



THE FIRST 100 DAYS: BIDEN'S HEALTHCARE OUTLOOK

Landscape and Predictions

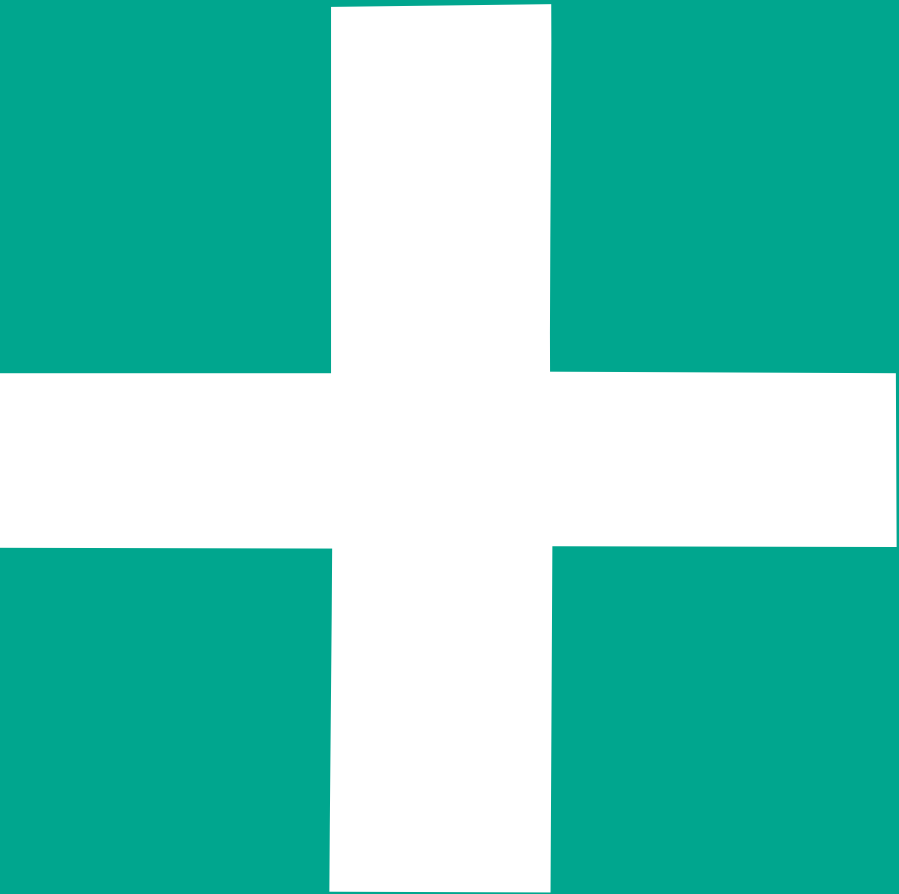
January 2021

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TOP PRIORITIES

- COVID 19 Response
- Coverage Expansion
- Reversing Trump Policies



POLITICAL LANDSCAPE

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

