

A Stalled Transition

Won't Derail Biden's Healthcare Team

By Kerry Weems

November 19, 2020

A stalled presidential transition in the midst of an unremitting pandemic sounds like a recipe for long-term damage to health policy and the health system. It probably isn't.

For a presidential transition to proceed, the Administrator of the Government Services Administration has to "ascertain" a winner of the election. The drafters of the law saw "ascertainment" as a prosaic but constitutionally necessary action. However in a contested election, it puts the Administrator in the uncomfortable position of choosing a winner, when the Administrator works for the President. In 2020, we can expect a transition delay extending beyond the 35 days of the 2000 election.

Transition activities fall into a few categories, chief among them choosing personnel. There are roughly 4,000 political appointees in the Federal government, most of whom will lose their jobs on January 20, 2021.

The Biden transition team will focus on identifying and naming key appointees such as cabinet secretaries and some key sub-cabinet officials, such as the CMS Administrator and the CDC Director. This process can take place without government support. To be sure, it's easier if there are offices, computers and telephones supplied by the government, but that lack won't stop it. In fact President-Elect Biden announced his coronavirus taskforce less than a week after election day, without using official resources.

Secondly, the incoming team will prepare and stage their policy initiatives. Events outside the transition team will



slow this step, particularly the reality that the Senate majority hangs in the balance, waiting for results of the Georgia runoff. While the transition team can make two-track contingency plans, this unknown is a significant impediment to the legislative agenda and strategy.

Lastly, there's federal agency review, when the incoming administration usually receives access to agency information and personnel. This review provides the president-elect and key staff needed information, and prepares the incoming cabinet secretary for the confirmation proceedings and leadership of the agency upon confirmation. The review includes recent and pending regulatory and sub-regulatory actions, and significant actions that might require action in the first three to six months of the term. A critical, pressing task is budget formulation, since the administration typically publishes the budget framework about a month after taking office.

Without ascertainment, agency review cannot proceed. But does it matter?

I would argue that it doesn't matter much for healthcare—**in this instance.**

OUT OF OFFICE, OUT OF EXPERIENCE

When Bill Clinton became president in 1993, the Democrats had just four years of executive leadership in the 24 years since Lyndon Johnson left office. President Clinton had a thin bench of experienced appointees to consider, so he relied on states, academia and the Congress to provide needed leadership during the transition.

From personal experience, I can say the Clinton HHS transition team included well-meaning, competent individuals who had

little trust of the senior career staff. They also had misconceptions of administration positions and processes that ran from the frightening to the hilarious. Denied access to agencies would have significantly damaged President Clinton's ability to govern in his first year.

A normal 1992-1993 transition granted a period for trust between the incoming administration and the career bureaucracy to grow. This trust is critical.



AN ACTING GOVERNMENT

On January 20th, 2021, the vast majority of the federal political appointees will lose their jobs. Each department usually leaves behind one Senate-confirmed political appointee to serve as acting secretary until the Senate confirms a new secretary.

Senior career staff will fill most of the remaining leadership positions on an acting basis. While in these positions, their job is to keep the trains running, in some cases taking significant official actions that require discretion and judgement. However unappointed, unconfirmed officials, who may not yet even be Federal employees, oversee these decisions. Keeping the trains running requires trust on all sides until the confirmed appointees assume leadership.

President Biden has a much deeper pool of experience on which he can draw. After just four years much of the senior career staff is still in place from the Obama administration, so narrowing the trust gap should be easy and quick. The "acting" government can implement the incoming administration's policies without delay.

It's worth reminding ourselves that transitions aren't power-sharing arrangements between administrations. Collaboration or not, the incoming administration cannot act until January 20th at noon.

PANDEMIC FIRST, THEN EVERYTHING ELSE

So, what does the reality of this transition mean for health and health policy?

The Biden team has been very clear that the single top priority in the health arena is to “get control” of the pandemic. Probable initial moves will include ramping up testing, using the Defense Production Act to produce PPE, and managing vaccine production and distribution. The Biden transition team includes recent high-level administration employees who are intimately familiar with the details of these initiatives. Lack of access to agency staff and information may slow these efforts from a day-

one standpoint, but there are no insuperable barriers to fast implementation. Obviously, access to the agencies would be better, but for this transition, it is not debilitating.

The longer-term healthcare policies of the incoming administration will manifest themselves in time, but they’re not hampered by lack of access to agency officials for a few months. Indeed, the outcome of the Georgia runoffs will shape how President Biden can strengthen and extend the ACA much more than a stalled transition. We’ll see what room he has to repair a battered health system.

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Prior to his private sector career, Mr. Weems served 28 years with the Federal Government in the U.S. Department of Health and Human Services, rising to Deputy Assistant Secretary for Budget. Nominated by President George W. Bush, he held the position of Acting Administrator of the Centers for Medicare and Medicaid Services from 2007 to 2009. He is a two-time recipient of the Presidential Rank Award, the highest honor in the civilian service. He holds an MBA and bachelor’s degree in philosophy and business administration.