## I. OVERVIEW

This week, the Democratic party convened for its virtual National Convention and formally adopted its 2020 Party Platform. This memo examines the health care policies and priorities articulated by the party and by its presidential nominee, former Vice President Joseph Biden. Vice President Biden's health care plan is largely defined by the intention to preserve and build upon the Obama-Biden Administration's Patient Protection and Affordable Care Act (ACA); however, key tenants of the plan have also been informed by joint input solicited from representatives of the Bernie Sanders (I-VT) campaign, as well as recent events such as the COVID-19 pandemic and the movement for racial equity. These Biden proposals are presented below, alongside – where available – the corresponding approach taken by the Trump Administration. Finally, we conclude with a look at the people known to be advising Vice President Biden on matters of health care, who may also be contenders for future appointments within the Department of Health and Human Services (HHS).

## II. BIDEN-SANDERS UNITY TASK FORCE

Following Sen. Sanders' endorsement of Vice President Biden in May, the two announced the formation of the Biden-Sanders Unity Task Force, charged with creating a unified set of recommendations to the Biden campaign and the Democratic National Convention's Platform Committee. The body consisted of six groups of eight people each, divided across the following issue areas: climate change, criminal justice reform, the economy, education, immigration, and health care. Four members on each issue team were selected by Vice President Biden and four by Sen. Sanders. The Task Force released its 110-page set of recommendations on Wednesday, July 8, 2020.<sup>2</sup> The table below captures the task force's thinking and recommendations on various health care issues, for implementation by an incoming Democratic president and congress.

	Biden Platform <sup>3</sup>	Trump Administration Policy
Public Option	<ul> <li>Program would offer at least 1 plan on the Exchanges without deductibles, administered by Medicare, and cover all primary care services without co-pays.</li> <li>Also encourages states to use ACA Section 1332 waiver authorities to test universal coverage programs at the state-level.</li> <li>Lower-income Americans not eligible for Medicaid would be automatically enrolled.</li> </ul>	• N/A

<sup>&</sup>lt;sup>1</sup> https://www.demconvention.com/wp-content/uploads/2020/08/2020-07-31-Democratic-Party-Platform-For-Distribution.pdf

 $^3$  *Ibid*.

<sup>&</sup>lt;sup>2</sup> https://joebiden.com/wp-content/uploads/2020/08/UNITY-TASK-FORCE-RECOMMENDATIONS.pdf

	Biden Platform <sup>3</sup>	Trump Administration Policy
	<ul> <li>Public option plan available without premiums to individuals in states that have not yet expanded Medicaid.</li> <li>Automatic prospective enrollment to the public option for individuals with an income below 200 percent of the federal poverty level and for beneficiaries of the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF) program, and other social safety net programs.</li> </ul>	
Exchanges	<ul> <li>The plan would expand eligibility for premium subsidies applied to ACA plans by tying them to gold-levels.</li> <li>Ensure that premiums do not exceed 8.5 percent of an individual's income.</li> <li>Increase funding for ACA outreach and enrollment programs, with a specific focus on closing the racial gaps in insurance coverage.</li> <li>In light of COVID-19, re-open the ACA marketplaces, expand subsidies, and offer a platinum-level plan on the marketplaces that is federally administered (available until the pandemic ends).</li> </ul>	<ul> <li>President Trump signed 2017 tax legislation eliminating the penalty associated with the individual mandate.<sup>4</sup></li> <li>Expanded the availability of ACA-noncompliant plans (e.g. short-term plans, association health plans, HRAs, etc.), including by enabling states to use ACA waiver authority to do so.<sup>5</sup></li> <li>Shortened open enrollment periods and decreased funding for navigator and enrollment programs.</li> <li>Suspended cost-sharing reduction (CSR) payments made to issuers of qualified health plans.<sup>6</sup></li> <li>The Department of Justice, under the Trump Administration, continues to actively pursue the invalidation of the ACA, arguing that the whole of the law is inseverable from the individual mandate. 20 states and the District of Columbia will defend the law before the Supreme Court beginning in October (<i>California v. Texas</i>), with a decision expected in 2021.<sup>7</sup></li> <li>In place of the ACA, President Trump has recently alluded to the release of a "comprehensive health care plan," and hinted that he would sign an executive order (EO) in the coming weeks to require health insurers to cover all preexisting conditions.<sup>8</sup></li> </ul>

