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Health Care Reform Update: HRAs and more

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Federal Health Reform Update
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Independent Health presents this special legislative edition of our Insight newsletter to keep our employer groups informed on Federal and State health care legislation.

President Trump and Republicans running for Congress in 2016 campaigned on repealing and replacing the Affordable Care Act (ACA). Even though the Republicans had control of the House, Senate, and White House in 2017, they were unable to garner sufficient support within the Senate to pass a replacement bill.

Since then, the Trump administration has issued two executive orders on choice and transparency and has also released a blueprint to lower drug prices. The president's health care reform strategy is to allow individuals to have more options (choice) while giving them the information they need to make educated decisions (transparency).

The blueprint and executive orders have guided and directed federal agencies to issue or revise regulations – a process that doesn't require congressional approval – to further the administration's goals in the absence of legislation. Some of the recent notable regulatory actions from the administration include:

Health Reimbursement Arrangements (HRAs)
As part of the president's first executive order in October 2017 to expand the number of choices consumers have, the administration issued a final rule in June 2019 to expand the use of health reimbursement arrangements (HRAs) beginning January 1, 2020, which are tax exempt accounts funded by employers. Previously, HRAs could only be used to reimburse for qualified medical expenses, whereas under the new rule they can be used for certain premiums. The two new types of HRAs created by the rule are:

1) Individual Coverage HRA (ICHRA) – Employers can reimburse the cost of premiums for individual coverage through an HRA, and an offer of an ICHRA that provides minimum value in accordance with the ACA would satisfy the employer mandate and deem an employee ineligible for a Premium Tax Credit. However, an individual can opt out of an ICHRA to be eligible for tax credits, and an employer can only offer an ICHRA or a group health plan, not both.

2) Excepted Benefit HRA (EBHRA) – Employers who offer group health coverage, not an ICHRA, can contribute up to $1,800 per year to an excepted benefit HRA to reimburse an employee for the costs of excepted benefits like dental, vision, Short-Term Limited Duration Insurance, or COBRA coverage. EBHRAs can also cover cost-sharing such as copays, including for Medicare.

The administration's intention of expanding HRAs is to provide more choices. For example, an employer may only offer one health plan option for employees, but if they offer an ICHRA, an individual can choose from the options in the individual market. An individual who receives an EBHRA along with their group health plan can use it to fill in some of the gaps of their coverage.

The federal government believes this change will result in significant interest and enrollment, and estimates that approximately 800,000 employers will offer ICHRAs.

Actions on Drug Prices

Within the blueprint to lower drug prices there are many different proposals on how to bring down prices both legislatively and regulatorily. Among the proposals that have seen regulatory action include:

- **List Prices in DTC Advertising** – A final rule was issued in May 2019 that would require drug manufacturers to disclose the list price of medications that cost more than $35 for a 30-day treatment and are sold through Medicare or Medicaid in direct-to-consumer (DTC) advertisements (i.e. TV ads). Manufacturers are challenging the rule in court and have won an injunction to prevent the rule from being in effect while the case advances.
- **Drug Rebates** – The administration proposed eliminating safe-harbor protections for rebates paid by manufacturers to pharmacy benefit managers (PBMs) or insurers that participate in Medicare and Medicaid. The proposal has since been withdrawn due to criticism the rule would increase beneficiary costs and not bring down prices.

Other provisions mentioned in the blueprint, but have yet to be acted upon, include preventing delays of generics entering the market, expanding the

availability of biosimilars, and relying more on value-based payments.

Hospital Price Transparency

Following the President's executive order in June 2019 on transparency, the administration included hospital price disclosure requirements in its annual Medicare outpatient payment rule. If the rule is finalized as is, hospitals would be required to publicly post on the internet all items and services provided in inpatient and outpatient settings, including a description of the item or service, the associated billing codes, and the "standard charges," defined as gross charges and payer-specific negotiated charges.

This change would require hospitals to disclose rates for Medicare Advantage, Medicaid managed care, and all commercial and employer plans. In addition, hospitals must make public, and annually update, payer-specific negotiated charges for a minimum of 300 common shoppable services. The proposal is aimed at supporting consumer choice by providing individuals with information about hospitals' prices.

Public comments are due by September 27 which the administration will consider before issuing a final rule.

What to Watch this Fall

Congress is currently focused on spending bills and is expected to pass a continuing resolution before the federal fiscal year ends on September 30 to keep the government open through late November while lawmakers negotiate. Appropriations often include policy changes that could impact health care.

There seems to be bipartisan support in both chambers of Congress to address surprise billing and drug prices, however, many details still need to be worked out between the House and Senate's differing approaches.