

THE HEALTH CARE EXECUTIVE ORDER AND ITS EFFECT ON EMPLOYEE BENEFIT OPTIONS

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In a development with potentially far-reaching ramifications, on October 12, 2017, the President signed Executive Order No. 13813 expressing an executive policy of facilitating, “to the extent consistent with law,” the purchase of insurance across State lines and the development and operation of a high-quality, affordable healthcare system under the Patient Protection and Affordable Care Act (PPACA). The Executive Order outlines three goals for near-term change:

- Expanding the availability of and access to:
 - **Association health plans** (AHPs), which would allow small businesses to group together to self-insure or to purchase large group health insurance and thereby “avoid many of the PPACA’s costly requirements”;
 - **Short-term, limited-duration insurance** (STLDI), as a temporary alternative to government-run exchanges for individuals without access to coverage through the workplaces;
 - **Health reimbursement arrangements** (HRAs), the existing tax-advantaged, account-based arrangements that employers can establish to promote employee flexibility and choices about their healthcare.
- Injecting **competition** into healthcare markets by lowering barriers to entry, limiting excessive consolidation, and preventing abuses of market power; and
- Improving access to and the quality of **information**, including data about healthcare prices and outcomes, so that individuals can make informed decisions, while also minimizing reporting burdens on plans, providers, or payers (presumably of making the information available).

To accomplish these goals, the Executive Order directs federal agencies to consider proposing revised regulations or revised guidance:

- Within 60 days to increase access to AHPs by expanding current “commonality-of-interest” requirements and promoting formation on the basis of common geography or industry;
- Within 60 days to expand the availability of STLDI by allowing it to extend for longer and to be renewable by the consumer; and
- Within 120 days to increase the usability of HRAs, by expanding the employer’s ability to offer them and to allow their use in conjunction with non-group

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coverage.

In addition, the Executive Order directs federal agencies, within 180 days (and every two years), to report on existing State and Federal laws, regulations, guidance, requirements, and policies that do not conform to the policies expressed in the Executive Order and to identify actions that States or the Federal Government could take in furtherance of those policies.

The proposed expansion of AHPs, STLDIs, and HRAs, and the identification of policies to increase competition and improve access to information, may result in additional health coverage options for employers offering health coverage to their employees. Over the next few months, as the Departments of the Treasury, Labor, and Health and Human Services draft regulations and prepare their reports, it may become clearer how the agencies propose to harmonize the directives of the Executive Order with existing Federal and State law.

In another significant development on October 12, 2017, the Department of Health and Human Services announced it will discontinue cost-sharing reduction payments to insurers selling health care insurance under PPACA. In swift response, on October 13, 2017, 18 states (including New York) and the District of Columbia filed suit in federal district court in California to enjoin the action.