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Some of Trump Executive Order Is at Odds With Statute, Lawyer Says

By Nina Youngstrom

The reach of President Trump's Oct. 3 Executive Order on Protecting and Improving Medicare for Our Nation's Seniors may exceed its grasp, because some of it would require legislation, an attorney says. The executive order, which has wholesale changes to Original Medicare and Medicare Advantage (MA) in mind, tells HHS to propose regulations about the way they are operated and/or funded.^[1] But the Trump administration's authority to carry that out is questionable, because it can't override statutes with regulations, says attorney Joel McElvain, former chief health program litigator at the Department of Justice.

The executive order "is really very generally worded, so it's hard to tell what they are thinking, but some of the ideas they are proposing seem to be clearly contrary" to the Medicare Law, which is part of the Social Security Act,^[2] says McElvain, with King & Spalding in Washington, D.C.

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