



**TALKING POINTS ON  
HOW THE NEW HEALTH CARE REFORM LAWS  
AFFECT FEDERAL WORKERS AND ANNUITANTS**

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## **INTRODUCTION: A CAVEAT ABOUT EXPLAINING THE NEW HEALTH CARE REFORM LAWS AND WHERE WE GO FROM HERE**

The famous management guru Peter Drucker once counseled managers making momentous changes to write a memo to themselves on what they expected the outcome of their decision to be. Then, he advised those managers to re-read their memo nine months later to discover how close their predictions came to the actual outcome.

Professor Ducker's advice seems particularly pertinent to the health care reform debate. It is a debate that, for better or worse, is just beginning, and will continue for some time as the letter, the spirit and the administration of these enormous changes to the nation's health care system is tested and borne out.

As you may imagine, there is much confusion about what is in the new law, much less what it means. eHealthinsurance, the largest online health insurance broker, has been inundated with calls from customers wanting to know where they sign up for their free health care insurance. Not only is the insurance not free, most of the insurance reforms and benefits do not start until 2014. Other important provisions, many of them tax related, may start very soon, while others will be delayed until 2018. Further, the mandates on states to provide health care have now entwined the Medicare and Medicaid programs together in ways still to be revealed.

With that in mind, NARFE has made an attempt to answer your most pertinent questions with what we know the facts to be currently (see below). That does not mean that a new regulation, a law suit or further changes by Congress could not

render a completely new policy on any of the evolving and shifting pieces of health care reform.

As the new law becomes clearer, NARFE will be looking at the issues as to how they affect federal workers and annuitants, and keeping you informed as to what the changes could mean for you. As always, we will look for opportunities to alter, improve or protect health policy important to our members.

Stay tuned for many more memos to come. Until then, here is what we know so far:

- **Protection of the Federal Employees Health Benefits Program (FEHBP):**

- ✓ **Question: Do I get to keep the insurance I have now?**

- ✓ **Answer: Yes,** federal employees and annuitants will be able to keep the insurance in the system they have now. However, current Members of Congress and some congressional staff will have to enroll in the state-based exchanges instead of FEHBP starting in 2014.

- ✓ **Question: What effect will the new law have on my FEHBP premiums?**

- ✓ **Answer:** According to the nonpartisan Congressional Budget Office (CBO), the new law will have a small effect on employer-based coverage. “In the large group market... [which includes FEHBP]

...the legislation would **yield an average premium per person that is zero to 3 percent lower** in 2016 (relative to current law).” Still, CBO notes that the projections of average premiums are uncertain under any circumstance (with or without the new law).

✓ **Question: How will the new law change my FEHBP?**

✓ **Answer: There will be no immediate changes to FEHBP plan coverage, premiums or cost sharing.**

➤ In 2011, however (as advocated by NARFE) all FEHBP plans will be required to provide coverage for:

❖ **Dependent children up to age 26** (Until 2014, only dependents who are not eligible for their own employer-sponsored health insurance can be covered by their parent’s health plan, including FEHBP).

❖ **Proven preventive services with no deductibles, co-payments or coinsurance.**

➤ **Unknown Consequences of Health Care Reform:** Any comprehensive plan that changes insurance law, provider financing, taxation policy and health infrastructure will have some ramifications on how the FEHBP operates in the larger health care system.

✓ **Question: Can you explain OPM's new role in offering health plans to non-feds?**

✓ **Answer:** The Office of Personnel Management (OPM) will play a significant role in national health care reform by partially administrating a health care delivery system of at least two national private insurance plans, one of which must be nonprofit. OPM's "multi-state" plans will be among the choices offered through state-based health insurance exchanges to the uninsured and small business workers.

✓ **Question: How will FEHBP be affected by OPM's multi-state plans?**

✓ **Answer:** The new law contains language drafted and advocated by NARFE that will move to **safeguard the FEHBP by separating the management and risk pools of the two programs.**

- **Tax Changes in New Law:**

**Premium Tax Credits**

✓ **Question: Does the new law address how to make health insurance more affordable to lower income individuals, including federal workers and annuitants?**

- ✓ **Answer: Yes.** Effective January 2014, there are premium tax credits available to individuals who are offered employer-sponsored health insurance if the employee/retiree share of the premium they pay exceeds 9.5 percent of their income.
  
