



Democrats Keep Control of the Senate – GOP Holds Onto House

Democrats will retain control of the Senate in the 113th Congress, having gained two Republican seats (Massachusetts and Indiana), held seats of targeted incumbents (Florida, Montana and Ohio), and picked up open seats that were presumed to be unwinnable (North Dakota, Wisconsin). The Democrats were seen as in trouble with retaining control as they came into the 2012 race with the seats of twenty-one Democrats, plus two independents who caucused with the Democrats, up for election. The Republicans only needed to pick up a handful of seats to take back the majority. The recruitment of strong candidates helped Democrats keep the upper chamber.

While the House Democrats won a narrow plurality of the popular vote – a day after the election analysis found that 53,952,240 votes were cast for Democrats seeking House seats, while just 53,402,643 votes were cast for Republicans -- Republicans held onto their majority keeping the gavel in the hands of Speaker John Boehner (R-OH). Because of the structural advantages created by Republicans through their control of state-based redistricting processes, the Democrats did not just need to win a majority of the votes, but they would have needed to win 55% of the national vote, a net gain of 25 seats, to earn a House majority. The last time the majority party in the House was unable to receive a plurality of the popular vote was in 1952, when the GOP kept the House for similar reasons.

The Republicans, retaining a solid majority control of the House which they seized with the Tea Party-fueled wave election of 2010, picked up 10 Democratic seats in the House. The Democrats defeated 12 GOP incumbents. There are at least 79 new members of the House. While the Republicans had a handful of Tea Party losses, philosophically the House Republicans may not be very different from the current one, pressing for lower taxes, federal spending cuts, a reduction in the growth of entitlement programs such as Medicare and Medicaid, and repeal of Obama's 2010 health care overhaul law. Already politically polarized, the House also will be demographically polarized: Women and minorities for the first time in U.S. history will hold a majority of the Democratic Caucus's House seats (expected to include 60 women, 43 African-Americans, 27 Latinos and 10 Asian-Americans), while Republicans will continue to be overwhelmingly white and male.

Obama Win Ensures PPACA's Future, But Challenges Loom

President Obama's re-election ensures that the health care reform law – *Patient Protection and Affordable Care Act* (PPACA) – will continue to be implemented, but significant challenges remain, including the creation of health insurance exchanges, the expansion of Medicaid coverage, and possible funding cuts related to a deficit reduction deal that could be reached by the president and Congress before year-end, but more likely in 2013.

Obama's win also ensures the law's \$716 billion in Medicare provider cuts likely will be implemented over the next 10 years. Providers should prepare for the (Cont'd page 2)

In this issue . . .

Democrats Keep Control of the Senate – GOP Holds Onto House	1
Obama Win Ensures PPACA's Future, But Challenges Loom	1
Busy Lame Duck Congress	2
CBO Says Freezing Physicians' Medicare Pay Would Cost \$10.6 Billion	2
From the States	3

Busy Lame Duck Congress

With the election out of the way, Congress returned November 13 to begin year-end deliberations after a six-week election lull. Lawmakers are focusing on a number of issues through the end of the year such as stalling looming tax changes and discretionary spending cuts. Any immediate plan likely will provide the basis for a longer-term tax overhaul plus another required increase in the federal debt limit – and will

open up possible talks on beneficiary and provider changes for the Medicare and Medicaid programs. A meeting with the White House and Congressional leadership November 16 focused on these issues. In addition to the fiscal topics, Congress will also need to focus on the annual adjustment of Medicare physician and other provider payments before the end of the year.

CBO Says Freezing Physicians' Medicare Pay Would Cost \$10.6 Billion

According to the Congressional Budget Office (CBO), averting a Medicare pay cut for doctors for 2013 would cost \$10.6 billion for one year and leave physicians facing a 25% pay cut in 2014, unless Congress agrees to cancel the cut. In an email sent to congressional aides November 19, CBO said that the cost of a zero-percent update (that is, no pay cut) for just 2013 would be \$25.2 billion over a decade. CBO said freezing physicians' Medicare payment every year over a 10-year period would cost \$243.7 billion.

As has often been the case in the past, the looming Medicare physician payment cut has become linked to several larger issues. This time it is a temporary or permanent legislative package meant to address the so-called fiscal cliff, a mix of expiring tax provisions, and spending cuts set to be implemented in 2013 as dictated by the *Budget Control Act of 2011*. The law will begin reducing Medicare spending by 2% beginning in 2013.

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possibility of even deeper Medicare spending cuts, as Congress and the White House are looking for program savings to include in a sweeping budget deficit deal being considered in the current lame-duck congressional session, or more likely, next year. A short-term budget deal that may emerge would delay larger fiscal decisions until next year and could include another temporary physician payment fix. Physicians' Medicare spending is scheduled to be reduced about 27% January 1, unless Congress intervenes.

Health care may be viewed by many lawmakers “as a bank” to help fund various pieces of legislation, including a short-term Medicare physician payment fix. The primary area likely to be targeted by lawmakers to pay for a doc fix will be making changes to Medicare outpatient hospital evaluation and management policy. Medicare spending for home health and imaging services also could be targeted.

PPACA also faces numerous implementation challenges. Many states have not taken action linked to creation of health insurance exchanges, and states also must work to expand Medicaid coverage mandated under the law.

From the States . . .

2012 State Election Results

Democrats took complete control of five additional state legislatures, while Republicans added a governorship and control of three additional state legislatures. All told, Republicans will have 30 governors and control of 24 state legislatures next year, compared to 19 Democratic governors and 18 Democratic-controlled legislatures. The remaining eight state legislatures are split or tied.

Many of those GOP governors are philosophically opposed to the *Patient Protection and Affordable Care Act*, including the idea of expanding Medicaid. And, thanks to the Supreme Court's ruling, states will be able to decide whether to broaden the program in their states. So far, six GOP governors, all of whom remain in power, have said that they would not expand the health program for the poor. Others have been waiting for the results of the election to decide. For those governors who haven't committed, what to do about Medicaid will likely figure high on their agendas come January.

California Bill Setting Rates for ED Care Vetoed

Last month, California Governor Jerry Brown (D) vetoed SB 359, a bill that would have changed hospitals' payments related to ED care. The bill, sponsored by Senator Ed Hernandez (D-West Covina), was developed in response to a February 24 legislative hearing

focused on ED costs and billing practices of Prime Healthcare, and critics' claims that the hospital chain is inflating such costs. Two health care providers, Kaiser and Heritage Provider Network, are involved in ongoing lawsuits with Prime Healthcare that accuse the chain of "trapping" their patients in Prime hospitals to charge more for treating patients from outside their health care networks.

SB 359 would have affected only those hospitals where, during the course of a year, half or more of the privately insured patients admitted through the ED are outside their care network. Once a hospital reached that threshold, the bill's new rules would have ensured that the hospital would be paid Medicare rates or a "good faith and reasonable" estimate of costs.

In his veto message, Brown noted that he shares the goal of reining in "excessive hospital charges for out-of-network emergency care." But he also wrote that he was not convinced "that the rate-setting formula in this bill has it right." Brown added that, if problems are "as widespread and as excessive as some claim, such practices will invite an appropriate regulatory response."

Prime Healthcare board chair and chief executive Prem Reddy applauded the veto in a letter sent to supporters of the chain. The California Hospital Association took a neutral stance on the bill.