October 13, 2017

Executive Order to Expand Access to Healthcare

On October 12 President Trump signed an executive order calling upon the U.S. Department of Labor (DOL) to consider, among other things, expanding access to Association Health Plans, which could potentially allow some employers to join together across State lines to offer coverage. This could have far-reaching implications for employer plans and for the individual health insurance market. The order is intended to reform the United States healthcare system and to take the first steps to expand choices and alternatives to the Affordable Care Act (ACA) marketplace plans and increase competition to bring down costs for consumers. Key elements of the order are as follows:

- **Association Health Plans.** The order directs the Secretary of Labor to consider expanding access to (AHPs), which could potentially allow some American employers to form groups across State lines. Unstated in the order is how an "association" will be defined. A broader interpretation of the Employee Retirement Income Security Act (ERISA) could potentially allow employers in the same line of business anywhere in the country to join together to offer healthcare coverage to their employees. It could potentially allow employers to form AHPs through existing organizations, or create new ones for the express purpose of offering group insurance. By potentially making it easier for employers to band together, workers could have access to a broader range of insurance options at lower rates in the large group market. Employers participating in an AHP cannot exclude any employee from joining the plan and cannot develop premiums based on health conditions. Advocates for the individual market have expressed concerns that the availability of AHPs will destabilize the individual market by pulling healthier individuals out of the risk pool.
- **Short-term limited duration insurance.** The order directs the Departments of the Treasury, Labor, and Health and Human Services to consider expanding coverage through low cost short-term limited duration insurance (STLDI). STLDI is not subject to costly ACA mandates and rules. Despite its low cost, STLDI typically features broad provider networks and high coverage limits. The main groups who benefit from STLDI are people between jobs, people in counties with only a single insurer offering exchange plans, people with limited coverage networks, and people who missed the open enrollment period, but still want insurance.
- **Health Reimbursement Arrangements.** The order directs the Departments of the Treasury, Labor, and Health and Human Services to consider changes to Health Reimbursement Arrangements (HRAs) so employers can make better use of them for their employees. HRAs are employer-funded accounts that reimburse employees for healthcare

expenses, including deductibles and copayments. The IRS does not count funds contributed to an HRA as taxable income. Expanded HRAs could potentially give American workers greater flexibility and control over how to finance their healthcare needs.

Executive orders must generally be implemented in a manner consistent with applicable law, including the Administrative Procedure Act, which requires extended review of and public comment on any federal rules which may be proposed as a result of an executive order. Unless and until there is further action, all provisions of the ACA remain intact, including penalties for noncompliance, and there is still a strong possibility that there may ultimately be no changes with the ACA this year. We will continue to watch decisions over the coming weeks and months, and provide details on new and revised employer obligations as they take shape over time. Should you have questions about any aspect of federal health insurance reform, please contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online Resource Center.

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