



UNITED
STATES *of*
CARE

2023 State Legislative Session Wrap Up

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ABOUT US OF CARE

United States of Care (USofCare) is a non-partisan non-profit working to ensure everyone has access to quality, affordable health care regardless of health status, social need, or income. By putting the needs of people at the forefront of our research and policy solutions, we can create a health care system that works for people.

In 2022, USofCare released a roadmap of 12 policy solutions that reflect what people want out of the health care system. These 12 solutions, titled the “United Solutions for Care”, comprise common sense policy reforms that garner broad public support across demographic, geographic, and partisan domains.

USofCare, grounded in our listening work and the United Solutions for Care, advocates for policy reforms at the state and federal levels. Translating these policy solutions into meaningful reforms for legislative and regulatory uptake is central to our advocacy efforts. As such, our experience and success advancing these policy solutions in states can influence the kinds of reforms that Congress and the administration may ultimately take up legislatively and regulatorily.

This report distills for federal and state policymakers, advocates, media, and other stakeholders the top health reform trends that occurred in states during legislative sessions in 2023, with a particular focus on the affordability crisis everyday people are encountering in the health care system. As such, this report reinforces the success states are having in advancing health care reforms that have evaded federal uptake.

The trends identified in this report are significant in advancing a very simple narrative: that states are leading the way on tackling health reforms that will drive down costs and prices, protect health coverage, and improve access. Federal policymakers should build on this momentum and accelerate the emergence of these reforms within the federal policymaking arena to deliver meaningful solutions for the health system challenges people face.

Introduction

Shifts in legislative and gubernatorial control, an influx of freshman legislators, the end of the public health emergency, abortion and reproductive health access, and the need to address key issues like affordability and pricing marked how states navigated the 2023 legislative session.

"A survey from early 2023 found that 60% of Americans say reducing health care costs should be a top priority for the President and Congress to address this year."

- Pew Research Center, 2023

With rising health spending consuming daily headlines nationwide, the economy and inflation polled as voters' top policy concern. Voters looked to elected officials to address economic insecurity, the increased cost of living, and the subsequent impact on their jobs and families. Americans pay more per person for health care than any other similarly-situated countries, with health care spending primarily driven by hospital pricing that outpaces inflation and saddles consumers with unsustainable costs. A recent survey found that 35% of Americans said their financial situation was worse in 2022 than the year prior, highlighting that high health care costs force many families to choose between affording health care or other basic needs in order to make ends meet, a trend that largely drove the health care policy landscape in state legislatures.

As legislative sessions draw to a close in many states,¹ it is clear that legislators are responding to the pressures that their constituents are feeling. Our analysis of the 2023 legislative session reveals **three key themes emerging** for state health policy reforms:

