

The 2024 Elections and the Health Policy Landscape

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The 2024 Presidential and Congressional elections are poised to shape the health policy landscape in the years to come. With the elections only a few months away, the polls consistently show that health care remains a top priority for voters across the nation and that its impact is only magnified when considered alongside inflation and the cost of living. No matter the outcome of the elections, the incoming Administration and Congress will continue to grapple with how to expand access to high-quality health care while reducing costs, which may bring about change and uncertainty to an industry that continues to recover and redefine itself following the pandemic. The Supreme Court's recent decision in *Loper Bright Enterprises v. Raimondo* overturning *Chevron* deference will add to this complexity, impacting the ability of the Administration and Congress to bring about comprehensive reforms while forcing them to reevaluate existing policies, the future of many of which will likely be decided by the courts. With health care poised to take center stage in the 2024 elections, this article provides an overview of the health policy landscape.

THE 2024 ELECTIONS

Unprecedented Times

The 2024 Presidential election is an unprecedented election that continues to unfold. Just six months before the election, the nation was heading toward a Presidential election between two long anticipated candidates: former President Donald Trump, who in May became the first former American president to be convicted of a felony crime, and President Joe Biden, who received wide criticism after his performance in the first Presidential debate resulting in more than 30 Democratic policymakers requesting that he withdraw.¹

The assassination attempt on former President Trump propelled an enthusiastic response during the Republican National Convention in July, where former President Trump selected Senator JD Vance

(R-OH) as his running mate. Following the Republican convention, President Biden withdrew, endorsing Vice President Kamala Harris as the Democratic nominee. Vice President Harris secured her nomination as the Democratic candidate, announcing Minnesota Governor Tim Walz as her running mate in the weeks running up to the Democratic National Convention. All eyes are now on the Presidential debate between former President Trump and Vice President Harris, which is scheduled for September 10th, as well as a debate between Senator Vance and Governor Walz, which has been tentatively agreed upon for October 1st.

Policy and Legal Uncertainty

While unprecedented times can serve as opportunities for change, these events and the uncertainty they have added to the 2024 Presidential election have resulted in largely underdeveloped policy platforms from both parties that make it hard for stakeholders to assess the potential impact of the election. While several think tanks and interest groups have been advancing recommended priorities ahead of the election, the details of each agenda remain unclear.² The expectation is for Vice President Harris to build on the Biden agenda and former President Trump to dismantle actions from the Biden administration, relying on executive orders where possible to advance policy priorities that they may be unable to move legislatively.

This policy uncertainty is compounded by the Supreme Court's recent decision in *Loper Bright Enterprises v. Raimondo* overturning the 40-year-old *Chevron* doctrine of judicial deference given to administrative agencies, which has resulted in a fundamental shift in courts' oversight of federal agencies.³ In *Loper Bright*, the Court held that the Administrative Procedure Act requires courts to exercise "independent judgment" in determining whether a federal agency's actions align with its

statutory authority.⁴ This means that while courts may still look to an agency's interpretation of a statute for guidance, particularly if it is long-standing or well-reasoned, courts will play a more active role in scrutinizing federal regulations following this decision.

In the weeks following the Court's decision, there has been an increasing number of stakeholder challenges in a wide range of industries, including health care, challenging federal regulations that rely on agency deference.⁵ In Congress, there has been an effort from Republican leaders to have federal agencies review final regulations and pending court cases that could be impacted by *Loper Bright*.⁶ Moving forward, federal agencies will need to be more circumspect in their rulemaking and provide clearer justifications for their interpretations of the law and the statutory authority in which those interpretations are based.

For Congress, the Court's decision emphasizes the importance of clear and explicit delegation of authority. While Congress retains the ability to delegate authority to federal agencies expressly, it will need to clearly define the scope of that authority. As a result, the Court's decision in *Loper Bright* may lead to more detailed and specific statutory language in future legislation and perhaps the need to revisit existing legislation.

