# No Such Thing as Obamacare Any More

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President Trump summarized the net result of two executive orders he recently signed in a Cabinet meeting on October 16, 2017, saying that there is “no such thing as Obamacare anymore.”[1]

The first executive order bolsters three insurance arrangements that are currently permitted as “exceptions” to the requirements of Obamacare plans under the Affordable Care Act. The first change expands the insurance options available to small businesses through “association health plans” or “AHPs.” The definition of “commonality of interest,” that currently limits groups who may participate as sponsors of AHPs will be expanded to allow more employers to participate and to allow AHPs to insure across state lines, creating larger risk pools than single state insurance. The minimum coverage requirements for AHPs will be different so that employer premiums may be less expensive; however, within an AHP, rates for insurance coverage may differ between employers based on an employer’s unique experience rating. The second change lengthens the term of “short-term limited duration insurance,” or “STLDIs,” from 3 months for up to one year and allows them to offer bare-bones, catastrophic coverage only at much less cost than Obamacare plans. The third change permits employers offering “health reimbursement arrangements,” or “HRAs,” to cover more out-of-pocket health care expenses.” Obamacare proponents are concerned that these three alternatives to Obamacare will lead to the weakening of Obamacare plans and state exchanges if young healthy people chose these alternatives, leaving a sicker, older pool of people in the Obamacare exchanges with higher premiums. President Trump also ordered the Federal Trade Commission to report to him in 180 days on the impact of the horizontal and vertical consolidation of the healthcare industry, including insurers, on competition and price.

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The second executive order is aimed directly at a contested element of the Affordable Care Act that is currently being challenged in federal court. This second order eliminates "cost-sharing reduction subsidies," or "CSR" made by the federal government to insurance companies that sell Obamacare plans to lower-income individuals. If premiums are not subsidized by CSRs, the out-of-pocket cost to these individuals is estimated to increase by at least 20%, making insurance coverage unaffordable and unavailable. CSRs are estimated to be $7 billion in 2017 and up to $10 billion in 2018.

The impact on the insurance industry was immediate, as stock prices of several health insurers dropped significantly. Some insurers are expected to exit the market. Quickly after the executive orders, a bi-partisan group of Senators proceeded with efforts to address the CSR payments and take steps to stabilize markets. The President has sent conflicting signals on his support for such Senate action, and discussion and negotiations continue.

The specifics and timing of the two executive orders are unclear. Federal agencies charged with implementing these two executive orders will have between 60 to 120 days to draft implementing regulations, which must include a period for public comments. Proposed Congressional action may also affect the timing of further action. As a result of this timeline, it may be anticipated that the effective date of the changes will impact insurance coverage in 2019.

Turmoil may be expected. Contact your Butzel attorney for updates on legislative and regulatory developments in this rapidly evolving area of the law.

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[1] President Donald Trump in Cabinet Meeting, October 16, 2017