Employee Benefits Report

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1470 Civic Court
Suite 330
Concord, CA 94520

Phone: 925-671-0248
Fax: 925 671-0236
Email: Denise@hbrinsurance.com
Web: www.hbrinsurance.com

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Prescription Drug Executive Orders' Future Unknown

Four orders have been signed, but it's unlikely they will go into effect before the election. Read on for details about the orders and their possible impact.

Even though President Trump signed four executive orders in July aimed at lowering prescription drug costs, it doesn't appear they will be implemented before the election in November. The Secretary of Health and Human Services must move the directives through the federal rule-making process first before they can take effect.

Trump says the orders will reduce drug prices by 50 percent or more in certain instances by enacting discounts for insulin and epinephrine for low-income individuals, eliminating rebates, allowing importation of some drugs, and creating an index tying U.S. prices to those elsewhere. It's expected that at least two of the orders will be limited to federal health care programs.

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Retirement Arriving too Early for Many Employees

Millions of older Americans have left the workforce this year and are not expected to return.

2.9 million workers age 55 to 70 have withdrawn from the labor force since March due to the COVID-19 pandemic and temporary shutdown of non-essential businesses, according to estimates published by The New School Retirement Equity Lab, a private New York City research university. That number could skyrocket to 4 million people who retire before they were ready.

There is fear that many of these new retirees will face poverty in later years because they didn't save enough money for

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Trump made drug pricing one of his key issues during the 2016 presidential election campaign. However, after several of his administration's attempts to effect prescription drug competition and price negotiations failed, Trump signed the orders.

In the meantime, pharmaceutical companies are enacting mid-year price hikes, even during the pandemic. GoodRx, which tracks prescription drug prices, reports that AstraZeneca, Eli Lilly and Sanofi were some of the companies that increased dozens of prices by low single-digit percentages in July.

The following are highlights of each of the executive orders and their possible impacts:

Lowering Prices by Eliminating Kickbacks

Drug manufacturers sometimes give rebates to pharmacy benefit managers or health plans that negotiate discounts on the list prices of drugs. This order eliminates the rebates for prescription drugs in Medicare plans. Instead, the discounts would be passed along to Medicare beneficiaries.

A U.S. Department of Health and Human Services spokesperson said that the order could achieve substantial savings, because existing rebates are more than 50 percent on some drugs in the Part D program. If implemented, this order could affect about 14 percent of the population — 65 million Americans — who are enrolled in Medicare.

The nonpartisan Congressional Budget Office and the Centers for Medicare & Medicaid Services Office of the Actuary reviewed a similar proposal in 2019 but determined that it would increase federal spending by $196 billion over 10 years, because without the rebates, health plans would need to raise Medicare premiums. These premiums would be paid by the government and beneficiaries.

In response to these concerns, Trump's executive order requires the HHS secretary to make sure whatever action is taken doesn't increase federal spending, Medicare premiums or total out-of-pocket costs.

Access to Affordable Life-saving Medications

If this executive order is implemented, low-income individuals without health coverage or access to affordable drugs would have access to low-cost insulin and epinephrine.

The HHS secretary would have to determine the definition of low-income. Federally Qualified Health Centers already provide primary care in underserved areas and offer drugs at discounted prices. So, if the secretary only defines low income as under 100 percent of poverty, this might not change anything for those already receiving services.

Increasing Drug Importation to Lower Prices

U.S. law allows some drugs to be imported from Canada if the HHS secretary certifies that it would "pose no additional risk to the public's health and safety" and would "result in a significant reduction in the cost of covered products to the American consumer." However, no HHS secretary has certified any drugs from Canada because of concerns over safety.

The third executive order requires the HHS secretary to expand access to cheaper imported drugs by granting waivers for individuals to legally import drugs, including insulin if needed for emergency medical care. Insulin is 50 percent cheaper or less in Canada. However, some observers are not convinced that these low prices will be available on drugs that are imported. It's expected that Canada and the pharmaceutical industry may take action to protect their lower prices in that market and discourage or even prevent importation. In 2019, Canadian officials objected to the idea of Americans importing drugs for fear it would harm the country's drug supply and increase costs for Canadians, according to a Reuters report.

retirement. Employees who retire earlier than planned may have to claim Social Security earlier, receiving less than if they waited. They will also have saved less for retirement and withdrawn from retirement assets prematurely.