The 119th Congress and Its Policy Agenda

The policy and legal uncertainty in which we are heading toward the election underscores the importance of the composition of the 119th Congress. No matter the outcome of the Presidential election, the ability of the incoming Administration to advance its policy agenda will depend in large part on the composition of Congress. A total of 469 seats (34 Senate seats and all 435 U.S. Congressional seats) are up for election this year and there is a real possibility that

the election could bring about significant changes in leadership. Currently, Democrats only have a two-seat majority in the Senate and are defending many more seats up for reelection than Republicans. In the House of Representatives, Republicans have a slim four-seat majority. Many competitive seats that Republicans are defending are in places where President Biden won.

At the start of the 119th Congress, the incoming President will have to work with Congress to avoid a government default in the first quarter of 2025. Under current law, on January 2, 2025, the debt ceiling is reimposed at then spending levels and the government must adopt “extraordinary measures” in order to avoid defaulting. This will give the 119th Congress a couple of months to raise the debt ceiling.⁷ The Fiscal Responsibility Act also instituted limits on discretionary spending for fiscal years 2024 and 2025, which means that policymakers will need to agree on the amount of appropriations for the following fiscal year when the caps expire.⁸ In addition, many provisions from the Tax Cuts and Jobs Act as well as the enhanced subsidies for purchase of health insurance and other health extenders expire at the end of 2025.⁹

These priorities will set the legislative agenda for the 119th Congress and the potential inclusion of particular policy priorities. Moreover, if either party has unified control of government, they are expected to use what is known as the “budget reconciliation” process to enact major policy changes, which could include tax and other changes and extensions. The budget reconciliation legislation only requires a majority vote and is harder to stop in the Senate.¹⁰ However, there are limitations on the types of policy priorities that can be included in such a legislative vehicle. In general, the main impact of the proposal has to be budgetary.

Meanwhile: Oversight, Oversight, Oversight

No matter the composition of the 119th Congress, there will be continued use of

Congressional hearings to explore policy priorities, as well as oversight and investigations to advance each party’s policy objectives.

In health care, we have seen this trend in the current Congress with regard to tax-exempt hospitals and the community benefit standard, as well as with regard to the use of federal programs, such as the 340B Drug Pricing Program.¹¹ We have also seen it applied to examining the role of private equity in health care, particularly following the recent bankruptcy protection filing by Steward Health Care, which has fueled what had already been a bipartisan interest in exploring the role of private equity in health care. In July, the Senate Health Education Labor and Pensions Committee officially opened an investigation and issued its first subpoena since 1981 to compel Steward’s CEO to testify at a hearing on September 12th.¹²

Against this backdrop, below are some of the top issues to watch in health care as we head to the elections. This includes policy issues with bipartisan support—such as telehealth, transparency, and behavioral health—that could gain traction in Congress later in the year as part of must-pass government funding legislation. It also highlights policy issues on which the parties are divided and where they have put forward differing strategies that could bring about significant change depending on the outcome of the elections.

THE HEALTH POLICY LANDSCAPE

Lame Duck: Telehealth, Transparency, Behavioral Health

While election years generally do not see as much legislative action as other years due to the limited number of legislative days in the calendar, Congress must act on must-pass legislation by the end of the year, including with regard to government funding. With current government funding expiring at the end of September, it is likely that Congress will extend funding until the end of the year as it negotiates a broader

funding legislative package, which could serve as a vehicle for health care priorities with bipartisan support.

Given that key COVID-19 telehealth flexibilities and several other health extenders expire at the end of the year, Congress is expected to include a health care section in the government funding legislative package. While there is bipartisan support for telehealth, Congress has debated in numerous hearings over the past two years whether to extend the flexibilities permanently or enact a short-term extension while it continues to analyze their impact. In this regard, key committees with jurisdiction over this matter, namely, the House Energy and Commerce Committee and the House Ways and Means Committee, have agreed on a potential two-year short-term extension, which is what is currently expected to be included as part of the package.¹³

In addition to telehealth, other bipartisan priorities may be included in a health care section, such as transparency and behavioral health. Over the past few years, there has been bipartisan interest in codifying and expanding some of the Transparency in Coverage requirements for hospitals and health plans, most recently as part of the Lower Costs More Transparency Act, which passed the House last year.¹⁴ There has also been bipartisan interest in reauthorizing the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act, a comprehensive opioid response legislation that passed the House last year but has since stalled in the Senate. The SUPPORT Act could serve as a legislative vehicle for other behavioral health priorities. Overall, while it is possible that some of these priorities could move as part of a broader government funding package by the end of the year, we expect these health policy issues to continue to gain traction no matter the outcome of the elections.

