

PRESIDENT SIGNS EXECUTIVE ORDER DESIGNED TO CHANGE ACA RULES



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OVERVIEW

On October 12, 2017, President Donald Trump signed an [executive order](#) intended to change certain rules under the Affordable Care Act (ACA). The order would relax regulations on association health plans. This change could allow individuals and small businesses to purchase health insurance policies across state lines and avoid certain ACA requirements.

The executive order also directs the Departments of Labor, Health and Human Services, and the Treasury (Departments) to consider expanding the availability of low-cost short-term, limited-duration insurance and health reimbursement arrangements (HRAs).

ACTION STEPS

An executive order is a broad policy directive that directs federal agencies to consider new regulations or guidance to implement the order's policies. The order does not make any changes to existing regulations.

As a result, the executive order's specific impact will remain largely unclear until agencies can issue further guidance.

THE EXECUTIVE ORDER

The executive order states that it is intended to reform the U.S. health care system by expanding choices and increasing competition to bring down costs for consumers.

President Trump issued this executive order as a measure to begin dismantling the ACA, following Congress' failure to pass legislation repealing the law.

HIGHLIGHTS

- Following Congress' failure to pass an ACA repeal bill, President Trump signed an executive order to begin dismantling the ACA.
- The executive order directs federal agencies to expand access to MEWAs, HRAs and short-term, limited-duration insurance.
- Agencies must issue new regulations to implement these changes.





ASSOCIATION HEALTH PLANS

Association health plans are an existing alternative option to traditional group health insurance, where several businesses pool funds together as a way to pay for benefits or buy group health insurance for their employees. Association health plans are intended to provide greater purchasing power and lower premiums for small employers by giving them an alternative to purchasing coverage in the small group market.

These arrangements are a type of multiple employer welfare arrangement (MEWA). Association health plans are generally MEWAs that are related to a trade association. MEWAs, including association health plans, have been subject to state insurance laws for many years. The Obama administration tightened regulation of these plans by subjecting them to additional ACA requirements, such as coverage of essential health benefits and premium rating restrictions.

The order directs the Departments to draft regulations expanding access to association health plans, potentially allowing employers to form groups across state lines and avoid certain ACA insurance requirements. This reform is intended to help accomplish an idea that has been long supported by President Trump, which is to allow health insurers to sell policies across state lines in an effort to increase free market competition.

Specifically, the executive order directs the Departments to consider ways to promote association health plan formation on the basis of common geography or industry. According to the order, these plans would allow employees access to a broader range of insurance options at lower rates in the large group market.

HEALTH REIMBURSEMENT ARRANGEMENTS

Finally, the executive order directs the Departments to consider making specific changes to HRAs that would allow employers to make better use of them for their employees. HRAs are employer-funded accounts that reimburse employees for health care expenses, including deductibles and copayments.

The executive order directs the Departments to expand employers' ability to offer HRAs to their employees, and to allow HRAs to be used in conjunction with individual health insurance coverage. The executive order states that expanded HRAs could provide employees with greater flexibility and control over how to finance their health care needs.

The executive order directs federal agencies to expand access to MEWAs, HRAs, and short-term, limited-duration insurance



IMPORTANT DATES

December 11, 2017

The order gives agencies 60 days to draft regulations to implement the changes related to MEWAs and short-term insurance.



February 9, 2018

The order gives agencies 120 days to draft regulations to implement changes related to HRAs.

SHORT-TERM, LIMITED-DURATION INSURANCE

The executive order also directs the Departments to consider expanding coverage through low-cost short-term, limited-duration insurance, which is not subject to the ACA's market reform requirements.

Existing regulations under the ACA recently amended the definition of short-term, limited-duration insurance to restrict the duration to be less than three months, including any period for which the policy may be renewed. Previously, this type of insurance was allowed to last for up to 12 months and could be renewed. Short-term, limited-duration insurance generally costs less than traditional types of health plans. According to the executive order, the main groups of individuals who benefit from this type of coverage are those that:

- ✓ Are between jobs;
- ✓ In counties with only a single insurer offering Exchange plans;
- ✓ Have limited coverage networks; and
- ✓ Missed the Exchange open enrollment period, but still want insurance.

As a result, the executive order directs the Departments to revise the ACA's rules to allow short-term, limited-duration insurance to cover longer periods and be renewed by the consumer.

IMPACT ON THE ACA

The executive order is very broad, and does not, itself, make any specific changes to existing regulations. Instead, it directs federal agencies to issue new regulations or guidance to implement the order's policies, which likely will have to go through a notice and comment period before being implemented. As a result, until additional guidance is issued and takes effect, the ACA's regulations continue to apply.

Federal agencies have broad authority in drafting and implementing regulations in response to an executive order. New regulations may follow the executive order directly, or may take other approaches in reforming the current health care system. As a result, it is difficult to know how any existing ACA regulations will be specifically impacted before any further guidance is issued.

In any case, the immediate impact of the executive order will likely be small, since it will take time to implement policies, regulations and other guidance to carry out these changes. It is unlikely that any changes will have a significant impact on many health insurance policies in 2018, since new regulations will not be available prior to the Nov. 1 open enrollment period. Therefore, employers should continue to prepare for upcoming requirements and deadlines to ensure full compliance.