

# What's Next for Health Care Under the Biden Administration and the 117th Congress

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# Agenda

- Welcome
- Biden Administration health care priorities
- Health care accomplishments to date (e.g., American Rescue Plan)
- Further potential health care legislation and executive action
- Areas of interest for employers
- Q&A and further discussion

# Biden Health and Family Proposal Builds on the ACA (Quality Health Care)

## Access to Quality Health Care

- Strengthen the Children's Health Insurance Program (CHIP)
- Increase access to Medicaid and address payment reimbursement (Medicaid/Medicare Parity)
- Provide robust consumer advertising and marketing outreach for Affordable Care Act's (ACA) open enrollment and full funding for Navigator program
- Address quantitative network adequacy standards in ACA plans
- Eliminate short term, limited duration insurance
- Strengthen home- and community-based services and workforce
- Support public option health plan

# Biden Health and Family Proposal Builds on the ACA (Access and Lower Prescription Drugs)

## Access to Affordable Health Care and Lower Prescription Drugs

- Address price transparency by controlling Medicare spending
- Eliminate anti-competitive health care consolidation
- Address Site Neutral Payment
- Allow HHS Secretary to negotiate drug prices with manufacturers
- Allow greater competition from generic and biosimilar drug manufacturers
- Remove barriers to drug competition and address anti-competitive pharmaceutical patent behaviors, such as issuance of “patent thickets,” sample denial, or “delay and pay” for delay settlements

# Biden's Health Care Spending Priorities

## Strengthen Public Health Infrastructure

- \$8.7 billion for Centers for Disease Control and Prevention (CDC) to support public health capacity improvements, modernize public health data collection, and build international capacity to respond to emerging global threats
- \$10 billion for global health programs and capacity building for a global health security agenda
- \$905 million for the Strategic National Stockpile (SNS) to maintain replenishments of critical medical supplies and to enhance the Food and Drug Administration's (FDA) organizational capacity
- \$1.6 billion to Community Mental Health Services Block Grant (MHBG)



# Biden's Health Care Spending Priorities (continued)

## Defeat other Diseases and Epidemics

- \$51 billion for National Institute of Health (NIH) to promote biomedical research and launch the Advanced Research Projects Agency for Health to address cancer, diabetes, Alzheimer's, and other disease
- \$10.7 billion to end the opioid crisis
- \$2.1 billion to address the gun violence public health crisis and provide funding for firearm violence prevention research at CDC and NIH

# Biden's Health Care Spending Priorities (continued)

## Address Racial Disparities in Health Care

- \$153 million for CDC to improve health equity and data collection for racial and ethnic populations
- \$200 million to reduce maternal mortality and morbidity rates nationwide
- \$8.5 billion to redress inequities experienced by American Indians and Alaska natives

# American Rescue Plan Act of 2021 (ARP) Builds on the ACA

*The Biden administration healthcare objectives: to increase access to quality and affordable healthcare and address healthcare disparities by strengthening and expanding ACA's provisions.*

- Expanded ACA's tax subsidies:
  - Enhanced marketplace premium subsidies to all income levels;  
Enhanced subsidies for Unemployment Insurance (UI) recipients
  - Premium Tax Credit Repayment Holiday 2020
  - Temporary 100% COBRA Premium Subsidies for 2021



# The ARP Builds on the ACA (continued)

- Provided fiscal incentives for states to expand Medicaid and benefits coverage
  - Provided non-expansion States a temporary five percentage points increase in Federal Medical Assistance Percentage (FMAP); allowed States to extend Medicaid coverage for post-partum women from 60 days to a full year post-partum;
  - Provided short term additional funds to states to enhance Medicaid Home and Community Based Services (HCBS)
- Extended Special Open Enrollment for the ACA

# How could More of Biden's health care objectives be achieved?

- American Jobs Plan and American Health Care and Family Plan (Biden infrastructure plan)
  - Budget reconciliation
- American competitiveness legislation (“China bill(s)”)
- FY22 appropriations
- Executive and other agency actions (to include rulemakings)

# Biden Infrastructure Plan and Process

- President Biden has put forward the American Jobs Plan and indicated the American (Health and) Family Plan proposal will follow
- Unless scaled down, or otherwise significantly modified, Republicans have generally indicated they do not intend to support this effort
  - Therefore, Democrats will have to go at it alone
  - Budget reconciliation a natural tool

# What is budget reconciliation and why is it important?

- House of Representatives rules require a simple majority to pass legislation, but, in the Senate, 60 votes are needed for most legislation
- Under current Senate rules and precedent, the minority can hold up (filibuster) bills if they do not support cloture (end the filibuster)
- Budget reconciliation provides a process to pass certain legislation by a simple majority
  - It is currently the primary tool to circumvent the 60-vote threshold

