

AMA experts discuss what to expect in the changing health care landscape in 2021

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Featured topic and speakers

In today's COVID-19 update, AMA experts discuss the changing landscape of health care post-election and what to expect as we head into 2021.

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Speakers

- Todd Askew, senior vice president, Advocacy, AMA
- Brian Vandenberg, senior vice president, General Counsel, AMA
- Mira Irons, MD, chief health and science officer, AMA

Transcript

Unger: Hello, this is the American Medical Association's COVID-19 Update. Today, we're talking about the changing landscape of health care post-election and what to expect as we head into 2021. I'm joined today by Dr. Mira Irons, AMA's Chief Health and Science Officer in Chicago. Todd Askew, AMA's Senior Vice President of Advocacy in Washington, DC and Brian Vandenberg, AMA's General Counsel in Chicago. I'm Todd Unger, AMA's Chief Experience Officer in Chicago.

Mr. Vandenberg, can you talk to us a little bit about the issue that's been dominating the news this past week besides the election, and that is the Affordable Care Act and the presentation before the Supreme Court. Can you talk about where things stand now with the ACA and what's being determined?

Vandenberg: Yeah. Thanks Todd. Yeah, this was a big week. Obviously, the case before the Supreme Court has been one that has been brewing and moving along for some time, culminating this week in the oral arguments. And the timing of that immediately post-election and with a brand-new Supreme Court justice on the bench is really an interesting set of circumstances.

The issue obviously, and I think everybody knows this is the constitutionality of the ACA. And this case came about when a number of Republican-led states challenged the constitutionality of the ACA after the individual mandate tax was reduced to zero in 2017. So, the case really raises three issues. One is the most interesting one in my book, is the question of standing, is do these states and do the individuals who are the plaintiffs even have standing to bring the case in the first place? Have they been damaged? And the court spent a little bit of time talking about that. I think that's an interesting question.

The second question is if they have standing, the second question is, does the elimination or the reduction of the mandate to zero render the individual mandate unconstitutional because the tax has been eliminated and that's what holds it all together?

And then the third question is if the court finds the individual mandate unconstitutional, whether that mandate is so intertwined with the rest of the law, that the entire law should follow as well.

Unger: Can you just elaborate on the AMA stance on this particular activity with the Supreme Court?

Vandenberg: Well, we've been aggressive all along, both in our advocacy work and then in the courts. From the moment that this case went before the district court, we've been involved, filing briefs, defending the ACA because of all of the benefits it provides. And we've amplified both the benefit to the public, the tens of millions who have acquired care that didn't have access to care before by virtue of it, but then also the legal arguments as well on the severability issue, the standing issue, and the severability issue because of the scope of other provisions of the ACA. So, we filed a brief with the Supreme Court. Our brief was noted in the oral arguments this weekend. So, we have a unique point of view to offer here.

Unger: Mr. Askew, beyond the Supreme Court, can you talk a little bit about our advocacy in this area and what's driving that?

Askew: Sure. Todd, I mean, obviously we've been big supporters of the Affordable Care Act from the very beginning. It's essentially what we've called for, for many years. It's access to private health

insurance in a well-regulated market and subsidies for people who can't afford it. So, it's been a good piece of legislation and it's provided a lot of help for a lot of people.

Unfortunately, over the last few years, it seems most of our advocacy has been pushing back against proposals that would undermine the Affordable Care Act. Some of these things that the current administration has undertaken have resulted in a reduced outreach in enrollment activities, shorter enrollment periods, the access to lower quality coverage options that don't cover preexisting conditions, or that lack the comprehensive benefits of ACA compliant plans.

So obviously with the new administration, we're hopeful and that there is based on some of the campaign information, a lot of common ground where we can work to continue to build on the Affordable Care Act, reach out to new populations, and increase the number of people covered.

Unger: Dr. Irons, any particular lens that you're looking through right now with the ACA given where we are with this pandemic?