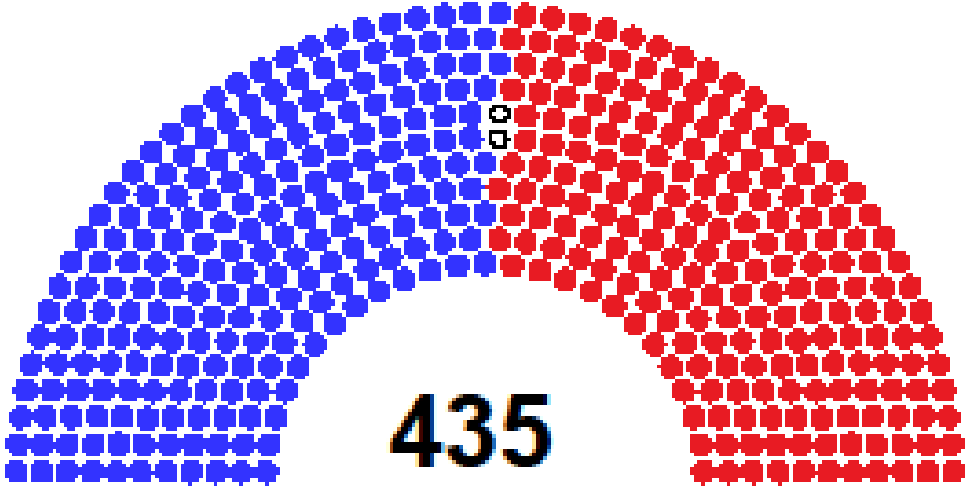


RACHEL LEVINE

Nominee for Assistant Secretary of Health

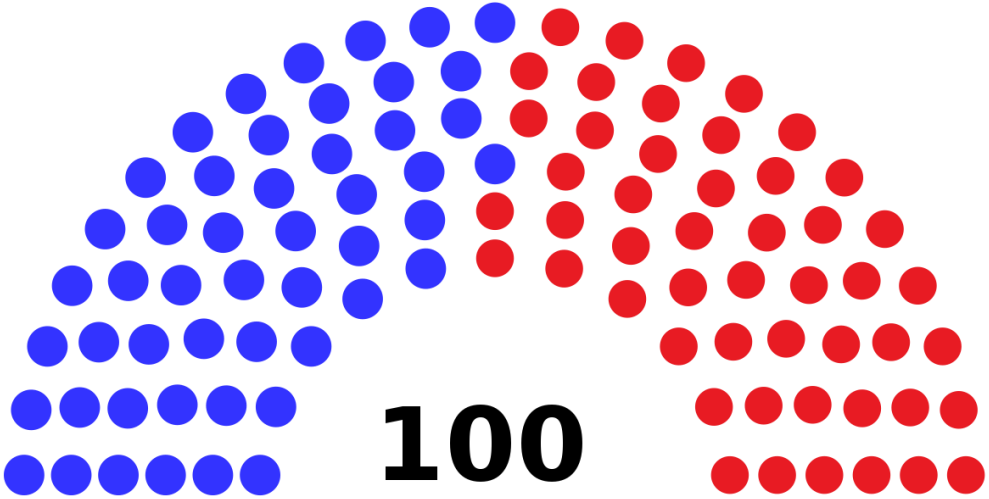
COMPOSITION OF THE 117TH CONGRESS

House of Representatives



222 / 211

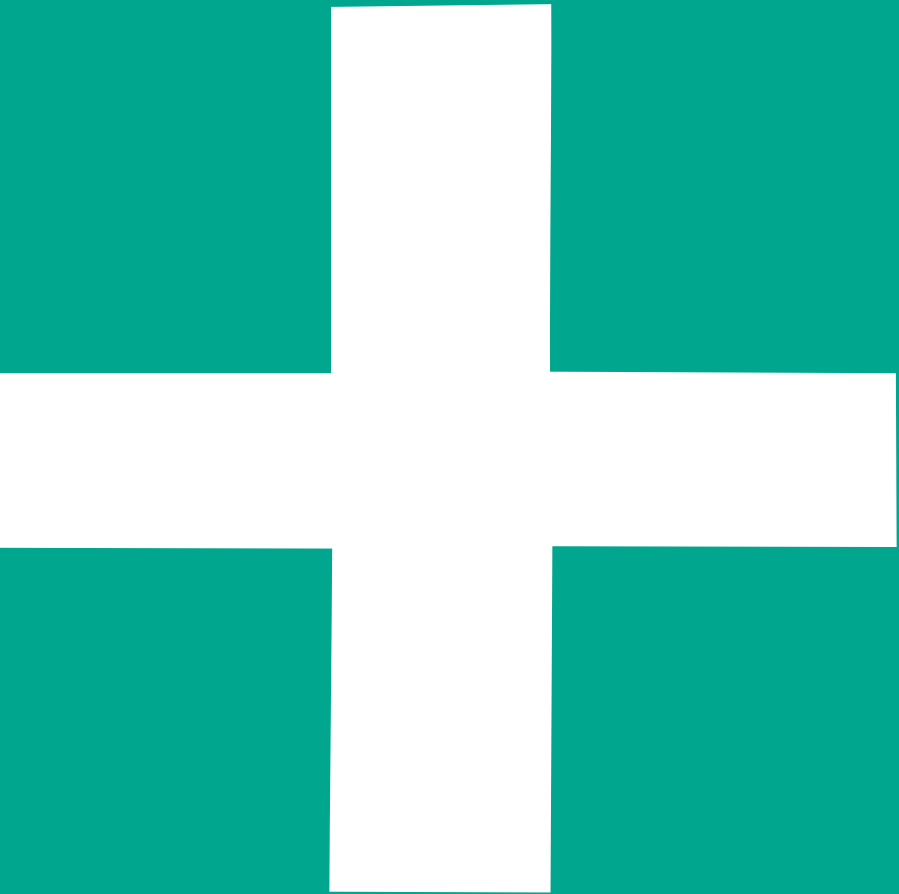
Senate



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.*) to include in reconciliation.



