



2020 Election's Impact on Medicaid

November 20, 2020



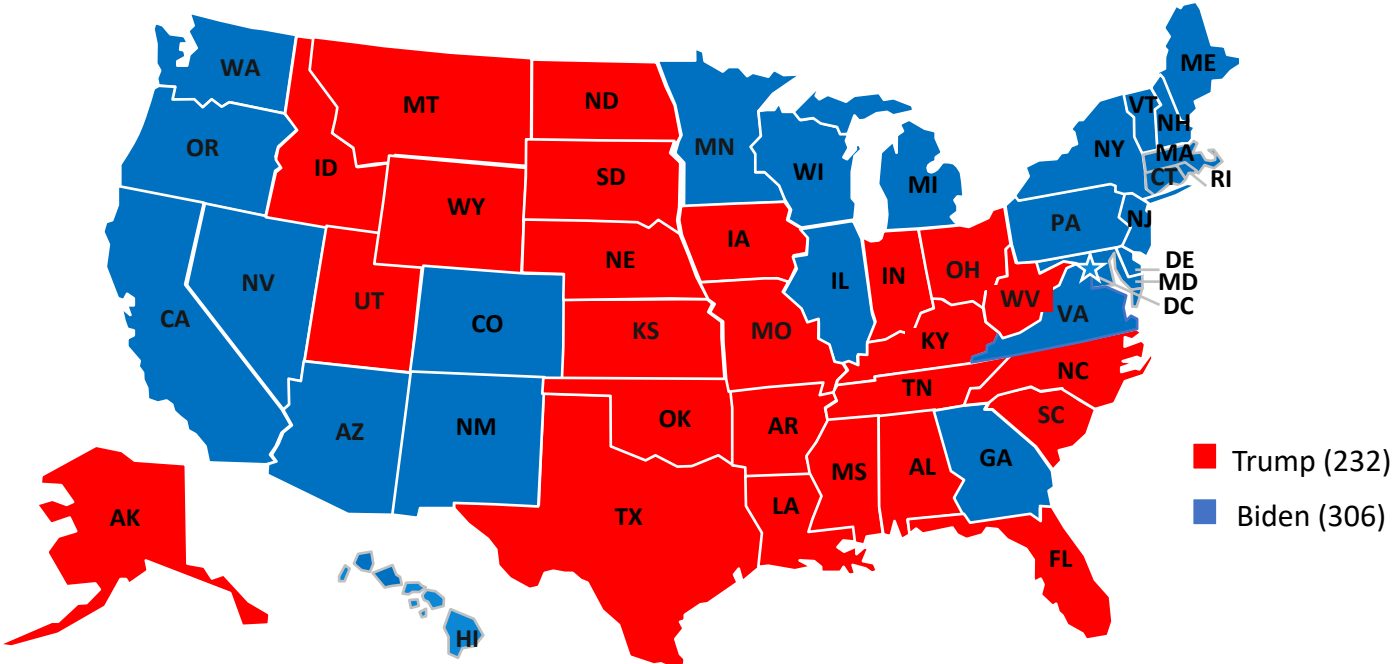
Dedicated to creating a nation where the best health and health care are equally accessible and affordable to all

Speakers & Agenda

Speakers	Today's Agenda
Frederick Isasi Executive Director Families USA	Federal and State Landscapes: Election Results and Medicaid Implications
Cindy Mann Partner Mannatt Health	Deep Dive on Administrative Opportunities
Anne Dwyer Senior Health Counsel US Senate Finance Committee	Deep Dive on Legislative Opportunities
Melissa Burroughs Associate Director of Strategic Partnerships, Families USA	Next Steps, Resources, Q&A

Federal Landscape: 2020 Election Results & Implications for Medicaid

Biden Won the Electoral College (306-232)

