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President Trump's Executive Order and the ACA: Much Ado About Nothing (or Something)?

On the day he was sworn in as the 45th President of the United States, President Trump signed an Executive Order titled "Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal." The first sentence of Section 1 of the Executive Order states, "[i]t is the policy of my Administration to seek the prompt repeal of the Patient Protection and Affordable Care Act...." The order left many wondering whether this is much ado about nothing (or something).

This Executive Order clearly establishes the White House's commitment to seeking something which will be labeled "repeal" of the ACA, but does it do more? The answer, in short, is no.

Executive Orders cannot change laws and regulations such as the ACA and its implementing regulations. Rather, regulatory changes must generally go through the notice-and-comment rulemaking process prescribed by the Administrative Procedures Act. The Executive Order acknowledges as much in directing HHS and other agencies to exercise all authority and discretion available to them to the maximum extent permitted by law. Furthermore, the Executive Order states that the agencies' authority is not affected and to the extent that carrying out these directives require revision of regulations, the agencies should comply with the notice-and-comment rulemaking process.

What does it mean?

For the health and welfare benefits world, as far as ACA compliance is concerned this Executive Order is much ado about nothing. Employers, plan sponsors, insurance carriers and third party administrators must continue their compliance efforts.

For Congress, this order may be much ado about something. It may buy Congress some time from staunch ACA opponents to work on a plan to repeal and replace.

It's not clear yet what will happen in the days and months ahead, but we know that change is coming. We will continue to stay abreast of the latest legal and regulatory changes and will keep you informed on how and when these changes will impact your organization.

Dated: January 24, 2017

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