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Impact on Employers of Presidential Executive Orders Regarding Affordable Care Act

While the orders lack detail, if they survive court challenges, they will have harmful effects on the ACA. The first order will likely have a more direct impact on employer-sponsored group health plans, with the second having indirect effects.

The first executive order asks federal agencies to address three issues: (i) expanding access to association health plans; (ii) expanding coverage through low cost short-term limited duration insurance; and (iii) changing health reimbursement arrangements (HRAs) so employers can have more leeway to use them for employees. The second order ends the reimbursements to insurers of cost-sharing reductions to low-income individuals who purchase coverage through the ACA insurance exchanges.

Association Health Plans

Currently, association health plans have somewhat strict rules that require grouping employers in the same line of business and in the same geographic areas. The order seeks to modify the law to make it easier for groups of employers who couldn't previously form association plans due to a lack of commonality of interest to form association plans across a larger geographic area. Among other things, this will allow small employers to band together via association plans in order to purchase insurance in the large group market, which has fewer restrictions than insurance purchased in the small group market.

Health Reimbursement Arrangements

ACA requires HRAs to be "integrated" with other employer group health coverage that satisfies the ACA insurance mandates. This means employers cannot contribute money to stand-alone HRAs for employees to use the money as they see fit, such as for

individual policies. The order states that the agencies should seek to expand the use of HRAs in conjunction with nongroup health insurance coverage, thereby removing the integration requirement applicable to HRAs.

Short-Term Duration Plans

Short-term duration insurance plans have traditionally helped cover people where regular health insurance is not feasible, such as people who are between jobs, in locations with few insurance options, or who have missed open enrollment. Short-term plans are exempt from the ACA and usually offer “skinny” coverage, such as limited doctor visits and exclusions of certain types of procedures; but they are also cheap. The law currently only allows short-term duration plans to provide coverage for no longer than three months. The order seeks to expand the ability of individuals to have this type of ACA-exempt coverage, and for longer periods of time, including making it easier to renew the coverage. For more information on the order’s effects on short-term duration plans, see the Frost Brown Todd Insurance Industry Group publication [here](#).

Cost-Sharing Order

The second executive order, issued on the evening of October 12, 2017, seeks to curb reimbursements to insurers for the ACA cost-sharing subsidies, which reduce costs for low-income individuals who purchase exchange coverage. The administration has clarified that the subsidies will end immediately, probably causing more insurers to withdraw from the exchanges, or, for those that stay, causing them to raise premiums for the plans offered.

While the overall effects of both orders are still unclear, it is certain that if the orders stand, there will be drastic changes to the ACA, including to rules governing employer sponsored plans. The first order will allow employers and employees to benefit from alternatives to traditional employer sponsored group health plans, and may even make it easier for healthy employees to find alternative coverage, causing premiums to rise for those who remain on employer plans. The second order seems to be aimed directly at dismantling the ACA by collapsing the insurance

exchanges, with the ultimate goal of pushing Congress to act quickly on an ACA replacement or revision. On October 17, 2017, it was announced that Senators Lamar Alexander and Patty Murray have reached a bipartisan agreement to restore the cost-sharing reduction payments for two years in exchange for giving states more flexibility over the ACA. We will soon see if Congress acts on this bipartisan effort.

If you have any specific questions on how the orders affect your employer group health plan, please contact [Carl Lammers](#) or any other attorney in Frost Brown Todd's [Employee Benefits Group](#) or [Health Law Group](#).

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