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Expertise

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What's in the executive order?

While the president's order has been recognized by many as another step to attempt to dismantle the Affordable Care Act, the guidance under the order does not substantially change any key ACA provisions. Rather, it focuses on expanding access to certain types of insurance.

Here is a summary of what the order instructs the departments of labor, health and human services, and treasury to consider:

- **Expand the usability of health reimbursement accounts:** Allow more workers to use tax-free employer contributions through HRAs to purchase their own plans on the individual market, and allow HRAs to be used to buy non-group coverage.
- **Expand the availability of short term, limited-duration insurance:** Allow individuals to buy short-term plans that last nearly a year (364 days), vs. the current rule that limits short-term policies to only three months. There are no other ACA regulations governing STLDIs. Insurance carriers can limit benefits under these plans significantly more than the ACA allows.
- **Expand access to health coverage by allowing more employers to form association health plans:** Allow small companies to come together (form associations) and purchase the type of coverage available to larger businesses. It is unclear whether the AHPs would be governed by federal employment law or state insurance regulations. There is a material open question as to whether insurance companies will be willing to cover this type of association formed primarily for the purpose of obtaining health insurance.

What the changes could mean to you

The biggest potential impact to employers is the proposed expansion of the association health plans, which proponents say would allow small businesses (and maybe even sole proprietors) in various areas of the country to join together for the purpose of purchasing health insurance. This would theoretically provide more flexibility to set premiums based upon the health of the overall group. Also, if associations are considered large-group plans, they would be exempt from the ACA rule for individual or small-group plans that require that they

provide certain essential health benefits. The opponents point to the long-term viability of these associations, especially because the overall demographics that establish insurance costs would benefit the older member groups and potentially raise the rates of younger groups.

For individuals, if you work for a company and get your health insurance from your employer, the guidance in the order could make it easier for your company to give you pretax dollars to buy your own insurance. For people who don't get their insurance at work, the impacts are less clear. However, greater access to short-term insurance plans may make it easier for individuals to purchase cheaper, less-comprehensive coverage outside of the ACA marketplace. It's also unclear whether individuals who choose to buy a short-term plan would be subject to the individual mandate (minimal coverage rule) under the ACA. The executive order does not address what is considered minimal coverage.

What's comes next and when?

The hurry-up-and-wait rhythm of health care reform continues, though the tempo may be picking up a bit. We may soon see some of the new proposals coming from the agencies tasked with drafting guidance under the order. The Department of Labor was given 60 days to issue its proposed rules for expanding the availability of association health plans. It's unlikely, however, that we will see any final changes completed by the end of the year, much less any new laws on the books that will impact this year's health care open enrollment season. Most pundits agree that there will be very little impact felt in 2018 from this executive order.

As usual, employers should monitor developments closely and ensure they remain in compliance with the current regulations under the Affordable Care Act.

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