

January 25, 2017

President Trump's Executive Order on the Affordable Care Act and his Administration's Freeze on New Regulations

On January 20, 2017, President Trump signed an [executive order \(https://www.whitehouse.gov/the-press-office/2017/01/20/executive-order-minimizing-economic-burden-patient-protection-and\)](https://www.whitehouse.gov/the-press-office/2017/01/20/executive-order-minimizing-economic-burden-patient-protection-and) directing the federal agencies responsible for the Affordable Care Act to minimize the economic and regulatory burdens of the law by waiving, deferring, granting exemptions from, or delaying the implementation of any provision that would impose a fiscal burden on any state or a cost, fee, tax, penalty or regulatory burden on various groups, including individuals, providers, purchasers of health insurance and insurers.

Amplifying one of the goals of health reform that President Trump has spoken about, the executive order also instructs the agencies to encourage the development of a free and open market in interstate commerce for offering health care services and insurance. A few states currently permit purchase of insurance across state lines, but the programs have not met with success, particularly because of the problems in developing networks in states in which the insurer is not licensed.

This executive order does not change any of the statutory authority currently existing under the Affordable Care Act. Consequently, it is purely symbolic. However, it sets a path for the federal agencies to follow in implementing the law. Because the President's choices for Secretaries of Health and Human Services, Labor and Treasury have not yet been confirmed, we may not know how the Administration will implement the executive order until these appointees are in place.

Also on January 20, 2017, White House Chief of Staff Reince Priebus sent a [memorandum \(https://www.whitehouse.gov/the-press-office/2017/01/20/memorandum-heads-executive-departments-and-agencies\)](https://www.whitehouse.gov/the-press-office/2017/01/20/memorandum-heads-executive-departments-and-agencies) to all federal agencies and departments ordering a regulatory freeze until further notice. Essentially, the order instructs the federal agencies to withhold any new regulations until they can be reviewed by the incoming Administration's Secretaries and agency directors, and postpones regulations not effective prior to January 20, 2017.

This type of freeze has become a matter of course for new administrations. The administrations of both Presidents George W. Bush and Barack Obama took similar actions. The Obama Administration was aware of the pattern, so no significant regulations affecting employee benefits were issued with effective dates after January 20, 2017.

Implications for Sponsors of Benefit Plans

These executive actions should not have any immediate impact on employer-sponsored group health plans. Regulations issued under the Obama Administration that were effective prior to January 20, 2017, remain in place, and can only be revised through a notice and comment rule-making process. The Trump Administration could modify sub-regulatory guidance, such as answers to frequently asked questions or notices. However, most of the rules governing employer-sponsored plans are set forth in either the statute or final regulations.

Deadlines under the Affordable Care Act have been modified by the agencies on several occasions. For example, the upcoming deadline for providing Forms 1095-B and 1095-C to employees and plan participants was extended from January 31, 2017 to March 2, 2017, as announced by the Treasury Department and Internal Revenue Service (IRS) late last year in [Notice 2016-70](https://www.segalco.com/publications-videos/hot-topics/30-day-extension-of-the-deadline-for-2016-aca-reporting-by-employers-and-plans/#Multiemployer) (<https://www.segalco.com/publications-videos/hot-topics/30-day-extension-of-the-deadline-for-2016-aca-reporting-by-employers-and-plans/#Multiemployer>). (That notice did **not** extend the 2017 deadlines for filing these forms and the applicable transmittal forms with the IRS. Those deadlines remain February 28, 2017, for paper returns and March 31, 2017, if filing electronically.) Additionally, the IRS used a notice to delay the employer shared responsibility penalty for one year (from 2014 to 2015). Consequently, Treasury and the IRS could modify reporting or other deadlines in a notice or other guidance.

Segal will keep you up to date on relevant changes to the Affordable Care Act.

Contact an Expert



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