President Trump’s Affordable Care Act (ACA) Executive Order

On the evening of his inauguration, President Trump issued a first executive order impacting the future of the Affordable Care Act (ACA). The timing and sweeping language sends a clear message to Congress and all regulatory agencies regarding the direction of the new administration. This order, in practice, is largely symbolic. The timing, itself, speaks as much as the wording. Importantly, President Trump cannot fully repeal the ACA via an executive order and the order offers no specifics within the larger ACA replacement agenda.

The order instructs all regulatory agencies to minimize the ACA burdens to the maximum extent permitted by law; and affords states more flexibility in creating an open health care marketplace. Specifically, the order directs the agencies to waive, defer and grant exemptions from the implementation of any provision or requirement of the ACA that imposes any cost, fee, penalty or regulatory burden on any individual, health care provider, health insurer or purchaser of health insurance (among others). The result leaves regulators with permission not to enforce ACA provisions, through available means, in anticipation of the approaching “repeal and “replace” efforts in 2017.

What to Expect Next

Taking a page from President Obama’s administration, executive orders are not new. Following the order, regulatory departments and agencies are analyzing the broad, sweeping language. At a minimum, this swift act by President Trump sends an implicit message to federal agencies to consider steps to eliminate a cornerstone to the ACA – the individual mandate penalty.

Turn to the Future

- Federal agencies are limited to changes within the “maximum extent permitted by law,” essentially leading to a deregulation and/or stalled enforcement platform through delayed or reduced penalties, rather than an initial rewrite.

- President Trump is employing the Administrative Procedure Act, a 1946 law involving draft rules, holding public hearings, collecting comments and issuing final rules over a drawn-out period. Elements of the ACA, in its nascent stages, were adopted through a similar process, taking years to advance from drafts to final regulations. In fact, the regulatory drafting process to implement the ACA, as is, is still not complete with several provisions awaiting clarifications from the IRS, HHS, DOL, and (CMS).

- In addition to President Trump’s executive order, steps to repeal and replace the ACA are underway within the Congress. The initial step is through the budget-specific reconciliation process, requiring a simple majority vote in the Senate, rather than the customary 60-vote filibuster-proof vote. While a budget reconciliation package...
has passed in both the Senate and the house, as of January 20, 2017, the steps towards replacement will include multiple legislative bills, ultimately requiring democratic support to reach the 60-vote threshold. Repeal and replace simply cannot occur via a one-stop sweep. Therefore, while President Trump’s executive order and the recent steps in the Congress are setting a clear message, the debate and discussions continue as to a timeline, procedure, cost projections and specific steps for a new health care law to come to fruition.

Background Information – Campaign Promises to “Repeal & Replace” Obamacare

Regardless of the approaching replacement plan details, an essential consideration will be the stability of the individual health insurance market. Repeating the individual coverage mandate and penalties while eliminating or phasing-out subsidies (yet still requiring insurance companies to cover individuals regardless of pre-existing conditions) will further destabilize the marketplace with fewer options and rising prices. Therefore, funding considerations will remain an ongoing discussion item as replacement efforts are implemented in the coming years.

Takeaways

Oswald Companies will remain vigilant in monitoring all legislative and regulatory actions, and through our relationships with industry experts in Washington, DC, we will continue our proactive communication efforts to anticipate change. Our dedicated team will provide timely and concise action steps with forward-looking strategic guidance approaching 2017, and beyond. Importantly, the Affordable Care Act (ACA) remains the law; therefore, all current compliance requirements remain in place today.

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