

ACA Update

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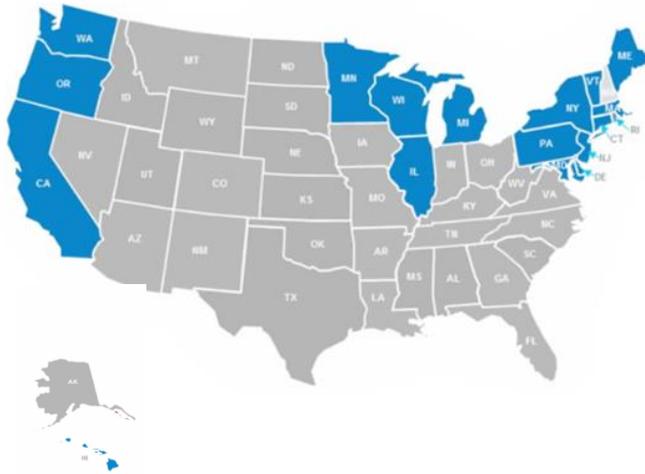
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AGENDA

- Election Results and Potential Future Impacts on the ACA
- Potential Strategies
- Key Players and Potential Roadmap to Replace ACA
- What Stays, What Goes, What Changes?
- Executive Order
- Next Steps

ELECTION RESULTS AND POTENTIAL FUTURE IMPACTS ON THE ACA

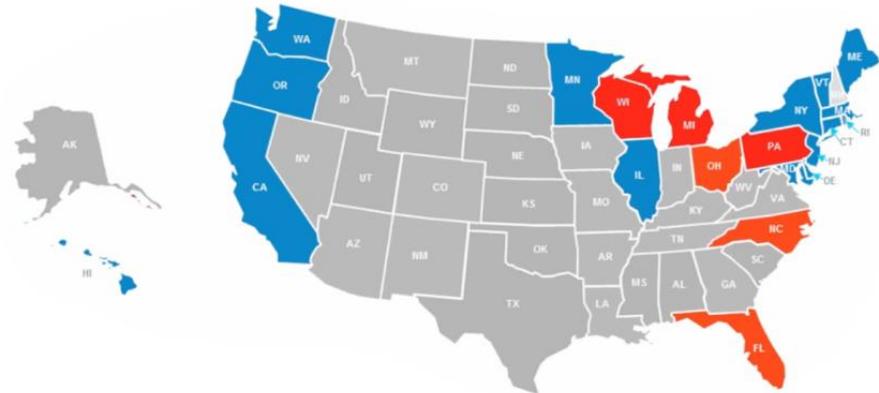
1992-2012



1992-2012 these 18 states and the District of Columbia have voted in the same pattern. This represents 242 electoral votes, also known as the “Blue Wall.” 270 electoral votes to win the election.

- Source New York Times 270towin.com

2016



Traditional swing states like Ohio, Florida and North Carolina all voted for Trump in 2016. Pennsylvania, Michigan and Wisconsin, states that were a part of the “Blue Wall” Trump carried in 2016.

Wisconsin – George W. Bush lost twice by less than 1%.

