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2024 Post-Election Landscape

Overview

The 2024 election results have immense yet unclear implications for health care policy. While the incoming Trump Administration will be accompanied by a unified Republican 119th Congress, the Republican Party's 2024 health care platform was notably vague. Given this uncertainty, SPG believes the best approach for health care stakeholders is to understand the implications of the Administration's core priorities, while preparing for a wider range of scenarios and contingencies for non-core areas.

Although the new Trump Administration may differ significantly from the first one, some principles are likely to continue to pertain:

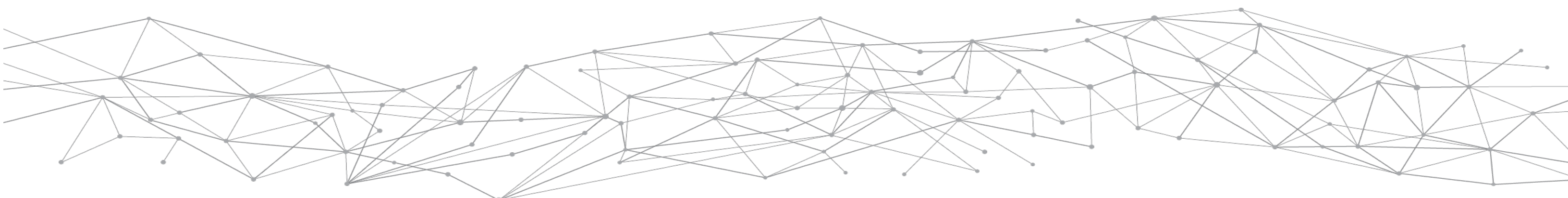
- Personnel is policy: The first Trump Administration's approach to policy was highly dependent on personnel choices. After the initial failure to repeal the Affordable Care Act (ACA) in 2017, health care ended up as a comparatively stable area of policy, due in large part to the stability of personnel. Seema Verma remained the Centers for Medicare and Medicaid Services (CMS) Administrator throughout Trump's first term, and there was only one change of Health and Human Services (HHS) Secretary, from Tom Price to Alex Azar.
- Regulatory rollback: The new Administration is likely to act aggressively to roll back federal regulations from the Biden Administration and before. The loosening of ACA regulations from the first Trump term could be resumed and redoubled. One major outstanding question is whether the new administration will be more assertive with actions that fall under agency discretion, such as rescinding regulatory approvals or revoking waivers.
- Federal-state conflicts: Democratic-controlled states will push back on Trump Administration policies immediately. The more forcefully the Trump Administration acts, the more political and legal challenges will arise. While the outcome of these legal challenges may be uncertain, they will likely tie up many aggressive actions for a significant time.

Below is SPG's analysis of some of the specific possibilities and implications to come.

Federal Outlook

Legislative Package

The early focus for the 119th Congress is likely to be the development of a reconciliation package to extend the 2017 Trump tax cuts in the Tax Cuts and Jobs Act (TCJA) and address other legislative



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priorities, in particular immigration and border security. Given these priorities, Congressional Republicans have signaled that legislative action on health care is not likely to occur rapidly.

However, the TCJA extension will be extremely expensive. The Congressional Budget Office has projected that full TCJA extension will cost $4 trillion over the next decade. By comparison, the first TCJA was passed with a deficit impact of $1.5 trillion. Congress may look to achieve offsets through health care savings. In that case, there are a few possible major targets for savings:

- Medicaid: The Trump campaign and the Heritage Foundation's Project 2025 have both proposed limiting federal funding for Medicaid in various ways, such as changing the federal matching funds percentage (FMAP), implementing block grants or per capita caps, and addressing Medicaid state share financing mechanisms.
- Site-neutral payments: Expanding site-neutral payment rules has also been of interest to Republicans and could produce moderate amounts of savings, although a recent bipartisan policy framework on site-neutral payments suggested that savings should be reinvested into the health care system.
- ACA: The expiration of the Biden Administration's enhanced premium tax credits after 2025 is already built into the baseline projections. It is unlikely that they could be removed from 2025 as the year will have already begun. Therefore, any ACA savings would have to come from the removal of existing payments. Only a limited amount of savings could likely be attained through this route.
- Other areas: Although other health care savings proposals are possible, it is not very likely that extremely significant sums could be raised without significant industry opposition, including from within the Republican coalition. For example, the GOP Doctors Caucus has long had significant influence over Republican health care proposals and has consistently supported more Medicare physician reimbursement. As another example, although Trump campaign personnel have criticized the Medicare prescription drug negotiation program from President Biden's Inflation Reduction Act (IRA), it also produces cost savings.

Regulatory Agenda

Congressional Review Act: The Congressional Review Act allows Congress to rescind regulations that date back to a certain time period. CRA Resolutions of Disapproval mean that no similar regulation can then be considered. The Congressional Research Service expects that the CRA may be applied to "rules submitted to the House or Senate on or after August 1, 2024." The exact date depends on the specific dates of adjournment by each chamber. Rules like the Biden Administration's nursing home staffing rule, finalized in April, would therefore not be subject to this process. Instead, such rules will have to be overturned by regulatory action (quite likely in that specific case).

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ACA Policies: The Trump Administration is likely to resume its previous significant expansion of flexibilities for ACA-exempt coverage options such as short-term limited duration insurance (STLDI), association health plans, and catastrophic coverage. While the Administration is not considered likely to enact significant cuts to Marketplace plans, such cuts are proposed in the Project 2025 manifesto.

