



Impact of 2020 Election Cycle on the Health Care Sector: Analysis and Scenarios

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As we move into the final phase of the 2020 election, the Healthsperien team is focused on analysis of potential election scenarios and sector developments in the near and long-term. In our issue brief released on August 19th, we covered broad issues in health care policy, animating candidate platforms and positioning in advance of the conventions. Not surprisingly, speakers at both party conventions addressed the COVID-19 pandemic response and economic recovery, with expected criticism of the Trump Administration from the Democrats and praise for the Administration's efforts in the crisis by the Republicans. Greater specifics on health care policy direction by either party, however, were limited, leaving many health care stakeholder questions unanswered. Still, candidate perspectives and goals for the future of the health care system have been evolving and shaping Biden and Trump's respective campaigns and plans for either a second term or the next Administration. This memo outlines implications of the presidential and state elections on health policy with issues our team will be exploring in the coming months:

Highlights

Similar health care issues related to COVID-19, affordable coverage, and prescription drug prices will dominate a Trump second term or a new Biden administration – and both their agendas would be affected by a Supreme Court decision that disrupts the Affordable Care Act (ACA). While Trump would build on existing policy direction for targeted changes in the coverage landscape, consumer protections, and state flexibility, we see Biden pursuing a more expansive vision for the sector with an enhanced role of government. A divided Congress would limit the actions of both administrations, but opportunities would emerge for bipartisan agreement and incremental action in a range of areas.

From crisis to management challenge. The next phase of COVID-19 will dominate both a Biden first 100 days and a Trump second term. Either administration will have to manage the emergence, testing and scaled distribution of new diagnostics, therapies, and vaccines, partnerships with the private sector and a public messaging effort. We expect Trump to emphasize state efforts to re-open and Biden to promote an expanded federal role in public health sphere. We see him using COVID-19's impact on health care to advance traditional Democratic coverage strategies. How the nation emerges from COVID-19 will affect either administration's ability to advance their health agenda.

Coverage debate amplified by Supreme Court uncertainty. Ensuring affordability in health insurance will continue to be a central issue for policymakers, with implications for provider reimbursement. A decision next year by the Supreme Court on the constitutionality of the mandate could cause substantial disruption to the current coverage debate, put pressure on policymakers (Republican) to protect pre-existing conditions (as set out in Trump’s recent Executive Order) and generate state-based solutions or raise the prospect of big government plays such as Medicare for All (by Democrats).

Biden to hold moderate position on coverage but faces calls for more aggressive approach. A Biden administration would aim to strengthen the ACA’s coverage goals and pursue a central feature of the Democratic “unity” platform, the addition of a “public option” into the ACA individual market framework. Questions remain about whether a bargain with the party’s progressive wing will lead the Biden team to push for more aggressive changes to the system that diminish the role of the private sector, particularly if the Senate shifts to Democratic control. A key issue that is likely to emerge is the negative impact that Medicare-like rates would have on the finances of doctors and hospitals.

Next steps on some, but not all concepts advanced in Executive Orders in Trump term. We see a Trump second-term agenda building on incremental coverage and consumer protection activities pursued in his first – and specifically focused on addressing surprise medical bills, price transparency, and expanding affordable solutions to coverage. While many individuals view his Executive Orders as more campaign rhetoric than policy direction, we expect to see a continued focus on many of those EOs, including addressing the prices of prescription drugs. If Republicans keep the Senate (and Democrats keep the House), we expect that Trump would look to regulatory solutions to give states more flexibility.

Next phase of payment and delivery reform. Either a Biden or Trump administration will face greater demands to find and scale successful models, integrate social determinants of health, and advance outcomes-based models for prescription drugs. While Trump has continued programs of previous administrations, it is unclear to what extent a Biden administration would engage on the next generation of quality/performance programs and price transparency efforts.

Provider rates and access face heightened concerns given economic outlook. Policy decisions about the scope and nature of government programs will have an impact on the kind of solutions and health care system we will see in the next decade and the extent to which policymakers will need to consider revenue-raising approaches. With adoption of broader government programs, we would likely see cuts to providers, with greater pressure on providers in the Medicare and post-acute care areas. Questions about the impact of lower reimbursement across the system include the extent of potential reductions in access to care, quality and health outcomes and the opportunities for new technologies to help the system weather those changes.

Broad factors influencing health policy in election outcomes and beyond

To a large extent, the outcomes of the 2020 election will not change the health policy landscape's trajectory as scientific, medical, and business innovation define health care and its possibilities and the economy and budget shapes its limits.

