Gallagher

Compliance Directions

New Executive Orders Will Impact Plan Sponsors

Gallagher

In the first week of his second term, President Trump signed a number of Executive Orders, some of which will likely have an impact on employer-sponsored health and welfare plans. Below we discuss three of those Executive Orders and their anticipated impact on plan sponsors.

Reinterpretation of Sex Discrimination

One Executive Order addresses the meaning of sex, gender identity, and related terms while mandating that the federal government will only recognize two biological sexes, male and female, as determined at conception. While the Order has no immediate impact, it does signal that plan sponsors are likely to see guidance in the future from the Equal Employment Opportunity Commission that reverses the Biden administration's stance that the prohibition of discrimination on the basis of sex in employment and benefits includes discrimination on the basis of gender identity.

For employers in the healthcare industry, we are also likely to see re-proposed Section 1557 regulations that reverse the broader interpretation of sex discrimination by the prior administration's Department of Health and Human Services (HHS). However, as discussed in our August 2024 article, *Section 1557 Suffers Challenges as Agency Deference Dissolves in Loper Bright's Wake*, there was already a nationwide injunction on the agency's interpretation in the 2024 final regulations.

HHS' interpretation is also important in the Patient Protection and Affordable Care Act (ACA) requirement of non-grandfathered group health plans, which currently requires such plans to provide coverage for recommended preventive care, without cost sharing, regardless of the sex assigned at birth, gender identity, or gender recorded by the plan.

As such, while this Order does not have an immediate impact on plans; plan sponsors should be prepared to address new guidance in the future.

Rescission of the Fixed Indemnity Notice

The Biden administration had issued final regulations requiring insurers and plan sponsors of fixed indemnity benefits to provide a notice to potential enrollees notifying them that the coverage was not comprehensive medical coverage. As we noted in our January 2025 article, *Texas Court Vacates Fixed Indemnity Notice Requirement*, a

Texas district court vacated the requirement set to go into effect on January 1, 2025. Thereafter, one of the Executive Orders signed on January 20 rescinded the requirement. Based on these actions, plan sponsors can confidently remove any reference to such notices in their enrollment materials.

Medicare Prescription Drug Pricing

In the same Executive Order, President Trump also rescinded former President Biden's Executive Order – Lowering Prescription Drug Costs for Americans. Biden's Order directed HHS to explore strategies to reduce prescription drug costs. In response to Biden's Order, the Centers for Medicare and Medicaid Services (CMS) put programs in place to cap the price of certain generic drugs at $2 for Medicare beneficiaries, improve Medicaid access to high-cost cell and gene therapies, and to streamline the evidence-gathering process for new drugs.

While President Trump's reversal of former President Biden's Order did not immediately change any existing laws and regulations on prescription drug pricing for Medicare and Medicaid, it did create uncertainty about the federal government's approach to addressing prescription drug costs. However, he has repeatedly stated that he will not reduce Medicare benefits. Moreover, President Trump's nominee for CMS Administrator, Dr. Mahmet Oz, and other policy advisors have advocated for Medicare Advantage plans, which are marketed by private insurers, as alternatives to traditional Medicare.

Action Items

Plan sponsors with fixed indemnity notices in enrollment packets and systems may remove those notices. Regarding the Executive Orders on the topics of prescription drugs and gender identity, plan sponsors should stay tuned for new guidance from CMS and HHS on the new path forward to compliance. There is currently a 60-day pause on rules being published in the Federal Register, so any related guidance is not likely to come for another few months.

The intent of this article is to provide general information on employee benefit issues. It should not be construed as legal advice and, as with any interpretation of law, plan sponsors should seek proper legal advice for application of these rules to their plans.