



## Policy Brief

To accommodate the upcoming holiday season, the next edition of the Policy Brief will be released on December 4<sup>th</sup>. AHPA wishes you and your family a wonderful Thanksgiving holiday!

November 13, 2020



### What a Joe Biden Presidency Means for Health Care

Former Vice President Joe Biden has secured the presidency and is expected to be sworn in on January 20<sup>th</sup>. The future of Biden's health care agenda now depends on two run-off races in Georgia that will determine which party controls the Senate and ultimately what policies move forward. If Democrats win the Senate, this would facilitate passing policies to bolster or reconstruct the Affordable Care Act (ACA); Republican control would make this and the passage of a [public option](#) more difficult. Regardless of the outcome, health care will be a top priority in the Biden Administration, with many changes likely to be driven through [Executive Orders](#) and regulatory action. Below is what to expect on key issues impacting health care.

#### The Affordable Care Act

Bolstering the ACA is a cornerstone of Biden's health care plan. If the Supreme Court invalidates the ACA, Biden will have to work with Congress to find a way to restore insurance for the estimated [21.1 million people](#) that will become uninsured. If the law remains intact, Biden is expected to reverse many of President Trump's policies to weaken the law, like limiting short-term health insurance plans and restoring [non-discrimination regulations](#). Biden could also establish a [public option](#) on the Health Insurance Exchanges and increase the size of tax credits.

## **COVID-19**

Biden has said he'll take action to fight the pandemic on his first day in office. To prepare for that effort, he recently announced a [Coronavirus Taskforce](#) responsible for developing a blueprint to fight the virus. While President Trump has deferred most of the COVID-19 response to the states, the federal government is expected to take a larger role under a Biden Administration. Biden wants to establish a [Pandemic Testing Advisory Board](#) that would coordinate a nationwide response. He also supports recruiting [contact tracers](#), subsidizing COBRA insurance coverage during the pandemic and expanding the Health Insurance Exchanges' enrollment period.

## **Medicare and Medicaid**

Biden wants to lower the Medicare eligibility age from 65 to 60 and cover dental, vision and hearing under traditional Medicare (something current beneficiaries have to buy separately). For Medicaid, policies that were promoted during the Trump Administration (e.g. work requirements and premiums) will likely be blocked under a Biden Administration. Biden's proposed public option would extend premium-free coverage to individuals in non-Medicaid expansion states, but this policy is unlikely to pass if Republicans keep control of the Senate.

## **Health Care Costs**

Reducing health care costs will be a key goal for President-elect Biden, particularly since the Congressional Budget Office [predicts](#) that the Medicare Trust Fund will become insolvent by 2024. Based on Biden's [health care plan](#), his policies to reduce costs won't be much different than President Trump's. This includes banning surprise billing, allowing consumers to buy drugs from other countries and permitting Medicare to negotiate drug prices. However, Biden is expected to take a more active role in preventing health care mergers. Other policies, such as site-neutral payments, are also expected to continue under a Biden Administration.

## **Value-Based Care**

Models currently run by CMMI are expected to continue but how the models are structured, such as the quality metrics used or whether a model is voluntary or mandatory, may change. Biden will also likely place a greater focus on the need to address social determinants of health and reduce health disparities.

## **Price Transparency and Surprise Billing**

Because advancing price transparency and prohibiting surprise billing has bipartisan support, policymaking on those issues is expected to continue. Therefore, it is unlikely for the price transparency rule of 2019 to be rolled back under a Biden Administration.



## The 117<sup>th</sup> U.S. Congress—What Can We Expect?

President-elect Joe Biden is [set](#) to take the country in a different political direction unless President Trump's legal [challenging](#) of the election process is found valid. If Democrats manage to win both the House and the Senate, we can [expect](#) a much more ambitious policy agenda from Biden, such as a large stimulus package and tax increases on corporations. However, if Republicans win one of two key Senate [runoff](#) races in Georgia, they will maintain control of the Senate and will likely cause President-elect Biden to make changes through regulatory avenues. The new President-elect would also have to carefully choose his cabinet members and appointees to agencies because they will be heavily scrutinized by the Senate majority. Republicans winning seats in the House and electing more far-right representatives shows that there are still strong conservative ideals held in the U.S. that the new President-elect will have to address in the next term.

### **Notable Elections to Congress**

The 2020 election brought many new firsts for electorates, and we are witnessing more polarizing viewpoints populate Congress. Several notable [elections](#) for the 117th Congress include:

- Marjorie Taylor Green (R-GA), a supporter of a fringe conspiracy group, QAnon.
- The youngest elected member of Congress, 25-year-old Madison Cawthorn (R-NC), who has taken strong [conservative](#) stances on issues from abortion to racial justice.
- The first two openly gay black men, Ritchie Torres (D-NY) and Mondaire Jones (D-NY).
- The first openly transgender senator, Sarah McBride (D-DE).
- The first person convicted of a felony, Tarra Simmons (D-WA), who was once arrested for drug misuse but went on to law school, advocating for criminal justice reform after release.
- A record 131 [women](#) and 13 [Native-American](#) candidates are projected to serve in 2021.

### **Congressional Party Make-Up**

Democrats [maintained](#) the majority in the House of Representatives but lost seats to Republicans, which will make it more difficult to unilaterally pass bills. Democrats did win Senate seats and could achieve a 50-50 split if they win both of the Georgia [runoff](#) races in January. However, this may be difficult to achieve, even if Georgia went blue in the presidential election, because of the

strong Republican presence in this state. No matter the outcome, Congress will be politically split down the middle for the next couple of years. This year's elections have illustrated that the Republican party is shifting further right while Democrats are become more fractured on issues, which may impact future policy agendas and priorities.