1. Ongoing challenges raised by COVID-19 regardless of political outcomes. Both the Trump and Biden campaigns are offering their views on the COVID-19 response and the status of efforts for how to provide treatments and distribute potential approved vaccines to the population in an affordable, efficient, and equitable way in partnership with the private sector. For both a Trump and Biden Administration, a deeper challenge lies with areas they are unable to control - the uncertainty around the disease's trajectory, the pace of scientific advances in developing diagnostics, therapies and vaccines, and the public's perceptions of their risks. They both will have to navigate operational and public messaging challenges arising from therapy and vaccine distribution that include staging its distribution (e.g., to health care workers first), setting standards for value and effectiveness (which will inevitably have effects on benefit design for payers), and creating a system to address issues relating to adverse side effects. ***The Healthsperien team is focused on how to help our clients navigate issues related to emergence of therapies and vaccines and guide potential client roles in planning efforts to address future pandemics.***

2. Renewed focus on coverage protections and portability will pressure policy guidance and raise risks for providers. COVID-19 and its substantial lockdown-related job losses have elevated discussions about access to health care services and the sustainability of protections offered under the current system (e.g., ACA exchange plans and Medicaid) as well as the importance of employer-based coverage. The number of uninsured is likely to remain a problem for the near-term with consumer discontent growing about the high premiums and deductibles of many health plans. If the economic recovery takes longer than expected, the call for coverage solutions will continue to grow through the foreseeable future.

The Supreme Court (SCOTUS) review of the constitutionality of the ACA's tax penalty and implications for the broader law has been on the radar of stakeholders for a long time, amplifying concerns about insurance coverage. (Oral arguments are scheduled for November 10th, with a decision expected next year.)¹ Concerns exist that a possible outcome of the case could lead to a dismantling of the wide-ranging law in its entirety (if the court does not deem the mandate severable from the rest of the law) or in part (if the court weighs in on what elements are severable). The recent passing of Justice Ginsburg and the nomination of a conservative judge has elevated the case's profile and public focus on the potential for disruption to health care coverage. It also brings greater attention to Justice Kavanaugh's potential views on core questions in the case (e.g., severability of an unconstitutional provision). Experts on the issues at stake believe that it is unlikely the law in its entirety will fall and see a range of possible outcomes, including a re-hearing of the case at the lower court level (which could extend the course of the case well into a next term). ***Healthsperien shares that view, though continues to assess the range of potential impacts on our clients and the health system overall. We will be following developments in this case and offer more detailed analysis in subsequent documents.***

¹ The ruling of the 5th Circuit was that the individual mandate was unconstitutional and tasked the district court (Northern District of Texas) to determine which elements of the law (if any) were "severable" (could be separated) from the rest of the law.

Ensuring affordability in health insurance will continue to be a central issue for policymakers and require a balance between policies that expand coverage and those that reduce payment rates to providers. Policymakers from both parties will continue to struggle to address growing concerns about network adequacy, cost sharing, and finding a solution for “surprise billing.” We expect a Biden Administration likely would look to an expanded role of government in solutions, but also for a Trump Administration to consider approaches that include public subsidies to some extent.

3. Payment and delivery innovations reaching new phase, requiring further commitment, incentives, and direction, with potential risks to providers. The Affordable Care Act (ACA) has been in place for roughly a decade, having meaningfully changed the coverage landscape as well as spurred advances in payment and delivery reforms and performance-based payment through initiatives at the Center for Medicare & Medicaid Services (CMS). At the same time, private sector efforts to test and scale innovative payment and delivery models have contributed to improvements in health outcomes, quality and access to care, and have led payers to become providers of care and providers to take on greater risk. Private sector managed care models in Medicare and Medicaid have continued to grow and serve seniors and low-income populations.

More work lies ahead to show the benefits of new approaches in addressing costs and quality, and we expect CMS to continue to focus on those efforts and the private sector to innovate regardless of the election outcome. New efforts the sector will consider include: outcomes-based payment for innovative therapies and new technologies, integrating approaches to address social determinants of health into mainstream care, addressing growth in chronic conditions, and designing new ways to deliver and pay for care in the home for vulnerable populations and seniors needing long-term care services and supports (LTSS). ***Healthsperien will continue to focus on helping our clients develop, participate in, and lead payment model innovation.***

