

Health Care Reform Roundup – Issue 10

Employee Benefits & Executive Compensation Blog on **October 27, 2017**

After months of failed attempts to pass any health care reform legislation, it appears efforts to pass a bipartisan bill to improve the Affordable Care Act (ACA) are picking up steam. Below is a summary of recent health care reform developments.

- **White House Directives.** On October 12, 2017, President Trump released his “Executive Order Promoting Healthcare Choice and Competition Across the United States.” In this Executive Order, the President directed agencies to take action to (1) expand access to association health plans, (2) permit short-term, limited-duration insurance policies to cover 12 months (instead of the current limit of 3 months), and (3) expand access to health reimbursement accounts (presumably to allow their use to purchase individual market insurance). We can expect regulations on each of these items in the coming months.

Shortly after releasing the Executive Order, President Trump also announced that the Administration would stop funding cost-sharing reductions available on the ACA Health Insurance Marketplaces. These cost-sharing reductions have been controversial and subject to litigation on the basis that Congress never appropriated funds to pay for the reductions. Critics of the President’s directive to end the reductions argue that it would destabilize the Marketplace and cause premiums to drastically increase. The Congressional Budget Office issued a [report](#) in August stating that ending the cost-sharing reductions would actually increase the federal deficit by \$194 billion by 2026. This increase is attributable to the fact that the increase in premiums would cause a corresponding increase in premium subsidies funded by the federal government.

An attempt to enjoin the President from ending the cost-sharing reduction program failed in a California district court. Thus, it is likely that the only available path to continuing the program is through the bipartisan legislation described below.

- **Legislative Efforts.** Following the failure to pass a full-scale repeal and replacement of the ACA, Congress is currently focusing on bipartisan ACA stabilization legislation. It appears at the moment that the leading piece of legislation is that being sponsored by Senators Lamar Alexander and Patty Murray. Under the

Alexander-Murray bill, cost-sharing reductions would be available to individuals with incomes within 100-250% of the federal poverty limit when purchasing coverage on the Marketplace. The bill would also fund ACA assistance and enrollment programs, which have been faced with budget cuts. Additionally, catastrophic health plans would be available to everyone (i.e., not just those less than age 30 or with a financial hardship). Finally, the bill would relax state ACA waiver programs under ACA Section 1332. This component of the ACA is intended to incentivize states to create innovative ways to improve health care, though opponents of relaxed waiver rules argue that states would be able to curtail many of the ACA's market reforms.

A possible second bill has been announced by Senator Hatch and Representative Brady. The parameters of this legislation are not yet clear. However, it appears that it would also continue funding for cost-sharing reductions (but only for a few years and only for policies that do not cover abortion-related services), provide limited relief from the individual and employer shared responsibility mandates, and increase the contribution limits on health savings accounts.

- **Contraceptive Coverage Mandate Relaxed.** The Departments of the Treasury, Labor and Health and Human Services released proposed regulations greatly expanding the ability to opt-out of the ACA's contraceptive coverage mandate. The ACA requires that health plans cover designated preventive services without cost-sharing and contraceptives are designated as a preventive service for this purpose. Previously, religious organizations and closely-held companies with religious objections to the mandate could opt-out of the ACA's requirement to cover contraceptives. The new proposed regulations provide that all entities can now claim an exemption from the ACA contraceptive coverage mandate for religious reasons. Additionally, group health plan sponsors (other than publicly-traded companies) are able to claim an exemption from this mandate based on "sincerely held moral convictions."
- **ACA Reporting Forms and Instructions Finalized.** ACA reporting forms of the 2017 filing season have been finalized. For a summary of the changes to the forms, please see [Roundup Issue 9](#).

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