

July 9, 2021

President Signs Executive Order to Promote Economic Competition

EO includes provisions for health care, including prescription drugs, hospitals and health insurers

President Biden today signed an [executive order](#) (EO) establishing a “whole-of-government” effort to promote competition in the American economy. The EO includes 72 initiatives by more than a dozen federal agencies to tackle competition issues across the economy, including in health care, financial services, technology and agriculture. It also establishes a White House Competition Council to coordinate, promote and advance federal efforts to improve competition in the American economy.

The EO, which does not have the force of law or regulation and rather serves to provide direction to federal agencies, contains a number of provisions directed at drug manufacturers, hospitals and health insurers.

Highlights of the EO that are important to hospitals and health systems, as well as AHA’s statement follow.

AHA Take: In a [statement](#) shared with the media, AHA President and CEO Rick Pollack said, “Today’s executive order is expansive, establishing an all-of-government effort to promote competition across many sectors of the economy. With health care, the executive order targets drugs costs and commercial health insurance plans, and hospitals and health systems as well, among others.

“In fact, with commercial health insurance plans, nearly three out of four markets were highly concentrated in 2019 and the top five largest insurers alone control nearly 50% of the market. Studies have found that when an insurance market is highly concentrated, insurers reduce provider payments and do not pass savings along to the consumer. We urge federal agencies to focus on policies that address in a meaningful way competition among commercial health insurers.

“However, today’s executive order falls short in several ways. For example, it does not recognize the exceptional value and essential services health systems provide to their patients and communities each day. This has been highlighted during the public health emergency of COVID-19. The pandemic challenged hospitals to transform their operations, which included rapidly expanding telemedicine services, overcoming shortages of equipment and drugs, retooling operations and reconfiguring space to provide life-saving care for patients and protect others from contracting the virus. Many

hospitals were also called upon to backstop an inadequate public health response by providing information, counseling and vaccinations as those became available.

“Additionally, it is important to stress that hospital mergers and acquisitions undergo an enormous amount of rigorous scrutiny from the federal antitrust agencies and state attorneys general.

“Finally, contrary to statements in the executive order, health systems can be a particularly important option for retaining access to hospital services in some rural communities. Mergers with larger hospital systems can also provide community hospitals the scale and resources needed to improve quality and decrease costs.”

SUMMARY OF MAJOR PROVISIONS IN THE EXECUTIVE ORDER

Hospitals: The EO encourages the Department of Justice (DOJ) and Federal Trade Commission (FTC) to review and revise their merger guidelines and directs the Department of Health and Human Services (HHS) to support existing hospital price transparency rules and to implement new price transparency provisions included in the No Surprises Act. The FTC has work underway to understand the effect of physician group and health care facility mergers, and HHS’ efforts to implement price transparency regulations have been ongoing. The EO suggests that consolidation among hospitals has led to high prices and inadequate access to health care services in rural communities.

Prescription Drugs: The EO aims to address high drug prices and lack of competition among drug manufacturers. It directs the Food and Drug Administration (FDA) to work with states and tribes to safely import prescription drugs from Canada, pursuant to the Medicare Modernization Act of 2003; directs HHS to increase support for generic and biosimilar drugs and instructs the department to issue a comprehensive plan within 45 days to combat high prescription drug prices and price gouging; and encourages the FTC to ban by rule “pay for delay” and similar agreements. It also reiterates the Administration’s support for legislative efforts to allow the Medicare program to negotiate drug prices, among other policies.

Health Insurers: The EO aims to address consolidation in the health insurance industry, which has led to many consumers having little choice when it comes to selecting insurers. Specifically, it directs HHS to standardize plan options in the federal Health Insurance Marketplace so people can comparison shop more easily.

Non-complete Clauses: The EO suggests that non-compete clauses and other types of contractual agreements limit workers’ ability to change jobs without making a specific reference to any industry, such as health care. The EO directs the FTC to use its rulemaking authority to curtail unfair use of such clauses.

Other Issues: Among other actions, the EO calls on the DOJ and FTC to enforce the antitrust laws vigorously and says that enforcement should focus on labor markets, agricultural markets, health care markets and the tech sector. The EO also recognizes

that the law allows the agencies to challenge past mergers that previous Administrations did not challenge. The EO reiterates the Administration's support for implementing a public health insurance option.

FURTHER QUESTIONS

If you have questions, please contact AHA at 800-424-4301.