4. Economic and budget factors will substantially limit choices of policymakers and access to care will become more challenging. Budget factors, made worse by a challenging economic recovery, will limit and bound the choices of policymakers over the next few years - and those will play out in the next cycle of COVID-19 relief, appropriations, health care “extenders”, and potential Medicare and Medicaid legislation. At the same as policymakers are likely to consider program cuts, catch-up services/utilization from delayed or missed care will also increase burdens on public programs. Bleak CBO deficit/debt projections and the revised date for the Medicare Trust Fund’s problems to 2024 will underscore those troubles and tough choices ahead. Policy decisions about the scope and nature of government programs – which account for roughly half of all health care spending – will have an impact on the kind of solutions and health care system we will see in the next decade and the extent to which policymakers will need to consider revenue-raising approaches. At a minimum, we expect to see cuts to post-acute care and other Medicare providers, with possible reductions in access to care. ***Healthsperien will continue to monitor the landscape and help our clients understand the risks and opportunities associated with the budget and economic outlook.***

2020 Presidential Scenarios

Scenario: Biden/Harris victory – transition and pressures for system change

In its first 100 days, a Biden Administration would need to balance the pressing challenges of taking on the COVID-19 crisis mid-stream and advance Democratic policy goals for the health care system. The composition of the Congress would shape how much flexibility a Biden Administration has in shaping the future of health care, and a potential SCOTUS decision next year on the ACA that disrupts the current approach would create openings for policies that make more fundamental system changes.

The Healthsperien team sees the following issues for a Biden Administration, and we would help our clients develop strategies to engage with and advance their agendas starting during the transition:

- ***Inherited COVID-19 crisis becomes a management challenge.*** A new Biden Administration would need to figure out what aspects of the Trump Administration’s response to continue - and what to change - and offer new ideas to show capability in dealing with the virus – including vaccine distribution. We see his administration focused on dealing with the nation’s emergence from the crisis using executive branch authorities and tools and using strong media allies and administration “honeymoon” to help with public messaging. Biden’s approach has been high level with support for a federal facemask mandate, increased testing, daily briefings to the public by scientists, appointment of a biodefense official to the National Security Council, national production of medical supplies and personal protective equipment, and improved surveillance, but without specific details. Facts on the ground (changes in new cases/deaths, approval of new testing technologies, a possible vaccine) will shape response and demands on the new administration, with setbacks blamed on prior administration and successes attributed to the new team. ***We see opportunities for our clients in helping the administration shape its response strategy, including a vaccine distribution plan.***
- ***Administration change opportunity to build on ACA coverage, but also opens field to broader role for government - and risks to providers.*** A Biden administration would aim to strengthen the ACA’s coverage goals and pursue a central feature of the Democratic “unity” platform, the addition of a “public option” into the ACA individual market framework. This represents a longstanding pursuit of Democrats left over from the original ACA development and could take many forms, including a CMS pilot of a public plan option in several different locales. Strong interest still exists in substantial reforms advanced by progressives and Sanders (e.g., Medicare for All). We expect to see details and comparisons of the pros and cons of different options and questions about the private, employer-based system coming from the think tank/foundation community in the early days of the administration regardless of Congressional control. That said, questions remain about whether a bargain with the party’s progressive wing will lead the Biden team to push for more aggressive changes to the system that diminish the role of the private sector, particularly if the Senate shifts to Democratic control. If so, a key issue that is likely to emerge is the negative impact that Medicare-like rates would have on the finances of doctors and hospitals.

At a minimum, we expect that the Biden team – staffed largely by former policy experts from the Obama administration - would put in place foundational elements to improve the ACA, such as auto

enrollment, modify proposals from the Trump administration such as short-term limited duration plans, and develop ideas, such as through waivers, to close coverage gaps. We expect a Biden administration would emphasize the impact of COVID-19 on coverage and use it to advance traditional Democratic coverage strategies such as lowering the Medicare eligibility age (to 60), expanding public coverage and subsidies for additional populations (including undocumented immigrants) as well as greater federal subsidies (COBRA, ACA plans), additional support for Medicaid expansions, and greater use of special enrollment periods. ***Healthsperien is focused on the potential range of coverage strategies presented by this election outcome and considering risks and opportunities for our clients in the payer and provider sectors.***

- ***Support for long-term care services and supports (LTSS) and caregivers.*** Biden’s campaign is advancing several approaches to direct resources toward long-term care, specifically to care in home settings. His current focus is on the sector’s workers, particularly a proposal to create a \$5,000 tax credit for informal caregivers and an aim to increase the current home care workforce by at least 600,000. He would expand LTSS worker training programs for entry-level and ladder jobs and authorizing new, large scale, CMMI-funded 4-year demonstration programs to test innovative models of post-acute care and LTSS delivery. ***We expect that the Biden team would continue to support the Trump administration’s efforts to expand models for care in the home and expand on those efforts and stand ready to help our clients interested in home-based care solutions.***
- ***Lowering prescription drug prices with an expanded role for government.*** We expect a Biden administration would seek to limit the prices of prescription drugs for consumers with a moderate approach and may look to the provisions of the bipartisan Prescription Drug Pricing Reduction Act (PDPRA) of 2019 for ideas. We expect him to face headwinds in this effort from industry with concerns about the impact on innovation and access and challenges from the progressive wing of his party which is interested in more aggressive policy approaches. Biden has specifically come out in support of an expanded government role in the regulation of drug prices (e.g., tax penalties linked to inflation) and policies such as importation, but it is unclear to what extent the Biden team will focus on advancing outcomes-based payment models.

