

Facts on Congress's Special Treatment under ObamaCare

Americans for Prosperity's new ad notes that Senator Kay Hagan supports waivers for Obama's friends and special treatment for Members of Congress. Some factcheckers have challenged these claims by focusing on specific allegations not made by AFP.

Waivers

It is established that multiple waivers have been given to specific constituencies. While the total number of waivers is not known, there is no denying that the waivers exist. Two key examples are [business owners in Representative Nancy Pelosi's district](#) and the [state of Massachusetts](#), which has a defacto waiver in the form of delayed implementation. As noted in the linked NRO article, the delay in implementation "is an extraordinary action, given that HHS itself acknowledges that the ACA doesn't include a provision for granting such a delay."

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.

On September 30, 2013 the Office of Personnel Management (OPM) released its [final rule](#) implementing Section 1312(d)(3)(D) of the Patient Protection and Affordable Care Act (PPACA), which requires that Members of Congress and their staffs purchase insurance from a health insurance exchange as created under the law. In the final rule, OPM announced that Members of Congress and their staffs will purchase insurance via the District of Columbia's small business exchange, known as a SHOP.¹

SHOPS created under ObamaCare are insurance exchanges for small businesses—those with fewer than 50 employees. Through the exchange, an employer presents employees with a menu of insurance choices and the employees make a selection. The employer is then billed for the insurance and in some instances qualifies for a tax credit to offset the cost of insurance. The employee does not qualify for premium tax credits that are available through an individual health insurance exchange. There is no subsidy for people buying insurance in a SHOP; it is just a type of insurance broker.

OPM has decided Members of Congress and their staffs must purchase through DC's SHOP because it's structure will allow the federal government to continue to make employer contributions towards congressional insurance plans—a contribution similar to what thousands of employers provide.

However, these SHOPS are not open to any other large employer—those with greater than 50 employees— until 2017, except Congress. Congress and its staff are getting special treatment not available to any other employer under the OPM guidance.

¹ PPACA SHOP section: 1312(f)(2)(B): "IN GENERAL.—Beginning in 2017, each State may allow issuers of health insurance coverage in the large group market in the State to offer qualified health plans in such market through an Exchange. Nothing in this subparagraph shall be construed as requiring the issuer to offer such plans through an Exchange."