United States

Office of Personnel Management

The Federal Government's Human Resources Agency

Benefits Administration Letter

Number: 14-201 **Date: February 26, 2014**

Subject: Additional Operational Issues Concerning the Final Rule for the Federal Employees Health Benefits Program Regarding Members of Congress and Congressional Staff

I. Background

This letter explains operations and operational issues related to the implementation of the Office of Personnel Management's (OPM) final rule to amend the Federal Employees Health Benefits (FEHB) Program regulations regarding health coverage for Members of Congress and congressional staff not addressed in BAL 13-204(a), released on November 4, 2013. The 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).

Specifically, this letter discusses:

- Coverage for Members of Congress and designated congressional staff when on workers' compensation;
- Coverage for Members of Congress and designated congressional staff when approved for a disability annuity;
- Coverage for family members of Members of Congress and designated congressional staff who die in service;
- Whether eligibility for Federal benefits programs other than the FEHB Program will change for Members of Congress and designated congressional staff under the Affordable Care Act;
- The process for documenting DC SHOP coverage;
- Coverage for the children of a same-sex domestic partner of a Member of Congress or designated congressional staff;
- Coverage for children age 26 or over that are incapable of self-support;
- The prohibition against dual enrollments;
- Paperless reimbursement when participating in the Federal Flexible Spending Account Program (FSAFEDS); and
- Other enrollment issues concerning Members of Congress and designated congressional staff.

II. Workers' Compensation

a. General Rule

When a Member of Congress or designated congressional staff member who is enrolled in a DC SHOP plan is injured on the job and approved for workers' compensation, the injured individual may remain covered under that DC SHOP plan for up to 365 days of leave without pay (LWOP). During this time, the individual may change SHOP plans during Open Season or due to a qualifying life event (QLE), but may not move from a SHOP plan to an OPM-contracted plan.

b. Process

When the injury occurs, the employing office will fill out an Office of Workers' Compensation Programs (OWCP) claims form CA-7 and attach a cover letter that includes: (1) the Government share of the individual's SHOP plan premium; (2) the employee's share of the individual's SHOP plan premium; and (3) the appropriate Health Benefits (HB) code. OWCP will then scan in the claims form and cover letter and an assessor will assess the claim.

In order to be approved for workers' compensation, an individual must be on LWOP. If approved by the OWCP assessor, OWCP will pay the agency share and deduct the employee share from the injured workers' compensation benefit during the time the person is receiving compensation for the injury. These payments may be retroactive. OWCP will pay the DC SHOP through the Retirement and Insurance Transfer System (RITS).

After 365 days of LWOP during which the injured employee is an OWCP compensationer,[1] if the employee meets the requirements to continue coverage into retirement and the individual chooses to remain covered, the individual is eligible to enroll in an OPM-contracted plan via a Standard Form (SF) 2809. The employing office will provide the employee with the SF-2809. Once the employee completes the SF-2809 and submits it to the employing office, the employing office will instruct OWCP to transfer-in the individual's enrollment in the OPM-contracted plan into the OWCP payroll system. The individual will enroll as if he or she was a new enrollee with the corresponding reset of deductibles and out-of-pocket maximums. After 365 days, the employee is no longer eligible for SHOP coverage.[2] Once the individual chooses an OPM-contracted plan, OWCP will interact with OPM the same as for other Federal workers' compensation claims.

c. Default

Just as in the retirement context, if the employee who meets the requirements to continue coverage into retirement does not select an OPM-contracted plan after 365 days, but does not affirmatively opt out of FEHB coverage, the House of Representatives or Senate Administrative Office (Administrative Offices) will default the employee, based on his or her enrollment at the

[1] This 365-day timeframe was chosen as the benchmark because 365 days is the duration of a Federal employee's job restoration rights upon recovery from compensable injury under 5 C.F.R. part 353.
[2] This is because Members of Congress and designated congressional staff members may only enroll in a SHOP plan as a condition of employment.

time of approval, into the lowest-cost Self Only or Self and Family OPM-contracted nationwide plan that is available to the individual based on the enrollee share of the cost.

d. Return to Work

If, after the individual enrolls in an OPM-contracted plan, that person is able to return to work as a Member of Congress or designated congressional staff member, OWCP will complete an SF-2810 to terminate the OPM-contracted plan coverage and the individual may enroll in a DC SHOP plan. Because this is a new enrollment in a DC SHOP plan, the individual may choose a different plan than the one he or she held prior to the injury and will be subject to the corresponding reset of deductibles and out-of-pocket maximums.

III. Disability Annuity

If a Member of Congress or designated congressional staff member is enrolled in a DC SHOP plan and files for a disability annuity, that employee will be treated as an annuitant for FEHB Program purposes at the time the annuity is approved by OPM's Retirement Office. At that point the individual is no longer an employee eligible for SHOP coverage and his or her SHOP coverage will terminate on the last day of the month in which the disability annuity is approved.

