3 Health Insurance Takeaways from Biden's Executive Order on Competition

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The Biden Administration issued a sweeping **Executive Order** on "Promoting Competition in the American Economy" last month. This Order's 72 initiatives span many sectors and industries, including health insurance and the healthcare industry, and by extension, many employers. While initial impacts may be limited, it provides a peek at potential policies likely to impact health insurance, the healthcare industry, and employers. Here are three takeaways from Biden's Executive Order on Competition.

1. Reducing healthcare costs remains a priority.

From prescription drugs, to insurance plans, to hearing aids, many of the Order's policy initiatives focus on reducing healthcare costs. The Order includes renewed proposals for importing prescription drugs and increased support for generic and biosimilar drugs, which can provide low-cost options for patients.[1]

The Order directs HHS to release a plan within 45 days addressing prescription drug prices and what the administration considers to be noncompetitive pricing practices. It also pushes the Federal Trade Commission (FTC) to ban "pay for delay," where brand-name drug manufacturers pay generic manufacturers to stay out of the market.[2]

The new initiatives seeking to limit prescription drug prices, including importing prescriptions from Canada, could potentially result in savings for participants and health plans, although we saw many of these same initiatives from the Trump Administration without much of an impact. Manufacturers—and Canada—oppose the importation effort.[3]

However, it will certainly benefit employers to have prescription drug costs lowered by some of these initiatives (if they become effective regulations).

The Order also reiterates several other previously announced policy priorities of the Biden Administration, including health plan and hospital price transparency, Medicare reform via "inflation caps," and the enactment of a "public health insurance option." While these transparency rules have already been issued as regulations, and while these other previously announced healthcare reform initiatives have not, their mention in this Order signals these initiatives as priorities of the Biden administration agencies in the months and years to come (even though it's unclear how soon the Medicare and "public option" initiatives will go into effect).

By contrast, one new initiative that does seem likely to go into effect soon is the proposal to make hearing aids available over the counter (OTC). Participants and health plans that would have paid for hearing aids with health insurance will, as a result, likely pay less if hearing aids are sold OTC due to this Executive Order.

[1] The White House Briefing Room, "Executive Order on Promoting Competition in the American Economy"
[2] The White House Briefing Room, "FACT SHEET: Executive Order on Promoting Competition in the American Economy"
[3] CNN, "Biden signs sweeping executive order that targets Big Tech and aims to push competition in US economy"

2. Mergers and consolidation are being scrutinized.

This Order makes it clear that the FTC and Department of Justice will have considerable oversight and enforcement power to stop mergers of, and potentially break up, large health insurance carriers, healthcare providers and pharmaceutical companies, among other large firms.

In the case of large healthcare provider systems, research has shown that consolidation leads to higher prices without improvement in the care provided. Consolidation also reduces the bargaining power of employers and plan sponsors.[4]

For insurance companies, studies show that there may be a "happy medium" related to consolidation and competition. More consolidation does seem to improve their negotiation power with providers, though this only leads to lower premiums in regions with enough competition.[5]

In either case, employers and plan sponsors may benefit if the rate of consolidation is slowed by tougher enforcement of U.S. antitrust laws.

3. It offers a glimpse of the future more than immediate impact.

While the Order is certainly ambitious, it is unlikely that any of the new initiatives will become effective regulations in the next six months, and many won't happen in the next year. In the long term, however, these initiatives will likely impact health insurance, the healthcare industry, and employers.

It's always important to remember that an Executive Order only directs government agencies to take action on certain policy initiatives of the White House. It doesn't have the effect of law or regulation, and so, employers, carriers and plans do not have to immediately comply with these rules. Further, it may take a considerable amount of time before the agencies issue regulations carrying out these orders, and then even longer before they are effective rules that require compliance.

However, it does offer valuable insight and an indication of what employers and the insurance industry can expect from the Biden administration and government agencies in the months and years ahead. We could see more formalized plans and proposed rules for some of these initiatives as soon as the fall, so stay connected with your employee benefits broker and compliance team. ■

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[4] Kaiser Family Foundation, "What We Know About Provider Consolidation"
[5] Kaiser Family Foundation, "What We Know About Provider Consolidation"