

United States Senate

OFFICE OF THE SECRETARY

DISBURSING OFFICE
WASHINGTON, DC 20510-7104

February 13, 2015

The Honorable David Vitter, Chairman
Committee on Small Business and Entrepreneurship
United States Senate

Dear Mr. Chairman:

This letter responds to your February 3, 2015 correspondence concerning administrative processes in the Small Business Health Options Program (SHOP) via the DC Health Benefit Exchange (DCHBX) as it relates to participation of Members of Congress and Congressional staff.

The Office of Personnel Management (OPM) has regulatory authority over and administers the Federal Employees Health Benefits (FEHB) Program as well as the other federal benefits programs. As such, OPM issued rules, regulatory guidance and operational procedures on the impact and implementation of FEHB and the Affordable Care Act regarding federal employees (specifically, as it relates to Members of Congress and designated Congressional staff).

OPM Rules and Guidance

The following was issued in OPM Benefits Administration Letters (BAL) 13-204, 13-207 and 13-204(a), dated August 7, 2013, September 30, 2013 and November 4, 2013, respectively:

- “The Affordable Care Act states, in Subparagraph 1312(d)(3)(D), that, ‘. . . 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’”
- “The health benefits plans currently offered by OPM under chapter 89 of title 5 are not ‘created under’ the Act; nor are they offered through the Exchanges. Therefore, Members of Congress and their employees employed by the official office may no longer purchase the health benefits plans for which OPM contracts under chapter 89 of title 5; they are limited to purchasing plans from Exchanges.”
- “. . . (OPM) has issued a final rule to amend the . . . (FEHB) Program regulations regarding coverage for Members of Congress and congressional staff. This 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 final rule includes the following modifications from OPM’s proposed rule (RIN3206- AM85): OPM has clarified that Members of Congress and designated congressional staff must enroll in an appropriate Small Business Health Options Program (SHOP) as determined by the Director in order to receive a Government contribution . . .”
- “The final rule extends a Government contribution towards health benefits plans for Members of Congress and designated congressional staff so long as the health benefits plans are purchased via the appropriate SHOP as determined by the Director. The formula for Government contributions is set forth in 5 USC 8906 and is the same formula used for other Federal employees. Nothing in the final rule or the law prevents a Member of Congress or designated congressional staff from declining a Government contribution for him or herself by choosing a different option for their health insurance coverage.”
- “Given the location of Congress in the District of Columbia, OPM has determined that the DC SHOP, known as the DC Health Link Small Business Market administered by the DC Health Benefit Exchange Authority, is the appropriate SHOP from which Members of Congress and designated congressional staff will purchase health insurance in order to receive a Government contribution.”

In addition, the Centers for Medicare and Medicaid Services (CMS) issued Affordable Insurance Exchanges Guidance, dated September 30, 2013, which states in part:

“A final rule published by OPM . . . establishes . . . (SHOP) as the channel through which [designated staff] and Members of Congress may enroll in qualified health plans. Consistent with the OPM rule, this guidance clarifies that offices of the Members of Congress are considered qualified employers eligible to offer coverage to Members and designated Congressional staff through the appropriate SHOP as determined by OPM. CMS clarifies that offices of the Members of Congress, as qualified employers, are eligible to participate in a SHOP regardless of the size and offering requirements set forth in the definition of ‘qualified employer’ in the Exchange final rule . . .”

OPM Administrative Processes and DC Health Link Instructions

As previously noted, in OPM BAL 13-207, dated September 30, 2013, OPM issued its final rule (published in the Federal Register on October 2, 2013, 78 Fed. Reg. 60654) stating that the DC Health Link is the appropriate SHOP from which Members and designated staff will purchase health insurance in order to receive a government contribution. The October 2, 2013 Federal Register notice added that “OPM intends to work with the DC Health Benefits Exchange to implement this rule.”

OPM BAL 13-204(a), November 4, 2013 states:

“The business process begins for the Administrative Offices when House leadership and the Senate Administrative office issue initial guidance to Members of Congress and congressional staff regarding OPM’s final rule . . . Those staff members that are designated as working in the official office must choose plans from the DC SHOP.” “The Administrative Offices will create separate accounts

on DC Health Link (www.DCHealthlink.com) for each Federal employer identification number. The Administrative Offices will select coverage effective dates of January 1, 2014 on DC Health Link and notify employees of their eligibility.”

Administrative offices were instructed to use DC Health Link and understood that, due to the compressed implementation time frame, system modifications to the DC Health Link system were not an option. Therefore, the DC Health Link system could only be used as originally configured. As a result, it was necessary to provide data that was compatible for system processing to establish the required employer account in a timely manner. OPM, DCHBX, House of Representatives and Senate Administrative Offices were all aware that it was essential that this be done promptly to facilitate seamless transition of health benefits for Members and designated staff.

The Senate Disbursing Office is a non-partisan, non-political office responsible for administration of federal benefits programs for Members and employees of the Senate. Thusly the Disbursing Office, in accordance with OPM rules, instructions and processes, established an employer account on the DC Health Link system, which facilitated appropriate access for Members and designated staff to obtain employer-sponsored health insurance.

In sum, OPM promulgated and issued regulations and instructions and directed the enrollment process. OPM publicly stated that it was working with DCHBX to implement the process. DCHBX understood and it was public information that Members of Congress and designated staff would be enrolling through DC Health Link in accordance with OPM’s determination. OPM, DCHBX and House and Senate Administrative Offices were aware of the system limitations and the compressed time frame. Thus, the issues of SHOP selection and enrollment procedure were public and the technical enrollment process was accomplished with the knowledge of all parties. Therefore, despite technical challenges, to the best of the Disbursing Office’s knowledge, this office, at no time in this process, provided any party misleading information.

I hope this description of the regulatory background, as well as the administrative process is helpful in addressing your concerns.

Respectfully,



Ileana Garcia
Financial Clerk of the Senate