
President Issues Executive Order Addressing Affordable Care Act Repeal

By Edward C. Hammond / Jan 23, 2017

On the day of his inauguration, one of the first actions taken by newly elected President Trump was to issue an executive order titled "Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal." The order stated that it is current administration policy to seek the prompt repeal of the Patient Protection and Affordable Care Act (the "Act"). Pending repeal, the executive order indicates it is designed, consistent with the law, to minimize the "unwarranted economic and regulatory burdens of the Act and to prepare to afford the States more flexibility and control to create a more free and open healthcare market."

The executive order goes on to provide that, to the maximum extent permitted by law, the Secretary of Health and Human Services and the heads of all other executive departments and agencies are to use their available authority and discretion to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the Act that would impose a fiscal burden on any State or a cost, 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. Noticeably absent from this broad list is any direct reference to employers and coverage mandated under the Act.

The executive order offers no specifics. Commentators have noted that, while the President does not have the authority to repeal the law, his actions do instruct agencies to start taking steps to use their authority to unwind it. At the outset, the President appears to open a door for minimizing the penalties for Americans who do not buy health insurance and might otherwise be required to pay a penalty in connection with filing their tax returns in the next few months. However, all current reporting requirements, including reporting of employees' health insurance coverage on Forms W-2 and 1095, remain in place.

The executive order also directs agencies to give States as much flexibility as possible in implementing the law. The next steps appear to be in the hands of Congress. It is difficult to predict whether there will be comprehensive revisions or piecemeal changes, but we will continue to provide updates on important changes to the Act, as well as other related developments.

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