



THE COUNCIL

Legislative Update Webinar

Tuesday, June 29, 2021



Joel Wood
SVP Government Affairs



Joel Kopperud
VP Government Affairs



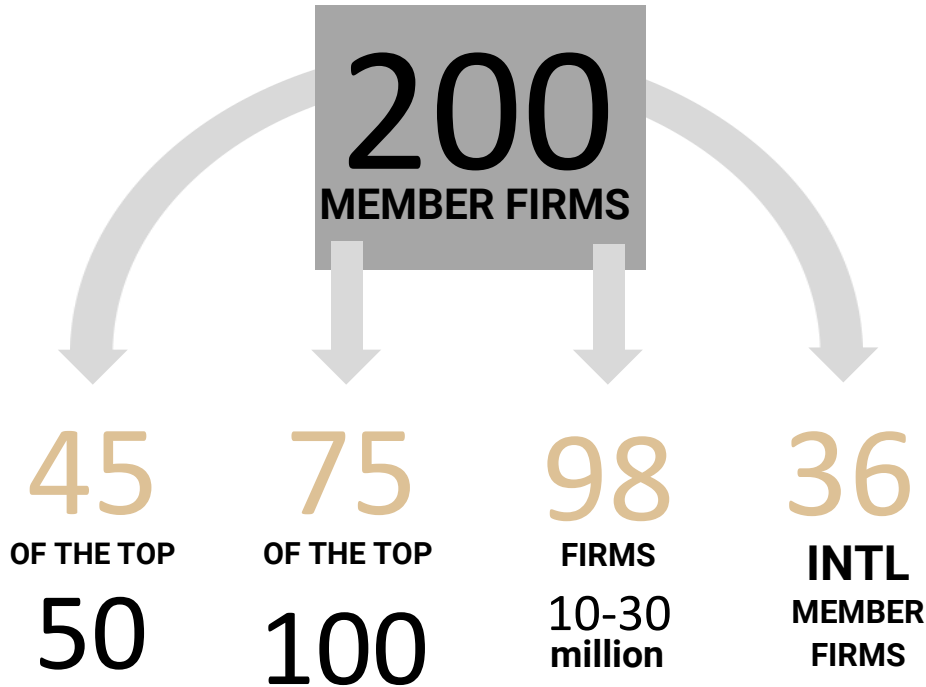
Blaire Bartlett
Director, Government
Affairs



Scott Sinder
Chief Legal Officer

Who We Are Today

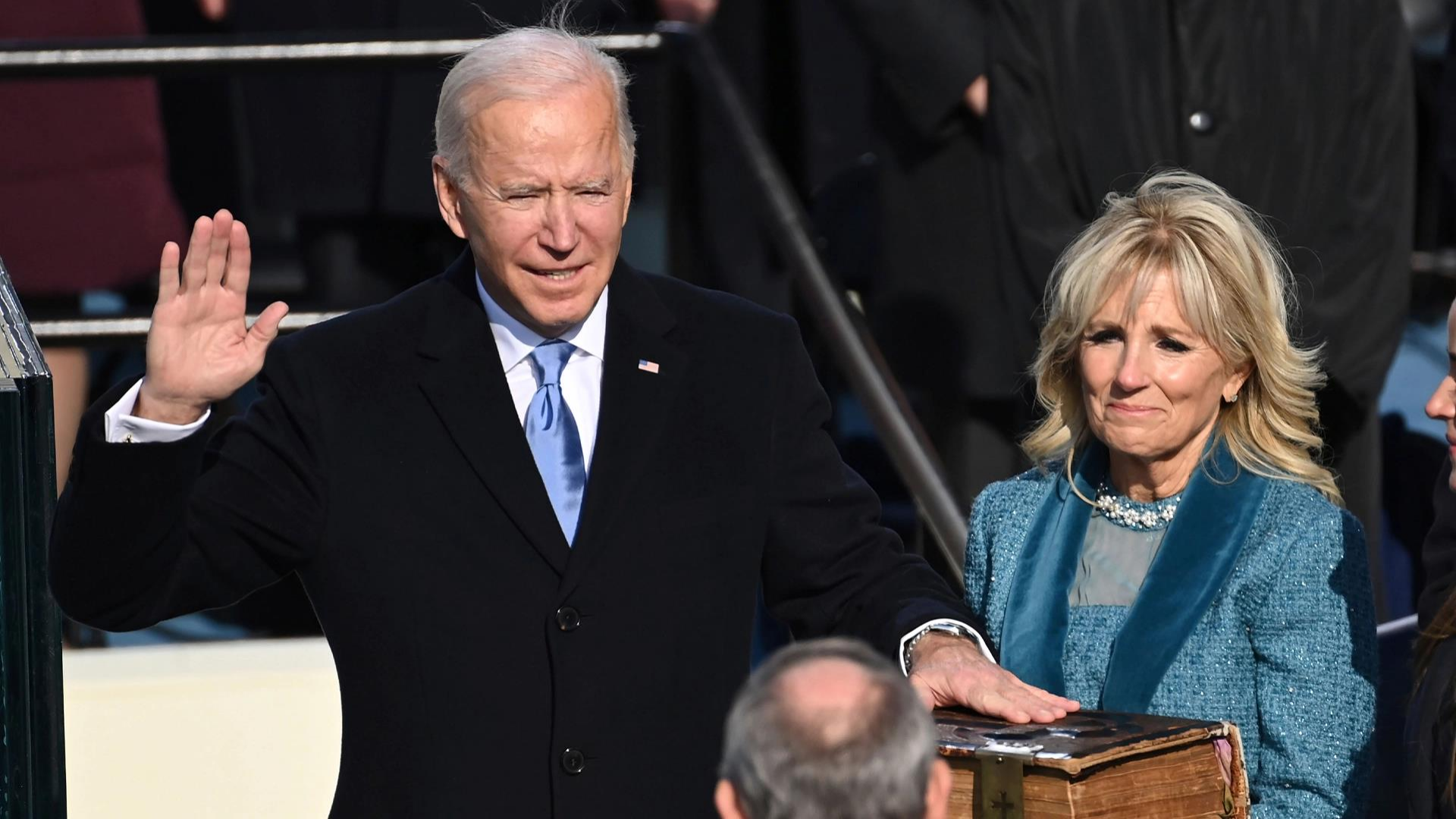
representing the
FULL SPECTRUM OF THE
MARKET



