

## 7 Ways President Biden Could Now Change Healthcare

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President Joe Biden

President Joe Biden has come into office after an unexpected shift in Congress. On January 5, Democrats scored an upset by winning two US Senate seats in runoff elections in Georgia, giving them control of the Senate.

Now the Democrats have control of all three levers of power — the Senate, the House, and the presidency — for the first time since the early years of the Obama administration.

How will President Biden use this new concentration of power to shape healthcare policy?

Democrats' small majorities in both houses of Congress suggest that moderation and bipartisanship will be necessary to get things done. Moreover, Biden himself is calling for bipartisanship. In his January 20 inauguration speech, he said, "On this January day, my whole soul is in this: Bringing America together, uniting our people, uniting our nation."

Key healthcare actions that Biden could pursue include the following.

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### 1. Passing a New COVID Relief Bill

Above all, Biden is focused on overcoming the COVID-19 pandemic, which has been registering record deaths in the past month, and getting newly released vaccines to Americans.

"Dealing with the coronavirus pandemic is one of the most important battles our administration will face, and I will be informed by science and by experts," Biden said.

"There is no question that the pandemic is the highest priority for the Biden administration," says Larry Levitt, executive vice president for health policy at the Henry J. Kaiser Family Foundation. "COVID will dominate the early weeks and months of this administration. His success rests, in particular, on improving the rollout of vaccines."

Five days before his inauguration, the president-elect unveiled the American Rescue Plan, a massive, \$1.9 trillion legislative package intended to hasten rollout of COVID vaccines, improve COVID testing, and provide financial help to businesses and individuals, among many other things.

The bill would add \$1400 to a recently passed \$600 in relief for each American, amounting to a \$2000 check. It would also enact many non-COVID measures, such as a \$15-an-hour minimum wage and measures to bolster the Affordable Care Act (ACA).

If Democrats cannot reach a deal with the Republicans, they might turn the proposal into a reconciliation bill, which could then be passed with a simple majority. However, drafting a reconciliation bill is a long, complicated process that would require removing provisions that don't meet the requirements of reconciliation, Marshall says.

Most importantly, Marshall says, reconciliation bills bring out diehard partisanship. "They involve a sledgehammer mentality," he says. "You're telling the other side that their views aren't going to matter." The final version of the ACA, for example, was passed as a reconciliation bill, with not one Republican vote.

In the Trump years, "the last four reconciliation bills did not get any votes from the minority," adds Rodney Whitlock, PhD, a political consultant at McDermott+Consulting, who worked 21 years for Republicans in the House. "When the majority chooses to use reconciliation, it is an admission that it has no interest in working with the minority."

Hammering out a compromise will be tough, but Pearl thinks that if anyone can do it, it would be Biden. Having served in the Senate for 36 years, "Biden knows Congress better than any president since Lyndon Johnson," he says. "He can reach across the aisle and get legislation passed as much as anyone could these days."

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## 2. Restoring Obamacare

Biden has vowed to undo a gradual dismantling of the ACA that went on during the Trump administration through executive orders, rule-making, and new laws. "Reinvigorating the ACA was a central part of Biden's platform as a candidate," Levitt says.

Each Trump action against the ACA must be undone in the same way. Presidential orders must be met with presidential orders, regulations with regulations, and legislation with legislation.

The ACA is also being challenged in the Supreme Court. Republicans under Trump passed a law that reduced the penalty for not buying health insurance under the ACA to zero. Then a group of 20 states, led by Texas, filed a lawsuit asserting that this change makes the ACA unconstitutional.

The lawsuit was heard by the Supreme Court in November. From remarks made by the justices then, it appears that the court might well uphold the law when [a verdict comes down](#) in June.

But just in case, Biden wants Congress to enact a small penalty for not buying health insurance, which would remove the basis of the lawsuit.

Biden's choice for secretary of Health and Human Services (HHS) shows his level of commitment to protecting the ACA. Biden's HHS nominee is California Attorney General Xavier Becerra, who led a group of 17 states defending the ACA in the current lawsuit.

In addition to undoing Trump's changes, Biden plans to expand the ACA beyond the original legislation. The new COVID bill contains provisions that would expand subsidies to buy insurance on the exchanges and would lower the maximum percentage of income that anyone has to pay for health insurance to 8.5%.

Dealing with Medicaid is also related to the ACA. In 2012, the Supreme Court struck down a mandate that states expand their Medicaid programs, with substantial funding from the federal government.

To date, 12 states still do not participate in the Medicaid expansion. To lure them into the expansion, the Democrat-controlled House last session passed a bill that would offer to pay the entire bill for the first 3 years of Medicaid expansion if they chose to enact an expansion.

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## 3. Undoing Other Trump Actions in Healthcare

In addition to changes in the ACA, Trump also enacted a number of other changes in healthcare that Biden could undo. For example, Biden says he will reenter the World Health Organization (WHO) so that the United States could better coordinate a COVID response with other nations. Trump exited the WHO with the [stroke](#) of a pen, and Biden can do the same in reverse.

Under Trump, the Centers of Medicare & Medicaid Services (CMS) used waivers to weaken the ACA and allow states to alter their Medicaid programs. One waiver allows Georgia to leave the ACA exchanges and put brokers in charge of buying coverage. Other waivers allow states to transform federal Medicaid payments into block grants, which several states are planning to do.

The Trump CMS has also allowed several states to use Medicaid waivers to add work requirements for Medicaid recipients. The courts have blocked the work rules so far, and the Biden CMS may decide to reverse these waivers or modify them.

"Undoing waivers is normally a fairly simple thing," Levitt says. In January, however, the Trump CMS asked some waiver states to sign new contracts in which the CMS pledges [not to end a waiver](#) without 9 months' notice. It's unclear how many states signed such contracts and what obligation the Biden CMS has to enforce them.