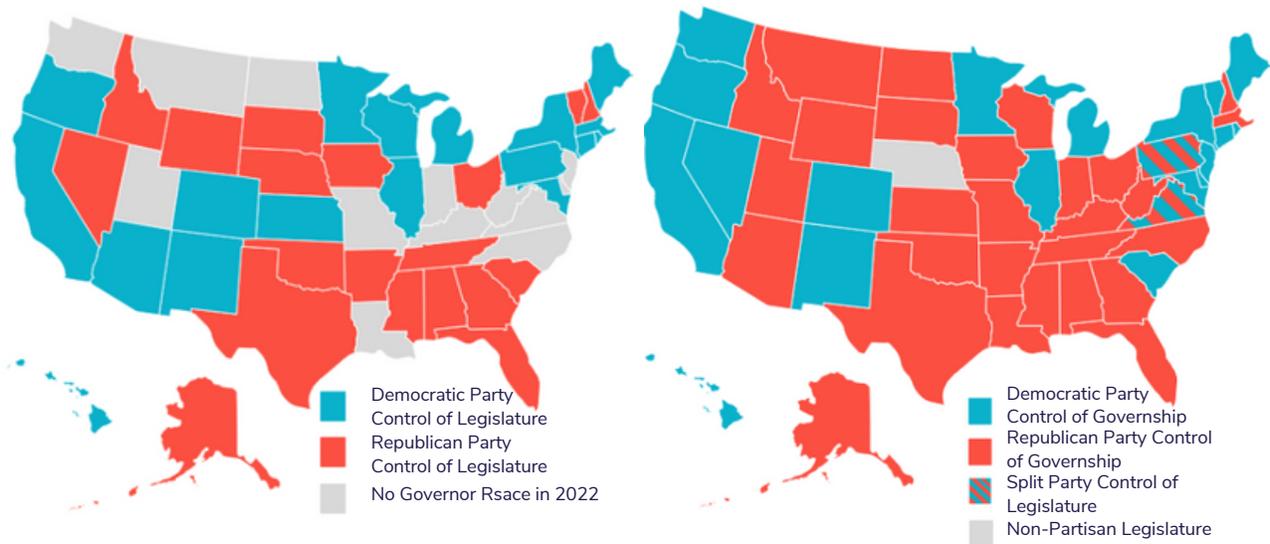
1. States Advanced Policies that Reign In Health Care Prices for Everyday People;
2. As Consumers Faced Threats to their Health Care, States Stepped in to Protect Access to Coverage and;
3. States Sought Out Opportunities to Innovate and Improve Access to Affordable Health Coverage.

These themes are evident in transformative state policy solutions to expand access to affordable coverage that meets people's specific needs. Threaded throughout each of these trends is a recognition that health inequities persist nationwide; individual states are making progress to eliminate systemic barriers to care and disparities for at-risk and traditionally underserved constituencies with targeted reforms and actions. This report details progress made in the 2023 legislative session to reign in pricing, protect access to coverage, and to advance innovative forms of coverage.

Based on that progress, we provide a glimpse into the implications these reforms will have on 2024 state legislative sessions, as well as how these policy gains translate into federal policy.

A Changing Landscape: Electoral Shifts and Transitions Out of the Pandemic Paved the Way for State Health Reforms

