

The Detroit News

Give Alex Azar credit for two pre-pandemic actions

Ramesh Ponnuru

December 30, 2020

Alex Azar, the secretary of Health and Human Services, has been one of the most effective Cabinet heads in the Donald Trump administration, advancing both its economic and its social agenda. When the administration made self-defeating moves on health care, as with its support for a dubious lawsuit seeking to kill Obamacare, it was over Azar's objections. Operation Warp Speed, which he helped oversee, has yielded vaccines faster than many people thought possible.

Xavier Becerra, the California attorney general who is President-elect Joe Biden's nominee to replace Azar, will seek to reverse many of Azar's policies if he is confirmed. That's life in the system of executive government that the U.S. has stumbled into. In two cases, though, Biden and Becerra would be wise to leave Azar's handiwork in place.

The first policy concerns insurance coverage for contraception and sterilization. In 2012, Barack Obama's administration introduced a requirement that most employers provide it. But the courts and Azar have relaxed it.

Biden has said he wants to return to the strong version of the mandate that existed before the Supreme Court's 2014 decision allowing Hobby Lobby and other companies whose owners object to some of these benefits to opt out. He probably has no way to accomplish that goal.

The court decided that case by 5-4, and today's lineup of justices would probably come out 6-3 the same way. Congress could amend the religious freedom law at issue in that case so that business owners who object still have to provide this coverage. But even if the Democrats narrowly win the Senate, they probably won't have the votes for it.

Biden could, however, withdraw the additional exemption that Azar extended to employers, including the Little Sisters of the Poor, a charity run by Catholic nuns. The Obama administration tried to make these employers sign a form authorizing their health plans to cover the benefits in question, supposedly at no cost to the employers. Azar released them from that obligation.

Reimposing it would generate still more litigation, with the nuns arguing that both the religious freedom law and the First Amendment require a full exemption for them. The courts might well side with the nuns (as they should).

But even if they didn't, the best-case scenario for the Biden administration is a politically costly and meaningless win. In several rounds of litigation, nobody has identified an employee of the nuns who has been harmed by their failure to provide contraceptive coverage. If Biden chooses to wage this battle, he will effectively be pursuing culture war for its own sake.

The second policy concerns short-term, limited-duration health insurance. This type of insurance plan isn't subject to Affordable Care Act regulations that have increased premiums for other plans. In the first years of the Affordable Care Act, enrollment in short-term plans grew rapidly, although they remained a small part of the market.

Fearing that this growth was threatening the act's insurance exchanges, the Obama administration imposed new limits on short-term plans a few days before the 2016 election. Where the plans had previously been allowed to last for a year, they were now capped at three months. They were also forbidden to guarantee renewability for customers whose health status declined. The aim was to force people into the exchanges.

Trump and Azar undid the restrictions. As two federal judges concluded while allowing this bit of deregulation, the effects have been more in line with Republican than Democratic expectations. The Affordable Care Act's subsidies kept the exchanges stable even when people had the short-term option. In 2019, the Congressional Budget Office estimated that the Obama rules would result in about 500,000 more people going uninsured each year, while lowering premiums only 1%.

The Democrats' leading public argument against the short-term plans is that they are "junk insurance." In fact, they have very high satisfaction rates. And as the CBO projection suggests, for a lot of people the alternative to these plans that's affordable isn't better insurance. It's no insurance at all.

During the final presidential debate, Biden said, "Not one single person with private insurance would lose their insurance under my plan." It was a recklessly broad statement, as almost any set of changes to health policy would have rippling effects on insurance markets. If his administration kneecaps short-term insurance, though, he will be going out of his way to break his promise.

Michael Cannon, a health policy analyst at the libertarian Cato Institute, suggests a better path forward: Allow short-term plans alongside Affordable Care Act plans. "The two markets could compete to see which can make coverage more affordable and secure."

Biden is almost certainly going to try to undo as many of Trump's health policies as possible, just as Trump tried to undo Obama's. Becerra is a social liberal without any nuance, and will surely want to continue the struggle against the Little Sisters of the Poor and allied groups, especially. And it would be unrealistic to ask Biden and the Democrats not to pick any fights with conservatives and Republicans. It's reasonable, though, to wish they would pick better ones.