

FACT CHECK: “Congress’s Special Treatment”

“The special treatment granted to Congress is a bit complicated. The ‘subsidy’ is not the problem. What is unique, and uniquely unfair, is Congress’s access to the DC ‘SHOP’ – the small business exchange that until 2017, is only available to small businesses (defined by the OPM as having less than 50 employees). In short, Congress and its staff are enjoying an option not available to the rest of the nation.” [AFP]

Congressional Staff Were Forced Into In A “Special” Position Relative To All Other Workers – They “Are Enjoying An Option Not Available To The Rest Of The Nation” Because ACA “Treated Them Particularly Badly” When Drafted

CONGRESSIONAL STAFF ARE “ENJOYING AN OPTION NOT AVAILABLE TO THE REST OF THE NATION” BECAUSE THEY WERE TREAT “DIFFERENTLY THAN ANY OTHER GROUP OF WORKERS” IN THE NATION UNDER ACA – FORCED TO DROP THEIR EMPLOYER COVERAGE AND ENTER THE EXCHANGES

“Opponents Of The Law Have Tried To Characterize Congress’ Unique Situation As An Exemption From The Law, But In Fact, The Law Treats Hill Workers Differently From Most American Workers.” “When drafting the law in 2009 and 2010, members required themselves to use the exchanges to buy coverage. Earlier this summer, the Obama administration stepped in with a controversial clarification that the government would still help workers pay for their coverage even though they’re no longer using the traditional federal benefits program. Opponents of the law have tried to characterize Congress’ unique situation as an exemption from the law, but in fact, the law treats Hill workers differently from most American workers, who will mostly be permitted to continue their membership in a company provided, privately procured medical plan.” [Washington Business Journal, [9/30/13](#)]

- **Unlike “Any Other Workers In The Country,” Congressional Staff Were Required To Drop Their Current Employer Health Insurance Coverage And Buy New Insurance Through The Exchange.** “The ‘special subsidy’ has its roots in a wrinkle in the Affordable Care Act. The law has a provision, pushed by Republicans, that requires members of Congress and their staff to buy health coverage through the government marketplaces that opened for business on Oct. 1. This clause treats lawmakers and congressional workers unlike any other workers in the country. At least three-quarters of Americans get insurance through their jobs, with employers paying part of the insurance premium. For the most part, Obamacare doesn’t touch that relationship. The clear exception is lawmakers and congressional workers. They must drop their current coverage and find something equivalent from insurance companies participating in the Marketplaces.” [PolitiFact, [10/7/13](#)]
- **National Review Online’s Patrick Brennan: Obamacare “Treats Congress And Its Staff Substantially Differently Than All Other Americans” Since “Only Congressional Employees Are Actually Forced Onto [The Exchanges] With The Option Of An Employer Plan Prohibited By Law.”** “The dispute has its origin in the debate over the law in 2010. Republican senator Chuck Grassley suggested an amendment intended to make Democrats balk: Members of Congress and their staff would have to buy their insurance from the health-care exchanges. The amendment explicitly said that the federal government should continue making the same employer contributions. It was not designed to cut employees’ benefits, but rather to make sure they had a stake in the quality and efficiency of the exchanges. Democrats actually accepted it, and put it into the eventually passed bill, but without the provision for employer contributions. The law thus treats Congress and its staff substantially differently than all other Americans. Many Americans who now get insurance coverage from their employer may end up having to go on the exchanges; but only congressional employees are actually forced onto them, with the option of an employer plan prohibited by law.” [Patrick Brennan, National Review Online, [9/27/13](#)]
- **Ezra Klein: “Congress Is The Only Large Employer That Has To Enter The Exchanges -- Or Is Even Allowed To Do So.”** [Ezra Klein, Washington Post, [8/1/13](#)]

PolitiFact: “The Only Thing Special About Obamacare And Congress Is That The Law Treated Congress And Its Workers Differently Than Any Other Group Of Workers.” [PolitiFact, [10/7/13](#)]