Making the situation worse is that the number of employers offering retirement plans has been falling the last 20 years, according to Bureau of Labor statistics. The COVID-19 pandemic could force one of four employers to drop their contributions to 401(k) plans.

As an employer, you can help your employees keep their retirement savings on track by providing them with easy access to benefit advisers. They should be encouraged to create personalized plans to help them determine the best course for optimizing their retirement.

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A Potential Fourth Executive Order

The fourth executive order hasn't been formally released by the White House, but it's expected to tie Medicare prices for drugs administered in a doctor's office to the prices other countries pay. According to HHS, Medicare "currently pays roughly 80 percent more than other countries" for such drugs covered under Medicare Part B.

This executive order's purpose is to ensure that the Medicare program and seniors pay no more for Medicare Part B drugs than what patients pay in economically comparable countries. This policy is sometimes referred to as an international pricing index. According to HHS, Medicare "currently pays roughly 80 percent more than other countries" for such drugs covered under Medicare Part B.

The Trump administration proposed something similar in 2018, but this new policy would go further by tying the drug prices to the lowest price paid among certain countries. Centers for Medicare and Medicaid Services estimate it would see a 30 percent savings in total spending for select Part B drugs.

In comparison, Democratic Presidential nominee Joe Biden supports giving Medicare the authority to bargain on drug prices.

Managing FMLA During COVID-19

The COVID-19 pandemic has created several challenges for employers trying to determine the best way to stay in compliance with Family and Medical Leave Act (FMLA) guidelines.

Employers want to know whether employees can take FMLA if they want to stay home to avoid COVID-19; to recuperate from the disease; or to take care of loved ones. The following answers some of these questions and more.

Q. Which of my employees are eligible to take FMLA leave?

A. First, you only are required to follow FMLA guidelines if you are a covered employer — someone engaged in commerce; and who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding year. If you are a covered employer, your employees are covered under FMLA if they have worked for you for at least 1,250 hours of service over the previous 12 months and work at a location where at least 50 employees are employed by you within 75 miles of each other.

Q. Can an employee use FMLA to stay home to

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avoid getting COVID-19?

A. FMLA does not protect employees who stay home to avoid exposure to the disease.

Q. Does an employee who has COVID-19 qualify for FMLA?

A. Employees who have a serious health condition are eligible to take up to 12 weeks of unpaid, job-protected leave in a designated 12-month leave year for specified family and medical reasons. This may include COVID-19 where complications arise that create a serious health condition. According to the Department of Labor, a serious health condition includes any illness that requires inpatient care, three or more days of incapacity, or permanent or long-term conditions that require multiple treatments.

Q. Do FMLA guidelines allow me to require an employee who was out sick with COVID-19 to meet certain criteria before returning to work?

A. Yes. The Americans with Disabilities Act allows an employer during a pandemic to require a doctor's note, a medical examination, or insist on a time period during which the employee has been symptom free before allowing the employee to return to work. In addition, the employer may do this if they believe the employee's medical condition would impair his or her ability to perform essential job functions.

Q. Must I grant leave to an employee who is caring for a family member who has COVID-19?

A. FMLA does allow employees to take up to 12 weeks of unpaid, job-protected leave in a designated 12-month leave year for specified family and medical reasons. These medical reasons can include illnesses where complications arise that create a "serious health condition" as defined by the FMLA.

Q. May employees use FMLA to stay home to take care of their children if there is no school or daycare available?

A. Federal law does not require employers to give FMLA coverage to non-government employees who take off from work to care for healthy children. However, you might want to review your policies and provide increased flexibility during the pandemic.

Q. How Quickly Must I Approve an FMLA request?

A. Employers must provide employees notice of their FMLA eligibility within five days of their request.

Important Steps to Take Before Launching Your Annual Benefits Enrollment

Paper shuffling, bewildered looks, and frantic note-taking. It's another open enrollment season — the annual 30-day period during which workers choose their benefits for the coming year

For calendar-year benefit plans that begin Jan. 1, open enrollment often takes place in November. However, enrollment this year won't be business as usual. The COVID-19 pandemic and the need for social distancing have made things more complicated.

