

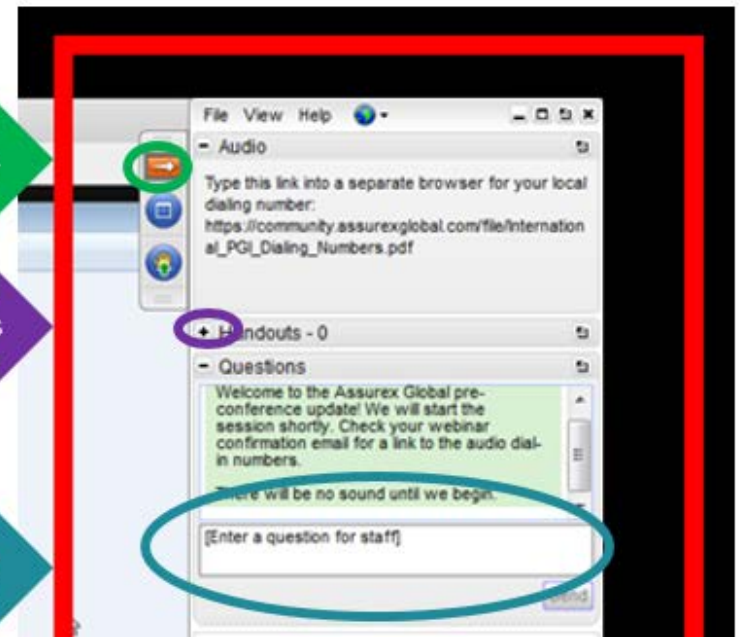
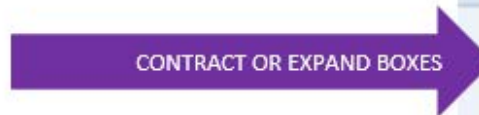
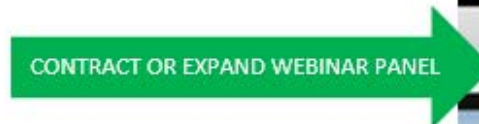
December 21, 2017

# 2017 Regulatory Wrap-up and a Look Forward to 2018

Presented by Benefit Comply

## 2017 Regulatory Wrap-up and a Look Forward to 2018

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



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# Agenda

- Quick Review of 2017 Republican Repeal and Replace Efforts
- Benefit Changes in Tax Bill
- Recent Regulatory Activity
- IRS §4980H Collection Efforts
- Looking Forward

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## 2017 Review

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# 2017 Congressional Activity Year To Date

- March 8th – House Introduced American Health Care Act (AHCA)
  - May 4th - House passed AHCA
- June 22nd – Senate Released Better Care Reconciliation Act (BCRA)
- Changes Included in Both Bills
  - Repealed the ACA's individual and employer mandate penalties
  - Eliminated ACA Medicaid expansion funding and imposed a cap on federal Medicaid spending
  - Provided states flexibility to change essential health benefits requirements
  - Repealed most ACA-related taxes
  - Expanded HSAs
  - Reductions in premium tax credits for purchase of individual health insurance, but each bill took a different approach

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# 2017 Congressional Activity Year To Date

- June – Congressional Budget Office (CBO) Report
  - 22 million would lose coverage by 2026 mostly due to Medicaid cuts
  - Individual insurance premiums would rise in the short term, then eventually reduce, primarily due to availability of plans with higher out of pocket costs
- July
  - Republicans introduced Obamacare Repeal Reconciliation Act (ORRA) – a new version of a bill passed by Congress in 2015 and vetoed by President Obama
  - Motion to begin debate passes 51 – 50 with VP Pence casting tie breaking vote
  - BCRA with amendments fails 57– 43, with nine Republicans voting no
  - Senate votes on ORRA, which was defeated 55 – 45 vote
  - July 27th – Republicans introduce the Health Care Freedom Act (HCFA), referred to as the “skinny bill” in last ditch effort to pass something
    - Repealed individual mandate, delayed the employer mandate until 2024, delayed the medical device tax, defunded Planned Parenthood for a year, and expanded flexibility for states under §1332
    - Bill failed 51 – 49 with Republican Senators Collins, Murkowski, and McCain voting with all Democrats against it

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## Tax Bill



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# Tax Bill – Benefits Related Provisions

