

Winds of Change: Healthcare Reform and the New Administration

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Today's Webinar

During the webinar, feel free to email or text Richard if you have additional questions that you would like to have addressed.

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Agenda

- **THE NEW POLITICAL REALITY (AT LEAST FOR NOW)**
- **OBAMACARE, TRUMP & THE 115TH CONGRESS**
 - Repeal: What Stays & What Goes
 - Replacement: The Possibilities
 - Executive Orders & The New Regulatory Regime
- **ACA REPORTING UPDATE**
- **NEW GUIDANCE ON FIXED INDEMNITY PLANS**



The New Political Reality (At Least for Now)

- **DONALD J. TRUMP—45TH PRESIDENT OF THE UNITED STATES**
- **UNIFIED REPUBLICAN HOUSE AND SENATE**
 - Democrats picked up 7 seats in the House (241-194)
 - Democrats picked up 2 seats in the Senate (52-48)
- **100-DAY PLAN**
 - Repeal of the ACA
 - Don't believe everything you hear on the campaign trail
 - Will be difficult to repeal ACA entirely without 60 vote supermajority in Senate



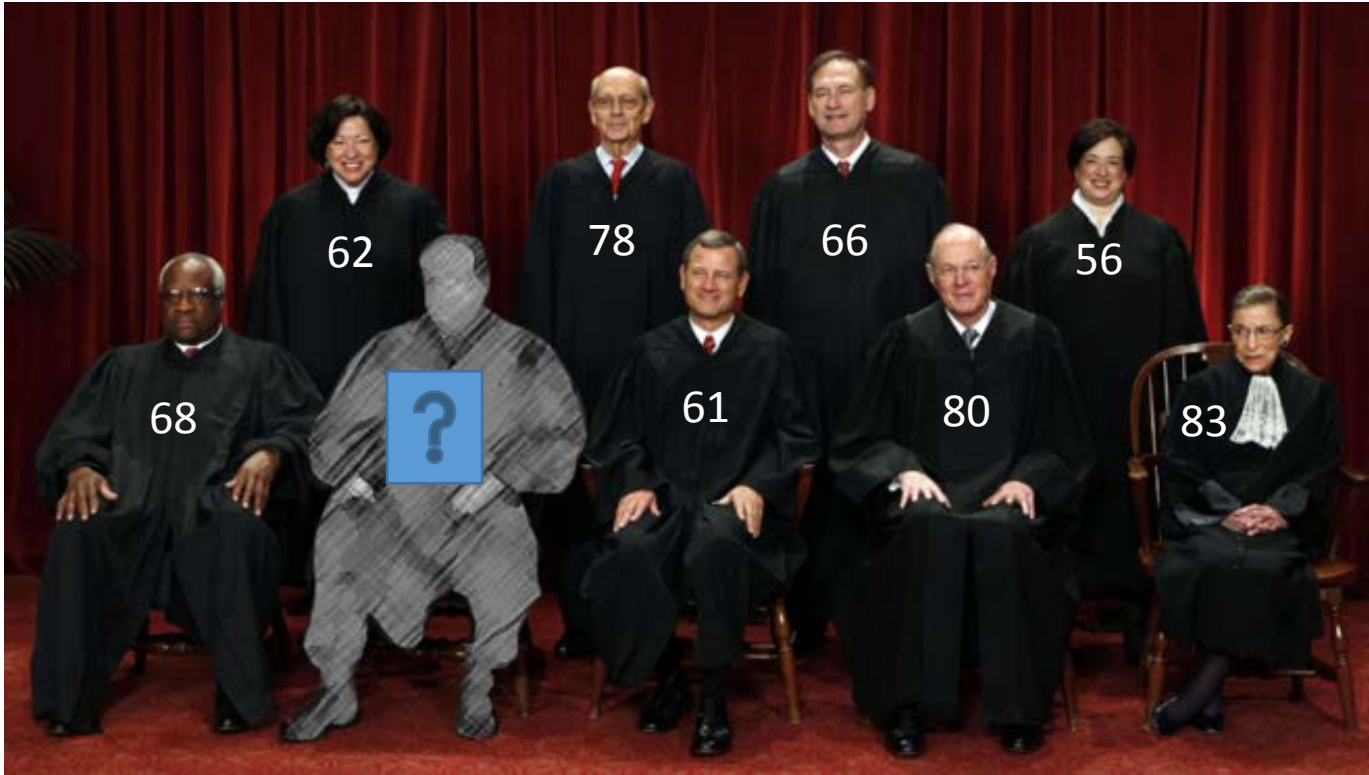
The New Political Reality (At Least for Now)

AVERAGE PREMIUM INCREASES IN EXCHANGES WITH KEY SENATE RACES

Ohio	13%
Florida	20%
North Carolina	20%
New Hampshire	30%
Wisconsin	30%
Indiana	36%
Pennsylvania	40%
Illinois	44%
Arizona	88%



The New Political Reality (At Least for Now)



