



MANAGED CARE SPOTLIGHT: RECAPPING 2020 AND LOOKING AHEAD TO 2021

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AGENDA

- Regulatory and Legislative Outlook
- Developments Impacting Plan-Provider Relationships
- Anticipated Changes in Medicare Advantage
- Judicial Watch



REGULATORY AND LEGISLATIVE OUTLOOK

THE OUTLOOK

- COVID-19 relief and response
- Healthcare nominees
- Policy priorities in a divided Congress

COVID-19 RELIEF AND RESPONSE

- COVID-19 Executive Orders set the tone for the response
- 200-page COVID-19 National Strategic Plan provides the Administration's vision and plan
- \$1.9 trillion rescue package, includes stimulus checks and minimum wage
- Letter to governors regarding Public Health Emergency (PHE) extension to provide predictability for 2021

STAFFING UP: KEY HEALTH OFFICIALS



XAVIER BECERRA

Nominee for Secretary of Health and Human Services



VIVEK MURTHY

Nominee for Surgeon General



JEFF ZIENTS

Transition Team Co-chair;
Coordinator of the COVID-19
Response and Counselor to
the President



MARCELLA NUNEZ-SMITH

COVID-19 Advisory Board;
COVID-19 Equity Task Force
Chair



ANTHONY FAUCI

Chief Medical Adviser on
COVID-19



ANDREA PALM

Nominee for Deputy Secretary
of Health and Human Services



ROCHELLE WALENSKY

Director of the Centers for
Disease Control and Prevention



NEERA TANDEN

Nominee for the Office of
Management and Budget

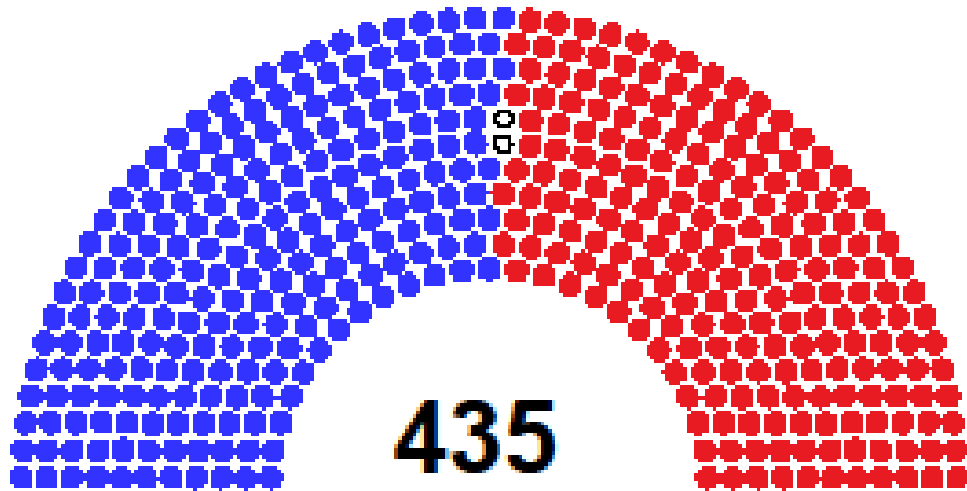


RACHEL LEVINE

Nominee for Assistant
Secretary of Health

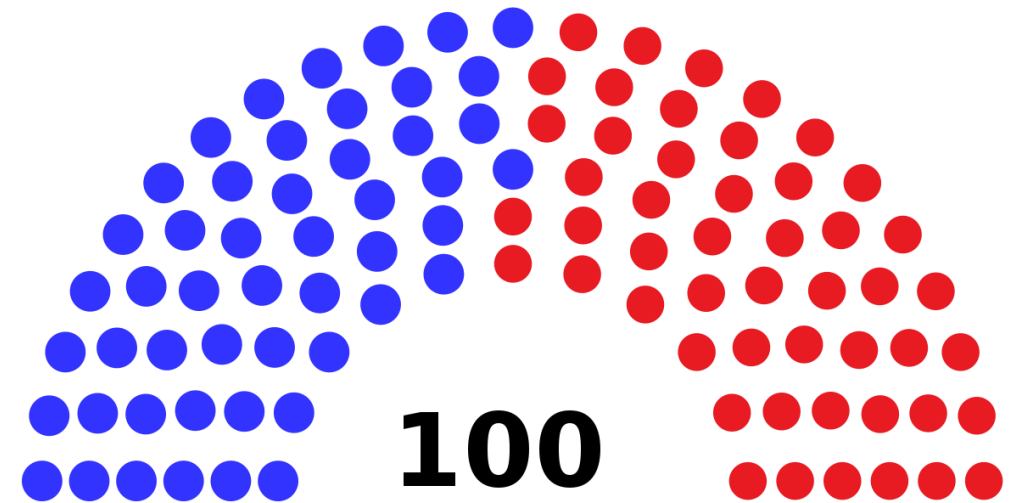
COMPOSITION OF THE 117TH CONGRESS

House of Representatives



222 / 211

Senate



50 / 50

CONGRESSIONAL INFLUENCE ON BIDEN'S HEALTHCARE PRIORITIES

