

NOVEMBER 15, 2022

SPECIAL ALERT

2022 Post-Election Analysis & Outlook

Federal & State Health Policy Outlook

On Tuesday, November 8, 2022, polls for congressional, state, and local elections around the country closed and it is now clear Democrats will maintain control of the U.S. Senate and the U.S. House will likely be led by a slim Republican majority. Mid-term elections (referring to an off year from Presidential elections) historically have led to reduced seats in Congress for the President's party, particularly in the U.S. House, often with a switch in party control. However, the 2022 mid-term election bucked that trend as Democrats maintained their majority in the Senate and lost fewer seats in the House than expected. Influencing the election dynamic are multiple factors, including the direction of the economy, inflationary pressures, abortion access, and other elements specific to candidates and local concerns. This memo outlines the implications of the elections on health policy for the rest of the year, in the 118th Congress and the future Biden health agenda.



Quick Take:

- Final margins in the Senate and House will help us gain insight into agenda setting and emerging bipartisan opportunities; tighter margins will force compromise and empower moderates to act on achievable and mutual must-pass legislation
- Evolving policy priorities of both Congress and the Administration will reflect positioning for the 2024 Presidential election and divided government may free the Biden Administration to pursue a more centrist course.
- The Senate remaining in Democratic control provides a clear pathway for new agency appointees. A Republican House may attempt to address and slow the implementation of prescription drug provisions of the IRA and other Biden regulatory priorities via oversight.



The Broader Context

2022 MIDTERM ELECTIONS & HEALTH POLICY

Overall, expected large gains by Republicans did not materialize (the so-called “red wave”), with Democratic incumbents holding off challengers in many races. The House remains likely to switch to Republican control, though with a narrow margin, which could elevate the power of smaller factions in the party over the agenda. The Democrats will retain Senate control with one undecided race in Georgia – moving to a December runoff. ***We are watching the size of the new House margin and drivers of outcomes in specific races across the country as insight into new House priorities and potential leadership and committee assignments shifts.***



The continued close margin in the Senate will force compromise on policy priorities and if Democrats hold their seat in the Georgia runoff the path for agency appointees will not require the approval of every Democratic Senator. Previously Senator Joe Manchin (D-WV) has stalled Biden priorities.

For now, key members on committees of jurisdiction overseeing health care policy remain unchanged. That said, we could still see significant changes in priorities for the health-related committees.

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Furthermore, while the new Congress does not convene until January 2023, the likely shift in majority control in the House will to some extent impact end-of-year legislation pursued by the current Congress, including negotiating strategies over raising the debt limit.

For the Biden Administration, the outcome in the House will close off some legislative avenues it otherwise might have pursued (or faced pressure to pursue), while other opportunities might emerge for greater negotiation, agreement, and legislative action on issues in the center of the political spectrum. The Administration, assessing the potential impact of new COVID-19 strains and a likely severe flu season, will soon decide whether and how to continue or roll back in January the public health emergency (PHE) and its related coverage expansions. It also could face policy pressure in negotiations with a Republican House over the debt limit. Questions remain about whether a divided government will free the Biden team from pressures from the progressive wing of the party and allow him to pursue more centrist approaches to health care issues.

We expect that Republicans in the House will pursue greater Congressional oversight of executive branch agencies and the President himself; this dynamic will have implications for health care policies pursued by the Department of Health and Human Services, with a likely focus on the pandemic response, implementation of the Inflation Reduction Act's drug pricing provisions, and the need for an ongoing public health emergency (and related health coverage provisions). Additionally, both parties will look to election results to begin to develop their plans for the 2024 Presidential election; a Republican House (or Congress) will employ their power to float bills with limited likelihood of being signed by the President, but that convey messages about their priorities or agendas.

There will be notable shifts in Committee leadership due to retirements. On Senate Appropriations, Chairman Leahy (D-VT) and Ranking Member Shelby (R-AL) are retiring at the end of this term. They are expected to be replaced by Sen. Murray (D-WA) and Sen. Collins (R-ME). On the Senate Committee on Health, Education, Labor, and Pensions (HELP), it is expected that Sen. Sanders (I-VT) will lead HELP for Democrats. Ranking Member Burr (R-NC) is also retiring and is expected to be replaced by Sen. Paul (R-KY) unless he takes another position, in which case Sen. Cassidy (R-LA) is expected to be next in line. Finally, on House Ways and Means, Ranking Member Brady (R-TX) is retiring. Candidates to fill the role include Rep. Jason Smith (R-MO), Rep. Buchanan (R-FL), and Rep. Adrian Smith (R-NE). Rep. Neal (D-MA) is expected to remain the Democratic committee head.

In races for governor, incumbents of both parties generally held off challengers in the states, though several of those challengers had good showings, pointing to continue divides in the voting public across the country. ***Given the prominent state role in health care and related programs, we are watching those races closely for impact on state policy agendas.***

Given the prominent role of states in health care and related programs, we are tracking gubernatorial races closely for potential impact to state policy agendas and potential innovative reforms.



