

Employee Benefit ■ Plan Review

Trump Administration Continues Focus on Drug Pricing with “Most-Favored-Nation Prescription Drug Pricing” Executive Order

BY ANNA K. ABRAM, SHAWN MAREE BISHOP, KELLY M. CLEARY,
SALLY STEWART LAING, CHRISTINA BARONE AND PHYLCIA WU

President Donald Trump has signed an executive order (EO) titled, “Delivering Most-Favored-Nation Prescription Drug Pricing to Americans,”¹ aimed at reducing prescription drug prices by implementing a most-favored-nation (MFN) pricing policy. The EO expresses concern that Americans are subsidizing lower-priced drugs and biologics in other developed countries and paying higher prices in the United States. To remedy this imbalance, President Trump has directed his administration to take a number of steps to “end global freeloading.”

FIRST STEPS

The first of those steps are aimed at getting voluntary price concessions from manufacturers. In the event drug manufacturers do not voluntarily offer American consumers the MFN lowest price, the EO lays out a number of other measures including importation and mandatory MFN pricing.

Notably, this latest EO is the second drug pricing EO issued by the administration in less than a month. The previous executive action – Lowering Drug Prices by Once Again Putting Americans First (EO 14273)² – aims to build on efforts from President Trump’s first term, the Biden era and legislative proposals in Congress, and this latest EO focused on MFN pricing also seeks to build on those prior actions.

In the event drug manufacturers do not voluntarily offer American consumers the MFN lowest price, the EO lays out a number of other measures including importation and mandatory MFN pricing.

Issuing two EOs on drug pricing in less than a month underscores that drug pricing

policy will be a continuing focus and area of negotiation for the Trump administration.

Issuing two EOs on drug pricing in less than a month underscores that drug pricing policy will be a continuing focus and area of negotiation for the Trump administration.

This article summarizes the actions outlined in this latest drug pricing EO but, as with the previous drug pricing EO, it is important to note that the MFN drug pricing EO lays out high-level actions and stakeholders will be closely watching for additional details as the administration moves forward with implementation of actions that will span multiple departments and agencies across the federal government, and may potentially involve engagement with Congress.

IMMEDIATE ACTIONS

The EO lays out the following immediate actions:

- Directs the Secretary of Commerce and the United States Trade Representative to take all necessary and appropriate action to ensure foreign countries are not engaged in any act, policy or practice that may be unreasonable or discriminatory or that may impair United States national security and that results in American patients paying for a disproportionate amount of global pharmaceutical research and development. Referring key trade authority provided by Section 301 of the Trade Act of 1974 and Section 232 of the Trade Expansion Act of 1962, the White House appears focused on claims that foreign

countries undercut market prices in their markets, which drives higher prices in the United States.

- Directs the Secretary of Health and Human Services (HHS) to facilitate direct-to-consumer purchasing programs for pharmaceutical manufacturers that sell their products to American patients at the most-favored-nation price. The means by which Secretary Kennedy will “facilitate” direct consumer purchasing are unclear. It is possible that the Secretary could leverage one of the various public health authorities, such as the general authority under the Public Health Service Act to conduct research and communicate information.
- Directs HHS, within 30 days of the date of the order, in coordination with the Assistant to the President for Domestic Policy, the Administrator for the Centers for Medicare and Medicaid Services (CMS), and other relevant executive department and agency officials, to communicate most-favored-nation price targets to pharmaceutical manufacturers to bring prices for American patients in line with comparably developed nations. The administration will use these targets to try to secure commitments from pharmaceutical manufacturers to make voluntary price reductions.

The EO also calls for further actions if the steps above do not result in “significant progress” toward reaching the lower MFN pricing targets.

Specifically, the EO calls for the following:

- *Mandatory MFN Pricing.* The HHS Secretary must propose a “rulemaking plan” to impose MFN pricing. This plan will most likely include a demonstration program operated under CMS’ Innovation Center authorities and could be similar to the

Medicare Part B MFN drug pricing model that was finalized in November 2020. This model was enjoined by federal courts (primarily for failure to observe notice and comment rulemaking procedures) and ultimately withdrawn by the Biden Administration.”

The EO also calls for further actions if the steps above do not result in “significant progress” toward reaching the lower MFN pricing targets.

- *Drug Importation Actions.* The Secretary must consider certifying to Congress that importing prescription drugs will pose no additional risk to the public’s health and safety and result in a significant reduction in the cost of prescription drugs to the American consumer, and if the Secretary of HHS so certifies, the Food and Drug Commissioner shall take actions to describe circumstances under which waivers will be consistently granted to import prescription drugs on a case-by-case basis from developed nations with low-cost prescription drugs.
- *Enforcement Against Anti-Competitive Conduct.* Calls for the Attorney General and the Chairman of the Federal Trade Commission (FTC) to undertake enforcement action against any anti-competitive practices identified in the report issued under EO 14273. This report is expected by October 12, 2025.
- *Export Controls.* Further directs the Commerce Secretary to review and consider all necessary action regarding the export of pharmaceutical drugs or precursor material that may

be stimulating global price discrimination.

Directs the heads of agencies to take “all action available,” in coordination with the Assistant to the President for Domestic Policy, to address “global freeloading and price discrimination against American patients.”

- *Modification or Revocation of FDA Approvals.* Calls for the FDA Commissioner to review

and potentially modify or revoke drug approvals for those that may be unsafe, ineffective or improperly marketed.

- *“All-Hands” Action.* Directs the heads of agencies to take “all action available,” in coordination with the Assistant to the President for Domestic Policy, to address “global freeloading and price discrimination against American patients.”

CONCLUSION

Except for the MFN pricing targets that were to be carried out within 30 days (i.e., by June 11), the EO does not include dates by which the other directives must be completed, thus signaling agency actions would be undertaken immediately, remain on-going, at least

until “significant progress” is made toward MFN pricing in the United States. 🌐

NOTES

1. <https://www.whitehouse.gov/presidential-actions/2025/05/delivering-most-favored-nation-prescription-drug-pricing-to-american-patients/>.
2. <https://www.whitehouse.gov/presidential-actions/2025/04/lowering-drug-prices-by-once-again-putting-americans-first/>.

Anna K. Abram (a Abram@akingump.com) and Shawn Maree Bishop (sbishop@akingump.com) are senior advisors at Akin Gump Strauss Hauer & Feld LLP. Kelly M. Cleary (kcleary@akingump.com) and Sally Stewart Laing (slaing@akingump.com) are partners at the firm. Christina Barone (cbarone@akingump.com) and Phylicia Wu (wup@akingump.com) are policy advisors at the firm.

Copyright © 2025 CCH Incorporated. All Rights Reserved.
Reprinted from *Employee Benefit Plan Review*, October 2025, Volume 79,
Number 8, pages 11–13 with permission from Wolters Kluwer, New York, NY,
1-800-638-8437, www.WoltersKluwerLR.com