- What's In the Final Version?
  - Individual Mandate Gone
    - Penalty for violating individual mandate goes to zero beginning in 2019
  - Employer Deduction for Transportation Benefits
    - The employer deduction, which allows employers to deduct the cost of certain employer-provided transportation benefits (for example, transit passes or parking) is repealed, effective 2018
    - The employee exclusion for certain qualified transportation benefits remains, so some employers may continue to offer these as salary reduction plans
  - Qualified Bicycle Reimbursements Exclusion
    - Under current tax law, reimbursements for bicycle commuting expenses (up to \$20 per month) are excluded from an employee's pay. This exclusion is repealed beginning in 2018
  - Methodology for Determining Health FSA and HSA Limits
    - Current law annually adjusts caps on contributions to health FSAs and HSAs. Under the final legislation, the methodology for determining adjustments to these limits uses a so-called "chained CPI," which is likely to result in a slower upward adjustment for these caps in the future

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# Tax Bill – Benefits Related Provisions

- What's Not in the Final Version (No Changes)
  - Employer Mandate & Employer Reporting
    - There is currently no change scheduled for the Employer Mandate or Employer Reporting
  - Cadillac Tax
    - Still scheduled to go into effect in 2020
  - Adoption Assistance
    - Employees will continue to be allowed to exclude reimbursements from employer-sponsored adoption assistance programs
  - Dependent Care Assistance
    - The exclusion for employer-provided dependent care assistance up to \$5,000 per year remains in place. This is the exclusion that supports dependent care assistance accounts (DCAPs) in cafeteria plans
  - Employer-Provided Child Care
    - Employers may currently claim a tax credit for certain qualified employer-provided child care. This credit is left unchanged by the final bill

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# Repealing the Individual Mandate

- Individual Mandate Penalty Eliminated Beginning in 2019
- CBO and JCT Estimate the Following Effects of that Provision:
  - Federal budget deficits would be reduced by about \$318 billion between 2018 and 2027, mostly due to lower insurance subsidy payments by the Federal government
  - Number of uninsured would increase by 4 million in 2019, and 13 million in 2027
  - Average premiums in the nongroup market would increase by about 10 percent above current projections each year
  - Those effects would occur mainly because healthier people would be less likely to obtain insurance and increases in premiums would cause more people to not purchase insurance

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## Recent Regulatory Activity

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# §1557 Nondiscrimination Rules

- Covered Entities Are Required to Comply
  - “Covered Entity” = any portion of the entity is involved in providing or administering health services or activities receiving federal funding from HHS
- §1557 Requirements
  - Establish a grievance procedure and compliance coordinator
  - Make all programs and activities provided through electronic and information technology accessible; ensure the physical accessibility of newly constructed or altered facilities; and provide appropriate auxiliary aids and services for individuals with disabilities
  - Post notices of nondiscrimination and taglines that alert individuals with limited English proficiency to the availability of language assistance services
  - Extend coverage for transgender services (if not already included) under the group health plan
- When Must Coverage for Transgender Services be Provided?
  - There is a national injunction in place on this particular requirement and therefore plans are likely safe under §1557 if this requirement is not met until we receive further guidance from HHS
  - However, also consider broader federal and state discrimination laws

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# Contraceptive Coverage Exemption

- Preventive Coverage Requirements
  - All non-grandfathered plans are required to offer preventive coverage with no cost-sharing, including for contraceptive coverage
- Previous Exceptions for Contraceptive Coverage
  - Complete exemption for religious employers
  - Accommodation process for non-profit entities and closely held for-profit entities with religious objections to providing contraceptive coverage
- New Broader Exception for Contraceptive Coverage
  - HHS released additional guidance in October providing for a complete exemption for the following:
    - All non-governmental employers who have a religious objection to providing some or all contraceptive coverage; and
    - Non-governmental employers, who are not publicly traded, who have a moral objection to providing some or all contraceptive coverage
  - Accommodation process is still available, but unlikely to be used now that a complete exemption is available

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## IRS §4980H Collection Efforts

# IRS §4980H Collection Efforts

- **Background**

ACA §4980H employer shared responsibility rules (employer mandate) require applicable large employers (50+ FTEs) to offer coverage to full-time employees and dependent children

