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.

<u>Association Health Plans</u>
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?

<u>Expansion of HRAs</u>
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.

Cost-Sharing Reductions (CSR) Payments Discontinued

On October 12, 2017, the White House announced it is allowing the cost-sharing subsidies for the individual market to lapse. The ACA requires insurers to reduce cost-sharing for eligible, low-income individuals enrolled in silver plans through their local Marketplaces. This does not affect the premium subsidies individuals receive, and will not affect the deductible reduction at their level. What this will in effect do is require the carriers to continue to offer the individuals artificially lower deductibles (to those who qualify), but not be subsidized by the federal government for the increased costs for such a benefit. The rates have already been finalized for 2018, so there won't be a change in premiums based on this move.

Covered California has already announced that health plans will include a surcharge on the Silver-tier plans for the 2018 coverage year due to the ongoing uncertainty at the federal level. The average Cost-Sharing Reduction (CSR) surcharge increase on rates for 2018 is 12.4 percent, although the surcharge will vary for each health insurance company and will range from 8 percent to 27 percent. Most Covered California consumers who receive financial help in the form of an Advanced Premium Tax Credit (APTC), will not see a significant change in what they pay for their insurance in 2018, and many will actually end up paying less because the subsidy amount will increase more than the surcharge.

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.