



Biden Health Policy Agenda on NCHC Priorities: Primer and Analysis

Policy Memorandum

10/27/20

Table of Contents

| | |
|--|---|
| The Biden Plan: Overview and Summary | 1 |
| Surprise Billing | 1 |
| Drug Pricing..... | 2 |
| COVID-19 Response | 4 |
| Coverage | 4 |
| Further Analysis and Forecast | 5 |
| Summary of Biden-Trump Overlap..... | 6 |

The Biden Plan: Overview and Summary

The following memo summarizes the “Biden Plan” for health care, according to the campaign and statements made by Vice President Biden and surrogates in recent months. We also compare the plan to the Trump Administration, where appropriate.

In short, the campaign’s health care plan would build on core components of the ACA (e.g., expanding individual market subsidies and expanding coverage) and establish a public option. Specific details of the public option are not available – such as specific reimbursement rates – which will be crucial to understanding its impact on the payer and provider landscape. In addition, the plan supports ending surprise billing and lowering prescription drug prices. We estimate the possible routes on surprise billing and the tactics to address drug prices would be similar to those already proposed this year. The Biden Plan, however, includes an “independent review board” for specialty drug prices.

Surprise Billing

End surprise billing (but does not offer specific details)

The [Biden Plan](#) would address surprise billing by prohibiting healthcare providers from “charging patients out-of-network rates when the patient doesn’t have control over which provider the patient sees.” Without more details, the plan could match several previously introduced bills.

Surprise billing has been politically challenging, but change would be popular among consumers and an opportunity for bipartisan success for Biden.

Previous legislation and forecast

There have been four prominent legislative proposals. A House and Senate “[compromise](#)” bill combines elements of S. 1895 and H.R. 2328, setting a benchmark rate for out-of-network charges. Claims over \$750 would go to a arbitration process to settle the amount. In contrast, the Ways and Means Committee bill does not offer a benchmark. Instead, voluntary negotiations occur over a 30-day period. Recent attempts at passing surprise billing legislation have been unsuccessful, including the bipartisan attempt to include legislation in the December 2019 spending bill that the White House endorsed. Analysts [predict](#) that Biden will not make surprise billing an immediate priority, and the policy has not been widely discussed on the campaign trail.

That said, the context of surprise billing has also changed since December 2019. The rise in COVID-related surprise billing (including recent [air ambulance rides](#)) could respark conversations about the topic in the near future. Some states in response to the COVID-19 pandemic have passed bills to protect consumers from surprise billing, such as Ohio and Idaho, although these do not usually cover consumers with policies that don't have to comply with ACA requirements (such as short-term plans and hospital indemnity plans). Additionally, these state-level requirements do not apply to most people who receive healthcare through their employer, who constitute the majority of those covered privately. Surprise billing has so far not been a part of the Coronavirus packages.

Drug Pricing

Negotiate drug prices through Medicare

The plan does not specify which drugs would be negotiated, but the plan assumes Medicare buyer power would reduce prices. The [AARP](#) stated that “Medicare could have saved \$14.4 billion on just 50 drugs in 2016 if the program had paid the same prices as the Department of Veterans Affairs, which is allowed to bargain for discounts.”

Limit launch prices for specific drugs that face no competition

The campaign reasons that drugs without competition need another mechanism to align prices with value. The plan includes establishing an independent review board under the Secretary of Health and Human Services that would assess their value and recommend a reasonable price based on external reference pricing (e.g., average price in other countries) or based on an evaluation by the board members if the drug is not used internationally yet. The drug price determined would be what Medicare and the public option pay and available to commercial payers.

Somewhat similarly, President Trump's Most-Favored-Nation executive order sets the prices for drugs in Medicare Part B and Part D to no more than the prices paid by a basket of other developed countries. This pricing scheme is similar to the International Price Index proposed rule from 2019, although there is less detail included in the executive orders released by the Trump administration. Both administrations favor using international drug prices, to some degree, to determine domestic drug prices.

Limit price increases for generic drugs to inflation

Participating in the Medicare program and public option will require companies to not increase their prices more than the general inflation rate; if they violate this, they will face a tax penalty. The idea is similar to the inflation rebate in the Prescription Drug Price Reduction Act ([PDPRA](#)), which mandates that price concessions are paid to the government if drug prices grow faster than inflation (list prices in Part D and average sales prices in Part B).

