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Health Benefits for Members of Congress and Designated Congressional Staff: In Brief

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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 the employee's compensation package. The federal government, as an employer, also offers health benefits to its employees and retirees.¹ In general, federal employees receive health benefits through the Federal Employees Health Benefits (FEHB) Program, administered by the Office of Personnel Management (OPM). However, Members of Congress and designated congressional staff receive employer-sponsored insurance (ESI) through the District of Columbia's small business health options program (SHOP) exchange, also known as DC Health Link (hereinafter the "DC SHOP").

Before January 1, 2014, Members and congressional staff were eligible to participate in FEHB, like other federal employees. The Patient Protection and Affordable Care Act (ACA; P.L. 111-148, as amended) requires that Members and congressional staff receive ESI through a plan or exchange created under ACA.² OPM issued a final rule that amends FEHB eligibility to comply with this requirement.³ Under the rule, as of January 1, 2014, Members and designated congressional staff were no longer able to purchase a health plan offered under FEHB; however, they remain eligible for an employer contribution toward coverage if they enroll in a health plan offered through the DC SHOP.⁴ Members and staff who obtain coverage through the DC SHOP may purchase a FEHB plan upon retirement from the federal government, provided they otherwise meet the criteria to do so. 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.⁵ The ACA and related OPM regulations do not require Members and staff to enroll in a health plan offered through the DC SHOP; rather, DC SHOP plans are the only plans that will be made available to them with respect to their federal service.

In addition to health insurance coverage under the DC SHOP, this report describes other health benefits available to Members and congressional staff, 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 nor provide a comprehensive picture of the health benefits available to other federal employees. 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*.

¹ In the statute, retirees are referred to as *annuitants*. In this report, the term *retirees* will be used.

² §1312(d)(3)(D) of ACA.

³ Office of Personnel Management (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>.

⁴ For more information about SHOP exchanges, see CRS Report R44065, *Overview of Health Insurance Exchanges*.

⁵ 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>.

Health Insurance Coverage

Coverage for Members and Staff

As of January 1, 2014, 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.⁶ OPM has indicated that Members and staff must use the District of Columbia’s SHOP exchange, known as DC Health Link (the “DC SHOP”).⁷

Section 1312(d)(3)(D) of the ACA defines *Members 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.”

OPM 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 notes, “[n]othing 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.”⁸ OPM indicates that it will not interfere in the process by which a Member or its designee determines the designations of their staff.

The employing office of a Member (or its designee) is required to designate staff for the plan year during the month of September of the preceding year (or at the time of hiring for individuals whose employment begins during the year).⁹ The designation is made annually, and individuals maintain their designations for the entire plan year, so long as they continue to be employed by the same Member.¹⁰ 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. 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,¹¹ and (2) continuous enrollment in a health plan offered under FEHB (or in the case of Members and staff,

⁶ 5 C.F.R. §890.102(c).

⁷ 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/>.

⁸ Ibid.

⁹ 5 C.F.R. §890.102(c)(9)(ii).

¹⁰ Ibid.

¹¹ For information about retirement eligibility, see CRS Report RL30631, *Retirement Benefits for Members of Congress*.

offered through the DC SHOP) for the five years of service immediately prior to retirement. To be clear, OPM has indicated that Members' and staff's DC SHOP coverage counts toward the five-year requirement.

Election of Coverage and Plan Choices

The open enrollment period for Members and designated staff coincides with the FEHB open enrollment period, running mid-November to mid-December each year.¹² For the 2017 plan year, there are 57 plan options offered in the gold tier on the DC SHOP. 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.¹³

Members and staff can select individual, self plus one, 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 web page when enrolling, these are the only dependents you may enroll.”¹⁴ OPM indicates that enrollment in a DC 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 DC 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.¹⁵ TCC is similar to COBRA coverage offered to individuals in the private sector, and is also available to FEHB enrollees.¹⁶ TCC enrollees may initially enroll in any FEHB plan and 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 employer 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.

Cost of Coverage

Plans offered under ESI 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, self

¹² OPM, Insurance FAQs: Members of Congress & Staff, <http://www.opm.gov/healthcare-insurance/insurance-faqs/?cid=6bf9dd32-d3b9-4fc7-9416-431e535f933a>.

¹³ 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%. For plan premiums and plan counts, see “January 2017 Rates for Health Insurance Products to be Sold in DC Health Link - SHOP,” <http://disb.dc.gov/sites/default/files/dc/sites/disb/publication/attachments/2017%20QHP%20Rate%20Submission%20Data%20-%20SG%20%28FINAL%29.pdf>.

¹⁴ OPM, Insurance FAQs: Members of Congress & Staff, <http://www.opm.gov/healthcare-insurance/insurance-faqs/?cid=6bf9dd32-d3b9-4fc7-9416-431e535f933a>.

