



## Can the Elections End the Health Reform Stalemate?

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Since 2010, Democrats and Republicans have battled over the Affordable Care Act (ACA) in Congress, the courts, and state legislatures and through alternating executive orders from Presidents

Barack Obama and Donald Trump. The result of this decade of partisan struggle is a de facto stalemate over health care reform, with Democrats unable to improve or build on the ACA and Republicans unable to repeal it.<sup>1</sup> Could the 2020 elections end the impasse and produce major changes in health policy?

The answer depends, of course, on the outcome of the elections. At present, Republicans hold the presidency and a 53-to-47 majority in the Senate, while Democrats have a 232-to-199 majority in the House of Representatives. If Democrats and Republicans continue to operate in a divided government, with neither party controlling both the White House

and Congress, then the status quo will probably persist. The ACA's fortunes would still be shaped by the party that wins the presidency and thereby controls the rulemaking, regulation, state waivers, and executive orders that influence the law's operation. But unless the Supreme Court strikes the ACA down, it would remain in place largely as it is now, with neither party able to realize bolder ambitions.

If Trump is reelected and Republicans win majorities in the House and Senate, the GOP could launch another effort to repeal Obamacare. It is not clear, however, that the party has the appetite to take on the ACA again through Congress. Despite repeat-

ed promises to do so, Trump has not released an ACA replacement plan in advance of the 2020 elections.<sup>2</sup> Republicans have not solved the problems and political perils that plagued their failed 2017 repeal campaign, which ended up boosting the ACA's popularity and contributing to major GOP losses in the 2018 congressional elections. Republicans would have to overcome public and stakeholder opposition to jettisoning the ACA's consumer protections, insurance reforms, and coverage expansion; the absence of intra-party consensus on a replacement plan; and the challenges of devising legislation that embodies a conservative vision of health policy while not substantially increasing the uninsured population and exacerbating the problem of underinsurance.<sup>3</sup> Sweeping the 2020 elections, then, would create another opportunity for Republicans to repeal and replace Obamacare,

but the formidable obstacles would make it difficult for them to do so.

A less ambitious alternative would be to target selected provisions for repeal, such as penalties on employers for not offering insurance to their workers. The Trump administration could also take additional steps to destabilize the ACA insurance marketplaces, while seeking to encourage states to restrict Medicaid eligibility, introduce Medicaid block grants, and circumvent ACA regulations. In theory, the GOP could instead pursue measures to improve the affordability of insurance under the ACA; in reality,

of short-term health plans and cuts in federal outreach and enrollment efforts.<sup>4</sup>

A Democratic administration could aim to go beyond such incremental measures. The campaign platform of Democratic presidential candidate Joe Biden calls for enacting a new Medicare-like, government-run public insurance option that both the uninsured (including low-income persons living in states that have not expanded Medicaid) and persons with private insurance could join. Biden has also proposed lowering the age of eligibility for Medicare from 65 to 60. During

of enacting a public option and expanding Medicare. The rise of the concept of Medicare for All gives the public option a more moderate place in Democratic party politics, which could help its chances in Congress (and in states, some of which have pursued variations on the public option model). A decade of the ACA has failed to stem the problem of underinsurance that leaves many people vulnerable to high bills, which builds the case for further government action. Moreover, the Covid-19 pandemic and associated recession have highlighted staggering gaps in U.S. insurance arrangements, including the vulnerabilities of employer-sponsored coverage, and increased the uninsured population, which could strengthen support for creating a new government program and expanding Medicare eligibility.<sup>5</sup>

The changing politics of the public option might mean that Biden would be a stronger public-option proponent as president than Barack Obama was. Biden would have to decide, though, whether to prioritize a divisive fight amid the array of pressing public health, economic, and social issues awaiting the next administration. After all, Presidents Bill Clinton and Barack Obama both launched major health care reform efforts in their first year in office, only to see Democrats lose majority control in Congress in the next election. And if they win only a narrow Senate majority in 2020, Democrats would have to rely on budget reconciliation, which requires a simple majority rather than the filibuster-proof 60 votes often necessary to pass legislation, or eliminate the filibuster altogether — a contentious move, albeit one with grow-

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Republicans have shown little interest in takings steps that would strengthen Obamacare.

