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TOPIC OF THE WEEK

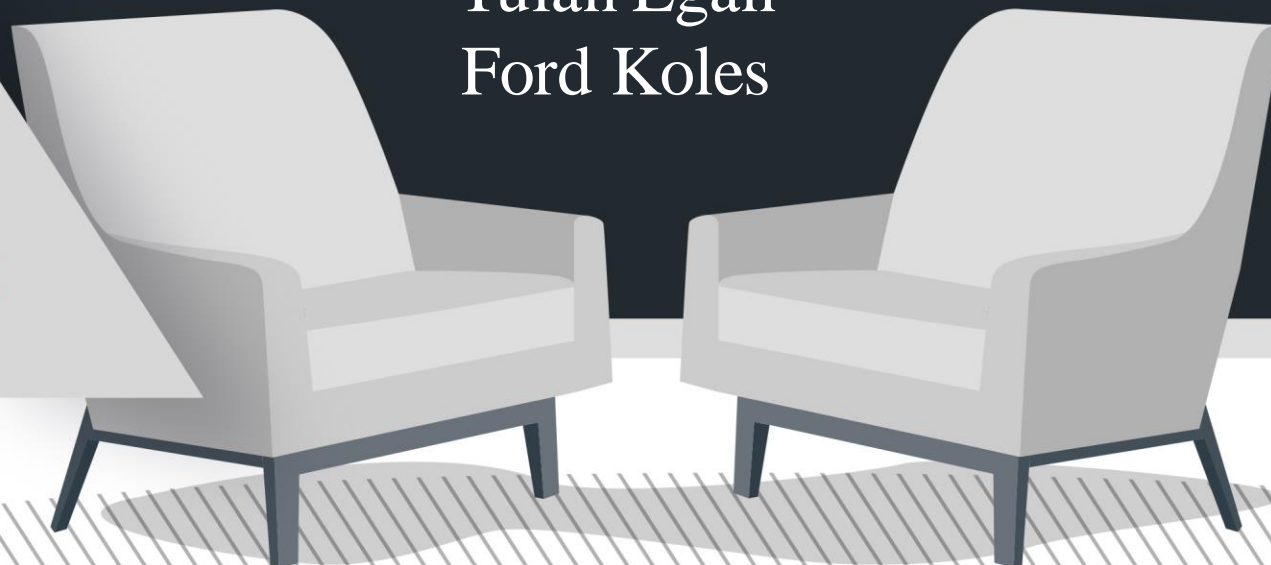
## Reflection on the election

*featuring*

Christopher Kerns

Yulan Egan

Ford Koles



Thursdays at 3 p.m. ET

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# Today's Research Experts



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- 1 What is President Trump's health care policy legacy?
  - 2 Things to watch between now and Inauguration Day
  - 3 President Biden's first 100(ish) days
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# A flurry of last-minute rulemaking

Trump administration races to tackle longstanding regulatory priorities

## Drug cost executive orders come to fruition



### International pricing index

Interim final rule creates mandatory model requiring Medicare providers and suppliers to receive indexed price, starting January 2021



### Exclusion of PBM rebates from safe harbor

Final rule excludes rebates paid by manufactures to pharmacy benefit managers from safe harbor protection under Anti-Kickback Statue; creates new safe harbor discount at point of sale

## Updated anti-fraud restrictions accommodate risk



### Protection for value-based care renumeration

Final rule establishes safe harbor for certain and outcome-based arrangements and affirms exemption for ACO incentive programs



### Modernization of the Stark Law

Final rule creates exceptions to self-referral regulations for value-based care arrangements that satisfy certain requirements and clarifies key concepts in order to create clear guidelines

A rushed rulemaking process has left the drug cost rules **vulnerable to legal challenges**, which drug manufactures and PBMs have promised are forthcoming

# Covid response remains obligation for Trump administration

Two questions remain unanswered in final weeks of Trump's term

## Vaccine approval and distribution

**Moderna and Pfizer** have applied for emergency use authorization from the FDA for a Covid-19 vaccine

13

Vaccines currently in Phase III trials



WHAT TO WATCH

**How do (likely) early distribution efforts fare, and how will that influence the Biden administration's approach?**



## Industry financial relief



~\$31.1B

Unallocated money within the Provider Relief Fund

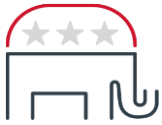


WHAT TO WATCH

**Will the Trump administration exhaust the relief fund in the coming weeks to ensure it can distribute the funds to its preference?**

