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President Trump ACA Executive Order

January 22, 2017

By Kristy Buckley

Executive Order Sets the Stage

On the day he took office, Friday, January 20th, immediately following his inauguration, President Trump issued an Executive Order to set the stage for Affordable Care Act reform.

The Order includes a statement of policy that the current administration intends to repeal the ACA. Then, the Order directs Health and Human Services (and presumably the IRS and Department of Labor) to exercise all discretionary authority to delay fiscal burdens of the ACA until repeal happens. The Order further sets the stage to encourage States to be flexible and cooperative regarding interstate healthcare commerce. Finally, the Order acknowledges that reform and repeal will require following Congressional and agency protocol for rulemaking.

Although the Executive Order does not create an official ACA non-enforcement regime for any particular agency (HHS, IRS, or DOL), the strong delayed enforcement policy statement sends a clear message that early rulemaking will likely focus on ACA self-reporting, IRS forms, and enforcement.

A full text copy of the Executive Order is printed below.

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

January 20, 2017

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.

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

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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

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