

Trump Sets Stage for ACA and Regulatory Reform; Senate Vets HHS Nominee

Shortly after the country’s 45th president was sworn in on Friday, he issued an executive order that would permit federal agencies to relax Affordable Care Act regulations and accelerate its demise. In this issue, we focus on the Trump administration’s first days, the future of health care and other regulatory reform, and legislation to protect benefits for retired coal miners.

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President Trump – Planning and Taking Action

On January 20, Donald J. Trump took the oath to serve as president of the United States. Although time will tell whether he will affect the changes he promised during and after his campaign, President Trump swiftly put in place key actions to further his [100-day action plan to Make America Great Again](#).

Action Plan

Three significant items included in president’s action plan are:

- Health care reform, with a full repeal of the Affordable Care Act (ACA), together with a replacement that includes a focus on health savings accounts (HSAs)
- Regulatory reform, with a requirement to pursue the elimination of two existing federal regulations for every one new federal regulation
- Tax reform, including large tax reductions for the middle class, a reduction in the number of income tax brackets from seven to three, and a lowering of the business tax rate from 35 to 15 percent

During his first days in office, President Trump took specific action towards implementing his 100-day action plan – he issued an executive order pertaining directly to the ACA and his chief of staff, Reince Priebus, released a memo relating to regulatory activity. However, congressional Republicans have not yet coalesced



around an ACA replacement plan. As such, although the budget reconciliation bill (a vehicle that serves as a first step towards dismantling the ACA) does not affect the market insurance reforms (e.g., coverage for children up to age 26 on their parents' plans and no limitations or exclusions for pre-existing conditions), these provisions may be – and likely will be – protected by an ACA replacement plan. (See our [January 16 Legislate](#) for additional information.)

ACA Executive Order

Although President Trump did not mention the ACA during his inaugural speech, shortly thereafter he issued an executive order taking direct aim at the ACA. Specifically, the order states his administration's policy to seek "prompt repeal" of the ACA (through congressional action) and directs federal agencies as follows:

- To "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"
- 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"
- To seek "revision of regulations issued through notice-and-comment rulemaking" to the extent necessary to implement any directions in the order

Comment. It's too early to know which ACA provisions the Trump administration and Congress will seek to modify through regulatory or legislative activity.

Regulatory Freeze Memorandum

The Office of the White House issued a memorandum last week intended to derail regulatory actions that commenced prior to President Trump's inauguration. This memorandum, which is generally routine when a new president from a different party takes office, does not apply to final regulations that have been published in the Federal Register and have already taken effect. However, it does apply to pending final regulations, as well as proposed regulations, subregulatory and other guidance – such as frequently asked questions (FAQs). Specifically, the memorandum requests (subject to exceptions for emergencies and the like) that the departments

- Not submit any regulations (or guidance) to the Office of the Federal Register (OFR) until the president or a member of his administration reviews and approves it
- Immediately withdraw any regulation (or guidance) that has already been submitted to the OFR but that has not yet been published
- Postpone the effective date of any regulation (or guidance) already published in the OFR that has not taken effect

Comment. As the memorandum does not give specific directives, it is not known which regulations will be affected. The fiduciary rule, which became effective in April 2016, has applicability dates in April 2017 and January 2018. Although congressional Republicans introduced [legislation](#) in the current Congress to thwart

the rule from being implemented, it is not known whether President Trump or his administration would seek to derail it. (For background, please see our [January 9 Legislate](#).) It does not appear that the regulatory freeze affects this guidance.

ACA and HHS Secretary Nominee

Rep. Tom Price (R-GA) is President Trump’s nominee for HHS secretary. He is also the sponsor of comprehensive legislation – [Empowering Patients First Act of 2015](#) – that would have repealed and replaced the ACA and limited the tax exclusion for employer-sponsored health care. (Additional information about the bill can be found in this [summary](#).)

A confirmation hearing for Rep. Price was held last week by the Senate Health, Education, Labor and Pensions (HELP) Committee and another hearing will be held tomorrow by the Senate Finance Committee. During the HELP committee hearing, remarks by Republicans were largely in support of Rep. Price’s nomination whereas Democrats reflected great concern and trepidation. Topics explored included the following:

- **Trading health care company stocks.** Rep. Price defended his activities relating to his ownership of health care company stocks, noting that he was transparent and disclosed his actions in accordance with the rules. (For additional background, see the [letter](#) from three Senate Democrats to Sen. Alexander on this issue.)
- **A right to health care.** Although he did not provide a direct response to whether such a right exists, Rep. Price [noted](#), that he wants a “health care system that’s affordable” and “accessible to all.”
- **Process for ACA repeal and replacement.** Rep. Price focused on the sequence of events, and did not offer a timeline. He stated that he wants “to make sure that the parts of Obamacare that are repealed are replaced before the repeal becomes effective.”
- **Federal debt and deficit.** On statements and conclusions contained in a recently released [CBO report](#) (which was prepared at the request of ranking congressional Democrats), Rep. Price suggested that the statements and conclusions in the report are misleading as they are presented in a “silo” without considering an ACA replacement plan.

Retired Miners’ Health and Retirement Benefits

Lawmakers in Congress have taken additional steps towards providing long-term protection for certain retired miners’ health and retirement benefits under the United Mine Workers of America’s multiemployer plans (UMWA Plans). In the views of many lawmakers, this is necessary because end-of-year legislation passed by the prior Congress did not secure any protection for retirement benefits or any protection for health care benefits beyond April 28, 2017. (For background, please see our [December 12, 2016 Legislate](#).)

In the current Congress, the following bills have been introduced:

- Helping Ensure Long-term Protection (HELP) for Coal Miner Health Care Act ([S. 176](#)). This legislation, sponsored by Senate Majority Leader Mitch McConnell (R-KY), would permanently extend health care benefits for certain retirees under the multiemployer health benefit plan. (See Sen. McConnell’s (R-KY) [press release](#) for additional information.)

- Miners Protection Act of 2017 ([S.175](#) and [H.R. 179](#)). This legislation, which has bipartisan support in both chambers, would provide extended protection for both retiree health care and pension benefits under the UMWA Plans. (For additional information, see Sen. Rob Portman’s (R-OH) [press release](#) and Sen. David McKinley’s (R-WV) [press release](#).)

Comment. The Miners Protection Act of 2017 provides that excess assets in the Abandoned Mine Reclamation Fund would be redirected to fund the retirement benefits. As such, it would not draw on funds from the PBGC. (Please see our [August 29, 2016 Legislate](#) for more on the financial status of the PBGC programs and potential options to fix them.)

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