

Congress of the United States
Washington, DC 20515

October 9, 2024

The Honorable Rob Shriver
Acting Director
Office of Personnel Management
1900 E Street, NW
Washington, DC 20415

Dear Acting Director Shriver:

We were disappointed to learn that Aetna Health Inc. (Aetna), will entirely withdraw from DC Health Link effective January 1, 2025. For Plan Year 2024, Aetna was the only provider on DC Health Link that offered Members of Congress and designated staff health plans that do not subsidize elective abortion.^[1] It is a clear violation of the Smith Amendment for health plans available to Members and staff to offer elective abortion. While we have been advised that two Smith-compliant health plans may be available in Plan Year 2025 from other providers, we call on you to take immediate action to ensure that all DC Health Link plans fully comply with the law.

Members of Congress and staff enrolled in Aetna plans will be required to select new health care plans. The Open Season for Congressional staff to select a specific health plan is scheduled for November 11 through December 9, 2024. As stated above, Aetna is currently the sole provider of Congressional-eligible plans that exclude coverage of elective abortion. With Aetna's departure, the Chief Administrative Officer of the House of Representatives has advised that only two plans in calendar year 2025 will not include elective abortion.

This outcome is a tragic result of the Office of Personnel Management's (OPM) illegal policies. The fact that plans available to congressional personnel have not properly excluded abortion coverage has been an ongoing well-documented violation of federal law by OPM. The severity of OPM's specious implementation of—or perhaps malicious disregard for—the law must be finally and permanently remedied and brought into compliance with congressional intent.

As you know, the Affordable Care Act (ACA) requires Members of Congress and designated congressional staff to purchase health plans offered through an ACA exchange.¹ Congressional offices covered through the ACA may select any Gold level health insurance plan offered through the DC Health Exchange Small Business Health Options Program (SHOP).

The law is specific. Under the Smith amendment, OPM is prohibited from engaging in administrative activity in connection with *any* plan that subsidizes elective abortion, let alone almost all of them. The Smith amendment (first offered by Rep. Chris Smith, R-NJ) has been renewed annually for nearly thirty years and included in the Financial Services Appropriations bill. It prevents appropriated funds from being used *“to pay for an abortion, or the administrative expenses in connection with any health plan under the Federal employees health benefits program which provides any benefits or coverage for abortions.”* The Smith Amendment includes exceptions *“where the life of the mother would be endangered if the fetus were carried to term, or the pregnancy is the result of an act of rape or incest.”*²

^[1] DC Health Link. “Frequently Asked Questions. Which health plans offered through DC Health Link include abortion coverage and which plans do not?” <https://www.dchealthlink.com/faqs/which-health-plans-offered-through-dc-health-link-include-abortion-coverage-and-which-plans-do>

¹ 42 USC 18032

² Further Consolidated Appropriations Act, 2024. Public Law No: 118-47. Division B. Title VI, Sec. 613-614

Even OPM's own final rule on this issue shows that the DC Health Link plans are supposed to be protected by the Smith Amendment.³ In fact, the OPM rule for DC Health Link relies on the statutory authority for the Federal Employee Health Benefits Program (FEHBP) in administering a government contribution for DC SHOP plans. Accordingly, the new health plans OPM established, like Congressional-eligible DC SHOP plans, must comply with the law in the same way as FEHBP plans.

This notice that OPM has failed to comply with the law should come as no surprise. OPM has been advised that administering the government contributions for ACA health plans that cover elective abortion violates the Smith Amendment. Most recently, on June 14, 2019, and again on February 19, 2020, Members of Congress sent letters urging OPM to ensure that any health insurance subsidies for Members of Congress and designated congressional staff fully comply with the Smith Amendment.

In Plan Year 2024, Aetna offered eight health plans that did not subsidize elective abortion.⁴ The situation has now deteriorated to the point that Members of Congress and their designated staff have only two plans available to them in 2025.

We reiterate that any DC SHOP plan that covers elective abortion should not be eligible for a government contribution, and it is OPM's responsibility to ensure that existing plans come into compliance.

We call on you to cease the administration of government contributions for Congressional health insurance plans that illegally cover elective abortion; instead direct the D.C. Health Link and its participating insurers to provide compliant health insurance plans to Members of Congress and their staff.

Sincerely,



Michael S. Lee
United States Senator



Christopher H. Smith
Member of Congress



James Lankford
United States Senator



Eric Burlison
Member of Congress



Marco Rubio
United States Senator



Debbie Lesko
Member of Congress

³ Federal Employees Health Benefits Program: Members of Congress and Congressional Staff.” (RIN 3206-AM85). October 2, 2013. § 890.501 Government contributions.

⁴ DC Health Link. “Frequently Asked Questions. Which health plans offered through DC Health Link include abortion coverage and which plans do not?” <https://www.dchealthlink.com/faqs/which-health-plans-offered-through-dc-health-link-include-abortion-coverage-and-which-plans-do>



Steve Daines
United States Senator



Robert B. Aderholt
Member of Congress




Michael Guest
Member of Congress



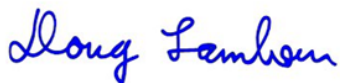
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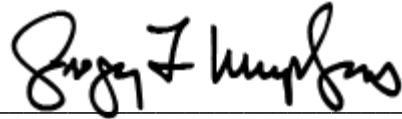
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