Once the disability annuity is approved, OPM's Retirement Office will alert the individual and the individual's employing office that the individual's disability annuity has been approved. The employing office must terminate the individual's SHOP coverage on the last day of the month in which the disability annuity was approved. The employing office is responsible for informing the employee that he or she is eligible to enroll in an OPM-contracted plan via an SF-2809 with coverage beginning on the 1st day of the following month. This coverage can be retroactive. If the employee enrolls in an OPM-contracted plan, he or she will have to enroll as a new enrollee with the corresponding reset of deductibles and out-of-pocket maximums. The Administrative Office will send the completed SF-2809 to the plan and the OPM Retirement Office will transfer-in the enrollment.

Just as in the retirement context, if the employee does not select an OPM-contracted plan, but does not affirmatively opt out of FEHB coverage, the Administrative Office will default the employee, based on his or her enrollment at the time of disability annuity approval, into the lowest-cost Self Only or Self and Family OPM-contracted nationwide plan that is available to the individual based on the enrollee share of the cost.

IV. Death in Service

If a Member of Congress or designated congressional staff member dies while in a DC SHOP plan Family[3] enrollment, and at least one family member is entitled to a survivor annuity, the employing office will terminate the survivor's coverage under DC SHOP and will notify the survivor of his or her right to enroll in an OPM-contracted plan under which he or she would continue to receive a Government contribution towards his or her health insurance premium. The

[3] A "Family" enrollment in a DC SHOP plan is equivalent to a "Self and Family" enrollment in an OPM-contracted plan.

survivor is eligible to make an OPM-contracted plan election via an SF-2809. The Administrative Office will send the completed SF-2809 to the plan. OPM's Retirement Office will transfer-in the enrollment, change the enrollment to the survivor's name and withhold premiums from the survivor annuity.

If the deceased individual had a Family enrollment, the survivor can choose a Self and Family enrollment with an OPM-contracted plan for all eligible family members. If the survivor is the only person eligible for coverage, the enrollment will be changed to Self Only.

If the survivor does not select an OPM-contracted plan following the death of the Member of Congress or designated congressional staff member, but does not affirmatively opt out of FEHB coverage, the Administrative Office will default the survivor and all eligible family members based on the deceased individual's enrollment at the time of death. The default plan will be the lowest-cost Self Only or Self and Family OPM-contracted nationwide plan that is available based on the enrollee share of the cost.

Coverage in an OPM-contracted plan will be effective the 1st of the month after the employee's death.

The employing office will be responsible for initiating this process, just as it would for a retiring employee.

V. Other Benefits Programs

Section 1312 of the Affordable Care Act and OPM's final rule only pertain to health benefits plans for Members of Congress and designated congressional staff. Members of Congress and designated congressional staff are eligible for other Federal benefits programs the same as other Federal employees. These programs include the Federal Employees Dental and Vision Program (FEDVIP), Flexible Spending Account (FSAFEDS) Program, Federal Long Term Care Insurance Program (FLTCIP), and Federal Employees' Group Life Insurance (FEGLI) Program.

VI. Documenting DC SHOP Coverage

When a Member of Congress or designated congressional staff leaves a position with the House of Representatives or Senate, the employing office under which the employee held DC SHOP coverage is responsible for documenting the dates of coverage on the DC SHOP in a brief memorandum. The purpose of this memorandum is to document whether a retiring employee who held DC SHOP coverage at some point during his or her career has met either the five-year or first opportunity requirement for carrying health coverage into retirement. The employing office must add this memorandum to the employee's official personnel folder (OPF), electronic official personnel folder (eOPF), or an alternative document management system if the employing office does not keep a standard OPF or eOPF. The employing office must classify the memorandum as a permanent document.

It is important to note that this documentation must be completed for all periods of DC SHOP coverage, regardless of whether the employee is ending DC SHOP coverage due to retirement or

for reasons unrelated to retirement.

VII. Children of Same-Sex Domestic Partners

Children of a same-sex domestic partner of a Member of Congress or designated congressional staff member have the same eligibility rules as children of same-sex domestic partners of other Federal employees. On October 30, 2013, the Office of Personnel Management (OPM) released final regulations to extend FEHB and Federal Employee Dental and Vision Insurance Program (FEDVIP) eligibility to children of same-sex domestic partners of Federal employees and annuitants who would marry their partners but live in states that do not allow same-sex couples to marry. These regulations took effect on January 1, 2014. Eligible children of same-sex domestic partners are covered as stepchildren, however the same-sex domestic partner of the Member of Congress or designated congressional staff member is not an eligible family member for purposes of FEHB coverage.

OPM recently released two BALs on this topic that are available at www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-209.pdf and www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-210.pdf (attachments: www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-210attachment1.pdf; www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-210attachment2.pdf).

VIII. Children Age 26 or Over that are Incapable of Self-Support

Members of Congress and designated congressional staff enrolled in DC SHOP plans who have adult children incapable of self-support will follow the same eligibility rules as other Federal employees enrolled in OPM-contracted plans with adult children incapable of self-support. A child can continue coverage under his or her parent's plan after turning age 26 if the child is incapable of self-support due to a disability present before turning age 26.

