

Congress Has Great Leeway In Applying Obamacare To Staffs

By LAURIE KELLMAN 11/01/13 03:20 AM ET EDT AP

WASHINGTON -- WASHINGTON (AP) — Think you're confused by "Obamacare." It's roiling Capitol Hill behind the scenes, too.

Members of Congress are governing themselves under President Barack Obama's signature law, which means they have great leeway in how to apply it to their own staffs.

For House members and senators, it's about a section of the law that may — or may not — require lawmakers to toss some staffers off of their federal health insurance and into the Affordable Care Act's exchanges. The verdict from congressional officers is ultimately that lawmakers, as employers, have discretion over who among their staffs gets ejected, and who stays. And they don't have to say who, how many or why.

What they all say is this:

"I followed the law," said Sen. Barbara Mikulski, D-Md., echoing Senate Majority Leader Harry Reid and others.

But the law as written is open to broad interpretation, inspiring a bureaucratic web of memos, regulations and guidance that members of Congress say allows them to proceed on the question of staffers and coverage as they see fit. Lawmakers this week were required to finalize plans for who stays on federal insurance and who's forced onto an exchange.

The Affordable Care Act, signed into law in 2010, only requires members of Congress and their "official" staff members to get health insurance through one of the law's marketplaces, or exchanges. Guidance memos from the Senate's financial clerk and the House's chief administrative officer, obtained by The Associated Press, define "official" aides as those who work in the lawmakers' personal offices. Committee and leadership aides, then, would be exempt and could stay on the federal health insurance program.

Unless lawmakers decide otherwise.

"Individual members or their designees are in the best position to determine which staff work in the official office of each member," the memos quote from an Office of Personnel Management regulation. "OPM will leave those determinations to the members. ... Nothing in this regulation limits a member's authority" on the matter.

The decisions were layered with Washington political logic that inspired many congressional leaders, Republicans and Democrats, to put all of their aides on the exchanges.

House Speaker John Boehner and all four Senate Republican leaders are among them, putting their entire staffs into the exchanges created by a law they loathe. That allows them to slam Democrats, the new health care law's chief defenders, who are keeping leadership and committee aides on the federal health insurance program.

"If these staffers aren't 'official,' then the taxpayer shouldn't pay for their salaries or office support or anything else," said Sen. David Vitter, R-La., announcing legislation to force each congressional office to disclose the designation for each aide.

Many Democrats, led by House Minority Leader Nancy Pelosi, are nullifying the hypocrisy charge by requiring all of their aides to get health insurance on an exchange.

But there are others.

Keeping the federal program for all of their staffers are House Oversight and Government Reform Committee Chairman Darrell Issa, R-Calif., and Sen. Tim Johnson, D-S.D., their spokesmen said.

And in the Senate, Democrats are split — and some are coy — about who's "official" and who's not.

"Me and my official staff are going into the D.C. exchange," Mikulski said Thursday, the deadline for deciding. She's the chairwoman of the Senate Appropriations Committee, so she's got lots of staffers who aren't necessarily "official."

"The overwhelming majority of employees will be going on the exchanges," said Matt House, spokesman for Sen. Chuck Schumer, D-N.Y., who is in the Senate Democratic leadership. He declined to elaborate.

A spokesman for Senate Majority Leader Harry Reid would only say that the Nevada Democrat is "following the law."

It all started with Iowa Republican Sen. Charles Grassley and his amendment to Obama's health care law that would have required members of Congress and staffers to get the health coverage offered through the exchanges.

During the drawn-out debate, Democrats insisted that their goal was merely to provide uninsured Americans with the same kinds of coverage and choices that members of Congress have.

Grassley, in effect, dared his Democratic counterparts to back up their rhetoric: a "no" vote on his proposal would have undercut the argument that the law's supporters in Congress only wanted regular Americans to enjoy what they, themselves, had.

Grassley said his original intent was to put everyone who works for a member of Congress on the exchanges. But different language ultimately passed into law, and Grassley's idea isn't being applied as he intended.

In August, the Office of Personnel Management tossed the question back in Congress' lap by saying lawmakers' offices should individually decide which aides get insurance from where.

Grassley said Thursday he took the question and the "convoluted system" to the secretary of the Senate and came up with an answer. His personal staff will exit the federal insurance program and get health insurance from an exchange. But Grassley's aides on the Senate Finance Committee will remain on the Federal Employee Health Benefit Program.

"That's the law," he said.

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