



## Modest health goals for new US Congress

With Congress almost evenly split between Republicans and Democrats, consensus on any major health legislation is unlikely. Susan Jaffe reports from Washington, DC.

For more on provisions to cut Medicare drug costs see [World Report Lancet 2022; 400: 551-52](#)

When a new US Congress convenes in January, 2023, the slim Republican majority in the House of Representatives and the Democrats' even smaller margin in the Senate will not provide enough momentum for either party to make major changes in the health-care system. With President Joe Biden promising to use his veto power to defend his health-care agenda, no significant fixes are expected. But there appears to be bipartisan support for some less ambitious legislation on issues that will overcome congressional gridlock.

"People will say nothing can happen because there'll be total polarisation and paralysis", said Chris Jennings, a health policy analyst who worked in the Clinton and Obama administrations. But that view is overly pessimistic, he cautioned. Members of both parties have some modest legislative priorities in mind even if none have the same scope as legislation that passed during the first 2 years of Biden's administration, such as the Inflation Reduction Act's provisions cutting Medicare drug costs and funding climate change solutions. Tom Miller, Senior Fellow at the American Enterprise Institute, agreed, saying the next Congress is unlikely to produce any new "earth-shattering" health laws.

Instead, they and other policy analysts point to congressional leaders who plan to address several health-care issues, including tackling opioid misuse, improving access to mental health care, expanding federal health insurance coverage of telehealth, and preparing for the end of pandemic response measures when the nationwide COVID-19 public health emergency is lifted. Under the emergency declaration, Congress increased premium subsidies for

Affordable Care Act insurance plans and expanded Medicaid coverage, among other things. Lawmakers haven't provided specifics yet, which will come after the new Congress assembles in January and gets down to business.

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Vermont Senator Bernie Sanders, an independent who votes with Democrats and a former presidential candidate, is expected to become Chairperson of the Senate Committee on Health, Education, Labor and Pensions. "As chairman of the committee, he will focus on universal health care, lowering the cost of prescription drugs, increasing access to higher education, and protecting workers' rights on the job", his spokesperson Mike Casca said in a statement.

Senator John Thune of South Dakota, who holds the second-highest position in the Senate Republican leadership, discussed his party's priorities for the next Congress with Bloomberg News two weeks ago. He called for spending cuts for the Medicare and Medicaid health-insurance programmes, along with raising the minimum age for receiving Social Security retirement benefits. These and other steps would reduce the amount of money the government has to borrow. Congress must raise its debt limit before August, 2023, to avoid defaulting on its loans. A Biden administration spokesman told Bloomberg News that such cuts are "a stone-cold non-starter".

When congressional consensus is out of reach, the President can sidestep

lawmakers by issuing executive orders and regulations. This alternative "may be the only game in town", said Oliver Kim, Health Policy Director at the Bipartisan Policy Center. But recent efforts to expand Medicaid coverage for low-income families in Georgia underscore the pitfalls of taking executive actions to change the rules.

In 2020, former President Donald Trump waived some Medicaid regulations to allow Georgia to expand coverage to some healthy adult Medicaid recipients younger than 65 years who agreed to work, volunteer, enrol in a university, or get on-the-job training for at least 80 h a month and submit proof of compliance. But that administrative action did not last long. Biden rescinded the new rules late last year, saying that they were impossible to comply with during the COVID-19 pandemic.

When Georgia's Governor sued to reinstate the work requirements, a judge appointed by Republican former President George W Bush decided that Biden did not have authority to rescind the Trump rule. The state's work requirements will be enforced next year, after the Biden administration declined to appeal.

The courts will continue to threaten Biden's ability to take executive action, including regulatory changes, said Miller. He cited a June Supreme Court decision restricting the Environmental Protection Agency's authority to regulate power plant emissions that could also limit regulations from other federal agencies.

Among the less controversial items on the health-care agenda of both parties is telehealth. During the pandemic, the use of online telehealth services as an alternative to in-person medical appointments increased from a national weekly average of 13 000

virtual visits to 1.7 million. "Now that we've had a couple of years of experience, and people are already used to it, it's much harder to say it's ending, and going away", said Miller. Jennings also said there is a consensus in Congress to expand telehealth coverage, especially since it can ease the shortage of mental health and other health-care professionals affecting some areas of the country.

