

Presidential Health Law & Policy Positions: Election 2020

James G. Hodge, Jr., J.D., LL.M.

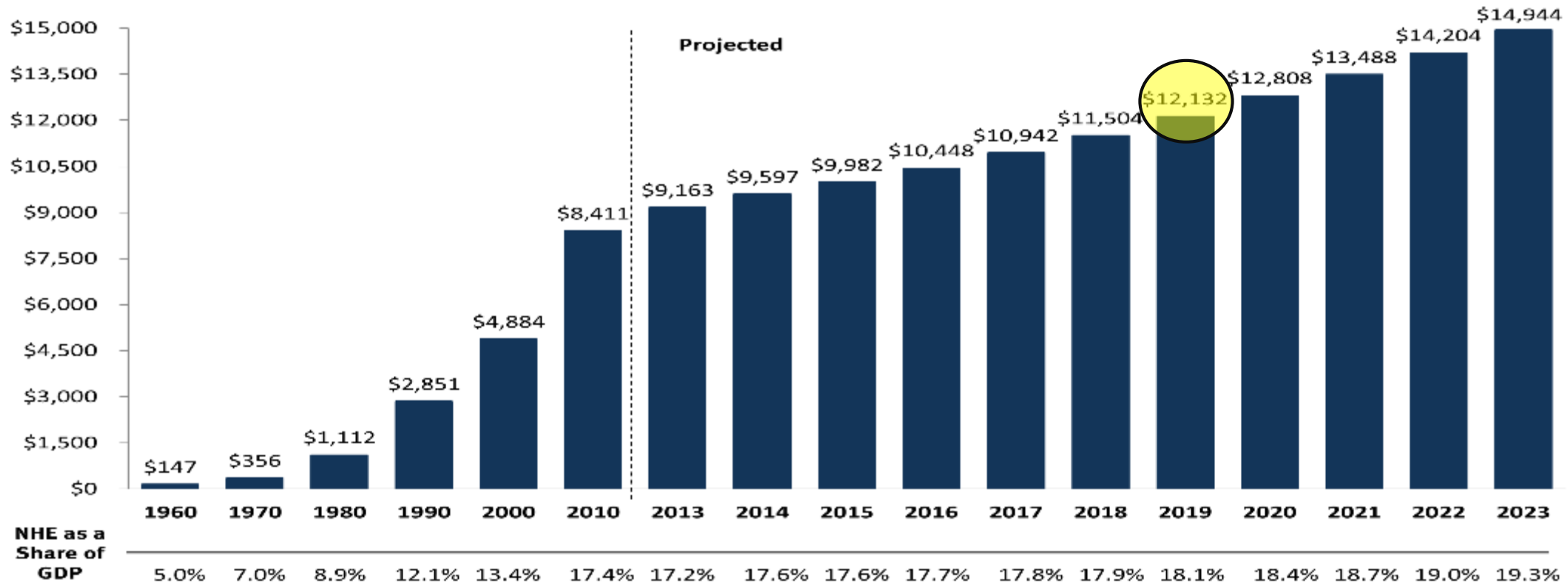
Peter Kiewit Foundation Professor of Law |
Director, Center for Public Health Law & Policy,
Arizona State University

Primary Objectives

- ▶ **What's at Stake: Health of the Nation**
- ▶ Election 2020: Health Care Priorities
- ▶ Democratic Field: Then & Now
- ▶ Major Health Law & Policy Issues
- ▶ Facing Realities: Practicalities and Limits
- ▶ Conclusions, Questions & Comments

Escalating Health Care Expenditures

National Health Expenditures per Capita, 1960-2023



NOTE: According to CMS, population is the U.S. Bureau of the Census resident-based population, less armed forces overseas and their dependents.

SOURCE: Kaiser Family Foundation calculations using NHE data from Centers for Medicare and Medicaid Services, Office of the Actuary, National Health Statistics Group, at <http://www.cms.hhs.gov/NationalHealthExpendData/> (For 1960-2010 data, see Historical; National Health Expenditures by type of service and source of funds, CY 1960-2012; file nhe2012.zip. For 2013-2023 data, see Projected; NHE Historical and projections, 1965-2023, file nhe65-23.zip).



Rising Insurance Premiums

Cost of Employer-Provided Health Coverage Passes \$20,000 a Year

Annual poll of employers by Kaiser Family Foundation finds premiums rose 5% for family plans; 'It's the cost of buying an economy car'

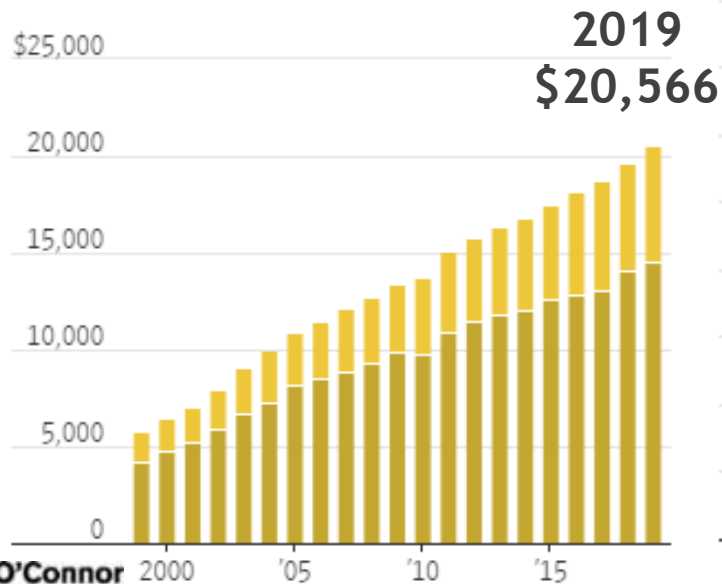
By [Anna Wilde Mathews](#)
Updated Sept. 25, 2019 12:55 pm ET

Health Check

The average cost of employer health coverage for a family rose above \$20,000 this year...

Contributions to premiums for family health coverage

■ Employer ■ Worker



...and the average deductible for single coverage went up as well.

Average employee deductible*



THE WALL STREET JOURNAL.

Americans' Concerns Over Costs

Satisfaction With Healthcare Costs -- Personal Healthcare vs. U.S. Healthcare, 2001-2018

Are you generally satisfied or dissatisfied with the total cost you pay for your healthcare?

Are you generally satisfied or dissatisfied with the total cost of healthcare in this country?

■ % Satisfied with personal healthcare cost ■ % Satisfied with total cost of healthcare in U.S.



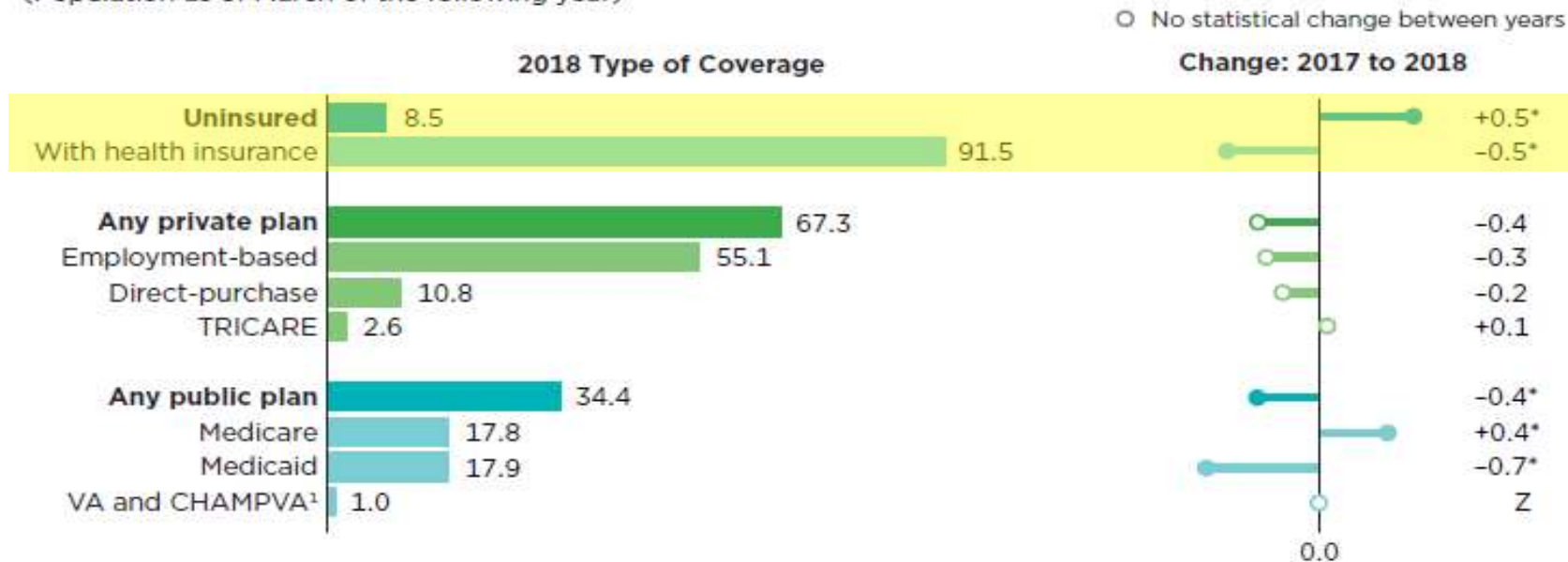
GALLUP

Higher Rates of Uninsured - Sept. 2019

Figure 1.

Percentage of People by Type of Health Insurance Coverage and Change From 2017 to 2018

(Population as of March of the following year)



Z Represents zero or rounds to zero.

¹ Includes CHAMPVA (Civilian Health Medical Program of the Department of Veterans Affairs), as well as care provided by the Department of Veterans Affairs and the military.

* Denotes a statistically significant change between 2017 and 2018 at the 90 percent confidence level.

