Lehigh Valley Business Coalition on Health

Market and Policy Briefing

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The Texas Court Ruling on the Affordable Care Act

- In mid-December, a single federal judge found the entire law unconstitutional.
- He was responding to a suit filed originally by 20 Red states arguing that the repeal of the individual mandate tax entirely undercuts all of the law based upon an earlier Supreme Court ruling citing the mandate's tax as the constitutional basis of the mandate.
- Since the mandate cannot be severed from the rest of the law, they argue and the judge agreed, the entire law is now unconstitutional.
- So far HHS has said it will be business as usual for the entire law pending the appeals.
- Most legal experts, conservative and liberal, I am aware of don't believe the red states will prevail with their case.

The Texas Court Ruling…

- However, the case will next go to the Fifth Circuit Court of Appeals—one of the most conservative—whose judges could well agree with the first judge.
- Then it would be off to the Supreme Court.
- Both the Appeals Court and the Supreme Court could also rule the repeal of the mandate only impacts the individual insurance provisions of the law and not all of the rest (severability); including the Medicaid expansion, ACOs, the various ACA taxes, the hospital and drug payment cuts that were part of paying for it, and the rest.
- This process will take at least another year—the Supreme Court would likely not take it up until the next term starting in October—and just keeps the cloud of uncertainty hanging over Obamacare.

The Texas Court Ruling…

- In late March, the Trump administration announced it would support the twenty Red states in seeking the overturning of the entire law—they had previously said they supported only the overturning of the law's pre-existing conditions reforms and benefit mandates.
- The administration's latest announcement would invalidate premium subsidies, Medicaid, Medicare pilot projects…
- The administration reached this decision over the objections of HHS Secretary Azar, Attorney General Barr, and the Republican Congressional leadership.
- The announcement led Trump to call for a new Republican alternative to Obamacare.

The Texas Court Ruling…

- Trump named Republican Senators John Barrasso (R-WY), Rick Scott (R-FL), and Bill Cassidy (R-LA) as the point people to develop the new Republican health plan.
- Then Trump admitted Republicans could pass a plan until they regained control of the government—after the 2020 elections.
- At the end of March, in a 43-page ruling, U .S. District Judge John D. Bates of the District of Columbia blocked the rules for small business Association Health Plans, which allow them to join forces to offer less comprehensive plans that don't comply with all the ACA requirements on individual market plans.

What Might a Trump/Republican Health Plan Look Like?

- Graham/Cassidy 2017 Bill – Would have taken Obamacare's Medicaid and insurance subsidy money, reduced it, then sent it to the states in the form of a block grants that would have given states wide flexibility to develop their own plans.
- Graham/Cassidy would have theoretically allowed states to charge sick people more, the distribution formula could have hurt Medicaid expansion states more, and would have put a cap on how fast block grants could grow.
- Trump's current budget also proposes using state block grants to replace Obamacare funding but with even less growth than Graham/Cassidy.
- Trump's latest budget was vague on insurance protections but set aside 10% of funds for people with pre-existing conditions (risk pools?).

What Would a Trump/Republican Health Plan Look Like?

- The conservative think tank, Heritage Foundation, has a plan that also provides state block grants to enable them to craft their own plan.
- Heritage leaves the legacy Medicaid program as it is.
- Heritage differs from Graham/Cassidy by requiring any government subsidized plans offer consumers at least one private health insurance plan.
- Heritage doesn’t provide a state block grant allocation formula or indicate how quickly the caps would grow.
- Heritage encourages states to create high risk pools as well as discounts for younger consumers, and stripped down less costly plans to encourage more sign-ups in the private market.

The 2019 Agenda

- Driven by Pelosi in the House and Trump's HHS regulations.
- Focus on incremental steps—drug pricing, surprise billing, and Obamacare taxes.
- A number of big and bigger health care bills offered by Democrats in the House and Senate that go nowhere until Democrats can control the government.
- The Trump administration will also continue their aggressiveness on the regulatory front—now looking at funneling ACA premium subsidies into HSAs to pay for premiums and out-of-pocket spending (they earlier proposed more state flexibility to do this) and allowing high deductible HSA plans to cover insulin as a preventive service.

House Democratic Leadership Proposals to Bolster Insurance Exchanges

- Expand insurance subsidies to middle class—end 400% of FPL cliff and reduce the maximum individual cost percentage from 9.86% to 8.5%.
- Codify the essential health benefits and standardized cost sharing.
- End the family glitch—the family cost, not the individual cost, would be used to calculate family cost in order to be eligible for subsidies.
- Undoing "sabotage"—prohibit association and short-term plans, $500 million for navigators, outreach, consumer assistance, and state efforts to promote enrollment.
- Provide $200 million for states to establish state-based marketplaces.
- Provide $10 billion in annual funding for state reinsurance programs or reduce out-of-pocket costs.
- Leaves Trump cuts to cost sharing reduction subsidies in place because that turned out to make subsidies more generous.

Incremental Drug Pricing Proposals

- The Creates Act – Bipartisan legislation that would make it easier for generic companies to get hold of the large quantity of patented medicine they need to create generic alternatives.
- Banning “Pay for Delay” – In which a drug company pays a generic manufacturer not to produce a generic.
- Restricting “Evergreening” – The practice of extending patent protection for a particular drug by tweaking the drug and thereby pushing out the patent expiration.
- Trump administration’s reference-based pricing proposed demonstration plan for half the country using an international market basket for Part B drug payments.

