

## Trump vs. Biden: HEALTH CARE POLICY

While the policy and politics of health care have dominated the last several election cycles, never have they been so prominent as they are today. As the country continues to battle COVID-19, there are now health care underpinnings to every aspect of the American economy. Health messaging around Obamacare and Medicare for All are in some ways quaint memories, with immediate and specific plans and policies being required to address the global pandemic and its associated effects.

Both the Trump and Biden campaigns have outlined their health care policy agendas for the next four years. Given the incredible range of issues within health care, it's impossible to cover them all in a short document; however, this overview provides a general comparison of how a Trump or Biden administration is likely to approach some of the top policy issues.

### COVID-19

COVID-19 is and will likely remain the top policy issue over the next year (or until a safe and effective vaccine is made widely available and Americans are comfortable with it). All policy during this period is likely to have a COVID-19 dimension. Significant questions remain about the approval, distribution, and administration of a COVID-19 vaccine; providers are struggling due to unforeseen expenses, significant drops in patient revenue, and concerns about liability; and insurers are faced with meaningful uncertainty as health care consumers lose or switch plans and forgo or delay necessary care. The next administration will therefore play a significant role in shaping America's pandemic response and dealing with the myriad questions the pandemic has brought to the forefront.

### Trump

Following the onset of the COVID-19 pandemic, the Trump administration waived numerous federal health care regulations to alleviate the pandemic's associated burdens. These waivers included relaxing requirements on health care facilities, lifting restrictions on telehealth services, expanding scope of practice flexibilities for health care providers, and granting a number of emergency use authorizations (EUAs). In May 2020, President Trump issued Executive Order (EO) 13924, which directed federal departments and agencies to consider the wisdom of making the deregulatory actions taken during the COVID-19 pandemic permanent. A second-term Trump administration would likely seek to make some of these regulatory waivers permanent and has already made clear its intention to make certain changes in the telehealth space permanent.

### Biden

A Biden administration would likely focus on issuing more national (and restrictive) guidance through the various agencies (for instance, a federal mask mandate and more specific requirements for employers protecting employees), requiring more COVID-19 data reporting, and depending on the state of the pandemic, having the federal government play a more active role in supervising COVID-19 testing. A Biden administration would likely maintain some of the Trump administration's regulatory waivers, such as those expanding access to telehealth services. Also, under Biden, there may be a greater level of comfort providing additional relief to providers who have experienced significantly decreased patient volume during the pandemic.

*Whoever the president is will make stopping or controlling the pandemic a top priority. As the country makes progress on treating and preventing the spread of COVID-19, the situation will almost certainly improve over the next year regardless of who is president.*

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The Trump administration has worked to combat or relax many of the Affordable Care Act's (ACA) policies with respect to health insurance. A Biden administration would seek to reverse the Trump administration's actions and would instead seek to align federal policy with the ACA's original intentions, as well as to go farther.

## Trump

A second-term Trump administration would continue advancing its deregulatory agenda, including in the area of federal health insurance regulations. The Trump administration is also currently supporting state legal challenges to the ACA in federal court. The states leading the lawsuit contend that the *Tax Cut and Jobs Act's* repeal of the individual mandate penalty invalidates the entire ACA. The U.S. Supreme Court will hear oral arguments in November, and will most likely issue a ruling on the case sometime in 2021. There are a number of ways the Supreme Court could rule that would not invalidate all of the ACA. Even in the case of certain components of the ACA being invalidated though, there would likely be support for targeted fixes from both Democrats and many Republicans in Congress.

President Trump has also vowed to ensure that health insurance plans would cover pre-existing conditions for all Americans, which happens to be one of the key tenets of the ACA. The Trump administration has not yet provided details on its specific plans in this area. Congressional Republicans have also pledged to protect Americans with pre-existing conditions.

## Biden

A Biden administration would work to undo many of the Trump administration's health care actions. For instance, a Biden administration would almost certainly pursue rulemaking to rescind the Trump administration's expanded allowance of short-term limited duration health plans and take an active role in defending the ACA from legal challenges.

Moreover, Vice President Biden has proposed establishing a public health insurance option that would compete with private health insurance plans, a "public option." Vice President Biden has also proposed increasing the availability of tax credits for purchasing health insurance, with a focus on those individuals who would have been eligible for Medicaid had their states expanded the program under the ACA. Many policies in this space would require congressional action as well. If Democrats were to seize control of the Senate and Biden were to be president, the Senate would likely seek to utilize reconciliation to pass COVID stimulus relief, as well as a public option potentially. Reconciliation is governed by stringent rules — notably that policies cannot increase the deficit outside of the 10-year budget window — which would present obstacles for these pricey policies.