Pennsylvania – 1988

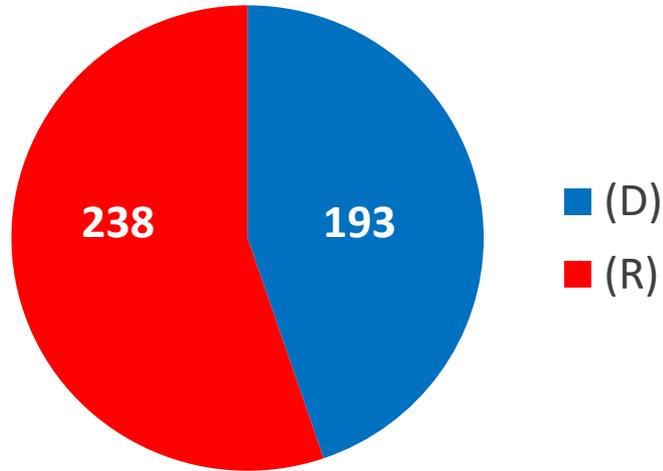
Michigan - 1988

Source – New York Times 270towin.com



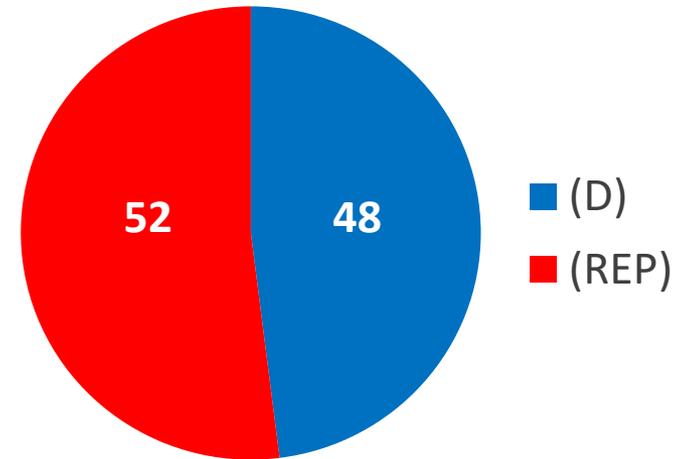
ELECTION RESULTS AND POTENTIAL FUTURE IMPACTS ON THE ACA

Post Election House of Representatives



Post Election Senate

** Two Independent Senate Seats. Both (I) candidates caucus with Democrats*



- GOP has a majority in Congress, but not a “super majority” of 60 seats needed to be “filibuster-proof”.
- Republicans are in much the same position as the Democrats were in 2010.
- Strategy and actions likely to be driven by Republican desire to win 60 seats in 2018 midterm elections.

POTENTIAL STRATEGIES

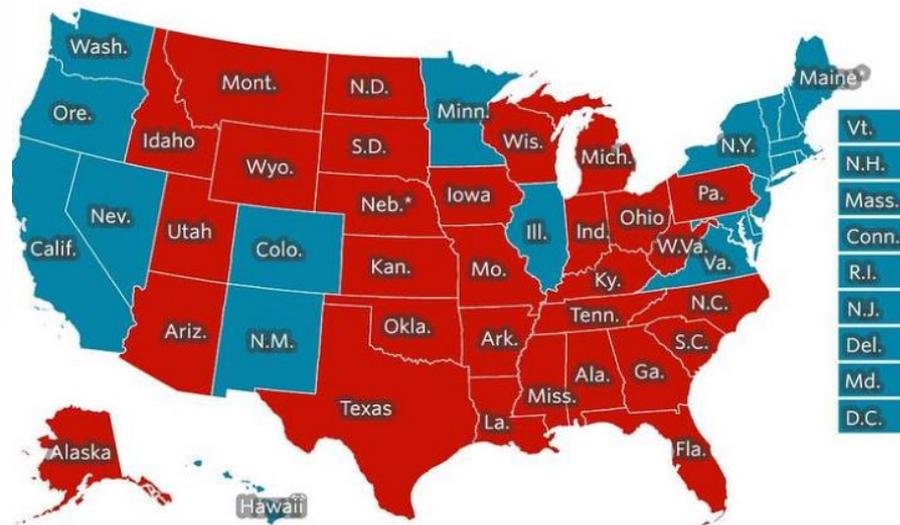
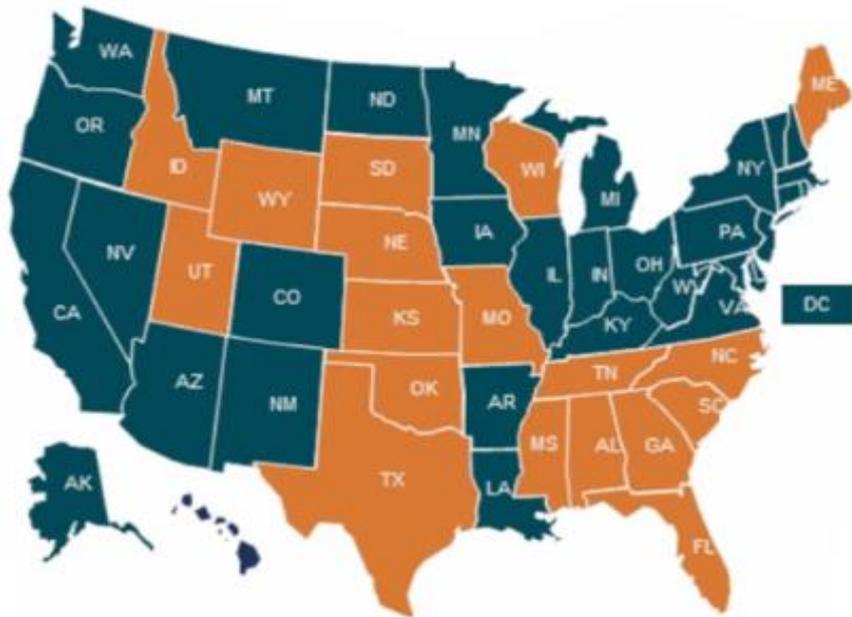
- Due to lack of super majority (60 votes) in the Senate and the threat of a potential filibuster, Republicans may try to use the “Reconciliation” strategy that the Obama administration used to pass the ACA originally.
- Reconciliation only needs a simple majority of 50, fewer than the 52 seats Republicans currently hold.
- Very specific requirements to use Reconciliation.
- According to the “Byrd Rule”, Reconciliation is limited to provisions that affect federal revenues and spending and requires only a simple majority to pass.