State Party Control Post-2022 Midterm Election



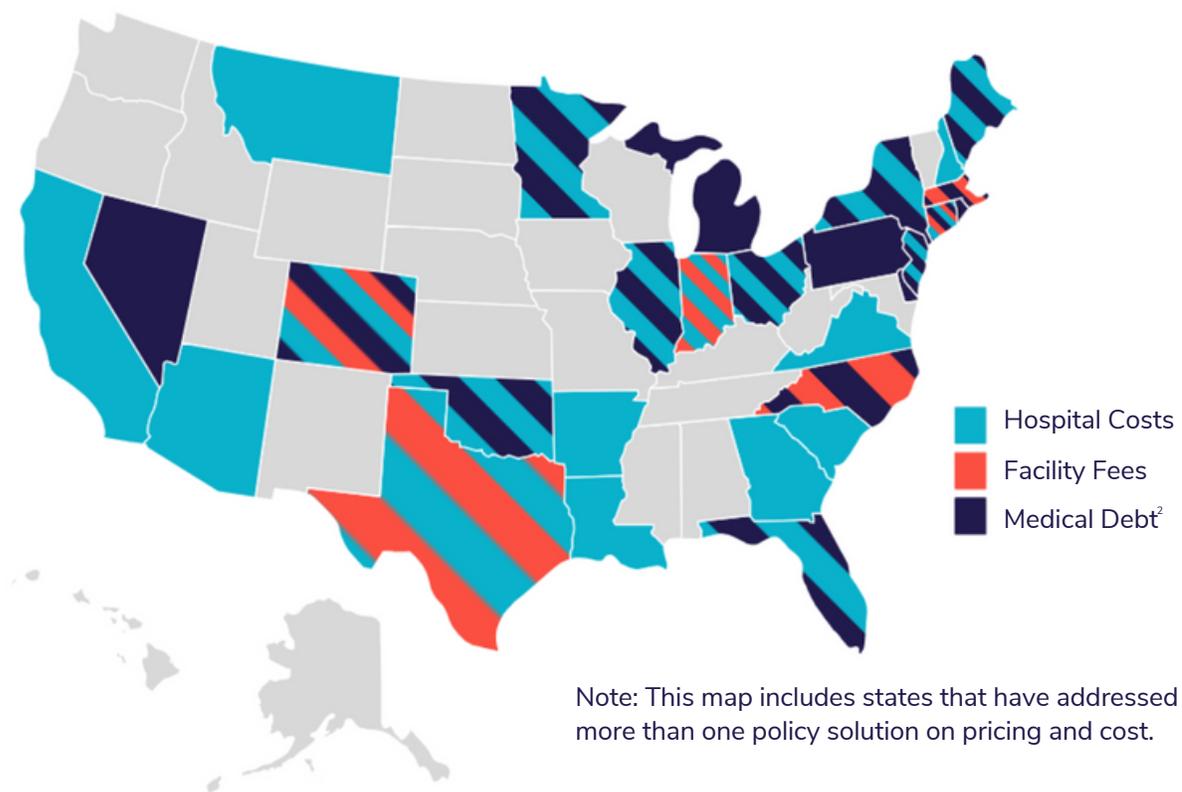
The 2022 midterm elections changed several state dynamics, the effects of which can be clearly seen in the political will of states in 2023. Democrats gained control of four state chambers—the Michigan House and Senate, the Minnesota Senate, and the Pennsylvania House—bringing Democrats full control of 19 state legislatures and Republicans control of 28. Additionally, the midterms resulted in two split legislatures: Virginia and Pennsylvania. Republicans flipped two governorships and Democrats three, bringing the number of divided states, or states with different parties in control of the Governor and legislature, down to 10. Notably, Michigan, Massachusetts and Minnesota gained Democratic trifectas, Nevada lost their Democratic trifecta with the flip of their Governorship, and Arizona lost a Republican trifecta with the election of a Democratic governor for the first time since 2009. Not only did we see an increase in states with one-party control, we also saw the number of states with veto-proof majorities increase to 26, following a trend that began during the 2010s.

On the heels of these electoral shifts, the end of the public health emergency (PHE) also triggered some states to examine how they were positioned to transition their residents into a new coverage paradigm. In March 2023, when the PHE-related Medicaid continuous coverage provision came to an end, states initiated the redetermination of eligibility for their Medicaid enrollees. It is estimated that more than 23.3 million people gained access to Medicaid and/CHIP nationwide during the two years the Medicaid continuous enrollment provision was in effect.

With its expiration, approximately 17 million people are expected to roll off state Medicaid programs. In response, states began the critical debate to identify the most effective approach to preserving health care access for the millions of individuals losing their Medicaid coverage this session, while also looking at how redeterminations affect funding and their budget responsibilities.

Taken together, the changing political landscape, in addition to the transition out of the PHE and a “return to normal,” created opportunities for health care reforms to take root to address health care issues facing everyday people, from coverage to cost and health equity to affordability. With this backdrop, the 2023 legislative session saw progress in three key areas: reigning in health care prices and lowering costs for consumers, protecting access to coverage, and innovations to improve access to health coverage.

State Trend #1: States Advanced Policies that Reign In Health Care Prices for Everyday People



Payers, policymakers, employers, consumers, and other stakeholders are desperate for policy solutions to apply downward pressure on hospital and provider pricing, leading to a more affordable and functional health care system for all. As the nation emerges from the public health emergency, state legislatures focused their sessions on addressing the key drivers in health care pricing and costs with sights set on hospitals and providers.³

Trend data demonstrates that 31% of national health care spending is attributable to hospitals, the primary driver of increasing costs for consumers and payers.

- National Health Expenditures, 2021

This increase is due, in large part, to a decades-long industry movement toward consolidation. From July 2012 through January 2018, the percentage of physicians employed by a hospital jumped by more than 70%. Moreover, total shares of physician practices owned by hospitals rose from 14% to 31% between 2012 and 2018.

