

Executive Order on the Affordable Care Act

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On his first day as President of the United States, President Trump issued an executive order on the Affordable Care Act instructing federal agencies to begin implementing plans for the full repeal of the law. The Affordable Care Act contains the following tax related provisions:

- The requirement to maintain minimum essential coverage. [IRC §5000A]
- The Premium Tax Credit. [IRC §36B]
- The medical expense deduction AGI limitation increased from 7.5% of AGI to 10% of AGI. [IRC §213]
- The Additional Medicare Tax. [IRC §1401 and §3101]
- The Net Investment Income Tax. [IRC §1411]
- The Shared Responsibility Mandate for Large Employers. [IRC §4980H]
- The Small Employer Health Insurance Credit. [IRC §45R]
- The Simple Cafeteria Plan Safe Harbor Rules and other health related changes to cafeteria plans. [IRC §125]
- The requirement that drugs or medicine reimbursed under FSAs, HSAs, HRAs, and Archer MSAs be prescribed by a physician in order to be pre-tax. [Rev. Rul. 2010-23]
- The requirement that adult children up until age 26 be covered under an employer provided group health plan. [TD 9482]
- The requirement for employers to notify employees of health coverage options.
- The requirement for health insurance companies to issue refunds if they do not spend at least 80% of premium dollars on health care.
- The excise tax on expensive insurance. [IRC §4980I]
- The Indoor Tanning Tax. [IRC §5000B]
- The Patient-Centered Outcomes Research Trust Fund Fee. [TD 9602]
- The requirement to report the cost of health insurance on the W-2. [IRC §6051]
- Codification of the Economic Substance Doctrine. [IRC §6662, §6662A, §6664, §66676, and §7701]

In addition to the above tax provisions, the Affordable Care Act contains provisions for the establishment of the Health Insurance Marketplace, the prohibition on insurance companies denying coverage due to pre-existing conditions, the market reform rules that eliminate annual or lifetime caps on health care coverage, and numerous changes to Medicare and Medicaid rules.

The full text of the executive order is reproduced below.

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 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

THE WHITE HOUSE,
January 20, 2017.