- ✓ **Question: I've heard that the premium tax credits for low income individuals are limited to participants of the exchanges; doesn't that leave us out of the equation?**
  
- ✓ **Answer: Yes, if you stay in FEHBP, but no, if you enroll in a state-based health insurance exchange.** The premium tax credit must be used to help purchase insurance through the exchange. Individuals who pay more than 9.5 percent of their income on their employer-sponsored health insurance will be eligible to participate in an exchange. In fact, for qualifying individuals, the premium tax credit may make buying insurance through an exchange more affordable than FEHBP.

**“Individual Mandate” (NARFE took no position)**

- ✓ **Question: How does the so-called “Individual Mandate” that requires everyone to have health insurance affect federal workers and annuitants?**
  
- ✓ **Answer: Most feds will be unaffected.** As of 2014, U.S. citizens and legal residents are required to have qualifying health coverage. FEHBP is considered qualifying coverage:

- 88 percent of federal workers and 72 percent of federal annuitants are enrolled in FEHBP.
  
- ✓ **Question: I suspended my FEHBP coverage and instead participate in TRICARE-FOR-LIFE. Does that count as qualifying coverage?**
  
- ✓ **Answer: Yes.** In fact, the definition of qualifying coverage is broad and includes employer-sponsored health insurance (including FEHBP), Medicare, Medicaid, military health care, Veterans Affairs (VA) health care and coverage purchased through state-based health insurance exchanges.
  
- ✓ **Question: What happens if you do not have qualifying coverage?**
  
- ✓ **Answer: Starting in 2014, you would pay a tax.** The tax would be the greater of \$695 a year up to a maximum of three times that amount or 2.5 percent of household income (to be phased in beginning in 2014).
  
- ✓ **Question: What if you cannot afford to pay for health insurance?**
  
- ✓ **Answer: The insurance requirement is based on an ability to pay.** Exemptions will be granted for financial hardship and for those for whom the lowest cost health plan option exceeds 8 percent of an individual's income and those with incomes below the federal tax filing threshold. In addition, exemptions will be provided for

religious objections, American Indians, those without coverage for less than three months, undocumented immigrants and incarcerated individuals.

✓ **Question: Do we have any idea how many federal workers and annuitants do not have coverage and would be subject to the tax?**

✓ **Answer: Relatively few feds would be required to pay the tax.**

➤ **Status of Feds without FEHBP:** While OPM does not maintain records on what, if any, health insurance workers and annuitants are covered by if they decline FEHBP, many participate in either a spouse's employer sponsored health plan, military or VA health care, Medicaid or traditional or private Medicare.

### **Excise Tax on "Cadillac" Health Insurance Plans (NARFE opposed)**

✓ **Question: Will I be affected by the tax on "Cadillac" health plans?**

✓ **Answer: It depends on several factors, but not until 2018 at the earliest.**

✓ **Question: How does the tax work?**

✓ **Answer: Insurance carriers would pay an excise tax if the aggregate values of their enrollees' spending on health premiums and other**

related costs exceed \$10,200 for individual coverage and \$27,500 for family coverage per year, indexed for inflation.

✓ **Question: What health care spending will be counted against the threshold?**

✓ **Answer:**

- Total FEHBP premiums (both the government/employer and enrollee shares); and
- Amounts set aside into Flexible Spending Accounts (FSAs) and employer contributions to Health Savings Accounts (HSAs). (Federal annuitants are not eligible to participate in FSAs, and annuitants age 65 and older are not eligible to have HSAs.)

✓ **Question: How would I be affected if that tax is on my insurance company and not me?**

✓ **Answer:**

- **Lower Premiums:** In response, insurance companies subject to the tax would most likely lower premiums to avoid the threshold.

- **Increase cost-sharing and/or reduce coverage:** To make up for the lost premium income, insurance carriers may reduce coverage and/or increase plan deductibles and co-payments.
  - **Pass the cost of the tax on to enrollees:** However, if coverage and enrollee cost sharing remained the same, carriers would likely pass the cost of the tax on to insured persons through increased premiums.
- ✓ **Question: When after 2018 would FEHBP plans be taxed?**
- ✓ **Answer: It is unclear** when, after 2018, the thresholds that trigger the tax would affect FEHBP plans. That is because the law includes “risk adjustments” that will increase the thresholds for:
- 1) health plans with premiums that increase by more than 55 percent between 2010 and 2018.
  - 2) health plans that have a higher proportion of older and female enrollees than the age and gender characteristics of the national workforce.
  - 3) retired individuals age 55 and older who are not eligible for Medicare.
  - 4) employees engaged in high risk professions.