COVID-19 RESPONSE



“My first 100 days won’t end the COVID-19 virus. I can’t promise that. But we did not get in this mess quickly. We’re not going to get out of it quickly.”

President-Elect Biden, December 8, 2020

OVERARCHING GOALS: VACCINATION STRATEGY AND IMPLEMENTATION

- 100M vaccinations by end of April
- Expand use of Defense Production Act
- Create a national COVID-19 Data Dashboard
- Establish Pandemic Testing Board

EXTENDING PANDEMIC WAIVERS AND FLEXIBILITIES

- During the COVID-19 public health emergency (PHE), the Trump Administration issued many flexibilities and waivers to allow the healthcare system to meet pandemic demands.
 - Many of these flexibilities, such as those for telehealth, are tied to the duration of the PHE, which expires April 21, 2021.
- Expect the Biden Administration to renew the PHE for most or all of 2021.
- These waivers are not permanent, and stakeholders will likely urge for greater stability or permanent changes.

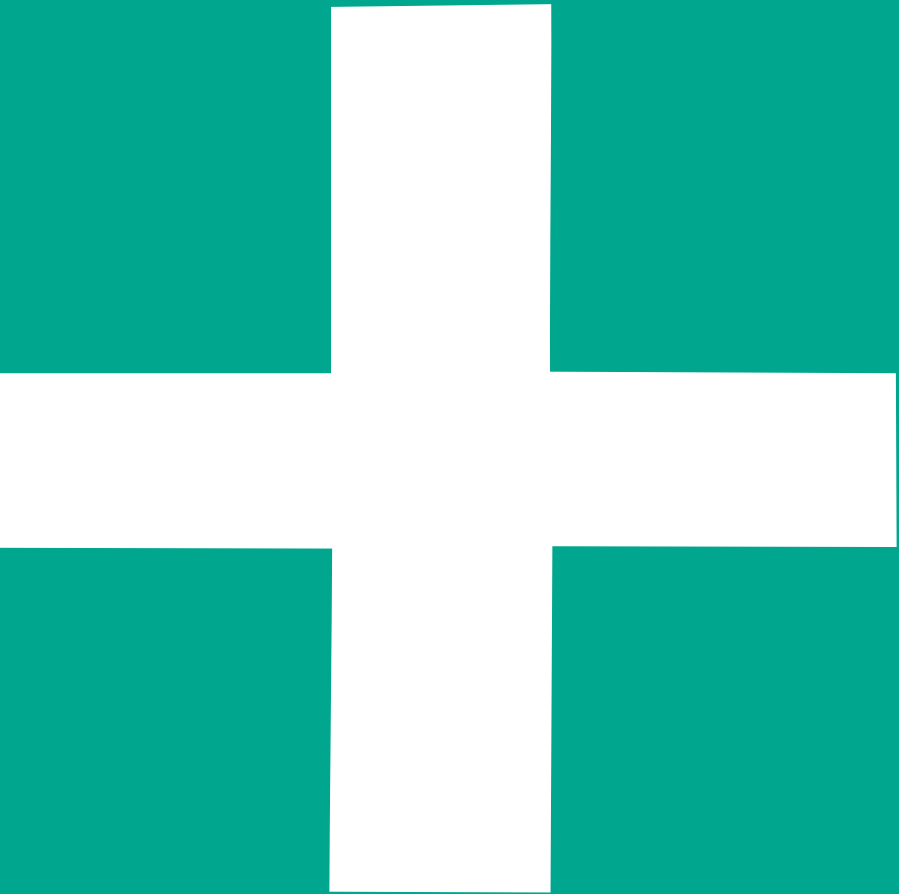
POTENTIAL FOR NEXT COVID-19 RELIEF PACKAGE

- Both parties have unfinished business they want to advance after the passage of the Consolidated Appropriations Act, 2021. Specific elements of what will be included are not yet determined and will be highly influenced by President-Elect Biden.

