

President Trump Signs Executive Order Permitting the Creation of “Association” Health Plans

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President Trump has signed an executive order instructing regulatory agencies to draft new rules permitting the creation of “association” health plans, expanding Health Reimbursement Accounts (HRAs), and extending the time for which coverage can be offered under short-term health insurance policies. It is important to note that the executive order only instructs the regulatory agencies to develop new rules—it does not immediately change any existing rules or laws. New regulatory rules must also be written in a manner that complies with existing benefits laws such as ERISA, HIPAA, the Affordable Care Act (ACA), and provisions of the Internal Revenue Code.

The order instructs the regulatory agencies to respond within 60 days, but the full rulemaking process normally takes several months. It will also take some time for the insurance industry to develop plans and services that comply with the new rules, so the impact resulting from any changes will probably not begin to take effect until later in 2018.

Elements of the Order

As with any regulatory changes, the devil will be in the details; but here are some of the possible effects of the changes being considered by the administration.

Association Health Plans

The executive order opens the door to “association” health plans. These plans could be structured to allow small employers to band together to form a larger group plan that might be able to operate outside of normal state insurance laws and regulations. These types of plans will have the biggest impact on small employers, and possibly on individuals purchasing their own health insurance.

- Association plans might be able to offer “skinny” benefits that do not meet current group insurance rules, and possibly be more selective about who they allow into the plan. This shift could help association plan sponsors to keep plan rates lower.
- A very important detail that needs to be clarified is who exactly will be able to sponsor association plans. Will it be limited to trade associations or other existing groups? Or will it be relatively easy to form some kind of “loose” association simply for the purpose of offering benefits?

Expansion of HRAs

The order instructs the agencies to expand HRAs. The order does not contain details about what that expansion might include, but specifically mentions the possibility of permitting the use of HRAs for the purchase of individual health insurance policies. Current HRA rules do not allow this practice unless it is offered by a small employer using a Qualified Small Employer Health Reimbursement Arrangement (QSEHRA).

Short-Term Medical Plans

Under current rules, coverage under short-term medical plans that typically do not cover pre-existing conditions is limited to 60 days. The administration would like these types of plans to be available for up to one year at a time.

Summary

The possible regulatory changes envisioned by the administration could have a significant impact on the types of health insurance policies available, especially in the small group and individual health insurance markets. The possible availability of policies that provide limited coverage, or that are offered only to healthier risks, could mean that lower-cost options might be available to some people. However, many in the insurance industry are concerned that if these arrangements attract healthier and younger individuals

away from regular health insurance, the rates of those plans will increase, and carriers might even pull out of some health insurance markets.

Since nothing has actually changed yet, employers should monitor the situation and wait until rules and regulations are issued before contemplating making changes to current employee benefits strategies.

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