

Publications

Trump Administration Issues Request for Information on Drug Costs

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On May 16, 2018, the Department of Health & Human Services (“HHS”) published a request for information (“RFI”) related to drug costs entitled “HHS Blueprint to Lower Drug Prices and Reduce Out-of-Pocket Costs.” The RFI was issued just days after the HHS released a similar public blueprint entitled “Putting American Patients First.” While the RFI focuses mostly on drug companies and federal health care programs, it also has important long term ramifications for insurers and PBMs, particularly with respect to drug rebates, as well as potentially for employers that obtain prescription drug services in connection with their group health plans.

The RFI is a part of President Trump’s administrative agenda to reduce drug pricing, lower list prices and reduce consumer out-of-pocket spending at the pharmacy. In February 2018, the President’s Council of Economic Advisors released a report, “Reforming Biopharmaceutical Pricing at Home and Abroad” that reiterated President Trump’s commitment to drug pricing reforms and presaged many of the issues addressed in the Blueprint and the RFI. The White House also included drug pricing reform proposals in its fiscal year 2019 budget, several of which are reiterated in the Blueprint and RFI.

The release of the RFI indicates that the Trump Administration, working primarily through HHS, is now seeking to take more concrete regulatory steps toward reducing drug costs. This is an immensely complicated area of policy-making and proposals in the RFI on which HHS is seeking feedback would involve multiple federal government entities, including the HHS, the Centers for Medicare & Medicaid Services (“CMS”), and the Food and Drug Administration (“FDA”), to implement.

The RFI outlines “actions the President may direct HHS to take immediately” and actions on which HHS is seeking comment. Many of these “immediate actions” are discussed in the RFI, along with the areas for which HHS seeks additional information. Notably, HHS has already taken some immediate action that may be of interest to plan sponsors and health insurance issuers: the RFI discusses updating Medicare’s drug-pricing dashboard and an update of the dashboard was announced on May 15. Similarly, the RFI discusses prohibiting Part D contracts from preventing

pharmacists from advising patients when they could pay less out-of-pocket by not using insurance and a CMS memo prohibiting “unacceptable pharmacy gag clauses” was issued on May 18.

Comments for the RFI are due July 16, 2018.

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