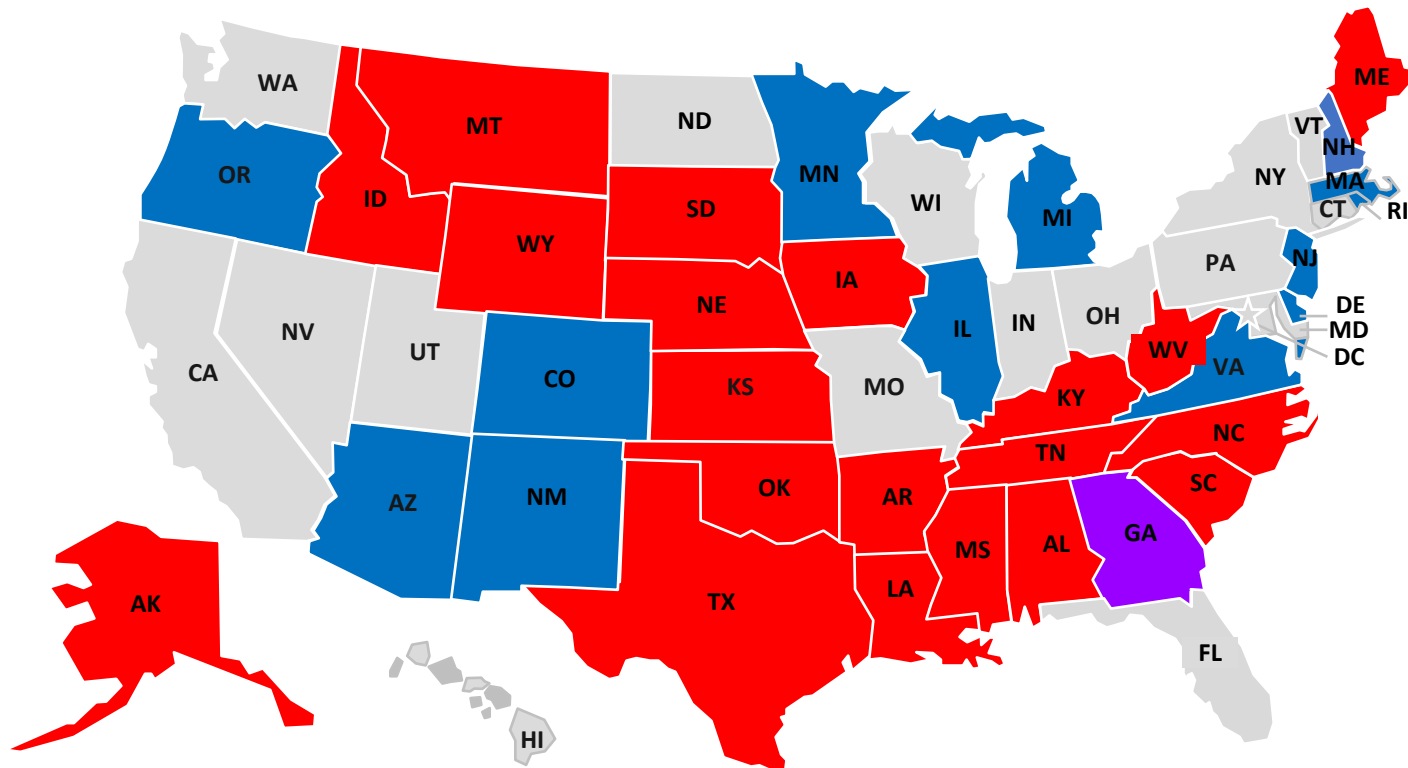


Sources: <https://www.270towin.com/2020-election-results-live/> and <https://apps.npr.org/elections20-interactive/#/president>



Senate: Dems Gain Seats, GOP Likely to Hold Majority (50 to 48)

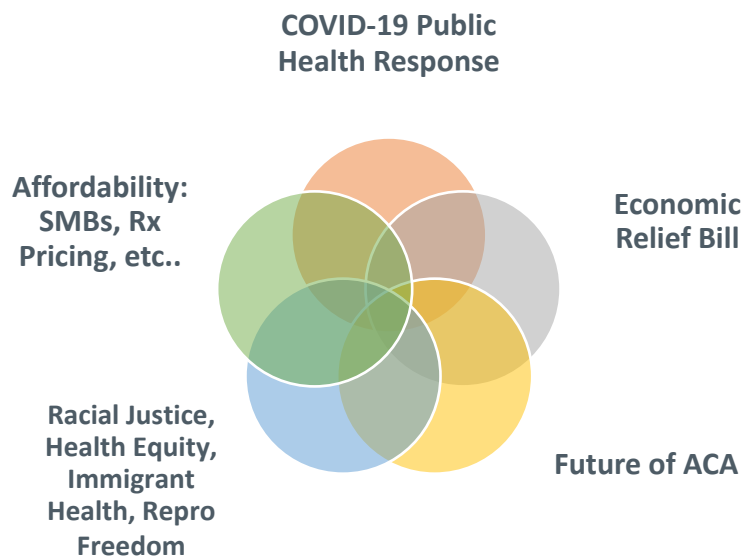
Most likely outcome is that Senate Republicans hold majority, but results depend on the two runoffs in Georgia.