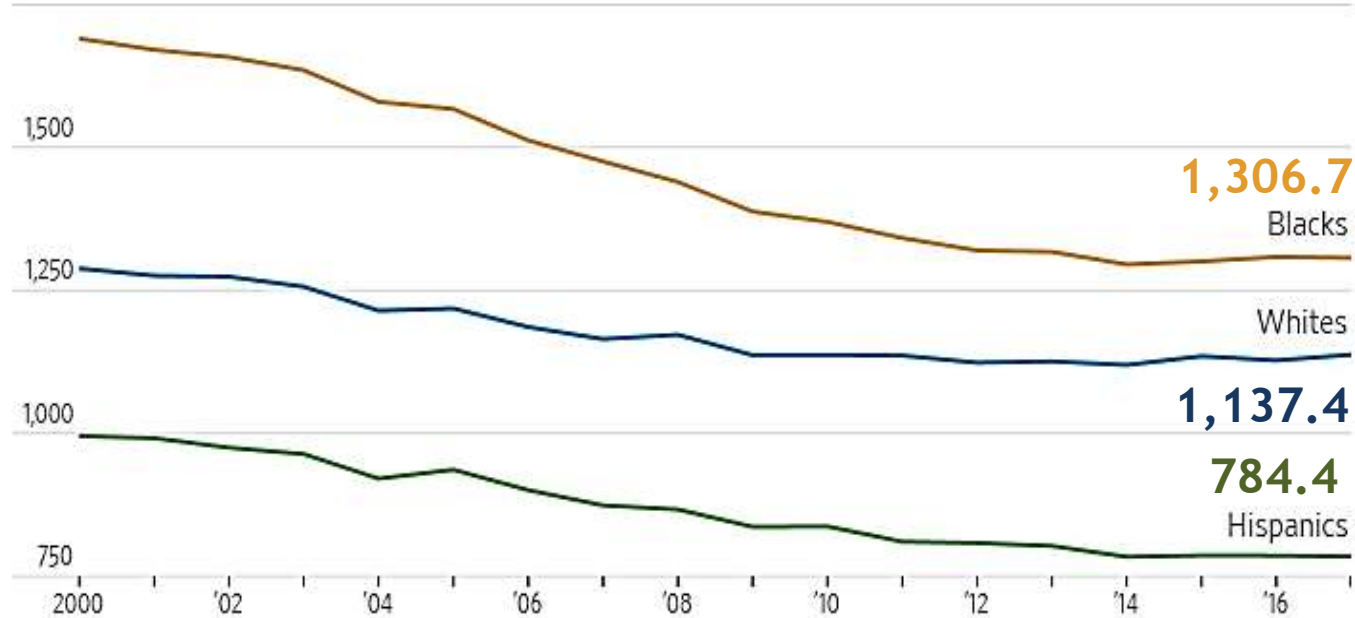
Note: The estimates by type of coverage are not mutually exclusive; people can be covered by more than one type of health insurance during the year. For information on confidentiality protection, sampling error, nonsampling error, and definitions in the Current Population Survey, see <<https://www2.census.gov/programs-surveys/cps/techdocs/cpsmar19.pdf>>.

Source: U.S. Census Bureau, Current Population Survey, 2018 Annual Social and Economic Supplement Bridge File and 2019 Annual Social and Economic Supplement.

Ascending Death Rates

Age-adjusted death rates since 2000, adults 25 and over

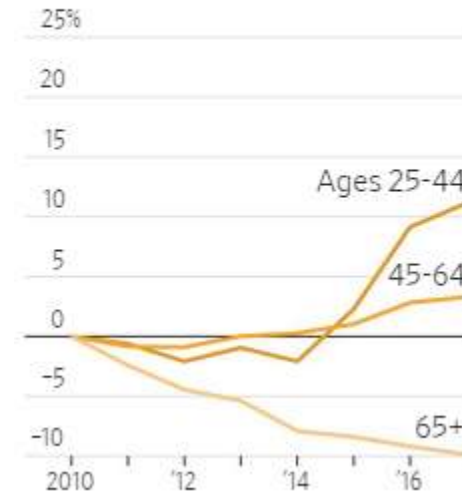
1,750 deaths per 100,000



Rates per 100,000 population

Percentage change in death rate since 2010

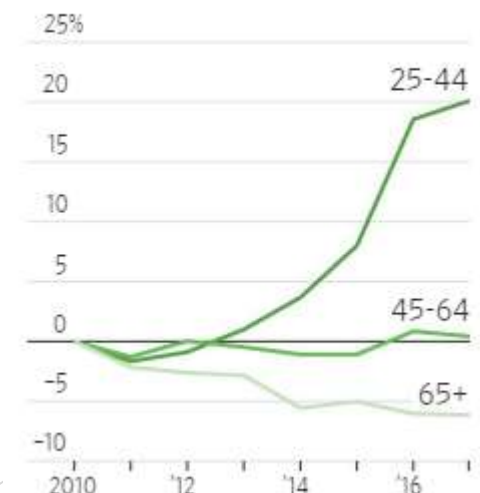
Blacks



Whites

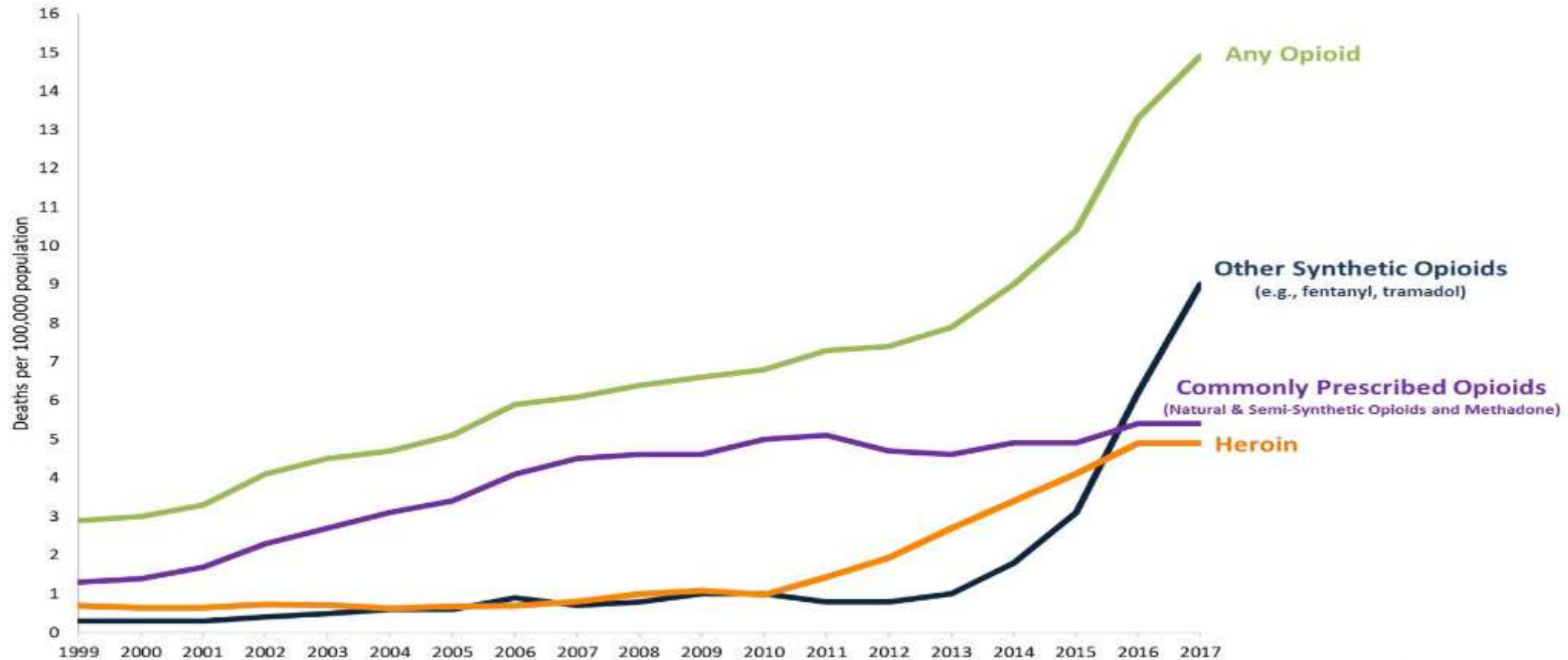


Hispanics



The Opioid Epidemic

Overdose Death Rates Involving Opioids, by Type, United States, 2000-2017

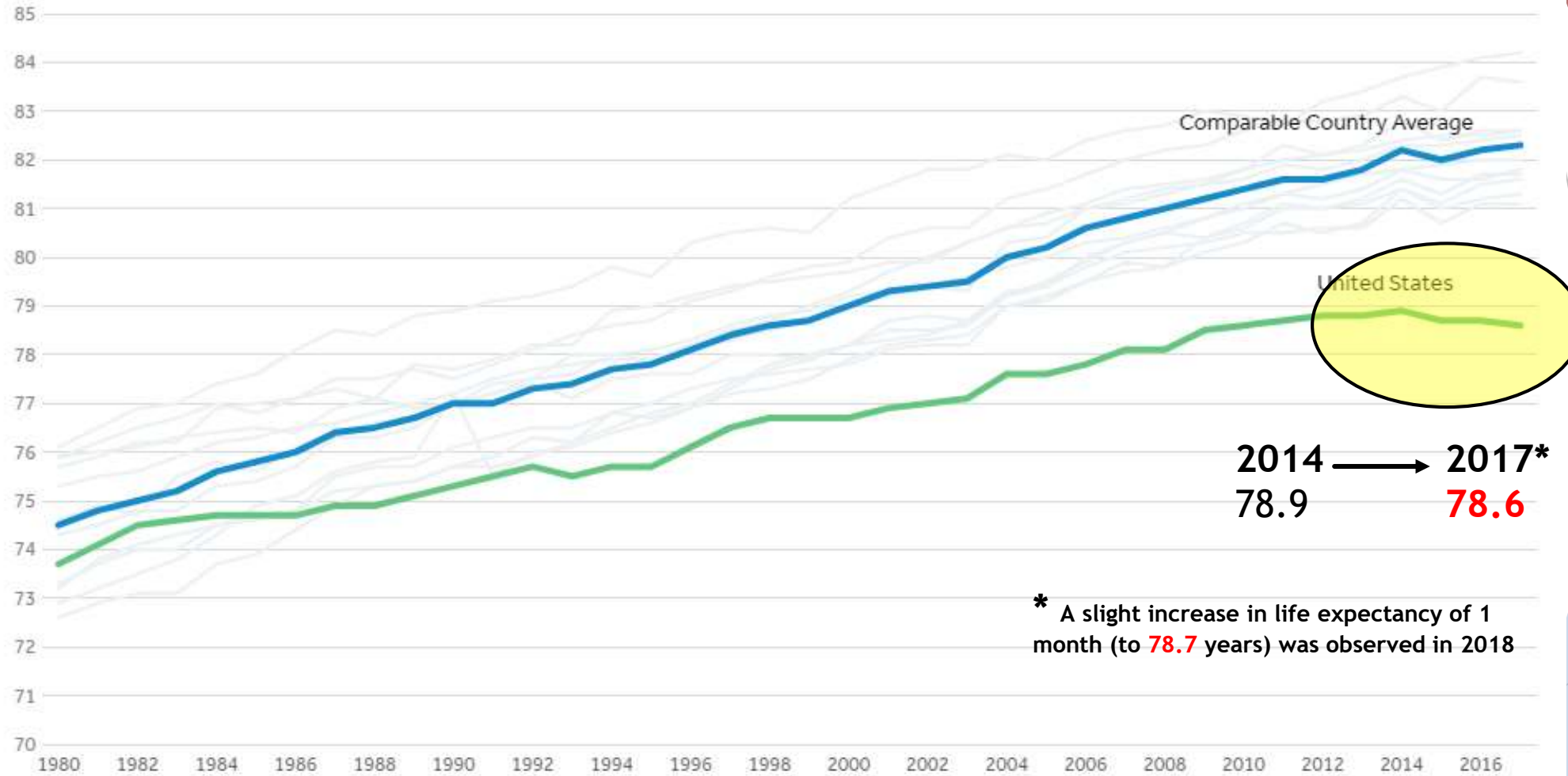


SOURCE: CDC/NCHS, National Vital Statistics System, Mortality. CDC WONDER, Atlanta, GA: US Department of Health and Human Services, CDC; 2018. <https://wonder.cdc.gov/>.

