



President Trump Issues Executive Order 13765 on the Affordable Care Act

On January 24, 2017, President Donald Trump issued [Executive Order \(EO\) 13765](#) on the Affordable Care Act (ACA). Key highlights include:

- The EO directs the Department of Health and Human Services (HHS) and other relevant federal agencies to take actions within their authority and discretion “to minimize the unwarranted economic and regulatory burdens of the [ACA],” including actions “to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the [ACA] that would impose a fiscal burden on any State,” or that would impose “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.”
- The EO does not identify specific ACA provisions to be waived, deferred or delayed, nor does the EO change any statutory provisions or existing regulations. However, the EO could have a near-term impact on agency enforcement of the ACA, such as potential waivers of individual mandate penalties.
- The EO expressly confirms that any regulatory changes taken in furtherance of the EO are subject to the Administrative Procedure Act (APA) and other relevant laws. The APA generally requires a notice and comment period before existing regulations can be altered or repealed, or before new regulations can be issued. Thus, although the ACA’s “essential health benefits (EHB)” requirements are among the provisions that have been highlighted as top priorities for repeal or reform by Republicans in Congress, any changes to existing EHB rules would require compliance with the APA and other laws applicable to regulatory changes, and/or a statutory amendment.
- Agencies are not expected to take substantive action on the ACA until the leadership of HHS, the Centers for Medicare and Medicaid Services and other relevant agencies are confirmed.

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work or

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