# No agreement on competing Covid-19 relief proposals

The election over and negotiations stalled, likelihood of quick action dwindles



## Republican Senate bill: \$500B

- No additional funding for state and local governments
- \$16B for testing, tracing, and PPE
- No additional provider relief funding
- \$31B for vaccine, therapeutics, and supporting government stockpiles
- Prohibits Covid-related liability action against health care providers during the public health emergency



## Bipartisan compromise: \$908B

- \$160B for state, local, and tribal governments
- \$10B for testing and tracing
- \$6B for vaccine development and distribution
- \$35B for provider relief fund (\$7B targeted to rural providers and \$1B target for Indian health)
- Endorsed by Pelosi, Schumer, and Biden as a “down payment”; growing support from Republicans



## Democratic House bill: \$2.2T

- Almost \$500B for state, local, and tribal governments
- \$75B for testing, contact tracing, and other measures to combat Covid-19
- Additional \$50B for provider relief fund
- Prohibits balance billing for presumptive or confirmed Covid-19 patients
- Increase federal Medicaid payments by 14 percentage points through Sept 2021
- Open a two-month special enrollment period for Obamacare exchanges
- Require coverage for Covid-19 treatment without cost-sharing

Source: “Senate GOP Targeted Relief Package,” September 2020; Newburger E, “Democrats and Republicans dismiss Trump’s coronavirus stimulus offer, dimming hopes for a deal,” CNBC, October 2020

# Legislative priorities depend on congressional control

Outcome of GA run-offs will impact Congressional agenda in 2021

## Congressional health policy issues in 2021

- Passing additional provider and economic relief in response to Covid-19
  - Ending surprise billing
  - Lowering pharmaceutical costs and patient out-of-pocket spending
  - Allowing Medicare to negotiate drug prices directly
  - Expanding coverage by building on the Affordable Care Act and funding Medicaid programs
  - Improving behavioral health access and maternal mortality rates
- Republican priorities
- Democratic priorities
- 

## What holds up legislation?

### *Senate filibuster*

- Essentially requires 60 votes for legislation to pass the Senate
- Budget reconciliation allows a party to pass a bill with only 51 votes, but such legislation can only be related to budgetary measures

### *Inter- and intraparty disagreement*

- Some long-held policy goals have been derailed by debates within the parties
- Example: disputes over how to handle arbitration have prevented legislation on surprise billing



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# Array of executive actions promised for first day in office

Health care agenda beyond Covid-19 does not top list of immediate priorities

## Joe Biden's stated day-one plans

### Covid-19 response

#### Climate change

- Rejoin the Paris climate agreement
- Reestablish Obama-era environmental rules reversed by Trump

#### Immigration

- Reinstate permanent protections for Dreamers
- End family separation and bans on immigration from majority-Muslim countries

#### Economic recovery

- Rollback Trump-era corporate tax cut

## Health care proposals revolve around pandemic

- “Ensure all Americans have access to regular, reliable, and free testing”
- “Fix personal protective equipment (PPE) problems for good”
- “Provide clear, consistent, evidence-based guidance for how communities should navigate the pandemic – and the resources for schools, small businesses, and families to make it through”
- “Plan for the effective, equitable distribution of treatments and vaccines — because development isn’t enough if they aren’t effectively distributed”
- “Protect older Americans and others at high risk”
- “Rebuild and expand defenses to predict, prevent, and mitigate pandemic threats, including those coming from China”
- “Implement mask mandates nationwide by working with governors and mayors and by asking the American people to do what they do best: step up in a time of crisis”

Source: “Covid-19,” BuildBackBetter.gov, November 2020.

# Awaiting Biden's picks for top agency positions

Who's already been tapped?



