

# United States Senate

WASHINGTON, DC 20510

Sept. 9, 2013

COMMITTEES:  
BUDGET

COMMERCE, SCIENCE  
AND TRANSPORTATION

FOREIGN RELATIONS

HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS

SMALL BUSINESS AND  
ENTREPRENEURSHIP

Chelsea Ruediger,  
Planning and Policy Analysis  
U.S. Office of Personnel Management  
1900 E St. NW  
Washington, DC 20415

Re: Federal Employees Health Benefits Program: Members of Congress and Congressional Staff (RIN 3206-AM85)

Dear Ms. Ruediger:

On behalf of Senator Ron Johnson and several members of his staff, we are writing to offer our comments regarding the proposed rules issued by the Office of Personnel Management (OPM) relating to the Federal Employees Health Benefits Program (FEHBP) regulations regarding coverage for Members of Congress and certain congressional staff.<sup>1</sup> The proposed rule permits the federal government to pay an employer contribution toward health insurance premiums for Members and staff when they purchase health insurance through an exchange as required by the Patient Protection and Affordable Care Act (ACA).

We submit this comment to OPM because the proposed rule is unlawful and it defeats the will and intent of Congress as expressed in the ACA and the statute creating the FEHBP.

OPM administers the FEHBP under Chapter 89 of Title 5 of the U.S. Code, and in that capacity OPM contracts with carriers to offer group health insurance to federal employees. OPM also determines the government and employee shares of the costs of such insurance and pays the government's share. Nowhere is OPM given authority to pay for a federal employee's health insurance (in whole or in part) that is not a group plan contracted for by OPM under Chapter 89. The Department of Health and Human Services (HHS) is responsible for implementing Section 1312(d)(3)(D) of the ACA, not OPM.

Section 1312(d)(3)(D) of the ACA provides that, as of Jan. 1, 2014, "the only health plans ... available to Members of Congress and congressional staff ... shall be health plans that are ... created under [the ACA]; or offered through an Exchange established under [the ACA]." The individual plans purchased by Members and their staffs by statutory definition are not OPM-negotiated group plans. Furthermore, the rate and benefit requirements for exchange plans (in substantial part because they are individual plans, not group plans) are different from those specified for FEHBP plans. Thus, exchange plans likely will not meet the standards for participating in FEHBP.

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<sup>1</sup> Federal Employees Health Benefits Program: Members of Congress and Congressional Staff (RIN 3206-AM85).

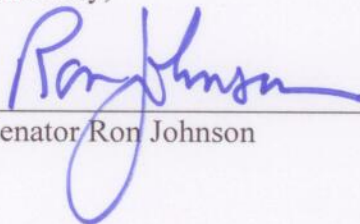
As a result, the proposed rule exceeds the authority granted to the OPM, is inconsistent with the federal statute authorizing the OPM's operation, and is inconsistent with the ACA.

When Congress was debating the ACA, at least one proposed amendment was offered that would have allowed Members of Congress and their staffs to continue to receive the payments the proposed rule would now allow. That amendment stated: "**Enrollment by Members of Congress and Congressional Employees.** Notwithstanding any other provision of law, beginning July 1, 2013, Members of Congress and congressional employees would be required to use their employer contribution (adjusted for age rating) to purchase coverage through a state-based exchange, rather than using the traditional Federal Employees Health Benefits Plan (FEHBP)." But that amendment did **not** become part of the law. Thus, Congress considered but did not accept an amendment that would have produced exactly the result that OPM is now trying to create by rule.

When Congress passed the ACA, it resolved that Members of Congress and their staffs would not be eligible for FEHBP plans or the pre-tax employer contributions to their plans. It was the intent of Congress that Members and their staffs would access health care through either an ACA qualified exchange or the open market with after-tax dollars, qualifying or not qualifying for exchange subsidies like every other American who loses his or her employer coverage.

We understand the concerns that have been raised by many Members and their staffs with respect to the financial consequences of the provisions of the ACA that require them to purchase individual insurance through the exchanges. We are sympathetic to those concerns, but it is our belief that they need to be addressed in a straightforward manner by Congress. It is simply wrong for OPM to address the matter by issuing a regulation that is neither authorized by statute nor consistent with the plain meaning of the ACA. The program you have proposed is unlawful. It would require Members and their staffs to facilitate the improper expenditure of taxpayer funds. We do not want to participate in such a program, as the proposed regulation would require us to do. We urge you to reconsider.

Sincerely,

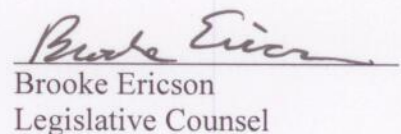


Senator Ron Johnson

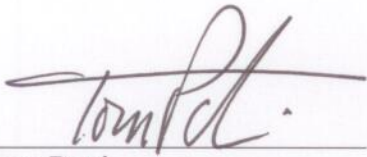
Staff of Senator Ron Johnson:



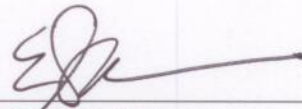
Patrick McIlheran  
Policy Advisor



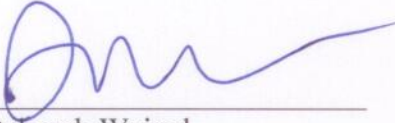
Brooke Ericson  
Legislative Counsel



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Senior Legislative Assistant



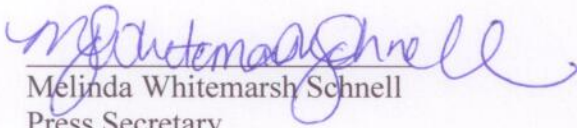
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