- **National Review Online’s Patrick Brennan: Congressional Staff “Are Getting A Questionable Workaround From The Law — But It’s From A Provision Of The Law That Treated Them Particularly Badly Rather Than Neutrally. The Net Result Of The Law And The Workaround Isn’t A ‘Special Handout’ For Congressional Employees.”** “When you hear about a ‘congressional exemption’ from Obamacare, this refers to the fact that the Office of Personnel Management, part of the executive branch, has chosen to make up for this differential treatment by paying part of congressional employees’ health-care premiums on the new exchanges. They haven’t been ‘exempted’ from the amendment that forces them onto the exchanges, in a way no other American is. [...]

Congressmen and their staff, then, are getting a questionable workaround from the law — but it's from a provision of the law that treated them particularly badly rather than neutrally. The net result of the law and the workaround isn't a 'special handout' for congressional employees." [Patrick Brennan, National Review Online, [9/27/13](#)]

AFTER CONCERNS AROSE THAT CONGRESSIONAL STAFF MAY LOSE THEIR EMPLOYER CONTRIBUTIONS, THE OFFICE OF PERSONNEL MANAGEMENT ISSUED A RULE ENSURING STAFF COULD RETAIN THEIR EMPLOYER CONTRIBUTIONS IF THEY ENROLLED IN THE DC SMALL BUSINESS EXCHANGE...

The Provision In ACA Requiring Congressional Staff To Enter The Exchanges “Caused Uncertainty Over [...] The Status Of The Employer Contribution” They Had Traditionally Received. “Members of Congress and their staff who will have to get their health insurance through the Affordable Care Act would continue to receive a government contribution toward premiums next year but only if they enroll in a specific ACA plan, under a revised Obama administration policy unveiled Monday. [...] Members of Congress and Capitol Hill workers, like almost all other federal employees, currently are eligible for the Federal Employees Health Benefits Program, in which the government pays about 70 percent of the total premium cost on average. However, under the ACA, House and Senate members and certain personal staff — although not other Hill employees — instead will have to get their insurance through the ACA's marketplace effective with the 2014 calendar year. That provision was put in the law because of pressures to have Congress experience the same health coverage under the ACA as what's to be available to the general public. However, it caused uncertainty over which congressional staffers will be affected and the status of the employer contribution.” [Washington Post, [9/30/13](#)]

The Office Of Personnel Management Issued A Rule Requiring Congressional Staff To Enroll In D.C.'s Small Business Exchange (SHOP) In Order To Retain Their Employer Contributions. “The Office of Personnel Management has finalized a rule for how members of Congress and aides will obtain health coverage through the exchanges starting in January — and it's requiring members of Congress and staff to enroll in the District of Columbia small-business exchange, even if they live or work outside the D.C. metro area. They won't be eligible for subsidies to buy insurance regardless of their income, although they'll be able to receive a federal employer contribution. But according to the rule, they'll be able to collect that employer subsidy by buying in the small-business exchange, also known as SHOP. ‘SHOPs are designed to provide employer-sponsored group health benefits and are, therefore, the appropriate environment in which to provide an employer contribution to members of Congress and congressional staff,’ the rule says.” [Politico, [9/30/13](#)]

...WHICH WAS THE MOST APPROPRIATE WAY TO ALLOW CONGRESSIONAL STAFF TO RETAIN THEIR EMPLOYER SUBSIDIES, SINCE THE SHOP IS “DESIGNED TO PROVIDE EMPLOYER-SPONSORED GROUP HEALTH BENEFITS” AND THE EXCHANGES WERE “BUILT FOR INDIVIDUALS”