Implications for Federal Action on Health

Health will Be Front-and-Center Next Year

Key Health Care Priorities for New Congress and Administration



Other Key Issues Connected With Reforms:

Medicare oral health care benefit, surprise medical bills, enrollment simplification, etc.

Considerations for Advancing Health in 2021

- Nationally coordinated pandemic response and economic relief still top of the list of priorities. State Fiscal Relief?
- Senate dynamics will be central. Must be able to garner McConnell / Republican leadership's support
- ACA-SCOTUS Dynamics. Despite very strong legal arguments, politicization of SCOTUS means the future of the ACA hangs squarely in the balance. Incredibly important leverage point for Majority Leader McConnell
- Several key priorities such as rolling back harmful Medicaid waivers and Medicaid improvements, racial justice and health equity, protections for immigrant families, reproductive freedom, enrollment simplification, HIX affordability improvements, likely to be centered on Administration-only action
- Health care affordability still at the center of most voter's minds (Rs and Ds). Opportunities for action around Rx Pricing, Surprise Medical Bills, private coverage and other affordability concerns remain in play on both Congressional and Administrative levels

Drilling Down on Medicaid: Legislative Opportunities

Potential Legislative Vehicles

- COVID-19 Relief Package
- Possible Legislation in Wake of Supreme Court Decision

Other Table Setting

- Layout Vision for Reform (House)
- Oversight Hearings (House)

Areas for Possible Bipartisan Agreement

- Maternal Health (e.g. 12 Months Post-Partum Coverage)
- Kids Coverage
- Affordability (e.g., Rx Prices, Surprise Medical Bills)

