

What's Ahead for Health Care Under Biden?

Administration plans to expand Affordable Care Act coverage

By Stephen Miller, CEBS

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In setting the direction for health care policy, Joe Biden, the presumed president-elect, will be building on the framework of the Affordable Care Act (ACA), which was enacted a decade ago while Biden served as President Barack Obama's vice president.

"Come January, we're going to work quickly with Congress to dramatically ramp up health care protections, get Americans universal coverage, and lower health care cost, as soon as humanly possible," Biden said on Nov. 10 (<https://spectrumlocalnews.com/nys/central-ny/news/2020/11/10/biden-pledges-health-care-expansion-aca-supreme-court>) in a campaign-style address.

Biden will revisit "many initiatives and policies of the Obama administration," said Kim Buckey, vice president of client services at Burlington, Mass.-based DirectPath, a benefits education, enrollment and health care transparency firm. She expects the new administration's priorities to be "reforming aspects of the ACA and introducing new policy initiatives, such as expanding ACA subsidies."

"Voters responded in huge numbers, and some of the most fundamental issues that drove people to the polls were health care and health insurance," said Heather Esaghpour, market leader at OneDigital Tennessee, an employee benefits and health insurance broker.

But, Esaghpour noted, "It's too early to predict how the new administration and Congress will interact and whether they will be able to find some areas of the ACA where they have common ground."

The final balance of power in the U.S. Senate and House of Representatives was still undetermined as some races remained uncalled as of Nov. 11. Democrats were expected to maintain a smaller majority in the House, while the incoming Senate was split at 50-48, with two races in Georgia scheduled for a runoff on Jan. 5.

"The Biden health policy agenda will be significantly impacted by these Senate races in Georgia (<https://mailchi.mp/15dd1c7310fb/the-election-and-the-lame-duck-session-whats-it-mean-for-healthcare?e=5713553571>)," wrote Paul Keckley, managing editor of *The Keckley Report*, a health care industry newsletter. "A Republican majority in the Senate would likely temper major changes."

The Society for Human Resource Management (SHRM) stands "ready to work with the new administration, the new Congress and other key stakeholders on policies and programs that promote better workplaces and employment opportunities for all," said Johnny C. Taylor, Jr., SHRM-SCP, SHRM president and CEO.

Although recognizing that much remains unknown about the political landscape, health benefit experts shared their insights on how the Biden administration might change U.S. health care policies.

A Shift in Focus

"The major health reform themes we've seen from Republicans over the past several years is a commitment to transparency, flexibility and consumerism," said Scott Behrens, director of government relations at Lockton, an employee benefits and insurance brokerage firm.

Legislative and regulatory actions supported by the Trump administration included "eliminating the ACA's individual mandate, development

of association health plans, allowing individual coverage health reimbursement arrangements, and more flexibility for states to opt out of some of the ACA mandates."

In contrast, "within the Democratic party, we see an overarching theme of the federal government's role in providing a health care safety net."

ACA Uncertainty

On Nov. 10, the U.S. Supreme Court heard arguments in a case challenging the ACA's constitutionality, with a decision expected by June 2021. Based on the questions and comments by U.S. Supreme Court Justices during oral arguments in *Texas v. California*, it appeared that a solid majority of the court was likely to uphold the ACA (www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/Supreme-Court-Oral-Argument-Affordable-Care-Act.aspx), perhaps striking down the "individual mandate" coverage requirement but leaving the rest of the law in place.

However, until a decision is rendered, the exact scope of the court's ruling remains speculative.

"If the law is upheld or most of it, then I think Biden will move forward on what he's promised to do, which is to simply build on the current structure," said James Klein, president of the American Benefits Council, which advocates for employer-sponsored benefit plans.

Top Biden Proposals

Among the changes Biden has advocated are the following:

ENACT A PUBLIC OPTION UNDER THE ACA.

The public option would be a federally run health insurance plan that sits on the marketplace exchanges alongside private plans. Individuals who are eligible for exchange plans would be able to choose the public option or one of the private plans.

According to Biden's campaign website, "Whether you're covered through your employer, buying your insurance on your own, or going without coverage altogether, the Biden plan will give you the choice to purchase a public health insurance option like Medicare."

A campaign fact sheet explained further (<https://joebiden.com/fact-sheet-how-joe-biden-would-help-you-get-health-insurance-coverage-during-the-coronavirus-crisis/>): "If you have coverage from your employer but it is inadequate ... Joe would give you the ability to choose a new Medicare-like public option, with the federal government providing enhanced premium subsidies."

As with Medicare, the public option Biden supports would cover primary care without co-payments. Biden's website said, "It will bring relief to small businesses struggling to afford coverage for their employees"—presumably by allowing them to stop offering coverage.