\$10 million
REVENUE MINIMUM

OUR MEMBER FIRMS PLACE

90% OF ALL P/C PREMIUMS
70% OF ALL E/B PREMIUMS







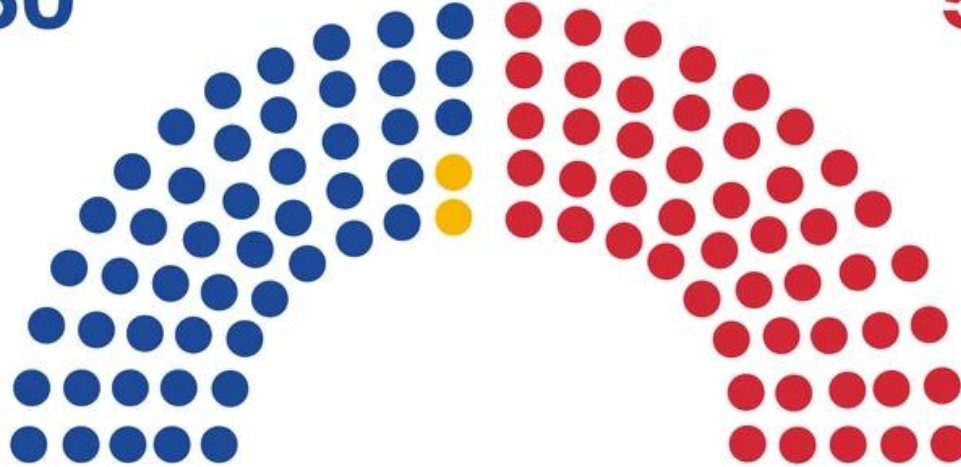
Senate Balance of Power

Democrats

50

Republicans

50



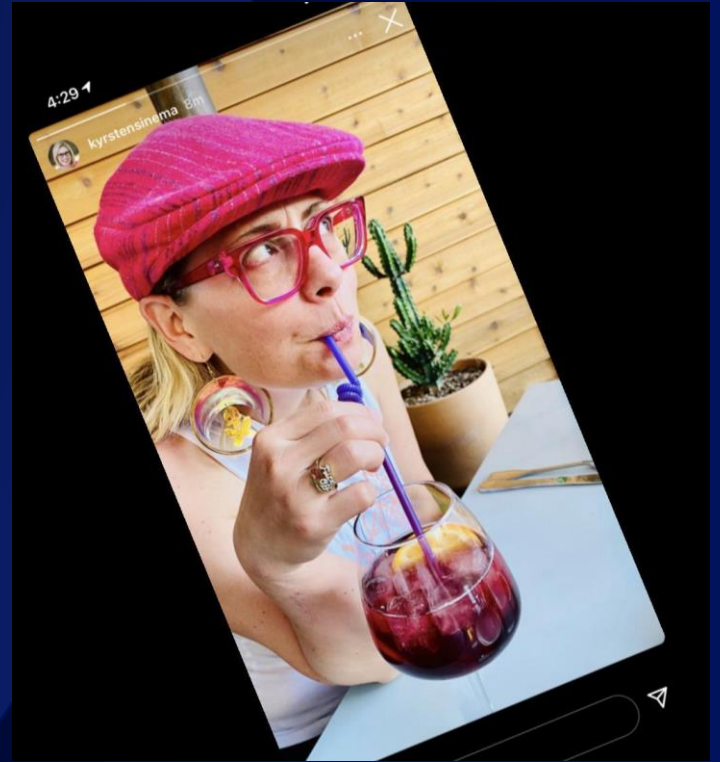
Note: Yellow indicates independents who caucus with the Democrats

Bloomberg Government



Joe Manchin

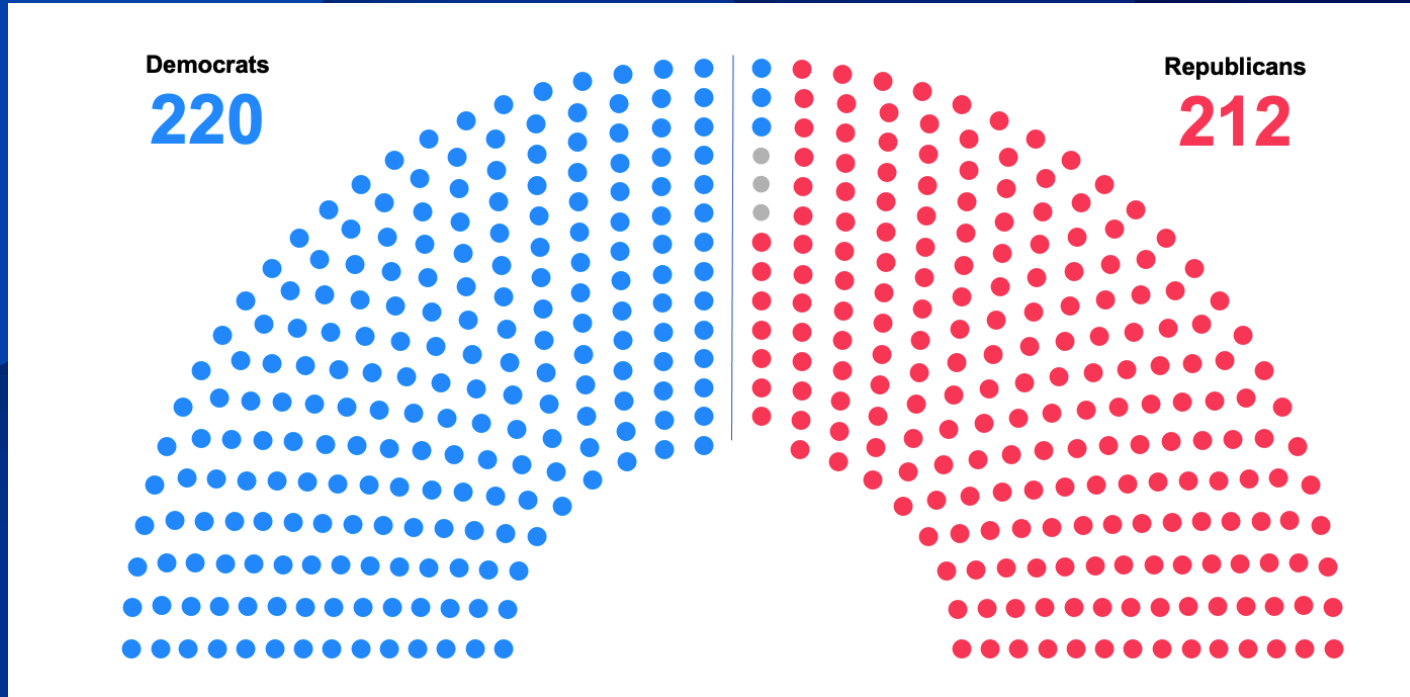
Senator D-WV



Krysten Sinema

Senator D-AZ

117th House Balance of Power



- TX-06 - Two Republicans advanced to a runoff, to be held July 27, 2021, after a special election was held on May 1, 2021.
- Fudge, Marcia (D), OH resigned on 3/10/2021.
- Hastings, Alcee (D), FL died 04/06/2021.
- Stivers, Steve (R), OH resigned on 5/17/2021.

Surprise Billing: 2020 Year-End Omnibus



Specialty practices, hedge funds,
providers on one side



Insurers/employers on the other side



Congress split the baby



“Stickiness” on benchmarks?