Allow consumers to buy prescription drugs from other countries, end tax breaks on advertisement, and boost generic manufacturers access to samples

Biden's importation plan is similar to elements of [Trump's](#) "America First Health Plan," which includes a provision allowing the importation of prescription drugs from Canada. Excluded from Trump's plan is biologic drugs, including insulin. HHS Secretary Alex Azar said that individuals would not be allowed to purchase drugs from Canada by themselves, and would instead do so through state-run programs. Bans on Direct to Consumer Advertising (DTCA) could be another source of bipartisan agreement on drug legislation. Lastly, the Biden Plan supports Senator Leahy's proposal to ensure generic manufacturers have access to a sample.

Previous Legislation: the Biden Plan vs. the Trump Plan and PDPRA

A major distinction between the Biden Plan's approach to drug pricing and PDPRA is that [PDPRA](#) does not regulate launch prices. [Brookings](#) suggests that manufacturers will be incentivized to launch at a higher price because they know they will not be able to raise the list price faster than inflation. However, Brookings also points out that if launch prices are raised to the extent that they fully offset the effects of the Part D inflation rebate, spending on current drugs would be reduced but newly developed drug spending would not be reduced.

Figure 1. "Comparison of the Trump Administration and Biden Campaign on Prescription Drug Proposals," Kaiser Family Foundation

| | Trump Administration  | Biden Campaign  |
|---|---|--|
| Government negotiates with drug companies to lower prices | No proposal¹ | Yes, to leverage lower prices for Medicare and other payers⁴ |
| Use international drug prices | "Most favored nation" drug pricing models for certain high-cost Medicare Part B and Part D drugs ² | Create review board that uses international reference price in helping set prices for newly-launched specialty drugs |
| Allow drug importation | ✓ | ✓ |
| Limit drug price increases to inflation | Medicare Part B drugs only ³ | Medicare and public option: all brands, biologics, and some generics |
| Cap out-of-pocket drug costs in Medicare Part D | ✓ ³ | ✓ ⁴ |
| Ban Medicare Part D rebates | ✓ ² | No proposal |
| Prescription drug advertising | Require drug prices in TV ads Status: Struck down by federal court | Eliminate drug company tax break for pharmaceutical advertising |

¹President Trump stated on July 24, 2020 he may support government drug negotiations, but he has not released a proposal or endorsed pending Congressional legislation to do so. ²Not yet implemented, requires further Administration action to implement. ³Included in the Administration's Budget but not adopted by Congress. ⁴In the Biden-Sanders Unity Task Force Recommendations.



COVID-19 Response

A seven step response:

- Expand testing by doubling the number of drive-through testing sites, invest in more testing that includes at home tests and instant tests, create a Pandemic Testing Board, and establish a US Public Health Jobs Corps to perform contract tracing.
- Use the Defense Production Act to increase production of PPE.
- Provide clear guidance and resources for schools, small businesses, and families and provide more funding for state and local governments.
- Plan for the effective and equitable distribution of treatments and vaccines as well as invest \$25 billion in vaccine manufacturing and distribution.
- Protect older Americans and high-risk groups, and focus on racial and ethnic disparities by creating a task force.
- Plan for future pandemic threats; reestablish a relationship with the World Health Organization.
- Implement mask mandates nationwide (mainly through state authorities).

[Stat News](#) reported that the Biden Plan includes a target of 100 million tests per month, with daily pandemic briefings conducted by scientists and public health experts. Analysts predict that he will rely on executive orders and federal guidance. The plan also includes aggressive messaging campaigns on vaccines, masks, social distancing, placing a biodefense official on the National Security Council, and improving COVID-19 tracking through insurance claims data. Of note, some of the populations most affected by the pandemic do not have insurance, so including that subpopulation in data analyses may prove to be a challenge.

Coverage

Lower medicare age to 60 for voluntary enrollment

As part of the Unity Task Force Recommendations, Biden plans to lower the age to enroll in Medicare from 65 to 60. Americans could choose between employer-provided health insurance, Medicare, or a public option. Reducing the age would be financed using general federal revenue instead of the Medicare Trust Fund. NCHC has supported the move because of the potential benefits for both employers and for Medicare, but risks of adverse selection are key and providers would be concerned about lower reimbursement rates from Medicare. Some on the left [worry](#) this plan is an inadequate substitute for Senator Sanders' Medicare-For-All plan. Other commentators maintain that this is a significant step and is easier to implement than other plans that call for creating a parallel Medicare-like plan run by the federal government.

