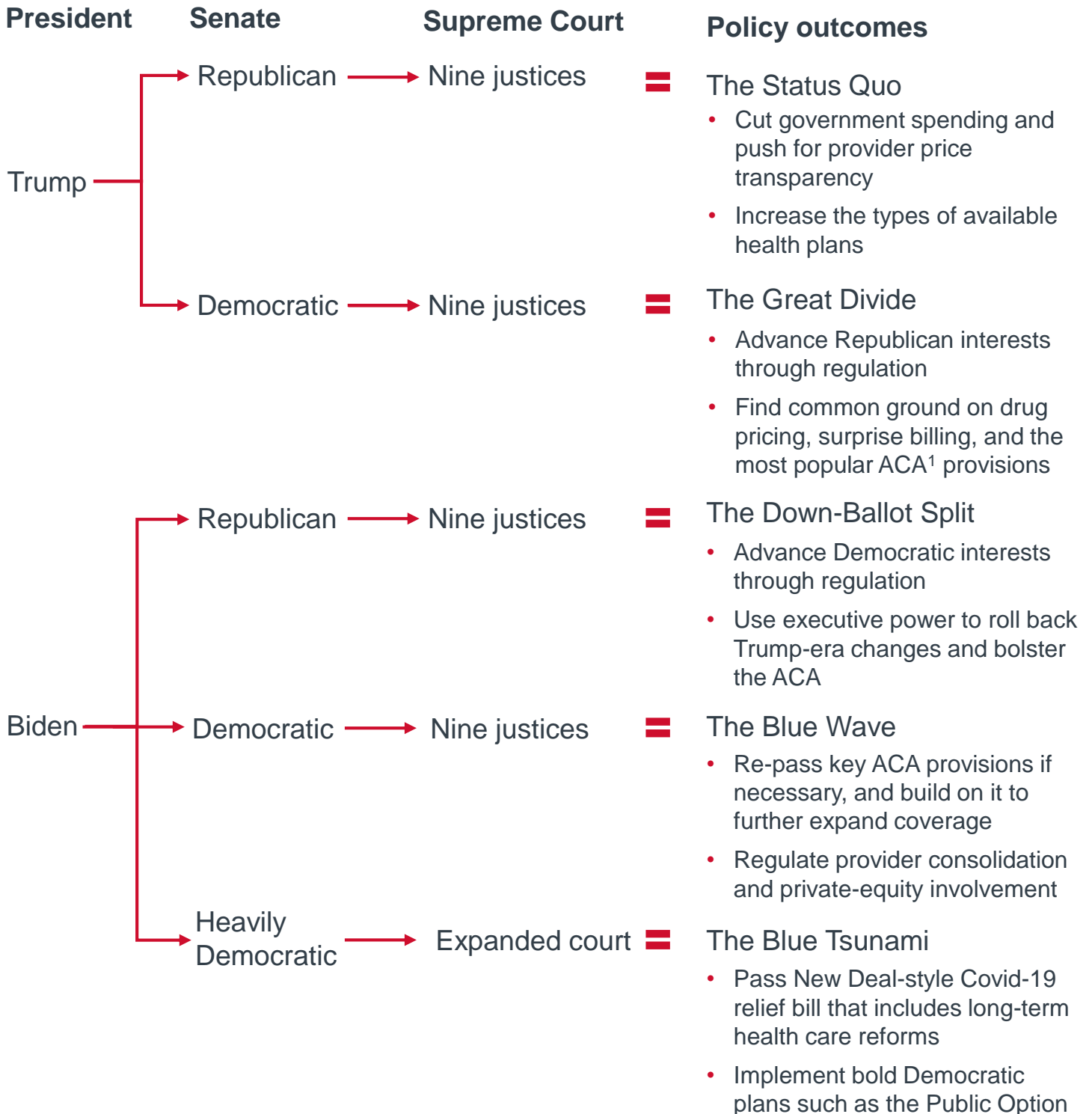


What is the future of federal health policy?

A look at possible outcomes of the 2020 election cycle and their impacts on health care policy



1. Affordable Care Act

1 The Status Quo

If President Trump remains in office, polls indicate Republicans are likely to retain a majority in the Senate, continuing a four-year streak of GOP control over both the White House and the upper chamber. President Trump will continue to push a health care agenda predicated on cutting government spending—particularly through Medicaid savings and Medicare price transparency—and relaxing regulations to allow more low-cost health insurance options.

With the constitutionality of the Affordable Care Act in question, a Republican federal government may be charged with filling the vacuum left by the elimination of all or part of the ACA. Value-based payments in Medicare have historically garnered bipartisan support; a GOP-led Senate would likely work hand-in-hand with the administration to find a path forward for alternative payment models. Protections for pre-existing condition are expected to be included in any replacement plan, but most other ACA provisions could be scrapped. Republicans may resurrect earlier proposals, like state high-risk pools and federal block grants, but would again struggle to pass legislation as they did in 2017.

2 The Great Divide

With presidential and senatorial races highly correlated, chances are slim that the winning candidate would face off against the other party in the Senate. However, if Trump were to be reelected but Democrats flipped the Senate we expect to see the bulk of health care reforms coming from regulation, rather than legislation.

President Trump has signaled support for some legislation that Democrats may be amenable to, including stringent drug pricing reform, surprise billing protection, and telehealth expansion. Should the Supreme Court strike down the ACA, the president could work with Democrats to re-pass a broader range of the most popular ACA provisions—such as bans on coverage limits and parental coverage until 26—on top of those that Senate Republicans support.