In 2023, states prioritized innovative policy solutions to tackle health care prices and increase affordability such as addressing hospital costs through rate review and price capping, limiting provider consolidation, prohibiting facility fees on outpatient services, and addressing medical debt in response to growing public support of legislative action to address hospital costs.

Reigning in Hospital Pricing

In 2023, several states — such as Montana, and Texas — advanced policy solutions representing a wide range of potential approaches to addressing hospital and provider pricing. In Montana, legislators looked at limiting hospital charges through capping inpatient and outpatient reimbursement at 250% of the Medicare rate through SB 364. This is a solution that the state has already successfully leveraged in their state employee health plan, leading to more than \$47 million in savings. Implementing price caps is generally considered less disruptive to the market, warding off unintended consequences while successfully maintaining high-quality access and bringing down costs for consumers. Price transparency is another strategy that state policymakers can use to help consumers identify lower cost health services.

Limiting Facility Fees

In 2023, bills to curb non-hospital facility fees were championed by legislators in red and blue states alike. Patients are often charged a “facility fee” on top of the normal professional fee that covers the physician’s services, resulting in the same service costing different amounts depending on where they receive their care, which could range from an independent physician’s clinic or hospital-owned outpatient facility.

Between 2004-2021, the amount of facility fees charged nationwide increased four times faster (531%) than professional fees (132%) for emergency department evaluation and management services.

- Peterson-KFF Health System Tracker, 2023

Charging these fees not only drives up health care costs for individuals and families, but inflates health system costs as a whole, an issue gaining increased attention from both sides of the aisle. We saw hospitals and health systems argue that facility fees are necessary to cover higher expenses due to costly licensing requirements and workforce expenses, and that their investments into independent physician practices are a key component to ensuring patients have access to care. Despite this, advocates and legislators contend that the ability to charge patients facility fees for outpatient care incentivizes health system consolidation that drives up costs, which are often passed on to patients through higher health insurance rates and cost-sharing, an argument that proved successful in a number of Republican party-controlled states.

Following recent ground-breaking laws to eliminate facility fees in New York and Connecticut, several state legislatures proposed policies to regulate this practice in 2023. Colorado limited this practice through HB23-1215, which requires health care providers to notify patients when they charge a facility fee, prohibits providers from collecting facility fees on preventive services, and creates a steering committee to study the impact of facility fees on patients and the state health care system. Indiana went a step further with HB 1004, which was championed by four House Republicans. Amongst other provisions, it prevents insurers from accepting a bill submitted on an institutional provider form — what hospitals use to bill for facility fees — and requires every hospital to file an annual report to the state detailing the facility fees they collected. State legislators in North Carolina continue to debate similar provisions in SB 321. These bills are the latest examples of state-level momentum to protect people from unnecessary facility fees, signaling a growing effort by legislatures to rein in this harmful practice in sessions to come.

Protecting People from Medical Debt

Another trend in state legislatures in 2023 was action to address medical debt for their residents.