POTENTIAL STRATEGIES

- This means the Republicans can repeal Obamacare, but with only 52 seats they cannot pass its replacement without cooperation from the Democrats who can filibuster.
- This effectively gives Republicans two options:
 1. Repeal and Replace
 2. Repeal and Delay
- Both strategies have dangers for the Republicans.

POTENTIAL STRATEGIES

Immediate repeal of the funding of Obamacare would create massive insurance market issues. It also would immediately take away the Medicaid expansion 31 states picked up. This would leave roughly 19-22 million people potentially without coverage with the potential loss of Medicaid expansion and exchanges. This would also create significant political blow back before the 2018 Mid-Term Elections.



■ Adopted Expansion ■ Not Adopted Expansion

POTENTIAL STRATEGIES

Step 1: Legislation **Repeals** the ACA

How: Through Reconciliation

Benefit: Only need 50 votes to pass, (R) have 52 current seats.

Issue: Potential political set backs, large spike in uninsured rates.

Solution: The most likely scenario would be to delay reduction of funds for Medicaid and exchange subsidies for 12-24 months. Provides time to plan for a replacement plan. This would also make sense because the Republican party is currently divided on how this should work.

Step 2: Legislation **Replaces** ACA

How: Timing will play a role here with the Mid-term elections. If super majority isn't established bi-partisan coalition would be required.

Benefit: Democrats may be willing to make compromises to avoid individuals losing coverage. However, there are only a few items the sides have historically agreed on.

Issue: Democrats may not be willing to make compromises and individuals lose coverage when no immediate replacement plan is implemented.

KEY PLAYERS AND POTENTIAL ROADMAP TO REPLACE ACA

Key Players in the Repeal Process

- Tom Price - President Trump's selection for Secretary of Health and Human Services. (HHS)
- Price will oversee the \$1 Trillion dollar budget department.
- A six time Republican congressman from Georgia, and a former orthopedic surgeon.
- Rep. Price has introduced bills offering a detailed, comprehensive replacement plan in every year since 2009.
- Favors widely available affordable coverage.
- Many of his offerings mirror those of Paul Ryan's "A Better Way".

KEY PLAYERS AND POTENTIAL ROADMAP TO REPLACE ACA

Tom Price is the architect of the “Empowering Patients First Act”

The Act would:

- Repeal the Affordable Care Act and offer age-adjusted tax credits for the purchase of individual and family health insurance policies.
- Tax credits would create refunds for those who don't normally get refunds as a way to reimburse people for coverage rather than advanced tax credits up front.
- Create incentives for people to contribute to health savings accounts; offer grants to states to subsidize insurance for “high-risk populations”
- Allow insurers licensed in one state to sell policies to residents of others.
- Authorize business and professional groups to provide coverage to members through “association health plans.”

KEY PLAYERS AND POTENTIAL ROADMAP TO REPLACE ACA

Key Players in the Repeal Process

- Paul Ryan – House Speaker.
- March of 2016 he introduced “A Better Way” aiming to replace the ACA and make changes to 5 other areas (national security, taxes, poverty, economy and the Constitution).

KEY PLAYERS AND POTENTIAL ROADMAP TO REPLACE ACA

Paul Ryan's "A Better Way" proposal is expected to be a guide for the administration.

- For people without access to employer coverage, Medicare, or Medicaid, offers a refundable tax credit to help buy health insurance in the individual market.
- Expand the use of health savings accounts.
- Preserve employer-based insurance, but caps the open-ended tax break on employer-based premiums.
- Allow sales across state lines.
- Allow small businesses and individuals to band together through new pooling mechanisms.
- Back wellness programs.
- Medical liability reform.

