White House Issues Executive Order on Price Transparency

President Donald J. Trump on June 24 signed an executive order directing executive branch departments to implement policies and rules to improve patient access to information about healthcare costs and quality. The Administration believes that patients need better information "[t]o make fully informed decisions about their healthcare. . . ." The Order envisions consumers using pricing and quality data to compare "shoppable" services—those services offered by a variety of providers—prior to making health care decisions.

Executive Order Proposes New Regulations to Promote Price Transparency

Among the specific directives, the Order instructs Health and Human Services ("HHS") to propose regulations requiring hospitals to publicly post standard charge information, including charges and information based on negotiated rates. Hospitals currently must disclose their prices, referred to as charge description master lists, which show the un-negotiated rates for services. Hospitals generally charge insurance plans and payors less than these rack rates or charges, and these negotiated or discounted prices, often based on complicated proprietary formulas, are typically kept confidential between the parties.

In fact, hospitals and insurers have stated that disclosing negotiated prices could increase costs rather than lowering them since providers could raise prices to match their competitors' prices. Rick Pollack, President and CEO of the American Hospital Association, released a statement in reaction to the Order that "it's important to note that hospitals already provide consumers with information on pricing, but publicly posting privately negotiated rates could, in fact, undermine the competitive forces of private market dynamics, and result in increased prices."

In addition, many providers believe price lists could be misleading as patients typically pay only a portion of negotiated rates out-of-pocket (with insurance paying the rest). The Alliance of Community Health Plans issued a statement in response to the Order that "one size does not fill all for transparency policies. Pricing information is most helpful when tied to an individual's circumstances, such as benefits, deductibles and copays."

Proposed Rules to Require Health Plans to Give Estimates on Out-Of-Pocket Care Costs

The Executive Order also directs HHS, the Treasury Department, and the Department of Labor, to propose rules requiring providers, health insurers, and self-insured group health plans to give patients information about expected out-of-pocket care costs. Provider groups have been vocal in their opposition to proposed requirements for providing such estimates as the estimates would be wildly inaccurate in emergency situations, and could not take into account a particular patient's changing circumstances in their course of care.

In addition, the Order charges the Treasury Department with making changes to regulations related to high-deductible health plan-health savings accounts ("HDHP-HSAs"): (1) expanding patients' ability to select HDHP-HSAs, (2) increasing the amount that can be carried over from one plan year to the next; and (3) redefining how HSA funds can be used, such that HSAs fund costs associated with direct primary care and health care sharing ministries. Health care sharing ministries are organizations in which health care costs are shared among members with common religious or ethical beliefs. The Executive Order inclusion of HDHP-HSAs is consistent with the Trump Administration's efforts to expand consumer use of HDHP-HSAs.

The Order also instructs HHS to issue a report on ways to address surprise medical billing. A number of States have enacted laws to prevent surprise medical bills and there are currently a number of bills in Congress seeking to

address the issue.

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