

President Trump's Healthcare Executive Order

On October 12, 2017 President Trump signed the Executive Order ("EO") Promoting Healthcare Choice and Competition Across the United States. This action has no immediate impact on the Affordable Care Act ("ACA") and employers as well as group health plan sponsors should continue to comply with all ACA requirements. The EO does not and cannot change the ACA statute, but instead the President is directing the various regulatory agencies to review certain rules and regulations that have been issued to *implement* the ACA.

The EO seeks to expand the availability of certain types of existing insurance vehicles, particularly for small employers, to allow more flexible plan design options and not be locked into the strict and comprehensive ACA coverage requirements. For example, large employers (generally more than 50 employees) and employers who sponsor self-funded group health plans are not required to offer coverage of all 10 ACA essential health benefits ("EHBs") and therefore have more control over cost and plan design.

Specifically, the EO addresses Association Health Plans ("AHPs"), Short Term Limited-Duration Insurance ("STLDI") and Health Reimbursement Arrangements ("HRAs") and seeks to:

- **Expand Access to Association Health Plans.** Directs the Secretary of Labor within 60 days of the EO to "*consider proposing regulations or revising guidance, consistent with law, to expand access to health coverage by allowing more employers to form AHPs.*"
- **Expand Availability of Short-Term, Limited-Duration Insurance.** Directs the Secretaries of the Treasury, Labor and Health and Human Services (the "Departments") within 60 days of the EO, to "*consider proposing regulations or revising guidance, consistent with law, to expand the availability of STLDI.*"
- **Expand Availability and Permitted Use of Health Reimbursement Arrangements.** Directs the Departments within 120 days of the EO to "*consider proposing regulations or revising guidance, to the extent permitted by law and supported by sound policy, to increase the usability of HRAs, to expand employers' ability to offer HRAs to their employees, and to allow HRAs to be used in conjunction with nongroup coverage.*"

Current Status of AHPs, STLDI, and HRAs

Association Health Plans provide health coverage usually to employers in a common trade or industry. AHPs can provide health coverage under an insured or self-funded arrangement. Current regulations generally (but not always) treat participating members of an association as individual or small group employers and therefore, subject to the current ACA market coverage and rating rules.

Short-Term Limited-Duration Insurance is a type of insurance generally geared toward individuals transitioning from one job to another and typically would provide coverage for a period of less than twelve months. STLDI may contain annual and/or lifetime limits on EHBs, pre-existing condition limitations, can be medically underwritten and costs less than an individual policy sold on the ACA marketplace. The final regulations issued in 2016 require the coverage be less than three months in duration and include a disclaimer indicating the plan is not Minimum Essential Coverage ("MEC").

Health Reimbursement Arrangements are subject to extensive regulations under the ACA and generally must be "integrated" with other ACA compliant group health coverage. Certain small employers (less than 50 employees) who do not offer any other group health coverage may establish a Qualified Small Employer HRA.

A Word About the Announcement to End Cost Sharing Subsidy Payments

President Trump also announced that the administration would end **cost sharing subsidy payments** to insurance carriers. The President is discontinuing these payments as Congress has never *appropriated* the funds for this ACA provision. Last year a federal district court ruled in the House's favor that challenged the use of federal funds that had never actually been appropriated by Congress.

These subsidy payments lower the deductibles and copayments in silver-level individual health insurance policies purchased on the Marketplace for certain low-income individuals. The government reimburses the carrier the difference between the reduced deductibles/copayments the policyholder is charged and the actual deductibles/copayments contained in the silver-level plan design and premium cost. This action does not impact the subsidy that reduces an individual's **premium payment** for their coverage.

ADDITIONAL INFORMATION

Information contained in this Update is not intended to render tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance with respect to matters of law, tax and related regulation. Cherry Bekaert Benefits Consulting, LLC provides comprehensive consulting and administrative services with respect to all forms of employee benefits, risk management, qualified and non-qualified retirement plans, private client services, transaction services, and compensation and human resources.

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