According to the Hoover Institution, a conservative think tank, "widespread enrollment would pose significant challenges to private insurers (<https://americashealthcarefuture.org/wp-content/uploads/2020/01/Final-The-Fiscal-Effects-Of-The-Public-Option-1.24.20.pdf>)," which would be competing against a federally subsidized alternative.

The liberal Brookings Institution noted that a public option might "enable private insurers to negotiate better rates with providers (<https://www.brookings.edu/policy2020/votervital/what-would-the-2020-candidates-proposals-mean-for-health-care-coverage/>), reducing premiums for private plans as well."

"The specifics of the public option have not been fleshed out," Behrens said. "There are going to be important policy choices that have to be made about the public option, and those policy choices are going to impact the effect it has on employers and the health care system as a whole."

For instance, "Will someone who has an offer of employer-sponsored coverage be able to elect the public option even if the employer coverage is affordable?" he wondered.

According to Chatrane Birbal, vice president of public policy SHRM, "The employer-based system is the largest provider of coverage in the U.S. and provides health benefits to more than 181 million Americans and their families. SHRM believes any approach to health care reform in the United States must preserve the option for employers to provide employer-sponsored health insurance and offer affordable access to care for all Americans."

LOWER THE MEDICARE-ELIGIBLE AGE TO 60.

Biden proposed allowing Americans ages 60 to 64 to enroll in Medicare (<https://www.npr.org/sections/health-shots/2020/04/11/832025550/bidens-health-play-in-a-covid-19-economy-lower-medicare-eligibility-age-to-60>). In April, he wrote (<https://medium.com/%40JoeBiden/joe-biden-outlines-new-steps-to-ease-economic-burden-on-working-people-e3e121037322>), "Under this concept, Americans would have access, if they choose, to Medicare when they turn 60, instead of when they turn 65. ... This would make Medicare available to a set of Americans who work hard and retire before they turn 65, or who would prefer to leave their employer plans, the public option, or other plans they access through the Affordable Care Act before they retire."

Researchers have found that "the strong link between health insurance and employment in the United States may cause workers to delay retirement until they become eligible for Medicare at age 65 (<https://www.nber.org/papers/w17703>)," suggesting that earlier access to Medicare could prompt more employees to retire sooner.

EXPAND ACA SUBSIDIES

Biden's campaign website said, if elected, he would propose increasing the value of tax credits available to subsidize coverage purchased through the ACA exchanges. Currently, families that make between 100 percent and 400 percent of the federal poverty level (<https://www.healthcare.gov/glossary/premium-tax-credit/>) may receive a tax credit to reduce how much they have to pay for health insurance on the individual marketplace. The dollar amount of the financial assistance is calculated to ensure each family does not have to pay more than a certain percentage of their income on a silver (medium generosity) plan (<https://www.kff.org/health-reform/issue-brief/explaining-health-care-reform-questions-about-health/>). "As President, Biden will help middle class families by eliminating the 400 percent income cap on tax credit eligibility and lowering the limit on the cost of coverage from 9.86 percent of income to 8.5 percent. This means that no family buying insurance on the individual marketplace, regardless of income, will have to spend more than 8.5 percent of their income on health insurance."

ENACT DRUG-PRICING REFORMS.

Controlling the rising cost of prescription drugs is "something that both parties would like to deal with," Klein said. "I do see interest on the part of both parties, once the dust settles, and hopefully the raw feelings subside a bit, to see if there are some surgical things that they might get done. And one [proposal] that enjoys some bipartisan interest, at least over in the Senate, is the idea of permitting importation of drugs from Canada."

Many of Biden's policies on drug pricing focus on what federal programs pay for drugs. He advocates, for instance, requiring drug corporations to negotiate with Medicare over drug prices. If that change were enacted, "there's really only an incidental benefit to employer-sponsored plans and what they pay for drugs," Behrens said. "So employers are probably not going to see their prices go down significantly."

END 'SURPRISE' OUT-OF-NETWORK BILLING

Surprise billing occurs when patients are billed by an out-of-network provider they reasonably assumed was in their health plan's network. According to Biden's campaign website, "The Biden plan will bar health care providers from charging patients out-of-network rates when the patient doesn't have control over which provider the patient sees (for example, during a hospitalization)."

In Congress, members of both parties favor efforts to end surprise billing, but they have not been able to agree on the details. Last December, the Senate passed out of committee a bill that would require a payment rate in surprise-billing disputes based on what the insurer pays in-network providers in the same area, while a House measure required binding arbitration in billing disputes above a certain amount. A compromise measure failed to advance (<https://www.vox.com/policy-and-politics/2019/12/9/21003480/stop-surprise-medical-bills-legislation>).

Because addressing surprise billing has bipartisan support, Congress "might make another run" at legislation, Klein said.

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