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COVID-19: Executive Order Grants Federal Government Broad Power Over Health and Medical Resources

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On Wednesday, March 18, 2020, President Donald Trump took the extraordinary step of invoking the Defense Production Act of 1950 (50 U.S.C. § 4501 et seq.) when he signed an [executive order](#) giving the Secretary of the U.S. Department of Health and Human Services (“HHS”) extremely broad powers over health and medical materials, services and facilities to promote the national defense (“Executive Order”). The Secretary of the HHS is granted the authority to prioritize and direct the allocation of health and medical resources necessary to respond to the COVID-19 pandemic, including personal protective equipment and ventilators. The Executive Order also gives the Secretary broad power to prioritize the performance of contracts or orders (other than employment contracts) to promote the national defense over the performance of any other contracts or orders. In determining the proper national priorities and allocation of health and medical resources, the Secretary may control the distribution of such materials and services in the private market in order to respond to the spread of COVID-19.

Although just how the HHS will use these newly granted powers to curb the spread of COVID-19 is uncertain, the Executive Order is broadly worded to support the Secretary taking significant actions and control over private contracts and the private resources to respond to COVID-19 as a national threat. While collaboration between the public and private sectors is essential to successfully combating a pandemic, it is unknown if the current environment of cooperation would continue with more aggressive measures taken by the federal government under the authority of the Executive Order or if the private market would push back and challenge the validity of Executive Order’s grant of authority.

Schenck Price will continue to closely monitor the news concerning the COVID-19 pandemic. Please note that this information is current based on information available as of the date of this Client Alert. However, in light of the rapidly changing developments with COVID-19, we recommend real-time review of guidance distributed by federal, state and local governmental officials. For more information, contact Daniel O. Carroll, Esq. at doc@spsk.com or any member of the Health Care Law Practice Group or the COVID-19 Crisis Management Practice Group at www.spsk.com.

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