<sup>&</sup>lt;sup>4</sup> https://www.congress.gov/bill/115th-congress/house-bill/1
<sup>5</sup> https://www.federalregister.gov/documents/2018/10/24/2018-23182/state-relief-and-empowerment-waivers
<sup>6</sup> https://www.hhs.gov/sites/default/files/csr-payment-memo.pdf
<sup>7</sup> https://www.oyez.org/cases/2020/19-840
<sup>8</sup> https://khn.org/morning-breakout/trump-pledges-preexisting-conditions-action-already-protected-by-obamacare/

Medicare	<ul> <li>Proposes to lower Medicare eligibility to age 60.</li> <li>Allow Medicare to negotiate drug prices directly with manufacturers.</li> <li>Medicare coverage for dental, vision, and hearing services.</li> </ul>	<ul> <li>See 'Drug Pricing.'</li> <li>Expanded supplemental benefits for the chronically ill in Medicare Advantage.<sup>9</sup></li> </ul>
Medicaid	<ul> <li>In light of COVID-19, would make additional funding available to state Medicaid agencies to enroll eligible adults and add new incentives to encourage states to expand Medicaid if they have not yet done so.</li> <li>12 percent increase in federal Medicaid matching funds during the pandemic.</li> </ul>	<ul> <li>Under the Trump Administration, CMS approved Sec. 1115 waivers in as many as 10 states allowing for the imposition of work requirements as a condition for eligibility.<sup>10</sup></li> <li>CMS announced a new 1115 Medicaid waiver demonstration pathway called the Healthy Adult Opportunity (HAO), which would allow states the option to implement a per capita cap or block grant for non-disabled "optional" adults in Medicaid.<sup>11</sup></li> <li>CMS has issued guidance on the temporary 6.2 percent increase in Medicaid matching funds, pursuant to the Families First Coronavirus Response Act.<sup>12</sup></li> </ul>
Drug Pricing	<ul> <li>Allow Medicare to negotiate drug prices directly with manufacturers, with negotiated prices "capped to a level associated with average OECD [Organization for Economic Co-operation and Development] median prices."</li> <li>Impose inflation caps on drug price increases.</li> <li>Cap out-of-pocket spending in Medicare Part D.</li> <li>Ensure drugs for chronic conditions are available at little to no cost.</li> <li>Enact anti-competitive reforms; and</li> <li>Eliminate tax breaks for prescription drug advertisements.</li> <li>End "pay-for-delay," allow importation of certain prescription drugs, and facilitation of market entry of generic drugs.</li> </ul>	• Ahead of the election, the White House refreshed the President's drug pricing agenda through the issuance of EOs addressing importation, 13 340B "penny pricing" for insulin and Epi-Pens at federally qualified health centers (FQHCs), 14 and drug rebates. 15 Additional executive action may be considered on favored-nation international pricing. 16

<sup>&</sup>lt;sup>9</sup> https://www.federalregister.gov/documents/2020/06/02/2020-11342/medicare-program-contract-year-2021-policy-and-technical-changes-to-the-medicare-advantage-program 10 https://www.commonwealthfund.org/publications/maps-and-interactives/2020/aug/status-medicaid-expansion-and-work-requirement-waivers

<sup>11</sup> https://www.cms.gov/newsroom/fact-sheets/healthy-adult-opportunity-fact-sheet

https://www.medicaid.gov/state-resource-center/downloads/covid-19-section-6008-faqs.pdf

https://www.whitehouse.gov/presidential-actions/executive-order-increasing-drug-importation-lower-prices-american-patients/

