



## Weekly Health Care Checkup

November 2 - 6, 2020

### IN BRIEF

**What Happened This Week:** Three days after the November 3 Election Day, the outcome of the Presidential contest between Republican President Donald Trump and Democratic former Vice President Joe Biden is still too close to call. As of this morning (Friday, November 6), Biden [appears](#) to have a more clear path to victory, although votes in several battleground states – including Arizona, Georgia, Nevada, and Pennsylvania – are still being counted.

Voters also elected representatives from all 435 Congressional districts across each of the 50 states this week. 35 Senate seats were also up for grabs (12 Democratic seats and 23 Republican), and 11 gubernatorial elections also took place on Tuesday. While some races have yet to be called, Republicans made unexpected gains in the [House](#), flipping at least 6 Democratic seats. Over in the [Senate](#), Republican Leader Mitch McConnell, who also won re-election, will likely continue to preside over a GOP majority – albeit a slightly [smaller](#) one. It appears that the final word on which party controls the Senate could be determined by two January runoff [elections](#) in the State of Georgia.

**What to Expect Next Week:** The Senate will return to Washington next week for the “lame duck” session of Congress. At 3:00pm on Monday, November 9, following Leader remarks, the Senate will resume consideration of James Ray Knepp to be US District Judge for the Northern District of Ohio. At 5:30pm, the Senate will vote on the motion to invoke cloture on the Knepp nomination.

The House is not expected to be in session until the week of November 16, although the chamber will hold a pro forma session on Monday, November 9. Upon their return, expect lawmakers in both chambers to take up legislation to continue funding the federal government after the current continuing resolution expires December 11. Several Medicare, Medicaid, and public health programs are also likely to be extended as part of that legislation. It’s also possible that lawmakers will move to take up another COVID-19 response package before the end of the year; however, the timing for this could slip to early next year in the new session of Congress. More on what Congress will likely look to do in the lame duck in the deep dive section [here](#).

### DEEP DIVE

**Quick Takeaways From the – Still Undecided – 2020 Election and the Impact on Health Policy:** With huge voter turnout, including a record of more than 100 million Americans voting early and the highest overall percentage of eligible voters casting ballots since 1908, the outcome of the Presidential contest between Republican President Donald Trump and Democratic former Vice President Joe Biden is still too close to call. As of this morning (Friday, November 6), Biden [appears](#) to have a more clear path to victory, though votes in several battleground states – including Arizona, Georgia, Nevada, and Pennsylvania – are still being counted. But while these remaining votes are from mostly mail-in ballots

where Democrats have an edge, nothing is certain given the historic nature of the election, never-before-seen voting patterns, and unprecedented early voting.

As expected, President Trump's campaign appears to already be laying the [groundwork](#) to contest the election results in a handful of states. And several states, including Wisconsin, are headed for recounts before the final outcome is secured next month. On Wednesday, President Trump declared "major fraud" in the 2020 election and suggested that his campaign would be taking its case to the Supreme Court – a move that Biden's campaign manager Jen O'Malley Dillon described as "outrageous, unprecedented and incorrect."

But whatever the ultimate outcome of Presidential contest, it appears likely that the House will continue under Democratic control. While some races have yet to be called, Republicans made unexpected gains in the [House](#), flipping at least 6 Democratic seats.

Over in the Senate, it's very likely that the final word on which party controls the Senate could be determined by two January runoff [elections](#) in the State of Georgia. Should Republicans retain their majority, Republican Senate Leader Mitch McConnell, who also won re-election by a comfortable margin, will likely continue to preside over a Senate GOP majority—albeit a slightly smaller one.

Looking ahead, if the current results hold as the final votes are counted, a politically divided Congress will have to find ways to come together to tackle some of the most pressing issues facing the deeply divided country, in the wake of this razor-thin election. First up, Congress will return for a lame duck session later this month where they will pass legislation to continue funding the federal government after the current continuing resolution expires December 11. At the same time, several important health care programs will need to be extended past that date, including funding for community health centers and the national health service corps, delay of disproportionate share hospital cuts under the Medicaid program, and several Medicare reimbursement provisions helping providers in rural areas. It also means that some of the Democrats' more ambitious health reform goals—like expanding the Affordable Care Act (ACA) and creating a Medicare-like public option to compete with private sector plans—will be shelved for the balance of the next Congress. In addition, Leader McConnell and the GOP majority will continue to have a role in shaping the composition of the federal courts and could restrict some of the cabinet appointees and other senior Administration positions requiring Senate approval that an incoming Biden Administration may put forth.

