

5 Likely Impacts of the Biden Administration on Benefits

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As the U.S. presidency transitions to a new administration, we've identified 5 likely impacts of the Biden administration on benefits programs:

The Affordable Care Act's Employer Mandate

While "Bidencare" will likely look a lot like "Obamacare," a closer look at his administration's proposed changes to the Affordable Care Act (ACA) shows some areas where employers and plan sponsors may have some potential concerns. As background, Biden is looking to increase the value of premium tax credits and to lower premiums on ACA Exchanges to help extend coverage to more working Americans. Specifically, Biden has proposed increasing the size of tax credits by basing the calculation on the cost of a more generous "gold" Exchange plan, rather than a "silver" plan, and to lower premiums by ensuring that enrollees—including those who have never had coverage through their jobs—will not pay more than 8.5% of their income for Exchange coverage. Biden has also proposed a new "public option," which will make it easier for low-income individuals to obtain coverage on the Exchanges.

While these proposals alone don't impose new penalties on employers and plan sponsors, it's expected that millions more Americans will enroll in the better and less expensive Exchange coverage, thereby increasing the likelihood that employers and plan sponsors could face Employer Mandate penalties. Under current ACA rules, employers offering coverage that falls below the ACA's standards aren't subject to penalties unless employees have enrolled in ACA Exchange

coverage. If millions more Americans enroll in Exchange coverage due to these new policies, and if their employers haven't been offering appropriate coverage, the penalties against such employers could increase substantially. Employers should watch for changes to the affordability threshold for employee contributions.

Finally, and importantly for employers and plan sponsors, the new "public option" is not code for "Medicare for All." Biden has made it very clear¹ that he wants to keep employer-sponsored health insurance and the current structure of the ACA intact. The new administration wants to offer more individuals the choice to purchase a public health insurance option like Medicare. This proposal makes Exchange coverage more appealing and may also bring some relief to small businesses struggling to afford coverage for their part-time or seasonal employees (for whom coverage offers are not required in order to avoid penalties under the Employer Mandate).

Reducing Surprise Medical Billing and Prescription Drug Costs

While the Biden administration proposed several initiatives addressing surprise medical billing and prescription drug costs, as well as increasing health care cost transparency, these proposals have already received something of a "head start" under COVID-19 relief legislation passed at the end of 2020. We discuss the details of this law in a [previous Compliance Alert](#); in short, the surprise billing provisions include many new rules designed to help protect patients from large unexpected

¹ [Biden/Harris Campaign Website](#) ("Instead of starting from scratch and getting rid of private insurance, he has a plan to

build on the Affordable Care Act by giving Americans more choice, reducing health care costs, and making our health care system less complex to navigate" [emphasis added]).

medical bills when they unknowingly receive out-of-network care beginning in 2022.

While the Biden administration's future policy initiatives in these areas will likely resemble those from the Trump administration, the Biden administration will likely go further than the Trump administration in trying to better protect patient and participant rights. This may impose additional costs and burdens on employers and plan sponsors, but with so much bipartisan support for reform in these areas, we're not expecting these initiatives to see major challenges.

The impacts of the Biden administration on benefits extend beyond changes to the ACA.

New Rules for Alternative Funding Arrangements

Based on informal comments from Biden administration officials, it appears likely that the Trump-era short-term limited duration insurance (STLDI), which is not required to meet the ACA's minimum standards, is likely to be substantially revised or eliminated.

It's also likely that we could see new rules and changes applicable to other types of alternative funding arrangements for health and welfare benefits that arose during the Trump administration, such as association health plans (AHPs), or even individual coverage healthcare reimbursement arrangements (ICHRAs). The Biden administration has not yet mentioned AHPs or ICHRAs as a possible area of change, but we'll continue to monitor those areas.

Long-term Care Insurance

Biden would expand access to, and defray the cost of, long-term care insurance in two primary ways.

First, he would establish a \$5,000 tax credit for family caregivers to cover out-of-pocket expenses based on the provisions of a bill with bipartisan support called the [Credit for Caring Act](#). Second, he would increase the generosity of current tax benefits for purchasing long-term care insurance, although the Biden administration has not yet specified how, or by how much.

Mental Health Coverage, Funding and Enforcement

Impacts of the Biden administration on benefits could also include increases to federal health care spending in several areas, and significantly for plan sponsors, in the area of mental health coverage. Specifically, in addition to expanding funding for mental health and addiction treatment services, the Biden administration would increase enforcement of mental health parity laws, laws which currently are rarely enforced, and sponsors of self-insured plans would likely have to make changes to ensure that their health plans and programs comply.

Get the [Compliance Update](#) recording from December 8, 2020 on demand, for full details on the impacts of the Biden administration on benefits and many other developments we're monitoring pertaining to your health and welfare plans.

You can also find additional resources on many of these topics on our [Compliance Resource Center](#).

Learn more in our virtual benefits education series: [The Compliance Report 2021](#). ■

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