<sup>14</sup> https://www.whitehouse.gov/presidential-actions/executive-order-access-affordable-life-saving-medications/

<sup>15</sup> https://www.whitehouse.gov/presidential-actions/executive-order-lowering-prices-patients-eliminating-kickbacks-middlemen/

https://www.hhs.gov/about/news/2020/07/24/trump-administration-announces-historic-action-lower-drug-prices-americans.html

Health Care Costs	<ul> <li>Ensure that premiums do not exceed 8.5 percent of an individual's income when purchasing plans on the Exchanges.</li> <li>Eliminate the cap on ACA subsidies.</li> <li>Outlaw surprise medical billing.</li> <li>Increase price transparency and establish an all-payer pricing database.</li> <li>Implement universal medical billing.</li> <li>Fight against major health care mergers.</li> <li>Increase the number of primary care providers, registered nurses, and dentists, especially in rural and low-income areas.</li> <li>Increase support for alternative payment models.</li> </ul>	<ul> <li>President Trump signed an EO in June 2019 on health care price and quality transparency, addressing hospital price transparency, out-of-pocket costs, competition, and surprise medical billing.<sup>17</sup></li> <li>Parallel with the CY 2020 Medicare rulemaking cycle, CMS promulgated rules implementing hospital and insurer price transparency requirements. The rules impacting hospitals are effective Jan. 1, 2021.<sup>18</sup></li> </ul>
Pandemic Response	<ul> <li>Provide guaranteed coverage without cost-sharing for COVID-19 testing, vaccines, and treatment and a mandatory 90-day special enrollment period.</li> <li>Implement a 12 percent increase in federal Medicaid matching funds, make additional funding available to enroll eligible adults, and will add new incentives to encourage states to expand Medicaid if they have not yet.</li> <li>Fully subsidize COBRA insurance for those who have lost their jobs.</li> <li>Re-open the ACA marketplaces, expand subsidies, and offer a platinum-level plan on the marketplaces that is federally administered (available until the pandemic ends).</li> <li>Make funding available to local public health departments to carry out contact tracing.</li> <li>Maintain the national stockpile supply and work with the private sector to ensure manufacturing capacity is sufficient in future pandemics.</li> <li>Stand up a national public health surveillance program to aid in the response to COVID-19 and future diseases.</li> <li>Increase funding for the Centers for Disease Control and Prevention (CDC).</li> </ul>	<ul> <li>The Administration, via HHS, has undertaken numerous policy changes and initiatives, including through the declaration of a public health emergency (PHE); the promulgation of two sweeping interim final rules enabling temporary changes to Medicare and Medicaid requirements; by providing guidance to states on the implementation of Congressional relief flexibilities; and through the distribution of relief funding to health care systems and providers.<sup>19</sup></li> <li>President Trump signed an EO directing federal agencies to undertake a variety of approaches to increase their procurement of yet-to-be-specified "essential medicines, medical countermeasures, and critical inputs" that are manufactured in the United States.<sup>20</sup></li> <li>The Administration has largely refrained from use of the National Defense Act or from developing a national testing and tracing strategy, instead deferring to states.</li> <li>The President placed a hold on U.S. funding to the WHO.<sup>21</sup></li> </ul>

https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-putting-american-patients-first-making-healthcare-transparent/
 https://www.cms.gov/newsroom/press-releases/trump-administration-announces-historic-price-transparency-requirements-increase-competition-and

<sup>&</sup>lt;sup>19</sup> https://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-press-releases

https://www.whitehouse.gov/presidential-actions/executive-order-ensuring-essential-medicines-medical-countermeasures-critical-inputs-made-united-states/
https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-demanding-accountability-world-health-organization/

