

HGA's 2018 Midterm Election Wrap-Up

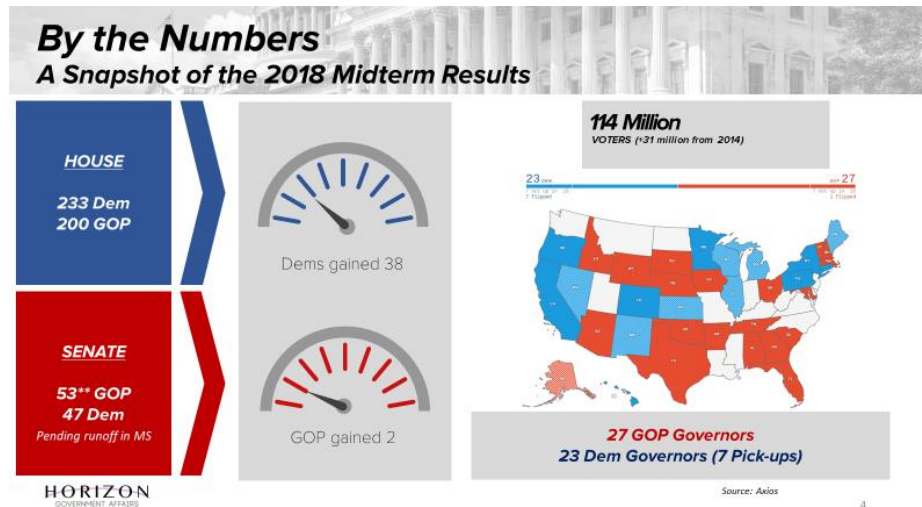
Dear Friend of HGA,

Another midterm election is behind us, and many are now considering the potential impact on the future of the *Affordable Care Act*, prescription drug affordability, Medicare for All, digital health initiatives, the response to the opioid crisis, and the like.

In these pages, we have offered some topline observations about the results of the election and the possible effects on health industry stakeholders, so that HGA partners may consider how to adapt their strategies to remain positioned for success.

Tuesday's outcome will be a mixed bag for most, with Democrats' predicted "Blue Wave" ultimately yielding only modest gains in the House, where the party will claim at least 223 seats (some races still outstanding), making for a narrow majority.

In the Senate, where Democrats faced an uphill map, Republicans may expand their lead to up to 53 seats (pending the final vote tally Florida and a runoff election in Mississippi).



The election saw record midterm voter turnout in a cycle that was largely a referendum on healthcare and the economy. Democrats dominated by a landslide margin in exit polls on the former, and Republicans holding a commanding lead on the latter.

Other concerns such as immigration, gun safety, and the confirmation of Supreme Court Justice Brett Kavanaugh factored into voters' decisions.

Increased Gridlock from Moderate Losses

HGA predicts the midterm results will lead to an even more polarized Congress in the new year, given the losses of moderate legislators in both parties and both chambers.

As a case study, consider the losses of Senator Joe Donnelly (D-IN) and Congressman Leonard Lance (R-NJ). Donnelly was the lead cosponsor of Republican-driven legislation to repeal the *Affordable Care Act's* 30-hour workweek and a supporter of Supreme Court Justice Neil Gorsuch's confirmation. Lance was a member of the Congressional Problem Solvers Caucus who opposed his own party's tax reform bill and ACA repeal efforts. A broad swath of legislators in "purple" seats saw this same fate, which we anticipate will make for a more gridlocked 116th Congress with fewer bipartisan votes.

House Democrats to Focus on Drug Pricing, Health Reform, Oversight

House Democratic Leader and likely Speaker-in-waiting Nancy Pelosi (D-CA) credited Democrats' newfound House majority to their healthcare focus at a Wednesday press conference.

Party leaders have suggested to HGA that their caucus will work on a return to regular order, addressing prescription drug affordability – including a number of proposals likely to meet swift industry objection (e.g., direct government negotiation of Medicare Part D prices and requiring manufacturers to publicly release data justifying significant price increases), further opioid-related legislation, and reversing what they believe has been a Republican-led "sabotage" of the *Affordable Care Act*.