If Democrats win the White House and congressional majorities, they are poised to pursue deferred agendas of repairing and building on the ACA. In June 2020, House Democrats passed the Patient Protection and Affordable Care Enhancement Act, with 232 of 233 Democrats voting in favor and 177 of 179 Republicans voting against the bill. The legislation provides a template for how Democrats could strengthen the ACA in 2021, by enhancing subsidies for already-eligible people to buy insurance and extending those subsidies to higher-income Americans, creating new financial incentives for states to expand Medicaid, and overturning the Trump administration's expansion

the Democratic primary, advocates framed the public option as a less radical, more politically feasible alternative to Medicare for All.

Yet proposals to establish a public option and lower Medicare's eligibility age did not make it into the ACA in 2010, even with Democrats holding a supermajority of 60 seats in the Senate. In 2021, Democrats would most likely encounter some of the same political obstacles that previously defeated these measures, including opposition from the insurance industry and health care provider lobbies as well as the reluctance of some Democratic lawmakers, especially senators from more conservative states, to support such proposals.

The political environment has changed over the past decade in ways that might boost the chances

ing support. Even with unified Democratic control of the White House and Congress, enactment of a public option and expansion of Medicare eligibility are far from certain.

Another uncertainty is the ACA's legal fate, which became more precarious after the death of Justice Ruth Bader Ginsburg. The Supreme Court will hear oral arguments November 10 in *California v. Texas*, a challenge brought by Republican states and supported by the Trump administration that seeks to invalidate the entire ACA.<sup>1</sup> The Court will probably issue a decision in 2021. A decision

 An audio interview with Dr. Oberlander is available at [NEJM.org](https://www.nejm.org)

to strike down the ACA or major components of it would destabilize both the insurance market and health politics, transforming the possibilities for reform.

Barring such breathtaking disruption, the 2020 elections will

shape the ACA's future. A decade ago, ambitious health care reform passed largely because Democrats had sizable congressional majorities, reached a consensus on a plan, and secured broad support for the ACA from health system stakeholders. In 2021, even if one party has unified control of government, it may not be able to reproduce all these favorable conditions. So a breakthrough in health policy is not inevitable during the next administration. Still, the profound political and economic instability wrought by Covid-19, frustrations with the ACA's limitations, the legal uncertainty, and a polarized environment in which parties are willing to legislate without bipartisan support mean that major change is possible. Stalemates, after all, can be broken.

Disclosure forms provided by the authors are available at [NEJM.org](https://www.nejm.org).

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## Insurance Coverage after Job Loss — The Importance of the ACA during the Covid-Associated Recession

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During the coronavirus pandemic, the U.S. unemployment rate reached 14.7%, the highest level since the Great Depression. More than 40 million people filed for unemployment insurance between March and May 2020, and official statistics may understate the true extent of job disruptions. Widespread layoffs amid the pandemic threaten to cut off millions of people from their employer-sponsored health insurance plans. Concurrently, health insurance has increased in importance because of the need

for coverage of Covid-19 diagnostic testing and treatment. As restrictions are lifted and the economy begins its slow recovery, some people who had been laid off will be able to reclaim their jobs and health benefits. But the economy is unlikely to recover to prepandemic levels in the near future, meaning that the Covid-associated recession will leave many people without jobs and without their usual source of health insurance.

Before the Affordable Care Act (ACA) was implemented, people

who lost their jobs had limited choices for health insurance. Newly disabled people could apply for Medicaid if their savings and assets were low enough for them to qualify for Supplemental Security Income, or they could enroll in Medicare after receiving 2 years of benefits from Social Security Disability Insurance. For adults without a disability, many states' income cutoffs for Medicaid were well below the poverty line, and only people with dependent children could apply. An individual private-insurance market