- ✓ **Question: Could these risk adjustments delay when FEHBP plans would be affected by the tax?**
- ✓ **Answer: Yes,** particularly because the FEHBP covers retirees and an aging federal workforce.
- ✓ **Question: Bottom line, even with risk adjustments, will we be affected by the tax?**
- ✓ **Answer: Very likely, particularly if** FEHBP premiums and other enrollee health care spending continued to outpace the consumer price index (which measures general inflation) plus 1 percent indexing of the excise tax's thresholds.
  - **Threshold Index Changes in 2020:** Starting in 2020, the law will index the thresholds for the excise tax to the rate of general inflation rather than to inflation plus one percentage point. This change could gradually increase the number of health plans affected by the excise tax.

**Other Tax Changes Related to Health Insurance and Costs (NARFE opposed)**

- ✓ **Reduction in Maximum Contribution to Flexible Spending Accounts (FSAs):** will limit the amount of contributions to an FSA for medical expenses to \$2,500 per year, increased annually by the consumer price index. Currently, federal workers may allot up to

\$5,000 per year of their salaries for medical expenses in their FSAs.

Retirees, including federal annuitants, are not eligible to participate in FSAs.

✓ **Exclude Over-the-Counter Drugs from FSA/HRA/HSA**

**Reimbursement:** FSA, Health Reimbursement Accounts and Health Savings Accounts participants will no longer be reimbursed for over-the-counter medications not prescribed by a doctor.

✓ **Increase the Deduction Threshold for Unreimbursed Medical**

**Expenses:** Effective in 2013, the threshold for itemized deductions for unreimbursed medical costs will be increased from 7.5 percent of adjusted gross income (AGI) to 10 percent of AGI for regular tax purposes. The threshold increase will be waived for individuals 65 and older from 2013 to 2016.

• **Medicare (NARFE expressed concerns about the impact of payment reforms on access to health care providers):**

✓ **Question: Are there benefit cuts to Medicare in the new law.**

✓ **Answer: No.**

✓ **Question: If there are no benefit cuts, how is the program being cut?**

- ✓ **Answer:** The bill achieves \$384 billion over ten years in Medicare cost savings by slowing growth in – and reforming the way – Medicare pays health care providers and by reducing fraud, waste and abuse in the program.
  
- ✓ **Question: How will the payment reform affect federal annuitants?**
  
- ✓ **Answer:** Most doctors and hospitals are compelled to accept Medicare reimbursement because the program is such a large share of all health care spending and because it finances Graduate Medical Education. However, if a doctor chooses not to accept Medicare, the program, when combined with FEHBP coverage, will reimburse enrollees for physician and hospital costs.
  
- ✓ **Question: Will some doctors and hospitals stop accepting Medicare in response to the payment reforms?**
  
- ✓ **Answer: That’s unclear at this point, but Congress has, or will be, taking steps to address whether beneficiaries have access to providers:**
  - **Some providers will see an increase in their reimbursements:** Starting in 2011, primary care practitioners (physicians in family medicine, internal medicine, geriatrics and pediatrics) will receive a ten percent bonus and an additional ten percent if they practice in an underserved area. All general surgeons who perform major

procedures in underserved areas will also receive a ten percent bonus payment. There are additional payments available to rural health care providers and facilities.

- **Blocking a scheduled cut (enacted prior to the new law) in Medicare payments to physicians:** Despite several procedural roadblocks and setbacks, the Senate is likely to approve pending legislation that would prevent a 21 percent cut in Medicare physician pay from taking effect.
  
- **Payment reform initiatives:** The new law includes a new payment system that rewards providers who supply care that meets certain quality standards and ensures that services are paid on the basis of value and not volume. This includes a pilot program offering incentives for ‘bundled’ services. Providers will receive a flat fee for certain procedures and treatment of chronic diseases.
  
- **Payment reform to reduce medical errors (NARFE supported):**
  - ❖ Medicare hospital payments will be lowered for institutions with an excess of preventable hospital readmissions and hospital-acquired conditions.
  
  - ❖ Federal payments to states for Medicaid services related to hospital-acquired conditions are prohibited.

- **Payments to private Medicare Advantage (MA) plans:**
  - ❖ Payments to private Medicare Advantage (MA) plans will be based on traditional Medicare costs in the plan's geographic area.
  - ❖ Bonuses will be awarded to MA plans for quality and enrollee satisfaction.
  - ❖ Most federal annuitants enroll in traditional Medicare because it better coordinates with the FEHBP.
  