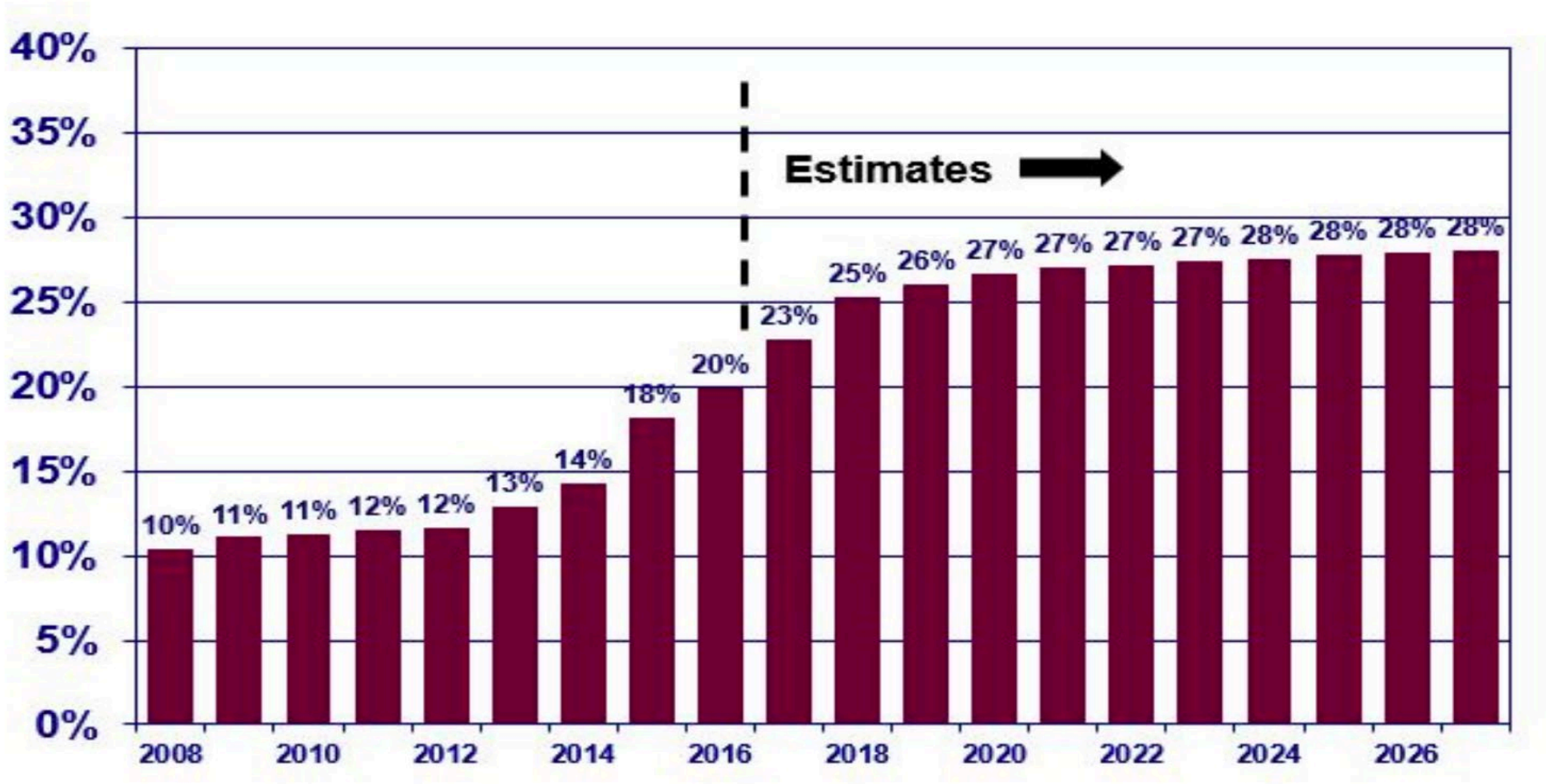
Ending Drug Rebates?

- The Trump administration has proposed ending rebates for government-sponsored Medicare and Medicaid plans.
- Some have argued the current rebate system gives drug companies the incentive to dramatically increase pre-rebate list prices.
- Drug rebates generally spread price discounts across the entire covered population but leave high prices in place for individual consumers that end up paying a bigger copay as a percentage of the higher list price.
- Ending drug rebates would generally increase private plan insurance prices and taxpayer costs for Medicare and Medicaid.
- But, ending rebates would generally decrease costs for consumers who need to buy high cost drugs because they would benefit from lower per prescription prices—many patients pay a percentage of list prices rather than the price net of rebates.

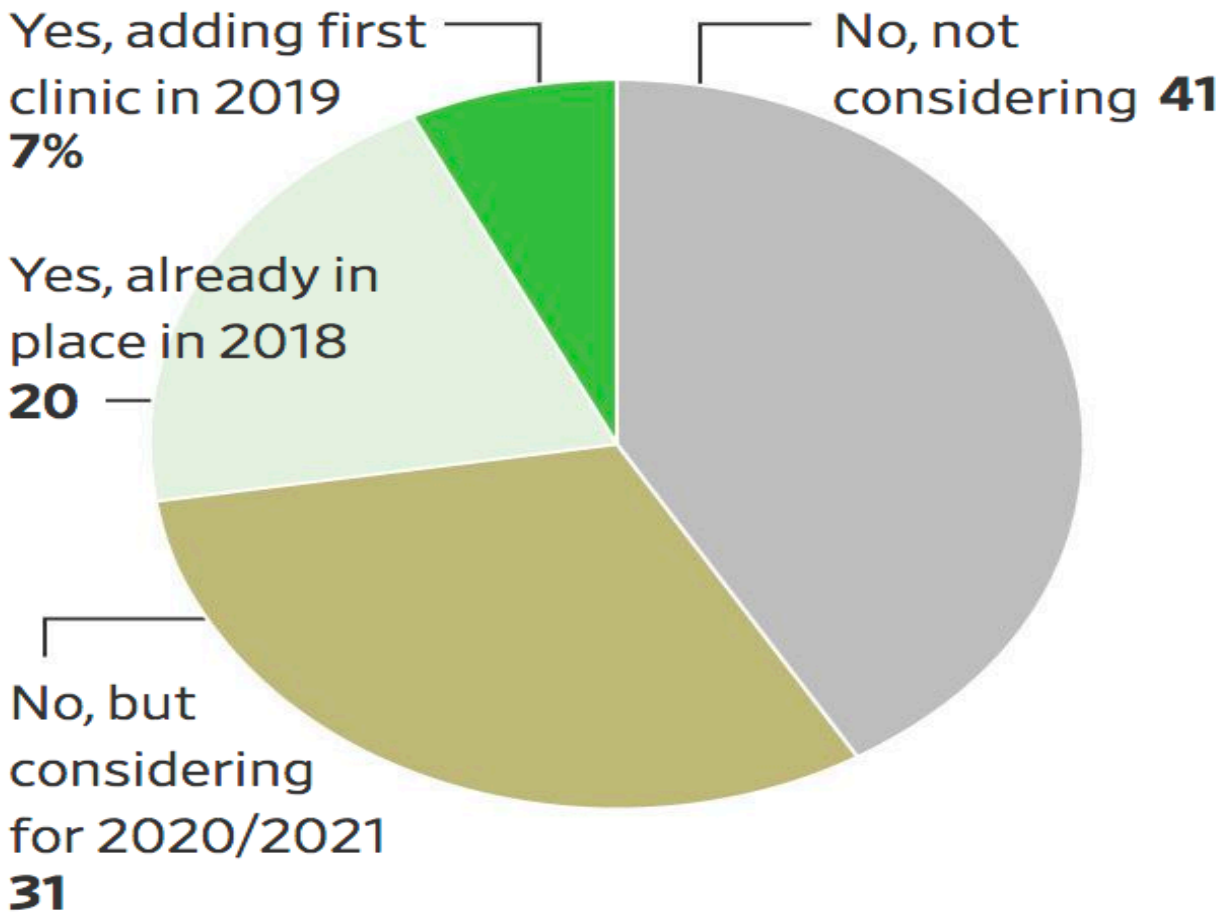
Rebates Have Become a Bigger and Bigger Part of Drug Prices

