

PRESIDENT TRUMP'S EXECUTIVE ORDER

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Overview

Last Thursday, President Trump signed an executive order intended to ease some health insurance regulations and to create an avenue for certain health plans to by-pass regulations under the Affordable Care Act ("ACA"). The goal was to significantly impact "Obamacare" and reduce the cost of coverage for those in the individual health insurance market.

These changes, if enacted, will have no immediate impact on the majority of our clients who are larger companies, and are often self-insured. Rather, these changes are designed to impact the individual health insurance market, and the small end of the small employer market. That said, there may be long term implications if the changes result in major market disruption.

Background

The Executive Order addresses four areas: "CSR" payments; Association Health Plans; STHPs; and Health Reimbursement Arrangements.

CSR-Under the Obama Administration, subsidies were given to insurers who provided coverage for low income individuals. These "cost sharing reduction" payments or "CSR's" effectively reduce the deductible and coinsurance on policies for these low-income persons. Originally this concept was put in-place under an executive order by Obama, and then was promptly challenged by the Republicans as an abuse of power because they were not authorized by Congress. The cost of these cost sharing reductions is put at \$9 billion dollars (in 2018).

The removal of the CSR payments could be very disruptive to the individual market in the near term. First, insurers have already filed their rates for 2018 and (generally) this change was not considered in their rating. This means a rate change, and most experts estimate an additional 7-20% for this one element alone (on top of the 15-20% they have already requested for 2018). Second, this change will impact low income voters who have elected to buy coverage, many without a rate subsidy from the government. These are people who need health insurance (i.e., they have claims). Some have speculated that these are largely Trump voters and their reaction to the change could create a challenge for the Trump administration, especially with the mid-term election fast approaching.

Association Health Plans-Under current law "Association Health Plans" and Multiple Employer Welfare Arrangements ("MEWAs) are regulated by both the Department of Labor and the state divisions of insurance. The President's Executive Order would classify these plans as "large employer plans" which would eliminate the requirement to comply with the federal "essential health benefits." Thus, rates would be lower for such plans. The Executive Order would also enable Association plans to be sold across state lines where currently they are limited to trade associations within a specific state.

This could be an opportunity for various associations and their brokers to attempt to create lower cost programs for their members. The challenge to this is that associations are currently limited to singular industries, and the association must provide other services for members besides simply offering insurance. How the Executive Order might change this is unclear.

STHPs-STHPs (“Short Term Health Plans”) were not considered to be insurance under the ACA and thus did not provide the purchaser with fulfillment of the requirement to purchase health insurance. The removal of these plans from the market caused numerous low cost plans to go away, stranding those who relied on them for their protection. The Executive Order would change the definition of a STHP to one with coverage for a year, and allow them to be renewed, thus making the extent of coverage more meaningful (the definition today limits coverage to three months and today the coverage cannot be renewed).

This change could be useful for those with lower incomes who are healthy, and who need low cost coverage. However, the fear is that people will not understand the limits of the coverage they bought and the lower cost will syphon off some healthy individuals who otherwise would have purchased more comprehensive coverage, which in-turn supports the insurer risk pool.

Health Reimbursement Arrangements- “Health Reimbursement Arrangements” (HRAs) have historically been limited by state and federal law to allow employers to fund premiums or reimbursements on a pre-tax basis. The current law precludes an employer from funding an HRA so employees could purchase insurance in the individual (non-employer) market with those funds. The Executive Order would open these HRAs up to allow employers to deposit funds that otherwise would have been used to purchase employer funded plans, and instead enable employees to obtain their own, private insurance which might be lower cost. This approach could be very helpful for employers seeking to exit the employer market, or who desire to use a private exchange to provide coverage. The hope is that this added flexibility would help employers and employees find less expensive coverage.

The concern by many is that this change could weaken the existing employer market because those employers with healthy employees could drop employer coverage and allow employees to purchase less expensive (possibly STHPs) on their own. Less employers purchasing traditional coverage could cause all insured rates to rise.

Key Considerations

The President’s order does not change the existing regulations or laws. Instead, it instructs the Department of Labor (and other agencies) to study the law and come back with recommendations on how to implement changes in these areas. The order gives the agencies 60 days to come forward with implementation plans.

This change will not be without its challenges. As with the Republican’s law suit against Obama, there are some who challenge whether the President has the authority under the Commerce Clause in the Constitution to make such changes. There is also legitimate concern about how such changes may further de-stabilize the individual insurance market.

Health Insurance is complicated and does not lend itself to easy answers, or quick solutions. It would be useful for Congress and the President to consider changes that follow sound actuarial principles rather than simply making slight tweaks which may create greater problems later.

So, for instance, could these changes destabilize the market enough that we have to consider a single-payer law? No one knows. Time will tell.

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