New ERISA Broker Transparency Regime

Except as provided in section 408, a plan fiduciary shall not contract with a service provider to provide plan services (ERISA § 406(a))

Old Section 408: Fiduciary can contract with a service provider if the payment for such services is “reasonable” (Former ERISA § 408(b)(2))

Now: After December 27, 2021, can only contract with a service provider if the new compensation disclosure rules are satisfied (New ERISA § 408(b)(2))

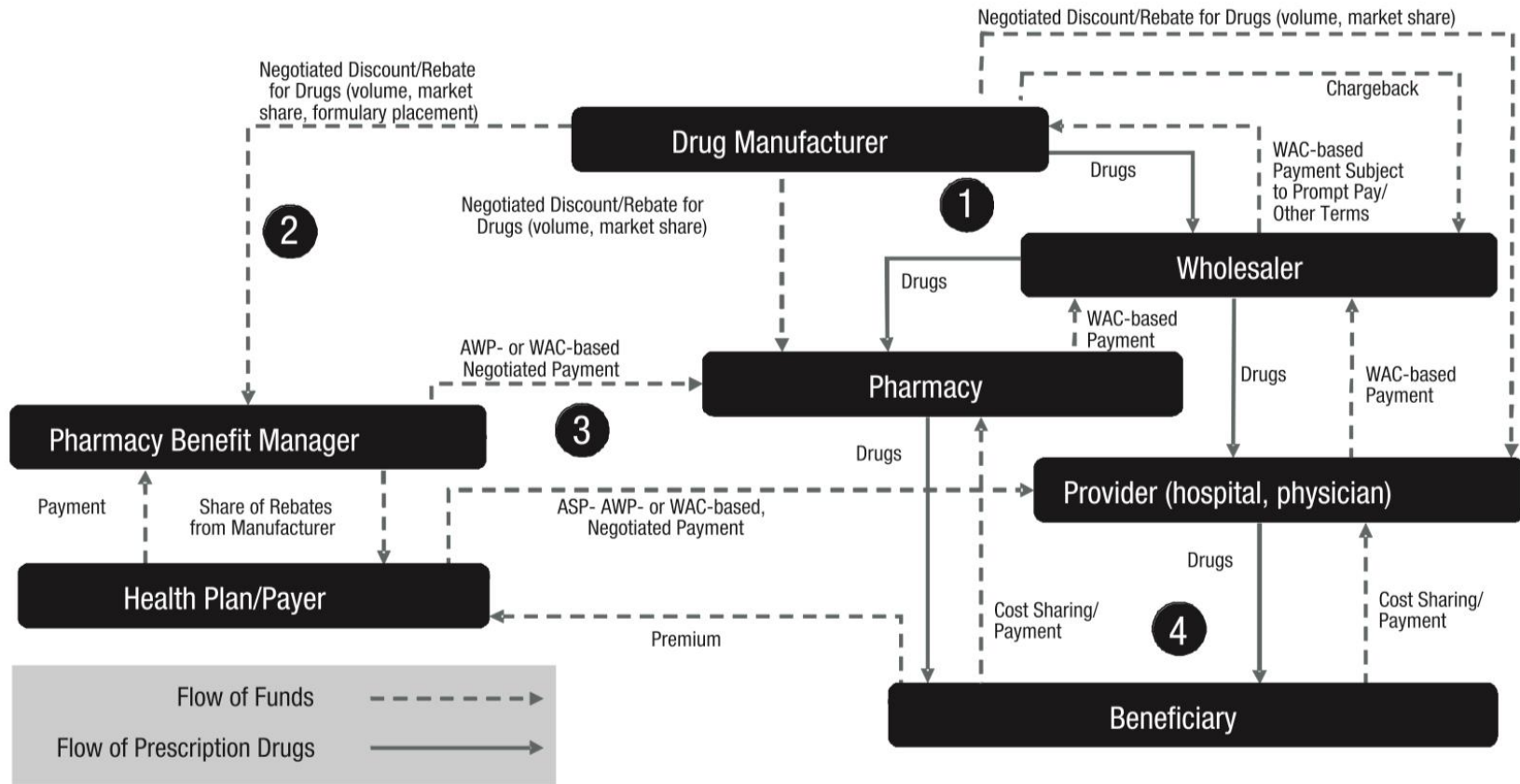
More to unpack on Transparency

ANY providers, including TPAs, must disclose direct and indirect compensation

The service of paying claims on behalf of a plan satisfies the “consultant” definition (thus sweeping in TPAs)

Challenge 1:
When to disclose and level of detail?
Challenge 2:
Formals on contingencies and overrides?
Challenge 3:
Non-enforcement for a period?

Drug Distribution Model



Bipartisan Infrastructure Package

- ⊙ \$974 billion infrastructure proposal –\$579 billion on top of existing authorized funding
- ⊙ \$125 billion for roads, highways, bridges, ports and waterways
- ⊙ Close to \$100 billion for clean-energy-related projects
- ⊙ Financed through IRS enforcement

Bipartisan Infrastructure Package



**\$66 billion to
passenger and
freight rail**

- \$49 billion in public transportation
- \$109 billion invested in roads, bridges, and other major projects



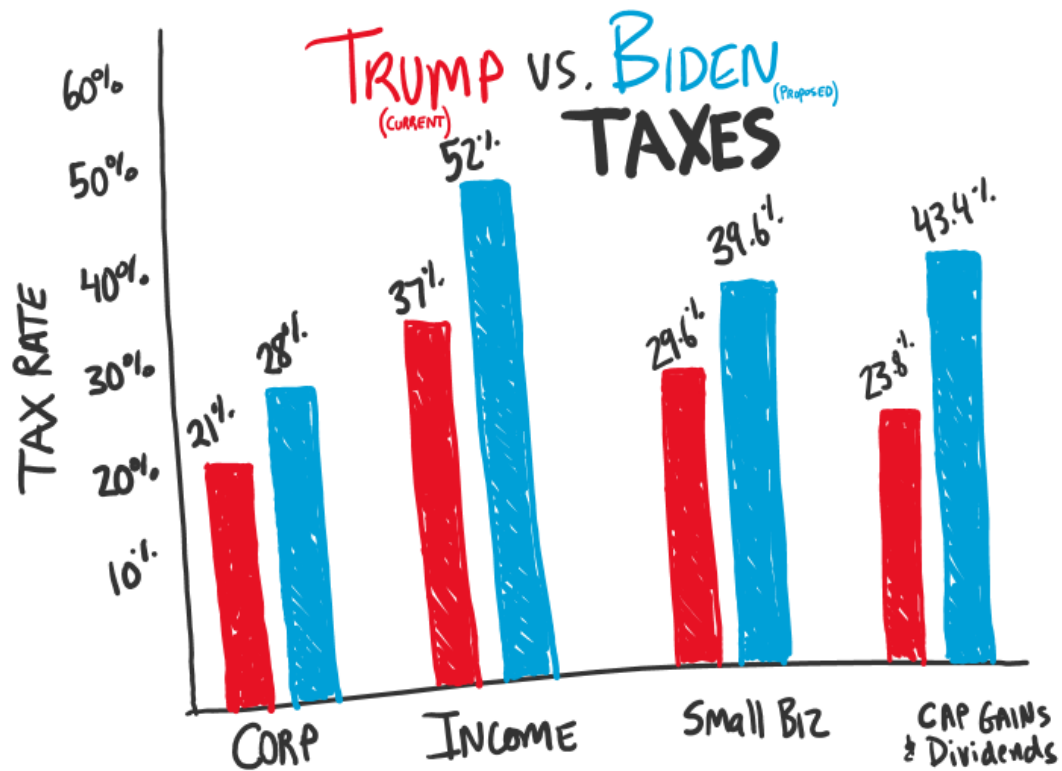
**\$15 billion towards
electric vehicle
infrastructure and
electric buses and
transit**

- \$266 billion into non-transportation infrastructure



\$73 billion for power

- \$65 billion for broadband
- \$55 billion for water



Tax Hikes

Personal rates >
\$400k?