Elements for Next COVID-19 Relief Package	
Factors influencing timing and content	Potential healthcare items
Economic crisis	State and local funding
Public interest in \$2,000 stimulus relief	Liability protections
Vaccine distribution	Sunsetting of healthcare policies – Medicare sequester ending and Advance and Accelerated Payments (AAP) due in April 2021

OVERSIGHT OF THE PANDEMIC RESPONSE

- Oversight of the pandemic response will continue in the next Congress as the country continues to struggle with the consequences of Trump's decentralized approach to the PHE, but the focus will shift from the Administration to corporate America.
- Congress will likely review the contracts and support provided to pharmaceutical companies to determine if the federal government made the right decisions during the pandemic.
- Expect Congress to re-examine the Paycheck Protection Program and Provider Relief Fund to evaluate recipients' eligibility and ensure proper use of funds.



COVERAGE
EXPANSION

MARKETPLACE ACTION FOR BIDEN ADMINISTRATION

Marketplace Navigators

- **Context:** In [2018, the Trump Administration, through the Benefit and Payment Parameters \(BPP\) rules](#), reduced the number of navigator states are required to make available and no longer required that navigators maintain a physical presence in the state.
- **Biden Outlook:** The Biden Administration could reverse this action through regulation.
- **Context:** The Trump Administration reduced funding support for Marketplace navigators and outreach through Centers for Medicare and Medicaid Services (CMS) bulletins.
- **Biden Outlook:** The Biden Administration could issue a bulletin or guidance to increase funding for navigators and outreach

STLDI and AHP Plans

- **Context:** In 2018, the Trump Administration [finalized a rule](#) expanding the availability of short-term, limited-duration insurance (STLDI) plans by allowing these plans to be sold for up to 12 months and renewed or extended for up to 36 months.
- **Biden Outlook:** The Biden Administration will likely issue a new regulation that reduces the availability of STLDI plans to a maximum duration of three months without renewals, as required under Obama Administration. (Also, there is a lawsuit challenging the legality of this rule.)
- **Context:** In [2018, the Trump Administration finalized a rule](#) expanding the availability of Association Health Plans (AHPs).
- **Biden Outlook:** A federal court invalidated portions of the AHP final rule. The Biden Administration may still seek to reverse the Trump Administration policy

Marketplace Enrollment

- **Context:** [In 2017 the Trump Administration issued a regulation](#) shortening the annual open enrollment to 45 days.
- **Biden Outlook:** The Biden Administration could reverse this policy through regulation.
- **Context:** State marketplaces created a special enrollment period because of the COVID-19 pandemic. However, the federally facilitated Marketplace does not have this special enrollment period.
- **Biden Outlook:** The Biden Administration could allow CMS to use its authority to authorize emergency special enrollment periods because of the COVID-19 pandemic.

MARKETPLACE ACTION FOR BIDEN ADMINISTRATION

1332 Waivers

- **Context:** In 2020, the Trump Administration finalized a [regulation](#) that would codify the 2018 waiver guidance and allow states to eliminate use of healthcare.gov or state-run marketplace websites and rely entirely on brokers.
- **Biden Outlook:** The Biden Administration will likely pause the effective date of this regulation.
- **Context:** In 2020, through the COVID-19 Interim Final Rule (IFR), the Trump Administration reduced the requirements for public comment and notice for 1332 waivers during the PHE.
- **Biden Outlook:** The Biden Administration could reverse this action through a COVID-19 IFR.

