



FEDERALISM ISSUE: HEALTH CARE POLICY

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In 2017, a key Republican attempt to repeal the Affordable Care Act (ACA) took the form of a repeal bill that would have replaced the ACA with a system of federal grants to states to design their own health programs. After the attempt failed, the Trump Administration turned to its administrative powers to incrementally move in the same direction. Specifically, the Administration gave waivers to states that want to expand Medicaid under the ACA with certain restrictions like work requirements. The United States Department of Health and Human Services (HHS) used waivers under section 1115 of the Social Security Act to give states more flexibility in Medicaid implementation.¹ Broadly, Trump's strategy is to allow states to limit coverage which, in turn, results in differing levels of health care coverage.² Other Administration tactics include reducing the effect of the ACA through creating bureaucratic roadblocks on HealthCare.gov, the federal insurance exchange. Trump cut the enrollment period from 90 days to 45 days and reduced HealthCare.gov advertising by 90 percent. This, along with the end of the tax penalty enforcing the individual mandate, contributed to a five percent decline in enrollment from 2017 to 2018. The Administration said in June 2018 that small busi-

nesses could join health plans that would be exempt from ACA protections. These businesses would not be required to give "essential" benefits like mental health care, emergency services, newborn care, and prescription drugs. In October 2018, the Trump administration decided it would allow states that were seeking a waiver to operate their own health insurance exchanges to use federal insurance subsidies for their health policies. The courts intervened with US District Court Judge John D. Bates ruling that the Department of Labor's rule on association health plans was not legal and "clearly an end-run around the [ACA]."³

The Democratic candidates propose two types of health care policies: a single-payer, "Medicare for all" system and a buy-in option in which Americans can keep their private insurance or enroll in the federal program. The latter builds on the Affordable Care Act. The single-payer system has clear federalism implications: the federal government would be the central marketplace for the insurance exchanges which, unlike Trump's efforts, will limit the states' ability to maintain control over health care practices. States are innovative laboratories that experiment with delivery and payment solutions, reducing drug costs,

¹ <https://academic.oup.com/publius/article/49/3/379/5530676>

² *Ibid.*, 387.

³ *Ibid.*, 387.

⁴ <https://www.kff.org/health-reform/perspective/medicaid-should-be-a-bigger-part-of-the-medicare-for-all-debate/>

and exploring the social roots of health issues, like poverty and housing.⁴ If a “Medicare for all” plan is implemented, governors may, depending on how the program is designed, be able to successfully acquire a waiver that allows them to operate the state’s single payer program.⁵ Nonetheless, a “Medicare for all” program would limit state policy innovation and create an imbalance between the states and the federal government.⁶ The policies that seek to build on the ACA do not have a clear federalism implication. Many federalism scholars, however, comment on the ACA’s current impact on the state-federal relations. Some argue that the policy allows for state and federal government bargaining and generally, the ACA’s implementation involves state political leverage, intrastate cooperation, and state autonomy.⁷ For example, states have a choice whether to run their own health insurance exchanges or rely on the federal exchange and (thanks to the Supreme Court decision in *NFIB v. Sebelius*) whether to expand their Medicaid system. There is wide acceptance, however, that the ACA’s federalism components are defined by a national structure that allows for state implementation.⁸

THE CANDIDATES

Here are the proposed policies for the American healthcare system of three leading candidates for the Democratic nomination.

Vice President Joe Biden says that as president he will protect and build on the ACA. He opposes every action that Republicans and Democrats take to get rid of the law. He wants to give Americans

more choice, reduce health care costs, and make the system less bureaucratic to navigate. Biden will give the option for public health insurance, like Medicare. He will increase the value of tax credits to lower insurance premiums and extend coverage and expand coverage for low-income Americans.⁹

Senator Bernie Sanders advocates for a single payer, national health insurance program. He promises no networks, premiums, deductibles, co-pays, or surprise bills. His plan will include dental, hearing vision, home-based long-term care, mental health and substance abuse treatment, reproductive health, and prescription drugs.¹⁰ The plan would prohibit private insurance and is estimated to cost from \$28-32 trillion over ten years.¹¹

Senator Elizabeth Warren supports Medicare for All, but the speed of implementation differs from Senator Sanders’ plan. Bernie will introduce a Medicare for All plan during his first week in office. Warren wants to pass a public-option plan as a first step during her first 100 days as president. During her third year she says that she will call for passing a full-scale single payer policy.¹² Her plan prioritizes affordable mental health services as a part of Medicare for All. She believes the policy should include vision, dental, coverage for mental health and addiction, physical therapy, and long-term care.¹³

Of these Democratic candidates, Sanders and Warren would do the most to centralize the system and reduce the state role in health care. The others would also centralize, but not to the same extent, leaving the ACA’s state exchanges intact and building on the Affordable Care Act.

⁵ <https://www.kff.org/health-reform/perspective/medicaid-should-be-a-bigger-part-of-the-medicare-for-all-debate/>

⁶ <https://www.kff.org/health-reform/perspective/medicaid-should-be-a-bigger-part-of-the-medicare-for-all-debate/>

⁷ http://www.law.northwestern.edu/research-faculty/colloquium/public-law/documents/Gluck_What%20is%20Federalism%20in%20Health%20Care%20For.pdf, 4

⁸ <https://www.ncbi.nlm.nih.gov/pubmed/30203949>

⁹ <https://joebiden.com/healthcare/>

¹⁰ <https://berniesanders.com/issues/medicare-for-all/>

¹¹ <https://www.crfb.org/blogs/how-much-will-medicare-all-cost>

¹² <https://thehill.com/policy/healthcare/476396-sanders-speed-of-medicare-for-all-push-is-a-major-difference-with-warren>

¹³ <https://elizabethwarren.com/plans/paying-for-m4a>

