

October 16th, 2017

President Trump's New Executive Order

On October 12, 2017, President Trump issued an executive order concerning health care coverage. The Executive Order encourages federal agencies to expand the permitted duration of short-term, limited-duration insurance (STLDI), increase the usability of health reimbursement arrangements (HRAs) and facilitate the use of association health plans (AHPs) as a tool for small employer groups to combine into one large group. It is important to note that the Executive Order itself does not make the above changes, nor are we likely to see any changes for months. Rather, the Executive Order directs the Departments of Labor, Health and Human Services, and Treasury (i.e., DOL, HHS and IRS) to consider revising current rules or issuing new rules that would accomplish the above aims.

In particular, the Executive Order provides that, to the extent consistent with law, Department rules should:

- Expand the availability of and access to AHPs. Under current regulations, even if small groups band into a large association group, small group market rules still apply to the small groups within the association. In other words, small groups cannot use AHPs to avoid the requirements applicable in the small group market, including community rating, the prohibition against considering the health status of participants, essential health benefits (EHBs), etc. Expanding the use of AHPs and changing current rules could allow small groups to band together and be treated like one large employer, meaning the association plan would not have to comply with EHBs and could provide more limited coverage, avoid community rating, etc.

- Increase the use of STLDI plans, which are generally short term plans that provide limited benefits. Of course, if benefits are limited, cost usually decreases. Currently, use of a STLDI is limited to a maximum period of 3 months. Expanded use of STLDI would allow individuals to rely on cheaper (albeit much more limited) insurance coverage for longer periods of time.
- Expand the use of HRAs; in particular, by allowing employers to establish HRAs that reimburse the purchase of individual market coverage by employees.

While all of the above actions may result in less expensive coverage for certain groups, it would also likely siphon healthy people away from the individual insurance marketplace and decrease or eliminate coverage options for those with pre-existing or chronic health conditions. It is important to again emphasize that the Executive Order itself does not make any changes to current Affordable Care Act requirements. It is likely to take four to six months for the various Departments to act. In addition, it is unclear whether the Departments have the ability to circumvent Affordable Care Act legislative requirements through administrative action.

Moreton & Company will continue to monitor this issue and will provide you with more information as it is available.

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