

TRUMP SIGNS EXECUTIVE ORDER ON THE ACA



President

Joseph A. King

jaking@timberlandgroup.com

Senior Benefits Consultants

Karen Borowy

kborowy@timberlandgroup.com

Steve Hardin

shardin@timberlandgroup.com

Senior Account Managers

Maura Carpenter

mcarpenter@timberlandgroup.com

Jill Tocco

jtocco@timberlandgroup.com

Account Service Representative

Nicole Keele

nkeele@timberlandgroup.com

For more information, please contact:

1.800.695.2921

1707 W. Big Beaver Road
Troy, Michigan 48084

www.timberlandgroup.com

HIGHLIGHTS

- President Trump signed an executive order directing federal agencies to minimize burdens of the ACA.
- The executive order is broad and does not specifically address any particular ACA provision.
- No ACA provisions or requirements have been eliminated or delayed at this time.

OVERVIEW

On Jan. 20, 2017, President Donald Trump signed an **executive order addressing the Affordable Care Act (ACA)**, as his first act as president. The order states that it is intended to “to minimize the unwarranted economic and regulatory burdens” of the ACA until the law can be repealed and eventually replaced.

The executive order broadly directs the Department of Health and Human Services (HHS) and other federal agencies to waive, delay or grant exemptions from ACA requirements that may impose a financial burden.

ACTION STEPS

An executive order is a broad policy directive that is used to establish how laws will be enforced by the administration. It does not include specific guidance regarding any particular ACA requirement or provision, and does not change any existing regulations.

As a result, the executive order’s specific impact will remain largely unclear until the new administration is fully in place and can begin implementing these changes.

OVERVIEW

President Trump’s executive order begins by emphasizing his administration’s long-stated goal of repealing the ACA. Pending these repeal efforts—which are already underway in Congress—the executive order is intended to:

- ✓ Minimize the ACA’s unwarranted economic and regulatory burdens; and
- ✓ Prepare to afford states more flexibility and control to create a free and open health care market.

IMPORTANT DATES

January 20, 2017

President Trump signed an executive order on his first day as president.



January 27, 2017

Targeted deadline for Congress to draft a budget reconciliation bill that includes ACA repeal provisions.



Specifically, the executive order directs HHS and other federal agencies responsible for administering the ACA to “exercise all authority and discretion available to them to:

- ✓ Waive, defer, grant exemptions from, or delay implementation of any ACA provision or requirement 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;
- ✓ Provide greater flexibility to states and cooperate with them in implementing health care programs; and
- ✓ Encourage the development of a free and open market in interstate commerce for the offering of health care services and health insurance, with the goal of achieving and preserving maximum options for patients and consumers.”

The executive order specifically states that it does not, itself, make changes to any existing regulations. To the extent that the executive order’s directives would require revision of regulations, that will be done by federal agencies through the normal regulatory process.

Impact on ACA Provisions

The executive order is very broad, and does not include any detailed guidance as to how it should be carried out. Instead, it gives federal agencies broad authority to eliminate or fail to enforce any number of ACA requirements, as permitted by law. As a result, until the new heads of federal agencies are in place, it is difficult to know how the ACA will be specifically impacted.

There is some indication that the executive order is partially aimed at eliminating or providing exemptions from the ACA’s individual and employer mandates, since those requirements impose tax penalties that may impose a “fiscal burden” on individuals and employers. In addition, it is clear that the executive order is intended to help accomplish an idea that has been long supported by President Trump, which is to allow health insurers to sell policies across state lines in an effort to increase free market competition.

However, the immediate impact of the executive order will likely be small, since it will take time to implement policies, regulations and other sub regulatory guidance to carry out the directives. In addition, health insurance policies for 2017 are already in place, and state law, in many cases, prohibits significant changes from being made midyear.

No ACA provisions or requirements have been eliminated or delayed at this time as a result of President Trump’s actions. Therefore, employers should continue to prepare for upcoming requirements and deadlines to ensure full compliance.

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