

Impact of the 2016 Elections and SCOTUS Vacancy / Nomination to the Affordable Care Act

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Agenda



- Gubernatorial Elections
- House of Representative Elections
- Senatorial Elections
- Supreme Court of the United States
- Presidential Election

Agenda



- Potential Affects to Specific Components of the ACA
 - Cadillac Tax
 - Immigration
 - Medicaid Expansion
 - Non Discrimination Provision
 - Contraceptives
 - Subsidies
 - 30 / 40 hour requirement
 - Health Insurance Tax
 - Small Business Tax Credit
 - Medical Loss Ratio
 - Employer Exclusion of taxes for Health Insurance

Gubernatorial



- Why do we care?
 - Governors are like the CEO of the State
 - Governors are responsible for implementing state laws and overseeing the operation of the state executive branch
 - Some Affected ACA Provisions
 - Expanded Medicaid
 - SCHIP
 - Small Group Threshold
 - Transitional Relief Extended Through 2017 for Small Groups

Gubernatorial



- Why do we (still) care?
 - A lot of former Governors become President
 - 17 former Governors elected to President
 - 4 of the last 6

Gubernatorial



- Current Split
 - 18 Democrats
 - 31 Republicans
 - 1 Independent
- 2016 Gubernatorial Races:
 - 7 Democrats
 - 4 Republicans

Gubernatorial



- Democrats
 - Delaware (Open Seat)
 - Missouri (Open Seat)
 - Montana
 - New Hampshire
 - Vermont
 - Washington
 - West Virginia (Open Seat)

Gubernatorial



- Republicans
 - Indiana
 - North Carolina
 - North Dakota
 - Utah

- Medicaid Expansion – what does it mean?
 - Provisions of the Patient Protection and Affordable Care Act (PPACA) would have expanded Medicaid to all Americans under age 65 whose family income is at or below 133 percent of federal poverty guidelines by Jan. 1, 2014 (increased to 138%).
 - The federal government would pay for a significant portion of the cost of coverage for the newly eligible
 - 100 percent in 2014 through 2016
 - Decreasing to 97 percent in 2017
 - Eventually 90 percent in 2020 and thereafter

Gubernatorial



- Supreme Court ruled expanding Medicaid is Voluntary and decided by each State
- Who has enacted the Medicaid Expansion
 - 25 States and DC are expanding Medicaid
 - 6 States are expanding Medicaid, but using an alternative
 - 19 States are not expanding Medicaid

- States without expanded Medicaid

Alabama (R)	Oklahoma (R)
Florida (R)	South Carolina (R)
Georgia (R)	South Dakota (R)–Discussing
Idaho (R)	Tennessee (R)
Kansas (R)	Texas (R)
Maine (R)	Utah (R)*
Mississippi (R)	Virginia (D) – Discussing
Missouri (D)*	Wisconsin (R)
Nebraska (R)	Wyoming (R) – Discussing
North Carolina (R)*	

House of Representatives



- Of the 435 Seats, there are:
 - 247 Republicans
 - 188 Democrats
- 2016 Elections – 41 Representatives leaving their seats, i.e., no incumbent candidate
 - 25 Republicans
 - 16 Democrats
- Estimated 67 seats are not considered “Safe” for their Party
 - 46 Republicans
 - 21 Democrats

House of Representatives



- Ever heard of the 12th Amendment Plan?

Senatorial



- Of the 100 Seats, there are:
 - 54 Republicans
 - 44 Democrats
 - 2 Independents
- 2016 Elections – 34 Seats up for election.
 - 24 Republicans
 - 10 Democrats
- Estimated 6 seats will not have an incumbent
 - 3 Republicans
 - 3 Democrats

Senatorial



- Nuclear Option: a parliamentary procedure that allows the U.S. Senate to override a rule or precedent by majority vote. The presiding officer of the United States Senate rules that the validity of a Senate rule or precedent is a constitutional question. They immediately put the issue to the full Senate, which decides by majority vote. The procedure thus allows the Senate to decide any issue by majority vote, even though the rules of the Senate specify that ending a filibuster requires the consent of 60 senators (out of 100) for legislation, 67 for amending a Senate rule.