And whether during the 2020 lame duck session or early next year when the new 117<sup>th</sup> Congress is sworn in, there is also very likely to be another multi-billion dollar, or even multi-trillion dollar, coronavirus relief package passed that includes additional federal support for families, businesses, and schools, though several major issues (the bill's price tag, liability protections for schools and businesses, additional funding for states and health care providers) still need to be addressed.

In addition, we can expect continued Congressional and/or Executive Branch action on a range of health care issues in 2021. Both parties in Congress and both Presidential candidates support additional measures to control the high and growing cost of prescription drugs. Both have an interest in protecting people with preexisting conditions, should the Supreme Court rule that key portions of the Affordable Care Act (ACA) are unconstitutional next year. Both parties support greater flexibilities for telehealth, a greater push toward value-based care, improvements in the public health infrastructure, protections against surprise medical billing, and reforms to promote greater interoperability of electronic health care records. The details will differ, depending on the ultimate outcome of this historic 2020 election. But further action in all of these areas is all but certain next year.

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**Trump Administration Approves Georgia's State Relief and Empowerment Waiver:** Over the weekend, CMS announced it had approved a [waiver](#) from Georgia that would essentially allow the state to shut down the healthcare.gov website and instead, encourage residents to purchase health insurance through insurance brokers or via private websites. In a statement, CMS Administrator Seema Verma said Affordable Care Act Exchanges have "not worked for Georgians," and suggested that the approved waiver changes will "usher in a groundswell of healthcare innovation that will deliver lower costs, better care, and more choice to Georgians in the individual market." As expected, several Democrats – including House Democratic committee leaders Frank Pallone (NJ), Richard Neal (MA), and Bobby Scott (VA) – were quick to [blast](#) the Administration's decision, arguing that the Trump Administration is "once again defying the law in its ideological pursuit to undermine the Affordable Care Act (ACA) anywhere it can." Should Georgia decide to move forward with the changes (which would not be effective until 2023 at the earliest), it would be the first state with government-run website for consumers to enroll in ACA coverage (currently, 36 states use the healthcare.gov website and 14 others maintain their own websites).

**Trump Administration Issues Proposed Rule Tied to Regulatory Reform Efforts:** The Trump Administration issued a [proposed rule](#) on Wednesday, which would require HHS to conduct reviews of regulations more than 10 years old. The proposal stipulates that any regulation that is *not* reviewed within the specified timeframe would expire. In a statement, HHS Chief of Staff Brian Harrison said the rule would "sunset burdensome regulations unless their necessity is publicly demonstrated to the American people." At this point, it appears that the Administration is looking to finalize the rule before the end of the President's first term (comments on the rule are due December 4, 2020), though the fate of the proposal – which is subject to Congressional review – will likely depend on the ultimate outcome of the 2020 election.

## **UPCOMING COVID / HEALTH-RELATED CONGRESSIONAL HEARINGS**

TBA

## **ADMINISTRATION ANNOUNCEMENTS**

### **Centers for Medicare & Medicaid Services**

- [Trump Administration Finalizes Transformative Medicare Payment Changes to Support Innovation in Kidney Care and Incentivize Dialysis in the Home](#)
- [CMS Releases Toolkit to Accelerate State Efforts to Rebalance Long-term Care Systems and Enhance Home and Community-Based Services for Eligible Medicaid Beneficiaries](#)
- [Trump Administration Approves Georgia's State Relief and Empowerment Waiver](#)

### **Food and Drug Administration**

- [Click here for the full list of all new FDA updates.](#)

### **Guidance Documents from the Centers for Disease Control and Prevention**

- [Click here for the full list of all new CDC updates.](#)

### **National Institutes of Health**

- [NIH Researchers Identify Gene in Mice That Controls Food Cravings, Desire to Exercise](#)
- [The Gut Trains the Immune System to Protect the Brain](#)
- [Neighborhood Conditions Associated With Children's Cognitive Function](#)

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## QUICK LINKS

- [Additional Mehlman Castagnetti Resources on COVID-19](#)
- [Johns Hopkins University Map of Global Cases of Coronavirus](#)
- [CDC Map of Coronavirus Cases in the US](#)
- [CMS COVID-19 Stakeholder Call Recording/Transcripts](#)
- [Kaiser Family Foundation: State Data and Policy Actions to Address Coronavirus](#)

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