthcare-insurance/insurance-faqs/?cid=e5aa4df4-5f24-4d7a-9373-a0843dc852a4&page=3>.

flexibility for states with regards to how the exchanges were set up. For example, there may be one exchange for both individuals and small businesses or there may be separate exchanges for each.

Although the proposed regulations themselves do not specify which exchange will provide the available health benefits plans for Members of Congress and congressional staff, “Questions and Answers” posted on OPM’s website state: “Initially, OPM expects that Members of Congress and congressional staff will enroll in the individual market on Exchanges. However, OPM plans to work with stakeholders to determine whether employing offices could purchase insurance in the SHOP.”

While Congress is by no means a small business or small group, SHOP plans are likely better-suited for the provision of health insurance to employees than individual exchange plans. Notably, SHOP plans may better be able to coordinate health insurance coverage with Medicare for employees or retirees age 65 or older. Without the full details of exchange plan offerings yet public and little other public information on the topic of the coordination of coverage between Medicare and exchange plans available, it is difficult to ascertain how the individual and SHOP plans will handle this issue. But SHOP plans likely need to deal with this issue for small businesses across the country that may employ individuals age 65 or older, while the individual exchanges may not.

Will exchange plans allow for different premiums for individuals enrolled in Medicare in situations where Medicare is the primary payer, e.g. for retirees, or, in the private-sector, for individuals employed by a company or organization with less than 20 employees? If the plans do not, Medicare-enrolled individuals could be paying age-rated premiums far in excess of the average cost of coverage for such individuals, making the choice to maintain an exchange-based plan cost prohibitive, even with the benefit of an employer contribution. The employer contribution would therefore become a negligible benefit for these employees and retirees.

Conclusion

In summary, NARFE has the following recommendations:

- (1) **Retiree Coverage.** The proposed regulations should be amended to allow all congressional staffers to obtain health insurance coverage through traditional FEHBP plans when they achieve annuitant status, provided they meet the continuous enrollment requirements under current FEHBP law.
- (2) **Reemployed Annuitants.** NARFE believes that the OPM regulations should make it clear that a reemployed annuitant does not automatically lose (or otherwise automatically convert) his/her FEHBP coverage absent an affirmative election to do so (that is, affirmatively electing to enroll in an exchange plan as an employee in the official office of a Member of Congress, with a government contribution).
- (3) **Employer Contribution.** We commend OPM for ensuring that congressional staff and members of Congress will receive an employer contribution towards health insurance plans

purchased through the exchanges created under the ACA – this framework should be confirmed in the final regulation.

(4) SHOP Exchange Plans. OPM should allow Members of Congress and congressional staff of their official office to obtain health insurance coverage through the SHOP exchanges.

Thank you for accepting NARFE's comments regarding the proposed rule. If you have any questions, please contact Jessica Klement, NARFE's Legislative Director, at jklement@narfe.org or 703-838-7760.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph A. Beaudoin". The signature is fluid and cursive, with a large, stylized initial "J".

Joseph A. Beaudoin
National President