**Secretary of Health and Human Services**  
*Xavier Becerra*



**Covid-19 Coordinator**  
*Jeff Zients*



**Chief Medical Advisor**  
*Anthony Fauci, MD*



**Surgeon General**  
*Vivek Murthy, MD*



**Director of the Office of Management and Budget**  
*Neera Tanden*

Who are we still waiting on?



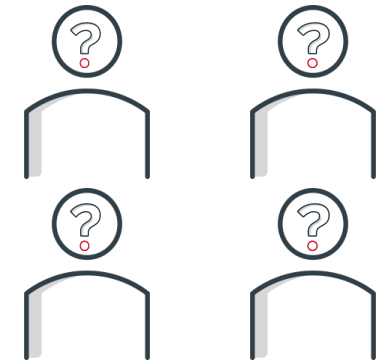
**Administrator of the Centers for Medicare & Medicaid Services**



**Director of the Center for Medicare and Medicaid Innovation**



**Assistant Attorney General for Antitrust, Department of Justice**



**Domestic Policy Council**

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# Biden enters White House with ambitious health care agenda

Without a significant majority in the Senate, execution will be an uphill battle

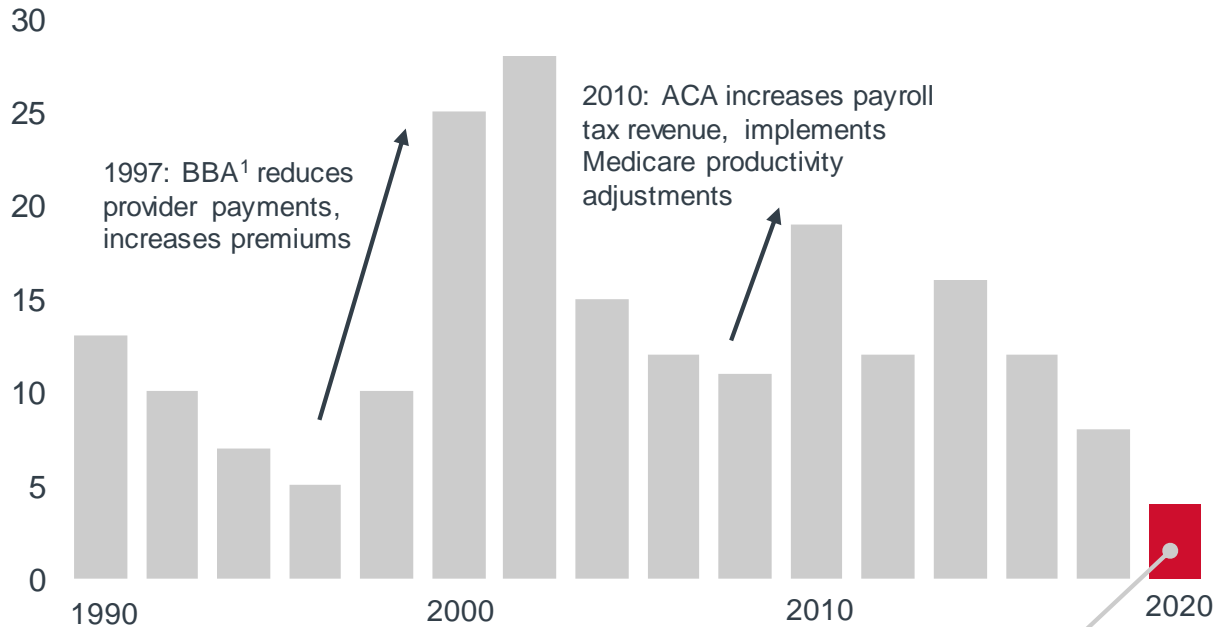
- 1 “Give every American access to affordable health insurance”**
  - Public option that anyone can purchase from the government, regardless of employer coverage
  - Increase individual market premium subsidies
  - Create a path to coverage for expansion populations in non-expansion states and lower the Medicare eligibility age to 60
- 2 “Provide the peace of mind of affordable, quality health care and a less complex health care system”**
  - End surprise bills when a patient doesn’t have a choice in which provider they see
  - Aggressively monitor provider and payer consolidation that would increase prices
- 3 “Stand up to abuse of power by prescription drug corporations”**
  - Allow Medicare to negotiate drug prices with manufacturers
  - Limiting drug launch prices and price increases
  - Increase the production of generics
  - Allow importation of HHS-certified drugs
- 4 “Ensure health care is a right for all, not a privilege for just a few”**
  - Protect reproductive rights and funding for contraception; lower maternal mortality rates, particularly for women of color
  - Increasing access to and reimbursement for mental health services

Source: “Health care,” JoeBiden.com.