- With close margins in the House and Senate, major progressive policies in coverage expansion—*i.e.*, Medicare for All—are unlikely in the next two years as Democrats can't afford to lose more than a half-dozen votes in the House, and a 60-vote threshold will still be required to move most legislation in the Senate
- ...unless Democrats use reconciliation to address health priorities
- Reconciliation only requires 50 votes in the Senate but has rules regarding which types of policies can be included
- Democrats have two opportunities to use reconciliation in CY 2021
- There will be competing policy priorities (taxes, energy, environment, *etc.*)

POLICY PRIORITIES

- Undoing Trump Administration regulatory actions and Executive Orders
- Shoring up the ACA
- Expanding coverage

REGULATORY FREEZE

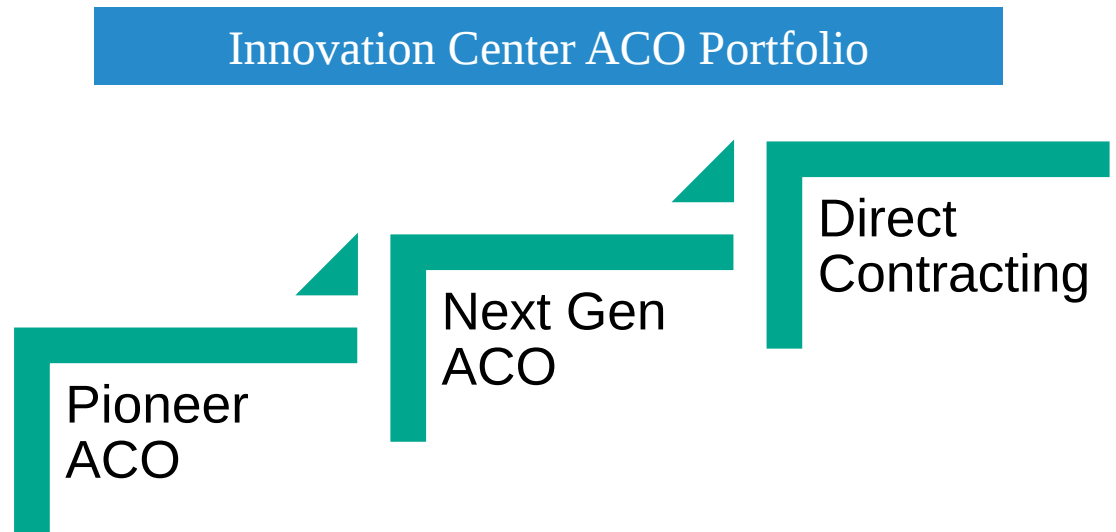
- Klain Memorandum
 - Propose or issue no rule until a department or agency head is appointed or designated by the President
 - Withdraw rules sent to OFR but not published in the Federal Register
 - For rules published in the Federal Register but not yet effective, consider postponing the rules' effective dates for 60 days (and taking comment)
 - If there are no substantial questions of fact, law, or policy, then proceed; otherwise, consult with OMB Director on next steps
 - All of the same applies to notices, ANPRMs, NPRMs, etc ...
- EO on Revocation of EOs Concerning Federal Regulation



DEVELOPMENTS IMPACTING PLAN- PROVIDER RELATIONSHIPS

DIRECT CONTRACTING MODEL OVERVIEW

- Direct Contracting represents the next step in the evolution of the Medicare Accountable Care Organization (ACO) portfolio
- Direct Contracting, like other models before it, allows Direct Contracting Entities (DCEs) to take two-sided financial risk for Medicare Part A and B services
- Some modifications to the model design allow new entity types, including those with little or no fee-for-service Medicare population at the outset, to participate



