

Health Care—Here We Go Again

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The Affordable Care Act has been an issue in every election since it passed in 2010. This election was the first time the Democrats could fully embrace the law and its patient protections. The issue of pre-existing conditions, for instance, was in the forefront of many Democratic attack ads. After the repeal and replace debate and the ACA-related executive orders, Republicans were on the defensive.

And, with the success of state ballot initiatives in Idaho, Utah and Nebraska and the election of Democratic Governors in Maine, Wisconsin and Kansas, at least 6 additional states may expand their Medicaid programs — another feature of ACA. With such an increase in the Medicaid eligible population, we may see proposals to allow states to manage costs that impact the drug industry (with more flexibility in state drug formularies) and the managed care industry; and proposals affecting Disproportionate Share Hospital payments to hospitals.

With that backdrop, we would not expect a replay of the repeal and replace debate in the next Congress. As recently as the day after the elections, Speaker McConnell backed away from his previous statements about it.

Rather, the House Democrats, especially the Energy and Commerce Committee under Frank Pallone, are likely to pursue legislation to *shore up* the insurance exchanges and to challenge recent Administrative actions authorizing the sale of short-term insurance plans and association health plans, which are considered by Democrats to undermine ACA because they can offer fewer benefits and lower cost. In this area, House actions could take the form of both oversight hearings as well as legislative proposals.

While most of this action will occur *only* in the House, Senator Alexander, Chair of the HELP Committee may be interested in resurrecting his market stabilization legislation. If so, it is possible that such a measure could move on a bipartisan basis in the next Congress. (that is, the Democrats in the House and some Republicans and Democrats in the Senate.)

We do not expect gridlock on *all* health care issues. Which is good or bad news depending on your agenda. In past congresses, major legislation was enacted on a bipartisan basis, like the 21st

Century Cures Act, drug and device user fees, and opioid funding. Similarly, we anticipate some action on a number of matters, including 340B reform, diagnostic reform including devices and LDTs, more funding to fight the opioid epidemic, and possibly orphan drug policy reform. Even if such bills move only in the House, experience demonstrates that they could form the basis for debate or enactment in the future.

Finally, now that the Congress is split, the Republicans may return their focus to the size of the deficit and the need for entitlement reform, especially in Medicare and Medicaid. As Gary will now discuss, with that shift in focus, we should expect consideration of a number of proposals affecting the biopharma industry.

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