

WHAT YOU NEED TO KNOW



Executive Order from President Trump on the ACA

On Friday, January 20, 2017, President Trump signed his first Executive Order, titled “Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal.”

The Executive Order instructs the Secretary of the Department of Health and Human Services (HHS) and the heads of all other executive departments and agencies with authority, or responsibility, under the Patient Protection and Affordable Care Act (ACA) to exercise all authority and discretion to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the ACA that would impose a fiscal burden on any state, or cost a fee, tax, penalty, or regulatory burden on individuals, families, health care providers, health insurers, patients, recipients of health care services, purchasers of health insurance, or makers of medical devices, products, or medications.

Notably, employers are not specifically enumerated in the list of those being protected from fiscal burdens, although arguments could be made that they are “purchasers of health insurance.”

The Executive Order also indicates that, as required, heads of agencies must comply with the Administrative Procedure Act and other applicable statutes in considering or promulgating such regulatory revisions. Essentially, the required notice-and-comment process of rule making still stands as required.

Risk-averse employers will wait for confirmation from various federal agencies that regulations they are in the process of complying with (notably, ACA-related reporting) are on hold for the time being. Without confirmed Cabinet members for the Secretary of HHS, the Secretary of the Treasury, and the Secretary of Labor, there will likely be a lag in information directly from any one agency. President Trump’s Chief of Staff also sent out a memo that essentially put a regulatory freeze on all agencies until presidential appointments are confirmed. We are, unfortunately, in a “wait and see” period.

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