VALUE-BASED CONTRACTING DEVELOPMENTS

Emphasis on financial risk

- State regulation of risk-bearing entities

Value-based flexibility

- Regulatory sprint
- Goal = provider flexibility

PLAN-PROVIDER JV HEALTH PLANS

CONTINUED EXPANSION IN 2020

- Ascension Complete (Ascension/Centene)
- Braven (RWJBH/HMH/Horizon)
- Activity from large independent physician groups and plans

KEYS TO SUCCESS

- Trust – pick the right partner
- Governance structure

SURPRISE BILLING

No Surprises Act, Pub. L. No. 116-260, Div. BB, Tit. 1 (2020) signed on December 27, 2020.

Applies to “group health plan[s],” “insurance issuer[s] offering group or individual health insurance coverage,” and providers.

Prescribes a series of multi-departmental rulemakings—plus studies and reports by departments, GAO, and an advisory committee on the air ambulance industry—over the next several years.

The timeframes in the Act are aggressive—especially given the presidential transition and competing health policy priorities—and beg the question of how the Biden Administration will proceed.

SURPRISE BILLING

Key Milestones for 2021

- By 7.1.21: HHS, Labor, Treasury rules on payment methodology and complaint procedure concerning payments
- By 10.1.21: HHS rule on process for auditing compliance by payers
- Within no more than 330 total days of enactment:
 - Report to Congress by Advisory Committee on Air Ambulance Quality and Patient Safety
- Within 1 year of enactment:
 - HHS, Labor, Treasury rules on independent dispute resolution (IDR) processes
 - HHS rule on reporting of air ambulance data

Implementation may present APA and preemption issues

PRICE TRANSPARENCY

Hospital Price Transparency

- Rule took effect **Jan. 1, 2021**
- Wide variation in compliance
- Penalty for non-compliance is up to \$300/day

Transparency in Coverage

- Rule finalized **Oct. 2020**, with a phased implementation from 2022 to 2024
- **Jan. 2022**: Machine-readable files with negotiated rates and historical pricing information
- **Jan. 2023 - 2024**: Consumer-facing self-service tool

MEDICARE PHYSICIAN FEE SCHEDULE

- 2021 Medicare Physician Fee Schedule Final Rule included payment increases for evaluation and management (E/M) services and a new add-on code to report E/M services for complex patients
 - Result: -10.2% conversion factor to achieve budget neutrality
 - Significant swings in payment by specialty: cuts as deep as 10%; increases as high as 16%
- End of year stimulus legislation makes 2 adjustments
 - Adds 3.75% to offset -10.2% conversion factor
 - Moratorium on the add on code
 - Result: -3.3% conversion factor; payment impact varies by specialty



ANTICIPATED CHANGES IN MEDICARE ADVANTAGE

REGULATORY CHANGES

COVID-19 Waivers

Star Ratings

Reinsurance

Related Party Rules

Prior Authorization

PROGRAM FLEXIBILITIES AND POTENTIAL CHANGES UNDER BIDEN ADMINISTRATION

Over the last four years, significant flexibility, favorable rate environment for Medicare Advantage plans

Biden Administration could bring closer examination of Medicare Advantage policies

Growth of beneficiary participation in MA has changed the landscape in DC



JUDICIAL WATCH

JUDICIAL WATCH

California v. Texas, No 19-840 (U.S.)



Texas v. California, No. 19-1019 (U.S.)



MSP Recovery Claims, Series LLC v. Ace American Insurance Company, 974 F.3d 1305 (11th Cir. 2020)



JUDICIAL WATCH

Association of Community Cancer Centers v. Cochran, No. CCB-20-3531 (D. Md., filed Dec. 4, 2020) (challenge to Most Favored Nations (MFN) Interim Final Rule)



Pharmaceutical Care Management Association v. Cochran, No. 1:21-cv-00095 (D.D.C. filed Jan. 12, 2021) (challenge to rebate rule)



National Community Pharmacists Association v. Cochran, No. 1:21-cv-00131 (D.D.C. filed Jan. 15, 2021) (challenge to DIR fees)



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THANK YOU / QUESTIONS?

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