Corporate rate
to 28%?

Cap gains
doubling?

WITH STEPPED
UP BASIS?

And
RETROACTIVELY
???

Pass-through
treatment
expires 2023

Biden's Plan to Tax the 1%

The proposal would raise \$4 trillion over 10 years.

Where most of that revenue would come from:

\$1.3 trillion by increasing the corporate tax rate from 21% to 28%.

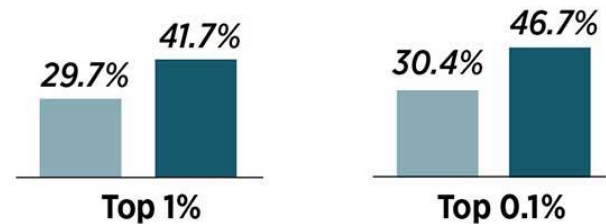
\$962 billion by lifting the Social Security cap.

\$448 billion by taxing capital gains as ordinary income for millionaires.



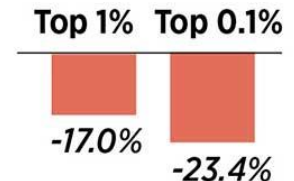
It would raise income taxes on the ultrarich ...

Average federal tax rate now and under Biden's plan:



... which would lower their net income.

Percentage change in after-tax income under Biden's plan:



THE NATION.

Sources: Urban-Brookings Tax Policy Center
Infographic by Tracy Matsue Loeffelholz

Reconciliation – Get used to hearing it!

51 votes required, not 60

All based on the federal fisc – spending and taxing

ACA tortuously passed on Reconciliation in 2010

Tax Cuts and Jobs Act of 2017 – same

Congress gets TWO bites at Reconciliation apple in 2021



The ACA is saved. Now what?

No immediate changes impacting employers.

Future challenges may focus on specific elements of the law, like claim denials and narrow provider networks.

The Biden administration is expected to double down on shoring up and expanding the ACA.

Potential renewed focus on the individual mandate. Six states plus DC have passed their own individual mandate.

Biden's proposed enhancements: Switching the benchmark plan for premium tax credits from silver to gold, limiting the cost of coverage for everyone to 8.5% of income, removing ESI "firewall."

If Biden expands the ACA:

- The new monthly benchmark premium will cost \$514, resulting in a **20% decrease in net premiums**, on average.
- Nearly **4 million previously uninsured individuals with an offer of ESI** would gain coverage due to the removal of the ESI firewall.
- Up to **24 million employees** would switch out of employer coverage with the removal of the ESI firewall.
- Extending exchange subsidies would cost around **\$166 billion** this fiscal year, and \$2.2 trillion over a decade.





Medicare at 60

- 1.3 million individuals that would qualify for “Medicare at 60” are currently covered by a plan on the current marketplaces.
- To finance “Medicare at 60,” Congress could pursue various tax increases.
- Congress could raise the additional Medicare tax rate by 285 percent in 2022, setting it at 3.5 percent in addition to the 2.9 percent for the standard Medicare payroll tax.
- Hospital Insurance (HI) tax would need to be 3.25 percent—a 12 percent increase in the current rate.
- Absent alternative financing mechanisms, the Hospital Insurance (HI) Trust Fund would be depleted in 2024, two years sooner than currently projected.



Medicare at 60

- Under Medicare at 60, gross Medicare expenditures could rise by \$82.9 billion in 2022.
- The federal deficit could rise by \$32.2 billion in 2022.
- Lowering the eligibility age could affect labor markets if it induces some individuals to retire earlier. This could result in lower tax revenue, further straining the federal budget.
- Policyholders of family plans could be unlikely to enroll in Medicare if it results in the loss of coverage for other family members.



“Congress does not pass perfect bills. But for working-class people, this is the most significant piece of legislation passed since the 1960s.”
Bernie Sanders, March 23

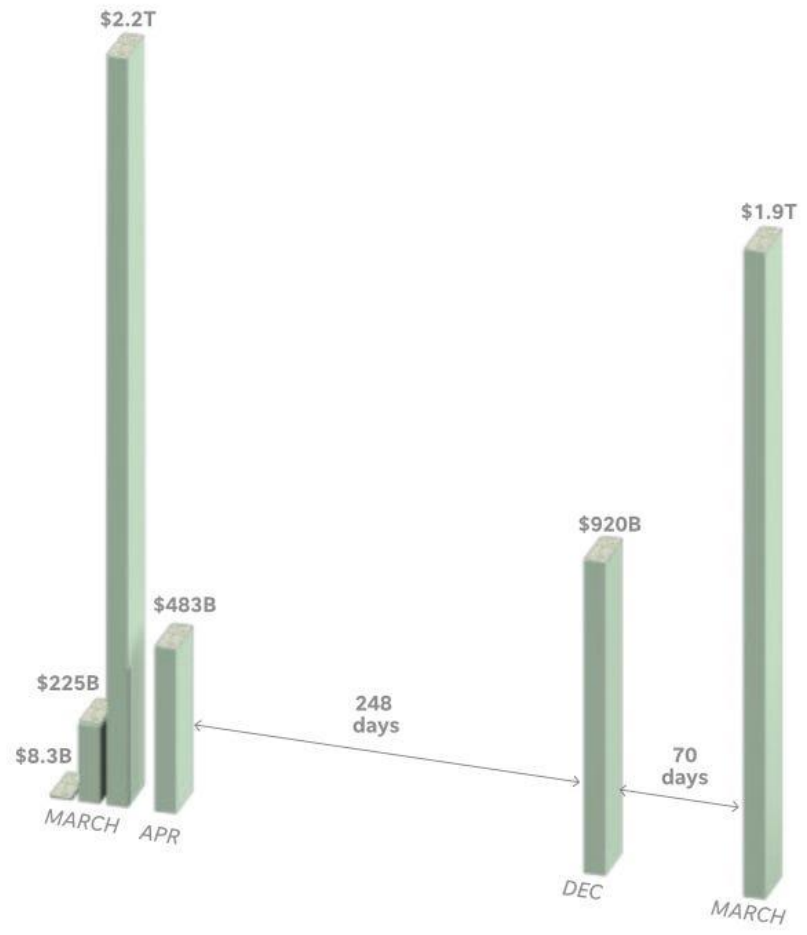
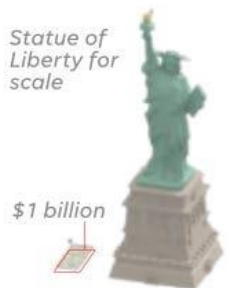
ARPA ACA Exchanges

