

Taking Stock Of Republican Health Policy In The Trump Era

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Health care will continue to be a hot topic as we near the 2020 election. Calls for additional health reform and celebration of the Affordable Care Act (ACA) were on full display at this week's Democratic National Convention. The Democratic platform, adopted earlier this week, was summarized in a [prior post](#) by Billy Wynne and includes several ambitious health reform ideas, many of which would require a Democratically controlled Senate to enact.

Next week, the Republican party takes its turn laying out a vision for the next four years under a second Trump administration. On the one hand, it is hard to know what this health policy vision could look like because there is no official Republican platform for 2020. (In fact, the website still highlights the [2016 Republican platform](#).) On the other, it is fair to expect more of the same—in part because very few of the Trump administration's policies from the past three years have been implemented. This post identifies several of the Republican party's health policy priorities since 2017 and takes stock of President Trump's record on health care.

Undermining The ACA

In 2016, President Trump—like all Republican presidential candidates—campaigning on repealing and replacing the ACA. With a Republican majority in both chambers and President Trump in the White House, the question was not if the ACA would be repealed in 2017 but how quickly it would be gone. After false starts in the U.S. House of Representatives and a high-profile bill passage celebration at the White House, members of the U.S. Senate voted against ACA repeal legislation by a narrow margin. The ACA lived to fight another day.

In the meantime, President Trump used his executive authority to target the ACA. His [first executive order](#), issued on inauguration day in January 2017, stated that the policy of his administration was to seek repeal of the ACA, minimize its burdens, waive its requirements, and provide state flexibility. This was quickly followed by [immediate cuts to ACA marketing](#), a [“market stabilization” rule](#), and [additional cuts to marketing and funding for the ACA's navigator program](#).

Once the repeal fight ended in Congress, the Trump administration turned to even more concerted efforts to undermine the ACA through administrative changes. In October 2017, President Trump issued an [executive order](#) to expand access to non-ACA plans through association health plans and short-term plans that do not have to meet many (or, in the case of short-term plans, any) of the ACA's consumer protections, as well as health reimbursement arrangements. He also [ended cost-sharing reduction payments](#) to insurers, inadvertently leading to more generous marketplace subsidies and higher federal spending. These and many other ACA administrative changes have been closely chronicled on Health Affairs Blog. In fact, an [entire lawsuit](#) has been devoted to the President's “death-by-a-thousand-cuts”

campaign against the ACA.

Then, in December 2017, Republicans in Congress passed, and President Trump signed, the Tax Cuts and Jobs Act, which eliminated the penalty for the ACA's individual mandate. Two months later, the Republican attorney general of Texas, alongside 19 other states, sued, arguing that the mandate is now unconstitutional and that the rest of the ACA should be struck down alongside it.

Taking a highly unusual legal position, the Trump administration agreed with Texas, first in part and later in whole, and declined to defend the ACA in court. As a result, this administration has repeatedly urged the court to invalidate the entire ACA, including the law's many protections for people with preexisting conditions. This litigation, now known as *California v. Texas*, is currently pending before the Supreme Court, which will hear oral argument in the lawsuit one week after the election and decide the fate of the ACA in 2021. In the meantime, premiums in the ACA markets have declined slightly in recent years and enrollment stands at around 11 million. Insurer participation continues to rise and the individual market is profitable for insurers. The ACA has [peaked in popularity](#) in 2020, one decade after enactment.

COVID-19 Response

[Much has already been written](#) about the Trump administration's response to the COVID-19 crisis. The federal government took a series of steps to respond to the crisis—through emergency declarations, new guidance, waivers, and more. But [many](#), including [me](#), argued that more could be done to bolster access to coverage, affordability, public health, support for states, and more.

Ditto for Congress which has passed a series of broad COVID-19 legislative relief packages with important, but relatively minor, [coverage-related provisions](#) that have proved inadequate to respond to the current crisis. The House has passed [multiple bills](#) that would address broader health care and affordability concerns; these bills have not been taken up by the Senate.

It is not clear where Republicans go next on COVID-19 relief. [Ongoing debate](#) about the next relief package has so far focused on liability protections for businesses, funding for schools and the postal service, and limited funding for public health activities such as vaccine development and expanded COVID-19 testing. Even health policy tools used during the last economic crisis, such as COBRA subsidies, do not appear to be under consideration.

Prescription Drug Prices

Drug pricing has long been touted as a top priority for President Trump. Federal officials have released drug pricing blueprints and proposed policies on Medicare drug prices, value-based purchasing in Medicaid, and drug reimportation from Canada. The Food and Drug Administration has sped approval of generic drugs, and officials [announced](#) a plan to lower insulin costs under Medicare Part D (although this policy was [criticized](#) for only modest tweaks). President Trump signed [no fewer than four executive orders](#) on drug pricing last month.

But, as Rachel Sachs has chronicled, the administration's most ambitious efforts

remain stalled and have had little effect. The Trump administration released [many drug pricing proposals](#) in 2018 with [little to no progress](#) made in 2019. The recent executive orders were [criticized](#) for being relatively limited in scope and focused on already-stalled policies. In the meantime, [many drug prices are on the rise](#) even during the pandemic, and [1 in 5 Americans](#) report that they or someone in their household were unable to afford prescribed drugs in the past year.