### **Health Care Policy Implications**

Health care issues will likely continue into the next year as many of priorities are bipartisan, such as surprise billing and price transparency. While there has been debate between Democrats and Republicans on how to address those issues, both parties agree that provider costs must be reduced and patients be protected from financial exposure. The new President-elect must also ensure that the executive actions and policies he gets through Congress will not be blocked by the conservative-leaning Supreme Court if challenged.

### **[Summary of AHPA State Congressional Winners](#)**



### **Health on the Ballot: Public Health Election Outcomes**

The U.S. presidential election can have a [large effect](#) on American health care, both through the priorities of each candidate and through specific ballot initiatives. This year, many state ballots included measures related to public health and community wellness. Public safety and police reform were up for a vote in multiple states, as was medical marijuana. Many states also presented measures to improve public transportation systems, as [improving transportation](#) is one way to encourage a healthy community and reduce health care costs. Both “red” and “blue” states voted in favor of many public health measures, signaling the importance of these topics to voters regardless of party affiliation.

### **Public Safety and Police Reform**

In an effort to combat police brutality and the abuse of power, communities in California, Pennsylvania, Ohio and Oregon have overwhelmingly passed measures to expand the power of community review and increase oversight of local police departments. Measures passed last week included the creation of citizen oversight boards, the expansion of these boards' scope and

the requirement that officers cooperate with independent investigations into police violence, racial and ethnic profiling, and overall misconduct.

### **Medical Marijuana and Drug Policy**

Voters in five states weighed in on legalizing marijuana for medical or recreational use, demonstrating a [major shift](#) in drug policy. Mississippi and South Dakota have passed measures approving marijuana's medical use, particularly for patients with debilitating and painful conditions. In addition to the drug's medical application, voters legalized recreational marijuana in Arizona, Montana, New Jersey and South Dakota. Oregon [decriminalized](#) drug possession, pivoting to substance use disorder treatment and mandatory health education instead.

### **Transportation and Infrastructure**

There were four large transit-related measures on the November ballot. In [California](#), a one-eighth cent sales tax was approved to provide the Caltrain with dedicated funding. In [Texas](#), an 8.5% city property tax will be levied to fund a light rail, a downtown transit tunnel and a fleet of electric busses for the Austin metro. A similar transit expansion measure was on the ballot in [Georgia](#), but preliminary vote tallies suggest the measure will not pass.

## **Supreme Court Update: The ACA and Religious Liberty**

The Supreme Court has been busy lately, hearing multiple high-profile oral arguments. Perhaps most anticipated were Tuesday's arguments on the constitutionality of the ACA. After two hours, it appears that the [majority](#) of justices favor upholding the law even without the individual mandate, including Chief Justice John Roberts and Trump-appointed Justice Brett Kavanaugh. The Court also heard arguments in *Fulton v. The City of Philadelphia* over whether Philadelphia can end referrals to a Catholic foster-care agency after learning the agency refuses to certify same-sex and unmarried couples. [Argument analysis](#) indicates that the Court may side with the Catholic agency.



### **Updates on COVID-19 Regulations**

AHPA continues to follow new COVID-19 regulations, guidance and other government actions. The updates below are the latest guidance and other developments since November 2<sup>nd</sup> to help

mitigate the impacts of COVID-19. For earlier COVID-19 regulations and guidance, visit the previous [Policy Brief](#).

### **CDC Updates COVID-19 Infection Control Guidance**

- The CDC has [updated](#) its recommended COVID-19 practices to prevent and control infection in health care settings. Topics include personnel screenings, managing ventilation systems and facility visitation policy.

### **CY 2021 Final Home Health Rule Makes Telehealth Waivers Permanent**

- CMS has released a [final rule](#) that permanently extends the home health telehealth flexibilities extended during the COVID-19 pandemic and implements new wage index calculations. CMS stresses that telehealth cannot substitute for an in-person home visit ordered on the plan of care or be considered a “visit” for payment purposes.

### **New COVID-19 Interim Final Rule with Comment Period**

- CMS has released an [interim final rule](#) providing enhanced COVID-19 reimbursement rates, outlining price transparency requirements for providers and finalizing coverage policies for COVID-19 vaccines. The rule also extends the Comprehensive Care for Joint Replacement model’s Performance Year 5 until September 30, 2021. For a summary of this rule, [click here](#).



### **Additional Updates from the Federal Register**

#### **Securing Updated and Necessary Statutory Evaluations**

HHS has released a [proposed rule](#) that would require the department to assess every regulation every 10 years. Regulations would expire if not reviewed in a timely manner; an estimated 2,480 regulations would be revisited under this proposal. **Comments are due on January 4, 2021.**

#### **Authority of VA Professionals to Practice Health Care**

The VA has released an [interim final rule](#) on the scope and requirements of providers’ VA employment. The rule also confirms the VA’s authority to establish national standards of practice for all VA-run medical facilities. **Comments are due on January 11, 2021**



## AHPA Resources

- [Rule Summary: Additional COVID-19 Policy and Regulatory Revisions](#)
- [Webinar Recording: FY 2021 IPPS Final Rule](#)
- [Webinar Recording: FY 2021 OPPS Proposed Rule](#)

## IN OTHER NEWS

[What We Actually Know About Pfizer's Vaccine Candidate](#) – Vox

[Biden Announces Ron Klain will be White House Chief of Staff](#) – Politico

[HHS Approves Telecommunications for Medicare Home Health on a Permanent Basis](#) – Crowing & Moring

[What Places are Hardest Hit by the Coronavirus? It Depends on the Measure](#) – The NY Times