What is in the EO?

- To the extent possible consistent with law, the EO directs the Administration to develop policy that increases healthcare competition and choice in order to improve the quality of healthcare and lower prices.

- The EO directs the Secretary of Labor to consider proposing regulations or revising guidance to expand Association Health Plans (AHPs).

- The EO directs the Secretaries of HHS, Treasury, and Labor to consider proposing regulations or revising guidance to expand short-term limited duration insurance (STLDI).

- The EO directs the Secretaries of HHS, Treasury, and Labor to consider proposing regulations or revising guidance to expand Health Reimbursement Arrangements (HRAs).

- Within 180 days, the Secretary of HHS, in consultation with the Secretaries of Treasury, Labor, and Federal Trade Commission, will report to the President on State and Federal laws, regulations, and policies that limit healthcare competition and choice as well as on actions that Federal and State governments could take to increase competition and choice and reduce consolidation in healthcare markets.

Why is this EO needed?

- Obamacare's mandates and regulations have reduced choice and competition in healthcare markets, exacerbated provider consolidation, and substantially driven up healthcare prices for consumers and employers.

- The higher premiums, higher taxes, and reduced coverage options that have resulted from Obamacare have primarily hurt small business owners, employees at small businesses, and middle class workers without workplace insurance.

- This EO directs federal departments to consider policies that would directly benefit the victims of Obamacare by providing them with greater choice of affordable coverage options and providing them with greater control over their healthcare decisions.

- The long-term focus of the EO on promoting healthcare choice and competition and limiting harmful consolidation has the potential to produce a much better healthcare system for all Americans.

Who will this EO help?

- Expanding AHPs and HRAs will benefit the roughly 35 million workers at small businesses, those with fewer than 50 workers.

- Many small business owners cannot afford to offer increasingly more expensive health insurance to their employees. This was true before Obamacare, but has worsened since Obamacare increased the cost of coverage. For firms that employ 3-24 workers, the percentage of workers covered by employer health benefits has fallen from 44% in 2010 to 32% in 2017. For firms that employ 25-49 workers, the percentage of workers covered by employer health benefits has fallen from 59% in 2010 to 45% in 2017.[1]

- By directing the federal government to focus on policies that expand competition and choice in healthcare markets and limit excessive consolidation, this EO will potentially benefit all American consumers by improving the healthcare system.

How can the EO achieve the policy goals it outlines?

- An expansion of AHPs could allow more small businesses to join together to self-insure or purchase large group insurance. Forming a larger group could allow employers to achieve greater administrative efficiencies and could allow them to negotiate better prices and coverage for their employees. Moreover, large group fully insured plans and self-insured plans are subject to fewer Obamacare requirements than small group fully insured plans—the plans that most small businesses currently purchase.

- An expansion of HRAs could allow employees greater choice and control over how to finance their healthcare needs. A worker-friendly approach to HRAs could allow employers to make better use of HRAs, from which employees would have greater control over how they want to finance their healthcare needs.

- An expansion of STLDI could provide millions of people with a much more affordable coverage option. STDLI is not subject to Obamacare's oppressive regulations that have created one-size-fits-all, expensive insurance. As a result, STLDI costs approximately one-third the price of the cheapest Obamacare plans. Yet despite its low cost, STLDI offers good value to many consumers, typically featuring broad provider networks and high coverage limits. The main beneficiaries of an expansion of STLDI are people between jobs who are seeking a cheaper alternative to COBRA, people in nearly half of U.S. counties with only a single insurer offering exchange plans, people in rural areas with limited coverage networks, and people who missed Obamacare's open enrollment period but still desire insurance.

Why is competition and choice important in healthcare markets?

Too many consumers lack adequate choices for financing healthcare and our healthcare system contains numerous inefficiencies, primarily due to government policy that promotes third-party payment of services. Most Americans either inherit their employer's choices or are driven into government programs characterized by bureaucratic price-setting.

[1] Kaiser Family Foundation, "2017 Employer Health Benefits Survey," (2017).