-Wikipedia

Senatorial



- Nuclear Option: On November 21, 2013, the Senate voted 52-48, with all Republicans and 3 Democrats voting against, to eliminate the use of the filibuster against all executive branch nominees and judicial nominees other than to the Supreme Court. At the time of the vote there were 59 executive branch nominees and 17 judicial nominees awaiting confirmation

-Wikipedia

Supreme Court of the United States (SCOTUS)



- Nomination Process
 - President nominates candidate
 - Name sent to Senate Judiciary Committee for hearings
 - Full Senate Vote
 - 60 Votes needed to confirm

Supreme Court of the United States (SCOTUS)



- Current Justices
 - Anthony Kennedy; 80; Reagan
 - Clarence Thomas; 68; GHW Bush
 - Ruth Bader Ginsburg; 83; Clinton
 - Stephen Breyer; 78; Clinton
 - John Roberts; 61; GW Bush
 - Samuel Alito; 66; GW Bush
 - Sonia Sotomayor; 62; Obama
 - Elena Kagan; 56; Obama

Supreme Court of the United States (SCOTUS)



- Nominated: Merrick Garland
 - Garland is the chief judge for the U.S. Court of Appeals for the D.C. Circuit, appointed by President Bill Clinton in 1997
 - Garland, 63, was confirmed by a 76-23 vote
 - Previously considered for the last two SCOTUS vacancies
 - He has a reputation for centrism

Supreme Court of the United States (SCOTUS)



- Healthcare Cases already heard (how did we get here):
 - November 14, 2011; Declared the Law could not be upheld under the Commerce Clause, however was constitutional because the legislatively-declared “penalty” was a tax
 - This was important for many reasons, including the obvious, but it also made many pending actions no longer viable because it basically declared Health Insurance was not commerce

Supreme Court of the United States (SCOTUS)



- Healthcare Cases already heard (how did we get here):
 - May 16, 2016; Zubik v. Burwell
 - Given the gravity of the dispute and the substantial clarification and refinement in the positions of the parties, the parties on remand should be afforded an opportunity to arrive at an approach going forward that accommodates the challengers' religious exercise while at the same time ensuring that women covered by the challengers' health plans receive full and equal health coverage, including contraceptive coverage – www.scotusblog.com

Supreme Court of the United States (SCOTUS)



- Healthcare Cases already heard (how did we get here):
 - US House of Representatives v. Burwell
 - US House of Representatives argued the money for the Premium Subsidies, even though approved, had not been appropriated as required by law. US District Judge Collyer agreed.
 - Likely to be appealed to the SCOTUS.

Supreme Court of the United States (SCOTUS)



- Healthcare Cases:

- Thomas More Law Center, et al., v. Barack H. Obama, President of the United States, et al.
 - Challenge to the Individual Mandate
- National Federation of Independent Business, et al., v. Kathleen Sebelius, Secretary of Health and Human Services, et al.,
 - Challenge to Individual Mandate and Severability
- Department of Health and Human Services, et al., v. Florida, et al.
 - Is State barred from bringing suit due to Anti Injunction Act

Supreme Court of the United States (SCOTUS)



- **Healthcare Cases (Continued):**

- Florida, et al., v. Department of Health and Human Services, et al.
 - States challenging the Individual Mandate and State sovereignty
- Virginia, ex rel. Kenneth T. Cuccinelli, II, Attorney General of Virginia v. Kathleen Sebelius, Secretary of Health and Human Services
 - State challenging the Individual Mandate and State sovereignty
- Liberty University, et al., v. Timothy F. Geithner , Secretary of the Treasury, et al.
 - Questions limits of Anti Injunction Act, Employer Mandate and Individual Mandate

Supreme Court of the United States (SCOTUS)



- ## Anti Injunction Act

The Anti-Injunction Act, (ch. 22 of the Acts of the 2nd United States Congress, 2nd Session, 1 Stat. 333, 28 U.S.C. § 2283), is a United States federal statute that prohibits any federal court from issuing an injunction against proceedings in any state court, except within three specifically defined exceptions. The Act was enacted on March 2, 1793 as Section 5 of the Judiciary Act of 1793, to alleviate states' fears of federal power.