The Affordable Care Act and Health Reform 2.0

Since its enactment in 2010, the Affordable Care Act has been the cornerstone of the U.S. health care system. The law made significant changes aimed at expanding access and controlling costs, in part through changes to key programs such as Medicare and Medicaid, as well as through the creation of health care exchanges where individuals can purchase health insurance while receiving subsidies in certain circumstances to do so.¹⁵ Enacted during the Obama Administration, the law has survived a number of legal challenges as well as attempts from Congress to repeal and replace aspects of the law. Yet its implementing regulations have been in a state of flux as the Trump Administration sought to make changes to the law through the regulatory process, which in many instances continue to make their way through the courts.

The Biden Administration has reinstated several of the Obama Administration's interpretations of the law, issuing key regulations impacting coverage of preventive services, nondiscrimination in health programs, and short-term limited-duration insurance.¹⁶ A Harris Administration is largely expected to continue to build on the law and defend it from legal challenges. Indeed, the Democratic platform notes that "[Democrats] will never quit fighting to protect and expand the Affordable Care Act."¹⁷ That said, a Harris Administration could also renew calls for broader health care reform in the years to come. While Vice President Harris is not leading her campaign with a promise of health care reform, she has supported Medicare for All and put forward proposals to expand coverage through Medicare Advantage.¹⁸ Governor Walz has similarly supported establishing a public option in Minnesota, which could renew calls for reform in the future.¹⁹

The Republican platform does not mention the Affordable Care Act, but it notes that "Republicans will promote Choice and Competition [and] expand access to new Affordable Healthcare."²⁰ The Republican Study Committee, which is a Congressional

caucus of conservative members of the Republican Party, laid out their policy priorities in a proposed FY 2025 budget, where they called for the elimination of the subsidies and the expansion of other forms of insurance, such as health savings accounts, association health plans, and health reimbursement arrangements.²¹ While it is unlikely that major health care reform will happen in the foreseeable future, these policies could serve as a building block for potential reform in the years to come.

Prescription Drug Pricing and PBM Regulation

Congress and the Biden Administration are focused on drug pricing, including regulations governing prices charged by drug manufacturers and pharmacy benefit managers (PBMs). This includes a focus on implementation of the drug pricing provisions of the Inflation Reduction Act (IRA), which passed with mostly Democratic support. The law allows Medicare to negotiate the prices for select Part D and B drugs with drug manufacturers, puts an inflation cap on certain drug prices, caps at \$35 monthly insulin prescriptions for Medicare beneficiaries, and caps at \$2,000 annual out-of-pocket prescription drug costs for Medicare beneficiaries.²² Vice President Harris has vowed to build on the law if she is elected President.

Days before the second anniversary of the IRA, President Biden and Vice President Harris highlighted that the negotiated prices would lead to \$6 billion in savings on prescription drug costs for American taxpayers and \$1.5 billion in savings on out-of-pocket costs for Medicare beneficiaries in 2026 alone.²³ In this regard, Vice President Harris has pledged to continue to expand the IRA by “accelerating” Medicare drug price negotiations and increasing the number of drugs subject to negotiation.²⁴ She has also pledged to expand the \$35 out-of-pocket cap for monthly prescriptions of insulin and the \$2,000 out-of-pocket prescription cost cap beyond Medicare and into the commercial market.²⁵ The Democratic platform also

notes that a Harris Administration would defend efforts from Congress to repeal the drug pricing provisions of the law.²⁶

The Republican platform does not mention the Inflation Reduction Act, but it notes that “Republicans will [...] expand access to new [...] prescription drug options.”²⁷ Republicans have opposed key aspects of the law, including “drug price controls.”²⁸ In this regard, it is possible that there could be efforts to repeal aspects of the law. More likely, the focus will be on discrete actions aimed at increasing access to generics and biosimilars and addressing practices within the pharmaceutical supply chain that may impact the cost of prescription drugs. Following a number of states that have taken action in recent years to try to regulate PBMs, there has been bipartisan interest in exploring actions to regulate and increase oversight of PBMs.²⁹ It is possible discrete measures could be added to a government funding package by the end of the year.

