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Signed order might start the gutting of ACA mandate

President Trump signed an executive order late Friday giving federal agencies broad powers to unwind regulations created under the Affordable Care Act, which might include enforcement of the penalty for people who fail to carry the health insurance that the law requires of most Americans.



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President Trump, surrounded by his family and lawmakers, signs the paperwork to install his Cabinet nominees confirmed by the Senate. A separate executive order gave U.S. agencies permission to “waive, defer, grant exemptions from or delay” Affordable Care Act regulations.

The executive order, signed in the Oval Office as one of the new president’s first actions, directs agencies to grant relief to all constituencies affected by the sprawling 2010 health-care law: consumers, insurers, hospitals, doctors, pharmaceutical companies, states and others. It does not describe specific federal rules to be softened or lifted, but it appears to give room for agencies to eliminate an array of ACA taxes and requirements.

However, some of these are embedded in the law, so it is unclear what latitude the executive branch will have.

Though the new administration’s specific intentions are not yet clear, the order’s breadth and early timing carry symbolic value for a president who made repealing the ACA — his predecessor’s

signature domestic achievement — a leading campaign promise.

Additionally, the order's language about easing economic and regulatory burdens aligns with long-standing Republican orthodoxy that the government exerts too heavy a hand on the U.S. healthcare system.

"Potentially the biggest effect of this order could be widespread waivers from the individual mandate, which would likely create chaos in the individual insurance market," said Larry Levitt, senior vice president at the Kaiser Family Foundation. In addition, he said, the order suggests that insurers may have new flexibility on the benefits they must provide.

"This doesn't grant any new powers to federal agencies, but it sends a clear signal that they should use whatever authority they have to scale back regulations and penalties. The Trump administration is looking to unwind the ACA, not necessarily waiting for Congress," Levitt said.

The order, several paragraphs long, does not identify which of the many federal rules that exist under the ACA the new administration intends to rewrite or eliminate. In general, federal rules cannot be undone with a pen stroke but require a new rulemaking process to replace or delete them.

But in giving agencies permission to "waive, defer, grant exemptions from or delay" ACA rules, the order appears to create room for the Department of Health and Human Services to narrow or gut a set of medical benefits that the ACA compels insurers to include in health plans that they sell to individuals and small businesses.

The order does not mention Medicaid, but it says one of its goals is to "provide greater flexibility to States," raising the question of whether the Trump HHS might try to loosen rules for states that have expanded the program for lower-income Americans, as the law allows.

The order directs all federal agencies "to minimize the unwarranted economic and regulatory burdens" of the ACA — the first step of Trump's central campaign promise to repeal and replace former president Barack Obama's healthcare plan.

Trump's action drew swift protests from ACA proponents who have coalesced to try to preserve the law. "While President Trump may have promised a smooth transition" from the current law to a replacement, said Leslie Dach, director of the fledging Protect Our Care Coalition, "the executive order does the opposite, threatening disruption for health providers and patients."

Also late Friday, Reince Priebus, Trump's chief of staff, issued an executive memorandum ordering a freeze on regulations for all government agencies.

The memo could freeze several new Energy Department efficiency standards, such as those affecting portable air conditioners, commercial boilers and uninterruptable power supplies, which were issued Dec. 28 but not yet published in the Federal Register. The regulations were part of the Obama administration's broader effort to cut greenhouse-gas emissions linked to climate change.

The move echoes a missive that then-White House Chief of Staff Rahm Emanuel sent the heads of every federal agency on Jan. 20, 2009, asking them to freeze any rules that had not yet been published in the Federal Register, and to consider a 60-day extension of the effective date of rules that had not yet gone into effect.

Also Friday, Trump signed the official paperwork installing Defense Secretary James Mattis and Homeland Security Secretary John F. Kelly, two of his Cabinet picks the Senate voted to confirm earlier in the day.

Trump's health-care order came at the end of what had otherwise been a largely ceremonial day. The White House did not immediately return requests for comment.

