

## Bidencare: The President-Elect's Healthcare Plan

On December 14, 2020, the U.S. Electoral College voted to confirm Joe Biden's presidential election victory.<sup>1</sup> During the 2020 election cycle, healthcare was a key issue for voters and a heavily discussed topic by presidential candidates.<sup>2</sup> With inauguration quickly approaching, there is much anticipation and speculation regarding what Biden's election means for the U.S. healthcare industry in the coming years.

The Biden Administration has put forth their healthcare plan, which seeks to expand access to affordable healthcare by: (1) upholding and expanding the *Patient Protection and Affordable Care Act* (ACA), to reduce the amount that consumers pay for health insurance on the individual marketplace; (2) offering a new, public insurance option similar to Medicare; (3) prohibiting the practice of "*surprise billing*"; (4) leveraging the Department of Justice's (DOJ's) and Federal Trade Commission's (FTC's) antitrust authority to target market concentration within the healthcare system; and, (5) driving down prescription drug prices by increasing competition for, and regulation, of pharmaceutical companies.<sup>3</sup>

To reduce the amount that individual marketplace beneficiaries pay on premiums and out-of-pocket expenses, President-Elect Biden plans to increase the value of the ACA's premium tax credit.<sup>4</sup> Currently, the ACA provides that families with a household income between 100% and 400% of the federal poverty level (FPL) are eligible to receive a tax credit to lower their monthly premium.<sup>5</sup> This tax credit ensures that families and individuals do not pay more than 9.86% of their annual household income on a silver plan.<sup>6</sup> However, Biden argues that even with the existing premium tax credit program, individual marketplace beneficiaries are still struggling to afford health insurance.<sup>7</sup> Biden plans to eliminate the 400% income cap on tax credit eligibility and lower the limit on the cost of coverage from 9.86% of income to 8.5%.<sup>8</sup> As a result, regardless of income level, families purchasing insurance on the individual marketplace will not spend more than 8.5% of their income on health insurance premiums. Additionally, under Biden's plan, the value of premium tax credits will be calculated using the more expensive gold plan, instead of the silver plan.<sup>9</sup> As gold plans typically offer more generous benefits, meaning the beneficiary will pay less on deductibles, coinsurances, and copayments, this change will ultimately reduce the amount that families

and individuals spend on out-of-pocket healthcare expenses.<sup>10</sup> Finally, Biden proposes removing current restrictions on premium tax credit eligibility to give all families an option to receive affordable health insurance through the individual marketplace. Currently, families and individuals who have an offer of job-based insurance are not eligible for a premium tax credit through the individual marketplace, provided their job-based insurance meets the minimum standards for affordability and coverage.<sup>11</sup> However, under Biden's plan, individuals who are paying more than 8.5% of their income for employer-sponsored health insurance and/or are not satisfied with the coverage of their health plan will have the option to purchase insurance on the individual marketplace and pay no more than 8.5% of their income on health insurance premiums.<sup>12</sup>

In addition to changes to the ACA to make the private insurance marketplace more affordable for beneficiaries, the Biden Administration plans to offer a new, public health insurance option similar to Medicare.<sup>13</sup> This public option has the potential to lower healthcare costs by increasing competition for private insurers, because as with Medicare, being the largest payor of medical costs gives the government significant leverage in negotiating lower prices with providers.<sup>14</sup> Moreover, this Medicare-like option is another key way through which the Biden plan seeks to expand coverage to low-income individuals.<sup>15</sup> Under Biden's plan, the estimated 4.9 million adults without Medicaid coverage as a result of the 14 states that have not adopted the Medicaid Expansion<sup>16</sup> would be offered premium-free access to the new, Medicare-like, public option.<sup>17</sup> Additionally, states that have expanded Medicaid will have the choice of moving the expansion population to the premium-free public option insofar as the states continue to pay their current share of the cost of covering those individuals.<sup>18</sup> Another mechanism that is anticipated to be used to reach lower income individuals is the automatic enrollment of beneficiaries that make below 138% of the FPL as they interact with certain institutions such as public schools, or through other programs for lower income populations such as the *Supplemental Nutrition Assistance Program* (SNAP).<sup>19</sup>