Beyond those issues, it is unclear to what extent a Biden/Harris administration would engage on payment and delivery reform, the next generation of quality/performance programs, consumer transparency efforts, and managed care programs that have been evolving over the last decade. As the system moves away from a fee-for-service system, there is an expected focus on patient-centered care. Neither Biden nor Harris have been leaders in the health care area, and Biden’s main effort in the cancer “Moonshot” was in its early stages when he left the Vice President’s office. ***The Healthsperien team sees opportunities to offer solutions to an incoming Biden administration and will be focused on policy development in this area.***

Impact of Congressional control. If the Republicans keep the Senate (and the Democrats retain the House), more ambitious elements of the Biden agenda – such as a public plan - are unlikely to move forward, given the history of the issue and the longstanding Republican opposition to such an approach (including a view it is a “Trojan horse” for single payer). While a narrow Democratic margin would raise the likelihood of a public plan option advancing, policies such as Medicare for All would still face headwinds (even with talk of ending the filibuster) as we expect Senate and House Democrats to get bogged down in the complexity of getting to a workable and affordable policy and encounter substantial disagreement over the policy direction from moderate Democrats.

Impact of SCOTUS disruption to the ACA. If a SCOTUS decision compromises the insurance provisions of the ACA, we would see a more challenging environment for affordable coverage in the individual and small-group market and state calls for federal support and action. We expect that proponents of Medicare for All – with a Democratic majority in the Senate - would use that outcome as an opportunity to advance a more aggressive change in the structure of U.S. insurance markets. Even with a divided Congress we expect the environment would be open for a bipartisan “skinny” ACA bill with provisions to ensure coverage of individuals with pre-existing conditions.

Trump/Pence victory

The early days of a Trump second term would be dominated by the ongoing COVID-19 crisis – much as it would with a Biden administration. At the same time, the Administration would advance other initiatives outlined in his “An America-First Healthcare Plan”, which addresses underlying challenges with coverage and costs in the market and builds on a suite of targeted efforts undertaken in the first term. Those actions included a range of initiatives to: address affordability and create more choices for coverage (e.g., HRAs, limited duration plans and association plans), expand telehealth services, support consumer protections (right-to-try, transparency, surprise medical bills), and improve efforts to combat kidney disease, HIV and opioid addiction. During his first term, he frequently used Executive Orders (EOs) to advance policy direction (given the divided Congress) and we would expect to see some future action in those areas even if their current purpose is to support the campaign message. Trump also might take the opportunity of a second term win to change up the health care team (e.g., advancing Seema Verma as HHS Secretary).

Healthsperien would help our clients understand and assess the strategic implications of a Trump second term, in particular identifying what specific priorities and actions are likely to emerge from the suite of Executive Orders advanced by the President.

- ***Dealing with COVID-19.*** Trump and his team would emphasize successes (and de-emphasize setbacks) of the administration’s efforts in addressing the virus, including the development of testing technologies, treatments and vaccines that may begin to emerge in late 2020 and 2021. We anticipate Trump would stay the course with leaving decisions to the states regarding public health measures such as lockdowns, social distancing, and masking. The emergence of a vaccine by end of 2020 is a priority of his Operation Warp Speed initiative, but challenges lie ahead for how the administration will operationalize administration of the vaccine, stage its distribution, and face risks if the vaccine does not work or proves unsafe. We expect COVID-19 would take up much of the administration’s health care focus in early 2021, especially with messaging efforts. ***We will be focused on how to help our clients understand administration policies and needs related to vaccine distribution.***
- ***Cost and coverage issues and the ACA.*** The ACA has been a target of Trump’s public criticism throughout his administration (and generally a rallying cry for supporters), yet the law for the most part remains intact though with some Republican-led modifications. Throughout his first term, Trump has stressed the importance of coverage for pre-existing conditions as a goal and echoed his interest in finding a solution in that area in a recent Executive Order, particularly if the SCOTUS case leads to substantial disruption of the ACA. Additionally, the Trump administration has advocated for Medicaid block grants and other initiatives that grant the states flexibility. ***Healthsperien will focus on analysis and development of potential client initiatives in this area and opportunities for clients to offer solutions to help the administration advance its coverage goals.***
- ***Value-based payment and new payment models.*** The Trump administration has largely continued and built on the efforts of previous administrations to encourage innovation in payment and delivery through the Medicare and Medicaid programs (including through EOs). Those efforts include a focus on social determinants of health, the Quality Payment Program, and care in the home. We expect a Trump

second term would include a focus on those programs and predict additional support for rural health reforms from Medicare Advantage plans given the area's high potential for innovation. ***Healthspieren would continue to support its clients' efforts in value-based payment and identify ongoing and new opportunities to engage with the administration.***