During his campaign and afterward, Trump pledged that fundamental changes to the health-care system would be a first priority. In a speech outside Philadelphia six days before the November election, Trump vowed to abolish the ACA before he was sworn in. "Have to do it," he said. "I will ask Congress to convene a special session so we can repeal and replace."

Last week, both chambers of Congress approved a budget resolution that was the first legislative step toward repealing the 2010 law, which was the centerpiece of the Obama administration's health policies. But health care was not among a half-dozen issue areas listed on the new WhiteHouse.gov website that debuted shortly after noon on Friday.

Earlier Friday, in the Capitol, the new president took several more perfunctory executive actions shortly after he was sworn in at noon, the most notable being to overturn a recent mortgage-fee reduction — geared at helping firsttime and low-income home buyers — that Obama announced last week and that called for the Federal Housing Administration to cut its annual borrowing fee by a quarter of a percentage point.

Trump also signed a waiver for Mattis to lead the Defense Department, despite his having been retired from military service for only three years. Without the waiver, federal law would have prohibited Mattis from serving as defense secretary until he had been retired from the military for at least seven years.

And just moments after Trump took the oath of office, he began implementing his general vision, transforming the official White House website with a new set of policy pledges that offered the broad contours of the Trump administration's top priorities. They included fierce support for law enforcement and gun owners' rights to defend themselves. There were also some notable absences, such as the omission of a policy page on climate change.

The issues page of Trump's White House offered no new plans or policies but rather a rehash of many of his most prominent campaign promises — a signal to the nation that Trump, more pragmatic than ideological, plans to implement at least the key guideposts of his campaign vision.

The policies laid out on the website included plans to both withdraw from and renegotiate major trade deals, grow the nation's military and increase cybersecurity capabilities, build a wall at the nation's southern border and deport undocumented immigrants who have committed violent crimes.

"Our job is not to make life more comfortable for the rioter, the looter, or the violent disrupter," read the law-and-order section, which calls for "more law enforcement" and "more effective policing." "Our job is to make life more comfortable for parents who want their kids to be able to walk the streets safely. Or the senior citizen waiting for a bus. Or the young child walking home from school."

The climate change Web page that existed under Obama was not replaced on the Trump site, with scant mention of climate change under the new president's energy plan. Also gone or not immediately replaced were Web pages the previous administration had devoted to the rights of lesbian, gay, bisexual and transgender individuals; people with disabilities; and civil rights more generally.

Trump's entire campaign was largely a repudiation of Obama, and a new Republican administration is unlikely to have the same set of issues and priorities as an outgoing Democratic one. But the missing issue pages were particularly alarming to Democrats and activists, especially after a vitriolic campaign in which Trump drew criticism for seeming to mock a disabled reporter and being insensitive to the needs and rights of minority communities.

On energy, Trump vowed to eliminate "harmful and unnecessary policies" such as the Climate Action Plan and the Waters of the United States rule. The first represents a variety of efforts Obama had pursued to reduce U.S. greenhouse-gas emissions while the second is a rule issued by the Environmental Protection Agency to protect not only the largest waterways but also smaller tributaries that others believe should fall under the jurisdiction of states rather than the federal government.

The initial Trump website also did not devote a separate section to immigration, another central tenet of his candidacy, though it mentioned immigration under the law enforcement section. Despite rumors within the immigration advocacy community that one of Trump's initial executive actions could be to revoke Obama's protections for "dreamers" — undocumented immigrants brought to the country as young children — his website so far focused only on big-picture enforcement and security goals.

"He is dedicated to enforcing our border laws, ending sanctuary cities, and stemming the tide of lawlessness associated with illegal immigration," read part of the immigration section.

The new administration's language echoed Trump's tough rhetoric on the campaign trail, including his promises to strengthen the law enforcement community, crack down on what he views as a broad range of trade violations and potentially forge alliances with countries long considered dangerous rivals, such as Russia.

"Finally, in pursuing a foreign policy based on American interests, we will embrace diplomacy," read part of Trump's policy vision. "The world must know that we do not go abroad in search of enemies, that we are always happy when old enemies become friends, and when old friends become allies."

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