

Update on the 2020 Election and Health Policy/COVID strategy

11.9.20

Over this weekend, as ballot counting in several swing states continued, major media outlets projected that former Vice President Biden will be the likely winner in Pennsylvania and the election overall. As we wait for the Electors to cast votes in their respective states on December 14th, we expect to see continued focus on swing state outcomes, including a recount in Georgia. Political analysts see an ultimate Biden victory as likely, along with a Republican Senate and a Democratic House with a narrower margin, though other possible outcomes could arise, including from two Senate races yet to be decided in Georgia's run-off elections on January 5th.

Healthsperien has previously put together [scenarios for health care](#) under a range of outcomes but continues to modify our thoughts and insights as events unfold.

The next several weeks are likely to be a complicated period - our team is focused on many issues for our clients including the following:

- **The Biden/Republican Senate scenario.** Given a potential scenario with a Biden presidency and a Republican Senate, we would expect to see a transition in the regulatory apparatus at the Department of Health and Human Services, a review of Trump Executive Orders, and an assessment of what elements of the Biden agenda to move forward administratively. A history of constructive engagement on policy between former Vice President Biden and Senate Majority Leader McConnell could create legislative opportunities to address bipartisan health goals such as prescription drug pricing, surprise billing, transparency, Medicare provider payments, and policies to address chronic conditions. We expect that under that scenario, more aggressive proposals raised during the campaign to expand the role of government in health care (e.g., public plan) would lose momentum, but still be part of the public dialogue about coverage. ***We will continue to work with our payer and provider clients on understanding the potential impact of policies to increase coverage on rates and flexibilities and any changes in the regulatory environment.***
- **End-of-year funding – and strategic positioning.** Even with some continued political uncertainty, Congress is looking to advance an end-of-year funding bill instead of another continuing resolution to address many things including additional COVID relief funding. We expect to see a complicated set of negotiations where all parties are trying to maximize the impact and need for action now with flexibilities in a new administration. ***We are focused on how to help our clients understand the financial impact of this process on their businesses, especially for provider relief.***

- **Supreme Court and the ACA.** Oral arguments are set for tomorrow (November 10, 2020) in the Supreme Court case, *Texas v. California* which may affect the future of the Affordable Care Act with a decision expected next year. We expect to hear questions related to the effect of the individual mandate and its severability from other provisions of the law, particularly those related to the functioning of the individual market rules. ***The Healthsperien team will be monitoring the oral arguments and will report back to our clients with more detailed insights on the case.***
- **COVID advisors.** The Biden team today [announced](#) the creation of an advisory task force to guide a potential Biden administration on policies to address the coronavirus pandemic on the same day Pfizer (which has a \$2 billion deal with the federal government) announced positive results from its vaccine development. Individuals nominated included notable physicians and public health officials co-chaired by Vivek Murthy, former Surgeon General and David Kessler, former FDA commissioner and Marcella Nunez-Smith, a Yale epidemiologist.

We see the move as getting a jump start on an important issue prior to an official transition and secure media attention for the campaign's messaging related to addressing the virus. Additional commentary from the campaign has focused on how Biden would engage with governors on mask mandates, direct the Centers for Disease Control and Prevention to provide national guidance for business and school lockdowns, provide additional investments in vaccines, therapies, and personal protective equipment, and develop strategies for vaccine distribution and contact tracing. The medical and public health composition of this initial Biden team raises questions about how his administration would balance the economic and other societal trade-offs with the virus and further lockdowns. (The Trump administration's coronavirus team had shifted gears this summer to re-opening the economy and ensuring worker safety but has faced challenges with messaging and coordination.)

The Healthsperien team has spent much of the last year on the public response to the coronavirus and has [tracked policies](#) put into place to address coverage gaps, provide incentives for and promote new therapies and re-open the economy.

- **COVID policy.** We see a Biden administration picking up the substantial challenge where the Trump administration left off (e.g., Operation Warp Speed) and leveraging its advances. As we noted earlier, there are few differences in COVID policy approaches for the two candidates as the course of the virus remains unpredictable and to a large extent outside of the hands of government actions; the main differences would be Biden's emphasis on national versus state roles in the response and messaging about national standards. We expect a Biden administration to prioritize this issue with help from a supportive media, but to face complex challenges developing an effective vaccine distribution and roll-out strategy while advancing further developments of therapies and treatments. We also anticipate that while the approach could offer states important tactical guidance to address the virus, it would at the same time create tensions with state officials exercising traditional public health authorities and views about how to most effectively open their economies given local

conditions. ***Healthsperien would in this scenario be prepared to offer guidance and advice about economic, technical, and policy factors that could aid stakeholders at the federal and state level.***

- **Health policies repackaged to leverage the COVID crisis.** Even as direct coronavirus response would dominate the early days of a new Biden administration, we see the new team using the attention on health care issues raised by the virus to advance agenda items that might face challenges in a Republican senate. For example, we anticipate calls for expanded health care coverage (such as reducing the age of Medicare eligibility to 60, subsidizing COBRA coverage and creating new special enrollment periods) would find a new home as part of a response plan to coronavirus. Similarly, we expect calls for funding of an expanded public health workforce that also addresses social determinants of health as well as support for expanded resources to support caregivers (as raised during the Biden campaign). ***In this case, Healthsperien would keep abreast of opportunities to shape opportunities for our clients that align with those administration priorities.***
- **Provider needs and the importance of care in the home and hospice.** Regardless of political outcomes we expect there will be bipartisan support for continued provider relief, and continued attention on the need to support hospice, home care and other services provided in long-term care facilities. We expect it will be important to inform and educate the incoming administration and Congress about the importance of hospice, home care and telemedicine in appropriately protecting seniors and will continue to support our clients in this area. ***Healthsperien plans to continue to advance proposals developed in our [issue brief on helping seniors in the pandemic and in future pandemics](#).***