	<ul> <li>Implement automatic triggers that would route funding to states when a crisis emerges.</li> <li>Continue the U.S. partnership with the World Health Organization (WHO).</li> <li>Improve nursing home staffing and quality standards, strengthen the accreditation process, and combat corporate abuses.</li> </ul>	
Health Equity	<ul> <li>Launch a "sustained, government-wide effort" to eliminate racial, ethnic, gender, and geographic disparities in insurance coverage, access to services, and health outcomes.</li> <li>Issue an EO which directs all federal agencies to develop datainformed policies that advance equity and eliminate disparities, with set goals and time-tables, and semi-annual progress reports.</li> <li>Fund data collection and analysis so that health disparities can be better understood and addressed.</li> <li>Increase funding for research on health disparities by race, gender, geographic area, socioeconomic status, and the important role of the SDOH.</li> <li>Reverse Trump Administration regulations that allow health care providers to discriminate against members of the LGBTQ+community.</li> <li>Significantly increase mandatory funding for the Indian Health Service (IHS) and address lack of access to health care and mental health services, nutrition services, modern infrastructure, and environmental and climate justice for indigenous people.</li> <li>Reinvest in public health, expand Federally Qualified Health Centers (FQHCs) and rural health clinics and invest in safety net providers, and community health workers.</li> <li>Expand diversity and cultural competence of our health care workforce and address implicit bias in the healthcare system.</li> <li>Expand health care access for immigrants and LBGTQ+populations.</li> </ul>	<ul> <li>In June, HHS finalized a rule stripping ACA Section 1557 nondiscrimination protections from LGBTQ individuals.<sup>22</sup></li> <li>CMMI rolled out the Integrated Care for Kids (InCK) and Maternal Opioid Misuse (MOM) Models designed to improve care delivery for vulnerable Medicaid and CHIP beneficiaries, in particular those affected by the nation's opioid crisis.<sup>23</sup></li> <li>Regarding issues of hunger, the Administration's USDA has issued numerous rules that would shrink the Supplemental Nutrition Assistance Program (SNAP), including imposing stricter work requirements on childless adults,<sup>24</sup> limiting the categorical eligibility pathway,<sup>25</sup> and restricting utility allowances.<sup>26</sup></li> <li>On housing and homelessness, the Administration recently reversed the Obama-era Fair Housing Rule,<sup>27</sup> and proposed a rule that would enable emergency shelters to deny shelter and services to houseless transgender individuals.<sup>28</sup></li> </ul>

<sup>&</sup>lt;sup>22</sup> https://www.hhs.gov/about/news/2020/06/12/hhs-finalizes-rule-section-1557-protecting-civil-rights-healthcare.html

<sup>&</sup>lt;sup>23</sup> https://innovation.cms.gov/files/fact-sheet/inck-mom-overlap-fs.pdf

https://www.federalregister.gov/documents/2019/12/05/2019-26044/supplemental-nutrition-assistance-program-requirements-for-able-bodied-adults-without-dependents

<sup>25</sup> https://www.federalregister.gov/documents/2019/07/24/2019-15670/revision-of-categorical-eligibility-in-the-supplemental-nutrition-assistance-program-snap

<sup>&</sup>lt;sup>26</sup> https://www.federalregister.gov/documents/2019/10/03/2019-21287/supplemental-nutrition-assistance-program-standardization-of-state-heating-and-cooling-standard

https://www.hud.gov/press/press\_releases\_media\_advisories/HUD\_No\_20\_109
https://www.federalregister.gov/documents/2020/07/24/2020-14718/making-admission-or-placement-determinations-based-on-sex-in-facilities-under-community-planning-and