Americans who enroll in the individual market also face extremely limited choices. In 2017, people in one-third of counties only had insurance options from a single insurer.[2] As additional insurers have withdrawn from markets, people in nearly 50 percent of counties are set to have options from only a single insurer in 2018.[3]

Obamacare exacerbated a growing trend toward consolidation among healthcare providers. Nearly one half of hospital markets are highly concentrated, with many areas of the country dominated by one or two large hospital systems that have no close competitors.[4]

Estimated average prices at hospitals without local competitors are nearly 16 percent higher than prices at hospitals with four or more competitors, a difference of nearly $2,000 per admission.[5] Since medical expenses largely drive insurer premiums, these costs are passed on to consumers. The lack of insurer competition also leads to higher prices—researchers have found that adding a single insurer to an exchange reduces premiums by 4.5 percent.[6] The impacts on the employer market are similar. The merger between Aetna and Prudential in 1999 led to a seven percent increase in premiums for large employers.[7] Similarly, the merger of Sierra and United in 2008 led to an almost 14 percent increase in small group premiums.[8]

Perhaps more importantly, a lack of competition also produces lower quality care. For example, researchers found that Medicare beneficiaries who experienced a heart attack had a 1.5 percentage point higher chance of dying within one year of treatment if they received care in a hospital that faced few potential competitors.[9]

Competitive healthcare markets often produce improved outcomes, with increased quality and lower prices. For example, as ophthalmologists competed for consumer dollars, the real price of LASIK eye surgery declined by 25 percent between 1999 and 2011, even as quality markedly improved.[10] As another example, the price of medical care grew at double the rate of inflation between 1992 and 2012, but the price of cosmetic surgery—for which consumers pay almost

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[2] Dan Mendelson, "Experts Predict Sharp Decline in Competition Across the ACA Exchanges," *Avalere*, Aug. 19, 2016.

[3] Haeyoun Park and Audrey Carlsen, "For the First Time, 45 Counties Could Have No Insurer in the Obamacare Marketplaces," *The New York Times*, Jun. 9, 2017.

[4] Highly concentrated means that the sum of the squares of firms' market shares (called the Herfindahl-Hirschman Index, of HHI) is 2,500 or higher, equivalent to a market with four equal sized firms.
David M. Cutler and Fiona Scott Morton, "Hospitals, Market Share, and Consolidation," *The JAMA Network* 310.18 (2013): 1964-1970.

[5] Martin Gaynor, Farzad Mostashari, Paul B. Ginsburg, "Making Health Care Markets Work: Competition Policy for Health Care," *Brookings* (2017): 5.

[6] Leemore Dafny, Jonathan Gruber, and Christopher Ody, "More Insurers Lower Premiums: Evidence from Initial Pricing in the Health Insurance Marketplaces," *American Journal of Health Economics* 1.1 (2015): 53-81.

[7] Leemore Dafny, Mark Duggan, and Subramaniam Ramanarayanan, "Paying a Premium on Your Premium? Consolidation in the US Health Insurance Industry,"*American Economic Review* 102.2 (2012): 1161-1185.

[8] Jose R. Guardado, David W. Emmons, and Carol K. Kane, "The Price Effects of a Large Merger of Health Insurers: A Case Study of UnitedHealth-Sierra," *Health Management, Policy and Innovation* 1.3 (2013): 16-35.

[9] Daniel P. Kessler and Mark B. McClellan, "Is Hospital Competition Socially Wasteful?" *The National Bureau of Economic Research* (1999).

[10] Devon M. Herrick, "The Market for Medical Care Should Work Like Cosmetic Surgery," *National Center for Policy Analysis* (2013): 2.

exclusively out of pocket—grew at less than half the rate of inflation.[11] One reason that expanding Health Reimbursement Accounts (HRAs) is so important is that it places employees in control of weighing how best to obtain value in the healthcare sector instead of third-party payers.

What is short-term, limited duration insurance and why is it necessary to overturn the Obama administration restrictions of that coverage?