Health Affairs, March 2019

Exhibit 2: Manufacturer Rebates As A Percentage Of Medicare Part D Spending



Percentage of employers with consumer rebate pass-through programs



Note: Figures do not equal 100 due to rounding.

Source: National Business Group on Health survey of 170 large employers

How Employers and Insurers Are Handling Drug Rebates…

- United (OptumRx) will require new employer clients (insured and self-insured) to pass on rebates to consumers.
- Last year United had required the rebates to be passed through on their insured plans.

Binding Arbitration to Set Drug Prices?

- Several members of the Medicare Payment Advisory Commission are suggesting that Medicare drug prices should be subject to binding arbitration.
- A neutral arbitrator would be selected by a non-partisan agency.
- The process would begin for drugs launched with excessive prices and/or limited competition.
- The drug maker would be required to comply with the outcome of arbitration.
- The panel is also discussing reference-based pricing where the payer sets a maximum price for a class of drugs often based upon the lowest cost player in the class—similar to the recent Trump administration proposal using an international reference price.

Health Industry Agenda

- Drug companies want a rollback of the 2018 legislation reducing the branded Part D donut hole to 25% in 2019 and drug companies' share of costs going from 50% to 70%—Lily has said if not rolled back it could cost the industry $200 billion in revenue in 2019.
- Generic companies would like to see the Creates Act passed—which makes it possible for generic companies to sue branded companies who stall generics coming to market by withholding samples for testing.
- Medical device companies want to get rid of Obamacare's 2.3% medical device tax that will restart in 2020—worth $20 billion over ten years.
- Repeal or delay the health insurance (HIT) tax on insurers—set to reapply in 2020 at $16 billion each year.
- Permanently eliminate the "Cadillac" tax on high cost employer plans—set to apply in 2022. CBO originally estimated its value as $87 billion in revenue between 2018 and 2025.

Blues Propose Steps to Stabilize Obamacare Exchanges

- Boost subsidies to entice younger people to sign-up—subsidies would not only be based upon where the person's income is in relation to the federal poverty level but also on age with younger people seeing an increase in subsidy eligibility.
- Create an enhanced reinsurance program to offset high claims costs.
- Resume cost-sharing reduction payments to insurers.
- Further delay the health insurance tax (HIT) which is now scheduled to come back in 2020.
- Increase enrollment spending by $160 million in both the state and federal exchanges.
- Oliver Wyman has estimated that the proposal would reduce premiums by an average of 33% and provide coverage for an additional 4.2 million people.
- The proposal is estimated to cost $10 billion a year.

Trump Administration Considering Requiring Providers to Disclose Rates Negotiated With Insurers

- The Trump administration is considering requiring providers to disclose the rates they negotiate with payers/insurers.
- Now, these negotiated payment schemes are considered trade secrets and provider contracts bound by confidentiality agreements.
- Do patients have the right to see price comparisons before obtaining care?
- Under the current system, payers and policymakers are unable to determine just which providers are doing the most to drive high costs.
- Rates could be posted on websites open to patients/consumers.
- A way to make the market work for consumers?

Trump Administration to Require Providers to Disclose Rates Negotiated With Insurers?

- HHS official: “Our interest is how can we empower the American public to shop for their care and control it…You can’t shop if you don’t know what the prices are.”
- *WSJ*: “Insurers might demand the same hospital discounts won by competitors, while some hospital systems might push for payment rates that match their crosstown rivals. If doctors’ negotiated rates become public, other doctors could lower their prices to try to lure patients away.”
- American Medical Association: “Disclosing negotiated rates between insurers and hospitals could undermine the choices available in the private market.”
- Would disclosure violate antitrust or contract law or proprietary information?

Trump Administration to Require Providers to Disclose Rates Negotiated With Insurers?

- The Trump administration is arguing that it would have authority to require price transparency through the 2016 21st Century Cures Act which makes blocking of health information illegal, as well as prior regulations under federal privacy law.

The Democratic Health Care Proposals Are Multiplying

- Senator Bernie Sanders (I-VT) has proposed a Medicare-for-All single-payer program to replace the entire system.
- Senators Tim Kane (D-VA) and Michael Bennet (D-CO) have brought the public option back—a Medicare-like plan offered in competition with private insurance on the exchanges.
- Senator Debbie Stabenow (D-MI) has a bill allowing people to buy into Medicare starting at age-50. The Congressional Budget Office (CBO) recently scored a Medicare buy-in at age-62 proposal. The CBO estimated that, at age-62, the Medicare-like public plan would cost about $7,600 a year compared to the unsubsidized age-62 average of $15,300 in the Obamacare marketplace.

