

HIPAA Amendments and Other Trump Regulatory Actions on Hold

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In the waning days of the Trump administration, the Office for Civil Rights (“OCR”) announced a number of new initiatives, including [proposed HIPAA amendments](#), discussed [here](#), and a very recent COVID-19 related [Notice of Enforcement Discretion](#). Under the Notice of Enforcement Discretion, published on January 19, 2021, OCR announced that it would not impose penalties for non-compliance with HIPAA on covered entities making good faith use of online or web-based applications for COVID-19 vaccination scheduling. With the swearing in of President Biden, these and other regulatory initiatives, including all regulations that have been sent to the Office of the Federal Register, but not yet published, are to be withdrawn until a department or agency head appointed by President Biden reviews and approves the rule.

The freeze was announced in a [Whitehouse memo](#) to the heads of executive departments and agencies (the “Memo”) which also suggests delaying the effective dates of rules that were published by the Trump administration, but that have not yet taken effect, for purposes of reviewing questions of fact, policy and law that the rules may raise. The Memo not only applies to rules, but any substantive action by an agency, including advance notice of proposed rulemaking, guidance document or statement of policy on a statutory, regulatory or technical issue.

There is an exception in the Memo for emergency or other urgent circumstances related to health, safety, environmental, financial or national security matters. It is possible that the HIPAA Notice of Enforcement Discretion for COVID vaccination scheduling would fall under this exception. However, as of this blog publication, the notice was no longer available on the Office for Civil Rights Website.

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