

Executive Order on Association Health Plans Could Benefit Employers

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Stymied by the lack of congressional progress toward repealing, replacing or reforming the Affordable Care Act (ACA), President Trump has in recent days issued a number of directives affecting various aspects of the law. Perhaps most significantly for employers, an executive order directs federal agencies to consider expanding the availability of association health plans.

Under current law, a member-governed association of employers in a common industry or geographic area can be treated as a single employer plan sponsor for purposes of the ACA and the Employee Retirement Income Security Act (ERISA). The rule-making process ordered by the president may result in less cohesive groups of employers, or even groups lacking member control, qualifying the association as a single employer plan sponsor.

Smaller organizations could benefit because a large group plan sponsored by such an association would escape many of the ACA mandates that apply in the small group market. Large group health plans, for example, are exempt from the ACA's requirements for providing essential health benefits. In addition, large group plans are exempt from the prohibition against underwriting based on health factors. As a result, large groups - especially younger and healthier ones - are often able to obtain lower-cost insurance for their members. Moreover, a large self-insured plan sponsored by an association deemed a single employer enjoys an additional benefit under ERISA - exemption from state insurance regulation - which may expand the offering of such plans across state lines.

Any significant expansion of association health plans, however, is likely to be controversial. Some worry that any such expansion would siphon off many of the healthiest employee groups, leaving the small group market with a population of relatively less healthy participants and higher costs. And regardless of any forthcoming regulatory changes, they will not be effective in time to make a difference for 2018 calendar year plans.

Please [contact me](#) or any member of [Barley Snyder's Employee Benefits Group](#) with any questions you may have concerning employer-provided health coverage.