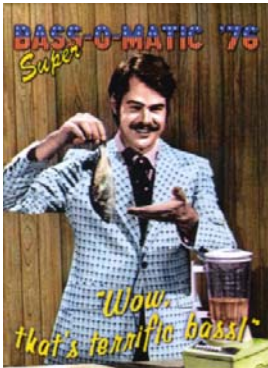




# eNAPUS Legislative & Political Bulletin

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Legislative Bass-O-Matic

## Senate-Passed Health Bill Safeguards FEHBP Risk-Pool, But Taxes Premiums

At 7:00 AM on Christmas Eve, the U.S. Senate sent to a yet-to-be-named House-Senate Conference Committee legislation (H.R. 3590) to revamp the nation's medical marketplace. The Conference Committee will attempt to resolve the differences between the House and Senate-passed bills. The Senate passed its version on a 60-39 party-line vote; Senator Jim Bunning (R-KY) did not vote.

At the outset, Congress and the Administration sketched a plan to provide health insurance to the uninsured, make health care more affordable, and improve its quality and accessibility. After running through the *Saturday Night Live Bass-O-Matic* (2009 version), it's unclear how close to or far from the mark the lawmakers fell. It is obvious, however, that the debate over health care reform is far from over. It will continue to be highly charged and will pull at the seam holding the House Democratic Caucus together. For its part, NAPUS focused its legislative attention on two key elements that may directly affect Postmasters: the integrity of the Federal Employees Health Benefit Program (FEHBP), and shielding FEHBP participants from the impact of an excise tax on certain health plans.

As has been reported in previous *eNAPUS Bulletins* and *Postmasters Gazettes*, the Senate has been toying with the idea of opening up the FEHBP to the non-Federal population, as proposed by Sen. Ron Wyden (D-OR); or forcing FEHBP participants into state-administered insurance exchanges, as originally proposed by Sen. Charles Grassley (R-IA). While Postmasters and their allies successfully deflected these proposals, the Senate Leadership suggested that the Office Personnel Management (OPM) contract with two or more national insurance carriers to participate in state-based health insurance exchanges. Our concern was two-fold. First, NAPUS feared that the proposal could result in a merger of the risk-pool for FEHBP and the OPM-contracted plans. This would have resulted in dramatically higher premiums for FEHBP participants. Second, NAPUS was concerned that OPM's newly-created health insurance contracting authority would divert its limited resources from its core mission of administering the FEHBP on behalf of the federal population. The legislation, as passed by the Senate, responds favorably to NAPUS concerns in this area. Specifically, section 1334(g) of the bill prohibits OPM from allocating "fewer financial or personnel resources to functions of the OPM related to the administration of the FEHBP" and directs the OPM to establish a separate unit to administer its health care reform responsibilities. Moreover, this section requires that participants in the new OPM-contracted plans "be treated as a separate risk pool apart from enrollees in the FEHBP." Finally, the bill does not require FEHBP plans to participate in the state-based health exchanges. Nevertheless, if this provision were to be included in a final bill, it is expected

that Blue Cross Blue Shield would elect to participate in the state-exchanges. House Speaker Pelosi has indicated that she supports OPM's new task.

One of the major points of contention in the soon-to-be-started House-Senate Conference Committee will be the Senate-passed 40% excise tax on high-premium insurance plans. The Congressional Budget Office (CBO) projects that the tax, which begins in Fiscal Year 2013, would raise \$149 billion in through Fiscal Year 2019. The excise tax would be levied on the amount that the health insurance premiums exceed a specified threshold – \$8,500 for single coverage and \$23,000 for family policies. After 2013, the thresholds would be indexed to inflation plus 1 percent. This tax proposal has created a firestorm of protest, particularly from unions, and has created a major political problem for Democrats. One of the defining issues in 2008 elections was taxation of employer-provided health benefits – Democrats, led by Presidential Candidate Obama, campaigned against the levy. (Interestingly, this morning's *Washington Post* reported that President Obama accepts the tax.) Besides the political issue of how the campaign promise could impact Democratic turnout in the 2010 Congressional elections, the proposal has a direct bearing on future FEHBP benefits. First, the premium threshold includes the total FEHBP premium (not just the enrollee contribution), vision and dental plan premiums, and contributions to a Flexible Spending Account. This sum of these amounts adds up quickly. Second, the premium threshold is indexed to general inflation, not medical inflation. Additionally, medical inflation, as reflected in FEHBP premium growth, increases much faster than general inflation. Consequently, FEHBP plans will be hit the threshold within a very few years. The result of hitting the mark will force FEHBP plans to reduce benefits, including increasing copayments and deductibles. It is likely that OPM will direct the plans on how to reduce benefits, probably in the form of "Call Letters" to FEHBP carriers, similar to actions taken by the Reagan Administration in the 1980s.

The problem with the excise tax is much more fundamental than its impact upon the active and retired federal workforce. The tax strategy was originally sold as a way to penalize *Cadillac health plans* (luxury plans), encouraging generous employers to ratchet down *excessive* benefits. The tax was also a method to raise funds to offset the cost of providing health benefits to the uninsured. However, the tax is not being imposed on the plan's *benefit-value*; rather it is levied against the plan's *premium-value*. Rule one of insurance: Benefits do not equal premiums – claims reflect premiums. Two plans with identical benefit packages can and will have dramatically different premiums. Plan A has a sick population, it has more claims; the premium will be high. Plan B has a healthy population, it has less claims; the premium will be low. This phenomenon is known as risk-selection. Unlike other plans, FEHBP provides non-discriminatory coverage to all members of the Federal population; it does not cast off retirees. Moreover, there are a significant number of Federal retirees who are not yet Medicare-eligible, and they represent the most expensive population to insure. The net effect of the excise tax is to penalize those health plans that insure an older and sicker population, not those plans that actually provide *Cadillac* benefits. (If this were the case, the USPS would get nailed for providing such benefits to its PCES employees.)

NAPUS plans to aggressively ensure that the integrity of the FEHBP is protected and to continue to oppose a regressive health care excise tax, which penalizes comprehensive – not excessive – health plans that provide health protection to NAPUS members.

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