- **§4980H(a) – Offer Coverage to Full-Time Employees**

- Applicable large employers (ALEs) must offer minimum essential coverage (MEC) to 70% (95% beginning in 2016) of all full-time employees and their dependent children
- Penalty of \$173.33/month in 2015 multiplied by the total number of full-time employees not counting the first 80 (not counting first 30 beginning in 2016). Example:
  - An employer with 200 full-time (FT) employees fails to offer coverage to 70% of the FT employees for 9 months of 2015
  - 2015 penalty = \$187,196.40 ( $\$173.33 \times 120 = \$20,799.60$  per mo.  $\times 9 = \$187,196.40$ )

- **§4980H(b) – Failure to Offer Affordable Minimum Value Coverage**

- If ALE fails to make an affordable offer of minimum value coverage to a full-time employee who then enrolls in individual coverage through a Marketplace and qualifies for a premium tax credit (PTC)
- Penalty of \$260/month in 2015 for each full-time employee who receives a PTC. Example:
  - 2 full-time employees are not offered affordable coverage. One receives a PTC for 6 months, the other for 12 months.
  - 2015 penalty = \$4,680 (EE 1:  $\$260 \times 6$  months = \$1560; EE 2:  $\$260 \times 12$  months = \$3120)



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# IRS §4980H Collection Efforts

- IRS “Employer Mandate” Penalty Collection
  - The IRS has begun to send letters to employers (Letter 226J) to begin the collection process for employers who failed to meet the §4980H requirements for benefits offered during 2015
  - The first letter is a “proposed assessment,” it is not an actual collection letter yet
  - Proposed assessment calculations are based on data provided by employers to the IRS on Forms 1094-C and 1095-C
  - Many of the Letter 226J proposed employer assessments are due to mistakes made in employer reporting rather than to an actual violation of a §4980H requirement
  - What is included in IRS communication:
    - Letter 226J
    - Form 14764 – Employer Shared Responsibility Payment (ESRP) Response
      - Must sign and return to the IRS to pay or dispute proposed assessment
    - Form 14765 - Employee Premium Tax Credit (PTC) Listing
      - Lists employees who received a premium tax credit and how the employer coded the 1095-C for each employee

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# IRS §4980H Collection Efforts

- Important 2015 §4980H Transition Rules
  - §4980H only applied to employers with at least 100 FTEs in 2015
    - Shared responsibility rules were delayed until 2016 for employers with <100 FTE
  - Margin of error rule was 70% for 2015 only
    - For 2015, employers will not face any 4980H(a) liability as long as coverage was offered to at least 70% of all full-time employees (95% beginning in 2016)
  - §4980H(a) payment not applied to first 80 full-time employees for 2015
    - When payments under §4980H(a) are calculated, the first 80 full-time employees are ignored. Beginning in 2016, the §4980H(a) payment will be based on the number of full-time employees, not counting the first 30
  - Non-calendar year plans
    - Employers with a non-calendar plan year did not have to comply until the beginning of the plan's 2015 plan year, as long as the employer did not change the plan year after 2012, and other offer of coverage criteria were met
  - Offering dependent coverage
    - In 2015, no payment will be due for plans that did not offer coverage to dependents, if the plan took steps during 2015 to do so in 2016

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# Most Common 1094-C Reporting Mistakes

- **Part III Column (a) – Coverage Indicator Code**
  - We are seeing employers who checked “No” even though they offered coverage to 95% (or 70%) of full-time employees
- **Wrong Monthly Full-Time Employee Counts**
  - Listing wrong number of full-time employees in Part-III Column (b) of 1094-C can lead IRS to believe employer did not offer coverage to 70% of their employees
- **Transition Rule Coding**

If employer did not report transition rules on 1094-C correctly, IRS will assume employer does not qualify

  - Employers should have checked Line 22 Box C in Part II of Form 1094-C if any §4980H transition relief applied

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# Most Common 1094 Reporting Mistakes

- Transition Rule Coding (cont.)
  - Employers with less than 100 FTEs
    - Employer should have added code “A” to Part III Column (e) if coverage was not offered to 70% of full-time employees
  - Employers with 100 or more FTEs
    - Part III Column (a) – Coverage Indicator Code
      - Employer should have checked “yes” for months coverage was offered to 70% of full-time employees
      - Employer should have checked “yes” for months of non-calendar year transition relief even if coverage was not offered to 70%
    - Part III Column (e)
      - Employer who failed to offer coverage to 70% of full-time employees should have added code “B” to Column (e) in Part III to take advantage of not counting the first 80 (rather than 30)

**Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns**

► Information about Form 1094-C and its separate instructions is at [www.irs.gov/form1094c](http://www.irs.gov/form1094c)

CORRECTED

**Part I Applicable Large Employer Member (ALE Member)**

1 Name of ALE Member (Employer)		2 Employer identification number (EIN)	
3 Street address (including room or suite no.)			
4 City or town	5 State or province	6 Country and ZIP or foreign postal code	
7 Name of person to contact		8 Contact telephone number	
9 Name of Designated Government Entity (only if applicable)		10 Employer identification number (EIN)	
11 Street address (including room or suite no.)			
12 City or town	13 State or province	14 Country and ZIP or foreign postal code	
15 Name of person to contact		16 Contact telephone number	
17 Reserved . . . . . <input type="checkbox"/>			



18 Total number of Forms 1095-C submitted with this transmittal . . . . . ►

19 Is this the authoritative transmittal for this ALE Member? If "Yes," check the box and continue. If "No," see instructions . . . . .

**Part II ALE Member Information**

20 Total number of Forms 1095-C filed by and/or on behalf of ALE Member . . . . . ►

21 Is ALE Member a member of an Aggregated ALE Group? . . . . .  Yes  No

If "No," do not complete Part IV.

22 Certifications of Eligibility (select all that apply):

A. Qualifying Offer Method     B. Qualifying Offer Method Transition Relief     C. Section 4980H Transition Relief     D. 98% Offer Method

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

**Part III ALE Member Information – Monthly**

	(a) Minimum Essential Coverage Offer Indicator		(b) Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Section 4980H Transition Relief Indicator
	Yes	No				
23 All 12 Months	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
24 Jan	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
25 Feb	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
26 Mar	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
27 Apr	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
28 May	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
29 June	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
30 July	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
31 Aug	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
32 Sept	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
33 Oct	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
34 Nov	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
35 Dec	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	

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# IRS §4980H Collection Efforts

- What Should You Do If you Get a Letter 226J?
  - Most importantly, the employer must act quickly
    - An employer has only 30 days to respond to the IRS
    - The IRS will initiate a collection process if employer fails to respond on a timely basis
  - Call the IRS number included on the Form 14764 and request an extension
  - Contact the entity (accounting firm or law firm) that you use to communicate directly with the IRS for tax-related issues
  - Contact your benefits advisor or firm you used for ACA reporting to help collect data necessary to respond to the IRS
  - Complete and sign Form 14764 and assemble all supporting materials
    - Reply must include a signed statement indicating why you object
    - Include a 1094-C with corrections
  - Make changes, if any, on the Form 14765 Employee PTC listing if necessary

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## Employer Reporting



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# ACA Employer Reporting

- Who Must Report
  - All Applicable Large Employers (ALEs) – 50 or more FTEs
    - Fully-insured or self-insured
    - Must report even if employer does not offer benefits
    - Small employers who are part of a larger “controlled group” or “affiliated service group” under §414 rules
      - IRS calls them an “Applicable Large Employer Member”
  - Employers Offering Self-Funded Plans (Large and Small)
    - Must report coverage information for all covered individuals

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# Reporting Timeframes

- 2017 Reporting (Due in Early 2018)
  - Reporting is always handled on a calendar year basis, regardless of plan year
- 1095 Individual Employee and Participant Statements
  - Form 1095s must be provided to employees and participants by Jan. 31, 2018
  - Forms may be delivered by hand, mail, or electronically if consent is given
- 1094 IRS Reporting
  - Form 1094 and Form 1095s must be filed with the IRS by Feb. 28, 2018 (Apr. 2, if filed electronically)
  - Employers filing less than 250 Form 1095s may submit by mail or electronically
  - Employers filing 250 or more Form 1095s are required to submit forms electronically

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## Looking Forward

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# Proposed Legislation

- **S.1908 - Commonsense Reporting Act of 2017**
  - Introduced in the Senate Oct. 3, 2017 by Mark R. Warner (D-VA) and Rob Portman (R-OH)
    - “A bill to streamline the employer reporting process and strengthen the eligibility verification process for the premium assistance tax credit and cost-sharing subsidy”
    - May have better chance now that individual mandate is gone
- **H.R. 4616**
  - Introduced December 12 by Representatives Devin Nunes (R-CA) and Mike Kelly (R-PA)
  - Would provide relief from the ACA §4980H employer shared responsibility rules (employer mandate) from 2015 through 2018
  - Delay Cadillac Tax until 2021 (currently 2020)