The Complex Role of Healthcare

IN THIS MIDTERM ELECTION CYCLE

Interestingly, the future of financing, coverage, and delivery reform in the health care system was not a top issue in this election cycle—as it was in previous elections with the Affordable Care Act—despite affordability and access to health care and prescription drugs remaining a significant concern to voters. Inflation, particularly for food and energy, and a weakening employment outlook appear to be the major considerations for many voters. Still, along with other issues such as immigration, crime, and the war in Ukraine, specific health care issues animated voter turnout and candidate choices. The Supreme Court's decision to overturn *Roe v. Wade* elevated the issue of abortion rights and women's reproductive health/family planning more broadly. Attention to the issue earlier this year raised voter turnout for Democrats and contributed to efforts by the Administration to enhance access to those services for women in states looking to restrict or ban abortion. Supporters of abortion rights saw some victories in a handful of state ballot initiatives and some suburban races. We will be analyzing the ongoing impact of this issue on the election and the health care system, with an eye to how abortion politics affects health care policy in the states and at the federal level.



Additionally, the recently passed Inflation Reduction Act that included provisions to add government limits and negotiating authority to prescription drug prices (a main concern of voters and a longtime bipartisan effort) had a muted effect. Despite a robust 18-month intraparty negotiation in Congress, relatively few Americans were aware of certain popular provisions of the law including capping the price of insulin and allowing Medicare to negotiate the price of specialty drugs. ***We will look to see how much that approach to addressing prescription drug prices swayed voters, particularly in the broader context of high inflation, and what to expect as HHS implements the new law over the coming years.***

While the pandemic continues to move into the rear-view mirror, ongoing issues with coverage and other policies enacted during the ongoing PHE have been part of the conversation this election cycle, and we expect to be in the next Congress. The impact of policies (such as lockdowns and school closures) taken to address the spread of COVID also played into the election, though possibly more so at the state and local levels.

Policies to address prescription drug prices were popular with voters; however, it is unclear the extent they played in election results, given the broader context of high inflation, gas prices, and abortion access.



At the state level, South Dakota's ballot initiative to expand Medicaid passed, leading to another hold-out state potentially taking on the coverage expansion for its non-disabled adult population. A medical debt bill in Arizona also passed, reflecting concerns about health care costs. Other ballot measures focused on legalizing marijuana and psilocybin, pointing to future voter interest and developments in those areas. ***The Healthsperien team is tracking the various state proposals to ensure our clients understand their implications.***

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Healthcare in the 118th Congress+

OPPORTUNITIES TO MOVE FORWARD

To a large extent, the outcomes of the mid-terms will not change the health policy landscape's trajectory as scientific, medical, and business innovation define health care and its possibilities and the economy and budget shapes its limits. Even with a shift to Republican control in the House, ensuring affordability of health insurance will continue to be a central issue for policymakers, particularly given the persistent voter concerns and inflationary pressures.

With House Republican control, even with a narrow margin, the continuation of pandemic-related coverage policies is less likely to occur with elevated scrutiny of the Administration's pandemic response. We are more likely to see efforts to scale back or slow implementation of the prescription drug policies in the IRA, although those efforts will likely die in the Senate outside of a budget reconciliation vehicle. We also expect Republicans to develop a range of approaches to restrain the growth of Medicare and other entitlement spending, though division between conservatives and moderates in the party will affect that approach and positioning for 2024. We expect that a Republican majority will pressure the Biden HHS on its approach to "surprise billing" and find ways to protect and ease the regulatory burden on physicians.

Still, bipartisan opportunities remain., particularly with closely divided chambers. Part of the House Republican agenda (in its Commitment to America) is affordable, high-quality options for health care, lowering prices through transparency, choice and competition, opioids, and access to innovation in therapies and telemedicine; those issues all have to some degree bipartisan historical support. Reducing administrative burden via prior authorization reforms, updating quality reporting requirements, and scrutiny of pharmacy benefit manager industry consolidation are likely to be a focus. We also expect bipartisan efforts to address a range of bipartisan mental health services and telehealth, particularly elements of the PHE that continue telehealth flexibilities.

At a broader level, the looming pressures on the Medicare Trust Fund will place pressure on finding financing solutions that work for both parties. And growing voter struggles with paying for long-term services and supports may prompt action on that front that draws from earlier draft legislation to reform home and community-based services.



Finally, given slim majorities in both houses of congress, action on a range of health care issues will likely shift to the executive branch. We anticipate the Biden Administration to exercise broader authority to advance the President's priorities outside of Congressional action. Health care reforms may come through regulation and oversight of the Medicare Advantage and Part D programs, programs offered by the Center for Medicare & Medicaid Innovation (CMMI), the Medicare Shared Savings Program (MSSP), and coverage more broadly.

Even as divided government slows action on health policy at the federal level, activity may rise at the state level, as Democratic and Republican governors alike promote policies and solutions to persistent problems in the health system.

We are closely tracking the potential impact in the states of changes in control at the Governor level and in state legislatures to better understand how states may pursue programs and policies in areas such as Medicaid. For example, with the increased aging population, states are preparing to rebalance LTSS service delivery to reduce reliance on institutional care settings, using managed LTSS, adopting LTSS payment reforms, and better integrating care for Medicare-Medicaid dual eligibles. ***As the conversation about rebalancing and long-term care more broadly has been left out of the national debates so far, we continue to focus on those issues and the opportunities created by the election outcome.***

Gubernatorial and state legislature changes could have an impact on how states pursue programs and policies in areas such as Medicaid, long term care delivery and individual market reforms.