The Future of Medicare

No matter the outcome of the election, the incoming Administration and Congress will need to address the long-term health of the Medicare Trust Fund and ways to reduce costs while providing quality care. As mentioned above, the Harris Administration is expected to continue to build on the Medicare program in part by supporting the expansion of the drug price provisions of the IRA. The Democratic platform also notes that a Harris Administration would oppose any actions to cut Medicare benefits and that it would look into expanding traditional Medicare coverage to include dental, vision, and hearing services.³⁰

A Trump Administration could potentially pursue a significantly different approach. While the Republican platform notes that “[Republicans] will protect Medicare, and ensure Seniors receive the care they need without being burdened by excessive costs,”³¹ it is worth noting that the Republican Study Committee’s budget proposed to merge all the Medicare trust

funds into one fund and implement a premium support model where private plans would compete with a federal Medicare plan that would offer the traditional Medicare benefits received through Part A, B, and D. Plans would compete with traditional Medicare to cover enrollees, with payments to plans benchmarked to the bid made by the federal plan.³² It also proposes to implement site-neutral payment policies throughout Medicare in an attempt to lower costs.³³

While comprehensive reform of the program is unlikely in the foreseeable future, more discrete measures to control costs within the program, such as the implementation of site-neutral payment policies, have gathered some bipartisan support and will likely continue to be explored as a means to contain costs.

Reproductive Care

Since the Supreme Court issued its landmark decision in *Dobbs v. Jackson Women's Health Organization*, where the Court held that the U.S. Constitution does not confer a right to abortion services,³⁴ federal and state governments have grappled with how to respond. In Congress, there have been several measures introduced aimed at protecting access to reproductive health services, including abortion and contraceptives, but they have stalled in the current divided government.³⁵ In this regard, the Biden Administration has responded by issuing a number of executive orders directing federal agencies to take action to preserve access to reproductive care, including abortion services and contraceptives, which have resulted in rulemaking to protect privacy and increase access. It has also been proactive in litigating issues related to access to abortion services, including defending a challenge to the Biden Administration's guidance related to the Emergency Medical Treatment & Labor Act and its impact on abortion.³⁶

Vice President Harris has pledged to continue to defend a right to abortion

services. She has noted that, if Congress were to pass a law to preserve the right to abortion, she would sign it. Following the Supreme Court's recent decision in *FDA v. Alliance for Hippocratic Medicine*, where the Court dismissed on Article III standing grounds a challenge seeking to roll back the abortion medication mifepristone,³⁷ former President Trump mentioned during the first Presidential debate that he would not seek to block access to the drug.

In this regard, the Republican platform does not call for a national abortion ban. The platform notes instead that Republicans will "oppose Late Term Abortion, while supporting mothers and policies that advance Prenatal Care, access to Birth Control, and IVF (fertility treatments)."³⁸ It is worth noting that, in contrast, the Republican Study Committee budget states that the party will "support unapologetically pro-life policies and combat the Biden administration's radical abortion-on-demand agenda."³⁹ Regardless of the composition of Congress, these differences could continue to stall meaningful action on reproductive care.

CONCLUSION

The 2024 Presidential and Congressional elections are poised to shape the health policy landscape in the years to come. No matter the outcome, the incoming Administration and Congress will continue to grapple with how to expand access to high-quality health care while reducing costs. As described in this article, current plans to address health care coverage and the cost of health care vary and the future of specific policies will be dictated by the courts, the result of the elections, and the policy agenda of the 119th Congress. These decisions could have profound implications for health care stakeholders and consumers across the nation in the years to come. Now is the time for health care stakeholders to think about these issues, analyze their potential impact, and consider engagement with Congress and Administration.