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# Tax Exclusion Limit

- Background
  - Current federal tax system provides preferential treatment for employer provided health insurance - employers' payments for employees' health insurance premiums are excluded from income and payroll taxes
  - Cost the federal government about \$275 billion in lost revenues in 2016
- Recent Proposals to Limit Tax Exclusion
  - McCain proposal in 2008 presidential race
  - 2010 Republican Patient Choice Act (Single - \$12,000/yr. Family - \$30,000/yr.)
  - 2015 HR 3762 (Single - \$8,000/yr. Family - \$20,000/yr.)
  - Rep. Paul Ryan's "A Better Way" Plan
  - 2017 Leaked AHCA Draft
    - Would have limited tax exclusion to 90% of national average health insurance premiums
- Tax Exclusion Limit Context
  - 2016 CBO Revenue Estimate
    - Exclusion limit set at 75% of average premiums would generate \$174 Billion for 10 year period 2017 – 2026 ([www.cbo.gov/budget-options/2016/52246](http://www.cbo.gov/budget-options/2016/52246))

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# Cadillac Tax

- Cadillac Tax
  - Beginning 2020, employers will pay a 40% excise tax on health coverage cost that exceeds “threshold amounts”
    - Threshold amounts, prior to adjustments
      - \$10,200/yr. for self-only coverage
      - \$27,500/yr. for coverage other than self-only
  - The actual amount of the tax will vary based on adjustments to the threshold amounts
    - A possible health cost adjustment percentage for 2020 based on medical cost trends
    - An annual cost-of-living adjustment
    - An age and gender group specific demographic adjustment
      - No IRS guidance yet on how this adjustment may work
  - There is currently no geographic adjustment

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# Cadillac Tax

- Defining Applicable Coverage - What Will Be Included???
  - Health coverage including medical and Rx
  - Health flexible spending accounts (FSAs)
    - Both employer and employee contributions
  - Employer health savings accounts contributions (HSAs)
    - Not sure if employee pre-tax contributions will be included yet
  - On-site medical clinics
  - Health reimbursement accounts (HRAs) pending confirmation
  - Some employee assistance plans (EAPs)
  - Some wellness programs
- Setting the Cost of Coverage – How Will It Work?
  - IRS has promised detailed regulations on calculating the value of the coverage subject to the tax

# Cadillac Tax

- Planning for the Cadillac Tax – Example
  - 250 employee group
  - Current 2017 rates
    - Single = \$650
    - Family = \$1750
  - Expected annual trend = 10%

Participating Employees		2017 Monthly Rate	Annual Trend	Approx. 2020 Monthly Rate	2020 Annual Plan Cost Per Person	Excess Over S-\$10,200 F-\$27,500	Tax Per Covered Employee Per Year	Tax Per Covered Employee Per Month
Single	150	\$650.00	10.0%	\$865.15	\$10,381.80	\$181.80	\$72.72	\$6.06
Family	100	\$1,750.00	10.0%	\$2,329.25	\$27,951.00	\$451.00	\$180.40	\$15.03
							<b>Total Annual Tax</b>	<b>\$28,948.00</b>
							<b>Total 2020 Annual Health Insurance Premiums</b>	<b>\$4,352,370.00</b>



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# Recent Executive Orders

- In October President Trump Issued an Executive Order Instructing Regulatory Agencies to Draft New Rules
  - Association Health Plans
    - These plans could be structured to allow small employers to band together to form a larger group plan that might be able to operate outside of normal state insurance laws and regulations
    - May be able to offer benefits that do not meet current group insurance rules, and be more selective about who can participate
    - Important detail needs clarification - Who will be able to sponsor association plans? Will it be limited to trade associations or other existing groups, or will it be easy to form a “loose” association simply for purposes of offering benefits?
  - Expansion of HRAs
    - The order does not contain details, but mentions the possibility of permitting the use of HRAs for the purchase of individual health insurance policies
- Timing
  - Instructs the regulatory agencies to respond within 60 days, but the full rulemaking process may take several months

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