Medicaid: The Project 2025 manifesto discusses a variety of specific Medicaid regulatory reforms, including:

- Reducing CMS oversight of Medicaid program operations, in order to "allow providers [sic] to make payment reforms without cumbersome waivers or state plan amendment processes where possible."
- Changing the scope of 1115 authority, including "adding Section 1115 waiver requirements in some cases (such as imposing work requirements for able-bodied adults) while rescinding requirements in others (such as non-health care benefits and services related to climate chance)."
- Reviewing flexibilities offered to states through state-directed payments.
- Changing mandatory and optional benefit requirements, including the elimination of benefits "that exceed those in the private market."
- Launching a "robust 'personal option' to allow families to use Medicaid dollars to secure coverage outside of the Medicaid program."
- Increasing eligibility requirements, such as by holding states accountable for improper determinations and strengthening asset tests.
- Reforming State share financing mechanisms such as provider taxes.
- Reforming (presumably reducing) uncompensated care and Medicaid Disproportionate Share Hospital (DSH) payments.

Medicare Advantage (MA): MA is likely to benefit from a more friendly overall regulatory agenda, although there has been bipartisan interest in controls on risk adjustment in the MA program. The conservative Paragon Health Institute has recently published a lengthy policy brief that "argues for enhancing Medicare through MA, emphasizing its benefits in providing more efficient, choice-driven, and cost-effective healthcare coverage compared to traditional fee-for-service Medicare."

CMMI: CMMI's focus is likely to change to some extent from the Biden Administration's 10-year strategic plan, although many of the value-based payment programs are not inherently politically controversial. However, programs that have not yet begun implementation, like the AHEAD hospital global budgets program and the TEAM mandatory hospital bundled payments program, may be subject to change:

- AHEAD involves cooperation among multiple divisions within CMS and the ongoing involvement of federal resources in issues such as service line adjustments. As a result, even delaying or reallocating resources from AHEAD could affect its implementation. Nevertheless,

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since AHEAD will replace existing models in Maryland and Vermont (a state with a Republican governor), abandoning the model entirely would create new problems.

- The TEAM model's mandatory nature may go against some of the policy preferences of the new Administration. However, its precursors in the Bundled Payment for Care Improvement (BPCI) and Comprehensive Joint Replacement (CJR) programs were supported by the previous Trump Administration.

The ACO REACH program is likely to benefit from administrative support. ACO REACH was the Biden Administration's modification of the previous Global and Professional Direct Contracting program, with somewhat greater oversight controls and a health equity component. It is now more likely that ACO REACH will be extended (possibly with more tweaks and another new name) for an additional five-year (or other) period.

NYS Outlook

NYHER Waiver

New York State is likely to seek an extension of the New York Health Equity Reform (NYHER) waiver during the lame duck period, albeit without additional funding. The Trump Administration will have the technical ability to rescind 1115 waivers, and the Biden Administration rescinded a number of approvals of 1115 waiver components that would have created work requirements for various state Medicaid programs. However, those programs had not begun yet due to legal challenges, and rescinding a waiver that is already under implementation would be unprecedented.

The Biden Administration also attempted to rescind the extension of Texas's 1115 waiver, which was an unusual ten-year approval issued in the waning days of the first Trump Administration. After more than a year of legal and political conflict—including a hold on the nomination of the CMS Administrator placed by Texas Senator John Cornyn—the Biden Administration backed down and allowed the waiver to continue.

While Project 2025 specifically mentions the recission of 1115 waivers dealing with "non-health care services" as a suggested policy move, it is unclear whether an 1115 waiver removal can produce accounting-level budget savings, as 1115 waivers are required to be budget-neutral.

As a result, there are several possibilities to consider:

- The NYHER waiver could be allowed to continue through 2027 (or 2029 if extended), in keeping with prior waiver precedents. Even in this circumstance, NYS will likely seek to move quickly to establish as many program parameters as possible during the lame duck period rather than have them be subject to approvals under the new CMS.

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- CMS could try to rescind the third demonstration year of the NYHER waiver. This would be the most likely cut that could emerge considering likely legal and political challenges. This would significantly reduce HRSN service funding but maintain most infrastructure, global budget, and workforce spending.
- CMS could seek to end the waiver and even claw back existing spending. This would be an unprecedented move that would likely draw significant opposition and invite similar hardball political tactics as were used by Senator Cornyn.

MCO Tax

New York's Fiscal Year 2024-25 budget proposed a Managed Care Organization (MCO) tax that would raise up to $4 billion for Medicaid reinvestment. Recent negotiations with the Biden Administration centered on the figure of $2 billion. While the Biden Administration could still approve the tax during the lame duck period, and it could potentially even be administered for 2025, this type of Medicaid tax is likely to be considered a Medicaid loophole by the new administration. Because authorizing matching funds for such a tax is a matter of administrative discretion at CMS, the Trump Administration will have the power to reject providing matching funds for such a tax in the future.

Indeed, California passed a referendum to establish their MCO tax in law. However, that measure cannot require the federal government to provide matching funds, in which case the state would not be able to draw down any net new funds.

New York's budget accounted for $350 million in funding from this mechanism in FY 2024-25. The legislature had hoped to use the full $4 billion to fund Medicaid rate increases and other health care investments. The New York Medicaid program's fiscal basis will face more significant pressure as a result.

1332 Waiver

New York's 1332 waiver authorizes the movement of the 138-250% FPL population into a new Essential Plan (EP) that is equivalent to the Basic Health Program established under Section 1331 of the ACA which previously was operated. This waiver could be a target of the new Administration, especially since it now includes a certain amount of funding for the undocumented Deferred Action for Childhood Arrivals (DACA) population.

If so, New York has expressed the intention to return to the Section 1331 authority, which would return to providing EP coverage only to the 138-200% FPL population. It is possible that the Trump Administration could also target the Basic Health Program more broadly. This would significantly disrupt insurance coverage for this population.