- ✓ **Question: \$384 billion in Medicare reductions still seems like a lot. Shouldn't we be worried about what will happen to the program?**
  
- ✓ **Answer:** NARFE and the other 50 national senior groups we work with as part of the Leadership Coalition of Aging Organizations will be closely monitoring how Medicare reform is implemented and what effect it will have on program quality and access to providers. If necessary, the clout of the 40 million older Americans we collectively represent will press lawmakers to fix any unforeseen challenge to Medicare.
  
- **\$384 million is significant, but it should be put into perspective:**

❖ **Comparing 1997 and 2010 Payment Reforms:**

- **Balanced Budget Act of 1997:** (BBA 1997) reduced Medicare spending by \$394 billion over 10 years.
- **No documented quality problems:** After the 1997 legislation became law, there were no documented quality problems with Medicare and the solvency of the Medicare “Part A” hospital insurance trust fund was extended by seven years.
- **With savings achieved, some payment reforms were reversed:** Congress reversed some of the BBA 1997 Medicare payment reforms in 1999 and 2000.
- **2010 cost savings significantly less than 1997:** Reforms in the new law will cut Medicare baseline spending (what otherwise would have been spent) by 5 percent while the BBA 1997 cut Medicare baseline spending by 12 percent.

➤ **Reform extended Medicare solvency by five years:** Absent changes in current Medicare law, the Part A trust fund was expected to become insolvent in 2017. Failure to address Medicare solvency now would have required far deeper and harsher cuts in the future.

• **Other Medicare Changes:**

✓ **Phased-In Closure of the Medicare Part D “Doughnut Hole”  
(NARFE supported):**

- Provides a \$250 rebate to Medicare beneficiaries who reach the Part D coverage gap (doughnut hole) in 2010.
- Eliminates the Medicare Part D coverage gap by phasing down the coinsurance to the standard 25 percent by 2020.
- Most federal annuitants do not participate in Part D since their FEHBP plan includes a prescription drug benefit.

✓ **Medicare Premium Means Testing (NARFE opposed):**

➤ **End Indexing of Part B Means Testing Threshold:**

- ❖ Under current law, an income threshold, which is increased or “indexed” each year by general inflation, is used to determine whether a beneficiary must pay a higher Part B premium than participants with incomes below the threshold.
- ❖ For 2010, the threshold is \$85,000 for individuals and \$170,000 for families. As a result of the new law, the thresholds will not be indexed from 2011 through 2019.

- ❖ While most federal annuitants are not affected by the means testing of the Part B premium, the percentage of those affected will increase at a greater rate now that the income threshold levels will no longer be indexed.

➤ **Means Testing of Part D Prescription Drug Program**

**Premiums:**

- Effective in January 2011, those with incomes above \$85,000 for individuals and \$170,000 for families will pay a higher Part D premium than those with incomes below such levels.
- Most federal annuitants do not participate in Part D since their FEHBP plan includes a prescription drug benefit.

• **Long-Term Care**

- ✓ **Question: Did the new law do anything to improve access to long-term care?**

- ✓ **Answer: Yes. (NARFE supported the following provisions):**

➤ **Community Living Assistance Services and Supports (CLASS)**

**Program:**

- To assist with long-term care, the Community Living Assistance Services and Supports (CLASS) program was included in the new law. CLASS creates a voluntary, long-term insurance program offering workers optional payroll deductions in return for a cash benefit for long-term care services.
- Designed to work alongside long-term care policies, CLASS benefits are open to those with pre-existing medical conditions.
- The law authorizes the Secretary of Health and Human Services to determine the feasibility of allowing current retirees to pay into the program to receive a future cash benefit.
- **Medicaid Home and Community-Based Long-Term Care**  
**Accessibility:** Community programs have been designed to enable Medicaid long-term care beneficiaries to remain in their homes.
- **Nursing Home Transparency and Improvements:** Medicare and Medicaid-participating nursing facilities will be required to disclose information regarding ownership, accountability requirements, and expenditures. New standardized information on nursing facilities will be available on a website so individuals can compare the facilities.
- **Background Checks for Workers of Long-Term Care**  
**Providers:** The new law will create a nationwide program for

national and state criminal background checks on direct patient access employees of long-term care facilities and providers.