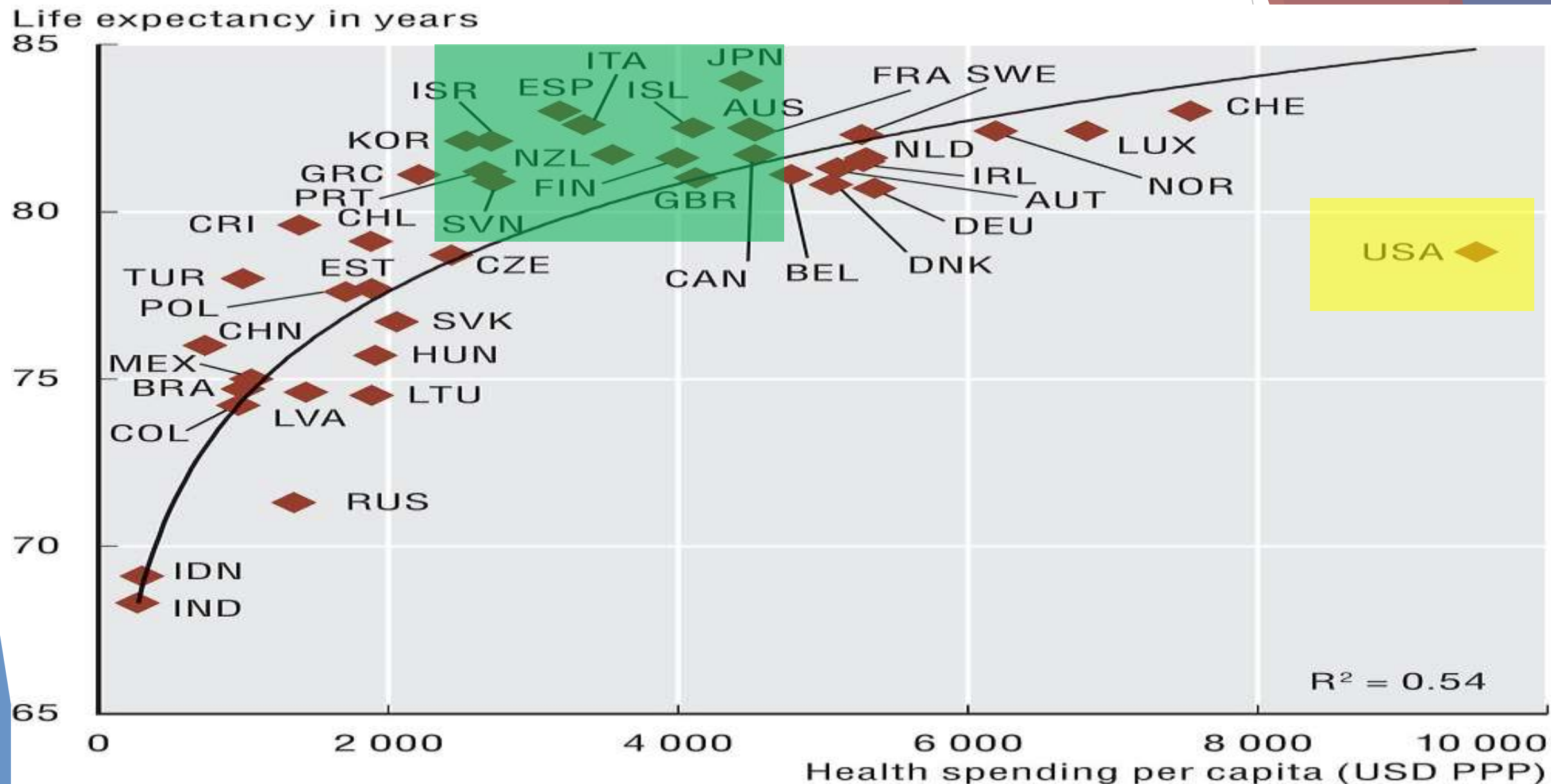
www.cdc.gov
Your Source for Credible Health Information

Decreasing Life Expectancy

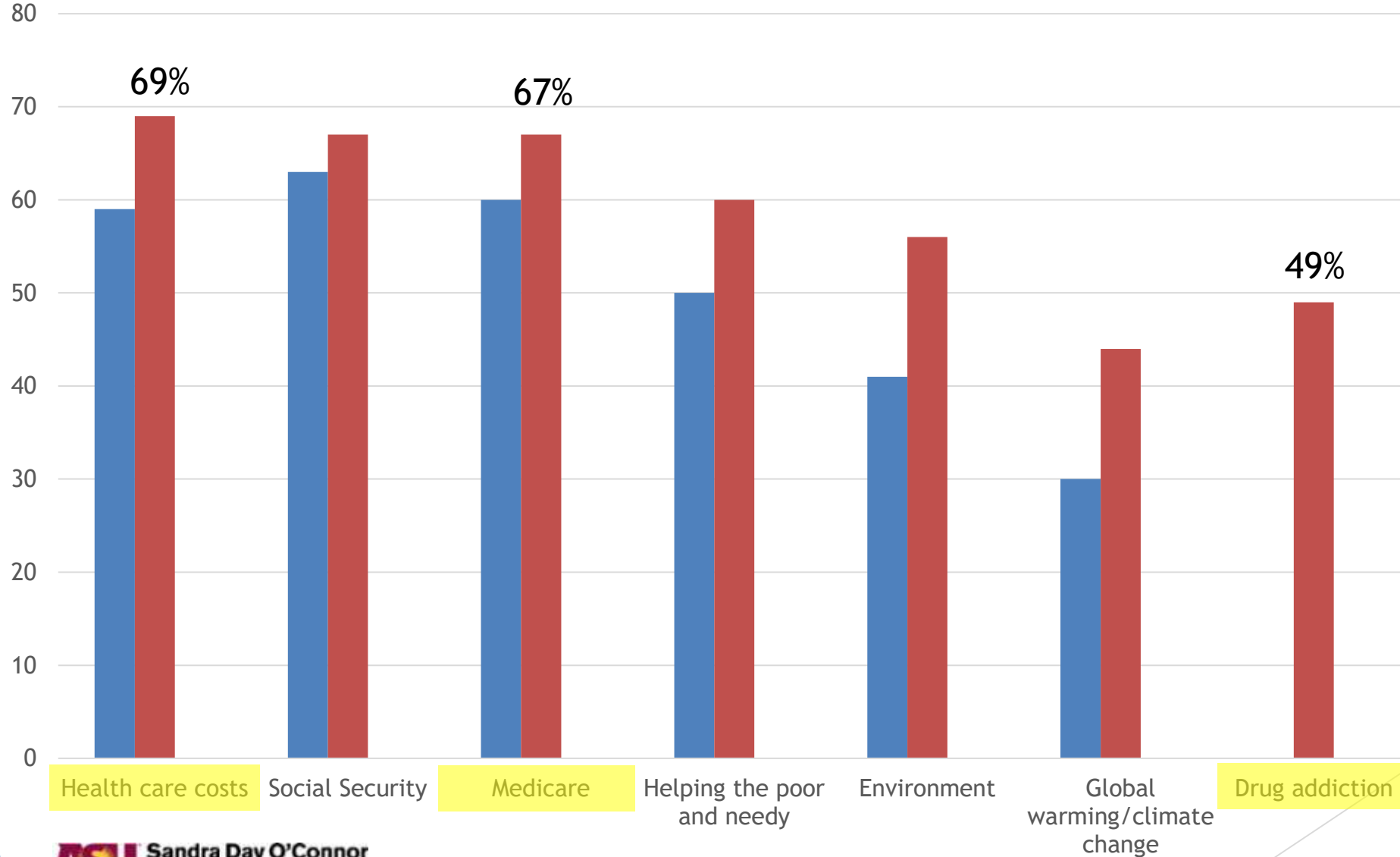
Total life expectancy at birth in years, 1980-2017



Health Spending Per Capita & Life Expectancy 2017

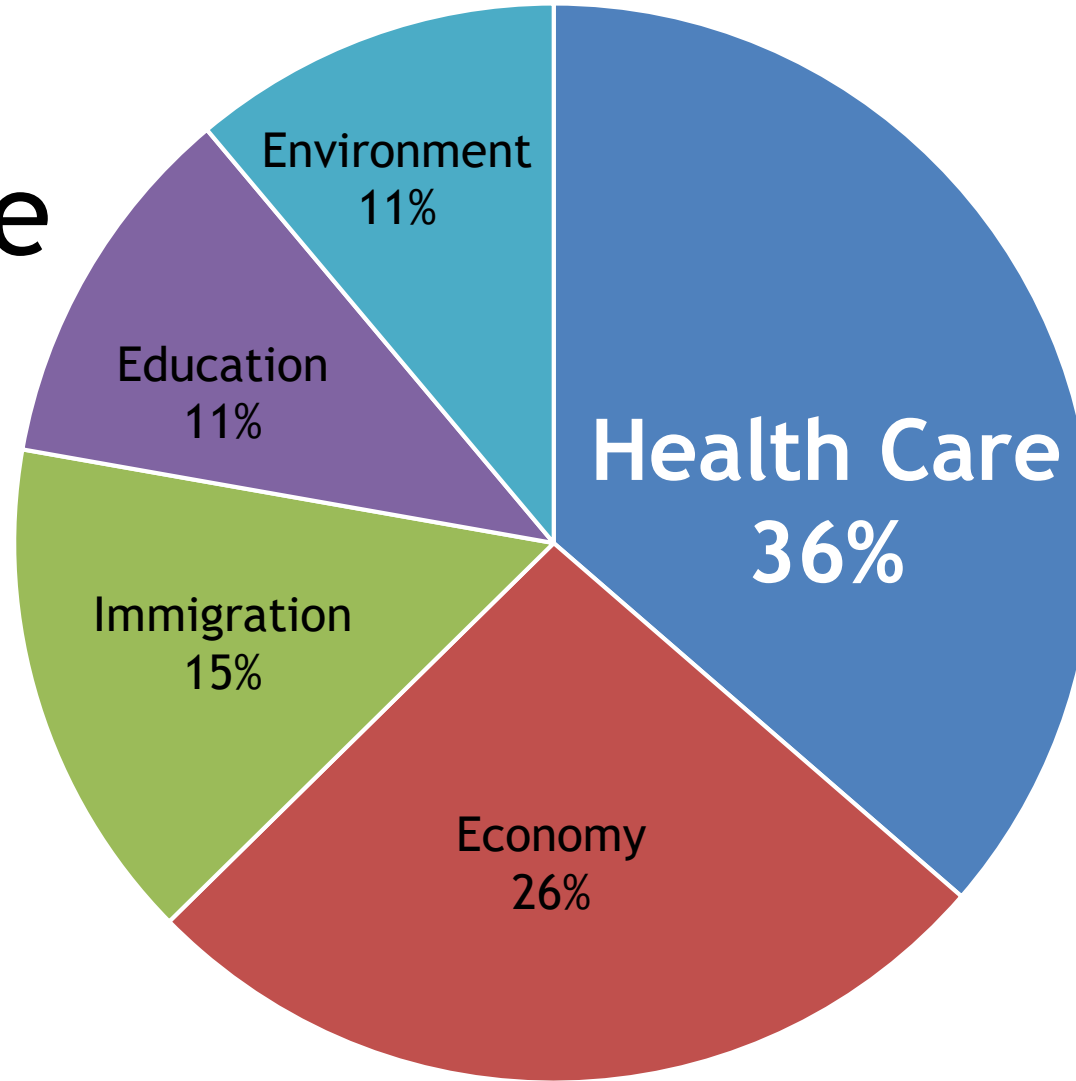


Top Public Priorities - 2009 | 2019



Health Care as a Priority

What is the top issue facing America today?