The Democratic Health Care Proposals…

- Senators Jeff Merkley (D-OR) and Chris Murphy (D-CT) would give every individual *and business* the opportunity to buy into Medicare—House members Rosa DeLauro (D-CT) and Jan Schakowsky (D-IL) have a similar proposal.
- Announced 2020 Democratic presidential candidates Elizabeth Warren (D-MA), Kamala Harris (D-CA), Cory Booker (D-NJ), and Kirsten Gillibrand (D-NY) have all said they support Medicare-for-all.
- Representative Pramila Jayapal (D-WA), the co-chair of the Progressive Caucus, and 100 co-sponsors, have proposed a Canadian-like single payer Medicare plan that would establish global budgets for every hospital and nursing home. It would also cover dental, vision, long-term care, and nursing home care. There would be no co-pays.

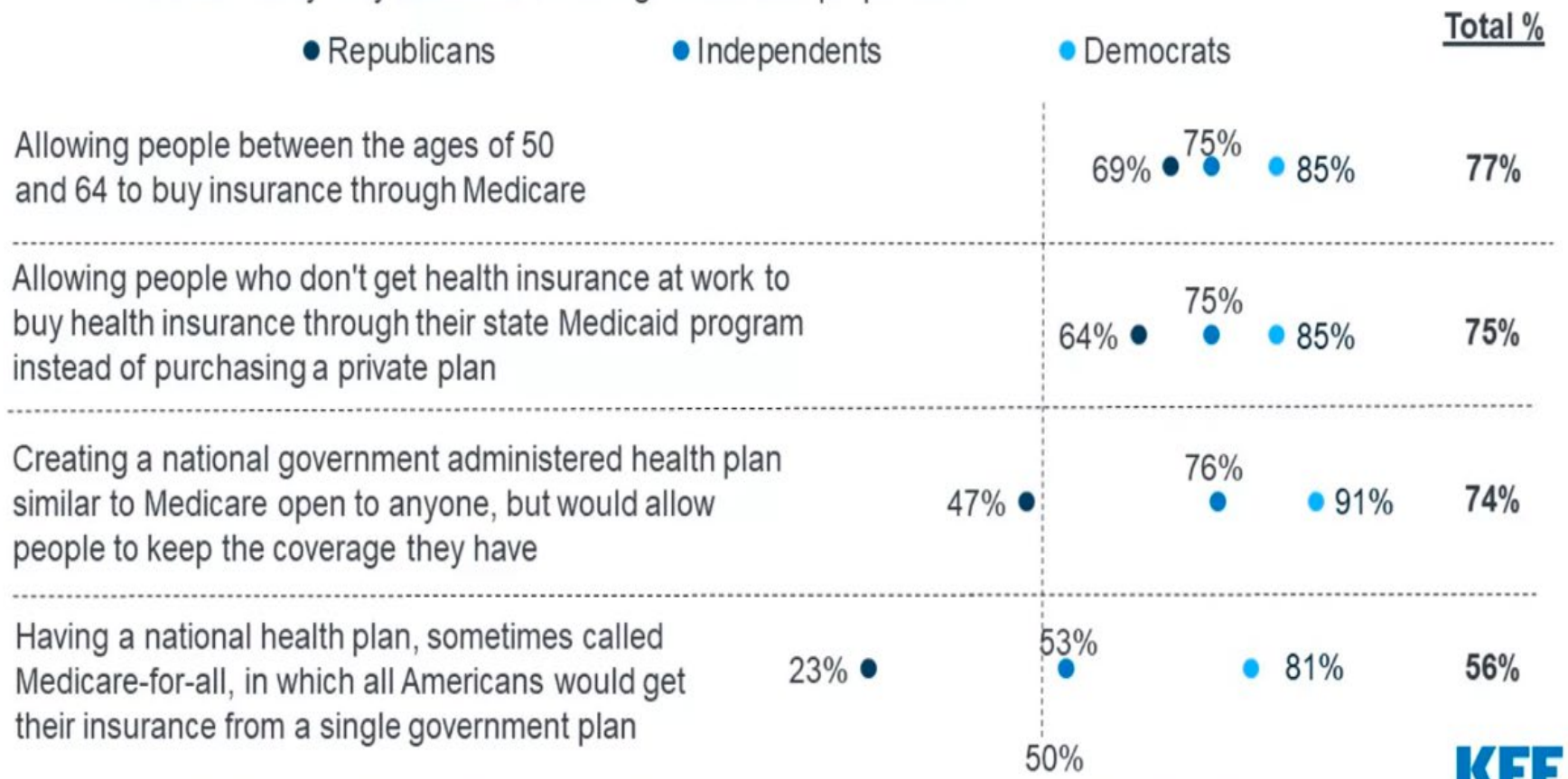
The Democratic Health Care Proposals…

- A coalition of 101 more moderate New Democrats has put encouraging “the Committees of jurisdiction to prioritize strengthening the Affordable Care Act (ACA) and continue the path toward universal affordable coverage” as their first priority in this Congress. They are calling for by reinstating cost sharing subsidies to carriers for out-of-pocket costs, providing reinsurance dollars to help insurers with the sickest patients, and letting states auto-enroll patients in the individual marketplaces.
- Senator Brian Schatz (D-HI) would give people the option of buying into Medicaid.
- A Democratic bill to authorize Medicare to negotiate drug prices, and would take patent exclusivity away if drug companies did not, sponsored by Senators Sherrod Brown (OH), Tammy Baldwin (WI), and Amy Klobuchar (MN), as well as Representatives Lloyd Doggett (TX), Peter Welch (VT), and Elijah Cummings (MD).

Figure 5

Majorities Across Partisans Favor Medicare Buy-In And Medicaid Buy-In

Percent who say they **favor** the following health care proposals:



SOURCE: KFF Health Tracking Poll (conducted January 9-14, 2019). See topline for full question wording and response options.

KFF
HENRY J KAISER FAMILY FOUNDATION

Medicaid Buy-In?

- The average Obamacare per enrollee subsidy was $6,300 in 2018 (a program that charges additional premiums to participants and includes big deductibles).
- At the same time, the Congressional Budget Office reported that the average *federal* outlay for non-disabled Medicaid participants was $4,230 per year—a program with virtually no premiums and deductibles.
- Medicaid buy-in plans would cost significantly less than the high out-of-pocket cost private plans now offered in the Obamacare marketplace.
- The benefits would be more comprehensive than in Medicare—which now leaves substantial gaps in coverage for seniors—such as long-term care, drugs, mental health benefits, and dental care.

