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EXTENDING HEALTH BENEFITS TO CERTAIN UNITED STATES COMMISSIONERS

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HEARING BEFORE THE COMMITTEE ON OFFICE AND CIVIL SERVICE OF REPRESENTATIVES EIGHTY-EIGHTH CONGRESS SECOND SESSION

ON

H.R. 5708

A BILL TO AMEND THE FEDERAL EMPLOYEES HEALTH BENEFITS ACT OF 1959 TO EXTEND COVERAGE TO CERTAIN UNITED STATES COMMISSIONERS

APRIL 29, 1964

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Committee on Post Office and Civil Service



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EXTENDING HEALTH BENEFITS TO CERTAIN U.S. COMMISSIONERS

WEDNESDAY, APRIL 29, 1964

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C.

The subcommittee met, pursuant to call, at 10 a.m., in room 215, Cannon House Office Building, Hon. Edward R. Roybal presiding.

Mr. ROYBAL. The subcommittee will come to order.

This subcommittee was appointed to consider H.R. 5708, introduced by our colleague from Florida, Congressman Charles E. Bennett. The bill is designed to amend the Federal Employees Health Benefits Act of 1959 to extend coverage to certain U.S. commissioners. The other members of the subcommittee are Mr. Pool, Mr. Wilson, Mr. Cunningham, and Mr. Johnson.

U.S. commissioners are appointed by the U.S. district courts for 4-year terms upon the basis of public need. They perform miscellaneous services, primarily as committing magistrates, and have no fixed hours of work or scheduled tours of duty. They are compensated by fees, set by law, for acts performed. Each commissioner makes quarterly accounting to the Director, Administrative Office of the U.S. Courts, and is paid the total fees due him upon approval of the quarterly accounting.

Commissioners are Federal officers but have not been included under the various benefit programs applicable to Government employees paid on a salaried basis, except for the Civil Service Retirement Act, which in 1956 was extended by law to cover commissioners with total earned compensation of \$3,000 or more for each of 3 consecutive calendar years. As of December 31, 1962, only 49 of the approximately 686 U.S. commissioners had acquired coverage under the Retirement Act.

H.R. 5708 would extend to those U.S. commissioners who qualify for coverage under the Retirement Act the provisions of the Federal Employees Health Benefits Act of 1959. The Civil Service Commission reports no objection to the enactment of this legislation and that its cost to the Government would be negligible.

(H.R. 5708 follows:)

[H.R. 5708, 88th Cong., 1st sess.]

A BILL To amend the Federal Employees Health Benefits Act of 1959 to extend coverage to certain United States commissioners

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2(a) of the Federal Employees Health Benefits Act of 1959 is amended by inserting after the word "includes" the following: "any United States commissioner to whom the Civil Service Retirement Act applies by operation of section 2(g) of that Act,".

Mr. ROYBAL. We have with us this morning the author of the bill, the gentleman from Florida, Mr. Bennett, and Mr. Andrew E. Ruddock, Director of the Bureau of Retirement and Insurance of the Civil Service Commission. We will ask Mr. Bennett to present his testimony first.

**STATEMENT OF HON. CHARLES E. BENNETT, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF FLORIDA**

Mr. BENNETT. Thank you very much, Mr. Chairman. I have a formal statement I would like to put in the record at this point, and then I will go on informally so I will not be repetitious.

(The statement referred to follows:)

STATEMENT OF HON. CHARLES E. BENNETT OF FLORIDA

Mr. Chairman, this legislation would extend eligibility to enroll in an approved Federal health benefits program to each U.S. commissioner then or thereafter subject to the Civil Service Retirement Act, where the commissioner's total annual compensation (fees earned) is \$3,000 or more for each of 3 consecutive years. As in the case of commissioners covered by the Civil Service Retirement Act, health benefits coverage once acquired on this basis would not be lost solely because a commissioner's total annual compensation later dropped below \$3,000.