Of note, Vice President Biden's running mate, Sen. Kamala Harris (D-Calif.), supported Medicare for All proposals as a U.S. Senator. She has subsequently walked back this position to call for a public option instead.

## Medicare

Medicare comprises approximately 15 percent of the entire federal budget, and this percentage is expected to grow over the next decade as Americans age and health costs continue to rise at a faster rate than inflation. Medicare policy over the next four or eight years will therefore be a significant topic of discussion.

## Trump

The Trump administration's Medicare policy focus has largely centered around promoting the use of Medicare Advantage (MA) plans, the continued development of alternative payment models (APMs) and value-based care initiatives, as well as a general preference for eliminating what, in its view, are market distortions. Trump administration officials have also sought to utilize the levers in the Medicare program to achieve other policy goals, such as bringing down prescription drug costs and helping to combat the opioid epidemic. A second-term Trump administration would likely continue these efforts.

## Biden

Vice President Biden has proposed lowering the Medicare eligibility age from 65 to 60. He has said this expansion of Medicare eligibility would be financed out of general revenues to protect the Medicare Trust Fund. He and Sen. Harris support the creation of a public option.

A Biden administration would also likely be interested in efforts to reform the Medicare prescription drug benefit and develop and deploy new APMs and value-based care initiatives, as the Trump administration is.

*One issue a Biden or Trump administration is likely to have to grapple with is the projected depletion of the Medicare Trust Fund in 2024. The imminency of this date will make decisions currently before Washington on Medicare Advanced Accelerated Payments repayment, specialist payment cuts for Evaluation and Management, and the need for additional funds to the Provider Relief Fund more complicated.*

## Medicaid

With more people facing unemployment or reduced income due to COVID-19, Medicaid policy will take on new importance in 2021. Medicaid is usually the second largest line-item in states' budgets. With states being especially cash-strapped due to COVID, state and federal governments will be faced with new policy decisions about the program. Even in non-COVID-19 times, Medicaid is the single largest health insurer in the country and plays especially important roles in the areas of maternal and child care, mental health, rural health care, and substance use treatment.

## Trump

The Trump administration has focused on promoting program integrity and state flexibility in its Medicaid policies. The U.S. Centers for Medicare and Medicaid Services (CMS) and the White House have pursued a number of policies to provide states with new flexibilities in their Medicaid programs and focused at length on block grants, work requirements for able bodied adults, and improving program transparency. A second-term Trump administration would likely continue to pursue these objectives, but perhaps not until the pandemic is over.

One key area of distinction between a Trump and Biden administration would be the Trump administration's willingness to pursue aggressive Medicaid program integrity measures, such as the previously proposed Medicaid Fiscal Accountability Regulation (MFAR). CMS originally proposed this rule in November 2019, which would have increased transparency around supplemental payments and likely ultimately cut down on state methods of increasing the federal contribution to their state Medicaid programs. After having received pushback on the rule from state governments, hospitals, and many components of the health care ecosystem, CMS announced that it would "[withdraw] the rule from the regulatory agenda" in September 2020. A second term Trump administration might decide to either reintroduce MFAR or pursue a similar rule for addressing Medicaid program integrity, especially after the COVID-19 pandemic has been sufficiently controlled and the U.S. economy recovers.

## Biden

A Biden administration is more likely to encourage Medicaid enrollment and will be less aggressive in addressing program integrity concerns. A Biden administration would seek to promote access to Medicaid through working with states that have not already expanded Medicaid access under the ACA or by providing new ways for the people in these states to access health insurance coverage. A Biden administration might also seek to expand the range of services that Medicaid covers. Working with Democrats in Congress, a Biden administration could prioritize legislation that boosts Medicaid's Federal Medical Assistance Percentage (FMAP) for states, as has been done during the public health emergency, potentially even adopting the idea of tying FMAP increases to unemployment rates, as recently proposed by Sen. Bob Casey (D-Pa.) (and as previously proposed by other legislators in 2008).

## Drug Pricing

Bringing down prescription drug costs is a campaign promise from both President Trump and Vice

President Biden, as well as Congressional Republicans and Democrats.