100%
subsidy for
those at
150% FPL
and/or UI

Ends
“subsidy
cliff” at
400% FPL

Cap of
premium
costs at
8.5% of
income

Boosts for
two years
only



Public Option Proposals

KEEPING HEALTH INSURANCE AFFORDABLE ACT:
Offers the public option through the exchanges alongside private plans

MEDICARE X:
Makes individuals considered "qualified" under the ACA eligible for participation in the Medicare Exchange health plan

MEDICARE BUY-IN:
Makes U.S. residents ages 50-64 eligible but prohibits states from buying Medicaid beneficiaries into Medicare buy-in

Level of disruptiveness to the healthcare ecosystem

least disruptive

STATE PUBLIC OPTION ACT:
Makes residents of states who establish a Medicaid Buy-In option eligible to participate in the marketplace

MEDICARE AT 50 ACT:
Makes U.S. residents/nationals between ages 50-64 eligible

CHOOSE MEDICARE ACT:
Offers Medicare Part E plans alongside private health plans; Opens Medicare to employers of all sizes

most disruptive

State Public Options: The Next Big Wave of Healthcare Reform?

Most state public options propose funding through a combination of payroll and income taxes, and the appropriation of federal funds received for the administration of public programs like Medicare.

Ⓞ WASHINGTON

The first operational state-run public option in the nation. Medicare-level provider reimbursement rates are capped at 160%. In 2021, 13 insurers opted into the exchange.

Ⓞ NEVADA

A recently signed bill makes it the second state to offer state-managed health insurance plans by 2026. State officials would select in-network providers for the public option plan and mandate that they charge 5% less in monthly premiums than the average plan on the state insurance marketplace and 15% less four years after it is first offered.

Ⓞ COLORADO

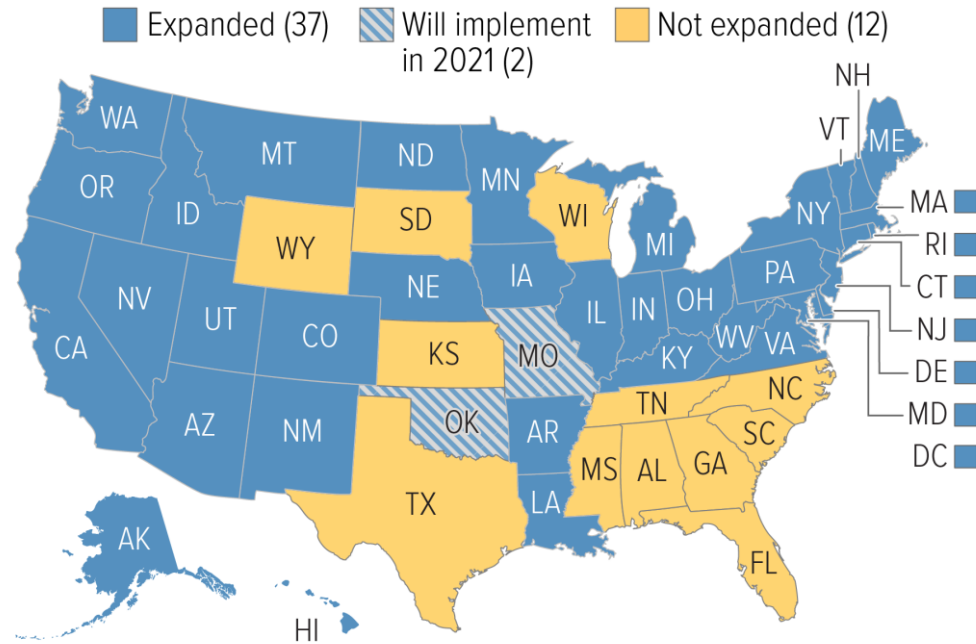
Recently passed a bill awaiting the Governor's signature to require insurers to offer the Colorado Health Benefit Option by Jan. 1, 2023, on the individual and small group marketplaces. By 2025, its premiums will have to be 15% less than the rates insurers offered in 2021.

ACA Pay-Fors Have Been Eroded Over the Years

ACA revenue provision	Savings	Status
0.9% increase in Medicare payroll tax and 3.8% net investment income tax on high-income earners	\$210 billion	No change
Health insurer fee	\$60 billion	Repealed
“Cadillac” tax on high-cost employer health plans	\$32 billion	Repealed
Prescription drug fee	\$27 billion	No change
Medical device tax	\$20 billion	Repealed
Medical expense deduction floor increased to 10%, from 7.5%	\$15 billion	Lowered to 7.5%
\$2,500 annual limit on FSA contributions, adjusted for inflation	\$13 billion	No change
Over-the-counter medicine excluded from savings account expenses	\$5 billion	Repealed
Deduction for Medicare Part D subsidy	\$4.5 billion	No change
Indoor tanning tax	\$2.7 billion	No change

37 States, D.C. Expanded Medicaid

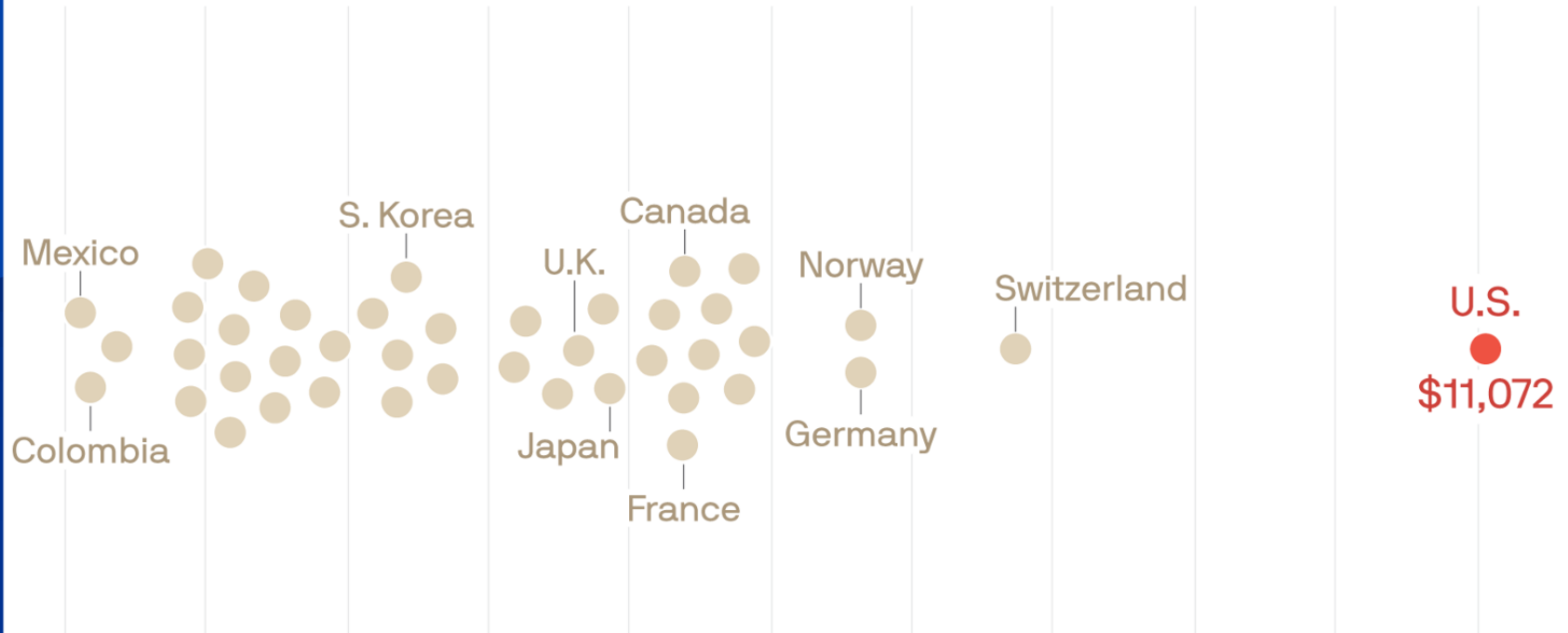
Status of State Medicaid Expansion in 2021



