

Biden to Nominate Xavier Becerra as Health and Human Services Secretary

California attorney general is a staunch Affordable Care Act defender

By Stephen Miller, CEBS

December 8, 2020

On Dec. 7, President-elect Joe Biden announced he would nominate California Attorney General Xavier Becerra to serve as Secretary of Health and Human Services (HHS). If Becerra is confirmed by the Senate, the former congressman would be the first Latino HHS secretary.

Following Biden's announcement, Becerra tweeted (<https://twitter.com/XavierBecerra/status/1335958492700581889>), "In Congress, I helped pass the Affordable Care Act [ACA]. As California's Attorney General, I defended it. As Secretary of Health and Human Services, I will build on our progress and ensure every American has access to quality, affordable health care—through this pandemic and beyond."

Becerra is leading California's defense of the ACA before the U.S. Supreme Court (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/supreme-court-oral-argument-affordable-care-act.aspx).

According to *The Wall Street Journal*, "Although Mr. Becerra has endorsed Medicare for All, the single payer health-care plan championed by Vermont Sen. Bernie Sanders, people familiar with the process said he supports Mr. Biden's plan to expand health-care access through a public option (<https://www.wsj.com/articles/biden-to-nominate-xavier-becerra-as-health-and-human-services-secretary-11607298426>)."

Below are other positions Becerra has taken that could affect employer-provided health care.

ASSOCIATION HEALTH PLANS

Becerra joined a coalition of 12 attorneys general (<https://oag.ca.gov/news/press-releases/attorney-general-becerra-joins-coalition-12-attorneys-general-seeking-block-0>) who sued to block a Trump administration rule that, if implemented, would allow small businesses to band together through association health plans (www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/judge-blocks-association-health-plan-rule.aspx) to provide large-group market health insurance to their employees, thereby avoiding some of the regulatory requirements that individual states and the ACA impose on small-group market plans. For instance, more factors are allowed to be considered in calculating large-group insurance rates (<https://www.associationhealthplans.com/group-health/recent-trends/>) than small-group rates.

Becerra charged that the regulations would remove critical consumer health care protections under the ACA.

In November 2018, the Society for Human Resource Management joined an amicus brief (www.shrm.org/hr-today/public-policy/hr-public-policy-issues/Documents/2018.11.6.%20Docketed%20Motion%20for%20Leave%20to%20File%20Amicus%20Brief%20and%20Attached%20Amicus%20Brief.pdf) in support of the association health plan rule. The brief argued that the rule "promotes economies of scale and administrative efficiency for small businesses" that are seeking to offer health care coverage to their employees.

The Court of Appeals for the District of Columbia Circuit has not yet ruled on the validity of the rule (www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/how-the-supreme-court-could-rule-on-the-affordable-care-act.aspx), blogged Katie Keith, a former research professor at Georgetown University's Center on Health Insurance Reforms and a contributor to the Health Affairs blog. Should the court overturn the

rule, the Biden administration seems unlikely to appeal.

[SHRM resource: *What You Need to Know About ... the Affordable Care Act* (www.shrm.org/ResourcesAndTools/tools-and-samples/need-to-know/Pages/What-You-Need-to-Know-About-Affordable-Care-Act.aspx)]

SHORT-TERM HEALTH PLANS

Becerra opposes allowing insurers to sell short-term, limited duration health plans (<https://oag.ca.gov/news/press-releases/attorney-general-becerra-fights-protect-californians-out-pocket-healthcare>) that provide coverage for up to three years. These plans don't cover all services and treatments required by the ACA and cost less than ACA-compliant plans.

Last year, a district court judge in Washington, D.C., dismissed a lawsuit (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/h/resourcesandtools/hr-topics/benefits/pages/judge-dismisses-challenge-to-expanding-short-term-health-plans.aspx) challenging a Trump administration rule that expanded the scope of short-term health plans sold on the individual health insurance market.

Becerra said the rule "would flood the market with stripped-down, junk health insurance plans that don't provide the reliable, comprehensive coverage families need when an emergency occurs, leading to bankruptcy."

Some see short-term plans as a low-cost alternative to COBRA coverage (www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/final-rule-short-term-health-plans-and-cobra-choices.aspx) for employees who find themselves between jobs.

"Short-term plans can be an affordable solution to fill gaps in coverage," said Jeff Smedsrud, CEO of Pivot Health, a provider of low-cost health insurance alternatives. "New employees typically have a 90-day waiting period before insurance coverage begins or have an extremely expensive COBRA option when they leave a job. That's when short-term health plans, which are structured like major medical health plans, can provide coverage and save consumers about 50 percent or more when compared to ACA plans."

CONTRACEPTION AND ABORTION COVERAGE

Becerra opposed final rules issued by the Trump administration (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/final-rules-exemption-contraceptive-mandate.aspx) that exempt certain employers from the ACA's contraceptive mandate if their opposition is based on religious or moral grounds. "More than 62 million women have benefited from the Affordable Care Act's birth control coverage over the last decade (<https://oag.ca.gov/news/press-releases/attorneys-general-becerra-and-healey-lead-multistate-amicus-brief-defending-aca>)," Becerra said. "We will continue to fight to keep health care decisions between women and their doctors, not their employers."

The *Washington Post* reported, "When the administration issued rules in fall 2017 to broaden exemptions to the ACA's requirement for employers to cover contraception, Becerra was one of several state officials and interest groups to swiftly file complaints in federal court (<https://www.washingtonpost.com/politics/2020/12/07/health-202-xavier-becerra-has-been-defending-aca-court-now-he-could-manage-it/>)."

In July 2020, the Supreme Court upheld the rules (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/aca-religious-exemption-contraceptive-mandate.aspx) allowing private employers with moral or religious objections to deny women contraceptive coverage. The 7-2 decision was rendered in *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*.

Becerra also defended California's authority to require employers to cover abortion procedures (<https://khn.org/morning-breakout/california-defends-authority-to-require-insurers-to-cover-abortion-as-protecting-womens-rights/>).

SHRM's public policy priorities (<https://advocacy.shrm.org/>) include workplace health care. As such, SHRM works with the agencies responsible for health care oversight including the Department of Health and Human Services, Department of Labor, Department of Treasury, as well as the Internal Revenue Service.

Related SHRM Article:

What's Ahead for Health Care Under Biden? (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/whats-ahead-for-health-care-under-biden.aspx), *SHRM Online*, November 2020

HR DAILY NEWSLETTER

News, trends and analysis, as well as breaking news alerts, to help HR professionals do their jobs better each business day.

Email Address

**CONTACT US (WWW.SHRM.ORG/ABOUT-SHRM/PAGES/CONTACT-US.ASPX) | 800.283.SHRM
(7476)**

© 2020 SHRM. All Rights Reserved

SHRM provides content as a service to its readers and members. It does not offer legal advice, and cannot guarantee the accuracy or suitability of its content for a particular purpose.

[Disclaimer \(www.shrm.org/about-shrm/Pages/Terms-of-Use.aspx#Disclaimer\)](http://www.shrm.org/about-shrm/Pages/Terms-of-Use.aspx#Disclaimer)