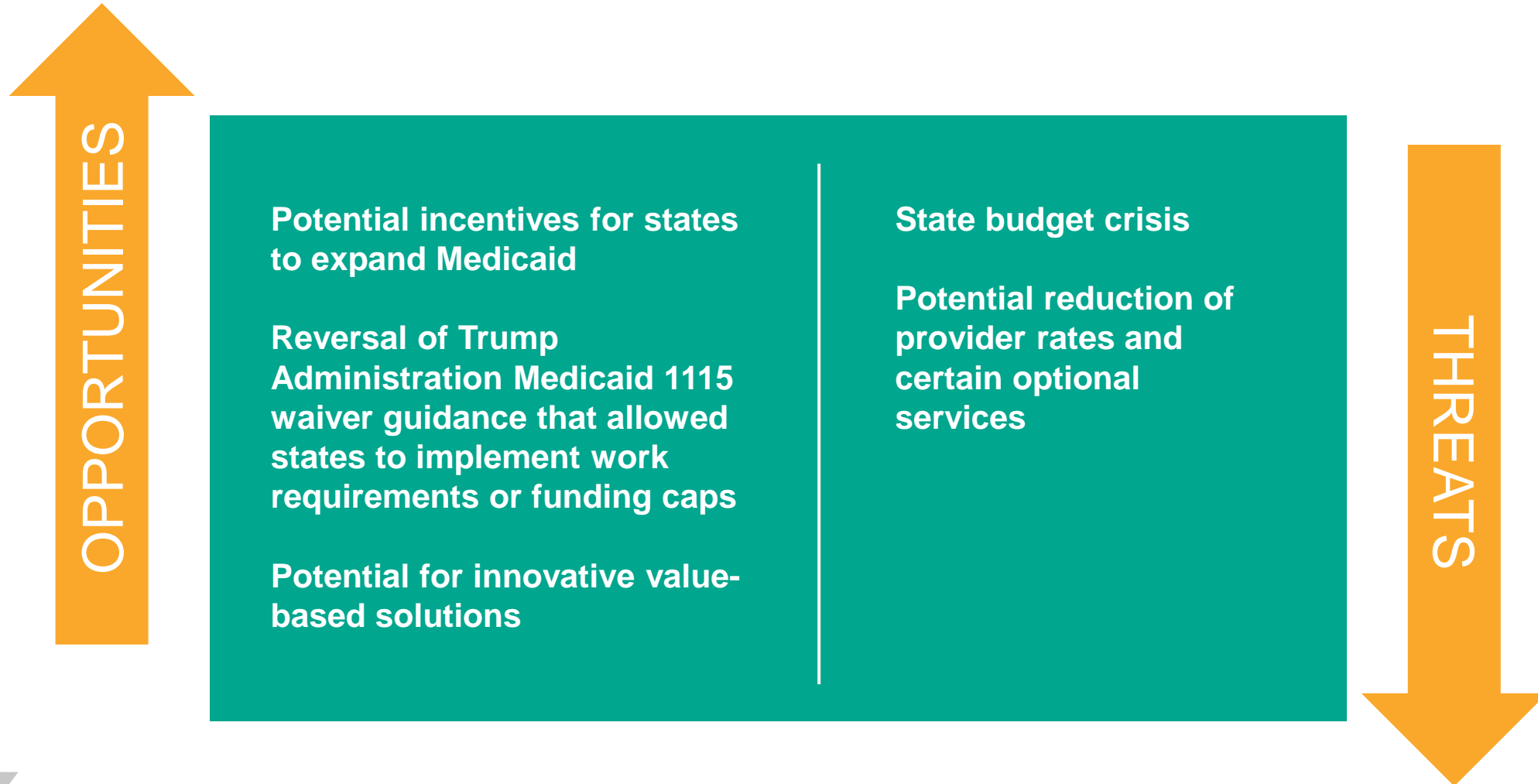
Marketplace User Fees

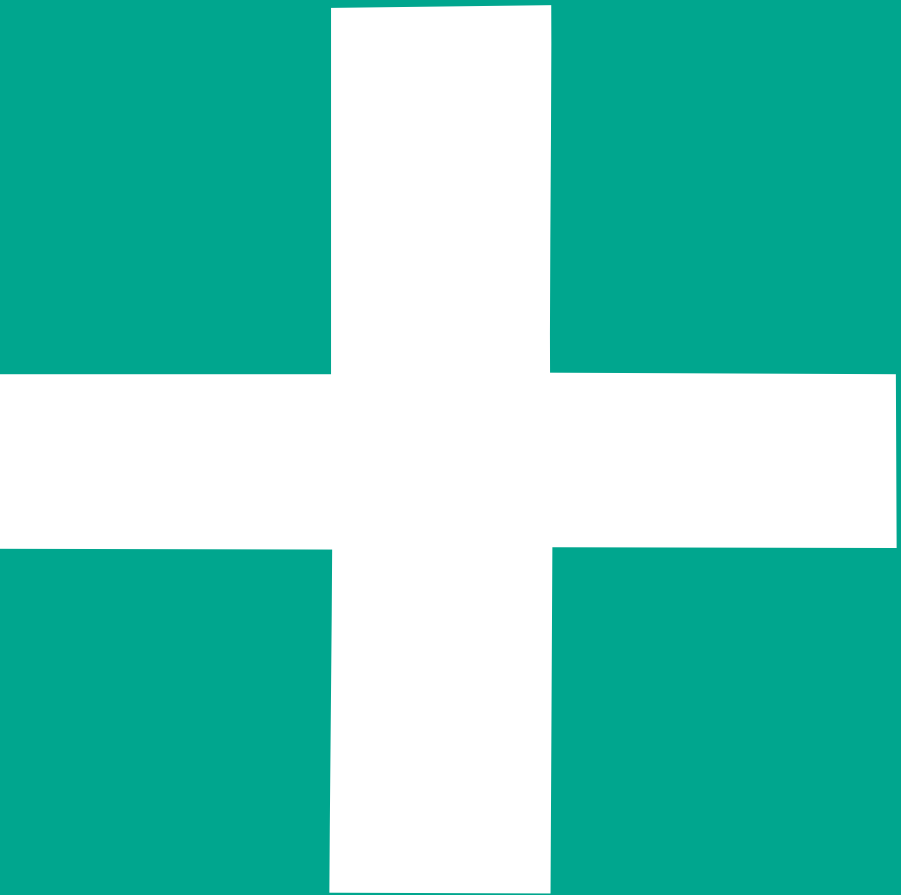
- **Context:** In 2020, the Trump Administration finalized a [regulation](#) that would reduce Marketplace user fees, which help fund the operation of the Marketplace.
- **Biden Outlook:** The Biden Administration will likely pause the effective date of this regulation.

Subsidies

- **Context:** Affordability for coverage on the Marketplace remains an issue for many Americans. Subsidies are available to those that make less than 400% of the federal poverty line.
- **Outlook:** Congressional action would be needed to expand the availability of subsidies on the Marketplace

FUTURE OF MEDICAID





REVERSING OTHER TRUMP ERA POLICIES

REGULATIONS FACING LEGAL CHALLENGES

- *Most Favored Nation (MFN)* – **final rule** with a mandatory model to test alignment of Part B drug prices to prices in other countries.
 - Two federal courts have **blocked implementation of the Trump Administration’s MFN drug pricing rule.**
 - **Biden outlook:** Depending on the outcome of litigation, the Biden Administration could withdraw the rule. At the same time, we anticipate some efforts by the new Administration to rein in Medicare drug prices.
- *Price Transparency* – **final rule** requiring hospitals to disclose the prices they charge various payers for services provided **effective January 1, 2021.**
 - Hospital community has pursued litigation but lost recent cases to prevent implementation.
 - **Biden outlook:** It is unlikely that the new Administration would completely repeal this rule, but it may be **less aggressive in policing this policy or provide for longer compliance timeframes.**

REGULATIONS FACING LEGAL CHALLENGES

- *Section 1557 of ACA* – **final rule** eliminating certain nondiscrimination protections.
 - **Biden Outlook:** The new Administration likely will work quickly to reverse and revoke this regulation through a new regulatory process.
- *Public Charge* – **final rule** limiting the ability of individuals who are determined likely to utilize Medicaid, the Supplemental Nutrition Assistance Program and several housing programs to be admissible to the United States.
 - **Biden Outlook:** The new Administration likely will work quickly to reverse and revoke this regulation through a new regulatory process.
- *Removal of Safe Harbor Protection for Rebates* – **final rule** eliminating Anti-Kickback statute protections for certain rebates from drug manufacturers to Part D plans or their pharmacy benefit managers.
 - **Biden Outlook:** Repealing this rule through legislation would result in a large savings from the Congressional Budget Office when estimating the cost of (scoring) a bill. The Biden Administration could wait to take action regarding this rule to allow Congress to repeal the rule through legislative means, which would allow Congress to also pay for other policy priorities.

QUESTIONS?

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