Nearly one in ten people in the United States have medical debt, with more than

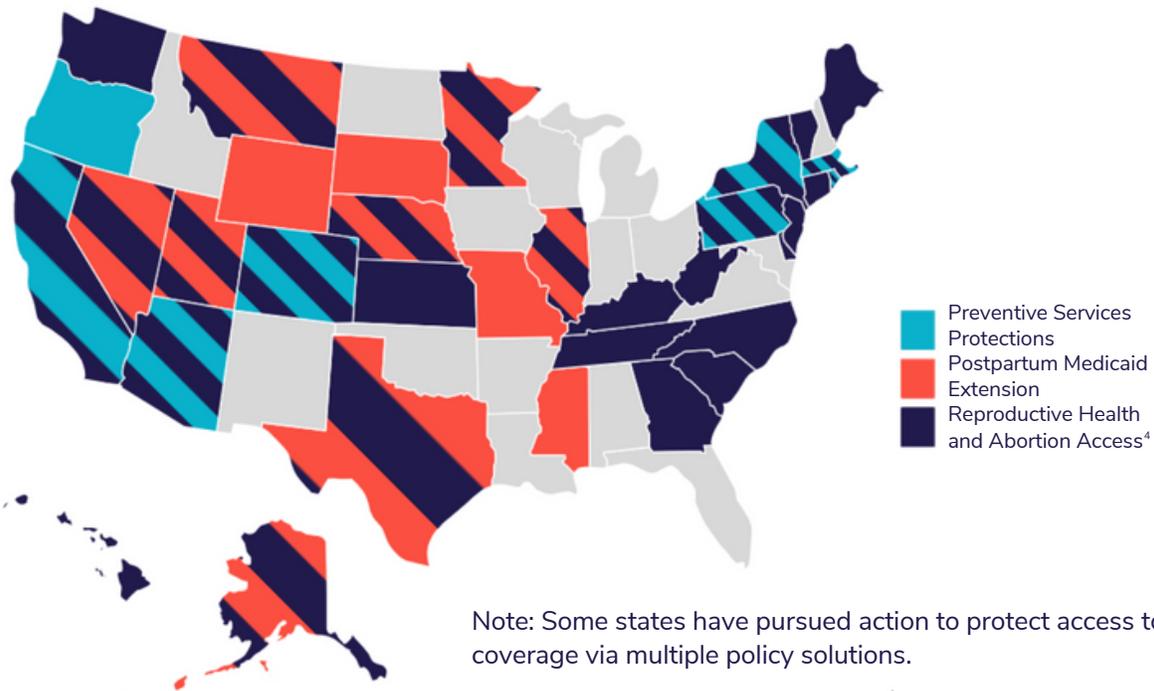
11 million people owing more than \$2,000.

- Kaiser Family Foundation, 2022

This issue disproportionately impacts historically excluded populations: Black adults, Hispanic adults, people with disabilities or complex medical issues, women, and low-income people all report significantly higher amounts of medical debt. Medical debt does not just impact uninsured people, as high out-of-pocket costs and complicated insurance billing practices often push those with health insurance into thousands of dollars in debt. Given limited federal regulation of this issue, states are stepping in to protect individuals and their families with solutions that include setting minimum criteria and mandating eligibility screening for charity care. Illinois, Maryland, New Jersey, Oregon, and Rhode Island all have adopted mandates requiring hospitals to provide free care to patients around 200% of the federal poverty level (FPL).

Several state legislatures have also placed restrictions on debt collection through measures like banning hospitals from placing liens on primary residences and heavily regulating wage garnishment.

State Trend #2: As Consumers Faced Threats to their Health Care, States Stepped in to Protect Access to Coverage.



The national uninsured rate reached a historical low of 8.3% in 2021, but when examining uninsured rates by state and demographic characteristics, variation emerges where some states lag far behind others in closing the uninsurance gap. Moreover, nonelderly adults in low-income working families largely make up the uninsured population, with six in ten being people of color. In 2023, state legislators combatted this by expanding eligibility for Medicaid postpartum care to reduce coverage gaps and protected coverage for critical health services and making accessing this care easier for those who need it. These efforts became all the more important in light of the Medicaid redeterminations process, which began in April.

Protecting No-Cost Preventive Services

On March 30, 2023, U.S. District Judge Reed O'Connor of the United States District Court for the Northern District of Texas issued a ruling in *Braidwood v. Becerra*, which deemed a portion of the preventive services mandate under the Affordable Care Act (ACA) unconstitutional. The ruling blocks the federal government from requiring health plans to provide free preventive services recommended by the United States Preventive Task Force (USPSTF), the entity responsible for making recommendations on the types of preventive screenings and services people need, with an “A” or “B” rating on or after March 23, 2010. As of the publication of this report, the case is advancing throughout the judicial system.

