

Trump's Executive Order—What Does it Mean for the ACA?

Just hours after being sworn into office, President Donald Trump signed an executive order directing the federal regulatory agencies responsible for enforcing the Affordable Care Act “to the maximum extent permitted by law” to “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.”

So what does the order really mean? It is somewhat cryptic and does not direct any particular actions. Executive orders cannot change law or regulations. They are viewed more as setting broad policy directions. So, in issuing the executive order, Trump cannot unilaterally dismantle the law—only Congress can effect broad changes to health policy through the legislative process.

The order itself also confirms that, to the extent carrying out the directives of the order would require revision of regulations, the agencies must follow the rulemaking process outlined in the Administrative Procedures Act, which generally requires issuance of proposed rules, followed by a notice and comment period, and finally issuance of final rules. This process can take months or years.

What an executive order can do is affect how agencies interpret the law and regulations. In this case, the agencies could, for example, be more liberal in granting hardship exemptions from the so-called individual mandate or delay the collection of certain penalties and taxes. In reality, however, we may not receive any specific indications from those agencies regarding how they intend to follow the executive order until after the individuals appointed to head those agencies under the new Trump administration are confirmed and in place.

As always, we will continue to monitor this issue and inform you of any significant developments as they occur.