Rescind/Repeal

Improve

Innovate

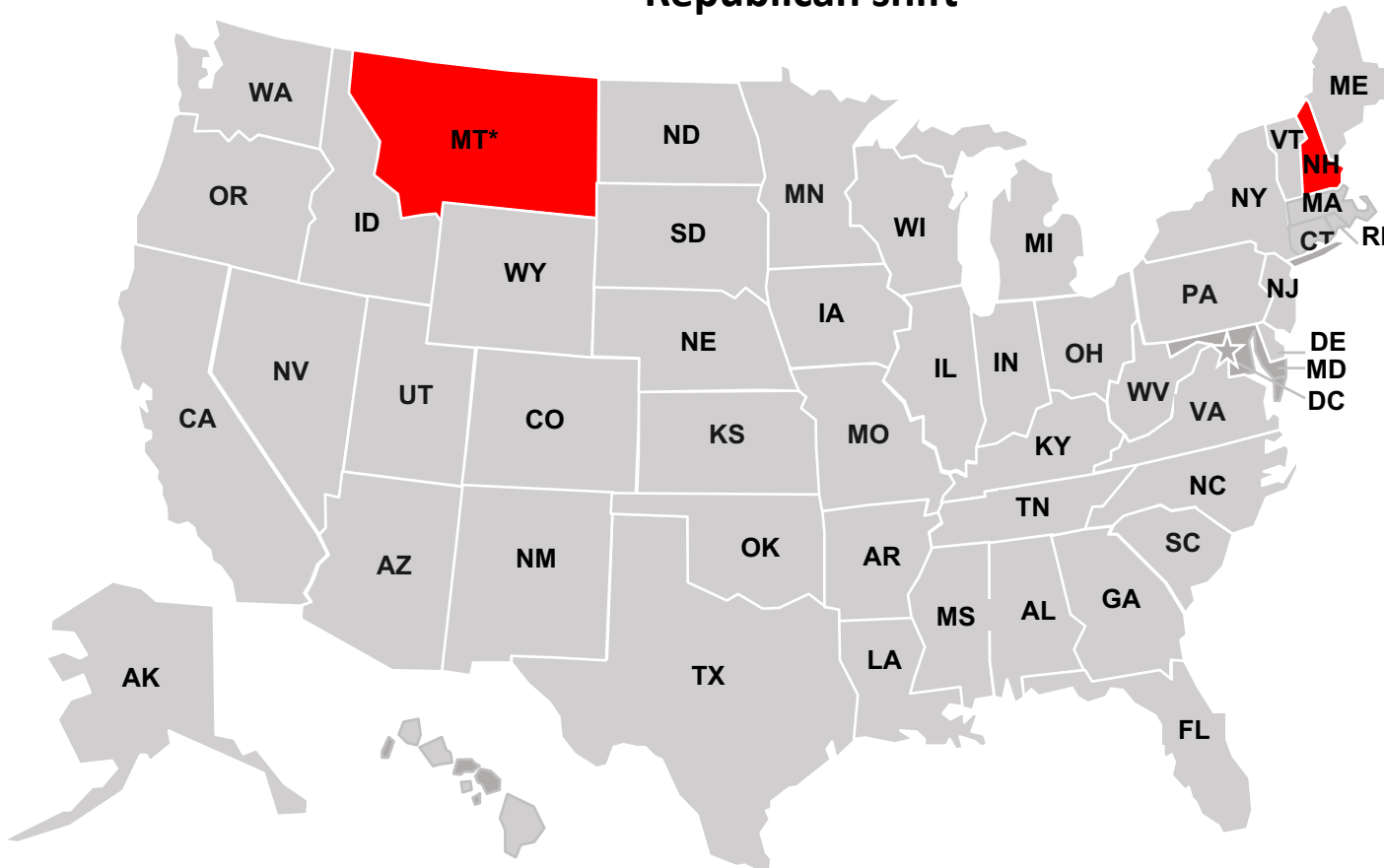
Big ticket items include:

- Block grants
- Work requirements
- Anti-choice waivers
- Public charge
- Reduce paperwork barriers
- Innovative 1115 waivers
- Improve outreach/enrollment

