

United States Senate
WASHINGTON, D.C.

November 16, 2012

Via Electronic Transmission

John Berry, Director
United States Office of Personnel Management
1900 E Street, N.W.
Washington, DC 20415

Dear Director Berry:

On November 9th, the Office of Personnel Management (OPM) published an interim final regulation that immediately allowed the Federal Emergency Management Agency (FEMA) to secure health insurance coverage to certain intermittent employees.¹ Under the rule, FEMA can petition OPM to provide immediate health coverage to "intermittent employees engaged in emergency response and recover work as defined by the Stafford Act."²

The interim final regulation cites Hurricane Sandy, as this regulation will effectively allow OPM to grant Sandy recovery workers the same health insurance choices afforded to full time federal employees under the Federal Employee Health Benefits (FEHB) program. Certainly, Hurricane Sandy was, as the regulation notes, "a major natural disaster" that "resulted in loss of life and major destruction of property."³

I appreciate the service of the 3,000 FEMA employees who were "immediately deployed to the hardest hit areas."⁴ Men and women who commit themselves to challenging relief work in a time of crisis reminds us of enduring American ideal of service to fellow man – whether such work is done by professional staff or just neighbors helping a friend in need.

As you know, customary regulatory changes use a "notice of proposed rule-making," and even interim final regulations like this one usually do not take effect until 30 days after they are published. However, in this case, the Administration has immediately adopted and implemented an interim final regulation. While this unusual step does now provide a 60 day comment period for public feedback, the administrative change is already in effect. The net effect is that routine questions about the impact of the regulation currently remain unanswered, even though the regulation is effective.

Therefore, to better understand the impact of the regulation on taxpayers and the FEHB program, please provide me with answers to the enclosed list of questions within two weeks of receiving this letter. I appreciate your assistance in ensuring federal actions are appropriately transparent and accountable to stakeholders.

Sincerely,



Tom Coburn, M.D.
U.S. Senator

¹ http://www.opm.gov/OFRUpload/OFRData/2012-27743_PL.pdf

² Page three of regulation, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5149(b)(1)

³ Page two of regulation.

⁴ Page three of regulation.

**Questions for OPM Response Concerning November 9, 2012 Interim Final Regulation
“Federal Employees Health Benefits Program Coverage for Certain Intermittent Employees”**

1. The regulation notes that “emergency response workers are voluntarily exposing themselves to hazardous working conditions every day” and “have a need for health insurance coverage to obtain preventative care, to allow for early detection of potentially serious conditions, and to address any health issues that may arise....” This is a rather elastic rationalization that could potentially be applied to any number of employees in the public or private sector. Therefore, what was the unique nature of these employees situation that justified the federal commitment?
2. What were the findings of any assessment OPM conducted to assess other health coverage options available these newly eligible personnel? If no such assessment was conducted, please provide a rationale as to why such a basic assessment was not deemed to be useful.
3. The regulation explained that “an agency may issue a final rule without first publishing a general notice of proposed rulemaking when it determines, for good cause, that notice and public comment are impracticable, unnecessary, or contrary to the public interest.” The regulation notes that this standard was satisfied. Please provide an explanation of why expediency in issuing a final rule was deemed more important than a more transparent and accountable process.
4. On July 17, 2012, OPM used an interim final regulation to extend FEHB coverage to firefighters working to combat fires afflicting much of the American west. Does the November use of a similar interim final regulation now constitute a trend toward subverting regular federal rulemaking processes to extend FEHBP coverage to certain favored populations?
5. If the thousands of FEMA employees who may be added to the FEHB program are relatively older and sicker compared to the current enrollees, the risk pools of participating health plans would be affected and the health insurance premiums for other federal workers could increase. Please provide a copy of any FEHB premium impact assessment conducted for this regulation, or explain why no such assessment was conducted.
6. According to the regulation, 3,000 FEMA employees were immediately deployed to participate in Sandy relief efforts. Please provide a copy of the ten-year cost to federal taxpayers for this new regulation, or explain why no such assessment was conducted.
7. What is the projected average length of federal service for an eligible intermittent employee?