The Trump CMS also stopped reimbursing insurers for waiving deductibles and copayments for low-income customers, as directed by the ACA. Without federal reimbursement, some insurers raised premiums by as much as 20% to cover the costs. It is unclear how the Biden CMS would tackle this change.

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## 4. Negotiating Lower Drug Prices

Allowing Medicare to negotiate drug prices, a major plank in Biden's campaign, would seem like a slam dunk for the Democrats. This approach is backed by 89% of Americans, including 84% of Republicans, according to a Kaiser Family Foundation survey in December.

"With that level of support, it's hard to go wrong politically on this issue," Levitt says.

Many Republicans, however, do not favor negotiating drug prices, and the two parties continue to be far apart on how to control drug prices. Trump signed an action that allows Americans to buy cheaper drugs abroad, an approach that Biden also supports, but it is now tied up in the courts.

"A drug pricing bill has always been difficult to pass," Whitlock says. "The issue is popular with the public, but change does not come easily. The drug lobby is one the strongest in Washington, and now it may be even stronger, since it was the drug companies that gave us the COVID vaccines."

Whitlock says Republicans will want Democrats to compromise on drug pricing, but he doubts they will do so. The House passed a bill to negotiate drug prices last year, which never was voted on in the Senate. "It is difficult to imagine that the Democrats will be able to move rightward from that House bill," Whitlock says. "Democrats are likely to stand pat on drug pricing."

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## 5. Introducing a Public Option

Biden's campaign proposal for a public option — health insurance offered by the federal government — and to lower the age for Medicare eligibility from 65 years to 60 years resulted from a compromise between two factions of the Democratic party on how to expand coverage.

Although Biden and other moderates wanted to focus on fixing the ACA, Democrats led by Sen. Bernie Sanders of Vermont called for a single-payer system, dubbed "Medicare for all." A public option was [seen as the middle ground](#) between the two camps.

"A public option would be a very controversial," Whitlock says. Critics say it would pay at Medicare rates, which would reduce doctors' reimbursements, and save very little money compared with a single-payer system.

Pearl sees similar problems with lowering the Medicare age. "This would be an expensive change that the federal government could not afford, particularly with all the spending on the pandemic," he says. "And it would be tough on doctors and hospitals, because Medicare pays less than the private insurance payment they are now getting."

"The public option is likely to get serious discussion within the Democratic caucus and get onto the Senate floor," Levitt says. "The party won't ignore it." He notes that in the new Senate, Sanders chairs the budget committee, and from that position he is likely to push for expanding access to care.

Levitt says the Biden CMS might allow states to experiment with a statewide public option or even a single-payer model, but he concedes that states, with their budgets ravaged by COVID, do not currently have the money to launch such programs.

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## 6. Reviving the CMS

Under President Obama, CMS was the engine that implemented the ACA and shepherded wider use of value-based reimbursements, which reward providers for quality and outcomes rather than volume.

Under the Trump administration, CMS leadership continued to uphold value-based reimbursement, Pearl observes. "CMS leadership championed value-based payments, but they encountered a lot of pushback from doctors and hospitals and had to scale back their goals," he says.

On the other hand, the Trump CMS took a 180-degree turn on the ACA and worked to take it apart. This took a toll on staff morale, according to Don Berwick, who ran CMS under President Obama. "Many people in CMS did not feel supported during the Trump administration, and some of them left," Berwick says.

CMS needs experienced staff on board to write comprehensible rules and regulations that can overcome court challenges.

Having a fully functioning CMS also requires consistent leadership, which was a problem for Obama. When Obama nominated Berwick, 60 Senate votes were needed to confirm him, and Republicans would not vote for him. Obama eventually brought Berwick in as a recess appointment, but it meant Berwick could only serve for 17 months.

Since then, Senate confirmation rules have changed so that only a simple majority is needed to confirm appointments. This is important for Biden's nominees, Berwick says. "For a president, having your team in place means you are able to execute the policies you want," he says. "You need to have consistent leadership."

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## 7. Potentially Changing Healthcare Without Congress

Even with their newly won control of the Senate, the Democrats' thin majorities in both houses of Congress may not be enough to pass much legislation if Republicans are solidly opposed.

Democrats in the House also have a narrow path this session in which to pass legislation. The Democratic leadership has an 11-vote majority, but it must contend with 15 moderate representatives in purple districts (where Democrats and Republicans have about equal support).

A bigger problem looms before the Democrats. In 2022, the party may well lose its majorities in both houses. Whitlock notes that the party of an incoming president normally loses seats in the first midterm election. "The last incoming president to keep both houses of Congress in his first midterm was Jimmy Carter," he says.

If this happens, Biden would have to govern without the support of Congress, which is what Barack Obama had to do through most of his presidency. As Obama's vice president, Biden is well aware how that goes. Governing without Congress means relying on presidential orders and decrees.

In healthcare, Biden has a powerful policy-making tool, the Center for Medicare & Medicaid Innovation (CMMI). The CMMI was empowered by the ACA to initiate pilot programs for new payment models.

So far, CMMI's work has been mainly limited to accountable care organizations, bundled payments, and patient-centered medical homes, but it could also be used to enact new federal policies that would normally require Congressional action, Levitt says.

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## Conclusion

Expectations have been very high for what Joe Biden can do in healthcare. He needs to unite a very divided political system to defeat a deadly pandemic, restore Obamacare, and sign landmark legislation, such as a drug-pricing bill.

But shepherding bills through Congress will be a challenge. "You need to have accountability, unity, and civility, which is a Herculean task," Whitlock says. "You have to keep policies off the table that could blow up the bipartisanship."

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