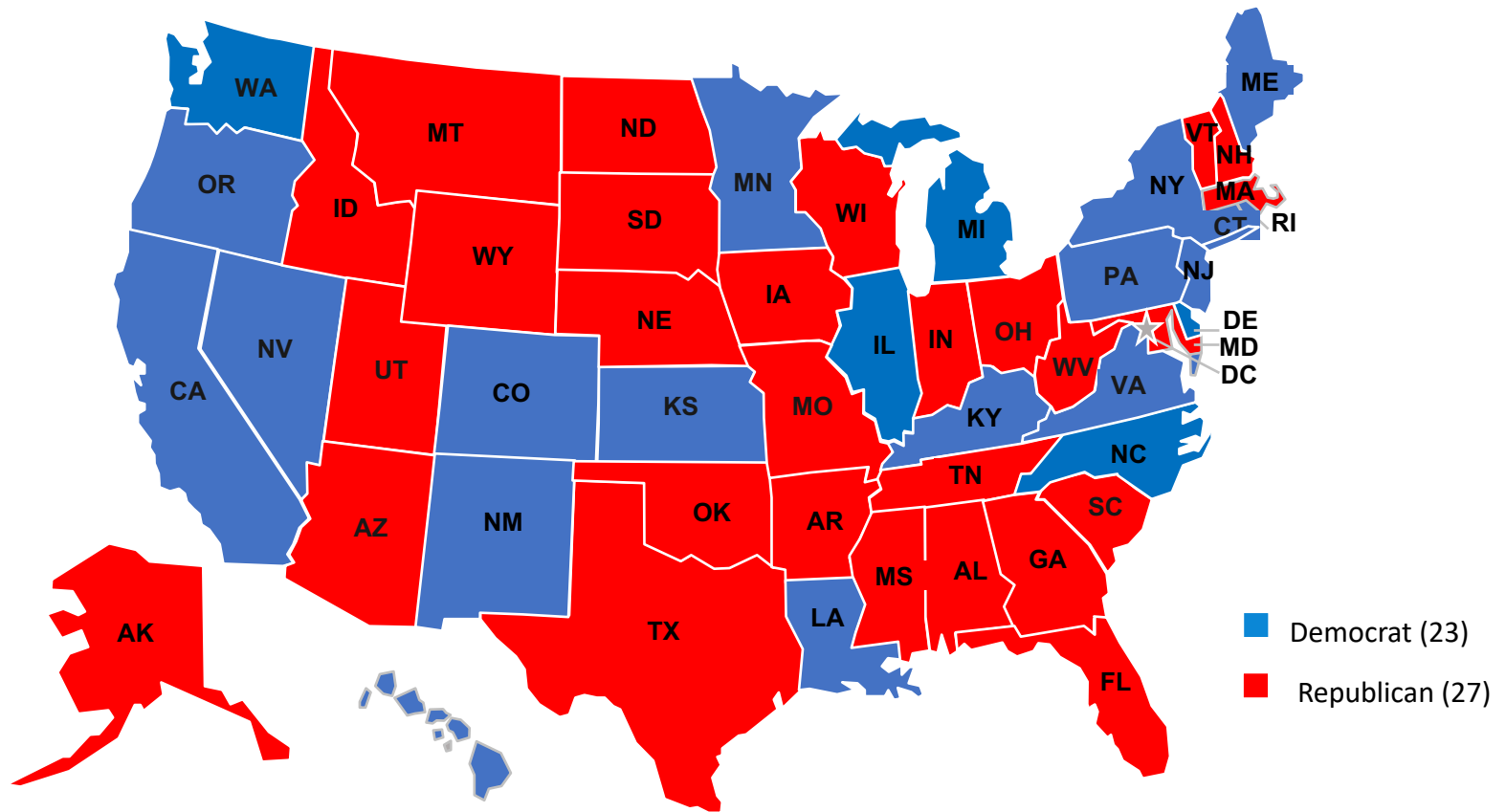
State Landscape: 2020 Election Results & Implications for Medicaid

At the state level, very little changed

Most states are status quo. Only, MT (governor) and NH (legislature) saw Republican shift



Now, GOP Holds Governorship in 27 States, Democrats 23



Medicaid & State Election Trends

Medicaid is politically popular, but not necessarily top of mind for most voters (see legislative races). Budget threats may eclipse opportunities.

Election Outcomes Show Political Popularity

- OK, MO ballot initiatives (June and August)
- NC Governor ran on Medicaid expansion and won re-election

But We Did Not See Legislative Chambers Flip

- e.g.: NC, TX

Budget Threats

- Pandemic continues to squeeze state budgets, without state fiscal relief – very significant cuts on the horizon
- Recent weakening of public health emergency maintenance of effort (MOE) makes Medicaid cuts possible, and likely.
- Next Pandemic relief package important MOE opportunity coupled with State Fiscal relief?

MARKETS

U.S. States Face Biggest Cash Crisis Since the Great Depression

The drop in tax revenue has led to a total shortfall expected in the hundreds of billions of dollars—greater than 2019's K-12 education budget for every state combined, or more than twice the amount spent that year on state roads and other transportation infrastructure

Tennessee state departments asked to cut budgets by 12%

America's School Funding Crisis:
Budget Cuts, Rising Costs And No Help
In Sight



State narrows budget deficit, but still projects huge shortfall

Budget officials say Minnesota's economy is doing better than expected. Which doesn't mean it's doing well.

Medicaid and Tight Budgets

Be Ready for Common State Strategies to Balance Budgets on the Backs of Medicaid

Cut Provider Rates

- Allowed during Public Health Emergency

Speed Up Redeterminations to Increase Terminations

- NOT allowed during Public Health Emergency

Cut Optional Benefits

- Was banned, but is now allowed during Public Health Emergency

Be proactive: Prioritize high quality, cost saving alternatives

- E.g. Efforts laser targeted on improving outcomes and reducing costs: behavioral health integration, ED utilization, Medical homes, housing and health care, transitions in care, justice involved populations, bipartisan efforts to address market abuses -- Rx prices, surprise medical bills, hospital consolidation, etc.