The current language of the Act states:

A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

Presidential



- Democrats
 - Hillary Clinton
 - Bernie Sanders
- Republicans
 - Donald Trump

Hillary Clinton – Healthcare Plan



- 1993 “Hillarycare” – Universal Healthcare
 - The core element of the proposed plan was an enforced mandate for employers to provide health insurance coverage to all of their employees
 - Required each US citizen and permanent resident alien to become enrolled in a qualified health plan and forbade their disenrollment until covered by another plan.

Hillary Clinton



- 1993 “Hillarycare” (Continued)
 - It listed minimum coverages and maximum annual out-of-pocket expenses for each plan.
 - It proposed the establishment of corporate "regional alliances" of health providers to be subject to a fee-for-service schedule.
 - People below a certain set income level were to pay nothing.

Hillary Clinton



- 2016“Hillarycare”
 - Medicare for more
 - Provide 3 sick visits per year that do not count towards the deductible
 - New, progressive tax credit of up to \$5,000 per family for excessive OOP costs (in excess of 5% of their income)
 - The tax cut would be fully paid for by demanding rebates from Rx manufacturers AND increasing taxes on higher earners (not defined)

Hillary Clinton



- 2016“Hillarycare” (Continued)
 - Expanded disclosure requirements as well as new cost sharing protections to limit bills from hospitals
 - New and “improved” system to limit health insurance rate increases
 - “Vigorously enforce antitrust laws to scrutinize mergers and ensure they do not harm consumers.”
 - Promote a shift away from the fee for service model (ACOs)

Bernie Sanders



- Health care must be recognized as a right, not a privilege. Every man, woman and child in our country should be able to access the health care they need regardless of their income. The only long-term solution to America's health care crisis is a single-payer national health care program.

BernieSanders.com/Medicareforall/

March 22, 2016

Donald Trump



- Party Affiliation
 - Until 1987; Democrat
 - 1987 to 1999; Republican
 - 1999 to 2001; Reform Party (Presidential Candidate)
 - 2001 to 2009; Democrat
 - 2011 to 2012; Independent
 - 2012 to Present; Republican

Donald Trump



- **Seven (7) Point Health Plan**

1. Completely repeal Obamacare. Our elected representatives must eliminate the individual mandate. No person should be required to buy insurance unless he or she wants to.
2. Modify existing law that inhibits the sale of health insurance across state lines. As long as the plan purchased complies with state requirements, any vendor ought to be able to offer insurance in any state. By allowing full competition in this market, insurance costs will go down and consumer satisfaction will go up.

- **Seven (7) Point Health Plan**

3. Allow individuals to fully deduct health insurance premium payments from their tax returns under the current tax system. Businesses are allowed to take these deductions so why wouldn't Congress allow individuals the same exemptions? As we allow the free market to provide insurance coverage opportunities to companies and individuals, we must also make sure that no one slips through the cracks simply because they cannot afford insurance. We must review basic options for Medicaid and work with states to ensure that those who want healthcare coverage can have it.

- **Seven (7) Point Health Plan**

4. Allow individuals to use Health Savings Accounts (HSAs). Contributions into HSAs should be tax-free and should be allowed to accumulate. These accounts would become part of the estate of the individual and could be passed on to heirs without fear of any death penalty. These plans should be particularly attractive to young people who are healthy and can afford high-deductible insurance plans. These funds can be used by any member of a family without penalty. The flexibility and security provided by HSAs will be of great benefit to all who participate.

