



## The Results Are In. Now What for the Dance Around Health Care?

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With the results of the national election in, starting in 2019, Democrats will lead the U.S. House of Representatives. We'll have new leadership, committee chairmen and a new agenda in the House. And while the Senate remains under Republican control, by dividing control of Congress, the American voter sent a clear signal that they want action on the many issues facing America. So, what does that mean?

There is an old saying, "campaigning is easy, governing is hard." The evidence over the last 10 years or so demonstrates the reality of this old chestnut. Lots of promises have been made on the campaign trail for why one party should lead, but were never delivered because making change is hard. The Republicans' inability to deliver on "Repeal and Replace" is a well-known case, but not the only example of this challenge. For the new Democratic majority in the House they may be setting themselves up for a similar disappointment with Medicare for All. Because of our system of government, it generally takes skill – and most importantly – a willingness to engage with the other side to make major changes.

The question then is – will change happen? Will Democrats work with the administration on any of the issues they say they want to work on such as lowering drug prices, stabilizing the ACA and fighting the opioids abuse epidemic? We'll see. It could go either way, though the last eight years strongly suggest the next two years will degenerate into a snarling mess.

But, here on the threshold of a new Congress with a new House majority promising a breath of fresh air, what could happen and what will happen when it comes to the health care agenda?

## What Will Happen: Investigations

Other areas they Democrats have sent a clear message that they intend to take their oversight authority seriously and so we can expect them to launch many investigations on various issues. As has been widely reported, health care was a top issue for voters in the 2018 election and specifically pre-existing conditions dominated the debate. Expect Democrats to take this fact and transform it into an investigation into the Affordable Care Act (ACA) and how the Trump administration has implemented it. The basic question for Democrats is has the Trump administration been carrying out its constitutional duty to implement the law, or are they undermining it. Whatever the answer Democrats come up with, given the success of health care as an issue in the election, this investigation's biggest impact will be political in that it will tee up the issue – again – for 2020. Spoiler alert – Democrats will "find" that the Trump administration did everything they could to undermine the law.

## What Will Happen: Investigations (continued)

Medicaid is an interesting issue. It is an area where Republicans and Democrats both support the program. But there is a difference. Of late, Republicans have been supporting expansion of the program through the ACA but with a hitch – the inclusion of a work requirement in the expansion. In the meantime, three more red states – Idaho, Nebraska and Utah -- voted to expand the Medicaid program in their states and in three other states that flipped to Democratic governors – Kansas, Maine and Wisconsin – we could see expansion through legislation (in Maine the previous governor, despite a state referendum supporting expansion, has resisted implementing the result. The newly elected governor is expected to ahead with the expansion). What this means is that more than 500,000 people are expected to become Medicaid recipients and thus avail themselves of the benefits of the program. But, where this gets interesting is regarding the work requirement idea. Arkansas is the most notable state that has adopted a work requirement. There, because of that new requirement, they have dropped thousands of people who previously were in the program and receiving benefits from it. In Wisconsin, a few days before the election, CMS granted their waiver to allow work requirements. The newly elected governor does not support the waiver. And in Kentucky there is a lawsuit challenging the state's work requirement. So expect Democrats to investigate the idea of including work requirements in Medicaid and whether this violates the fundamental nature of the program. In the meantime, the Trump administration will continue to encourage states to adopt work requirements as a tool to control enrollment. Expect those issues to be resolved in the courts.

And while not health care issues per se – Congressional investigations take a lot of time and effort to respond to, can easily overwhelm a federal department and knock them their agenda – there are several other areas Democrats will use their investigative powers to examine, including the Office of Refugee Resettlement and toffe immigration issue. While HHS is not the policy-making department on the Zero Tolerance policy, and per the GAO, did not receive a warning in advance of the policy being implemented (i.e., they knew when the rest of us knew), in the aftermath of the decision and consequences, they have been the most open about their efforts and actions. Democrats will use this as an avenue to investigate, though it is really the Departments of Justice and Homeland Security who are responsible. Democrats will also examine the Office of Civil Rights and several of their actions including a possible new definition of sex that does not include transgender, the new office of religious protections and the use of fetal tissue in research.

## What Could Happen: Areas of Cooperation

But.....

