



## President Trump Issues Executive Order on the Affordable Care Act

### Overview

President Trump issued his first **Executive Order** on Friday, January 20, 2017, just hours after his inauguration. The Order reiterates the Administration's objective to seek the repeal of the ACA and sets broad policy direction to federal agencies with respect to the ACA. Specifically, it directs the Department of Health and Human Services and other agencies involved in administering the ACA "to the maximum extent permitted by law" to:

- Waive, defer, grant exemptions from, or delay the implementation of any ACA provision or requirement that would impose a fiscal burden on states, individuals, health care providers, health insurers, and medical device and product producers (**including fees, taxes, and penalties**);
- Provide greater flexibility to states, and cooperate with them in implementing health care programs; and
- Encourage the development of a free and open market for the offering of health care services and health insurance.

This Executive Order reminds the departments and agencies that "to the extent that carrying out the directives in this order would require revision of regulations issued through notice-and-comment rulemaking," which would generally be the case; they must comply with the Administrative Procedures Act and other applicable statutes. This Executive Order does not affect the authority of the executive departments and agencies or the role of the Office of Management and Budget (which plays a major role in rulemaking) and is subject to appropriations.

Executive orders, presidential memoranda, and proclamations, such as those signed on Friday by President Trump, are used extensively by Presidents to achieve policy goals, set uniform standards for managing the executive branch, or outline a policy view intended to influence the behavior of private citizens. The U.S. Constitution does not define these presidential instruments and does not explicitly vest the President with the authority to issue them. Nonetheless, such orders are accepted as an inherent aspect of presidential power. Moreover, if they are based on appropriate authority, they have the force and effect of law.

Finally, it states: This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

### What Should an Employer Do Now?

**At this point, nothing has changed.**

The ACA remains law and compliance with the law is required. Specific repeal and replace actions are not likely to begin until after Thomas Price, nominee to become the Secretary of the Department of Health and Human Services, Steven Mnuchin nominee to become the Secretary of Treasury, and Andrew Puzder, nominee to become the Secretary of Labor, are confirmed.

Changing the underlying law would require Congress to act, and the agencies to issue new regulations that follow a legally established process that requires public notice and an opportunity for interested parties to comment on the administration's changes. **Therefore, it is imperative that employers continue to fulfill obligations set forth in the ACA, including the employer mandate and reporting responsibilities under ACA Sections 6055 and 6056.**



## Changes to Come

Congressional committees tasked with creating legislation to repeal and replace the ACA have started the process that would allow them to use a legislative procedural technique, called “reconciliation,” to accomplish the repeal to the extent allowed under the reconciliation process (i.e. budgetary related items). Reconciliation allows for a simple majority vote to eliminate taxes and spending, including new taxes created to fund the ACA, such as those on medical devices, subsidies to buy health insurance, penalties for not having insurance and Medicaid expansion. This action would seriously impact the financial foundation of the ACA.

The committees — House Energy and Commerce, House Ways and Means, Senate Finance and Senate Health, Education, Labor and Pensions — are planning the next steps for achieving that goal. The panels will have to handle doubts by some GOP senators about repealing the law without an immediate replacement and ease insurance carrier fears that such an approach could create uncertainty in the Health Insurance Marketplaces. Through upcoming organizational meetings it is expected the committees will fill out subcommittees and adopt rules.

## Next Steps

To reiterate, employers should stay the course and continue to fulfill obligations set forth in the ACA, including the employer mandate and reporting responsibilities under ACA Sections 6055 and 6056. **Going forward, any deferrals, exemptions, delays, or changes made to any ACA requirements will be promptly reported.**

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## Full Text of President Trump’s Executive Order

### MINIMIZING THE ECONOMIC BURDEN OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT PENDING REPEAL

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1.** It is the policy of my Administration to seek the prompt repeal of the Patient Protection and Affordable Care Act (Public Law 111-148), as amended (the "Act"). 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.

**Sec. 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.

**Sec. 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.

**Sec. 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.

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Sec. 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.

Sec. 6. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP  
THE WHITE HOUSE,  
January 20, 2017.

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