Primary Objectives

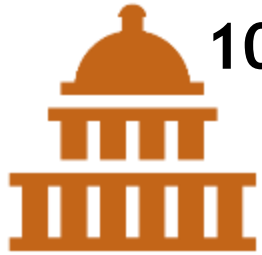
- ▶ What's at Stake: Health of the Nation
- ▶ **Election 2020: Up For Grabs**
- ▶ Democratic Field: Then & Now
- ▶ Major Health Law & Policy Issues
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The White House | Election 2020



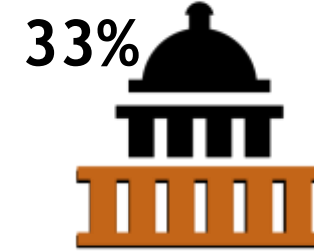
Election 2020: Up for Grabs

Federal Elections



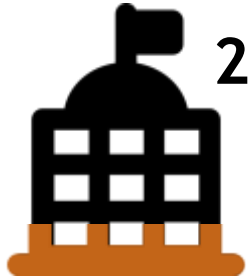
100% U.S. House of
Representatives
(235 D / 197 R / 1 I /
2 vacancies)

U.S. Senate
(12 D / 22 R)



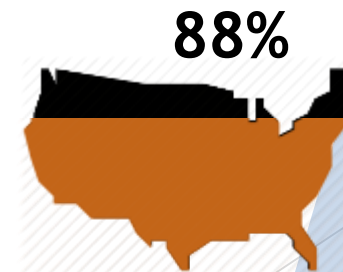
33%

State Elections



22% Gubernatorial
(4 D / 7 R)

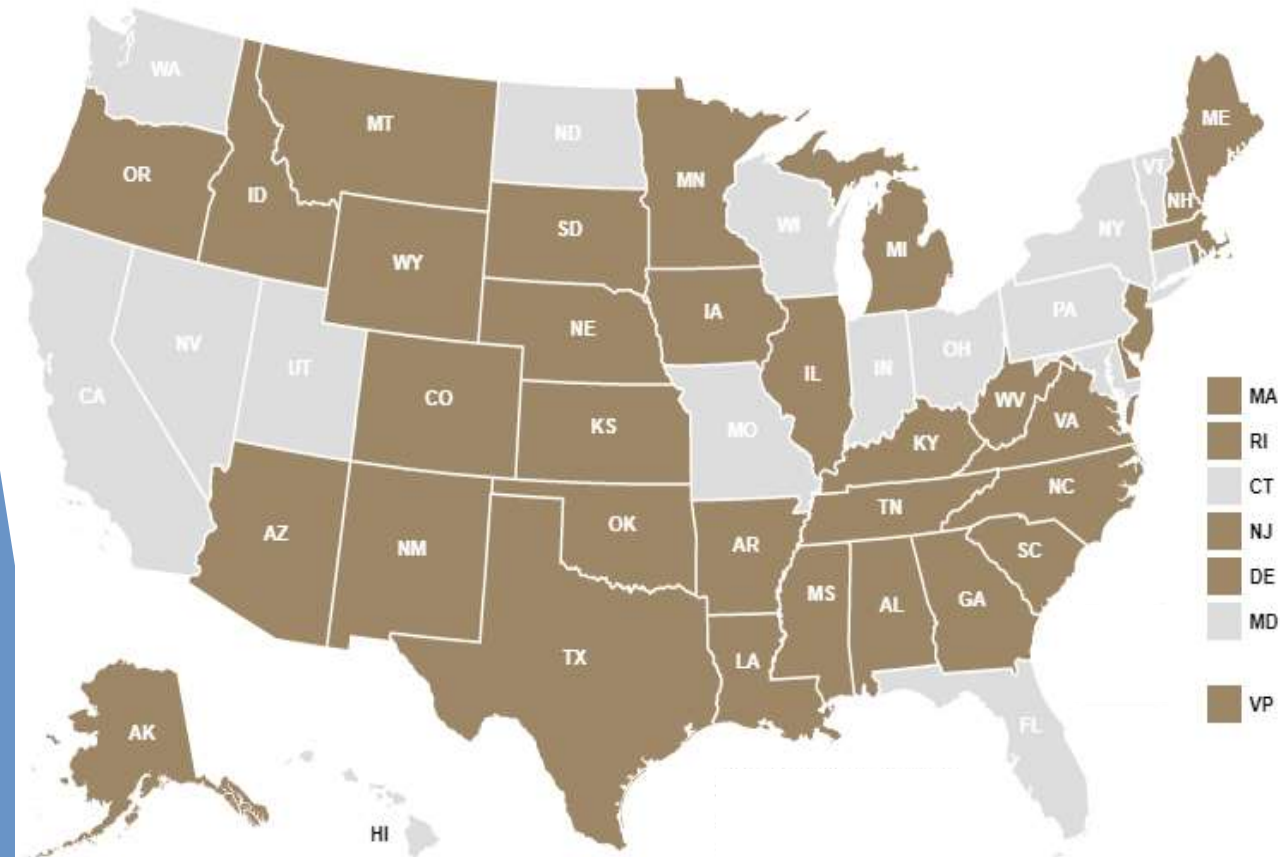
State
Legislatures
44 States



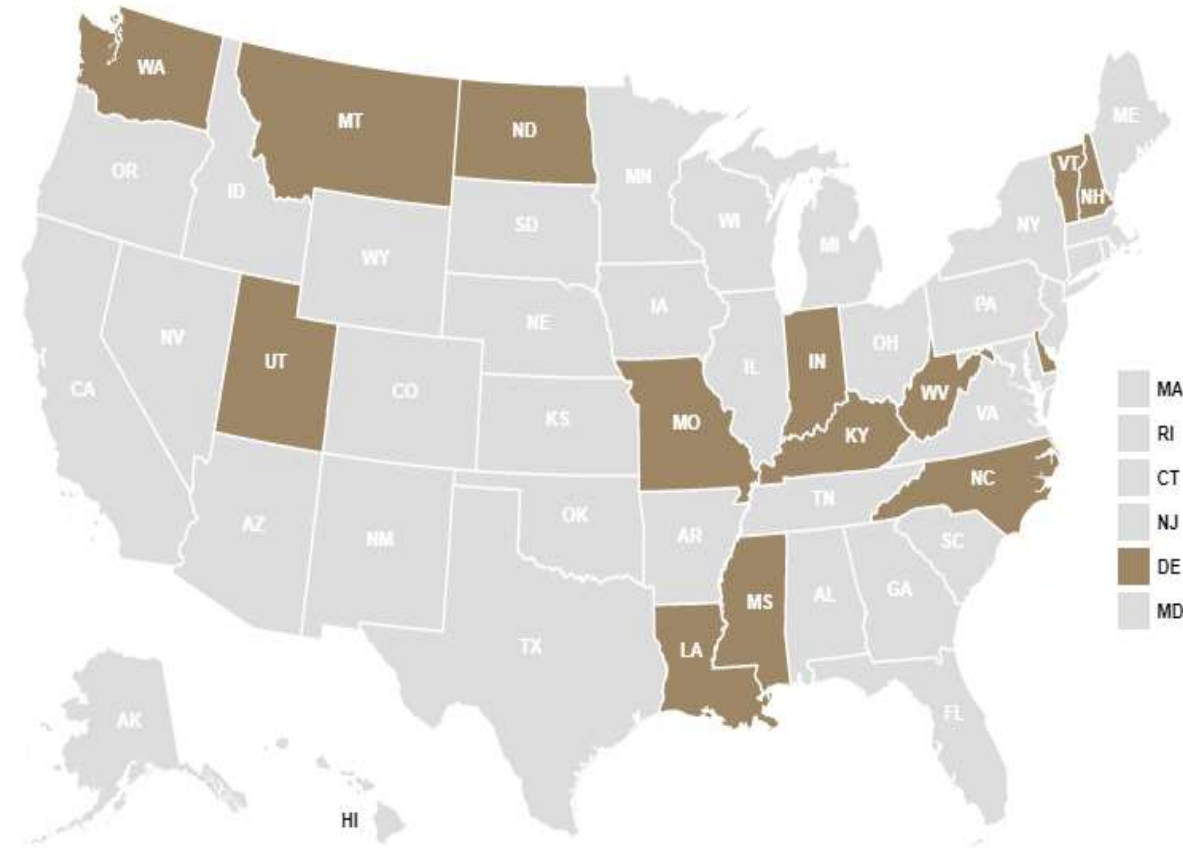
88%

Election 2020: Seats

Senate



Gubernatorial



Primary Objectives

- ▶ What's at Stake: Health of the Nation
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- ▶ **Democratic Field: Then & Now**
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Democratic Candidates: Full Field



Democratic Candidates: Elected Officials



U.S. Senators



Vice President



Mayors



Governors



U.S. House Members

Democratic Candidates: Attorneys



Democratic Candidates: Age



Millennials (1977-1995)

Generation X (1965-1976)



Baby Boomers (1946-1964)



Silent Generation
(before 1946)

Democratic Candidates: Age

Age, Life Span, Healthy Life Span, Disabled Life Span, and Four-Year Survival Probability of 2020 Presidential Candidates With at Least 2% Approval in National Polls^a

Candidates	Exact Current Age, y ^b	At Inauguration Day 2021, y				Four-Year Survival Probability, % ^d
		Exact Age	Life Expectancy	Healthy Life Span ^c	Disabled Life Span ^c	
Bernie Sanders	77.9	79.4	8.7	8.4	0.3	76.8
Joe Biden	76.7	78.2	9.3	9.0	0.4	79.2
Bill Weld	74.0	75.5	10.9	10.4	0.4	83.6
Donald Trump	73.1	74.7	11.4	10.9	0.5	84.8
Elizabeth Warren	70.1	71.6	15.4	14.4	0.9	91.8
Kamala Harris	54.9	56.5	27.6	26.7	0.9	97.6
Cory Booker	50.3	51.8	28.2	27.7	0.5	97.3
Beto O'Rourke	46.8	48.4	31.1	30.6	0.5	98.0
Julián Castro	44.9	46.4	32.9	32.3	0.5	98.4
Tulsi Gabbard	38.3	39.8	38.8	38.3	0.5	99.0
Pete Buttigieg	37.5	39.0	39.5	39.0	0.5	99.0

^a Estimates are based on resident US population that matches attributes of all the candidates. The candidate approval ratings are based on an August 20, 2019 report: https://www.realclearpolitics.com/epolls/latest_polls.