# Reconciliation basics

- Reconciliation may be used (at least) once each fiscal year
  - Congress used the FY 2021 budget resolution to enact COVID-19 relief in the American Rescue Plan (ARP) Act
  - The FY 2022 budget resolution is currently available, and they will have a third to use for FY 2023
  - Senate Parliamentarian interpretation may give additional opportunities
- Budget reconciliation entails stricter rules in the Senate



# Are there limitations on the use of budget reconciliation?

- The Budget Act prohibits the reconciliation package from containing “extraneous matters.” In the Senate this can be enforced via a point of order under the “Byrd Rule”
  - Among other stipulations, matters are considered extraneous if they do not change outlays or revenues or the changes in outlays or revenue are “merely incidental” to goals of the provision
  - This subjective decision is made by the Senate parliamentarian
  - The Byrd Rule also prohibits provisions with a fiscal impact outside of the 10-year budget window
  - If the parliamentarian rules that a matter is extraneous, this ruling can be overridden with 60 votes (under current rules)

# American Competitiveness Legislation

- Senate Majority Leader Schumer (D-NY) and Sen. Todd Young (R-IN) engaged in substantial push to pass legislation to enhance competition with China
  - Examining investment in American innovation, American workers and manufacturing, and strategic partners and allies to expose, curb, and end China's anti-competitive practices
  - Leader Schumer instructed Senate committee chairmen to begin work on these issues and wants a bill this spring
  - Committees are at work, including Health, Education, Labor and Pensions (HELP)
    - Ideas on table: how to improve research integrity and foreign interference, supply chain, and genomic sequencing
  - This could move as stand alone or perhaps be tied to infrastructure effort

# FY 2022 Appropriations

- Annual appropriations process is a vehicle for health care policy and funding
- Senate Parliamentarian ruling on budget reconciliation could impact FY22 appropriations process
- Areas for bipartisan agreement on increase of funds could be:
  - Opioid crisis
  - Mental health crisis
  - NIH funding

# Healthcare – Key House Players

## House Ways and Means Committee

- Chairman Richard Neal (D-MA)
- Ranking Member Kevin Brady (R-TX)

## House Appropriations Committee

- Chairwoman Rosa DeLauro (D-CT) – *also LHHS Subcommittee Chairwoman*
- Ranking Member Kay Granger (R-TX)
- Rep. Tom Cole (R-OK) – *LHHS Subcommittee Ranking Member*

## Energy and Commerce Committee

- Chairman Frank Pallone (D-NJ)
- Ranking Member Cathy McMorris Rodgers (R-WA)
- Rep. Anna Eshoo (D-CA) – *Health Subcommittee Chairwoman*
- Rep. Brett Guthrie (R-KY) – *Health Subcommittee Ranking Member*

# Healthcare – Key Senate Players

## Senate Finance Committee

- Chairman Ron Wyden (D-OR)
- Ranking Member Mike Crapo (R-ID)

## Senate HELP Committee

- Chairwoman Patty Murray (D-WA)
- Ranking Member Richard Burr (R-NC)

## Senate Appropriations Committee

- Chairman Pat Leahy (D-VT)
- Ranking Member Richard Shelby (R-AL)
- Sen. Patty Murray – *LHHS Subcommittee Chairwoman*
- Sen. Roy Blunt – *LHHS Subcommittee Ranking Member*



# Areas of Interest for Employers

- Vaccine distribution
- Coverage for COVID PPE under medical FSAs
- COBRA subsidies
- Telehealth
- Shore up the Exchanges; limit short-term health plans
- Potential return to Obama Administration's Section 1557 provisions
- Revisit EEOC Rules on Wellness Initiatives
- Cost transparency
- No surprise billing
- MHPAEA enforcement
- New HIPAA regulations coordinating with ONC's interoperability provisions

# Upcoming Health Tech Webinar Series Dates

## **Newest Trends in Health Data Breaches: FTC, OCR, and AG Enforcement**

May 26, 3:30-4:30 p.m. ET

## **Health Tech: The Marriage of Patient Apps, Price Transparency, and Payment Options**

July 27, 1-2 p.m. ET

## **Health Information and the FTC and State Law Regimes**

September 16, 1-2 p.m. ET

## **Use and Disclosure of Medical Data under HIPAA, Part 2, and the Interoperability Rules**

October 26, 1-2 p.m. ET

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**Questions?**

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