	<ul> <li>Implement recommendation from the AHRQ National Health Care Quality and disparities.</li> <li>End the gun violence epidemic.</li> <li>End the opioid epidemic.</li> <li>Target hunger and homelessness.</li> </ul>	
Immigrant Health	<ul> <li>Expand immigrants' access to coverage via the ACA market.</li> <li>Make Dreamers eligible for premium and cost-sharing subsidies.</li> <li>Repeal the current five-year waiting period for Medicaid and Children's Health Insurance Program eligibility.</li> </ul>	<ul> <li>Though an injunction is currently blocking implementation, the Department of Homeland Security finalized a rule that would make the use of public benefits (Medicaid/CHIP, SNAP, WIC, etc.) grounds for inadmissibility for an immigrant seeking entry to the U.S. or a legal permanent residency status.<sup>29</sup></li> <li>In October 2019, the White House signed a proclamation that would deny immigration visas for those who lack health insurance or the ability to pay for medical costs.<sup>30</sup></li> </ul>
Reproductive Rights	<ul> <li>Ensure every woman has access to high-quality reproductive health care services, including safe and legal abortion.</li> <li>Restore funding for Planned Parenthood.</li> <li>Repeal the Hyde Amendment, which prohibits federal dollars from being spent on abortion services.</li> <li>Overturn federal and state laws that create barriers to women's reproductive rights.</li> <li>Address sexual assault and domestic violence through reauthorizing the Violence Against Women Act.</li> </ul>	<ul> <li>The Administration finalized a rule in 2019 to overhaul the Title X Family Planning program, such that Title X recipients are prohibited from providing referrals for abortion care, even when requested by the patient, and must "establish and maintain physical separation" from the provision of abortion services. As a result, Planned Parenthood, hundreds of other providers, and several states exited the program.</li> <li>A separate rule, first issued in 2017, sought to dramatically expand which employers can be exempted from covering free contraception under the ACA contraceptive mandate. The Supreme Court upheld the rule in July, 2020. 32</li> </ul>
Rural Health and Workforce	<ul> <li>Invest in the community healthcare workforce through creating a robust talent pipeline and providing more opportunities for workers to serve the communities they come from.</li> <li>Reauthorize and double funding for Community Health Centers (CHCs) and the National Health Service Corps for five years.</li> </ul>	Ahead of the election, the President signed an EO to expand and maintain access to telehealth services during the COVID-19 pandemic, with a focus on access in rural areas. This was accompanied by the roll out of a new CMMI model to expand value-based purchasing in rural

https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds
https://www.whitehouse.gov/presidential-actions/presidential-proclamation-suspension-entry-immigrants-will-financially-burden-united-states-healthcare-system/
https://www.federalregister.gov/documents/2019/03/04/2019-03461/compliance-with-statutory-program-integrity-requirements
https://casetext.com/case/little-sisters-of-the-poor-saints-peter-and-paul-home-v-pennsylvania
https://www.whitehouse.gov/presidential-actions/executive-order-improving-rural-health-telehealth-access/

	• Establish workers' rights and mandate that employers who are	health care, called the Community Health Access and
	<ul> <li>publicly funded provide a minimum hourly rate of \$15 with benefit and permit union organizing and collective bargaining.</li> <li>Align Medicare and Medicaid GME financing rules and increase diversity in the health care workforce to improve cultural competency.</li> <li>Add 600,000 long term services and support (LTSS) positions that</li> </ul>	Rural Transformation (CHART) model. <sup>34</sup>
	pay at least \$30,000 a year with benefits and double the community health workforce through expanded training and credentialing.	
	Enforce federal mental health and substance use disorder parity laws.	
	• Invest in training and hiring more mental health providers, substant use disorder counselors, and peer support counselors.	е
	<ul> <li>Support increased training for health care professionals, educators, social workers, and other care workers in trauma-informed care and practices.</li> </ul>	President Trump declared the opioid epidemic a public
Mental Health and Substance	• Oppose efforts to weaken HIPAA and FERPA privacy rights of people with mental illness.	health emergency and has maintained it as an ongoing designation. <sup>35</sup>
Abuse	<ul> <li>Make medication-assisted treatment (MAT) available to all who need it, and require publicly supported health clinics to offer MAT for opioid addiction and approved treatments for other substance us disorders.</li> </ul>	• Signed and implemented the SUPPORT for Patients and Communities Act. 36
	• Support expanded access to mental health and substance use disorder care in prisons and for returning citizens.	
	Ensure no one is incarcerated solely for drug use, and support increased use of drug courts, harm reduction interventions, and treatment diversion programs.	