Obamacare substantially increased premiums, particularly for young and middle-aged middle-income Americans seeking coverage in the individual insurance market. Despite Obamacare's unprecedented penalty for failing to purchase Washington-approved coverage, relatively young and middle-aged middle-income people have largely shunned Obamacare coverage—leaving unbalanced risk pools. As a result, many insurers, despite massive subsidies, have incurred substantial losses—causing them to exit the Obamacare exchanges. This has significantly reduced choice in the individual market and produced insurer monopolies in many parts of the country, particularly in rural regions. Between 2016 and 2017, average Obamacare premiums increased by 25%[12] and another hike roughly that large will happen from 2017 to 2018.

In order to reduce competition for insurance companies that were losing money and pulling out of the exchanges, the Obama administration issued a rule in October 2016 to limit STLDI to periods of less than 3 months (down from one year) and to prevent insurers from renewing coverage beyond 3 total months.[13] This drastically reduced the attractiveness of buying STLDI and as a result, the STLDI market has been devastated. The American people were left with fewer coverage options, and frequently had only the "choice" to buy government-designed Obamacare insurance from local insurance monopolies or pay a penalty. A revitalized STLDI market could allow issuers to develop innovate coverage solutions that provide value to consumers and best meet their unique needs and circumstances.

How does this EO affect people purchasing coverage through an exchange?

Nearly nine-in-ten people with an exchange plan receive premium tax credits,[14] and they will be largely unaffected by this EO. People who receive tax credits are insulated from bearing the cost of the higher premium since the credit limits the amount of income they pay for a benchmark plan.

Will this EO allow insurance to be sold across state lines?

If the Department of Labor is able to modernize its current interpretation of the Employee Retirement Income Security Act (ERISA), then a much broader range of employers may be able to band together to sponsor AHPs. For example, employers in the same line of business

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[11] Ibid., 5.
[12] "Avg. Unsubsidized Indy Mkt Rate Hikes: 25% (49 states + DC)," *ACASignups.net,* Aug. 14, 2016.
[13] "Strengthening the Marketplace – Actions to Improve the Risk Pool," *Centers for Medicare & Medicaid Services*, Jun. 8, 2016.
[14] Department of Health and Human Services, "Health Plan Choice and Premiums in the 2017 Health Insurance Marketplace," (2016).

anywhere in the country may be able to join together to offer healthcare coverage to their employees and any employers within a single state or a multi-state metropolitan area may be able to join together to offer healthcare coverage to their employees.

Will the Administration be enforcing the individual and employer mandates?

The administration believes Congress should repeal the individual and employer mandates—respective penalties, enforced by the IRS, on people who fail to purchase Washington-approved coverage and employers with at least 50 workers that fail to offer Washington-approved coverage. While HHS has the ability to define a hardship exemption for the purpose of the individual mandate, the tax penalties are contained in the Internal Revenue Code and only Congress can change the law.

Will this affect AHPs that already exist?
Depending on the outcome of the agencies' rulemaking, existing AHPs could potentially grow in size.

Will this affect my pension benefits (or other benefits plan governed by ERISA)?
No.

Will this affect HRAs that people already have?
Depending on the outcome of the agencies' rulemaking, people may have more options for how to use their HRAs.

Will this affect the insurance I get through my employer?
Depending on the outcome of the agencies' rulemaking, employers may have expanded ability to offer insurance to their workers through AHPs or have the ability to offer money through an HRA that employees can use to purchase health services. Otherwise, this will have no effect on group health insurance offered by an employer.

Will this affect the short-term limited duration insurance that I already have?
Depending on the outcome of the agencies' rulemaking, people may have more choices within the market.

How does the process proceed from here? Will the public have input?

This EO does not direct the agencies to adopt any particular rules but asks the agencies to consider expanding access to AHPs, STLDI, and HRAs to the extent consistent with law and comments received by the public. Any proposed regulations would comply with the public notice and comment process required by the Administrative Procedure Act, which requires publication in the Federal Register and a public comment period. This standard process will provide the opportunity for broad participation by the American people in this important initiative and will help the Administration gather all the information it needs to determine the best regulatory approach for these areas.