

Affordable Care Act Executive Order

On January 20, 2017 President Trump, as one of his first acts as President, signed an executive order that sets in motion the dismantling of the Affordable Care Act (“ACA”). While the Executive Order does not contain *specific ACA provisions* to be targeted, it does direct the Secretary of Health and Human Services (“HHS”) and other agency heads, within the bounds of the law and prior to full repeal, to take the necessary steps to modify the impact of the ACA and put in place the building blocks for a replacement plan. At this time, President Trump’s nominees for HHS (Tom Price), Labor (Andrew Puzder) and Treasury (Steven Mnuchin) have yet to be confirmed and sworn in. The Executive Order directs the agency heads 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”,
- Provide greater flexibility to the states to implement meaningful healthcare solutions,
- Encourage cooperation among the states to develop a “free and open market” to preserve maximum healthcare options for consumers, and
- Adhere to the Administrative Procedure Act when issuing changes to ACA regulations by following the proper notice and comment period procedures.

In addition, the newly elected Congress (House and Senate) passed a budget measure to begin the process to repeal certain ACA provisions, which could include the individual and employer mandates, through budget reconciliation which directs one or more committees to submit legislation changing existing law in order to bring spending, revenues, or the debt ceiling into conformity with the budget resolution.

The ACA and implementing regulations are quite voluminous and impact every segment and stakeholder in the healthcare marketplace. We expect the Trump administration to take swift ACA action (where it can) and we will keep you apprised of the developments and effective dates of any changes as they unfold.

NOTE: At this time, employers should continue to comply with all applicable ACA provisions until further notice. Applicable Large Employers and those employers with self-funded group health plans should continue to prepare, issue and file the ACA Information reporting forms 1094 and 1095. The forms are due as follows:

Issue statements to participants:	March 2, 2017
File with the IRS on paper (file less than 250 Forms 1095):	February 28, 2017
Issue statements to participants (file 250 or more Forms 1095):	March 31, 2017

ADDITIONAL INFORMATION

Information contained in this UPDATE is not intended to render tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance with respect to matters of law, tax and related regulation. Cherry Bekaert Benefits Consulting, LLC provides comprehensive consulting and administrative services with respect to all forms of employee benefits, risk management, qualified and non-qualified retirement plans, private client services, transaction services, and compensation and human resources.

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