

Vizient Post-Election Analysis 2016

The Impact on Health Care & Hospitals, November 10, 2016

The White House

In an election night surprise, Donald J. Trump surpassed most expectations and prevailed over a heavily-favored Hillary Clinton in arguably the greatest political upset in the modern history of American elections. [As of Thursday morning](#), President-elect Trump won 279 electoral votes versus Secretary Clinton's 228, after flipping several battleground states that had previously been reliably blue. Despite the electoral breakdown, however, Secretary Clinton maintains a more than 200,000 popular vote lead, which may contribute to continued partisan gridlock both in D.C. and among the American people. President-elect Trump will be sworn in as the 45th President of the United States on January 20, 2017.

Based on his previously released campaign platform, we provided a [summary](#) of his healthcare priorities and their potential impact on healthcare policy and hospitals. However, campaign positions are generally short on detail and Congress is the branch of government tasked with creating and passing laws. One thing is clear though – the Affordable Care Act (ACA) faces an almost certain repeal effort. Repealing the law (in pieces or in its entirety) is an immediate objective of both President-elect Trump and Republicans in Congress.

The question still remains what that approach will look like. Will it be a cooperative, bipartisan effort to modify the core components of the law, or a blunt repeal effort that will only serve to reinforce the all-or-nothing approach that has dominated debates around the health care law since its passage?

Under a Trump Administration, there are still questions about who will be leading health care efforts. Some have suggested that Dr. Ben Carson may be in line to guide the administration's policy – though that is complete speculation at this point. Another consideration is the impact that a rapid changeover will have on the leaders at the HHS and CMS. From this point forward much of the focus of CMS will be on implementing and finalizing ongoing projects, but key leadership will likely be leaving those agencies in early 2017 with new appointees and staff possibly taking a bit longer to be put in place.

"For those who have chosen not to support me in the past, of which there were a few people, I'm reaching out to you for your guidance and your help so that we can work together and unify our great country."

President-elect Donald J. Trump – 11/9/2016

Congressional Election Results

Perhaps just as consequential as the Presidential election was the race for control of the Senate. With Republicans attempting to hold onto their 54 seat majority there was no clear consensus on which party would be in control at the end of the night. Ultimately Republicans maintained a 51 to 48 seat majority in the Senate, with a runoff planned in Louisiana on December 10 to determine the final Senate seat. In the House

of Representatives, Republicans lost some seats, but still hold a 238 -193 (with 4 races uncalled) majority in the lower chamber going into the 115th Congress.

Senate Majority Leader Mitch McConnell (R-KY) will retain his role guiding the agenda in the upper chamber. While Republicans have a narrow majority, McConnell will prioritize policies and determine what legislation and nominations may be considered. McConnell may hope to accomplish substantial goals – including repealing the ACA and entitlement and tax reforms. However, he will face challenges with such a narrow majority (due to the power of the filibuster it often takes a 60 vote majority in the Senate to pass major pieces of legislation) and competing interests in the party. At the same time, with a number of moderate Democratic Senators facing reelection in 2018, there may be opportunities to reach bipartisan compromise.

House leaders will be contending with the same dynamic as the Senate. Speaker Paul Ryan (R-WI) has indicated his priority will be more pragmatic initiatives over partisan fights to show the party is capable of governing. Significant issues will include managing the budget and appropriations processes, and seeking an ambitious overhaul to our tax laws.

Lame-Duck Session

Before the new Congress is sworn in, a notoriously unpredictable lame-duck session will take place when the members of the 114th Congress return to Washington next week. Leaders will have to determine how to fund the government, which is currently operating under a Continuing Resolution that expires on December 9. Republican leaders have staked their support in passing a series of so-called minibuses that would group appropriations bills together, while Democrats are leaning toward an omnibus bill that would include all of the spending bills. One thing is for certain, though, and that is Congress must pass a spending bill in some form by December 9 or else we face another government shutdown.

For hospitals, several major pieces of legislation could be in the works, but it is not clear if there is the time or the appetite to advance legislation. Specifically, Congress will likely consider a biomedical innovations package (often referred to as the 21st Century Cures legislation). There is also the possibility of a hospital bill that would address so-called “site neutral payment policies” which will go into effect January 1, 2017, and would greatly reduce reimbursements to new, off-campus hospital outpatient departments.