Additionally, Biden plans to lower beneficiaries' out-of-pocket expenses by prohibiting the practice of surprise out-of-network billing, wherein beneficiaries are billed for out-of-network care even though they did not intend

to select an out-of-network provider.<sup>20</sup> For example, a patient could select a hospital that is in-network, but may be treated by a specialist (i.e. radiologist, pathologist, emergency medicine physician, or anesthesiologist) that is out-of-network during their stay.<sup>21</sup> Biden's plan will prohibit providers from charging patients out-of-network rates in instances where the patient does not have a choice in which provider administers care.<sup>22</sup>

Market consolidation across the healthcare industry is considered to be another source of increasing healthcare expenditures.<sup>23</sup> Studies have revealed that horizontal and vertical consolidation among hospitals and physicians are associated with higher healthcare prices.<sup>24</sup> This evidence, compounded by the increasing number of healthcare mergers and acquisitions, has made targeting healthcare market concentration a priority for the Biden Administration.<sup>25</sup> Biden plans to use existing antitrust authority to dissolve the high levels of market concentration.<sup>26</sup>

Lastly, Biden and the preponderance of the Democratic Party have shown their disdain for the substantial rise in prescription drug prices.<sup>27</sup> In his healthcare plan, Biden outlines a multi-faceted approach for reducing prescription drug prices that focuses on increasing competition for, and regulation of, pharmaceutical companies.<sup>28</sup> Some of the strategies that Biden proposes include: (1) allowing Medicare to negotiate prices with pharmaceutical companies; (2) setting the launch price that Medicare, the public option, and individual marketplace plans will pay for prescription drugs using a review board established by the *Department of Health & Human Services* (HHS); (3) limiting price increases of generic drugs to the general inflation rate; (4) allowing consumers to purchase HHS-certified prescription drugs from foreign countries; (5) eliminating the tax break that pharmaceutical companies receive on advertisement spending; and, (6) reducing barriers to the development of generic medications.<sup>29</sup>

Despite Biden's ambitious plans, there is doubt as to how much of his agenda he will be able to accomplish.<sup>30</sup> Any significant effort to expand ACA coverage or make it more affordable would require congressional action.<sup>31</sup> However, control of the Senate will come down to two runoff elections in Georgia, to be held in January 2021.<sup>32</sup> Experts assert that even if the Democratic Party was to gain control of the Senate, the existence of a handful of

moderate democratic senators will likely require legislation to be largely bipartisan.<sup>33</sup>

Beyond the political obstacles involved in legislative action, the current political climate casts doubt on Biden's ability to even get his cabinet and other executive branch officials approved by the Senate.<sup>34</sup> On December 4, 2020, the Biden Administration extended an offer to California Attorney General Xavier Becerra to serve as HHS Secretary.<sup>35</sup> During the Trump Administration, Becerra has been a champion for defending the ACA.<sup>36</sup> He also has received attention for filing an antitrust case against Sutter Health in 2020 for using its large market share in Northern California to drive up prices for services.<sup>37</sup> Further, it has been reported that Becerra's success generating bipartisan support for key issues helped secure his nomination. For example, Becerra has successfully worked with Louisiana's Republican Attorney General to increase availability of Remdesivir, a drug used to treat COVID-19, in California and Louisiana.<sup>38</sup> Additionally, Becerra has worked with many Republican Attorneys General on legal issues against opioid manufacturers.<sup>39</sup> Given the likelihood of a divided Senate in 2021, Becerra's history of generating bipartisan support will likely be critical to his confirmation hearing.

While Biden emphasized his healthcare plans during the election cycle, ACA expansion and a public insurance option will likely take a backseat to the COVID-19 response early in the Biden Administration.<sup>40</sup> Biden has already announced a three-point plan to control the COVID-19 pandemic during his first 100 days.<sup>41</sup> His plan includes signing an executive order to require Americans to wear face masks in federal buildings and on public transportation crossing state lines; distributing 100 million COVID-19 vaccine shots; and, enabling the majority of schools to reopen.<sup>42</sup> To help support his efforts in controlling the COVID-19 pandemic, Biden has selected Jeffery Zients, who served as head of the National Economic Council during the Obama Administration, to serve as the coordinator of the White House's pandemic response.<sup>43</sup>

While the political climate renders substantial uncertainty regarding what to anticipate from the Biden Administration, it is reasonable to expect that COVID-19 response and upholding the ACA will dominate Biden's early healthcare agenda.<sup>44</sup>

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