Health Reform WK-EDGE Wrap Up, HR & BENEFITS TOP STORY: Trump suggests regulatory changes, possibly undermining ACA protections & market stability, (Oct. 18, 2017)

Health Reform WK-EDGE Wrap Up
Click to open document in a browser

By Kathryn S. Beard, J.D.

President Donald Trump signed an Executive Order (EO) directing agencies to make changes to the requirements for some types of health insurance plans, which he says will improve access, increase choices, and lower costs for health care. Experts disagree, however, and say the EO will destabilize the health insurance market and undermine the Patient Protection and Affordable Care Act’s (ACA) protections and coverage requirements. In a press release, the White House said that the EO covers association health plans (AHPs), short-term limited duration insurance (STLDI), and health reimbursement arrangements (HRAs). The EO does not have the force of law—rather, it is a directive to Executive Agencies to take certain regulatory actions promulgated under the ACA—and is subject to judicial review or statutory override by Congress (Notice, 82 FR 48385, October 17, 2017).

Following Congress’ failure to pass a bill to repeal or alter the ACA (see Graham-Cassidy would reduce coverage by millions to reduce deficit, September 27, 2017; McCain’s thumbs down vote defeats ACA ‘skinny bill’ repeal, July 28, 2017), Trump announced his intention to issue an EO on Twitter. He wrote, "Since Congress can’t get its act together on HealthCare, I will be using the power of the pen to give great HealthCare to many people – FAST." The EO was signed on October 12, 2017.

**AHPs.** AHPs are a type of multiple employer welfare arrangement (MEWA) that allows small businesses to come together at an association level and pool their employees as a group. The goal of AHPs is to offer smaller groups the same value and reduced administrative costs as a large-group plan. Regulations promulgated by the Obama Administration (76 FR 54969, September 6, 2011) require AHPs to comply with individual and small-group market requirements and consumer protections, including coverage of essential health benefits (EHBs), community rating, and rate review. The EO directs the Secretary of Labor to consider expanding access to AHPs, potentially allowing groups to form across state lines, including possible changes to the agency interpretation of the Employee Retirement Income Security Act (ERISA).

The American Academy of Actuaries published an Issue Brief in 2017 detailing concerns about AHPs. It warned that "the viability of many state-based markets would be challenged" if AHPs were allowed to operate under different rules than other small group and individual market plans, and "result in higher premiums in the non-AHP plans." Similarly, an America’s Health Insurance Plans (AHIP) Issue Brief from October 6, 2017, echoed the Actuaries’ assessment about raising premiums in the small-group market and referenced a January 2000 analysis from the Congressional Budget Office (CBO). AHIP also said that giving AHPs broader exemptions would "eliminate consumer and patient protections," and "increase the potential for fraud and abuse."

**STLDI.** Before the ACA, STLDI was often used by individuals who were transitioning between jobs with employer-provided health coverage and in similar situations. It is exempt from many of the ACA’s requirements because it is not included in the definition of "individual health insurance coverage." The Obama Administration determined that some individuals were using STLDI as a primary form of health coverage, thereby harming the risk pools for ACA-compliant coverage, and issued regulations limiting STLDI to three months (81 FR 75316, October 31, 2016). The regulations also required STLDI to notify consumers that the plans do not qualify as minimum essential coverage (MEC). The EO directs the Departments of the Treasury, Labor, and HHS to consider expanding coverage through STLDI.
The Commonwealth Fund recently noted that expanded access to STLDI is "bad for consumers and the individual market" because such plans "discriminate against consumers with preexisting conditions." However, when the regulation limiting STLDI was proposed, the National Association of Insurance Commissioners opposed the change, saying that it "could harm some consumers, limit consumer options, and have little positive impact on the risk pools in the long run."

HRAs. HRAs are a type of employer-funded health insurance plan that reimburses employees for qualified medical expenses, and is considered a group health plan. It is not the same as a Flexible Spending Account (FSA) or a Health Savings Account (HSA), which are not group health plans. Section 18001 of the 21st Century Cures Act (P.L. 114-255) created a new type of HRA—the Qualified Small Employer HRA—allowing small employers that don’t sponsor a group health plan to fund stand-alone HRAs for employees who buy nongroup health insurance coverage on the ACA’s marketplace. The EO directs the Departments of the Treasury, Labor, and HHS to consider changes to HRA regulations, possibly allowing expansion of such arrangements.

Companies: American Academy of Actuaries; America’s Health Insurance Plans; The Commonwealth Fund; National Association of Insurance Commissioners