<sup>34</sup> https://www.cms.gov/newsroom/press-releases/trump-administration-announces-initiative-transform-rural-health
35 https://www.cms.gov/About-CMS/Agency-Information/Emergency/Downloads/October\_26\_2017\_Public\_Health\_Declaration\_for\_Opioids\_Crisis.pdf
36 https://www.congress.gov/bill/115th-congress/house-bill/6

## III. ADVISORS AND POTENTIAL APPOINTMENTS

Vice President Biden recently selected Sen. Kamala Harris (D-CA) as his running mate. During her own presidential bid, Sen. Harris formulated a health care plan centered on a ten-year phase in of a Medicare buy-in, while maintaining the role of private insurers.<sup>37</sup> However, her stance on the role of private insurers was not always clear during debates, despite being an early cosponsor of Sen. Sanders' seminal Medicare for All bill. Ultimately, Sen. Harris – having served on the Senate Judiciary Committee and others outside of the jurisdiction on health care – is considered to be stronger on other issues. However, her support for universal coverage, health equity, and reproductive justice may serve to further shape a Biden health agenda.

The cochairs of the Biden-Sanders Unity Task Force subgroup on health care were Vivek Murthy – Former Surgeon General under the Obama Administration – and Rep. Pramila Jayapal (D-WA) – the House Progressive Caucus co-chair – appointed by Biden and Sanders, respectively. Dr. Donald Berwick, the Administrator of the Centers for Medicare & Medicaid Services (CMS) under President Obama, also served on the Task Force subgroup.

Other key individuals known to be involved in shaping the Biden campaign's health care strategy, or serving in an ongoing advisory capacity include:

- Chris Jennings Former Obama Administration Deputy Assistant to the President for Health Policy;
- Rebekah Gee Former Secretary of the Louisiana Department of Health;
- Sarah Bianchi Former Director of Economic and Domestic Policy for Vice President Biden;
- Ezekiel Emanuel Former Special Advisor for Health Policy at the Office of Management and Budget (OMB); and
- Stefanie Feldman Current Policy Director for Vice President Biden.

Some observers have begun to speculate as to who among these informal advisors could later secure an appointment within HHS under a Biden Administration. Former Surgeon General Murthy is considered to be a front-runner to helm the health agency, though others are rumored to be under consideration, including former Democratic candidate Pete Buttigieg. To lead Medicare and Medicaid policy at CMS, Kavita Patel is reportedly in the running.<sup>38</sup> Based on the last presidential transition, we will likely learn who is selected later this fall. HHS Secretary Price and CMS Administrator Verma were nominated on November 29, 2016. Secretary Price was confirmed on Feb 10, 2017, while Administrator Verma was confirmed on March 14, 2017.

## IV. CONCLUSION

Were former Vice President Biden to win the election this fall, many of the health policies outlined in this memo could be achieved via executive action, including a potential public option waiver for states and many of the additional steps needed to address the response to the COVID pandemic. However, will require legislative action and, thus, the support of a Democratic Senate. If Democrats can take the Senate along with the White House, the likely thin margin and probable continuation of the filibuster, will mean that realization of these goals will depend on the degree to which they can be effectuated by the restrictive budget reconciliation process.

<sup>&</sup>lt;sup>37</sup> https://medium.com/@KamalaHarris/my-plan-for-medicare-for-all-7730370dd421

<sup>38</sup> https://www.medpagetoday.com/washington-watch/electioncoverage/88033