¹⁵ Ibid.

¹⁶ The Consolidated Omnibus Budget Reconciliation Act (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>.

plus one, 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, under the ACA, states may allow plans offered in the small-group market, such as those available through the SHOP exchanges, to vary premiums based on an individual's age, geographic location, and whether the individual uses tobacco products. The DC SHOP only varies premiums based on age, not by geography or tobacco use.¹⁷ 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. Detailed information on the plans and premiums available through the DC SHOP is at <http://www.dchealthlink.com>.¹⁸

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.¹⁹ The percentage of premiums paid by the federal government is calculated separately for individual, self plus one, 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.²⁰ 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.²¹ After determining their monthly premium on the DC SHOP website, Members and designated staff may use the OPM "Premium Contribution Calculator" to estimate their share of the premium.²²

Other Health Benefits Related to 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 is not affected by Section 1312(d)(3)(D) and the final rule.²³ Some of these health benefits are available to all federal employees and retirees, while others are only available to active employees, Members, and staff.

¹⁷ DC only has one geographic rating area and has decided not to allow insurers to vary premiums based on tobacco use.

¹⁸ Sample premiums for 2017 SHOP plans are available at "January 2017 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/2017%20QHP%20Rate%20Submission%20Data%20-%20SG%20%28FINAL%29.pdf>.

¹⁹ 5 C.F.R. §890.501(h).

²⁰ 5 U.S.C. §8906.

²¹ OPM, Insurance FAQs: Members of Congress & Staff, <http://www.opm.gov/healthcare-insurance/insurance-faqs/?cid=6bf9dd32-d3b9-4fc7-9416-431e535f933a>.

²² The calculator is available at <http://www.opm.gov/healthcare-insurance/changes-in-health-coverage/eligibility-enrollment/#url=Members-of-CongressStaff>.

²³ Ibid.

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:

1. the Health Care Flexible Spending Account (HCFSA), which 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;
2. the Dependent Care Flexible Spending Account (DCFSA), which reimburses eligible non-medical child day care and elder care expenses;
3. the Limited Expense HCFSA (LEX HCFSA), which 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.
4. The accounts are funded by the employee from pre-tax salary dollars, with no government contribution. Participants may carryover a limited amount 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.²⁴ Details about the allowed amounts to deposit in a calendar year and to carry over to the next year are available at <https://www.fsafeds.com/>.

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 Insurance Program (FEDVIP) 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 several nationwide and regional plans covering a variety of preventive and major services, as well as orthodontics for dependents under the age of 19.²⁵ For vision coverage, enrollees can choose from several 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.²⁶

²⁴ OPM, *Flexible Spending Accounts (FSAFEDS) FastFacts*, <http://www.opm.gov/insure/fastfacts/fsafeds.pdf>.

²⁵ OPM, *FastFacts for Dental Insurance*, <http://www.opm.gov/insure/fastfacts/dental.pdf>.

²⁶ OPM, *FastFacts for Vision Insurance*, <http://www.opm.gov/healthcare-insurance/fastfacts/vision.pdf>.

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 (FLTCIP), 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.

Other Health Benefits for Current Members of Congress

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.²⁷

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.²⁸ 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 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.²⁹

Medicare

Medicare is the nation's health insurance program for individuals aged 65 and over and certain people with disabilities. 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.³⁰ Workers, including all federal employees, Members, and congressional staff, must pay a tax on their wages for Medicare Part A.³¹ Participation in Part

²⁷ For background information on the Office of the Attending Physician, see CRS Report RL33220, *Support Offices in the House of Representatives: Roles and Authorities* <http://appdev24.crsdnet.lctl.gov:82/Reports/RL33220>.

²⁸ The National Capital Region includes Washington, DC and nearby jurisdictions in Maryland and Virginia.

²⁹ 32 C.F.R. §728.77.

³⁰ For more detail on Medicare eligibility and benefits, see CRS Report R40425, *Medicare Primer*.

³¹ Internal Revenue Service, *Topic 751 - Social Security and Medicare Withholding Rates*, <https://www.irs.gov/> (continued...)

B, Medicare Advantage, and Part D is voluntary, and enrollees may need to pay a premium. 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) of the ACA and the OPM final rule do not 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.³²

Members and designated staff who become eligible for Medicare while actively employed can have DC 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.³³

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(...continued)

taxtopics/tc751.html.

³² OPM, Insurance FAQs: Members of Congress & Staff, <http://www.opm.gov/healthcare-insurance/insurance-faqs/?cid=6bf9dd32-d3b9-4fc7-9416-431e535f933a/>.

³³ For more information about how FEHB interacts with Medicare, see CRS Report R43922, *Federal Employees Health Benefits (FEHB) Program: An Overview*.