Note: The 37 states that have expanded include the District of Columbia.

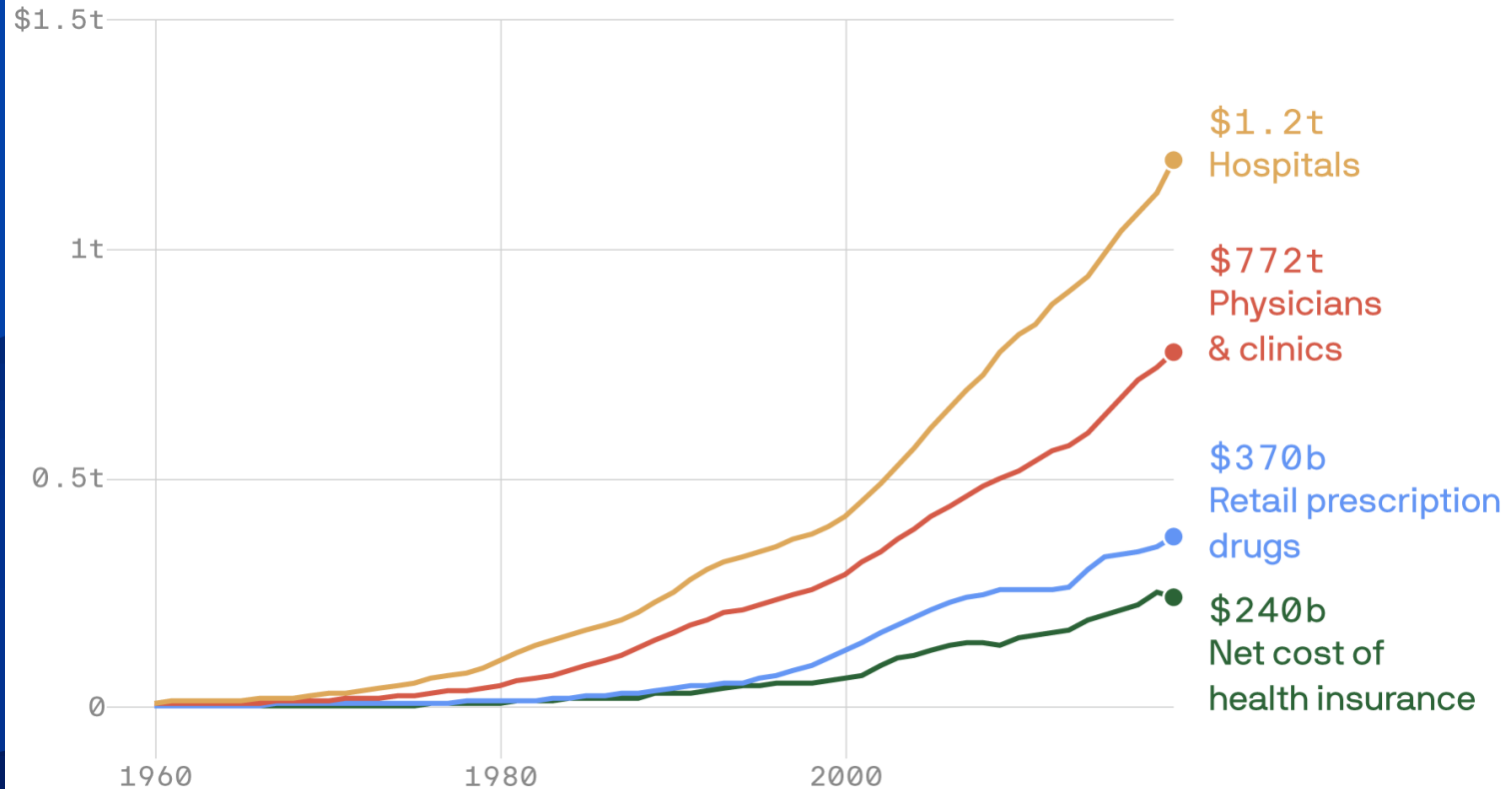
Countries' health care spending per person