If O'Connor's ruling is made permanent by higher courts, nearly half of Americans, over 151 million people who have private health insurance coverage may lose access to free preventive services, such as cancer screenings, mental health interventions, and PrEP.

- Assistant Secretary for Planning and Evaluation: Office of Health Policy, 2022

No-cost preventive services are one of the most popular aspects of health care coverage and are scientifically proven to improve health outcomes and lower costs. These changes to coverage will likely have a disproportionate impact on communities of color, low-income people, and the LGBTQ+ community, further limiting these populations' access to essential preventive services and reversing the progress made in reducing health disparities.

In anticipation and response to this decision, several states — including Colorado, Oregon, and Minnesota — passed legislation to codify no-cost coverage of USPSTF-recommended “A” and “B” rated services into state law. Colorado and Minnesota's bills went a step further, requiring health insurers to not only cover USPSTF services at no-cost, but also the preventive services recommended for women and children by the Health Resources and Services Administration (HRSA), and vaccines recommended by the Advisory Committee on Immunization Practices (ACIP). This comprehensive approach ensures that all preventive services are protected at no cost to consumers, even if future court decisions result in weakening the remaining protections for preventive services recommended by ACIP and HRSA. While these protections would apply to the individual and small group market as well as state employee benefit plans, state legislatures do not have jurisdiction over fully insured and self-insured plans, which are federally regulated, leaving millions of residents unprotected. In addition to successful legislation, at least seven other states introduced bills to codify protections, signaling momentum for more states to take up this issue in 2024.

Postpartum Medicaid Extension

While efforts to expand Medicaid coverage in the 10 states that have yet to expand largely stalled this year, many state legislators sought to improve maternal health, reduce racial disparities that disproportionately harm Black birthing people, and improve coverage stability specifically for pregnant people through Medicaid postpartum coverage extension. A provision in the American Rescue Plan Act of 2021 gave states the option to extend Medicaid coverage from 60 days to 12 months postpartum via a state plan amendment, which was made permanent through the Federal Consolidated Appropriations Act of 2023. Significantly, eight states — Alabama, Florida, Georgia, Kansas, Mississippi, South Carolina, Tennessee and Wyoming — that have not expanded Medicaid to adults up to 138% FPL have successfully pursued this option. Of note, North Carolina authorized a 12-month postpartum Medicaid extension in 2022, followed by passage of legislation authorizing a full expansion of Medicaid in the 2023 session.

In 2023, eight states — Alaska, Mississippi, Missouri, Montana, Nebraska, Nevada, South Dakota, Texas, Utah, and Wyoming — authorized extended Medicaid postpartum coverage. Notably, almost all of these efforts were championed by Republican Governors or legislators, driven by a bipartisan effort to address the maternal health crisis.

- Kaiser Family Foundation Medicaid Postpartum Tracker, 2023

New Hampshire and Wisconsin continue to debate a 12-month extension, while Arkansas, Idaho, and Iowa adjourned their 2023 legislative sessions without taking action on bills to extend postpartum Medicaid coverage. We expect extension conversations to continue into 2024 as states leverage momentum to ensure that new parents do not lose access to Medicaid coverage in response to the expiration of the Medicaid continuous coverage provision in March 2023.

Protecting Reproductive Health and Abortion Access

In the wake of the *Dobbs v. Jackson Women's Health Organization* decision, state legislators were handed the role of determining access to abortion and reproductive health access. Many states pursued policies to enshrine or expand access to abortion, while others opted to restrict or ban access to these services. 787 state bills impacting access to abortion services have been introduced so far in 2023, addressing policies that range from strengthening abortion protections in the state constitution to implementing waiting period requirements for abortion services or outright bans on abortion services. States like Vermont and Washington passed bills prohibiting cost-sharing for abortion in private and state employee plans, while Illinois and Rhode Island enacted laws that expand abortion coverage in their state Medicaid programs. Many states also discussed contraception access, with the most frequent policy proposals addressing dispensing requirements for contraception, funding for family planning services, and protecting contraceptive coverage by private insurers and state Medicaid agencies. We expect state legislators to continue grappling with debates around access to reproductive health and abortion services in 2024, largely guided by state voters and elected officials' political will.