^b Current age estimated as of July 15, 2019.

^c The sum of healthy life span and disabled life span may not add to life expectancy due to rounding.

^d Four-year survival probability is the statistical probability that an individual with these attributes will be alive exactly 4 years after inauguration day in 2021. One hundred minus this percentage is the probability of death in that 4-year time window.

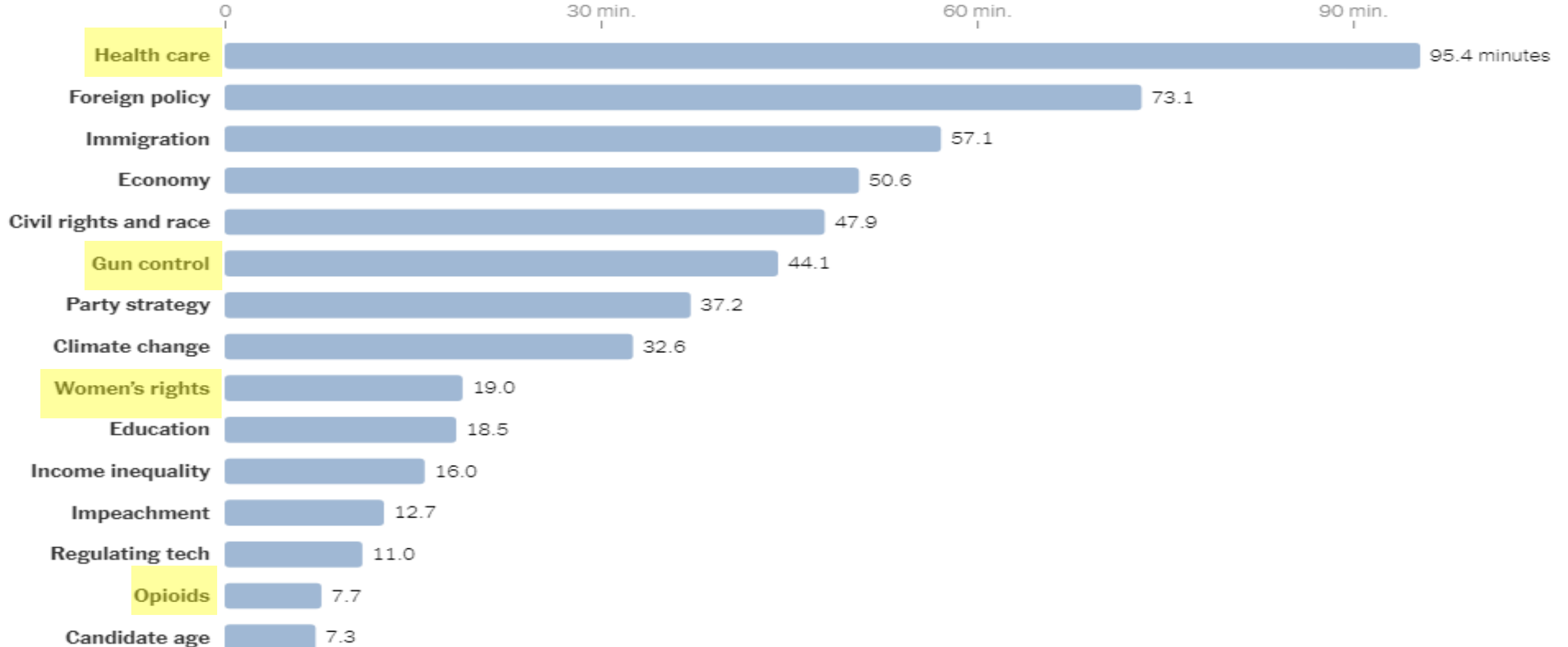
JAMA®
The Journal of the
American Medical
Association

Democratic Candidates: Now



Top Issues: Democratic Debates

Which issues got the most speaking time in the Democratic debates (as of November 2019)



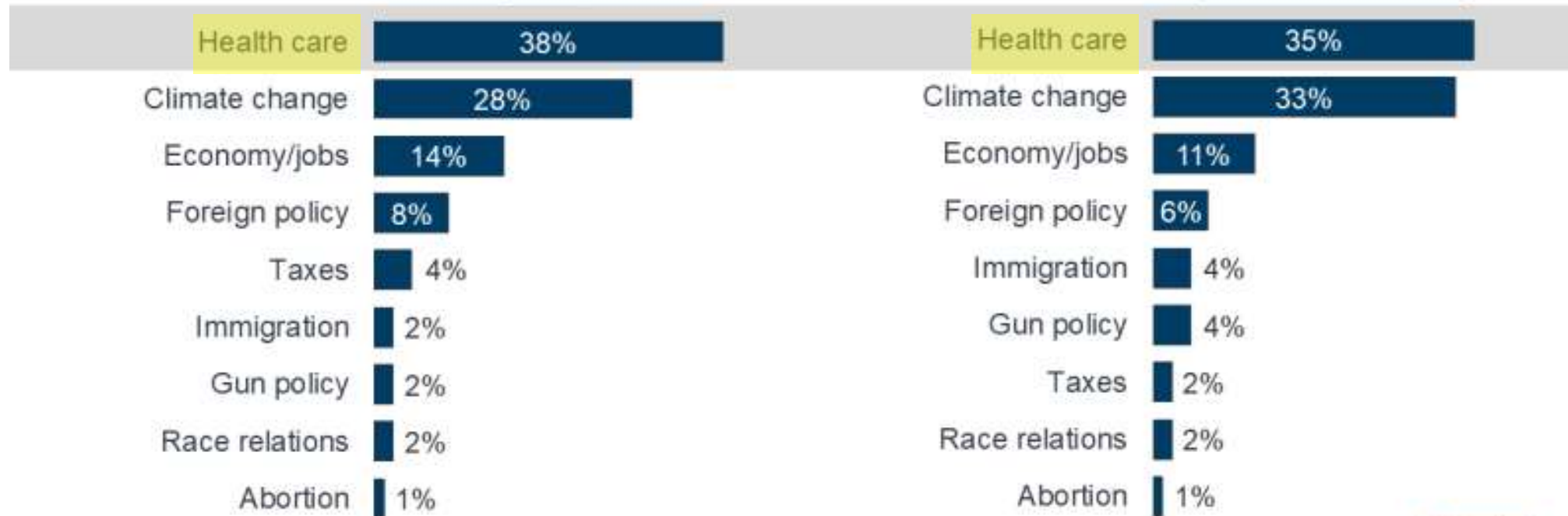
Top Issues: Early Voting

Health Care Ranks Among Top Issues For N.H. Democratic Primary Voters And Iowa Caucus-goers (as of February 12, 2020)

Percent who say each of the following is the most important issue facing the country:

IOWA:

NEW HAMPSHIRE:

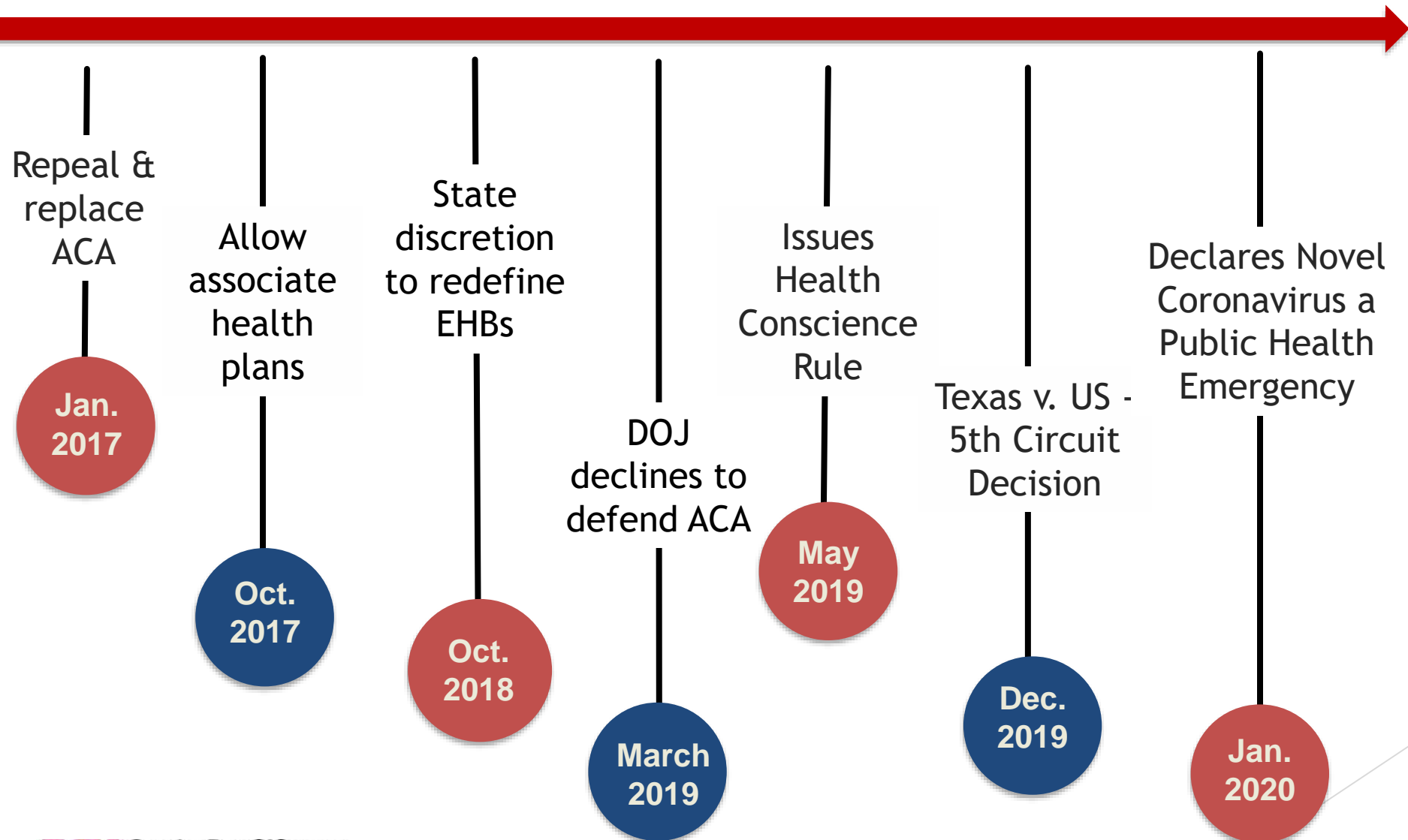


SOURCE: KFF Analysis of AP VoteCast, a survey of N.H. Democratic Primary Voters and Iowa Democratic Caucus-goers conducted by NORC at the University of Chicago.