- **Seven (7) Point Health Plan**

5. Require price transparency from all healthcare providers, especially doctors and healthcare organizations like clinics and hospitals. Individuals should be able to shop to find the best prices for procedures, exams or any other medical-related procedure.

6. Block-grant Medicaid to the states. Nearly every state already offers benefits beyond what is required in the current Medicaid structure. The state governments know their people best and can manage the administration of Medicaid far better without federal overhead. States will have the incentives to seek out and eliminate fraud, waste and abuse to preserve our precious resources.

Donald Trump



- **Seven (7) Point Health Plan**

7. Remove barriers to entry into free markets for drug providers that offer safe, reliable and cheaper products. Congress will need the courage to step away from the special interests and do what is right for America. Though the pharmaceutical industry is in the private sector, drug companies provide a public service. Allowing consumers access to imported, safe and dependable drugs from overseas will bring more options to consumers.

<https://www.donaldjtrump.com/positions/healthcare-reform>

Potential Impacted ACA Provisions



- Cadillac Tax
 - 40% Excise Tax on plans that premium exceed \$10,200 / \$27,500
 - Includes amounts deposited into FSAs, HSAs and HRAs
- Immigration
 - Access to Healthcare Exchanges and / or Medicaid
- Medicaid Expansion
- Non Discrimination Provision
 - Does not allow plans to create Classes of employees
 - This has been delayed since 2013 until further guidance is issued
- Contraceptive Mandate
- Subsidies
- Employer Shared Responsibility
 - Pay or Play

Potential Impacted ACA Provisions (Continued)



- 30 / 40 hour requirement
 - How many hours constitute a full time employee?
- Health Insurance Tax
 - Insurers pay annual tax based on their total annual premiums
- Small Business Tax Credit
 - Not enough small business qualify
- Medical Loss Ratio
 - Broker Commissions are included in the calculation
- Employer Exclusion of taxes for Health Insurance
 - Employers tax deduction for premiums paid for their employees

Scenarios – Bernie Sanders



- SCOTUS
 - Garland?
 - Someone else?
- ACA Provisions
 - Repeal
 - Cadillac Tax
 - Medicaid Funding

Hillary Clinton

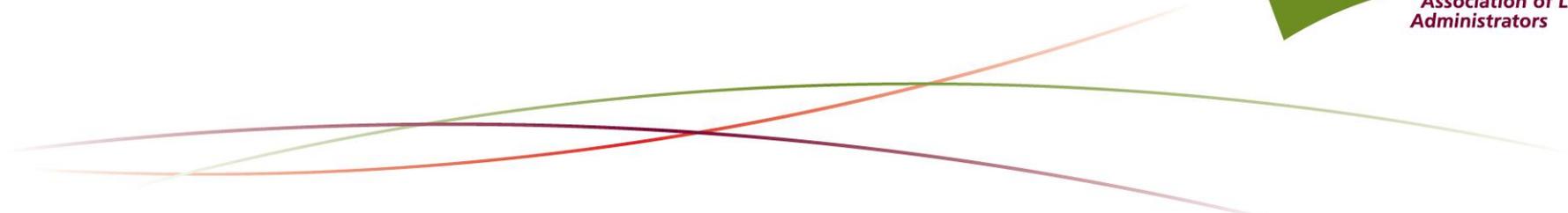


- SCOTUS
 - Garland?
 - Someone else?
- ACA Provisions
 - Cadillac Tax
 - Medicaid Funding
 - Non Discrimination Provision
 - Contraceptives
 - Subsidies
 - 30 / 40 hour requirement
 - Health Insurance Tax

Donald Trump



- SCOTUS
 - Garland?
 - Ted Cruz
 - Someone else?
- ACA Provisions
 - The entire list

Three decorative, overlapping curved lines in shades of green, purple, and red sweep across the upper portion of the slide, starting from the left and ending on the right.

I tremble for my country when I think we may in
fact get the kind of leaders we deserve

-Thomas Jefferson

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Thank You



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