# Biden administration will have to tackle Medicare insolvency

Federal government must reduce expenditures and/or increase tax revenue

## Number of years projected until Hospital Insurance Trust fund insolvency



## Cost saving options on the table



Site-of-care shifts



Value-based care programs

### Declines in tax revenue due to Covid-19 accelerate fund shrinkage

Congressional Budget Office now expects insolvency in 2024, up from previous projections of 2026

1. Balanced Budget Act of 1997

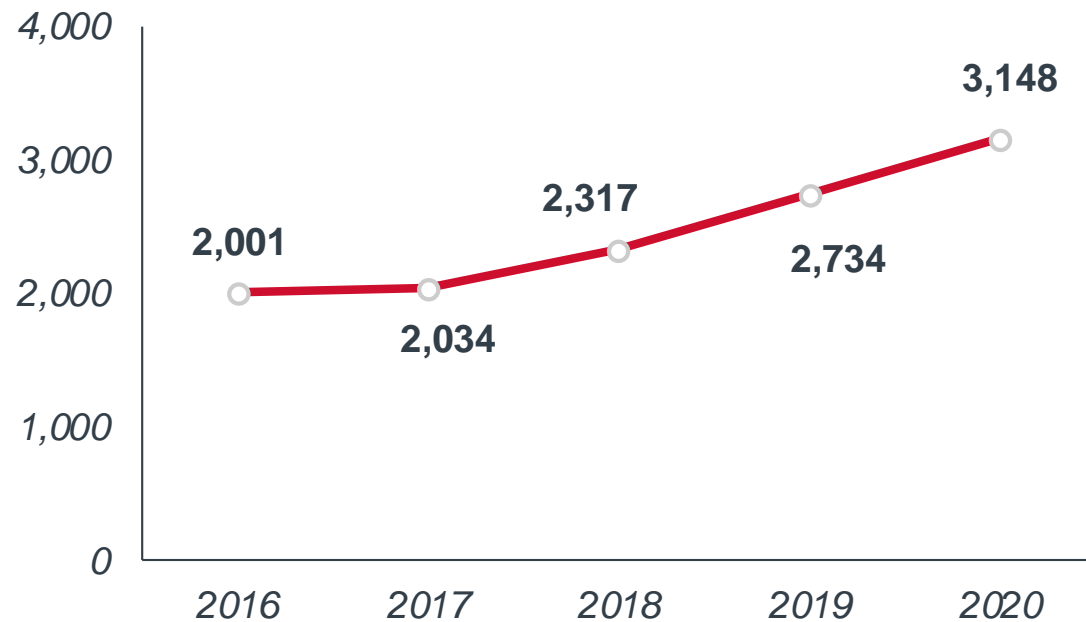
Source: "Medicare: Insolvency Projections," Congressional Research Service, May 2020; "The Outlook for Major Federal Trust Funds: 2020 to 2030," Congressional Budget Office, September 2020.

# What we're watching in Medicare Advantage

## Will a Biden administration take a harder look at Medicare Advantage costs?

### Medicare Advantage becomes growing part of private insurance industry

Number of MA plans offered each year



### Two outstanding questions for the incoming administration

1  
Will the government try to rein in MA spending?

- ▶ Reducing quality bonuses for plans achieving high star ratings
- ▶ Cutting costs associated with risk adjustment and coding intensity

2  
Will the government try to exert more control over MA?

- ▶ Standardizing supplemental benefit offerings
- ▶ Implementing more value-based care models

Source: Freed M, Damino A, Neuman T, "A Dozen Facts About Medicare Advantage in 2020," KFF, April 2020; Jacobson G, Freed M, Damico A, Neuman T, "Medicare Advantage 2020 Spotlight: First Look" KFF, October 2019; "Health Care Spending and the Medicare Program, Medpac, July 2020.

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