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Trump Administration - Select Health Policies



Major Health Law and Policy Positions Among 2020 Democratic Presidential Candidates

JLME | May 31, 2019

Public Health and the Law

*James G. Hodge, Jr.,
Leila Barraza, Michelle
Castagne, Hannah-Kaye
Fleming, and Erica N. White*

Assuring the nation's health promises to be among the premier political objectives underlying the 2020 U.S. Presidential election. In 2018, we (and others) identified major public health threats emerging from the 2016 election of President Donald Trump (and Republican control in over half the states).¹ The short- and long-term public health repercussions from related shifts in national

ACA. The Trump administration, however, is actively working to strip access to care for millions through lax implementation and refusals to defend the ACA's core foundations. With many Americans facing potential denials of basic coverage, all the leading Democratic candidates are rallying around universal health care. Popularized by Sanders in his 2016 run and central to his current cam-

Major Health Law & Policy Issues

- ▶ Affordable Care Act
- ▶ Cannabis
- ▶ Climate change
- ▶ Dementia/Alzheimer's
- ▶ Elder care
- ▶ Environmental health
- ▶ Food safety
- ▶ Gun violence
- ▶ Health equity/disparities
- ▶ Immigration
- ▶ LGBTQ
- ▶ Maternal/child health
- ▶ “Medicare for All”
- ▶ Mental Health
- ▶ Opioids
- ▶ Prescription drugs
- ▶ Reproductive rights
- ▶ Social determinants of health
- ▶ Surprise bills
- ▶ Tobacco/nicotine products
- ▶ Tribal health services
- ▶ Vaccines
- ▶ Veterans' Affairs

Table 1. Health Law & Policy Positions 2020 Democratic Presidential Candidates						Major Topics									
						I.	II.	III.	IV.	V.	VI.	VII.	VIII.	IX.	X.
						Medicare for All	Climate Change	Repro. Rights	Mental Health	ACA	Gun Violence	Opioids	Cann- abis	LGBTQ	Rx Drugs
#	Candidate	Most Recent Title	ST.	Age	Launch										
1	Michael Bennet	Senator	CO	54	5/2/19	■	■	■				■			
2	Joe Biden	Vice President	PA	76	4/25/19	■	■	■	■	■	■	■	■		
3	Cory Booker	Senator	NJ	50	2/1/19	■	■	■	■	■	■	■	■	■	■
4	Steve Bullock	Governor	MT	53	5/14/19	■	■	■		■		■			■
5	Pete Buttigieg	Mayor, South Bend	IN	37	1/23/19	■	■	■	■		■	■	■	■	■
6	Julián Castro	HUD Secretary	TX	44	1/12/19	■	■	■		■		■		■	
7	Bill de Blasio	Mayor, New York City	NY	58	5/16/19	■	■		■						
8	John Delaney	Representative	MD	56	7/20/17	■	■		■	■		■		■	■
9	Tulsi Gabbard	Representative	HI	38	1/11/19	■	■	■	■	■	■	■	■	■	■
10	Kirsten Gillibrand	Representative	NY	52	1/15/19	■	■	■	■	■	■	■	■	■	
11	Kamala Harris	Senator	CA	54	1/21/19	■	■	■	■	■	■	■	■	■	■
12	John Hickenlooper	Governor	CO	67	3/4/19	■	■	■	■	■	■		■	■	■
13	Jay Inslee	Governor	WA	68	3/1/19	■	■	■		■			■	■	
14	Amy Klobuchar	Senator	MN	58	2/10/19	■	■	■	■	■	■	■	■	■	■
15	Wayne Messam	Mayor, Miramar	FL	44	3/28/19	■	■	■	■		■				■
16	Seth Moulton	Representative	MA	40	4/22/19	■	■		■	■			■		
17	Beto O'Rourke	Representative	TX	46	3/14/19	■	■	■	■	■	■	■	■	■	
18	Tim Ryan	Representative	OH	45	4/4/19	■	■	■	■	■	■	■			
19	Bernie Sanders	Senator	VT	77	2/19/19	■	■	■	■	■	■	■	■	■	■
20	Eric Swalwell	Representative	CA	38	4/8/19	■	■	■	■		■		■		■
21	Elizabeth Warren	Senator	MA	69	2/9/19	■	■	■	■	■	■	■	■	■	■
22	Marianne Williamson	Author	CA	66	1/28/19	■	■	■	■		■			■	
23	Andrew Yang	Entrepreneur	NY	44	11/6/17	■	■	■	■	■	■	■	■	■	■
					TOTALS	23	23	20	19	17	16	16	15	15	13

Trending Issues: Other Topics



Climate Change



Immigration



National Security



LGBTQ

Trending Issues: Hot Topics



Affordable Care Act



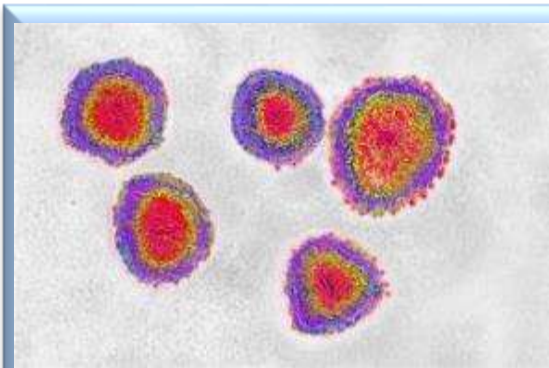
Medicare for All



Prescription Drugs



Gun Violence



Novel Coronavirus

Trending Issues: Major Candidates



Bernie Sanders



Pete Buttigieg



Joe Biden



Elizabeth Warren



Amy Klobuchar



Mike Bloomberg

Affordable Care Act

Protect, strengthen,
and expand



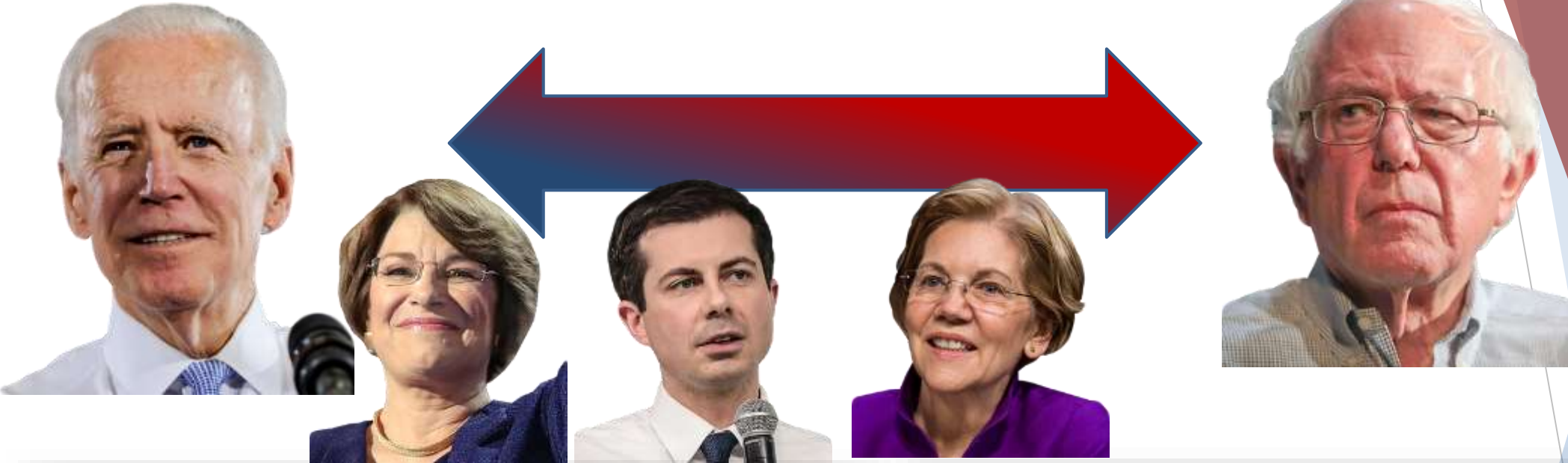
Temporarily maintain
and add public option



Legislation to ensure
universal coverage



Medicare for All



**Biden campaign rips
'Medicare for All,' calls
Dems to protect
Affordable Care Act**

BY TAL AXELROD - 07/20/19 04:41 PM EDT

**Bernie Sanders: Medicare for All means more taxes,
better coverage**

POSTED 6:33 PM, AUGUST 30, 2019, BY AP WIRE SERVICE



Prescription Drugs

Foreign
importation

International price
referencing

Federal negotiation with
pharmaceutical
companies

Federal government to
manufacture generic
prescription drugs



Gun Violence Prevention



Universal
background
checks | Close
“loopholes”



Assault
weapons
ban



Voluntary
buyback
program



“Stop and
Frisk”



Novel Coronavirus: COVID-19

Little to no
direct input



Alludes to
global health
threat



Official
Senatorial
Statement



She's got a
plan



Full throttle
politization



Primary Objectives

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Facing Realities: Practicalities



