

July 1st, 2019

New Executive Order Calling for Increased Transparency

An executive order (Order) issued last week by the Trump Administration directs the Departments of Labor, Health and Human Services and Treasury (Departments) to issue guidance in the near future addressing health care cost transparency, along with several other key employee benefit issues. The issues raised in the Order include:

Increased Transparency

To combat surprise billing (balance billing of a patient that can occur when a patient receives care at an out-of-network hospital or from an out-of-network provider at an in-network facility) and increase transparency, the Order directs the Departments to (i) issue regulations and request comments on a proposal to require health providers, health insurers, and self-funded group health plans to provide or facilitate access to information about expected out-of-pocket costs for items or services to individuals before they receive care; and (ii) to propose regulations that would require hospitals to publicly post (and regularly update) standard charge information for services, supplies, or fees billed by hospitals. The Departments must issue this guidance within 90 days of the Order (June 24, 2019).

Access to Health Care Claims Data

The Order directs the Departments to provide increased access to de-identified health claims data from group health plans and governmental health care programs (i.e., Medicare and Medicaid) to researchers, innovators, providers and entrepreneurs. Presumably this data could be used to identify inefficiencies in the system and develop new processes and products to improve health care.

HDHPs, HSAs, and Health FSAs

First, the Order directs the IRS to issue proposed regulations (within 120 days) to expand individuals' ability to choose HDHPs that can be used with HSAs – and that cover low-cost preventive care pre-deductible – for medical care that helps maintain health status for individuals with chronic conditions. In plain speak, this could allow qualified HDHP's to cover as preventive care (i.e., on a pre-deductible basis) and additional routine care for chronic conditions.

Second, the IRS must propose regulations (within 120 days) to treat expenses related to certain types of benefit arrangements (for example, primary care arrangements and health care sharing ministries) as eligible medical expenses under Code Section 213(d) (26 U.S.C. § 213(d)). Currently such arrangements are not necessarily deemed eligible medical expenses reimbursable from tax favored accounts.

Third, the IRS must issue guidance (within 180 days) to increase the amount of funds that individuals can carry over without penalty at the end of the year under an FSA.

Health Care Pricing and Quality

The Order instructs HHS and other agencies to develop a "health quality roadmap" to improve reporting on data and quality measures across Medicare, Medicaid, the Children's Health Insurance Program (CHIP), the health insurance marketplace, the military health system (TRICARE), and the Veterans Affairs Health System.

Stay tuned for further information.

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