On healthcare, Democrats must perform a difficult balancing act: Privately, Democratic leadership has strong concerns over Medicare for All but know they must satisfy progressive members of the caucus who have campaigned on the policy. Look for them to consider a symbolic vote on Medicare for All possibly sometime in the spring, while devoting much of their energy behind the scenes to their preferred strategy of a more incremental approach that starts with expanding gains made under the ACA.

We also expect House Democrats to use their majority to conduct aggressive oversight on everything from the President's business dealings and tax returns – which likely incoming Ways and Means Chairman Richard Neal (D-MA) has said he would demand – to allegations of collusion between the Trump campaign and the Russian government in the runup to the 2016 election.

Finally, look for House Democrats to move a “good government” package early next year that may include reforms to pay-as-you-go (PAYGO) requirements, a reinstatement of earmarks, and lobbying reform measures.

Senate Republicans Look to Avoid ACA Fights

Whereas House Democrats will place special focus on Trump administration investigations, Senate Republicans will put their emphasis on administration *confirmations* – including federal judges and new cabinet members arising from the resignation of Attorney General Jeff Sessions, the likely departure of Secretary of the Interior Ryan Zinke, and others.

Senate Republicans will also be able to stack committees of healthcare jurisdiction – including the HELP and Finance Committees – with more of their members as a result of their expanded majority. We expect Senator Lamar Alexander (R-TN) will retain his post as HELP Committee Chairman, while current Judiciary Committee Chairman Chuck Grassley (R-IA) will leap to the Senate Finance Committee to replace retiring Senator Orrin Hatch (R-UT).

Senate Leadership Breakdown

| REPULICAN | DEMOCRAT | |
|--|---|--|
| Majority Leader Mitch McConnell (KY) | Democratic Leader Chuck Schumer (NY) | Democratic Conference Vice Chair Mark Warner (D-VA) |
| President Pro Tempore Chuck Grassley (IA) | Whip Dick Durbin (IL) | Steering Committee Chair Amy Klobuchar (D-MN) |
| Whip John Thune (SD) | Assistant Democratic Leader Patty Murray (WA) | Chair of Outreach Bernie Sanders (I-VT) |
| Conference Chair John Barrasso (WY) | Policy and Communications Committee Chair (DPCC) Debbie Stabenow (MI) | Vice Chair of the DPCC Joe Manchin (D-WV) |
| Policy Committee Chair Roy Blunt (MO) | Democratic Conference Vice Chair Elizabeth Warren (D-MA) | Democratic Conference Secretary Tammy Baldwin (D-WI) |
| Republican Conference Vice-Chair Joni Ernst (IA) | | |
| NRSC Chair Todd Young (IN) | | |

HORIZON
GOVERNMENT AFFAIRS

21

Leader McConnell has effectively ruled out another vote on ACA repeal – taking a cue from Democrats’ victories in the House, the law’s improving popularity, and anticipating Senate Republicans’ 2020 map where they will be playing defense, including in states such as Colorado and Maine where Hillary Clinton bested President Trump.

Senate Republicans, who have struggled in the polls on healthcare in recent months, may seek to avoid dealing with the ACA altogether, unless a pending Texas court case strikes down the law and puts the issue back in their laps.

Following the White House’s upcoming report on competition and choice – due later this month – we expect Senate Republicans to use their perch to highlight their vision for market-based healthcare reform, including possible hearings and votes.

Trump to Rely More Heavily on Executive Action, Ready to Work with Democrats on Drug Pricing

Amid the loss of unified Republican control in Washington, HGA anticipates the Trump administration will rely more forcefully on the rulemaking process, demonstration capabilities under the Center for Medicare and Medicaid Innovation (CMMI) and levers it can pull at the Federal Trade Commission and the Justice Department to implement its healthcare agenda.

