



**ADVANCING FAITH, FAMILY AND FREEDOM**

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September 9, 2013

Ms. Chelsea Ruediger  
Planning and Policy Analysis  
U.S. Office of Personnel Management  
Room 2H28  
1900 E St., NW  
Washington, D.C. 20415

**Re: Proposed Regulations on Federal Employees Health Benefits Program, File Code No. RIN 3206-AM85**

**Submitted Electronically**

Dear Ms. Ruediger:

The following are comments on the Proposed Rule to amend the Federal Employees Health Benefits Program (FEHBP) regulations regarding coverage of Members of Congress and congressional staff, respectfully submitted by the Family Research Council. 78 Fed. Reg. 48337 (August 8, 2013).

We are specifically concerned that this Proposed Rule makes no mention of the requirement that the Office of Personnel Management (OPM) comply with the Smith Amendment in the implementation of new regulations affecting health care coverage for Members of Congress and congressional employees.

The Proposed Rule indicates that OPM intends to amend the eligibility requirements of the FEHBP to comply with section 1312 of the Patient Protection and Affordable Care

Act (ACA) in regards to coverage for Members of Congress and congressional employees. This means that, using FEHBP as the authorizing authority for the proposed changes, OPM will require that the Federal Government make available only plans that are established under the ACA or through Exchanges established under the ACA. The Federal Government is permitted to contribute to employee health plans through the Financial Services Appropriations Bill, which was amended in 1983, through an amendment authored by Rep. Christopher Smith (Smith Amendment), to prohibit funds to be used for “abortion, or the administrative expenses in connection with any health plan under the Federal employee health benefits program which provides any benefits or coverage for abortions.” Abortions in the cases of rape, incest or to save the life of the mother are excluded from the prohibition. The ACA specifically permits health insurance plans offered under exchanges to include elective abortion in their benefit packages.<sup>1</sup>

If OPM plans to use FEHBP as the authorizing authority for the implementation of this Proposed Rule, then it must comply with the Smith Amendment. Additionally, the Smith Amendment specifically prohibits funds for administrative expenses, such as those related to collecting payments and disbursing premiums payments, used in connection with coverage that includes elective abortion. OPM will act on behalf of congressional members in administering the health plans under the ACA by, among other things, calculating government contributions for purchase of plans on the Exchange, ensuring government contributions and withholdings are made in accordance with 5 U.S.C. 8909(a)(2), and paying premiums for plans out of the Employees Health Benefits fund which OPM administers. These administrative functions cannot be executed without

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<sup>1</sup> Section 1303(b)(1)(A)(ii)

complying with the Smith Amendment, which means that health plans that include coverage for elective abortion must be excluded from those OPM will offer contributions toward for any Member of Congress and congressional employee. Thus, the Proposed Rule must be written to prohibit the federal government from making contributions to any ACA health plan that includes elective abortion. Currently, the Proposed Rule does not address the necessity of complying with the Smith Amendment in regards to health care plans for Members of Congress and congressional employees. We respectfully request that a Final Rule explicitly provide for such compliance.

Respectfully Submitted,

A handwritten signature in black ink that reads "David Christensen". The signature is written in a cursive style with a large initial "D" and a long horizontal stroke at the end.

David Christensen  
Senior Vice President

Anna Higgins  
Director, Center for Human Dignity