Eye On Washington

Health Care Reform Update

A more human resource.

White House Actions on the Affordable Care Act: Executive Order and Notice to Stop CSR Payments

On October 12, 2017, President Trump issued an Executive Order, entitled "Promoting Healthcare Choice and Competition Across the United States" (the "Executive Order"), that directs the Departments of Treasury ("Treasury/IRS"), Labor ("DOL") and Health and Human Services ("HHS") (collectively, the "Departments") to issue sweeping new healthcare rules and regulations to reform the Affordable Care Act ("ACA"). Later on October 12, the White House announced that the Trump administration would no longer be providing cost-sharing reduction ("CSR") payments to health insurance issuers.

The Executive Order is very broad, prioritizing three areas of focus: (1) association health plans ("AHPs") and selling insurance across state lines; (2) health reimbursement arrangements ("HRAs"); and (3) short-term, limited-duration insurance ("STLDI"). Rather than laying out specifics, it directs the Departments to engage in rulemaking with respect to these areas, briefly summarized below. The Executive Order directs the Departments to consider proposing regulations or revising guidance pertaining to AHPs and STLDI within 60 days, and regulations or guidance pertaining to HRAs within 120 days.

Association Health Plans/Sale of Insurance Across State Lines

AHPs and the sale of insurance across state lines have been the most highly publicized issues expected to be covered by the Executive Order. The Executive Order directs DOL, within 60 days, to consider proposing rules or revising guidance to permit more employers, including small businesses, to participate in AHPs, which would be treated as large group coverage on a federal level. Notably, the Executive Order contemplates both fully-insured and self-insured AHPs, and states that expanding access to AHPs can help small businesses "by allowing them to group together to self-insure or to purchase large group health insurance."

Specifically, the Executive Order states that DOL should consider broadening the conditions that satisfy the commonality-of-interest requirements under current DOL advisory opinions that address the definition of "employer" under ERISA. The Executive Order notes that DOL should consider ways to promote AHP formation on the basis of common geography or industry, which could further expand the breadth of AHPs and enable the sale of insurance across state lines. A set of questions and answers accompanying the Executive Order notes that these changes could result in "employers in the same line of business anywhere in the country [being able] to join together to offer healthcare coverage to their employees and any employers within a single state or a multi-state metropolitan area [being able] to join together to offer healthcare coverage to their employees."

Health Reimbursement Arrangements

The Executive Order directs the Departments, within 120 days, to consider proposing rules or revising guidance to increase the usability of HRAs, expand employers' ability to offer HRAs to employees, and allow HRAs to be used in conjunction with non-group coverage. Currently, the Departments' position (e.g., in Notice 2013-54 and subsequent guidance) is generally that HRAs for active employees that are not "integrated" with another group health plan (i.e., a stand-alone HRA) violate the ACA market reforms and may not be used to reimburse premiums for non-group coverage. The 21st Century Cures Act, however, permits certain small employers to offer their employees non-integrated HRAs to purchase non-group coverage in certain circumstances. Because the Executive Order effectively pulls back on the Departments' guidance in Notice 2013-54, it appears that the Departments will need to create an exception to the ACA market reforms for stand-alone HRAs. For example, one possibility is to treat such HRAs as excepted benefits not subject to the ACA market reforms. The Departments will also need to determine whether or the extent to which a stand-alone HRA constitutes minimum essential coverage for purposes of the employer and individual mandate requirements.

Eye On Washington
Health Care Reform Update

A more human resource.

Short-Term, Limited-Duration Insurance

The Executive Order directs the Departments, within 60 days, to consider proposing regulations or revising guidance to expand the availability of STLDI. While STLDI is not an excepted benefit, it is exempt from the ACA market reform requirements, because it is not considered individual health insurance coverage. Previously, the Departments defined STLDI as health insurance coverage that expires less than 12 months after the original effective date. However, on October 31, 2016, the Departments finalized rules shortening the permitted duration of STLDI to be less than three months, including any period for which the policy may be renewed. The Executive Order directs the Departments to consider allowing STLDI to cover "longer periods and be renewed by the consumer." The Executive Order does not indicate whether the Departments would revive the original requirement that STLDI be offered for less than 12 months, or whether longer periods of coverage would be permitted.

This is the third Executive Order to be issued by President Trump that implicates the ACA and healthcare. The first Executive Order, entitled "Minimizing the Burden of the Patient Protection and Affordable Care Act Pending Repeal" directed federal agencies to ease the regulatory burden of the ACA. The second Executive Order, "Reducing Regulation and Controlling Regulatory Costs" directed the Departments to, among other things, withdraw two regulations for every new regulation issued.

Notice to Stop CSR Payments

Also on October 12, the White House confirmed President Trump plans to cut CSR payments to insurers who sell healthcare plans on the ACA Exchanges. According to the White House, the payments will end immediately, because they are paid in monthly installments and have not been appropriated by Congress. The announcement concerns CSR payments or the cost-sharing subsidy and not the other type of subsidy available to Exchange enrollees, the premium tax credit. In order to receive either type of subsidy, individuals must enroll in a plan offered through a health insurance Marketplace. ADP will provide future updates on this matter, specifically regarding law suits in response to this action and/or Congressional action to appropriate funds to make CSR payments in the future.

The most recent Executive Order and White House announcement changes nothing related to the employer mandate. Applicable large employers (employers with 50 or more full-time and full-time equivalent employees) should be continuing their preparations for 2017 ACA annual reporting, as the **reporting requirements for employers** are unchanged, and IRS deadlines are fast approaching. As a reminder, the due dates to file 2017 Forms 1094-C and 1095-C with the IRS are February 28, 2018 for paper filers and April 2 for electronic filers. Electronic filing is required for any applicable large employer filing 250 or more such forms with the IRS. Employers must furnish the **employee statement** (Form 1095-C) on or before January 31, 2018.

ADP Compliance Resources

ADP maintains a staff of dedicated professionals who carefully monitor federal and state legislative and regulatory measures affecting employment-related human resource, payroll, tax and benefits administration, and help ensure that ADP systems are updated as relevant laws evolve. For the latest on how federal and state tax law changes may impact your business, visit the ADP *Eye on Washington* Web page located at **www.adp.com/regulatorynews**.

ADP, LLC.
1 ADP Boulevard, Roseland, NJ 07068
adp.com

Updated on October 13, 2017