CMS has been prodding states to set up reinsurance programs using ACA dollars, which appears to be working to moderate premium increases and in some cases lowering premiums. While there might not be a need for legislation, Democrats in the House may well encourage this kind of action. More importantly, it may be an area where both parties see eye-to-eye, providing an opportunity to build some trust. But the big area for possible cooperation is on drug pricing. Both sides, Democrats and the Trump administration, have seized on the idea that drug prices are too high and that taking actions to lower them is good for the country, and perhaps more importantly, is good politics. Republicans in the House and Senate have not shown a great deal of enthusiasm for the administration's Blueprint to Lower Drug Prices. In fact, they have been remarkably quiet in reaction to Trump and HHS's aggressive rhetoric and rollout of various proposed rules. It seems they are not willing to take on Trump on the issue.

Democrats on the other hand, are more than willing to try and use the hand of government to lower prices. And while Democrats have, so far, not been vocal supporters of the Trump plan, they have not completely dismissed it either. Therefore, there may be an opportunity to for the two sides to cooperate to a limited degree. But even a limited degree of cooperation is politically dicey for Democrats because providing Republicans with any victory on the drug price issue means it may be a less powerful issue for them in 2020. The possibility of cooperation, however, does not mean the administration is going to sign on to Medicare direct price negotiation, nor a broad drug importation plan. But it does mean that in some discreet areas Democrats may be willing to support some of the proposals included in the HHS Blueprint including legislation that would be helpful to what HHS is contemplating in Part B and D, the rebate debate, etc.

If Trump encourages and supports this cooperation, and as we've seen he can sell anything to his base, it would be very difficult for the Republican controlled Senate to oppose since there are no John McCains or Jeff Flakes who will stand up to him. Politically, Senate Republicans will be the in the same position as Democrats were in 2018. They will be defending far more seats than Democrats and may view the drug pricing issues as a winning issue they do not want concede to Democrats.





## The Wild Card: Medicare For All

As the [exit polls](#) told us, health care was the top issue for many voters and voters generally favored Democrats over Republicans on the issue. Democrats campaigned on the issue, positioning themselves as better able to protect Americans' access to good health care and to protect the ACA – specifically the pre-existing condition protections. This gives Democrats a strong perch in the coming Congress. However, there is one health care issue that was not a big campaign issue yet looms large over Congress that could overshadow all other health care issues – Medicare for All.

While Democrats did not directly campaign on the idea of Medicare for All, it is still a major item on their political/policy agenda. Significant numbers of Democrats in the House and Senate have signed on to support various Medicare for All bills and the leading Democratic candidates for president in 2020 have all come out in support of the idea, thus providing it with political momentum. However, pursuing this policy is fraught with challenges. The first is that while there appears to be [support from the public](#) for a Medicare for All bill, all you have to do is scratch a bit below the surface and that support starts to [disappear](#) when the bill is defined. And right now there are [multiple definitions](#) for what Medicare for All means. Is it a single payer health care program that would cover all Americans and would subsume all other federal, state and private sector insurance? Is it a program just for those persons without health insurance? Is it for people 55 and older? Is it a voluntary program for individuals, and possibly for small businesses as well? Clearly, exactly how you define it impacts the level of support the public has for the idea.

What this adds up to is that while Democrats may try and pass a Medicare for All bill in the House, they need to be careful. To pass legislation means you need specific language that will define Medicare for All. To do so could create fissures in the Democratic ranks and spark a fight among potential candidates for president. It would make more strategic sense to keep the idea at a high level and use it as a political talking point that so far remains surprisingly popular, even among Republican voters. This is why Republicans never went beyond Repeal and Replace – it sounded appealing to their base and helped get out the vote – but the moment they had to define what replace meant, they lost support.

What is clear – Medicare for All can be expected to be a major idea on the debate agenda running up to the 2020 election campaign. Whether it becomes a serious legislative item is another story that remains unclear.

## Now What?

What will happen in the next two years, especially in the opening months, will be a dance. No one is going to come out and do a big group hug, but I would not be surprised to see some tentative steps toward cooperation. But like dancing, expect steps forward, backward and sideways...and stumbles. In the end, it could end up with both sides stepping on the others toes and a realization that this is not a match that will work. A smooth dance could emerge – just don't bet on it.