One complication that could slow down even modest new health-care initiatives is the need to renew funding for existing health-related programmes. The farm bill, a massive package of agricultural aid, will be up for reauthorisation next year. It currently includes US\$1 billion for nutrition programmes for low-income families. The President's Emergency Plan for AIDS Relief (PEPFAR), created in 2003 by the then President George W Bush, is also coming up for renewal. Congress provided \$5.5 billion for PEPFAR to prevent and treat HIV/AIDS across the world but, in recent years funding has been essentially unchanged, according to the Kaiser Family Foundation.

The timeline for negotiating and passing any legislation is short. Late next year, attention will shift to the 2024 election, when a trifecta of campaign drives will dominate the political landscape. In addition to the biannual election of all 435 House members, 33 Senate positions will be up for grabs, and several candidates will be vying for the most coveted prize, the presidency.

### The abortion vote

Another health issue mired in congressional gridlock is abortion access, following the Supreme Court's June ruling to eliminate the nationwide right to an abortion by nullifying the 1973 *Roe v Wade* decision. So far, Republican proposals for a national ban and Democrats' efforts to codify abortion rights lack the votes to move forward. The Supreme Court left the matter to each

state to decide and urged women in particular on both sides of the abortion issue to influence their state's legislative process. "Women are not without electoral or political power", the Court majority told them.

But women who opposed the decision did not need the reminder. "From our analysis, we can find that large majorities of women voters, especially those 18 to 49, say that the decision to overturn *Roe* was a major impact on their turning out to vote and who they voted for", said Ashley Kirzinger, Director of Survey Methodology, at the Kaiser Family Foundation. By comparison, the primary concern for many male voters was the economy and inflation's impact on living expenses. Overall, more people were motivated to vote who were angry about the court's decision than those who agreed with it, said Kirzinger.

In each of the five states where the question of abortion access was on the November ballot, voters protected the procedure. In Michigan, voters supported abortion rights in a referendum, re-elected the strongly pro-abortion Democrat Governor Gretchen Whitmer, and flipped the balance of power in both houses of the legislature to Democrats. These results followed an August election in traditionally conservative Kansas, where voters overwhelmingly defended abortion rights.

But in some states that did not explicitly ask voters about abortion, the issue did not diminish support for popular anti-abortion Governors such as Ron DeSantis of Florida and Gregg Abbott in Texas. And, in general, state legislators who put strict abortion bans in place were not voted out of office. In the non-referendum states, the status quo prevailed, with some exceptions.

To make abortion access a reality, "you need to have legislatures and Governors who are going to put policies in place", said Elizabeth Nash, State Policy Analyst at the Guttmacher

Institute. Maryland and Massachusetts voters elected new pro-abortion Governors and Democrats now control both houses of the Minnesota legislature. But in Nevada, voters chose an anti-abortion Governor.

In Kentucky, voters rejected an amendment to the state constitution that would have denied abortion rights protection. The legislature's Republican majority had approved the measure, but it needed the voters' approval to take effect. Meanwhile, on the judicial front, a battle in state court continues, challenging a Kentucky law banning abortion after conception and another law prohibiting the procedure after 6 weeks of pregnancy.

After the election, 14 states have a near-total ban on abortion or made the procedure unavailable, said Nash. Three more states ban the procedure after 6 or 15 weeks of pregnancy. And numerous lawsuits challenging the restrictions have been filed in state courts by reproductive rights groups as well as the Biden administration. The continuing litigation means a court can invalidate abortion restrictions and when the losing side appeals, another court can restore the law until another appeal.

In this volatile environment, the restrictions have prompted new objections from the American Medical Association, which represents more than 250 000 physicians, medical students, and residents. At its November meeting, the group's House of Delegates cited the Supreme Court's *Roe v Wade* decision and passed a resolution encouraging physicians who may provide abortions to abide "by medical and ethical standards of care to act against state and federal laws". The resolution also pledged legal and other assistance "to physicians that are targeted for practicing in accordance with accepted standards of medical care and medical ethics in the face of legal constraint or any other disciplinary action".

Susan Jaffe