## Trump

The Trump administration has proposed numerous policies to address the high cost of prescription drugs, some of which would have previously been considered anathema to many Republican policymakers. These proposed policies include capping the price Americans pay for prescription drugs at the prices that are paid for them in other countries, permitting states to import certain drugs from Canada, changing hospital reimbursement through the 340B drug discount program, requiring federally qualified health centers to pass along discounts on insulin and epinephrine to their patients, and replacing the safe harbor for Medicare Part D rebates with a safe harbor for discounts offered to patients at point of sale. President Trump has also announced that the United States would soon send 33 million Medicare beneficiaries cards worth \$200 to help them pay for prescription drugs. Additionally, under President Trump, the FDA has sought to cut red tape at the agency and safely speed up drug approvals. The FDA has increased the number of approvals of new generic drugs at the FDA. In Fiscal Year (FY) 2019, the FDA approved a record 1,171 new generic drugs. A second-term Trump administration would likely seek to continue, finalize, and implement these policies and work with Congress on incremental changes to spur pharmaceutical competition and lower drug prices.

## Biden

A Biden administration would also make lowering prescription drug prices a top priority. In particular, Vice President Biden has said he would work with Congress to provide the Secretary of Health and Human Services with the authority to directly negotiate drug prices with drugmakers. Additionally, Vice President Biden has said he would limit launch prices for drugs that face no competition and limit price increases for all brand, biotech, and generic drugs to the inflation rate as a condition for their participation in the Medicare program. Another campaign pledge from the Biden team is a tax penalty on drug manufacturers that raise their prices at a greater rate than inflation. Many policies that were featured in Speaker Pelosi's Elijah E. Cummings Lower Drug Costs Now Act would also likely become part of a Biden administration's drug pricing agenda as well.

A Biden administration might not be altogether different from a Trump administration with respect to lowering drug prices, as the two have expressed support for similar policies in this area.

## Surprise Medical Billing

Surprise medical billing refers to the practice where a patient receives an unexpectedly high medical bill because the care that they received was out-of-network when they presumed the care to be in-network — or, due to an emergency was forced to receive care with out-of-network providers. This has been a source of bipartisan frustration over the past year, and the next administration will likely work with Congress to try to address the issue in a manner that would protect patients from these bills.

## Trump

The Trump administration has pushed for a solution to surprise billing in many packages that have moved through Congress recently; however, due to disagreements in Congress over how to accomplish the goal, a solution has not yet passed. While the Trump administration originally supported a benchmark approach for resolving surprise medical bill disputes, it has subsequently been more agnostic as to how such disputes would be resolved in an effort to find a solution. The Trump administration's main objective is eliminating surprise medical bills and ensuring that patients are held harmless during these disputes. In September 2020, President Trump issued an EO directing the U.S. Secretary of HHS to take administrative action to address surprise medical billing if there is no legislative solution to the issue by the end of 2020.

On a separate but somewhat related note, The Trump administration has also made health care price transparency a key part of the health care agenda, focusing on transparency policies for both hospitals and insurers. Last year, the Trump administration issued a hospital price transparency rule set to go into effect on January 1, 2021. The Trump administration also proposed requirements for health plans to disclose cost-sharing information upon request for plan participants,

beneficiaries, and enrollees. A Biden administration might be inclined to maintain these policies, although his campaign's calls for price transparency have primarily been related to health care payers as opposed to health care providers.

## **Biden**

Vice President Biden's campaign has also announced its opposition to the practice of surprise billing, but specifies only that he would "bar health care providers from charging patients out-of-network rates when the patient doesn't have control over which provider the patient sees."

## **Other Important Health Care Topics**

There are countless other health care issues a Trump or Biden administration will address, including the racial and ethnic disparities in health outcomes, social determinants of health, the opioid epidemic, mental health, maternal health, rural health, health care for veterans, the rise of youth vaping, and decreasing competition due to increasing provider and payer market concentration. There are without a doubt key differences in the way a Trump or Biden administration would address health care policy on many fronts, and generally how they view the federal role in health care policy. One critical area in particular where the distinction between a Trump administration and a Biden administration would be especially stark is around abortion, where the policies of a Biden or Trump administration are likely to be night and day.

*The bottom line though is that yes, there are certain major health care issues where a Trump administration would look very different from a Biden administration. In more areas than may meet the eye though, while the messengers and the delivery may be very different, the policies of a Trump administration or a Biden administration could be very similar.*

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