As you know, U.S. commissioners are appointed by the U.S. district courts for 4-year terms upon the basis of public need. They perform miscellaneous services, but act primarily as committing magistrates. They are compensated for their services by fees established by law. Some fee acts may take a few hours' work, while others may require their services on 2 or more days. Commissioners are required by law to make a quarterly accounting of fees earned to the Director, Administrative Office of the U.S. Courts, and then upon approval of the quarterly account, are paid the total fees then due them. Although the minimum calendar yearly fee is \$4, some commissioners earn the maximum allowed by law of \$10,500.

There is no question that U.S. commissioners are clearly Federal officers. However, 5 U.S.C. 2252(e) provides that the Civil Service Commission may exclude "any employee or group of employees * * * whose tenure of office or employment is temporary or intermittent." Acting upon this authority, the Civil Service Commission has excluded U.S. commissioners as "intermittent" Federal employees. However, some U.S. commissioners are hardly intermittent, and the statute before you is to protect them from this regulatory decision. Since a large number of commissioners, and particularly those earning the \$3,000 necessary to qualify for retirement benefits, must stand by for duty during certain hours of the day, they are no less restricted in their activities than many Federal salaried employees. It seems to me that commissioners who work a sufficient number of hours to earn \$3,000 in fees annually, for 3 consecutive years, and who therefore qualify for Federal retirement benefits, should certainly be eligible for Federal health benefits on the same basis.

By 1959 less than 30 commissioners had qualified for retirement benefits under the 1956 act, and today there are only 55 of the 701 U.S. commissioners who have qualified for benefits under the Civil Service Retirement Act.

It seems to me that from the standpoint of equal treatment of Federal personnel qualified U.S. commissioners should be included under the Federal Employees Health Benefits Act, and that by bringing these commissioners in line with other Government personnel it will be in the interest of efficient administration.

The Civil Service Commission advises the cost of extending such coverage to the small number of U.S. commissioners who would qualify would be negligible, and they state they have no objection to the inclusion of the persons sought to be included if it is done by statute. The Bureau of the Budget has also reported favorably on the bill. In light of the negligible cost factor and the importance of maintaining a fair and equitable system of Federal employment, I am hopeful that this committee will report the bill favorably.

Thank you.

Mr. BENNETT. The informal remarks that I will make deal with a sort of summary in addition to the summary you have made, point-

ing out that when this law was originally drafted the benefits to Federal employees allowed for regulation in the Civil Service Commission to eliminate intermittent employees. These U.S. commissioners were not included in the coverage of retirement or any other benefits of that type on the theory that they were intermittent. It is certainly so that many of them are intermittent in employment, but there is a group of less than a hundred who are very substantial employees of the Federal Government, who devote the vast bulk of their time to this sort of activity, and who for all practical purposes are complete Federal employees in every sense of the word, with obligation to be ready and actually do perform these duties at all times. This was acknowledged by a law which, subsequent to the law I have just referred to, allowed retirement benefits to be enjoyed by a specific minority of these commissioners, who are for all practical purposes full Federal employees in every sense of the word, and this bill that I have introduced would allow them to come under the benefits for health and hospitalization.

In addition to this bill, a suggestion has been made to me just this morning that since the logic was already determined by the Congress of including these few U.S. commissioners who have a real career type of activity under the general law with regard to retirement, and since this bill deals with health and similar provisions, it would be logical just to go ahead and evade having a third law introduced in this field and include these employees by amendment to this bill for certain additional benefits, on which I understand Mr. Ruddock will testify further. This would only be life insurance. So I would certainly be thoroughly agreeable to adding this to the bill.

Many times legislation comes before Congress because of a specific request that was made. This bill is before you today because in the district which I represent a gentleman who was formerly a county judge, Mr. T. V. Cashen, for many years occupied this type of activity in the Federal court in Jacksonville, Fla., and is acknowledged by everybody to be just like ordinary Federal employees and therefore should have such benefits. He only brought to my attention the need for the health aspect, but as has been pointed out the logic was already established of including men like Mr. Cashen under all benefits, and so I think it would be preferable in passing this law, if we do, to also include the life insurance benefits as well as the things now involved in this bill. I hope an amendment will be added by the staff, so we would not have another bill coming in 2 or 3 years to add that.