Dr. Irons: I think it's the lens that Brian talked about, the tens of millions of people that could lose their health insurance. If the ACA isn't upheld. That happening at any time would be a problem, but doing so during a pandemic where we're in the third phase of exponential growth, where over 150,000 people are being diagnosed daily, or a thousand people are dying. Losing that health care during the pandemic would be especially tragic. Both for care of COVID, care of chronic and acute conditions that we already knew people suffered from during the first and second phase of the pandemic. And then you mentioned preexisting conditions. COVID itself is going to become a preexisting condition with the long-term side effects.

Unger: Mr. Askew, looking ahead to next year, if we have a divided Congress, what can be done with the ACA and potentially other health care issues through executive action and oversight alone?

Askew: Well, we won't know for sure we'll have a divided Congress until the 5th of January or some days after the 5th of January with the two runoffs for the U.S. Senate in Georgia. But obviously, I think we have to prepare for a divided Congress. Options for legislation would be greatly limited then. I think last Congress, there has been some bipartisan support for some market stabilization legislation. Unfortunately, the Republican senator who pushed that issue in the senate this past Congress is retiring and won't be around next year.

But because coverage is so fundamental to the task of meeting people's health care needs and especially in the context of COVID, I think there's an imperative to make sure that people have access to care. Then I think it's too early to say nothing can happen. But I think that if we have a divided Congress, significant expansions are going to be pretty tough to come by. You can do some things under rulemaking, both to under-do some of the steps that were taken that undermine the ACA. But rulemaking takes time and you have to follow all the processes of notice and comment, or it can be

challenged in the courts. You can take regulatory action perhaps to restore the 90-day enrollment period, roll back some of the waivers that have been provide. You could also have new regulations, for instance, you could probably reinterpret the family glitch. So, you have more access to families of low-income workers who are eligible.

I think there's a few things you could probably do just with straight administrative action. You could open a special enrollment period for people who currently aren't enrolled, and you could redirect some of the funding to more outreach and enrollment. So, you can fix it around the edges, you can fix some problems, and roll back some of the damage that's been done. But real fundamental expansions, real fundamental improvements would take bipartisan cooperation. And that obviously, in the environment we're in right now, it's hard to imagine, but you never say never.

Unger: Well, Dr. Irons, we do have a big job ahead of us as we move through the pandemic in the coming year. Post-election, how do you see the national pandemic response potentially changing and what should physicians be doing until then?

Dr. Irons: Well, I don't think we should underestimate two things. The first is acknowledging that the pandemic exists and it's not going away. We really want this to go away, but it's not going to go away because we want it to. And also having a plan. And looking at the Biden plan and looking at the Biden Task Force, there's a lot of hope there. The task force itself is being chaired by a former surgeon general, a former FDA commissioner, a current researcher at Yale, and a lot of really well thought of people in public health, health care policy, and global health. But if you look at what the plan is really based on, it's based on listening to science, letting public health officials actually lead a public health emergency, and also transparency. And is focusing on a lot of the things that the AMA is focused on, testing, the supply chain for PPE, providing guidelines to communities, letting evidence really lead the way, the importance of masks, and really leading the country in a public health emergency.

Unger: Mr. Vandenberg, Mr. Askew, is there anything we should know about in terms of upcoming legal issues or advocacy efforts in the post-election period? What do you see happening in January on these fronts and how would it affect physicians? Mr. Vandenberg, will you go first?

Vandenberg: Sure. Well, I think on the legal front, we're always monitoring and watching. At any point in time, AMA judicial advocacy is involved in dozens of cases around the country, I think 70 some currently. And some of those are before the Supreme Court. So right now, we have on our Supreme Court docket six different cases that we're involved in that are at different stages, waiting for our oral argument or petitions for cert, things like that.

I think one issue just coming back to the transition and a Biden administration, we're currently a plaintiff in a lawsuit on the Title 10 rule, challenging that rule which interferes with physician speech and patients. So, we've spoken out on behalf of physicians and their patients to try and strike down a rule that has the impact of interfering with the physician-patient relationship.

The Biden administration has signaled that they intend to undo that rule, which would be positive for us. Meanwhile, we still have the sitting before the Supreme Court. And then there's the DACA issue, which we have been involved in litigation before and other immigration issues that talk about access to care and filling the pipeline of med students. So, there's no shortage of issues and we'll continue to watch, wait, and respond.

Unger: Mr. Askew?