Costs



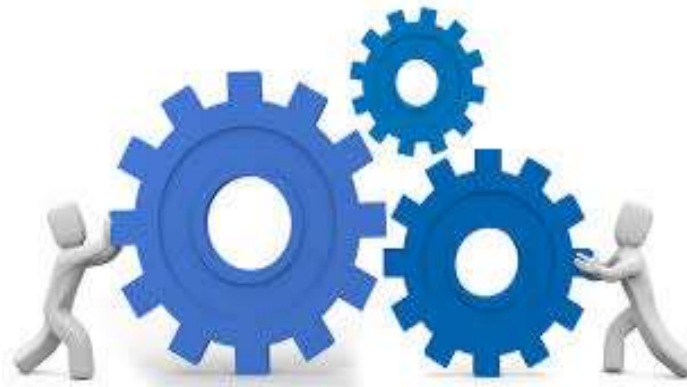
Logistics



Industry



Lobbies



Implementation



Infrastructure

Facing Realities: Legal Limits



Federalism



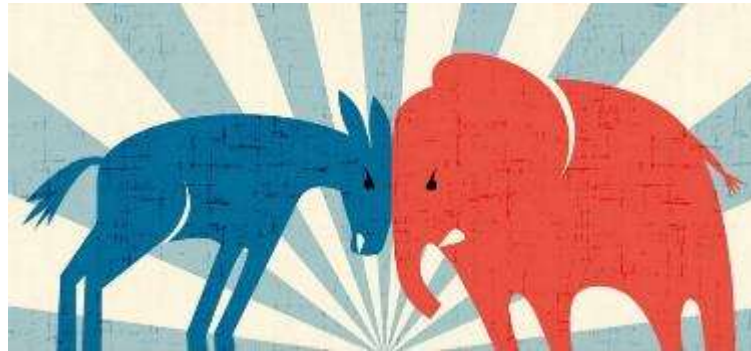
Separation of Powers



Individual Rights



Benefits

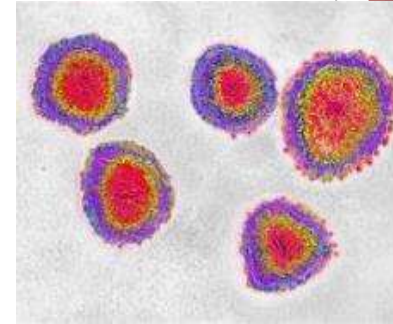


Politics



Litigation

Trending Issues: Legal Forecast



1. Viability



2. Analysis



3. Forecast



Legal Viability: Affordable Care Act

Objective: Protect and build on ACA



Analysis: Affordable Care Act

As Court Case Imperils Affordable Care Act, Some States Prepare Contingency Plans

By *Stephanie Armour*

Oct. 21, 2019 5:30 am ET

Lawmakers explore ways to preserve coverage, benefits if the health law is struck down

THE WALL STREET JOURNAL.

Moda Health Plans v. United States

Are insurers entitled to risk corridor payments?

San Francisco v. Azar

May providers deny care under the Health Conscience Rule?

State of New York v. US Dep't of Labor

Does the association health plan rule violate ACA?

Forecast: Affordable Care Act



Partly Cloudy

Legal Viability: Medicare for All

Objective: Federal single-payor system



Medicaid



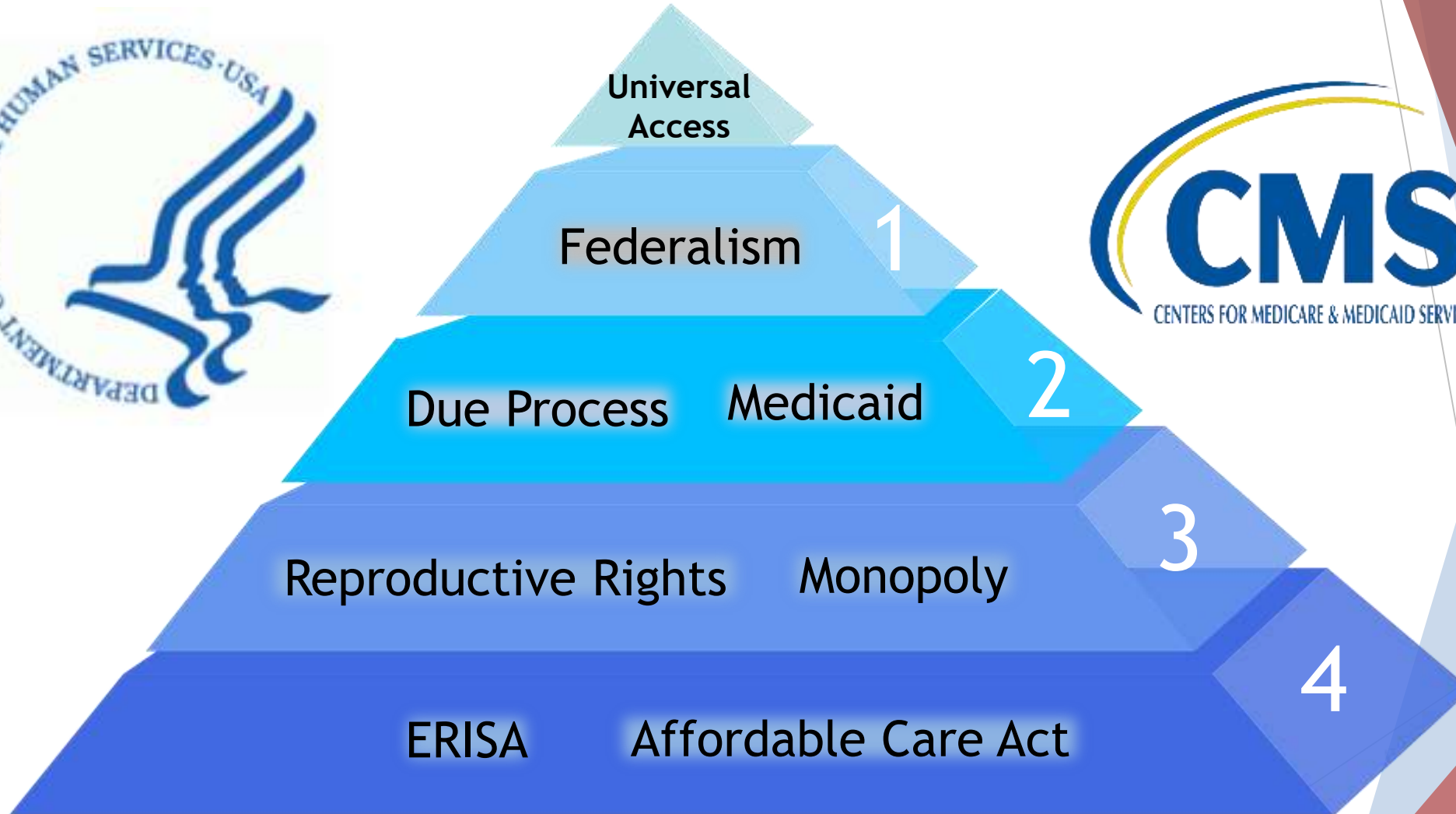
Medicare-for-All Would Eliminate Most or All of Medicaid, But No One Is Talking About It

Drew Altman 

Published: Jul 18, 2019

KFF
HENRY J. KAISER
FAMILY FOUNDATION

Analysis: Medicare for All



Forecast: Medicare for All

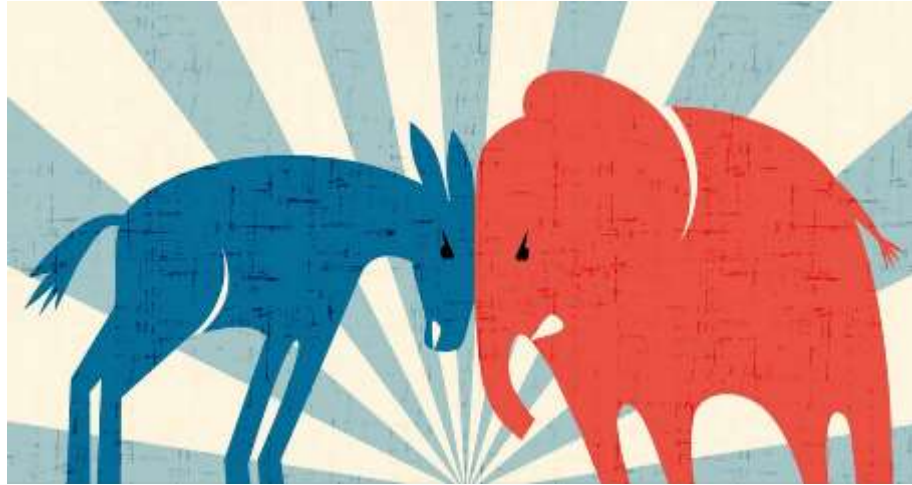


Dreary

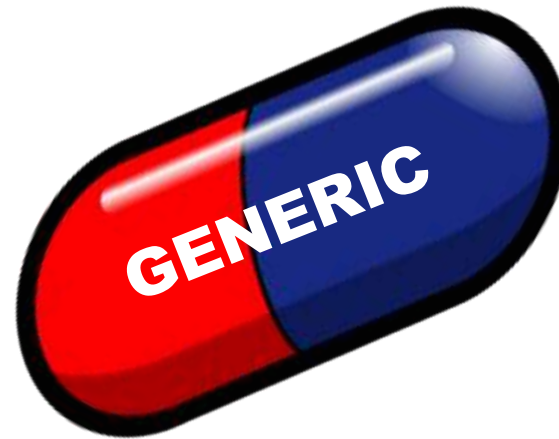
Legal Viability: Prescription Drugs

Objective: Federal manufacturing of generics

- ▶ HHS to manufacture drugs if: (1) no company is manufacturing it; (2) limited manufacture + price spikes; (3) drug is in short supply; or (4) “essential” drugs face limited competition & high prices



Analysis: Prescription Drugs



Forecast: Prescription Drugs

Partly Sunny

Legal Viability: Gun Violence Prevention

Bloomberg's Blunt Defense of Stop-and-Frisk Policy Draws Scrutiny



By Alexander Burns and Maggie Haberman

The New York Times

Feb. 11, 2020



“The way you get the guns out of the kids’ hands is to throw them up against the walls and frisk them”



Analysis: Gun Violence Prevention

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

DAVID FLOYD, LALIT CLARKSON, DEON
DENNIS, and DAVID OURLICHT, individually and
on behalf of a class of all others similarly situated,

Plaintiffs,

- against -

THE CITY OF NEW YORK,
Defendant.

OPINION AND ORDER

08 Civ. 1034 (SAS)



ASU Sandra Day O'Connor
College of Law
Arizona State University
Center for Public Health Law & Policy



Forecast: Gun Violence

A photograph of a dramatic, stormy sky. Dark, heavy clouds fill the upper portion of the frame, with bright light breaking through in several places, creating a rainbow-like effect. The lower portion of the image is a lighter, hazy greenish-yellow, suggesting a landscape or water surface obscured by mist or rain.

Stormy

Legal Viability: Novel Coronavirus



Joe Biden: Trump is worst possible leader to deal with coronavirus outbreak



So far, Trump has blithely tweeted that 'it will all work out well.' Yet the steps he's taken as president have only weakened our capacity to respond.