State Trend #3: States Sought Out Opportunities to Innovate and Improve Access to Affordable Health Coverage.

Too many people throughout the U.S. cannot count on their health insurance coverage and are concerned that major life changes could cause them to lose coverage for themselves or their families. In 2022, 26% of workers were not offered health insurance through their job, while one in six workers whose health insurance comes from an employer report staying in unwanted jobs out of fear of losing their coverage in 2021.

In New Mexico, efforts to create a new affordable program took the shape of Medicaid Forward, a Medicaid Buy-in program, in [HB 400](#). This cutting-edge proposal requires the state to study the impact of the implementation of such a program and provide design recommendations for further legislative action. By leveraging New Mexico's high Federal Medicaid Assistance Percentage (FMAP) through a Medicaid Buy-in, the state is able to reduce the burden on state revenues while building out a competitive option that works within New Mexico's existing health care framework. West Virginia introduced bipartisan [legislation](#) to create the Affordable Medicaid Buy-in Program, which would allow West Virginia workers who are ineligible for Medicaid and make incomes under 200% FPL to purchase health coverage that mimics Medicaid at a price that is affordable for them. The bill passed the House with broad bipartisan support and is expected to be reintroduced next year.

Taken together, these examples highlight how states are approaching access by leveraging their unique strengths to build programs that address the specific health care challenges their residents face.

Transitioning to a State-Based Marketplace

As of the end of 2022, [17 states](#) and DC successfully operate their own state-based marketplaces (SBMs), with another 3 states operating a state-based exchange on the federal platform (SBM-FP). The remaining [30 states](#) use the federally facilitated marketplace (FFM). In 2023, a handful of states introduced bills that would transition their health insurance exchange from the FFM to a SBM, drawn to the opportunities for flexibility and personalization, retention of user fees, and data collection that a SBM provides. Furthermore, SBMs provide a platform for states to more easily pursue innovative solutions to provide affordable coverage, making the creation of a SBM a foundational step toward further reforms.

The Oregon Health Authority has cited the need for the state to transition to a SBM as they seek to establish a Basic Health Plan, with the legislature authorizing this transition by plan year 2027 via [SB 972](#). The Illinois legislature approved a transition to a SBM through [HB 579](#), which will allow Illinois to easily identify traditionally underinsured communities and provide effective outreach and enrollment support to expand health care access and coverage. Additionally, New Hampshire is deliberating a [bill](#) to study the implementation of a SBM; similar legislation is expected to be introduced in Michigan in the near future.

States have made progress towards SBMs as they see the clear benefits that SBMs provide. Remarkably, the states that have decided to pursue a SBM are capitalizing on the political moment to do so, creating a marketplace platform with flexibility to meet the needs of their residents.

Federal Policymakers Can Learn from State Action

As red and blue states continue advancing reforms that deliver on people's health needs, it is clear that bipartisan solutions at the federal level are possible. With the 2024 presidential election on the horizon, now is the moment for federal lawmakers in both chambers to capture this progress and deliver meaningful reforms to increase health care affordability and access for people.

This work has already begun in several committees, with Congressional members amplifying issues like hospital consolidation and price transparency, facility fees, and site-neutral payments — solutions championed by states during 2023 legislative sessions to lower costs for people. Moreover, Congressional committees have heard from the Centers for Medicare & Medicaid Services (CMS) on successes and gaps in major coverage programs like Medicaid and Medicare.

Relatedly, state experience can also continue to influence and inform policy coming out of CMS itself, whether through annual payment rules and program regulations or subregulatory guidance. Examples of state innovation and policy reforms are valuable considerations for federal regulators as they capitalize on gains states are making across coverage, affordability, access, and health equity, while mitigating risks in policies that could cause confusion or complexities for people navigating the health system.