That is the end of my testimony.

Mr. ROYBAL. All right, sir. Someone, of course, will probably ask what the cost of this bill is, and I think we should know.

Mr. BENNETT. I am glad to say it has been found to be negligible. There will be no appreciable cost involved in this bill, and the Bureau of the Budget has recommended that it pass.

Mr. ROYBAL. Is it possible to determine just how much it really is, or how many commissioners?

Mr. BENNETT. The last figure I had was 55, and I think you gave another figure, but there was a different date on it. The statement from the Civil Service Commission said:

If Congress determines that U.S. commissioners covered by the Civil Service Retirement Act should be admissible for coverage under the health benefits program, the Commission will not object to the enactment of H.R. 5708. The

Government's cost of extending such coverage to the small number of U.S. commissioners who would qualify would be negligible.

They have not given an exact figure. I guess you could arrive at it, but I could not myself arrive at it.

Mr. ROYBAL. Thank you, Mr. Bennett.

The next witness is Mr. Andrew E. Ruddock.

STATEMENT OF ANDREW E. RUDDOCK, DIRECTOR, BUREAU OF RETIREMENT AND INSURANCE, CIVIL SERVICE COMMISSION

Mr. RUDDOCK. Mr. Chairman, my name is Andrew E. Ruddock, Director of the Bureau of Retirement and Insurance, Civil Service Commission.

I would say on a very rough computation that we are talking about something in the neighborhood of \$3,000, and I would base that on the fact that the only Government cost is the contribution the Government as an employer makes toward the cost of whatever health benefit plan the individual chose. The individual has the option of taking coverage for himself only or for himself and family. If he takes coverage for himself alone, the Government contributes \$2.82 a month. If he takes coverage for himself and family, the Government contribution is \$6.76. We have no way of knowing what the mix would be between self only and self and family, nor how many of them would choose not to participate. But assuming an average Government contribution of \$60 a year for approximately 50 commissioners, it would be \$3,000 a year.

Mr. IRVINE. In order to qualify for coverage under this bill, a commissioner would already have to have established eligibility for coverage under the Retirement Act; is that right?

Mr. BENNETT. Would you mind repeating that?

Mr. IRVINE. The commissioner would first have to establish eligibility for coverage under the Retirement Act?

Mr. BENNETT. Correct. He would. That would be the criterion. In other words, there would be only one decision. That is true under the law which you have already passed as to those who would have the benefit of the Retirement Act. With the bill I have introduced, they would have the benefits of the health program and, under the amendment, life insurance. Is life insurance under this an expensive program?

Mr. RUDDOCK. In life insurance cost we are talking about would be considerable less. The Government contribution is much smaller for life insurance than for health benefits. It is 12½ cents biweekly, or \$3.25 per year for each \$1,000 of life insurance. For 50 U.S. commissioners the annual Government cost would be about \$1,500.

Mr. BENNETT. These commissioners do have a righteous cause, because they are, from all standpoints and from a practical standpoint, the kind of employees that Congress had in mind, I think, when they passed the law, and since we have now allowed them to come under the retirement benefits and are now proposing they come under the health insurance benefits, to include them under the life insurance, I think, would be wise. If somebody asked Congress to include them later you could hardly turn them down.

It is only these career people under a practice that has grown up in some Federal courts that we are talking about here. Some Federal courts use these committing magistrates in a very large degree. And I might say right here it is an awfully good thing they do, because if I have any criticism of the Federal court system it is that Federal judges occupy too much of their time with details, in many courts. We pay them a good salary and ask these Federal judges to do the sort of thing that they can turn over to these commissioners, which is an awful waste of the taxpayers' money. I regret to say that in a very busy court like the one in Jacksonville there is a good deal of bootlegging to deal with, and the commissioner handles these cases. If the Federal judge had to do this it would take him away from big cases involving hundreds of millions of dollars and the lives of people and narcotics and things like that. It would be an awful waste of time. So in the Federal court system this has grown to the place where in a good number of these instances, less than a hundred of these cases, you have people that are really spending full time being Federal employees. They were taken care of under the law that said they could get retirement benefits, but people other than this small number, who are these U.S. commissioners, cannot even get retirement and it is not proposed to change that.