In order to continue coverage for an adult child incapable of self-support, the Member of Congress or designated congressional staff member must contact his or her Benefits Office and the Benefits Office will work with DC Health Link to ensure that the eligible adult child is covered.

IX. Prohibition Against FEHB Program Dual Enrollment

Dual enrollment is prohibited for Members of Congress and designated congressional staff with coverage on the DC SHOP the same as for other Federal employees with OPM-contracted health plan coverage. Members of Congress and designated congressional staff, as well as eligible family members under a Self and Family enrollment, may not be covered under more than one FEHB enrollment, which includes OPM-contracted plans and DC SHOP plans. Just as in the FEHB context, a dual enrollment may be allowed if an individual or a family member would otherwise lose coverage, however benefits may only be provided under one plan for any individual with a dual enrollment.

X. Paperless Reimbursement

Members of Congress and designated congressional staff are eligible for FSAFEDS. However, Members of Congress and designated congressional staff will not be able to participate in paperless reimbursement (PR) if enrolled in a DC SHOP health plan because PR is set up through agreements between the OPM-contracted FEHB and FEDVIP carriers. This means that Members of Congress and designated congressional staff must submit health care claims manually, either via mail, fax or online. However paper reimbursement for participating FEDVIP carriers will still be available. Please visit www.FSAFEDS.com for more information. OPM is exploring the possibility of PR for DC SHOP health plans in the future.

XI. Other Enrollment Issues

a. Choosing Covered Family Members

DC Health Link allows an enrollee who has a Family enrollment to select which eligible family members will be covered. Members of Congress and designated congressional staff with health coverage under a DC SHOP plan will follow the DC Health Link rule for choosing covered family members and may select which family members are covered under a Family enrollment.

It is important to note that the FEHB rules for determining which family members are eligible for coverage apply to Members of Congress and designated congressional staff choosing health coverage on the DC SHOP. This is true regardless of the eligible family member relationships listed on the DC Health Link website. For more information on eligible family members, please visit http://www.opm.gov/healthcare-insurance/healthcare/eligibility/#url=Dependents.

b. Social Security Number and Date of Birth

DC Health Link requires that an individual provide his or her Social Security Number and date of birth and the Social Security Numbers and dates of birth of all eligible family members when enrolling. In accordance with this rule, Members of Congress and designated congressional staff must provide a Social Security Number for each individual that will be covered under a DC SHOP plan when enrolling on DC Health Link.

c. Changes Due to a Qualifying Life Event

DC Health Link allows 30 days from the time of a qualifying life event (QLE) to make a change to one's enrollment. In accordance with this rule, Members of Congress and designated congressional staff will have 30 days from the time of a QLE to make a change to their enrollment.

d. Implementation of Rule Regarding 31-Day Temporary Extension of Coverage

In BAL 13-204(a), released on November 4, 2013, OPM clarified the rule for the 31-day temporary extension of coverage for Members of Congress and designated congressional staff. If a Member of Congress or designated congressional staff chooses not to enroll in a DC SHOP

plan, an additional 31 days of coverage is included after the termination date at no cost to the enrollee. If the Member of Congress or designated congressional staff chooses to enroll in a DC SHOP plan, the effective date of coverage will be January 1, 2014 and the 31-day temporary extension of coverage will not apply.

e. January Enrollment Period

As stated in BAL 13-204(a), released on November 4, 2013, individuals hired during Open Season in 2013 and through December 31, 2013, as well as those people who had incorrect census data, have been provided an additional opportunity to enroll in a DC SHOP plan during January 2014. The Administrative Offices must provide DC Health Link with a final census of these individuals. The Administrative Offices should include individuals who were unable to enroll due to technical errors on DC Health Link in this census. All enrollments made during this period will have a retroactive effective date of January 1, 2014.

f. Enrollment Reconciliation – CLER

The DC SHOP will not report to the FEHB enrollment reconciliation clearinghouse (CLER) and the Administrative Office will not report enrollees in the DC SHOP to CLER. However, the Administrative Office will continue to report its OPM-contracted plan enrollees to CLER.

The Administrative Office will be responsible for reviewing the quarterly CLER reports to determine if an employee who has enrolled in a DC SHOP plan appears on the CLER report. These enrollees will generate a 160 error as the OPM-contracted plan is showing an active enrollment. The Administrative Office will submit a corrective action SF-2810 to the OPM-contracted plan so that the plan can terminate the enrollment.

Once the employee retires and chooses to enroll in an OPM-contracted plan, the Administrative Office will follow the established procedures for reporting the retirement to OPM's Retirement Services. Should the OPM-contracted plan fail to report the annuitant to CLER, a 163 error will be generated. The 163 error will inform OPM's Retirement Services that an annuitant's SF-2809 has not been processed by the OPM-contracted plan.

XII. Questions

Please refer any questions to Mark Knee at Mark.Knee@opm.gov.

Sincerely,

John O'Brien
Director, Healthcare and Insurance