ACA

What stays, what goes?

ACA feature likely to remain:

- Elimination of Pre-Existing Conditions
- Potential for 2-tiered system:
 1. Continuous coverage, no Pre-Ex
 2. Break in coverage, subject to Pre-Ex
- Supported by insurance industry to combat adverse selection/death spiral

WHAT STAYS, WHAT GOES, WHAT CHANGES?

What stays, what goes?

ACA feature likely to remain:

- Ban on Rescissions
- Guaranteed Issue
- Guaranteed Renewal

WHAT STAYS, WHAT GOES, WHAT CHANGES?

What stays, what goes?

ACA feature likely to remain:

- Elimination of Lifetime Dollar Limits (Annual Dollar Limits might return)
- Coverage to Age 26
- Coverage of Clinical Trials
- Elimination of Prior Auth for OB/GYN, Pediatric Svcs, Out-of-Network ER Care
- Increased Wellness Incentives

WHAT STAYS, WHAT GOES, WHAT CHANGES?

What stays, what goes?

ACA features likely to go/change:

- Employer Mandate (“Play or Pay”)
- Reporting (possibly not right away)
 - Needed for MarketPlace subsidies
- Individual Mandate
- Cadillac Tax

WHAT STAYS, WHAT GOES, WHAT CHANGES?

What stays, what goes?

ACA features likely to go/change:

- Federal Operation of Exchanges/MarketPlaces (reinstate state high risk pools?)
- Medicaid Expansion (replace with block grants?)
- Advanced Premium Tax Credits
- Other ACA Taxes (Medicare Surtax, Medical Device Tax, Health Insurer Tax)
- OTC Ban, Dollar Cap for FSAs
- Effect on IRS Guidance (Cash in lieu of benefits, etc.)

WHAT STAYS, WHAT GOES, WHAT CHANGES?

ACA Items on the fence:

- Medical Loss Ratio/Limits on Carrier Profits (trade off for MarketPlace?)
- Annual Dollar Limits
- Preventive Care without Cost Sharing (Staying but changing?)
- Section 1557 non-discrimination rules

WHAT STAYS, WHAT GOES, WHAT CHANGES?

How quickly might this happen?

- Don't expect to see the suspension of ACA reporting for this cycle
- IRS announced in Notice 2016-70 the extension of “good faith reporting” for 2016 filings and also extended the individual statement deadline from January 31, 2017 to March 2, 2017
- Conservative position is to carry through with 2016 1095-C filings
- Executive Order arguably waives Play or Pay penalties for 2016
- The ACA “is the law until it isn't”; it's in effect until repealed/replaced

EXECUTIVE ORDER

On January 20th, President Trump signed an Executive Order “Minimizing The Economic Burden Of The Patient Protection And Affordable Care Act Pending Repeal”.

Section 2 of the Executive Order states:

“Sec. 2. To the maximum extent permitted by law, the Secretary of Health and Human Services (Secretary) and the heads of all other executive departments and agencies (agencies) with authorities and responsibilities under the Act shall exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the Act that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications.”

EXECUTIVE ORDER

- The Executive Order essentially instructs the regulatory agencies (DOL, IRS, HHS) to do what they can to unwind the law, but any changes to the actual agency-made regulatory law must comply with the Administrative Procedures Act (APA).
- Formally changing existing regulations takes time, due to notice-and-comment periods for proposed regulations.
- Agencies can extend compliance and enforcement delays or be more lenient in enforcement, but the law is still the law (until it isn't).
- In the short run, employers will need to continue to offer coverage and comply with the reporting requirements for the 1094-C/1095-C.
- Do not anticipate any waiver of the reporting requirement for the current cycle.
- If the Trump administration retains an of income-based MarketPlace subsidy, some type of employer reporting will be needed.

NEXT STEPS

What should employers do next?

- All ACA provisions remain in effect.
- In the near term, employers should continue to comply with the ACA.
- Employers should complete their 2016 plan year 1094-C/1095-C reporting obligations.
 - Employee 1095-C statements must be provided to employees by March 2, 2017.
 - Employers must complete electronic filing with the IRS by March 31, 2017.
- Employers must continue to offer coverage to full time employees and their dependents.
- Employer coverage must continue to meet the affordability and 60% minimum value requirements.
- Employers should continue to monitor the situation.

QUESTIONS?



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