Total spending in 2019 among 42 OECD countries



U.S. health care spending

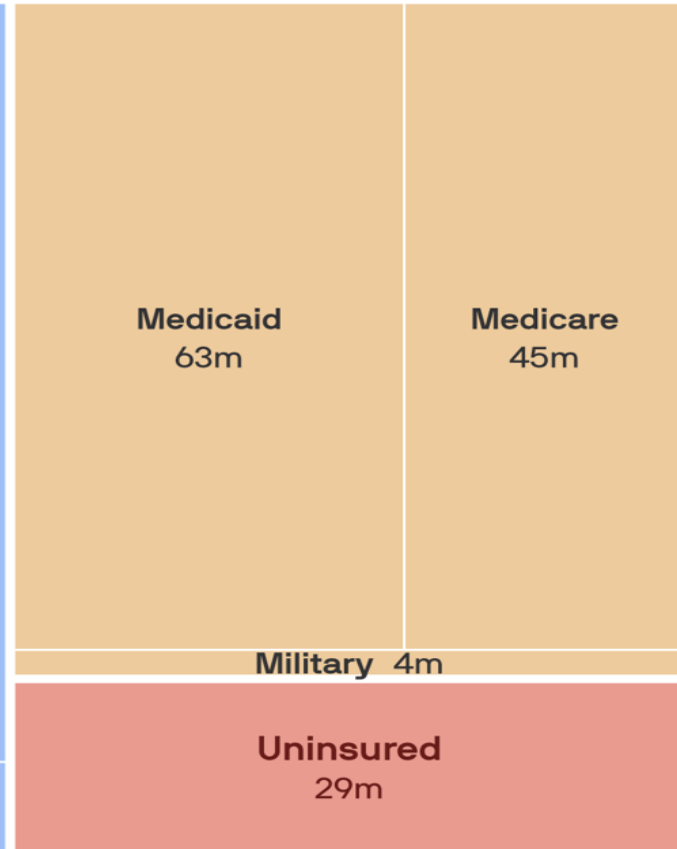
1960-2019



Private insurance

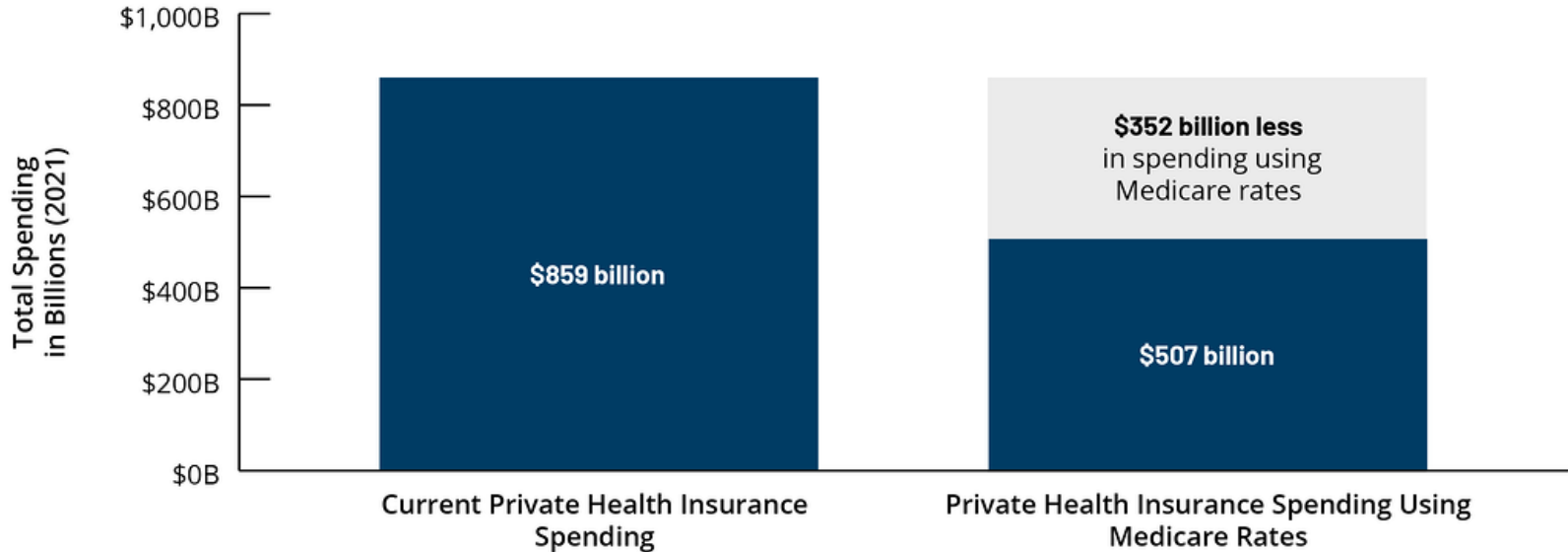


Government programs



Data: [Kaiser Family Foundation](#); Note: Data is from 2019; Chart: Andrew Witherspoon/Axios

Total Spending on Health Care Covered by Private Insurance Would be \$352 Billion Less Using Medicare Rates, 2021

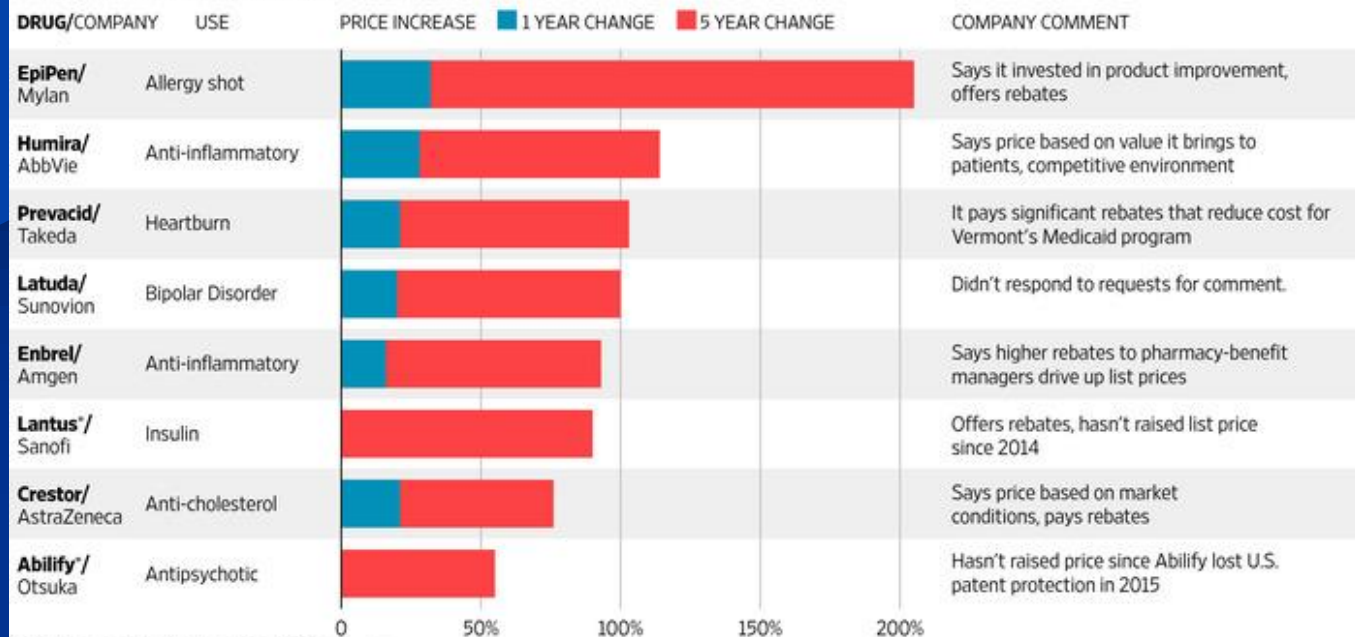


SOURCE: KFF analysis of FAIR Health, Marketscan, American Community Survey, and National Health Expenditures data