Keep and build the Affordable Care Act with a public option

The plan states that “the public option will reduce costs for patients by negotiating lower prices from hospitals and other healthcare providers.” Biden also wants to increase the value of tax credits to lower premiums and extend coverage by eliminating the 400% income cap on tax credit eligibility (currently, only families that make between 100% and 400% of the federal poverty level are eligible for a tax credit) and lowering the limit of the cost of coverage from 9.86% of income to 8.5%.

Expand coverage to low-income Americans via public option auto-enrollment

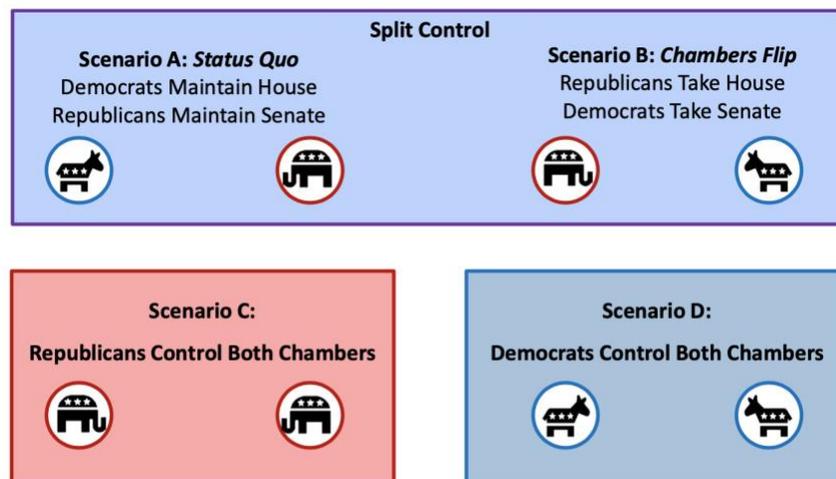
Currently 14 states have not expanded Medicaid. The Biden Plan would offer premium-free access to the public option to people who would be eligible for Medicaid but are not currently enrolled because of the state's expansion status. Additionally, he would automatically enroll individuals making below 138% of the federal poverty level when they enroll in certain programs or public schools. Lastly, the Biden Plan proposed to base premium and cost-sharing subsidies for individual exchange policies on Gold plans instead of the Silver plans, which would reduce deductibles and co-pays for most. The federal government would assume more spending under this plan, while lowering costs for low-income individuals.

Further Analysis and Forecast

If elected, Biden's effectiveness will depend largely on whether Congress is split. The outlook for the full Biden Plan would likely rely on the outcome of Senate races. Without Democratic control of the House and Senate, elements of the Biden Plan like the public option are unlikely. A public option, however, has failed in a Democratic majority before in 2009. Biden's proposal is actually more expansive than the public option that was part of the ACA originally, and thus it seems unlikely that it would pass in the Senate without a flip. The Medicare-For-All debate has had a mixed effect on American's willingness to accept a larger federal role in health care.

In addition, Biden's plan also includes a repeal of the Hyde Amendment and supports some federal funding for abortions, which is highly controversial for Democrats attempting to hold on to a House majority. As of 2019, the Democratic-led House did not introduce a repeal of the Hyde Amendment. In regards to the filibuster, the [Hill](#) reports that "Republican votes are not expected for basically any Democratic health care proposals, including expanding Obamacare without a public option, and Democrats will not have the 60 votes needed to clear a filibuster."

Figure 2. "Federal Election Scenarios," Manatt Health, *2020 Presidential Campaign Healthcare Policy Positions*



Additionally, the timeline for the Biden Plan is unclear. The [Hill](#) also reported that “the Biden campaign did not respond when asked whether a President Biden would push for a public option right away or start with a smaller bid on health care.” The transition team has signaled that the foremost priority for a Biden Administration would be controlling the COVID-19 epidemic, which reduces the chances that Biden will prioritize coverage in the early stages of the administration.

Figure 3. *Summary of Biden-Trump Overlap*

