

## NAR Issue Brief

# Health Care Executive Order

### Background:

- On Thursday, October 12, the White House issued an [Executive Order](#) directing the Departments of Labor, Health and Human Services (HHS), and Treasury to “*consider proposing regulations or revising guidance*” to facilitate the availability high-quality affordable health insurance options for Americans.
  - An executive order is a presidential policy directive that can be used to implement or interpret a federal statute, and can instruct Federal Agencies to issue new rules or amend existing regulations to carry out legislative policies and programs.
- The Executive Order directs the Department of Labor (DOL) to consider proposing regulations or revising guidance to expand access to health coverage by reinterpreting the definition of “employer” under the *Employee Retirement Income Security Act of 1974 (ERISA)* to allow more employers to form Association Health Plans (AHPs).
  - **ERISA is a federal law governing the conduct of *employee* benefit plans, including employer-sponsored group health plans, which sets minimum standards and protections for plan participants.**
  - **Self-employed individuals and independent contractors are not considered employees. A health plan covering only those individuals would not be covered by ERISA.**
- Expanding AHPs would help small businesses band together to purchase health insurance coverage in the large group health insurance market, similar to large employers. Expanding access to AHPs in this manner would allow more small businesses to avoid some Affordable Care Act (ACA) regulations and potentially bring down the cost of coverage.
  - The AHP proposal in the Executive Order is directed at *employer provided* health insurance coverage offered by employers that fall under the ERISA statute.
  - Neither the Order nor the supplemental documents provided with the Order mention or direct the agencies to examine coverage options for self-employed individuals or independent contractors.
  - In order for the AHP proposal to apply to coverage for self-employed individuals and independent contractors, DOL would first need to propose and implement *new* formal regulations.
  - Many experts question the legality of including self-employed individuals and independent contractors in any AHP rulemaking, and expect any effort to do so to be challenged in the courts.
- The Executive Order also directs Treasury, DOL, and HHS to (1) consider expanding the length of short-term limited duration insurance policies (STLDI) for individuals (a component of the Order that would apply to independent contractors) and (2) consider changes to the rules governing Health Reimbursement Accounts (HRAs) offered by employers to fund employee health care expenses.

### Timeline:

- The Executive Order is not a change in law or regulations. Rather the Executive Order is a policy directive instructing DOL, HHS, and Treasury to “consider proposing regulations or revising guidance” to facilitate these health care reforms.
- The rulemaking process to enact such changes will take months, and likely will face legal challenges, which could delay implementation.
- Should regulations enacting the Executive Order’s proposals be issued expeditiously and survive legal challenges, the earliest such changes would take effect would be mid-year next year and would unlikely affect the 2018 federal exchange health care marketplace.

**NAR Response:**

- NAR has long supported legislation enabling the creation of AHPs, as well as other similar efforts to expand health insurance options for REALTORS®.
- NAR will continue to work with the Administration and Congress on regulatory and legislative changes needed to ensure AHPs are a workable option for REALTORS®.
- NAR will also continue to assess the impact of the Executive Order on the broader health care marketplace and how the proposals could benefit the REALTOR® population.

**Additional Resources:**

Read the Executive Order [here](#).

For more on NAR's member benefits, see [here](#).