Mr. ROYBAL. They cannot?

Mr. IRVINE. That is because of the fees. They do not earn over \$3,000.

Mr. BENNETT. That is correct. In other words, the law which was passed allowing them to have this retirement benefit is very specific. You have to get more than \$3,000 a year, and when you get that \$3,000 in a year you are qualified to come under it.

Mr. IRVINE. But it would be possible under the terms of this bill for a commissioner who is otherwise eligible for retirement, but who decides for some reason not to get into the retirement program, to take advantage of the health benefits?

Mr. BENNETT. It would be. He would not have to take retirement, but he would have to be qualified to take retirement. Is that correct?

Mr. RUDDOCK. I would like to clarify this one point. When the U.S. Commissioner meets the condition of earning \$3,000 in each of 3 consecutive calendar years, he automatically comes under the Civil Service Retirement Act without any choice on his part. It is not optional coverage. At that point he is considered to be essentially a full-time Federal employee rather than being one of the category of intermittent or part-time employees without a regular tour of duty, who are not included in fringe benefits such as retirement, life insurance, and health benefits. There is an element of arbitrariness in the \$3,000 rule, and yet it is the best device that we could find in 1956 for separating the U.S. Commissioners into two categories; one category being the intermittent, part-time, no-regular-tour-of-duty person, who works and gets paid a fee for each service he performs, and the other, the U.S. Commissioner who essentially works full time or practically full time, just like a regular employee.

Part of the testimony that was given in 1956 cited the illustration of Mr. Stanley King, who is the U.S. commissioner at Alexandria, Va. In fact, he testified, and he indicated that most of his business comes from traffic violations on the George Washington Memorial Parkway, the Federal lands in Virginia, and the whole Pentagon complex, and these cases come before him. He is the U.S. commissioner, and he is essentially a committing magistrate but has the authority to make final disposition of any one of these small cases where the person does not want to have a jury trial. Mr. King testified that he keeps regular hours, that he goes to his office, which is in one of the Federal buildings in Alexandria, and he goes at a regular time each day and keeps a regular schedule just like the rest of us.

Mr. BENNETT. I am glad you corrected me on that. In other words, once you fall within this definition you automatically and compulsorily become covered as far as retirement is concerned.

Mr. RUDDOCK. Yes, but it is still completely optional as to whether you want the health benefits coverage if you are eligible for it, and a person eligible for life insurance coverage has the option.

Mr. BENNETT. That will be the case if we pass this law. Without this law they would not have this opportunity.

Mr. RUDDOCK. U.S. commissioners are not presently eligible to participate in health benefits or life insurance.

Mr. ROYBAL. The bill needs an amendment, does it not?

Mr. RUDDOCK. If the committee wishes to extend eligibility for coverage under the Federal employees group life insurance system, it would take an amendment to the bill to accomplish this. I mentioned this to Mr. Bennett before the hearing, only with the thought that, while I am not proposing this extension, it seems to me only logical that unless it is done now we will be sitting around the table next year or the year after, debating whether life insurance coverage should be extended to these U.S. commissioners who work practically full time. The logic is exactly the same on retirement, life insurance, and health benefits.

Mr. ROYBAL. We will, of course, consider the amendment during our executive session.

Mr. RUDDOCK. Mr. Chairman, with your permission I would like to ask that the report from the Civil Service Commission, addressed to the Honorable Tom Murray, and dated November 18, 1963, be made a part of the record of this hearing. In that report the Commission expressed the position of no objection to this legislation. While the Commissioners have not considered the extension of life insurance as a policy matter, I would express a personal opinion that there would be no objection from the executive branch to that extension.

Mr. ROYBAL. Without objection, the report will be added to the record.

(The report referred to follows:)

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., November 18, 1963.