Medicaid Buy-In…

- A Medicaid buy-in scheme would provide an option for individual market consumers without disrupting those satisfied with their current private coverage—you really could keep your doctor and insurance plan if you like them.
- Consumers' existing employer-based coverage would not be directly threatened.
- The consumer buy-in premiums would be attractive when compared to private plans that pay providers a lot more.
- Medicaid buy-in would focus on a relatively small market niche—those in the individual market now not able to afford the big Obamacare premiums and deductibles—instead of the risky leap a remake of the entire private insurance system Medicare-for-all entails.

Medicaid Buy-In…

- A number of states are also looking at Medicaid buy-in expansions to reach more of their uninsured including Nevada, New Mexico, Minnesota, Wisconsin, Connecticut, Illinois, California, Delaware, Oregon, and Washington.

Hospitals Circling the Wagons Over Single-Payer

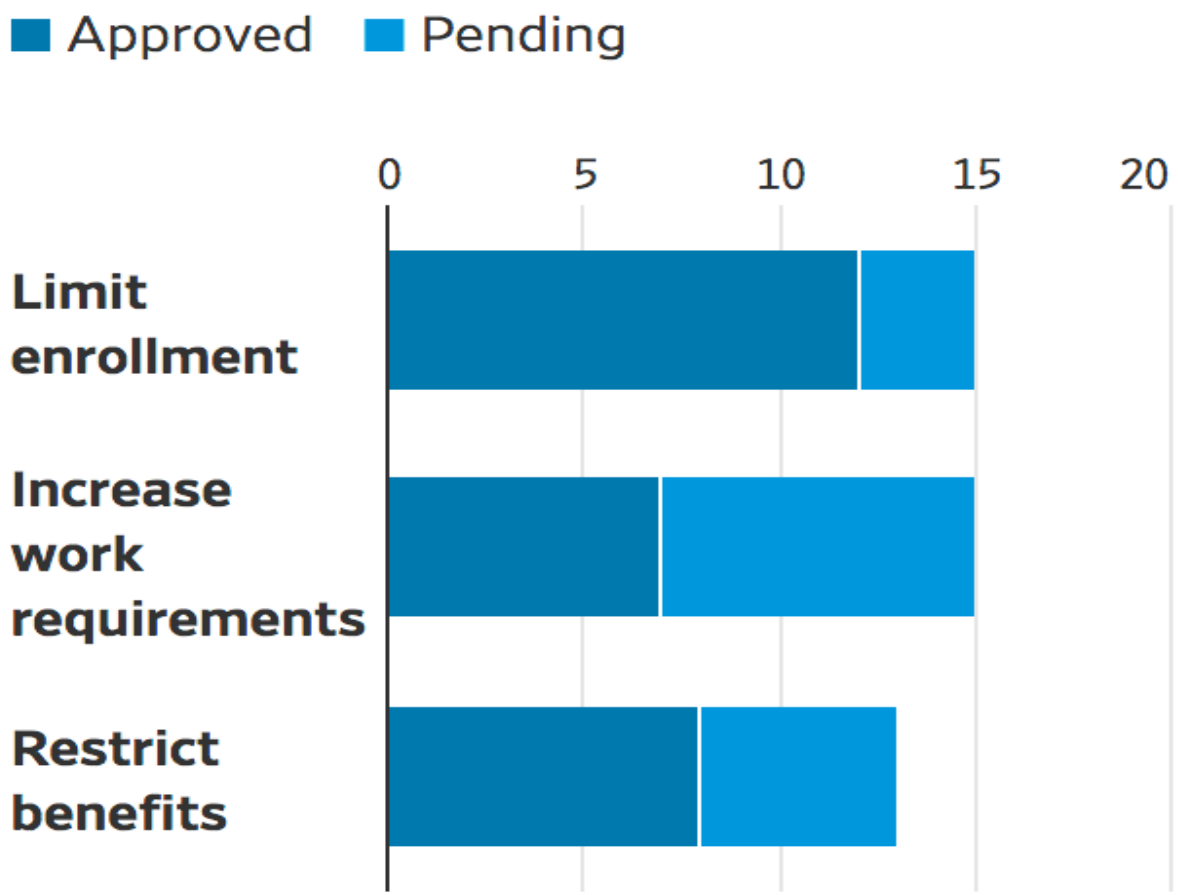
- The American Hospital Association (AHA) issued a report in March saying a universal Medicare buy-in would take $800 billion from hospitals through lower Medicare reimbursements.
- Overall provider spending would fall by $1.2 trillion over ten years.
- Lower Medicare reimbursement would raise costs in the private insurance market.
- Modeled on the Bennet – Kane Medicare buy-in proposal, the AHA says as many as 20 million could shift from commercial insurance to Medicare.
- Instead, the AHA is arguing that Obamacare's private option should be improved and Medicaid should be expanded in the remaining states—in which case 9.1 million would gain coverage compared to the 5.5 million that would under universal Medicaid buy-in.

Republican States Taking the Medicaid Initiative

- Medicaid now covers 75 million people (almost 25% of the population)—up from 50 million pre-Obamacare.
- So far, seven Republican states have received approval for work requirements—eight other requests are pending.
- The Kentucky governor has said he would move to end the state's expansion if a court blocks the work requirements that were set to begin on April 1.
- Arkansas created the first work requirement last June and more than 18,000 people had lost their coverage by December.
- A DC Federal judge in late March blocked the Kentucky and Arkansas expansion.
- The Tennessee legislature is considering a bill to change the states funding arrangement from an open-ended grant to a capped grant in exchange for more flexibility—Utah has already passed such a bill.

Medicaid Restrictions

The Trump administration has approved state requests to impose new restrictions on Medicaid such as work mandates and copays.



Source: Kaiser Health News

The Republican Utah Medicaid Expansion Alternative

- In the wake Utah's voters approving a Medicaid expansion, the Republican dominated legislature significantly narrowed what their voters approved over worries about how the state is going to pay for it.
- Utah will now expand Medicaid for only just over half the number of people the complete Obamacare expansion would have covered—to 100% of the federal poverty level instead of the 138% Obamacare allows for.
- This, even though voters approved a sales tax increase to pay for a full roll-out. Republicans pointed out that the new sales tax would fall $10 million short in paying for the expansion in 2021, as a reason to curtail the expansion.

