

# REFORM UPDATE

Issue One Hundred Thirty-Four

October 2017

October 30, 2017

## EXECUTIVE ORDER ON HEALTH CARE DISCONTINUATION OF COST-SHARING SUBSIDIES IN THE MARKETPLACES

This *Update* summarizes the following two key missives the Trump administration recently released regarding the Affordable Care Act (ACA):

- Executive Order on Health Care
- Discontinuation of cost-sharing subsidies in the Marketplaces

### EXECUTIVE ORDER ON HEALTH CARE

On October 12, 2017, President Trump signed an executive order comprised of the seven sections listed below to promote healthcare choice and competition across the United States.

1. Policy
2. Expanded Access to Association Health Plans
3. Expanded Availability to Short-Term Limited Duration Insurance
4. Expanded Availability and Permitted Use of Health Reimbursement Arrangements (HRAs)
5. Public Comment
6. Reports
7. General Provisions

This order directs various administrative entities to issue guidance on the topics covered. It contains a high-level view of the goals to change specific aspects of the ACA. Once the regulations are drafted and released, employers will have a better sense of how these changes may affect the market. Legal challenges to this executive order may follow.

### POLICY

This section broadly states it should be the policy of the executive branch to facilitate the legal purchase of health insurance across state lines. The executive branch should also help develop and operate a health care system that provides Americans with high quality care at affordable prices.

The three areas of improvement below will take priority in the near term:

1. Association Health Plans (AHPs)
2. Short-Term Limited Duration Health Insurance
3. Health Reimbursement Arrangement (HRAs)

The administration will also encourage health care markets to compete and limit excessive consolidation throughout the healthcare system. To the extent consistent with law, government rules and guidelines affecting the U.S. healthcare system should:

- Make alternatives to expensive, mandate-laden ACA insurance, such as AHPs, Short-term Limited Duration Health Insurance and HRAs, available and accessible.
- Encourage competition in healthcare markets by lowering entry barriers, limiting excessive consolidation, and preventing abuses of market power.
- Increase access to the information that Americans need to make informed healthcare decisions, including data about health care pricing and outcomes and decrease the reporting burdens on affected plans, providers and payers.

The policy outlines the Trump administration's near term goals of improving healthcare access and affordability.

### EXPANDED ACCESS TO ASSOCIATION PLANS

Within 60 days of this order, the Secretary of Labor will consider proposing regulations or revising guidance to allow more employers to form AHPs. The Secretary should consider expanding the definition of an employer under ERISA and promote methods to form AHPs based on common geography or industry.

The goal of promoting AHPs is to allow smaller employers to overcome their competitive disadvantage with large employers who can spread the risk among a larger pool of members. Although the executive order states obtaining coverage through an AHP will allow employers to avoid many costly ACA requirements, it does not list the specific requirements that will no longer apply.

The executive order does not provide details on expanding AHPs. More details will likely be included in the proposed regulations or revised guidance.

### EXPANDED AVAILABILITY TO SHORT-TERM LIMITED DURATION INSURANCE

Within 60 days of this order, the Secretaries of Treasury, Labor and Health and Human Services must consider proposing regulations or revising guidance under the law to expand access to Short-Term Limited Duration Insurance (STLDI). The Secretaries should consider allowing these policies to cover longer periods of time and to be renewable.

The goal is to offer an appealing and affordable alternative to Marketplace coverage. The current ACA regulations limit the coverage period under these plans to three months.

The executive order does not include details on the expanded availability of these plans. The details are significant for insurance carriers. STLDI policies do not need to comply with ACA coverage mandates. This will allow policies that don't cover essential health benefits. These policies may also include annual and dollar lifetime maximums. Depending on the details, healthy people may buy these policies, while sick people will remain in the comprehensive Marketplace policies. Insurance carriers will struggle to stay in the Marketplace as rates increase to reflect poor experience. Many carriers may choose to exit Marketplaces over concerns they will not be able to operate profitably with a split risk pool.

### EXPANDED AVAILABILITY AND PERMITTED USE OF HEALTH REIMBURSEMENT ARRANGEMENTS (HRAS)

Within 120 days of this order, the Secretaries of Treasury, Labor and Health and Human Services will consider proposing regulations or revising guidance to increase the use of HRAs. The guidance should expand an employer's ability to offer HRAs and allow HRAs to be used with non-group coverage. The goal is to allow employees, especially those that work for small businesses, more options for financing their health care.

The executive order does not include details of these expanded HRA rules. HRAs are employer-funded accounts providing tax-favored funds to pay for eligible expenses insurance plans do not cover. The ACA has significantly limited the use of HRAs. In general, HRAs are available only to employees covered under the employer's medical plan. Loosening these rules may allow employees to use HRA funds to purchase individual insurance coverage.

### PUBLIC COMMENT

The Secretaries are charged with evaluating public comments on this executive order.

### REPORTS

Within 180 days of this executive order, and every two years, the Secretary of Health and Human Services along with the Secretary of Treasury and Labor and the Federal Trade Commission (FTC), must provide a report to the President that:

- a) Details the extent to which existing state and federal laws, guidance and policies fail to meet the goals of Section 1.
- b) Identify actions that the state and federal government can take to meet the goals of Section 1.

The administration is looking for ideas to help develop and operate a health care system that provides high quality care at affordable prices for the American people.

### GENERAL PROVISIONS

This order should not be construed to impair:

- a) The legal authority of any executive department or agency (including the head of a department or agency)

- b) The functions of the Director of the Office of Management and Budget relating to budgetary, administrative or legislative proposals

This order should be implemented consistent with applicable law and subject to available appropriations.

## DISCONTINUATION OF COST-SHARING SUBSIDIES IN THE MARKETPLACES

The Trump Administration also indicated it will immediately stop paying cost-sharing subsidies to insurance carriers in the Marketplace.

Just a reminder, the cost sharing subsidies are available to anyone making 250 percent or less of the federal poverty level (FPL). They are designed to fund lower out-of-pocket cost for those with lower incomes. Insurance carriers that offer a silver plan in the Marketplace are required to offer three variations of that plan for people that qualify for cost sharing subsidies. The variations have lower cost-sharing than the standard silver plan option. The government subsidizes the insurance carrier for these costs. These funds are NOT directly authorized by statute.

The Trump administration ended the subsidies, but insurance carriers still must offer the three other plans with lower cost sharing. Carriers anticipated the loss of these subsidies and submitted two sets of rates for approval by the Marketplace. The rates assuming no cost-sharing subsidies are approximately 20 percent higher.

Premium subsidies, on the other hand, are not affected. If a person qualifies for a premium subsidy, the cost for coverage under the second lowest cost silver plan is a set percentage of that person's household income. The federal government pays the remaining premium. The Federal government will end up paying the 20 percent premium hike for those that receive premium subsidies. Approximately 85 percent of people purchasing coverage in the Marketplace receive a premium subsidy.

## CONCLUDING THOUGHTS

The efforts to repeal and replace the ACA in 2017 have failed. The Trump administration is now taking executive and regulatory action to modify various aspects of the ACA.

The impact of these actions on employers and the health care market as a whole is difficult to assess right now. The details of the pending regulations will be important and may offer opportunities for employers. Expect the Trump administration to continue to revise ACA provisions when permitted by law. Expect a legal challenge to this executive order and any subsequent regulations as well.

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