For planks of the administration's health policy platform requiring Congressional action, President Trump is optimistic about the odds of a deal with Democrats, saying Wednesday that *"Lowering the cost of prescription drugs, these are some of the things that the Democrats do want to work on ... I really do believe we're going to be able to do that."*

Similarly, Speaker Pelosi said this week, *"I think we could find common ground on reducing the cost of prescription drugs, if the president is serious about his saying that he wants to do that."*

Many have also pointed to surprise billing – where lawmakers as diverse as Sens. Bill Cassidy (R-LA) and Maggie Hassan (D-NH) are working on similar legislation this year - as another area that could be ripe for bipartisan compromise.

Blue States Could Limit Short-Term Plans, Enact Progressive Policies Under Section 1332

In this year's gubernatorial races, Democrats flipped seven governorships (Illinois, Kansas, Maine, Michigan, Nevada, New Mexico, Wisconsin) to Republicans' one (Alaska), though the GOP still holds a slim majority of governorships across the nation.

Democrats also gained majorities in seven state legislature chambers, per the National Conference of State Legislatures.

These states could use their authority to limit short-term and fixed indemnity plans that are a frequent object of Democratic criticism. They could also enact an individual mandate of their own under the ACA, given Republicans' zeroing out of the penalty as part of last year's tax reform law.

The shifting dynamics in statehouses could also have implications on states' use of the ACA's 1332 waiver program. HGA expects states to continue seeking waivers to stabilize their markets, but blue states may tailor their waiver applications to be a simple reinsurance proposal, rather than tying the application to other market reform policies.

Red States Expand Medicaid

Even traditionally Republican states offered surprises on Tuesday evening, with voters in Utah, Nebraska, and Idaho passing ballot initiatives to expand Medicaid.

Voters in Montana, however, rejected a measure to raise taxes on tobacco and e-cigarettes in order to continue funding the state's Medicaid expansion.

Meanwhile, voters in Michigan, Utah, and Missouri approved initiatives expanding the legal use of marijuana, while North Dakota rejected a medical marijuana measure and Ohioans voted against easing drug sentencing laws.

Forecast for Lame-Duck

Before the 116th Congress convenes in January, lawmakers have scheduled four-weeks of “lame-duck” session this year. This will include passage of a government funding package on or before December 7, when current funding for many programs is set to expire, and a reauthorization of the National Flood Insurance Program.



The graphic features a header with the text "Lame Duck" over a background image of a classical building. Below the header are six dark blue boxes arranged in two rows of three. The first row contains: "Leadership Elections and New Member Orientation", "Budget & Appropriations" (with sub-points: December 7th deadline, DACA/Wall, Disaster supplemental bill), and "Farm Bill" (with sub-point: Resolve differences between House and Senate). The second row contains: "Taxes" (with sub-points: Technical fixes, Extenders), "National Flood Insurance Program (NFIP)" (with sub-point: Must pass NFIP extension by November 30), and "Health Care?". At the bottom left is the logo for "HORIZON GOVERNMENT AFFAIRS" and at the bottom right is the number "14".

Congressional staff are also prepping for a possible lame-duck debate over border wall funding and possible action on legislation to amend the patient privacy law governing addiction treatment records known as “42 CFR Part 2.”

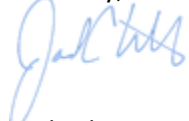
HGA will keep clients apprised of further developments as chairmanships are announced and additional policy priorities are rolled out.

Conclusion

Advancing legislation in the new Congress will require differing strategies for the Democratic-controlled House, the Republican-controlled Senate and administration. While gridlock will be a common theme through much of next year, a looming March 2019 deadline to raise the debt limit could provide a vehicle for a bipartisan deal on key issues. The divided Congress also makes the administration all the more powerful, due to the likelihood of more frequent executive action.

HGA’s [bipartisan team](#) of policy, advocacy, and economic experts are prepared to meet these shifting dynamics head on and look forward to our continued work together with each of you in the weeks and months ahead.

Sincerely,



Joel White
President and CEO
Horizon Government Affairs