Office Of Personnel Management: “Because A Government Contribution Is, In Essence, An Employer Contribution” And Because “SHOPs Are Designed To Provide Employer-Sponsored Group Health Benefits” They Are “The Appropriate Environment In Which To Provide An Employer Contribution To Members Of Congress And Congressional Staff.” “The proposed rule was silent on whether eligible individuals would select qualified health plans through an Exchange in the individual or small group market by way of the SHOP. Because a Government contribution is, in essence, an employer contribution, the final rule clarifies that Members of Congress and designated congressional staff must enroll in an appropriate SHOP as determined by the Director in order to receive a Government contribution. SHOPs are designed to provide employer-sponsored group health benefits and are, therefore, the appropriate environment in which to provide an employer contribution to Members of Congress and congressional staff.” [Federal Register, Office of Personnel Management, Final Rule On Health Benefits For Congress And Staff, [10/2/13](#)]

- **Ezra Klein: “The Insurance Marketplaces Are Built For Individuals, Not Employers” So “There Was Concern That The Federal Government Could Not Continue Paying Its Traditional Share Of Congressional Health Plans.”** “Starting in 2014, members of Congress and their staffs will have to get their health insurance through Obamacare's insurance marketplaces. But according to a regulation that the Obama administration's Office of Personnel Management plans to announce on Friday and release next week, the federal government can continue to contribute toward the cost of their health plans. The regulation comes after months of worry on Capitol Hill. The Affordable Care Act includes a provision, first proposed by Sen. Chuck Grassley (R-Iowa), forcing members of Congress and their staffs to buy insurance through Obamacare. But it didn't provide a clear mechanism for them to do so. The insurance marketplaces are built for individuals, not employers, and there was concern that the federal government could not continue paying its traditional share of congressional health plans. That would mean the entire cost would fall to members of Congress and their staffs, many of whom would likely flee the institution. The Obama administration's compromise is to permit the federal government to contribute toward employee insurance on the exchanges, but to render those employees ineligible for any tax credits or subsidies.” [Ezra Klein, Washington Post, [8/1/13](#)]

REPUBLICANS WHO PROPOSED MOVING CONGRESS INTO THE EXCHANGES CONFIRMED THAT THE OFFICE OF PERSONNEL MANAGEMENT RULING REFLECTED THEIR INTENTIONS

Republican Senator Chuck Grassley Confirmed His Intent In Requiring Congressional Staff To Go Into The Exchanges Was For Them To Keep Their Employer Contributions. “Sen. Charles E. Grassley, R-Iowa, said Thursday he is frustrated by the continuing battle over health benefits for members of Congress and their staff, which he attributes to a drafting mistake in the Affordable Care Act by Democrats. Grassley sponsored the original amendment requiring lawmakers and staffers to enter the Obamacare exchanges, but he didn’t intend for them to lose the employer subsidy. ‘It is frustrating, but it’s most frustrating because if they had let those of us who knew anything about health care draft this amendment, we wouldn’t have this controversy,’ Grassley said. Grassley said staff for Majority Leader Harry Reid, D-Nev., did not properly draft the statutory language for his amendment, omitting language that would have allowed lawmakers and staff to keep their employer contribution while in the exchanges ... Grassley has said repeatedly that the OPM rule was in line with the original intent of the amendment, despite the amendment not being his.” [Roll Call, [9/27/13](#)]

“A Former Republican Congressional Staffer Familiar With The Amendment Said That The Final Ruling To Keep The Contribution In Place Matched The Original Intent Of The Provision.” “The Huffington Post reached out to Grassley’s office for reaction but did not get a response. However, a former Republican congressional staffer familiar with the amendment said that the final ruling to keep the contribution in place matched the original intent of the provision. ‘The intent was that Congress would be required to get the same plans that are available in the exchange and that the [Federal Employees Health Benefits Plan] would continue to operate,’ said the former staffer, who would only speak about the initial goal of the amendment on condition of anonymity. ‘The employer contribution, the tax treatment of it, the contributions by staff, the amount of them, every respect would remain intact ... It would have been a much different notion if the amendment would have been to explicitly end the federal government contribution,’ the staffer added. ‘You can imagine that the kinds of concerns being raised now -- about staff and their ability to recruit and retain expertise -- would have come up at the time the amendment was offered.’” [Huffington Post, [8/2/13](#)]