Deep Dive: Administrative Implications

Cindy Mann

Partner

Manatt Health

Medicaid Administrative Advocacy

Undo

Work Requirements

Block Grants

Public Charge

Title X Restrictions

Access Rules

Medicaid Fiscal
Accountability
Regulation (MFAR)

SUNSET Regulation

Improve

Enrollment
Simplification

Immigrant Coverage

Continuous Eligibility
Unwinding

Extending Public
Health Emergency
Flexibilities

Access Rules

Oversight and
Transparency

Innovate

Maternity Care

Justice Involved

HCBS

Outreach and
Enrollment

Equity-Focused

Social Determinants of
Health

Incentives for
Expansion

And More

Deep Dive: Medicaid Work Requirements

Though several states have approved work requirements, as of today none are implemented.

Work Requirement Status	States
Waiver Obtained, Not Implemented	Arizona, Georgia, Indiana, Ohio, Nebraska, ¹ South Carolina, Utah, Wisconsin
Waiver Requested	Alabama, Idaho, Mississippi, Montana, Oklahoma, ² South Dakota, Tennessee
Waiver Approval Vacated	Arkansas, Kentucky, Michigan, New Hampshire

Biden Administration Administrative Options

- **State Medicaid Director Letters**
 - Rescind SMD 18-002 “Opportunities to Promote Work and Community Engagement Among Medicaid Beneficiaries”
 - Draft new guidance and SMD outlining the Biden Administration’s principles for Medicaid expansion
- **Address Existing State Waivers: Options**
 - Revise the waivers in light of court decision
 - Negotiate changes immediately
 - Negotiate changes at time of renewal

1. Nebraska received approval to implement work requirements for expansion adults as a condition of receiving an enhanced benefit package, not as a condition of eligibility.

2. On 8/11/2020, Oklahoma withdrew its request to implement work requirements (among other features) for the expansion population, due to the State’s passage of a Medicaid expansion ballot initiative prohibiting restrictive conditions on Medicaid expansion eligibility. The state’s earlier request to implement work requirements for parents and caretakers with income 0-40% FPL is still pending with CMS.

Source: Manatt Health analysis.



Options for to Address Existing Regulations

There are three pathways for the Biden Administration to address existing regulations based on the regulation's status.

Final but Not in Effect (Typical Executive Order)

- Postpone the effective date *for 60 days without* notice-and-comment rulemaking
- Postpone the effective date *beyond 60 days with* notice-and-comment rulemaking

Expect an Executive Order: No new regulation is published until it is reviewed by the new Administration.

Proposed and Not Finalized

- Formally withdraw the rule
- Re-issue in proposed form with modifications

Finalized

- Proceed with notice-and-comment rulemaking to rescind or propose modifications



The Administration has broad enforcement discretion, but limiting enforcement may increase litigation risk.



Deep Dive: Undoing MFAR

The Medicaid Fiscal Accountability Regulation was proposed and published in the Federal Register in November 2019. If it is not finalized before Biden Administration, to “undo” the rule, the Biden Administration will need to formally withdraw the rule in the federal register.

Final but Not in Effect (Typical Executive Order)

- Postpone the effective date *for 60 days without* notice-and-comment rulemaking
- Postpone the effective date *beyond 60 days with* notice-and-comment rulemaking

Proposed and Not Finalized

- **Formally withdraw the rule**
- Re-issue in proposed form with modifications

Finalized

- Proceed with notice-and-comment rulemaking to rescind or propose modifications

MFAR Overview

- Overhaul of Medicaid financing options relating to provider taxes and intergovernmental transfers
- Limits physician supplemental payments
- Imposes new standards for approval of supplemental payments
- Requires extensive reporting requirements
- In September 2020, CMS Administrator Seema Verma tweeted that CMS is “withdrawing the rule from the regulatory agenda”

Deep Dive: Unwinding FFCRA Continuous Coverage Requirements

When continuous coverage requirements expire, states will need to conduct a full redetermination for all enrollees who would have otherwise been subject to redetermination. States will also need to unwind flexibilities implemented other Medicaid and CHIP Disaster Relief SPAs.