It is imperative that Congress and the Administration act to translate these lessons learned from the states into applicable policy solutions that can deliver sorely-needed improvements to the U.S. health care system. We will continue to monitor how key committees and leadership signal an appetite to move federal legislation before the end of 2023 that echoes successes taking place in states and will actively communicate with federal regulators through the notice and comment process about state insights for federal uptake.

Looking Ahead to 2024

One of the root challenges to making the system affordable for people is how to apply downward pressure on pricing across the health care sector, bringing down the underlying cost of care. To address this, we expect escalating attention on hospitals and providers at the federal and state level as elected officials look for ways to take meaningful action on reforms that lower health care prices for all, a solution supported by voters, payers, and members of Congress.

According to a 2023 survey, voters' main concern about lawmakers stepping in to bring down hospital costs is that Congress won't do enough, vastly outweighing their concerns about Congress setting prices within the market. In fact, a broad majority of voters in both parties believe that the most effective solutions to lowering hospital costs would be to limit what hospital systems could charge and require hospitals to be more transparent about their prices.

In fact, a broad majority of voters in both parties believe that the most effective solutions to lowering hospital costs would be to limit what hospital systems could charge and require hospitals to be more transparent about their prices. Most voters across demographics acknowledge that hospitals are overcharging private plans when their prices are exceeding twice of what Medicare pays. In fact, 59% believe that if Congress limited hospital prices to twice the Medicare rate, it would have a direct impact on decreasing the burden of their personal health care costs.

This knowledge can help to guide advocates and legislators in 2024. We expect to see further state action to eliminate outpatient facility fees, regulate dishonest hospital billing practices, cap or limit provider payments, strengthen hospital financial assistance and community benefit requirements, and establish robust hospital data collection and price transparency initiatives to lower prices for health care consumers and build a more affordable system for all. Moreover, states will be continuing Medicaid redeterminations, a tumultuous process that has led to the loss of Medicaid coverage for 1.3 million people thus far, largely due to administrative issues rather than an enrollee's actual eligibility. We expect states to experience much higher uninsured rates moving into 2024. In response, we urge state legislators to take action to minimize coverage losses due to procedural reasons and conduct oversight on how the process has gone in their state.

As advocates and legislators look towards 2024, this year's legislative sessions made clear that people want to know that they can afford their care and that they won't have to choose between their health and potential bankruptcy. We expect state policymakers and advocates to continue pushing for reforms to public coverage options, the commercial market, and the health care system as a whole, putting people first and centering equity along the way.

Endnotes

¹As of June 30, 9 state legislatures (AZ, CA, MA, MI, NJ, NC, OH, PA, WI) and the District of Columbia have convened their regular sessions. 39 legislatures (AL, AK, AR, CO, CT, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MN, MS, MO, MT, NE, NV, NH, NM, NY, ND, OR,, RI, SC, SD, TN, UT, VT, VA, WA, WV, and WY) have adjourned their regular sessions. Two legislatures are in a special session (OK and TX).

²17 states took action to provide relief for or protect their residents from medical debt in 2023 (CO, CT, DE, FL, IL, MA, ME, MI, MN, NC, NJ, NV, NY, OH, OK, PA, and RI).

³Prescription drug pricing continued to be a driving factor in 2023 state legislative conversations around lowering costs, however second to provider and hospital costs and, therefore, is not included in our analysis.

⁴29 states took action to protect reproductive health and abortion access in 2023 through expanding abortion coverage in medicaid or private plans, expanding Medicaid eligibility for family planning services, and/or protecting contraception coverage by insurers (AK, AZ, CA, CO, CT, DE, GA, HI, IL, KS, KY, MA, ME, MN, MT, NE, NC, NJ, NV, NY, PA, RI, SC, TN, TX, UT, VA, WA, and WV).

⁵6 states took action to transition from a federally facilitated marketplace to a state-based marketplace in 2023 (IL, NH, MI, OR, TX, and WI).