Medicaid Expansion in Utah…

- As part of their federal waiver application to the Trump administration, Utah will set its own Medicaid spending cap—something the Republican Congress wanted to do in their failed repeal and replace effort in 2017.
- Simply, if Utah misses its federal and state spending estimates, the program will have automatic rollbacks in how many people will be covered and/or how generous their benefits will be.
- In every other state, if Medicaid exceeds its budget estimates, the federal government has an open-ended mandate to just keep paying its share of the costs.
- Trump administration approved the Utah waiver in late March.

The 2020 Elections

The Latest Democratic Presidential Polls

2020 Democratic Presidential Nomination

Iowa Democratic Presidential Caucus | New Hampshire Democratic Presidential Primary

Polling Data

Poll	Date	Biden	Sanders	Harris	O'Rourke	Warren	Booker	Buttigieg	Klobuchar	Gillibrand	Yang	Castro	Inslee	Hickenlooper	Spread
RCP Average	**3/14 - 4/7**	**29.7**	**21.1**	**9.9**	**8.9**	**5.7**	**3.6**	**2.9**	**1.7**	**1.0**	**1.0**	**1.0**	**0.7**	**0.7**	**Biden +8.6**
The Hill	4/5 - 4/6	36	19	9	7	6	6	4	2	2	1	1	--	--	Biden +17
M. Consult	4/1 - 4/7	32	23	9	8	7	4	5	2	2	1	1	1	1	Biden +9
Quinnipiac	3/21 - 3/25	29	19	8	12	4	2	4	2	0	0	1	0	1	Biden +10
Harris	3/25 - 3/26	26	18	11	5	5	3	2	1	0	2	1	0	0	Biden +8
FOX News	3/17 - 3/20	31	23	8	8	4	4	1	1	2	1	1	1	0	Biden +8
Emerson	3/17 - 3/18	26	26	12	11	8	3	3	1	0	1	1	1	1	Tie
CNN	3/14 - 3/17	28	20	12	11	6	3	1	3	1	--	1	1	1	Biden +8

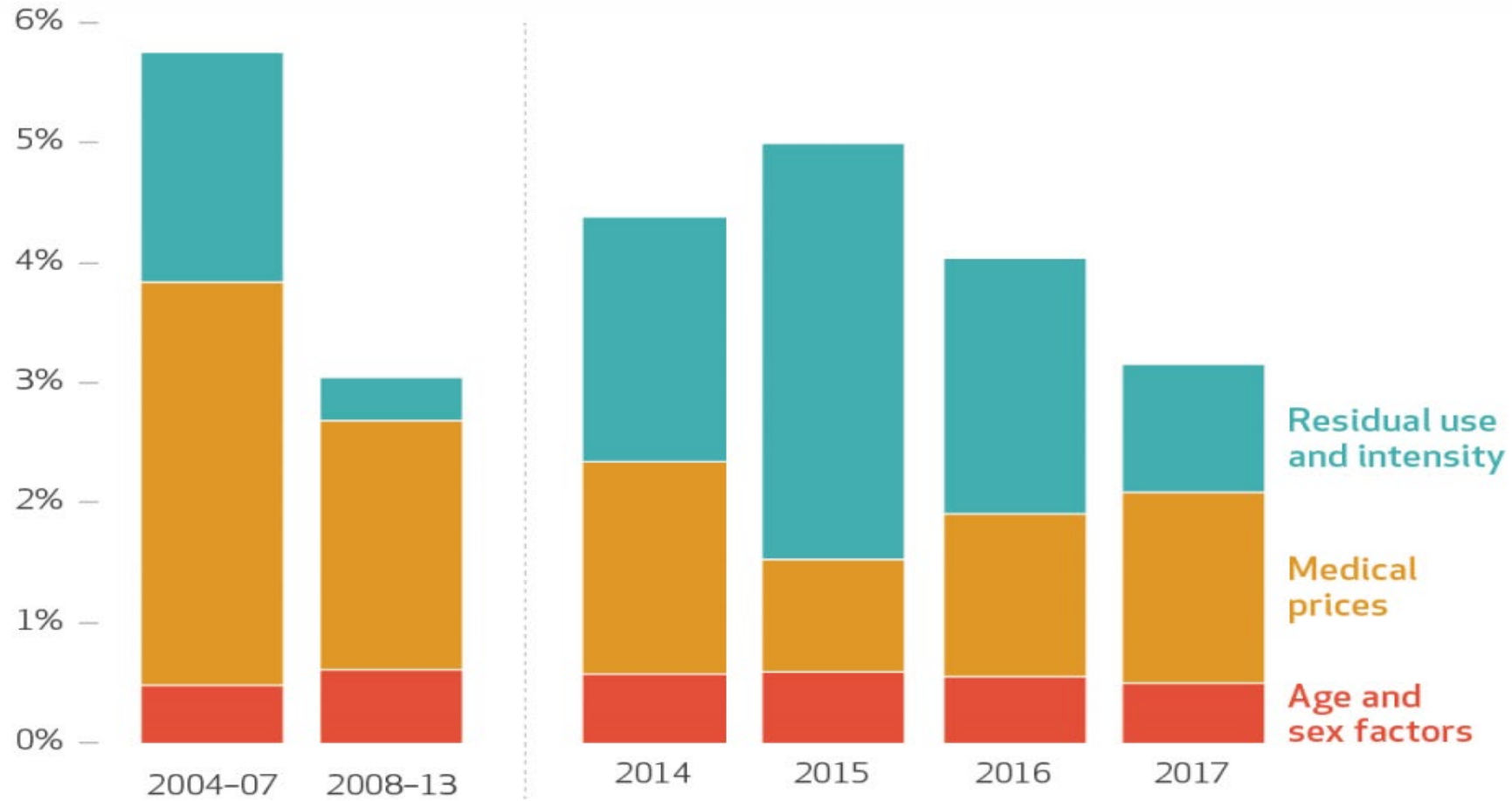
All 2020 Democratic Presidential Nomination Polling Data

The Presidential Race

- The Democratic candidates' appear to be racing to the left.
- Have leading Democrats too quickly embraced single-payer health care?
- Then there is the Green New Deal.
- Democrats want to make the race about Trump.
- But Trump was exonerated on Russian collusion.
- Now Democrats are more eager to make health care the successful election issue it was for them in 2018.
- Trump ready to brand the Democrats as "socialists."
- So far, the Democrats are cooperating.
- But Republicans have no detailed health care plan and nothing on the horizon.

