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## Employer Sponsors of Health Benefits Part 2: More Gridlock Ahead

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Regardless of what side of the political spectrum you find yourself, you would probably agree that to say Washington, DC is in gridlock is an understatement. We are not going to assign blame to any particular party for the impasse. Instead, we'll focus on how employer-sponsored health benefits could be impacted in 2019-2020 and by the results of the next Presidential election in November 2020.

We will look at how the Trump Administration's executive actions between now and then could shape the direction of employer-sponsored health benefits. We will also speak to how the makeup of the U.S. Supreme Court (SCOTUS) could impact the outcome of any related legal challenges.

On February 27, Representatives Pramila Jayapal (D-WA) and Debbie Dingell (D-MI) introduced the Medicare for All Act of 2019. This bill goes far beyond the Affordable Care Act (ACA) by eliminating employer-sponsored health plans. In fact, Healthcare.gov (i.e. the ACA Marketplace or Exchange) would also be eliminated as everyone is moved to Medicare within two years. Given the Democrats have a 235-197 majority in the House of Representatives (there are 3 vacancies), it's quite possible the Medicare for All bill will pass. However, the Republican majority in the U.S. Senate (53-47) likely means this bill would not pass the Senate—if it ever makes it to the floor for a vote. Other health care-related bills passed by the Democrat-controlled House will likely be opposed by the Trump Administration and the Senate Republicans too.

The Trump Administration will continue issuing healthcare-related Executive Orders (EO), such as the one which changed the maximum coverage period for short-term limited duration insurance plans from 12 to 36 months. Another example is the EO that would allow organizations (beyond churches and religious employers) to avoid the ACA's contraceptive mandate based on religious or moral grounds. Predictably, this EO was challenged by Attorneys General from five states



where the governor is a Democrat and/or the legislatures are primarily controlled by Democrats. As a result, two federal district courts have issued nationwide preliminary injunctions to block this order.

The Trump Administration is also likely to continue directing the DOL/HHS/Treasury Departments to issue regulations or guidance that are consistent with its objectives and policies to control healthcare costs and improve access to affordable coverage. One example is the proposed rules to expand the use of Health Reimbursement Arrangements (HRAs) by employers of any size to pay for individual health insurance premiums. Another example is the possibility the HHS Secretary could relax prescription drug importation rules to give Americans the ability to purchase their prescriptions from abroad at a fraction of US prices.

Although Democrats would probably not oppose prescription drug importation because it will help reduce costs for their constituents, they are likely to challenge the HRA measure. Democrats are concerned about their constituents losing comprehensive, ACA-compliant coverage through their employers (at least until they can get them moved on to Medicare) in exchange for a

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stipend that may not be sufficient to cover the premiums for an individual health insurance policy (probably with higher deductibles and a more narrow provider network). And speaking of challenges, you may recall that Attorneys General from eleven states and the District of Columbia filed suit to block the Administration's endorsed DOL/HHS/Treasury regulations on Association Health Plans (AHPs), because they believe AHPs will undermine the ACA Marketplace and result in people being covered under non-ACA compliant plans.

Earlier, we mentioned the makeup of SCOTUS will determine the fate of court challenges to the Trump Administration's (and that of future Administrations) healthcare-related EOs and regulations. Today, the Administration enjoys an advantage with the recent appointments of Justices Gorsuch and Kavanaugh. However, with Chief Justice Roberts showing a tendency to be a more moderate voice, that advantage is narrow. What if President Trump has the opportunity to appoint another conservative Justice before the November 2020 election and that nomination is approved by the Republican majority in the Senate? If that happens, it's more likely the Administration's EOs and regulations will be upheld in the future.

Learn more on possible 2020 election scenarios by reading the third article in this series: [Employer Sponsors of Health Benefits: Part 3: Possible 2020 Election Scenarios](#)

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