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Recent Executive Order

President Trump issued an executive order last week directing the Department of Health & Human Services (HHS), the Department of the Treasury (IRS), and the Department of Labor (DOL) to take various actions related to health care over the next two to six months. The executive order instructs the regulatory agencies to develop new rules and to prepare reports and suggestions—it does not immediately change any existing rules or laws. The order's emphasis is on actions to be undertaken in an attempt to increase transparency in healthcare costs and quality, but it also contains items that might expand HSA eligibility; increase expenses that would be reimbursable by an HSA, HRA, or FSA; and increase carryover limits for health FSAs.

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Much of the order focuses on actions meant to create more transparency concerning pricing and quality for healthcare, including disclosure of provider pricing and potential out-of-pocket costs to consumers before they receive such services.

That being the case, the order also directs the agencies to take some actions that could more directly impact the benefits employers offer to employees. Specifically, the order requires the IRS to take the following actions:

1. Release guidance within 120 days that would expand the ability of high-deductible health plans (HDHPs) to cover additional services, especially for the care of chronic conditions, while maintaining HSA eligibility;
2. Release guidance within 180 days to expand the definition of a "qualifying medical expense" under §213(d), perhaps including direct primary care arrangements and healthcare sharing ministries as expenses eligible for tax-favored reimbursement under HSAs, HRAs, and FSAs; and
3. Release guidance within 180 days to increase the amount of carryover from one plan year to the next for health FSAs (beyond the \$500 limit currently in place).

SUMMARY

The order instructs the regulatory agencies to take various actions by the end of 2019, but the full rulemaking process could certainly extend into late 2020—similar to how things were rolled out following the previous executive order addressing association health plans, short-term limited duration insurance, and expanded HRAs. Therefore, for now, we can only wait until rules and regulations are issued to get a better understanding of exactly what changes might be proposed. It's really too early to contemplate making any changes.

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