



COMPLIANCE ALERT



EMPLOYEE BENEFITS | JUNE 28, 2019

President Trump Issues Executive Order Encouraging Transparency in Pricing and Expanding Consumer-Directed Arrangements

On June 24, 2019, President Trump issued an **Executive Order** intending to develop price and quality transparency initiatives to ensure that healthcare patients can make well-informed decisions about their care. This is part of the consumer-driven healthcare initiative, which has been a focus of government and patient groups alike to have more transparency regarding the cost of services from hospitals and other healthcare providers, as well as expanding the ability to use certain pre-tax health spending arrangements. The goal is to help consumers to make better informed decisions regarding their healthcare. It is also intended to address so-called “surprise billing,” which can expose patients to unexpected medical bills. The Executive Order directs federal agencies to promulgate regulations and issue guidance to meet these objectives.

Transparency in Prices

The Executive Order instructs the Department of Health and Human Services (HHS) to promulgate regulations requiring hospitals to publicly post standard price information for services rendered in an easy-to-read format. The regulations should mandate the disclosure of standard charge information for services, supplies, and any other fees that apply to the hospital and its employees. HHS may also use the Executive Order to create regulations for other providers and self-funded

health plans to also post standard costs for services and supplies. The objective of such disclosure is to allow patients to make more informed decisions about the cost of services and goods if the patient goes to a certain healthcare facility. If a patient understands the cost and quality of services, they could avoid unexpected costs. It could also facilitate further analysis regarding the cost differentials between facilities and providers. The standard costs posted must be regularly updated, in order to provide accurate, up-to-date pricing. The Executive Order also requires the agencies to monitor the hospitals, providers, and plans for compliance.

Increased Access to Healthcare Information

The Executive Order directs applicable agencies to increase de-identified claims data to give researchers, providers, and other parties more information and access to taxpayer-funded healthcare programs. Such parties could create better educational materials for consumers by being able to access more aggregated public data.

Enhancing Patient Control over Healthcare

This provision of the Executive Order directs the Secretary of Treasury to propose regulations to help patients who have high

deductible health plans (HDHPs). Part of the guidance would allow HDHPs to cover low-cost preventive care, before the deductible, for medical care that helps maintain health status for individuals with chronic conditions. Currently, drugs or medications used to treat other existing illnesses, injuries, or conditions are not considered permitted “preventive care” for Health Savings Account (HSA) purposes.

The directive also includes expanding the definition of eligible medical expenses under the Internal Revenue Code to include expenses related to certain types of arrangements, such as direct primary care and healthcare sharing ministries. Furthermore, the carryover allowance for health flexible spending arrangements would also be increased, from the current \$500 limit. This could enable consumers to better reserve pre-tax money to help further fund their own healthcare costs.

Surprise Billing

Building upon the proposals already occurring in federal agencies and Congress, the Executive Order further directs the agencies to report to the President any additional steps that can be taken to help control surprise billing issues. Surprise billing often occurs when an individual goes to a facility that is in-network with his or her plan, but a provider giving certain services is not part of the facility contract. This means that the patient could be charged for out-of-network provider services because it is not covered under their health plan, regardless of the facility being in-network. The patient is then responsible for an unexpected bill. Some of the previously proposed changes for surprise billing include changes to out-of-network reimbursement when a facility is in-network under the health plan, especially for emergency services.

Current Impact on Employers

The Executive Order does not make any changes to existing regulations; it directs agencies to propose and create regulations associated with the Executive Order. Employers, plan sponsors, and administrators should be ready to implement new changes as they occur in the future. Consumers, plan sponsors, and employers alike may benefit from these regulations as the increase of information provides further education to plan participants and help them make more well-informed decisions concerning their healthcare.

About the Authors: This alert was prepared for Woodruff Sawyer by Marathas Barrow Weatherhead Lent LLP, a national law firm with recognized experts on the Affordable Care Act. Contact Peter Marathas or Stacy Barrow at pmarathas@marbarlaw.com or sbarrow@marbarlaw.com.

The information provided in this alert is not, is not intended to be, and shall not be construed to be, either the provision of legal advice or an offer to provide legal services, nor does it necessarily reflect the opinions of the agency, our lawyers or our clients. This is not legal advice. No client-lawyer relationship between you and our lawyers is or may be created by your use of this information. Rather, the content is intended as a general overview of the subject matter covered. This agency and Marathas Barrow Weatherhead Lent LLP are not obligated to provide updates on the information presented herein. Those reading this alert are encouraged to seek direct counsel on legal questions.

© 2019 Marathas Barrow Weatherhead Lent LLP. All Rights Reserved.