3 The Down-Ballot Split

If Democrats win the White House but fail to gain net-three Senate seats in November, a Biden administration will face serious headwinds from a GOP-controlled Senate. Passing Democratic priorities, or even appointing judges and cabinet secretaries, could become extremely difficult. Biden's health care efforts would need to focus on making changes within the executive branch. Options include rolling back CMS approval of work requirements and block grants, funding advertising and navigators for the marketplace exchanges, opening an ACA special enrollment period during the public health emergency, and reinstating funding for health care groups that provide abortions.

New leaders at HHS and CMS would have ample opportunity to shape the value-based care landscape, facing decisions about whether to emphasize mandatory vs. voluntary programs, episodic vs. population-based payments, and hospital vs. physician-centric models. Stances on these issues do not fall cleanly along partisan lines, and depend on who Biden taps for key health care positions.

President Donald Trump

Republican-controlled Senate

Nine justices on Supreme Court

President Donald Trump

Democrat-controlled Senate

Nine justices on Supreme Court

President Joe Biden

Republican-controlled Senate

Nine justices on Supreme Court

4 The Blue Wave

External analysts agree that 2020 is shaping up to be a “winner-takes-all” year, meaning a win for Biden probably means a win for Senate Democrats. With free rein over the legislative and executive branches, the top priority for the left will be quickly passing additional Covid-19 relief. Once that is out of the way, Democrats can turn their gaze to other agenda items. Along with tackling drug pricing and surprise billing, as well as re-passing any major ACA provisions if the Supreme Court rules against it, Biden will push to expand individual market subsidies, create a path to coverage for expansion populations in non-expansion states, and lower the age of Medicare eligibility to 60.

Regulators under a Democratic administration would also take a more skeptical eye toward provider consolidation, which Biden has threatened to police aggressively, and private equity involvement in health care.

5 The Blue Tsunami

Facing unprecedented change—instigated by the pandemic, economic strife, and growing social movements—some models have predicted a small but not insignificant chance of Democrats sweeping the 2020 elections by gaining a sizable majority in the Senate and retaking the White House. With large margins, Democrats may feel comfortable taking drastic steps to advance a more progressive agenda, including eliminating the legislative filibuster, passing statehood for DC and Puerto Rico, and expanding the Supreme Court.

A heavily Democratic Senate would likely still begin by passing comprehensive Covid-19 relief, but could also include provisions to expand health coverage and enhance environmental policy. Biden would also need the support of a heavily left-leaning Senate—unencumbered by the filibuster and able to lose one or two moderate Democrats—in order to pass the more controversial aspects of his public option plan, which would allow any citizen to buy health insurance directly from the government regardless of age, income, or employer coverage.

By expanding the Supreme Court and appointing more liberal justices, Democrats would be more likely to get wins on some big-ticket health policy issues making their way through the judicial system, like Medicaid work requirements, abortion access, and short-term and association health plans.

President Joe Biden

Democrat-controlled Senate

Nine justices on Supreme Court

President Joe Biden

Heavily Democratic Senate

Expanded Supreme Court

What are the business implications of these scenarios?

How policy changes could affect providers and the industry

1 The Status Quo

Business implications

- Continuation of the previous four years, though with a decrease in regulatory activity as the President no longer has to campaign on an active record

President Donald Trump

Republican-controlled Senate

Nine justices on Supreme Court

2 The Great Divide

Business implications

- Conflict between president and Senate could slow additional Covid-19 provider relief funding
- Uncertainty around the future of the ACA will destabilize individual market plans
- Elimination of ACA would increase charity care as people lose Medicaid, individual market, or parental coverage; raise costs for patients with preexisting conditions or coverage limits
- Loss of the ACA could derail Trump price transparency push as the ACA is what permits HHS to demand provider prices; Congress must repass laws allowing transparency requirements
- Continued pressure on providers to accept capitation and risk will necessitate more provider action to lower the total cost of care
- CMS's push to cut Medicaid spending would force states struggling with budget shortfalls to further reduce provider reimbursement
- Consensus positions between Trump and Democrats on drug pricing—namely indexing Medicare drug prices to other countries and increasing the production of generics—will put downward pressure on drug manufacturer revenues

President Donald Trump

Democrat-controlled Senate

Nine justices on Supreme Court

3 The Down-Ballot Split

Business implications

- Very limited legislative action, particularly affecting Covid-19 relief, as McConnell limits Biden's ability to take credit for progress
- Executive branch support for exchanges—funding advertising and navigators, restoring cost sharing reductions, opening federal special enrollment period—would boost enrollment
- Executive branch will reinstate Title X funding for providers referring for or providing abortions
- New leadership at HHS will evolve the alternative payment landscape, with broad authority to shift emphasis along several vectors: mandatory vs. voluntary models, episodic vs. population-based payments, and hospital vs. physician centric programs

President Joe Biden

Republican-controlled Senate

Nine justices on Supreme Court

4 The Blue Wave

Business implications

- Quick action on additional Covid-19 relief, including more money for providers
- Create a nominal individual mandate tax or re-pass the majority of the ACA to reduce disruption, while increasing support for exchanges and raising subsidies
- Creating a path to coverage for expansion populations in non-expansion states, reducing uncompensated care in those regions
- Opt for tax increases, rather than rely solely on provider rate cuts, to keep Medicare Trust Fund solvent
- Target manufacturers, rather than hospital 340B programs, to reduce drug costs
- More stringent investigation of proposed provider mergers and private equity acquisitions may require parties to demonstrate need and/or a positive impact on cost and quality

5 The Blue Tsunami

Business implications

- All of the above plus...
- Public option for all citizens would reduce provider revenue in almost every situation and compete with private payers
- Covid-19 response legislation will aim to reduce the uninsured and underinsured population, lowering uncompensated care
- Requiring that health care employers who receive federal funding allow workers to unionize, likely increasing labor costs

President Joe Biden

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