- ***Other second-term priorities build on cost and quality efforts.*** Based on his two recent Executive Orders for his second-term agenda, we see a Trump second term focused on addressing surprise medical bills, enhancing price transparency, expanding access to affordable medicines with approval of generic and biosimilar drugs, improving quality of care for veterans, and expanding access to health care. He also promised in a recent speech to send \$200 discount cards to seniors for prescription drugs. ***We will continue to monitor the implications of those EOs and follow-through at the agency level.***
- ***Continued focus on addressing the prices of prescription drugs despite tension with industry.*** Trump is expected to keep the pressure on the pharmaceutical industry through pursuit/negotiation of proposals in recent EOs, such as the rollback of safe harbors on drug rebates for Medicare Part D. Other EO policies, such as the international pricing index and importation will continue to cause tension with industry stakeholders and color discussions and negotiations over rollout of future vaccines and therapies for COVID-19. It is possible in a second term this focus may open the door for new partnerships between the administration and insurers who are also looking to rein in drug costs. ***Healthspieren's expertise in the life sciences and intersections with payer policies will help to guide our clients on these issues.***

Impact of Congressional control. If Republicans keep the Senate (and Democrats keep the House), we expect that President Trump would continue to use his EO pathway to make tweaks to the ACA that would allow states more flexibility in benefit levels, rating rules, and coverage options. A Democratic win in the Senate would advance robust debate among Congressional Democrats about a public plan and Medicare for All and possibly create opportunities for dealing with the Trump Administration on coverage solutions. Should the Republicans take the House and maintain Senate control, we expect that President Trump would pursue state-based flexibilities and coverage solutions such as high-risk pools to address pre-existing conditions.

Impact of SCOTUS disruption to the ACA. If the ACA remains intact, we expect the Trump team would continue to pursue avenues that allow states to adopt more flexible approaches to marketplace and Medicaid expansion coverage (including through waivers). If SCOTUS action causes disruption to the basic ACA coverage approach, we expect a Trump administration would use the opportunity to advance state-based solutions, including with solutions like high-risk pools to ensure protection for people with pre-existing conditions. However, the absence of subsidy dollars for coverage would stress the health care system and the Administration might look to the new Congress to negotiate a revised approach. With such an outcome, we believe President Trump may be open to dealing with House Democrats to develop a solution on the coverage front and risk tensions with Republicans in the Senate.

State elections and impact on policy

State policy has a heavy influence on the market for health insurance, Medicaid, and public health and governors are influential players in countering or supporting a President's health care agenda. There are 4 Democratic and 7 Republican seats up for re-election in the gubernatorial races, and the outcomes of the races that shift control from one party to the other have implications for health care policy. The following are contentious issues that states may be pursuing depending on the outcome of state elections:

The Medicaid expansion option has been gaining traction among Republican-led states through voter approved ballot measures. Currently, 38 states (plus the District of Columbia) have adopted the Medicaid expansion. Despite opposition, Missouri and Oklahoma approved expansion of their Medicaid programs and are expecting to begin implementation by the middle of next year. We are watching how competitive state elections will impact the future of the Medicaid expansion in states that have not yet expanded or implemented (e.g., North Carolina, Montana), and the extent to which states pursue or advance waiver initiatives that explore different approaches to coverage (e.g., Texas, Florida).

The use and adoption of managed care has grown substantially and has taken root in states regardless of political leadership. States also are seeking to better align payment with quality and improved health outcomes, specifically looking into managed care contract changes focused on value-based payment initiatives and the social determinants of health. The election outcomes could influence state decisions about those programs.

Healthsperien will be monitoring those changes to help our clients consider new opportunities at the state level.

With the increased aging population, states are preparing to rebalance LTSS service delivery to reduce reliance on institutional care settings, using managed LTSS, adopting LTSS payment reforms, and better integrating care for Medicare-Medicaid dual eligibles. As the conversation about rebalancing and long-term care more broadly has been left out of the national debates on health care reform, it will be interesting to watch how state-level candidates focus on those issues and the opportunities created by the election outcome.