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Healthcare policy 2025: Why states and courts are more likely drivers than federal elections

Week of October 13 - October 19, 2024

| OCT 18, 2024

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The Buzz This Week

Much of the attention for the November 5 election has focused on the presidential race between Vice President Kamala Harris and former President Donald Trump. We previously covered their stances on key healthcare issues. However, regardless of which party wins, the ability to pass desired legislation will highly depend on control of the US House of Representatives and Senate.

Both legislative bodies are expected to have narrow majorities. It is unlikely one party will have control over the executive branch and Congress. Thus, healthcare policy may see limited legislative change at the federal level.

Meanwhile, several ballot initiatives at the state level have notable potential for meaningful healthcare impact. Eleven states will vote on reproductive rights, and four (Florida, North Dakota, South Dakota, and Massachusetts) will vote on legalization of marijuana or psychedelics. Additionally, California will vote on two propositions focusing on funding for Medi-Cal (the state's Medicaid program) and provider use of funds from 340B (the federal prescription drug discount program).

Reproductive rights are up for a vote in nearly one-quarter of states. In nine states (Arizona, Colorado, Florida, Maryland, Missouri, Montana, Nebraska, Nevada, and South Dakota), citizens will vote on measures defining whether abortion is a protected state constitutional right. In Colorado, voters will also decide whether to repeal the constitutional provision that bans the use of public funds for abortion. Currently, Missouri and South Dakota have abortion bans with no exceptions. Arizona, Florida, and Nebraska have bans at varying gestational ages. These amendments would overturn those bans.

In New York, voters will decide whether to include anti-discrimination protections for pregnancy in the constitution's equal rights amendment, a change that would prevent the state legislature from passing abortion restrictions. In Illinois, voters will answer a healthcare advisory question on whether all health plans that provide pregnancy benefits must cover assisted reproductive treatments, including IVF, without limit to the number of treatments. While the question in Illinois is non-binding, it will guide state policymakers.

California voters will decide on two healthcare-specific propositions. Proposition 34 would require specific providers that receive 340B funds to spend 98% of those revenues on direct patient care. Currently, this proposition would only apply to the AIDS Healthcare Foundation. Proposition 35 would require state revenues from a tax on health plans to go to primary and specialty care, emergency services, family planning, and mental health and prescription drugs for Medi-Cal recipients.

Many of the most consequential healthcare policy issues are also decided through state legislation by elected state officials. Historically, states oversee many healthcare policies, including licensing healthcare professionals, distributing state healthcare resources (including Medicaid administration), and regulating health plans that are not underwritten by employers. The most significant healthcare legislation at the state level in the last 4 years includes Medicaid expansion, women's health access, surprise billing and other consumer price protections, health equity initiatives, prescription drug pricing laws, LGBTQIA+ laws, substance use disorder programs, and antitrust regulation.

Policy at the state level often depends on the make-up of state legislatures. Except for Arizona, all states that have passed abortion bans have a Republican-controlled governor's office and legislature or a Republican supermajority to override a governor's veto. In the case of Medicaid expansion, eight of the 10 states that have not expanded have Republican governors and legislatures, and the remaining two have Democratic governors but Republican legislatures. Other issues, like price transparency and antitrust legislation, have been more bipartisan and reflective of the elected officials' agendas.

Going into the 2024 elections, 40 states have a governor, state senate, and state house majorities of the same party. Of these, 23 are Republican, and 17 are Democrat. The remaining 10 states (including the swing states of Arizona, Nevada, North Carolina, Pennsylvania, and Wisconsin) have split control, making it more difficult to pass legislation. This year, 11 states will elect governors, and nearly 90% of states will vote for state legislators.

Why It Matters

With a narrow split, Congress has been mostly deadlocked in passing significant legislation. Increasingly, the courts and states have had a larger role on healthcare policy decisions. Chartis has previously discussed the effects of the courts' decisions in key healthcare cases like [Dobbs](#) and [Chevron](#).

States can enact healthcare policy through legislation and voting. State ballot initiatives like those highlighted above provide an opportunity for direct democracy. Ballot propositions and amendments can be introduced through the state legislature or through a citizen-initiated process. The rights of citizens to bring ballot initiatives varies by state, with 33 states allowing citizen-initiated state statutes or constitutional

amendments. State legislatures can add ballot measures in every state but Delaware.

Of the 534 successful ballot initiatives in the last 10 years, nearly 65% were broadly related to healthcare or public health. Top topics have included reproductive healthcare, care delivery, Medicaid expansion, and medical debt.

While ballot initiatives are a powerful strategy to impact health policy, citizen-initiated ballots have specific challenges. Ballots started by groups of citizens can be time- and resource-intensive, limiting which ideas can gain enough momentum to make it on the ballot for election day. Additionally, many states have recently restricted citizens' ability to propose amendments and referenda, including most states where abortions are currently banned.

State ballots can also influence voter turnout. In this year's election, many wonder how significant the impact of having certain state propositions, specifically those related to abortion, on the ballot will be to federal election outcomes. Some experts have indicated that states with an abortion proposition have seen higher new voter registration than other states. Whether that translates to a boost to Harris and Democratic congressional candidates remains to be seen.

The push to state-level decision-making can lead to significant variability in the healthcare landscape and care delivery across state lines. State policy may affect health plan availability and coverage, especially in states that did not expand Medicaid. It may also affect healthcare affordability, access to reproductive and gender-affirming care, health equity, gun laws, and more. While the presidential and congressional elections will certainly influence the trajectory of the healthcare industry, the states and courts are more likely to drive more material immediate change.

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