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Executive Order Seeks to Improve Consumer-Driven Healthcare

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On June 24, 2019, the President issued his Executive Order on Improving Price and Quality Transparency in American Healthcare to Put Patients First. The Executive Order directs regulators to take action to improve healthcare price transparency and to enhance consumer-driven healthcare. The success of consumer-driven healthcare is dependent on patients being able to act as a consumer would – namely, comparing prices and quality before making a decision to purchase. However, patients typically have very limited access to pricing and quality information in the healthcare sector. The Executive Order outlines a number of directives that would improve access to pricing and quality information. The following directives are likely to affect group health plan design and administration:

- **Price and Quality Transparency.** The Executive Order directs regulators to propose regulations that would require hospitals to publicly disclose the standard charge for common items and services. The disclosure would need to be written in a consumer-friendly manner that would enable patients to compare the cost of receiving the item or service at various sites of care. The regulators are also directed to require health plans (both individual and group) to take steps to improve enrollee access to pricing and quality information. Many large insurance carriers and administrative services companies have already developed price transparency tools that have quality ranking features. There is no indication at this point whether these tools would need to be modified to comply with the future regulations.

- **Expanded Use of Consumer-Driven Health Plans.** The Executive Order also directs regulators to adopt rules to make it easier for individuals to use high-deductible health plans tied to health savings accounts (HSAs). This directive includes a mandate to expand the scope of preventive care that can be covered by a high-deductible health plan before the statutory minimum deductible is reached to include maintenance-related care for chronic conditions. The Executive Order further requests that regulators increase the amount of money that can be carried over to future years under a healthcare flexible spending arrangement, from the current limit of $500.

- **Surprise Billing.** The Administration also continues to target surprise billing, which refers to bills that patients unexpectedly receive after they visit in-network healthcare providers. This often occurs when a patient visits an in-network facility and ancillary services are provided by out-of-network providers. For example, a patient could visit an in-network hospital but the anesthesiologist might be out-of-network. In that case, the anesthesiologist might send the patient a bill for the cost of care that is not covered under the health plan. This also occurs in the context of emergency care received at an out-of-network hospital. Although the Affordable Care Act (ACA) requires that point-of-sale cost-sharing be the same for in-network and out-of-network emergency care, the ACA does not prohibit the hospital from later billing the patient for medical costs that exceed the health plan's reimbursement to the hospital (i.e., balance billing). The Executive Order directs regulators to issue an advance notice of proposed rulemaking that solicits comments on a proposal to address this issue; and the Executive Order directs the Secretary of HHS to submit a report on additional steps the Administration may take to address the issue. The issue of surprise billing has also recently received legislative attention. Ultimately, the solution for surprise billing might necessitate changes to plans' out-of-network provider reimbursement practices.

The Executive Order itself does not mandate changes, but employers and plan sponsors should anticipate having to make changes in the relatively near future.

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