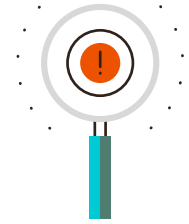


What Does the ACA Executive Order Mean?



Shortly after President Trump's inauguration on Friday, he signed an executive order addressing the Affordable Care Act (ACA). The Order is yet another confirmation of the administration's intent to repeal the ACA. The order is largely symbolic and leaves a host of unanswered questions on the scope of the relief it provides. Moreover, it provides no indication of the timing or content of a replacement plan. Most notably, the Order gives Rep. Tom Price, once he's confirmed as HHS Secretary (likely sometime next month), not only the direction but also the discretion to implement a certain enforcement policy (or non-enforcement policy) pending repeal and replacement. We've excerpted pertinent parts of the order below; they are largely self-explanatory. It is important to remember that the statutory and regulatory framework of the ACA still exists. While the Order directs the agencies to interpret the existing regulations in a manner consistent with the administration's priorities, the agencies are still legally beholden to the general ACA statutory and regulatory framework. **The next milestone in this process is scheduled for this Friday, January 27** when the relevant Senate committees are required to submit their draft budget reconciliation bills. This should give us a more defined indication of where the repeal legislation is headed.

Section 1. [...]In the meantime, pending such repeal, it is imperative for the executive branch to ensure that the law is being efficiently implemented, take all actions consistent with law to minimize the unwarranted economic and regulatory burdens of the Act, and prepare to afford the States more flexibility and control to create a more free and open healthcare market

Section 2. To the maximum extent permitted by law, the Secretary of Health and Human Services (Secretary) and the heads of all other executive departments and agencies (agencies) with authorities and responsibilities under the Act shall

exercise all authority and discretion available to them 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, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications.

Section 3. To the maximum extent permitted by law, the Secretary and the heads of all other executive departments and agencies with authorities and responsibilities under the Act, shall exercise all authority and discretion available to them to provide greater flexibility to States and cooperate with them in implementing healthcare programs.

Section 4. To the maximum extent permitted by law, the head of each department or agency with responsibilities relating to healthcare or health insurance shall 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.

Section 5. To the extent that carrying out the directives in this order would require revision of regulations issued through notice-and-comment rulemaking, the heads of agencies shall comply with the Administrative Procedure Act and other applicable statutes in considering or promulgating such regulatory revisions.

Alliant will continue to monitor developments and, as always, please contact us with questions.

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