Health Care Cost Drivers

Factors accounting for growth in per capita national health expenditures (NHE), selected calendar years 2004–17

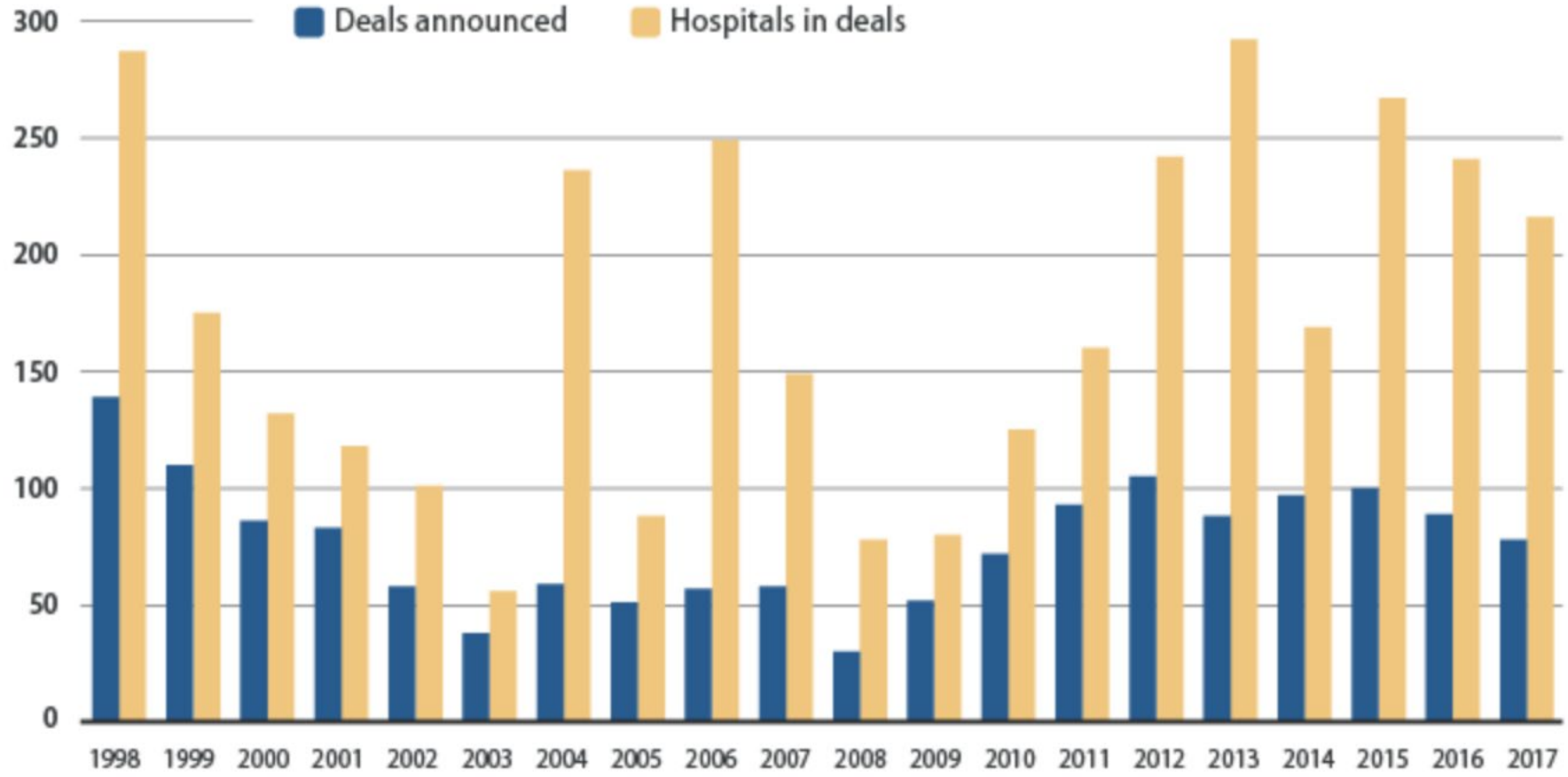


Anne B. Martin et al. Health Aff 2018; 37: Published online

Health Affairs

Hospital consolidation shows no signs of slowing

Number of announced hospital mergers and acquisitions, 1998–2017

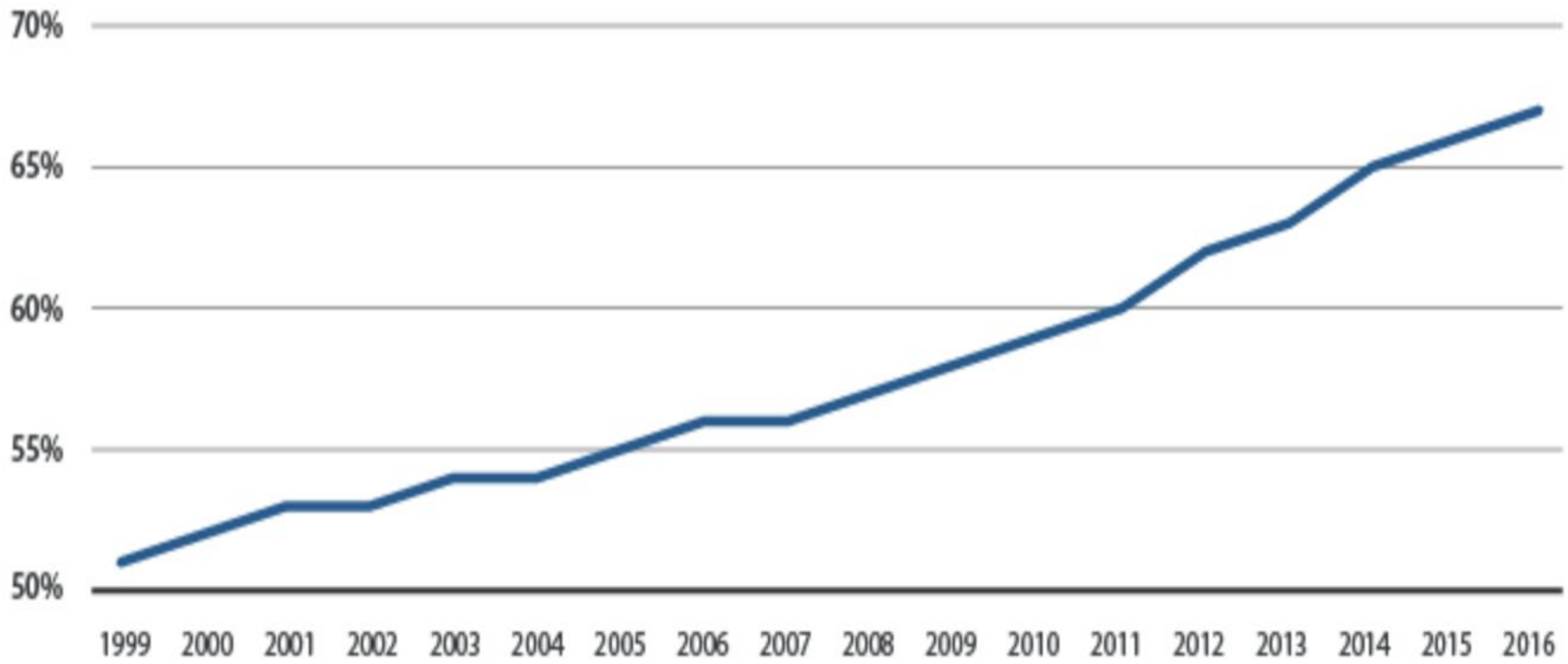


Source: American Hospital Association, "Trendwatch Chartbook 2016" (2016), available at https://www.aha.org/system/files/2018-01/2016-chart-book.pdf; idem; American Hospital Association, "Trendwatch Chartbook 2018" (2018), Chart 2.9: Announced Hospital Mergers and Acquisitions, 2005–2017, available at https://www.aha.org/system/files/2018-05/2018-chartbook-chart-2-9.pdf

CAP

Fewer hospitals are independent of health systems