Prescription Drug Pricing

Pricing Power

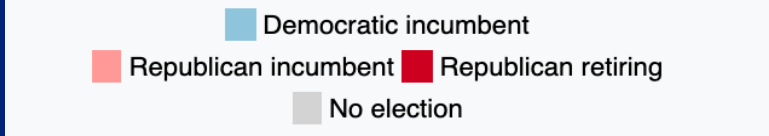
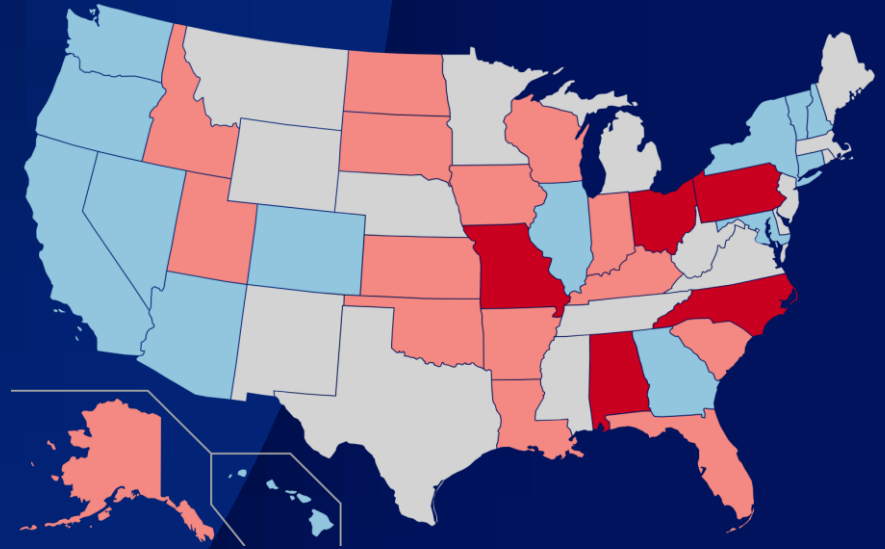
A new Vermont law required several drug makers to submit information explaining why they raised prices for prescription drugs. Here is a selection of the drugs and company comments.



^aDid not exceed the price threshold of 15% in one year
Sources: Vermont Attorney General's office; the companies

THE WALL STREET JOURNAL.

2022 Senate





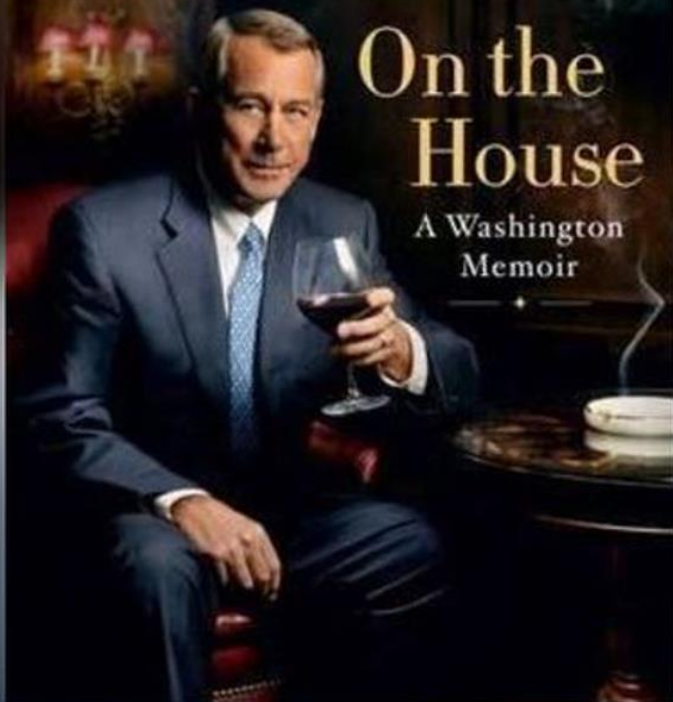




JOHN BOEHNER

On the House

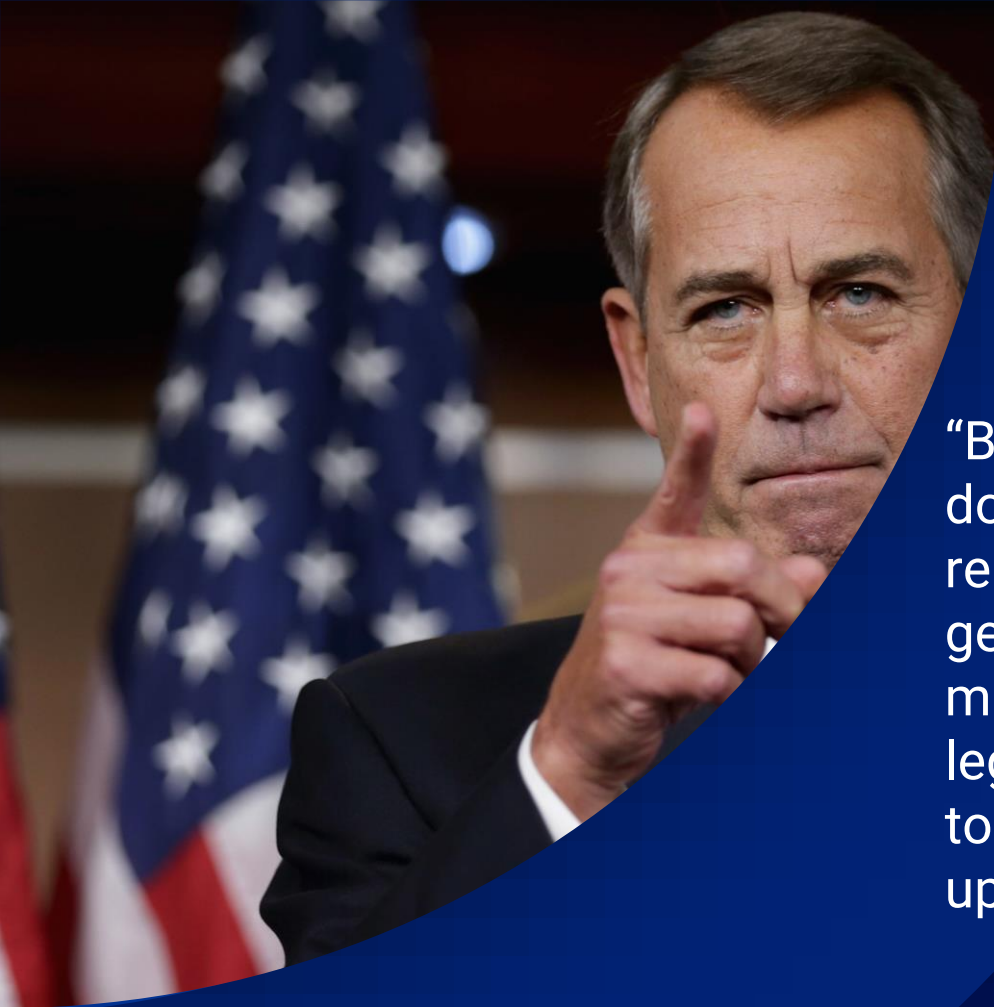
A Washington
Memoir





“A lot of people sling around ideas to ‘fix Washington’... and most of them are bullshit.”

- John Boehner



“But there’s at least one thing you can do ... Vote to send people there to represent you who actually want to get things done instead of hucksters making pie-in-the-sky promises or legislative terrorists just looking to go to Washington and blow everything up.”



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