Endnotes

1. See Megan Brenan, *29% in U.S. Say Neither Biden nor Trump Would Be Good President*, Gallup (April 3, 2024).
2. See, e.g., the Heritage Foundation's Project 2025 and Protect Our Care.
3. *Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024).
4. *Id.*
5. See, e.g., *HMH Hospitals Corp. et al. v. Becerra*, 1:24-cv-01901 (D.D.C.) (2024).
6. See, e.g., Press Release, *Rodgers, Comer, House GOP Committee Leaders Demand Federal Agencies Adhere to Recent Chevron Reversal*, House Energy and Commerce Committee (July 17, 2024).
7. See Peter G. Peterson Foundation, *The Lawmakers we Elect in November will Face a Series of Important Fiscal Decisions* (May 20, 2024).
8. *Id.*
9. *Id.*
10. See *The Budget Reconciliation Process: Timing of Legislative Action*, Congressional Research Service (2016).
11. See, e.g., Hearing on Tax-Exempt Hospitals and the Community Benefit Standard, House Ways and Means Committee (April 26, 2023); see also Ranking Member Cassidy Opens Investigation into Hospital Revenue Generated by 340B Drug Program, Senate Health Education Labor and Pensions Committee (September 28, 2023).
12. See Press Release, *With Bipartisan Vote, Sanders Leads HELP Committee Investigation into Bankruptcy of Steward Health Care and Subpoenas Its CEO*, Senate Health Education Labor and Pensions Committee (July 25, 2024).
13. See, e.g., Telehealth Modernization Act (H.R.7623) (118th Congress – 2023-2024) and Preserving Telehealth, Hospital, and Ambulance Access Act (H.R.8261) (118th Congress – 2023-2024).
14. See Lower Costs, More Transparency Act (H.R. 5378) (118th Congress – 2023-2024).
15. Affordable Care Act (Public Law 111–148).
16. See, e.g., Coverage of Certain Preventive Services Under the Affordable Care Act (RIN 0938-AU94), Nondiscrimination in Health Programs and Activities (RIN 0945-AA17), Short-Term, Limited-Duration Insurance and Independent, Noncoordinated Excepted Benefits Coverage (RIN 0938-AU67).
17. See 2024 Democratic Party Platform (2024).
18. See Kamala Harris, *My Plan For Medicare For All*, Medium (July 29, 2019).
19. See Briana Bierschbach, *The MinnesotaCare buy-in, explained*, MPR News (November 28, 2018).
20. See 2024 GOP Platform: Make America Great Again (2024).
21. See Fiscal Year 2025 Budget proposal, Fiscal Sanity to Save America, Republican Study Committee (March 20, 2024).
22. Inflation Reduction Act (Public Law 117–169).
23. See Fact Sheet, Biden-Harris Administration Announces New, Lower Prices for First Ten Drugs Selected for Medicare Price Negotiation to Lower Costs for Millions of Americans, The White House (August 15, 2024).
24. *Id.*
25. *Id.*
26. See 2024 Democratic Party Platform (2024).
27. See 2024 GOP Platform: Make America Great Again (2024).
28. See Fiscal Year 2025 Budget proposal, Fiscal Sanity to Save America, Republican Study Committee (March 20, 2024).
29. See, e.g., Pharmacy Benefit Manager Transparency Act (S.127) (118th Congress – 2023-2024), Pharmacy Benefit Manager Reform Act (S.1339) (118th Congress – 2023-2024), Modernizing and Ensuring PBM Accountability Act (S.2973) (118th Congress – 2023-2024), Medicare PBM Accountability Act (S.2254) (118th Congress – 2023-2024), Patients Before Middlemen Act (S.1967) (118th Congress – 2023-2024).
30. See 2024 Democratic Party Platform (2024).
31. See 2024 GOP Platform: Make America Great Again (2024).
32. See Fiscal Year 2025 Budget proposal, Fiscal Sanity to Save America, Republican Study Committee (March 20, 2024).
33. *Id.*
34. *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022).
35. See Women's Health Protection Act (H.R. 12) (118th Congress – 2023-2024); see also Right to Contraception Act (S.4381) (118th Congress – 2023-2024).
36. See *Moyle v. United States*, 603 U.S. ____ (2024).
37. *Food and Drug Administration v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024).
38. See 2024 GOP Platform: Make America Great Again (2024).
39. See Fiscal Year 2025 Budget proposal, Fiscal Sanity to Save America, Republican Study Committee (March 20, 2024).

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