With the results of the election somewhat surprising, questions remain around what the GOP will try to accomplish during the remaining weeks of President Obama’s time in office – or what they will simply postpone until next year when they have a more favorable administration. One thing we know we will not see, however, is a hearing for Judge Garland, President Obama’s nominee to fill Justice Scalia’s seat on the Supreme Court.

The Outlook for 2017

The new Congress promises to be eventful for healthcare policy. The top of the agenda will be led by a concerted effort to repeal the ACA. Given the limited majority in the Senate, the most likely path for repeal will be using the budget reconciliation process which avoids procedural hurdles requiring 60 votes in the Senate. Reconciliation is a messy process, but Republicans successfully utilized it last year to target key components of the ACA only to be stopped by a presidential veto, which will no longer be the case next year. Reconciliation can only address certain provisions of the ACA which affect spending or taxes. The likely targets of the Administration and Congress would be to eliminate the individual and employer mandates, funding for Medicaid expansion, and the health insurance subsidies, among other provisions.

Before we get to that point, Republicans will first need to include reconciliation instructions in a budget resolution, which may push the timing of that discussion to later in the year. That delay may open the door for a more constructive, bipartisan conversation to consider broader changes and wholesale reforms to the ACA in place of the blunt tool of partial repeal through reconciliation. It's also important to note that the specific provisions that Republicans could repeal via reconciliation would likely result in millions of Americans losing access to health insurance, making it critical that the Administration and Congress have a clear plan to replace those elements of the ACA with other features that would ensure continued access to care. The result of millions of Americans losing access to health care coverage would also have rippling effects throughout the healthcare industry, most notably on insurers and hospitals.

It is largely expected that President-elect Trump will defer to Congress in developing those policies. Speaker Ryan has offered his "[Better Way Agenda](#)" which includes a broad outline for a GOP replacement option. The Better Way health plan retains some popular components of the ACA – such as allowing young people to stay on their parent's health insurance plan to age 26 – but is a stark departure from the health care law in other ways. It would allow insurers to underwrite for preexisting conditions if there is a break in insurance coverage – reverting to previous standards which often priced people out of the insurance market. It would also transition Medicaid to a modified block grant program, promote health savings accounts, utilize high risk insurance pools, allow the purchase of health plans across state lines and provide tax subsidies for the purchase of insurance.

Another key agenda item is how to address rising prices of prescription drugs, a priority of both Congress and President-elect Trump. What the policy changes may look like remain to be seen although the president-elect has supported novel approaches in the past, such as allowing importation of drugs and Medicare to negotiate prices, but the Republican-controlled Congress will likely resist such efforts. It is also possible that the 340B drug discount program could come under significant scrutiny through that debate.

For hospitals, a key question is what will happen with ongoing efforts to transition health care to a value-based delivery system? The goal of moving away from fee-for-service to value-based, coordinated care and alternative payment models was the foundation of the ACA and is largely agreed upon by both parties. When Congress passed the Medicare and CHIP Reauthorization Act (MACRA) on an overwhelmingly bipartisan basis last year, they largely ratified that approach. At the same time, if the ACA is repealed, even in pieces, ongoing delivery system reforms such as value-based purchasing, accountable care organizations, and bundled payment programs could be at risk. Despite the consensus on value-based care, it seems certain that Congress will look to rein in or completely repeal the authorities of the Center for Medicare and Medicaid Innovation, which has been the driving force behind many of the value-based care initiatives that hospitals have been participating in and anticipating for years.

One significant item Congress and the Administration will need to address next year is reaching an agreement to raise the debt ceiling. For health care, that debate could open the conversation around entitlement reform. Speaker Ryan has long-supported transitioning Medicare to a voucher program and Medicaid to a block-grant system. These reforms stand a better chance of passage with both a Republican controlled Congress and Administration. For hospitals in particular, any conversation around entitlement reform is bound to include debates over pricing transparency (the chargemaster controversy, in particular), as well as the effects of consolidation. Additionally, since Congress has already dipped its toes into the site-neutral payment policies that are set to go into effect on January 1, 2017, it is expected that more of these site-neutral provisions will be included in health care conversations moving forward.



The only thing we do know is that we can't really predict much. Very few experts predicted the outcome of the election and even fewer know how it will impact policies both in health care and other sectors. As a self-proclaimed outsider, President-elect Trump will bring a new vision, new people and new staff to Washington, D.C. over the next several months. Vizient's Office of Public Policy and Government Relations looks forward to working with our colleagues, stakeholders, the 115th Congress and the new Administration to continue advocating on behalf of affordable, accessible, quality health care.