There has been Republican leadership on drug pricing reforms in Congress: Senate Chuck Grassley (R-IA) advanced a [bipartisan package](#) as chair of the Senate Finance Committee. However, that package has not been considered by the full Senate due to [opposition](#) from Senate Majority Leader Mitch McConnell. It is unclear where President Trump or the Republican Senate will go next on prescription drug prices.

Transparency And Interoperability

Another key Trump administration priority has been to increase health care price transparency with the goal of helping consumers make informed health care decisions. President Trump issued an [executive order](#) on transparency in 2019, [a rule](#) requiring hospitals to post negotiated rate information for common or shoppable items or services, a [proposed rule](#) that would impose similar requirements on insurers, and a [rule](#) to require drug manufacturers to disclose list prices in their advertisements.

Price transparency will not be a panacea for reducing health care costs but is a popular measure that could enable better information about health care prices. While these rules could have an impact, there is nothing to assess yet. None have gone into effect yet because they have been set aside by a court, will go into effect in 2021, or have not yet been finalized by the administration.

Relatedly, the administration has built on the Obama administration's efforts to advance interoperability and promote access to health care information. New interoperability rules for [insurers](#) and [health care entities](#) were finalized earlier this year, but implementation has been delayed due to COVID-19.

Religious Exemptions In Health Care

Religious exemptions and limits on access to abortion services have been among the Trump administration's more controversial priorities. In response to a 2017 [executive order](#) by President Trump, the federal government expanded religious and moral exemptions to the ACA's contraceptive mandate. Federal regulators [dramatically reinterpreted](#) federal health care provider conscience rules to expand their scope while [limiting the scope of nondiscrimination protections](#) under Section 1557 of the ACA. Two of these rules have gone into effect only very recently (and [parts](#) of the Section 1557 rule were put on hold); the provider conscience rule was set aside by courts and has not gone into effect.

A separate rule made significant changes to the Title X federal family planning grant program; this rule went into effect but [litigation is ongoing](#). The Trump administration also proposed requiring insurers to send and consumers to pay separate bills for the amount of premium due to certain abortion services; this rule, too, has been put on hold in court.

Additional Priorities

Other major priorities include kidney health, state waiver flexibility, Medicare payment reform, and immigration-related health policy. President Trump issued an executive order on kidney health in 2019 which, one year later, was [described](#) as arguably “the most broadly popular health initiative of Trump’s presidency.” On waivers, the Trump administration has encouraged states to adopt Medicaid work or community engagement requirements, to block grant their Medicaid program, and to adopt broad Section 1332 waivers under the ACA. Medicare payment policies have also been a focus, including rules on site-neutral payments and hospital payment cuts under the 340B drug discount program. Consistent with a government-wide emphasis on immigration, President Trump has issued a series of [executive orders or policies focused on immigration and health care](#), including an [executive order](#) barring entry of immigrants who would “financially burden” the health care system and the “public charge” rule. Still other priorities include protecting patients from surprise medical bills, the opioid crisis, ending the HIV epidemic, and restrictions on vaping.

Litigation And The Role Of The Courts

The courts have undoubtedly stymied the Trump administration’s health policy agenda—even as President Trump has himself shaped the federal judiciary.

Ongoing litigation over the ACA and its implementation has been [well chronicled](#), but litigation over Trump-era health policy has extended far beyond the ACA. Legal challenges have successfully stopped implementation of the rule to require drug manufacturers to disclose their list prices in ads, the provider conscience rule, parts of a Section 1557 rule, Medicaid work requirements, the public charge rule, and the executive order on immigration. Lawsuits have, so far, not stopped the hospital transparency rule, payment cuts to the 340B program, site-neutral payments, and changes to the Title X program.

One explanation for so much litigation is that the Trump administration has not followed proper procedures or has simply exceeded the scope of its authority under federal law. In other words, [“it has been hard to follow the rules on rules.”](#) At the same time, President Trump and the Senate have confirmed an [astounding number of judges](#) to the federal bench, remaking the appellate courts in particular. That is worth noting because many district court wins against Trump-era health policies may be short-lived; if the district court decisions are ultimately overturned by appellate courts, these policies would go into effect during the President’s next term.

Next Steps

Given a second term, President Trump and Republicans in Congress would need to grapple with the potential fallout of a Supreme Court decision on the ACA. To date, there is no clear GOP replacement plan for the ACA. President Trump [continues to suggest](#) that a new health plan is forthcoming, but nothing has been released. The greatest indication of the Trump administration’s views for health reform may then come from its annual budgets. But these budgets [repeatedly assume](#) that the ACA will be repealed and replaced with few details except for major spending cuts.

Even if the entire ACA is upheld and there is no fallout to grapple with, it remains unclear whether Republicans will be motivated to once again actually pursue ACA repeal—or continue to focus more on other health policy priorities that resonate with voters, like surprise medical bills and drug pricing. Republicans are likely to continue to tout long-standing priorities, such as the expansion of health savings accounts and additional Medicaid flexibility. Much will of course depend on the makeup of the next Congress and the next President—at least some of the Trump-era rules finalized in 2020 could be vulnerable to invalidation under the Congressional Review Act.