To add to enrollment challenges, this year more than ever, it's imperative employers communicate with employees about their choices for benefits. Whether the benefits are health, dental, life insurance or ancillary benefits, employees must understand what benefits are available so they can best take advantage of them. They also need to know which benefits are fully paid for by the employer, which ones are employee-paid through salary deferral, and which ones are shared costs.

There is no requirement that open enrollment be held for a certain length of time, although most employers have an open enrollment period of at least two to four weeks. To determine the timeline that works best for you, work backwards from the date that the information must be completed for the carriers and then work forward to deliver the communications program. Remember to send reminders to employees about the deadline for making their selections.

Before you start your open enrollment, give serious thought to how you will conduct open enrollment, taking into account social distancing. Typically, employers and carrier representatives hold enrollment meetings to discuss changes and options. If you decide you cannot safely hold a group meeting — either all at once or in

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stages — consider hosting a virtual enrollment meeting via a group video call.

Many small businesses still enroll employees through the traditional paper process. If that is your situation, talk to your broker and insurance carrier about going digital this year. If your carrier doesn't have a system in place, it may be too late to implement a digital system this year, but you can start planning ahead now.

Best Practices

As always, there are procedures you can put in place to ensure that you have a successful enrollment period. Here are a few ideas recommended by benefit experts:

- **Do your homework:** It's easiest to just offer the benefits you've always offered. Instead, review the demographics of your workforce and target benefits to their needs. For instance, young families have different needs than older workers who are nearing retirement age.
- **Use different communication delivery systems:** Don't just rely on an email or one meeting. Your employees get information in a variety of ways. Try to use more than one of the following:
  - ❑ Webinars or video calls
  - ❑ In-person company meetings
  - ❑ Direct mail to their home
  - ❑ Social media
  - ❑ Videos
  - ❑ Intranet posts
  - ❑ Online decision tools
  - ❑ E-mails and instant messaging
  - ❑ Live hotline for questions and concerns
  - ❑ Infographics
  - ❑ Posters
  - ❑ Desktop dashboards or pop-up "Did you know?" benefits messages
  - ❑ Q&As
- **Explain why the benefit package was chosen:** Employees need to know why a certain package was chosen, and they want to know if there were changes to their benefits, such as increased health plan premiums or deductibles. You also can highlight the value of your benefits programs, promote wellness and encourage retirement savings.
- **Inform managers and supervisors prior to the campaign launch:** The more your company's supervisors know about the plan and deadlines, the more they can encourage their team members to enroll

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Importance of Flu Shots Heightened During the COVID-19 Pandemic

Health care workers faced a difficult challenge this year — treating patients with the unpredictable COVID-19 virus. But now that fall is upon us, health care workers have an additional challenge — the common flu.

Flu season usually starts in October and peaks between December and February. Battling COVID-19 at the same time as the flu has many experts in the health care industry concerned. That is why many are campaigning for individuals to get a flu shot.

If you offer flu shots onsite, consider offering them as soon as possible. And, if you have employees working from home, encourage them to come into the office for the shot or suggest they visit their doctor, pharmacy or supermarket to get inoculated. Off-site vaccination sites are planned this year at community centers, senior centers, libraries, sports arenas and parking lots.

According to the Centers for Disease Control and Prevention (CDC), the U.S. flu vaccine is 40 percent effective on average, because it is developed at the end of each flu season and is based on the four most prevalent strains of the flu circulating at that time.

Of course, the same strains may or not be present the next flu season. Still, those vaccines reduce the chances that someone exposed to the virus will have symptoms severe enough to visit a doctor or

hospital. And, while a flu vaccine will not protect against COVID-19, it can reduce the risk of illness, hospitalization and death. It also can help a health care system already burdened by COVID-19 and lessen the odds flu and COVID-19 patients will infect each other.

Anyone older than the age of six months can get a flu shot. However, the CDC reports that more than half of Americans don't get immunized in a typical year. ■

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