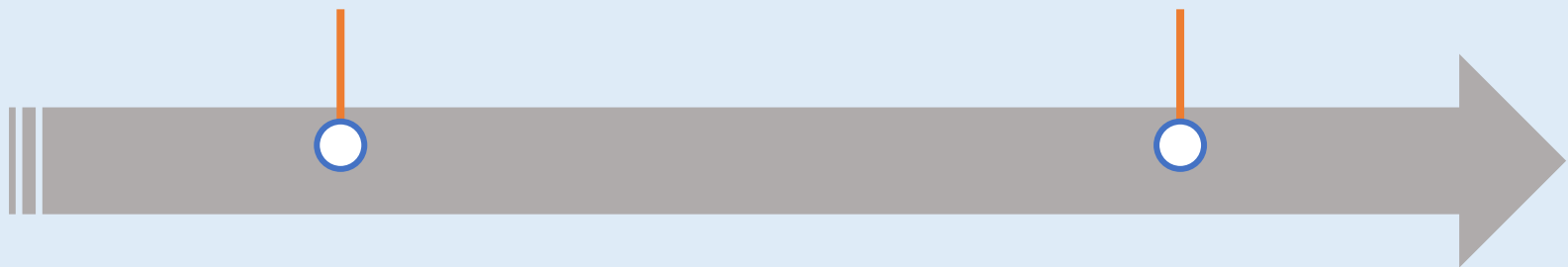
Timeline for Unwinding

Jan 20, 2021

Current Date for Expiration
of PHE

Jan 31, 2021

Current date for expiration of
continuous coverage¹



If the PHE is extended under a Biden administration, the end of the Disaster Relief SPA flexibilities and the continuous coverage requirements change.

1. Continuous coverage requirement ends the last day of the month in which the PHE ends

Sources: State Health and Value Strategies (SHVS), [Federal Declarations and Flexibilities Supporting Medicaid and CHIP COVID-19 Response Efforts Effective and Expiration Dates](#), October 2020.

States, Federal Government and Advocates Have Roles in Unwinding

CMS is expected to release “subregulatory” guidance (i.e., “State Medicaid Director” letter) on the expected timeline for unwinding CHIP and Medicaid SPA flexibilities and the FFCRA continuous coverage requirements. The Biden Administration can maintain, revise or replace that guidance through a new SMD letter.



Potential CMS Actions on Continuous Coverage

- Provide more time for redeterminations
- Remind states of current rules
- Identify allowable best practices
- Provide technical support



Potential State and Advocate Actions

- Adopt best practices
- Update mailing addresses; revise “return mail” policies
- Plan and execute outreach strategies
- Improve IT systems/notices as needed
- Collaborate on real time monitoring strategies

Deep Dive: Legislative Implications

Anne Dwyer
Senior Health Counsel
US Senate Finance Committee

Upcoming Inflection Points: It's Time to Act

Comprehensive COVID-19 Relief Package

- Lame Duck & in early 2021

Medicaid Administrative Agenda

- Immediate response to MOE rule
- Push for quick action with new admin

Defending Against State Budget Cuts

- On-going, most legislative sessions start early 2021

Possible Supreme Court Response

- Most likely late Spring



Sign on Letter to Biden Transition Team

- **Letter closes 12/8 COB**

Responding to MOE Rule

- **New Short Analysis:** Trump Administration Reverses Course on Medicaid Maintenance of Effort Provisions, Clearing the Way for Devastating Cuts in the Middle of the COVID-19 Pandemic
- **Advocates Call: 12/9 at 3 ET**
- Template comments coming (NHeLP)

Unifying Messages on Health Reform: Messaging Guide

- **Coming early December**

Health Action Conference

- **1/26-1/28**



POWER. IMPACT. NOW.

FAMILIES USA'S HEALTH ACTION 2021



POWER.



IMPACT.



NOW.

SAVE THE DATE

Conference, January 26–28
[Familiesusa.org/HA2021](https://familiesusa.org/HA2021)

Dedicated to creating a nation where the best health and health care are equally accessible and affordable to all



FamiliesUSA.org