Percent of community hospitals belonging to health systems, 1999–2016

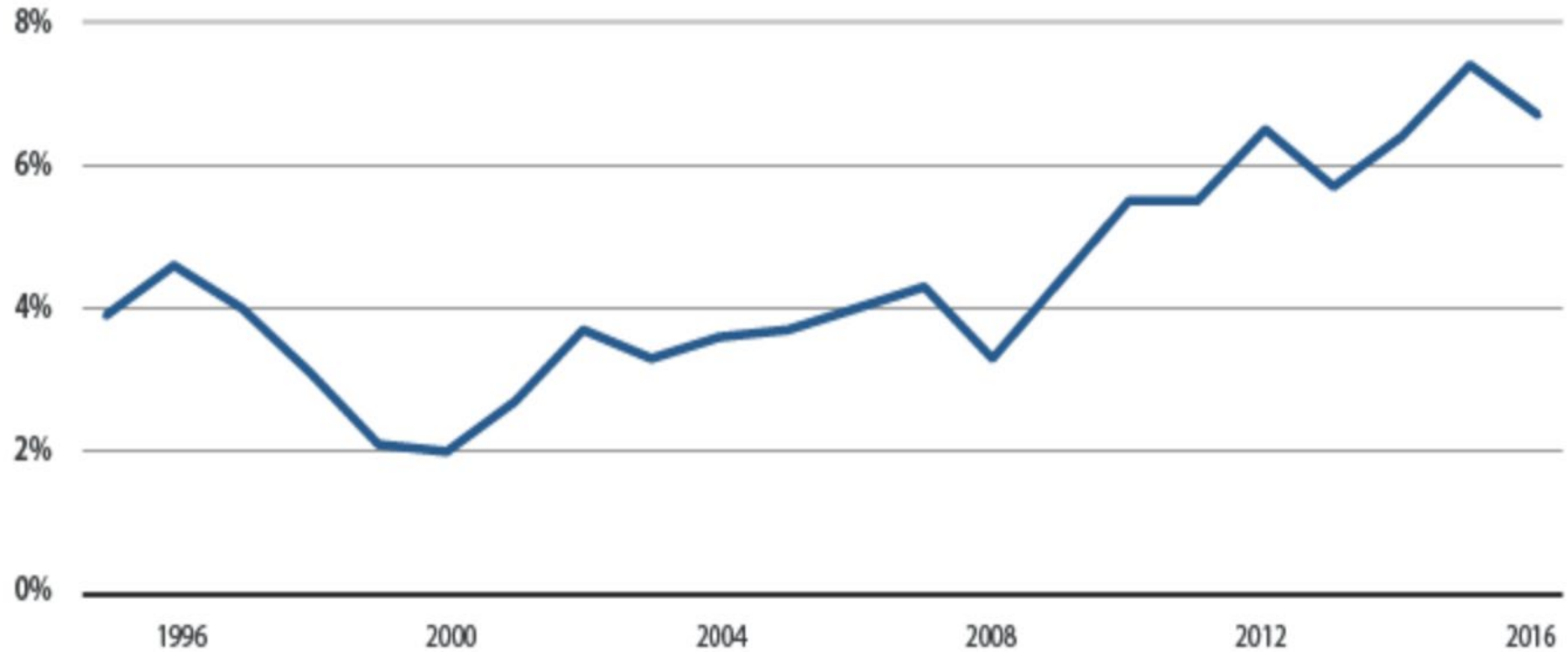


Source: American Hospital Association, "Trendwatch Chartbook 2018" (2018), Table 2.1: Number of Community Hospitals, 1995–2016, available at https://www.aha.org/system/files/2018-05/2018-chartbook-table-2-1.pdf.

CAP

Hospital operating margins are at their highest in decades

Aggregate hospital operating margins, 1995–2016



Source: American Hospital Association, "Trendwatch Chartbook 2018" (2018), Table 4.1: Aggregate Total Hospital Margins and Operating Margins; Percentage of Hospitals with Negative Total Margins; and Aggregate Non-operating Gains as a Percentage of Total Net Revenue, 1995–2016, available at https://www.aha.org/system/files/2018-05/2018-chartbook-table-4-1.pdf.

CAP