

President Signs Day 1 Executive Order Weakening ACA

January 23, 2017

President Trump's first [executive order](#), (“the Order”), signed hours after taking office on Friday, January 20, directs agencies of the federal government to scale back regulations, taxes and penalties under the Affordable Care Act (ACA). While the Order does not repeal the ACA, or even mention employers or employer-sponsored health insurance, it does seem to function as a sort of “mission statement” for the new President, clarifying the President’s intentions with respect to the ACA.

What Does the Order Say? What Does It Do?

The Order states that:

- 1) It is the policy of the Trump Administration to “seek the prompt repeal of the [ACA],” and pending such repeal, to take actions to “minimize the unwarranted economic and regulatory burdens of the [ACA]” This first part is essentially a statement of intent to repeal the ACA.
- 2) The federal agencies that implement and oversee the ACA (“the Agencies”) can exercise their authority and discretion to grant waivers, exemptions and delays of ACA provisions that would impose fiscal costs on States or costs (including any “fee, tax, penalty, or regulatory burden”) on “individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications.”
- 3) The Agencies can exercise their authority and discretion to give flexibility to States, and to cooperate with them, when implementing healthcare programs.
- 4) The Agencies must encourage the development of a free and open market in interstate commerce for the offering of healthcare services and health insurance, with the goal of “achieving and preserving maximum options for patients and consumers.”
- 5) The Agencies, when carrying out the directives of the Order (including revising or issuing new regulations under the

Order), must comply with the Administrative Procedure Act and other current laws. This provision stops the Agencies from revising or issuing new regulations that conflict with existing regulations that have already been commented upon by the public and finalized.

So, what is the effect of the Order? Clearly, the Order does not expressly repeal any part of the ACA or any ACA regulation. It does, however, indicate that there will be a rollback of enforcement of regulations that have an impact on individuals and States.

Specifically, the reference to “individuals” suggests that the Trump administration will likely seek to weaken the ACA’s unpopular “individual mandate” requirement, which is the requirement that individuals enroll in health insurance or else face tax penalties.

Weakening this requirement of the ACA may result in healthy individuals dropping out of (or never enrolling in) coverage on the Exchanges, and this, in turn, may result in more insurers dropping out of the Exchanges.

The reference to “States” suggests that the Trump Administration will likely be actively involved in, consistent with its campaign promises, taking actions to give the States more of their own authority and discretion over the use of Medicaid funds.

SYNOPSIS

- The Order does not expressly repeal any part of the ACA or any ACA regulation.
- Employers should still comply with the ACA information reporting requirements, as well as all other employer requirements under the ACA until further guidance is issued.

How Does this Affect Employers? Do Employers Still Need to Comply with the ACA's Pay or Play Rules?

The Order does not refer to employers in the group of individuals and organizations that it seeks to protect, and there is no reference to the Employer Shared Responsibility provisions of the ACA (commonly referred to as “Pay or Play” or the “Employer Mandate”) that impose substantial tax penalties on employers that fail to provide affordable, adequate health insurance to their full-time employees.

Accordingly, the Trump Administration hasn't clearly indicated one way or the other how it might change the ACA's Pay or Play tax penalties.

Do Employers Still Need to Comply with the ACA Information Reporting Requirements?

Employers should still comply with the ACA information reporting requirements, as well as all other employer requirements under the ACA until further guidance is issued. While the Order directs the Agencies to relax enforcement of existing regulations, it does not expressly refer to employers, Pay or Play penalties or a change in ACA information reporting requirements.

What's Next for the ACA?

On January 12 and 13, the Senate and House approved a [budget measure](#) that will allow Congress and the President to enact an ACA replacement legislation through budget reconciliation, which means that they will not have to worry about a filibuster from Democrats. While this will help to clear the way for the Republican ACA replacement plan, details of that plan have not been released yet.

It is expected that the ACA replacement plan will include several of the key components of the Paul Ryan ACA replacement plan entitled, “[A Better Way](#).”

We will continue to closely monitor these developments.

If you have any additional questions, please call your Corporate Synergies Account Manager or 866.CSG.1719.

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