Askew: I think Brian's right. I think also when you look at a transition period, I kind of consider it from this post-election period through the first hundred days of a new administration, it's where an administration and a new Congress like to lay down their priorities and take action on some of the higher profile issues. They may be a little more partisan, but some of the promises that were made during the campaign, there's a lot of things of interests for physicians in the AMA in that COVID is going to be the primary health care focus of this administration, right out of the box. All aspects of our response as a nation to this disaster, and also what we need to do to rebuild our public health infrastructure.

But there's other things, too. We're going to see the U.S. rejoin the World Health Organization. That'll happen pretty much on day one. Gun safety and background checks, President-elect Biden has been a major advocate in the post-Newtown era for broader background checks consistent with where we have been.

So, I think that's going to be an important effort. And there's other critical elements outside the purely health care focus that kind of speak to people's rights in our society, policing reform, voting rights, minimum wage legislation, the Dream Act. I think the Dreamers will see a lot of attention. So, I think there's a broad set of important social statements. I don't know how many will become law, but they're important issues that will set the tone for the new administration and the new Congress that we will see beginning right after January the 20th.

Unger: Okay. Final question for all of you, we've seen so many aspects of health care become politicized over the last several months, not the least of which is mask wearing. Have we ever seen such a strong intersection between politics and health before? Do you see it continuing in the coming months and what is AMA's role as well as physician's role in responding to these challenges? Dr. Irons, will you start?

Dr. Irons: Yeah. You know, Todd, I've been a physician for a really long time now. And I never thought I'd see a pandemic. And I certainly never thought I'd see a pandemic at a time when we were so ill-prepared to deal with it. And on top of that, having it as politicized as it is. Human life and the ability to save human lives should somehow be above politics. And we know that that's occurred certainly with this pandemic. Misinformation has certainly cost lives. The fact that this isn't as bad as it is, and that masks really won't protect you. "Why should I do this?" We know that it's cost lives.

I think it's also leading to the vaccine hesitancy because of the lack of trust in the FDA and the CDC and some of the government agencies that are there to really protect us. And the one thing we have heard, and I think learned through this pandemic, is trust and consistent messaging is really important. And I think that's our role. I think it's the AMA's role, I think it's a physician's role is to walk that line of science and evidence, and do what we do every day, is interpret the evidence and really counsel our patients in helping them to take care of themselves.

Unger: Mr. Askew?

Askew: No, I think that's exactly right. I mean, there's always, I think been a tension between public health and individual liberties in this country. And really in the history of public health. And I think most times we can kind of find some common ground and come together for the greater good and overcome those issues. But when one side or the other tries to use some of what public health is doing for partisan gains and dividing people, that any compromise to the middle kind of becomes an admission of guilt, that we really are trying to take something from you. And that's just a formula for failure.

And I think that's where we have found ourselves now where wearing a piece of cloth over your face or not wearing a piece of cloth is some grand statement of your ideological beliefs. And we've got to get beyond that. I think part of its people don't have the truth. They don't have the information. They don't know where the information they're getting is coming from, or if it's to be believed. And that distrust has just left us where we are. And we're just going to have to keep trying to find a way to get beyond that. And a lot of that leadership starts at the very top. And so hopefully we will see not a, "I won and now it's my way," attitude. We'll see a, "We need to come together and focus on getting past this period."

Unger: Mr. Vandenberg, your final thoughts?

Vandenberg: I think Todd just nailed it. I mean, when you have a public health emergency, inevitably individual liberties will be impacted. They have to be, or you can't control it. So, it's finding that balance and having an honest, meaningful discussion about what that balance is. And it ultimately comes down to leadership. And if you don't have leadership, it will be politicized. If we do have leadership, folks can come together, build consensus, and do what's right for the nation. So that's where we are today. And I hope we move forward in a better direction.

Unger: Let's hope so. When you look at the numbers that are out today and the projections for early in next year, it really is something that we need to come together on. Thank you so much, Mr. Vandenberg, Dr. Irons, and Mr. Askew for sharing your perspectives today. We'll be back soon with another COVID-19 Update.

For resources on COVID-19, visit [ama-assn.org/covid-19](https://www.ama-assn.org/covid-19). Thanks for joining us and please take care.

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