HON. TOM MURRAY,
Chairman, Committee on Post Office and Civil Service,
House of Representatives.

DEAR MR. CHAIRMAN: This refers further to your request of April 26, 1963, for Commission report on H.R. 5708, a bill to amend the Federal Employees Health Benefits Act of 1959 to extend coverage to certain U.S. commissioners.

U.S. commissioners are appointed by the U.S. district courts for 4-year terms upon the basis of public need. They perform miscellaneous services, primarily as committing magistrates. Commissioners are and always have been compensated by fees, set by law, for acts performed. They have no fixed hours of work or scheduled tour of duty. Some fee acts may be completed in a day or less, while others may require the performance of commissioner services on 2 or more days in order to earn the fee for a completed act. Each commissioner makes a quarterly accounting to the Director, Administrative Office of the U.S. Courts, and is, upon approval of the quarterly account, paid the total of fees then due him.

While commissioners are clearly Federal officers, the nature of their employment is such that they have traditionally not been included under the various benefit programs applicable to Government employees who perform regular service on a salaried basis. A single exception in this regard is retirement. In enacting the Civil Service Retirement Amendments of 1956, Congress saw fit to extend retirement coverage to those commissioners with total compensation (fees earned) of \$3,000 or more for each of 3 consecutive calendar years, starting from calendar year 1953. A commissioner meeting these requirements is automatically covered by the Retirement Act, with service credit allowable for all days on which commissioner service is performed. The Administrative Office of the U.S. Courts advises informally that there are currently about 686 U.S. commissioners under appointment. As of December 31, 1962, only 49 commissioners had acquired Retirement Act coverage under the described provisions.

The Federal Employees Health Benefits Act of 1959 extends eligibility to enroll in an approved health benefits plan to all employees of the Government who are not excluded by law or Commission regulation. The act authorizes this Commission to provide for the exclusion of employees "on the basis of the nature and type of their employment or conditions pertaining thereto, such as, but not limited to, short-term appointments, seasonal or intermittent employment, and employment of like nature * * *"

In line with this directive, the Commission has adopted regulations (title 5, Code of Federal Regulations, sec. 89.2(b)) which exclude, among others, "intermittent employees—non-full-time employees without a prearranged regular tour of duty" and "employees paid on a contract or fee basis." Since U.S. commissioners have no regular tour of duty and are paid on a fee basis, they are not eligible to be enrolled in a health benefits plan.

Effective upon enactment, H.R. 5708 would extend eligibility to enroll in an approved health benefits plan to each U.S. commissioner then or thereafter subject to the Civil Service Retirement Act based on total compensation (fees earned) of \$3,000 or more for each of 3 consecutive calendar years. As is the case with Retirement Act coverage, health benefits coverage once acquired on this basis would not be lost solely because a U.S. commissioner's total annual compensation later dropped below \$3,000.

In January 1962, the Commission had for consideration a request that it change the governing regulations to afford U.S. commissioners coverage under the health benefits program (and under the group life insurance program, which operates under similar regulatory exclusions), either on a general basis or limited to commissioners whose duties usually call for full-time availability. The Commission decided that no such regulatory change was warranted and denied the request. This decision was based on two major factors: (1) The facts of U.S. commissioner employment indicated they were within the class of employees Congress intended the Commission to exclude by regulation, and (2) Congress had set a policy as regards fringe benefits for U.S. commissioners—it had legislated retirement benefits for them on a restricted basis in 1956, but had not seen fit to include them in the other programs.

If Congress determines that U.S. commissioners covered by the Civil Service Retirement Act should be made eligible for coverage under the Federal Employees Health Benefits program, the Commission will not object to the enactment of H.R. 5708. The Government cost of extending such coverage to the small number of U.S. commissioners who would qualify would be negligible.

The Bureau of the Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

JOHN W. MACY, Jr., *Chairman.*

Mr. ROYBAL. I think that covers the questions I was going to ask you. You anticipated my questions.

Mr. BENNETT. Thank you very much.

(Whereupon, at 10:20 a.m., the subcommittee was adjourned.)

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