Joe Biden Opinion contributor

Published 4:00 a.m. ET Jan. 27, 2020 | Updated 4:13 a.m. ET Jan. 27, 2020

Analysis: Novel Coronavirus

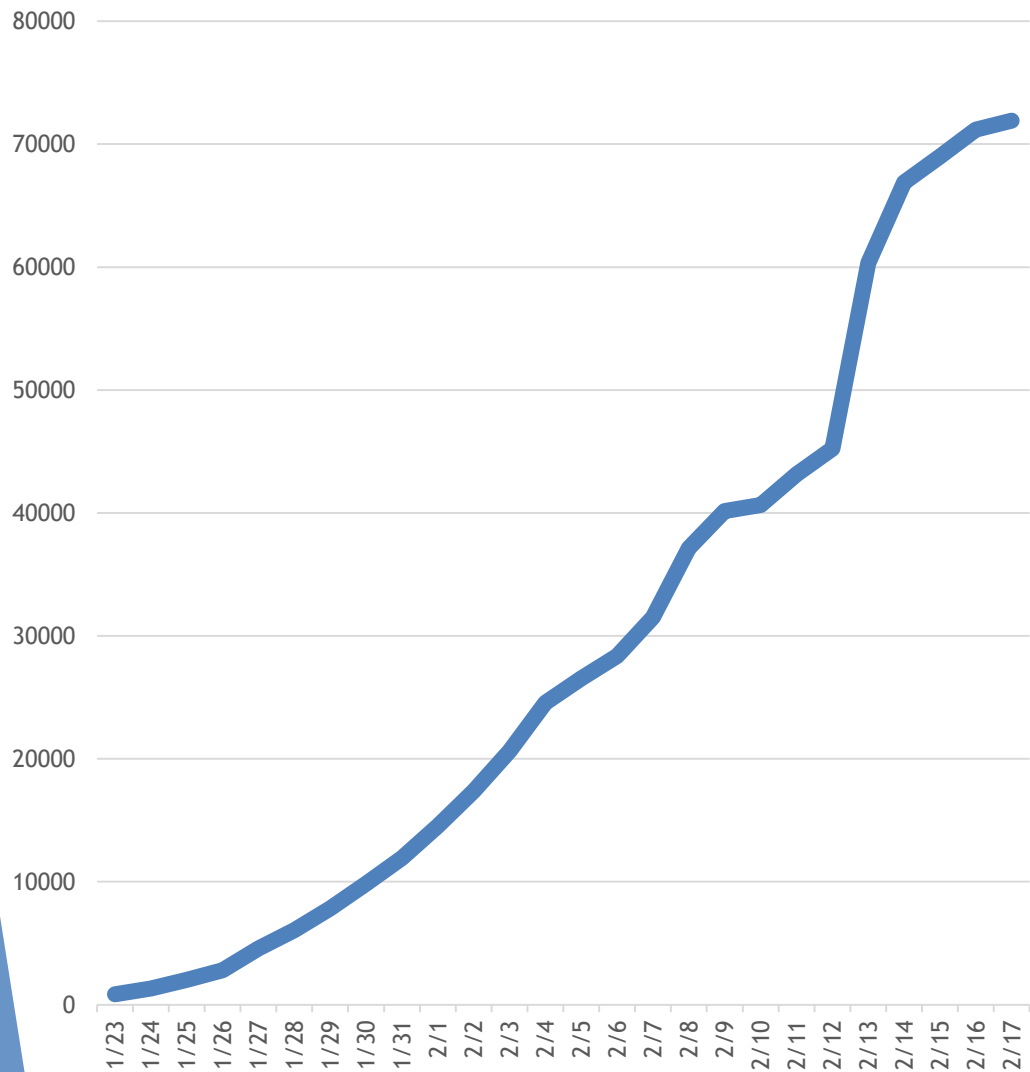
“Joe Biden’s track record on appropriate reactions to outbreaks is about as poor as his track record on almost everything else”



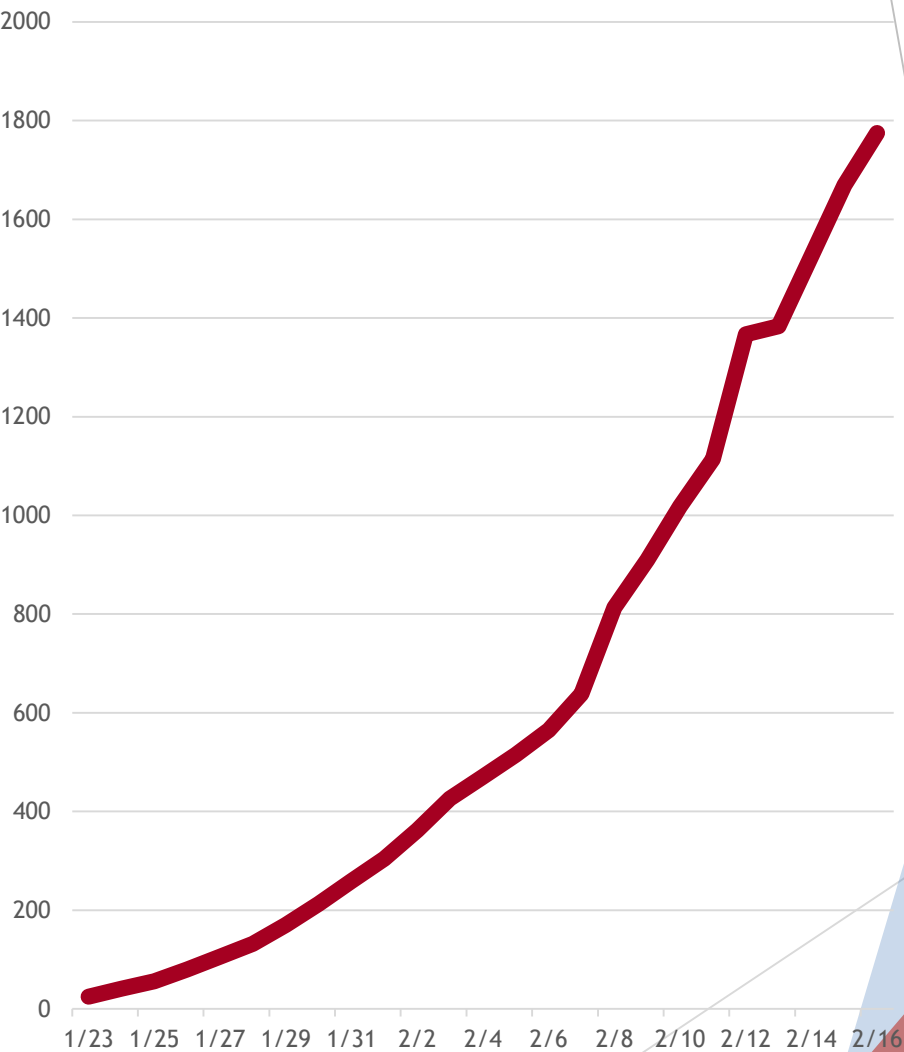
Sarah Matthews
Deputy Press Secretary

COVID-19 Longitudinally

Total Number of Cases



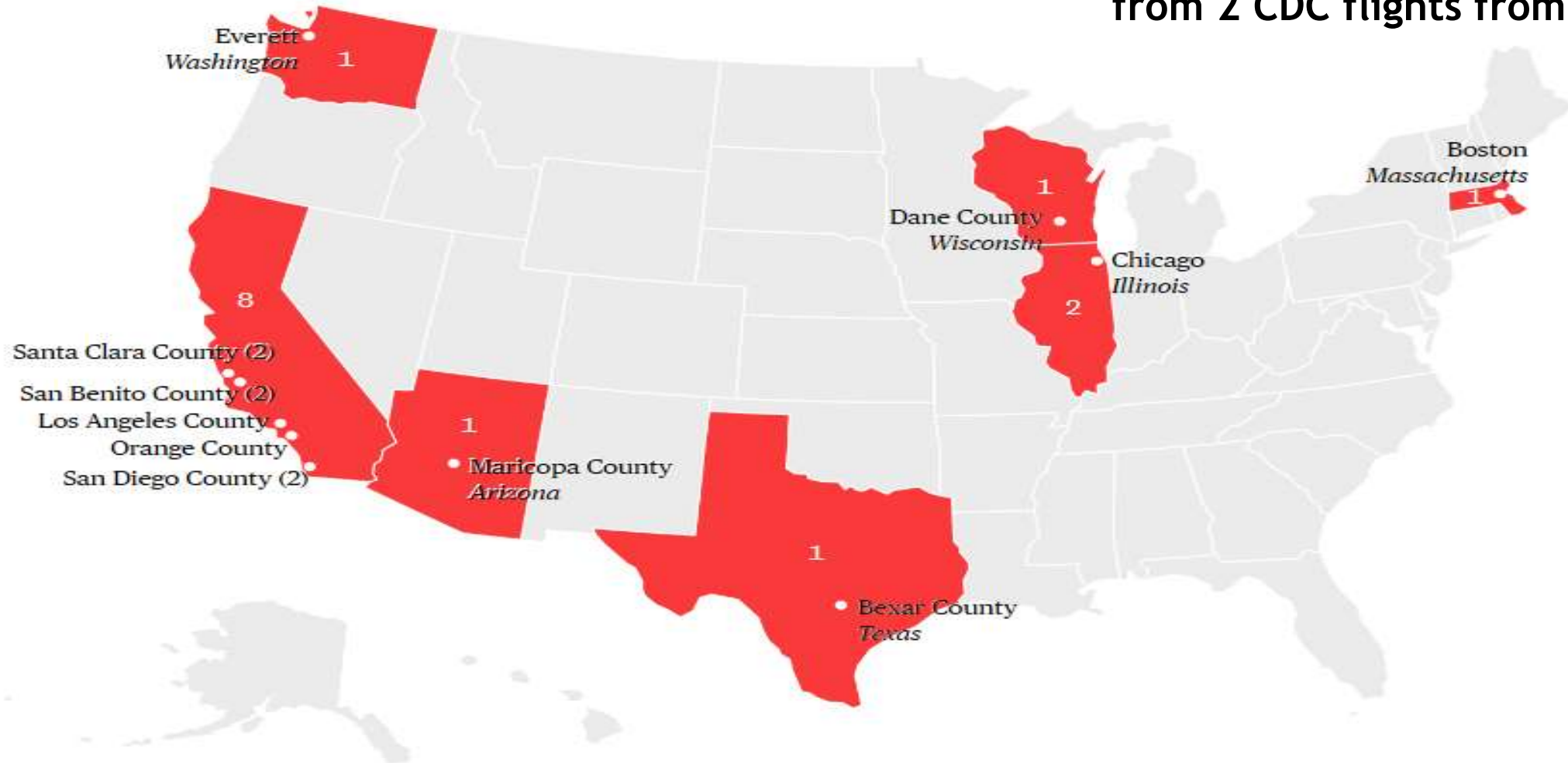
Total Number of Deaths



U.S. Cases of COVID-19

Confirmed cases of the COVID-19 in the United States

15 Prior Cases + 14 New Cases
from 2 CDC flights from Japan



Forecast: Novel Coronavirus



Trending Issues: **Forecasts**

*Partly
Cloudy*

Affordable Care Act

Dreary

Medicare for All

*Partly
Sunny*

Prescription Drugs

Stormy

Gun Violence

Tempest

Novel Coronavirus

Questions & Comments

Special thanks to **Erica N. White**, Senior Legal Researcher, for her research, design & formatting contributions.



james.hodge.1@asu.edu | @jghodgejr