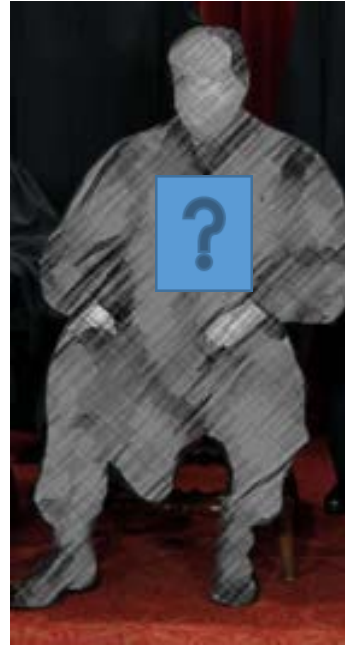
The New Political Reality (At Least for Now)

THE SUPREME COURT

WHO IT WON'T BE: MERRICK GARLAND

WHO IT MIGHT BE: NEIL GORSUCH

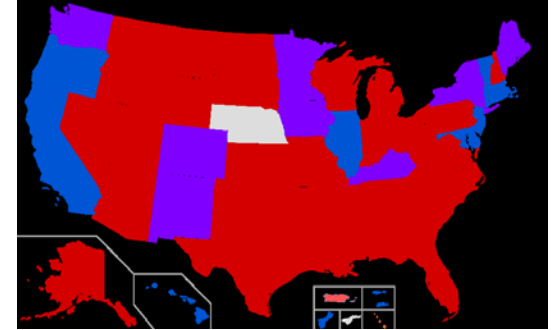
- Age 49, 10th Cir. (CO, KS, NM, OK, UT & WY)
 - Appointed to the U.S. Court of Appeals by President George W. Bush in 2006
 - Opinions are similar to Scalia's; known as exceptionally clear and routinely entertaining to read
 - Textualist (like Scalia)
 - Differs with Scalia on Chevron deference
 - Participated in Hobby Lobby and Little Sisters of the Poor cases
 - Appears to have a pro-religion conception of Establishment Clause



The New Political Reality (At Least for Now)

THE STATES

25	Republican Controlled States (Governor/Legislature)
5	Democratic Controlled States (Governor/Legislature)
7	Governor (D)/Legislature (R)
7	Governor (R)/Legislature (D)
1	Governor (I)/Legislature (Split)
1	Governor (R)/Legislature (Split)
1	Governor (D)/Legislature (Split)
25	Republican Controlled States (Governor/Legislature)
5	Democratic Controlled States (Governor/Legislature)



Obamacare, Trump & The 115th Congress

THE PHILOSOPHICAL MINDSET

- REPUBLICANS: A DEFINED CONTRIBUTION MODEL
- DEMOCRATS: A DEFINED BENEFIT MODEL
- LEADING PROPOSALS:
 - Tom Price's "Empowering Patients Act"
 - Paul Ryan's "A Better Way"
 - Orin Hatch's "Patient Care Act"
 - Cassidy-Collins' "Patient Freedom Act"



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WHAT IS LIKELY TO STAY

- MANY OF THE ACA'S "INSURANCE MANDATES" LIKELY TO REMAIN GIVEN THE DIFFICULTY OF UNRAVELING THE INSURANCE MANDATES BECAUSE OF SENATE FILIBUSTER
- NO EVIDENCE OF INSURABILITY FOR HEALTH INSURANCE
 - A reliable tool of the insurance industry
 - ACA: no pre-existing condition limitations
 - HIPAA: pre-existing conditions limitations offset by immediately prior periods of existing coverage (Ryan's proposal)



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WHAT IS LIKELY TO STAY

- COVERAGE FOR ADULT CHILDREN
 - ~54 million Americans between the ages of 18 and 30 (~17%)
 - Sluggish economic recovery
 - 26 may be too low
 - Advantages to keeping this population in the insurance pool



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WHAT IS LIKELY TO STAY

- ANNUAL & LIFETIME MAXIMUMS
 - Concept of Essential Health Benefits probably here to stay
 - Eliminating annual and lifetime limits popular
- TAX CREDITS TO SMALL BUSINESSES
- SUBSIDIES TO PURCHASE INSURANCE AND “EXCHANGES”

- POSSIBILITIES:
 - Medicaid—block funding
 - Medicare Reform



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WHAT COULD GO

- INDIVIDUAL MANDATE
 - Efficacy has always been suspect
- EMPLOYER MANDATE
- CADILLAC TAX

- IT APPEARS ALL OF THESE COULD BE REPEALED THROUGH BUDGET RECONCILIATION—WHICH ESCAPES FILIBUSTER



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WHAT COULD GO

- EMPLOYER MANDATE
- WILL PAY-OR-PLAY IN ITS PRESENT FORM SURVIVE?
- BI-PARTISAN APPROACH MAY EVOLVE THAT INVOLVES MORE EMPHASIS ON THE CARROT AND NONE ON THE STICK
- REPEAL OF CURRENT RULES COULD BE YUGE!
 - 30 hour rule
 - Counting hours
 - Affordability
 - Variable hours
 - Minimum Value
 - Reporting



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OTHER POTENTIAL CHANGES

- PERMIT SALE OF HEALTH INSURANCE ACROSS STATE LINES
 - Increased competition
 - Reduced administrative expenses
 - Foster new approaches to network creation
- INCREASE USE OF TAX-FAVORED VEHICLES
 - HSAs
 - FSAs
- ALLOW INDIVIDUALS TO DEDUCT PREMIUM COSTS
- PROVIDE INDIVIDUALS WITH TAX CREDITS/SUBSIDIES FOR PREMIUMS



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OTHER POTENTIAL CHANGES

- TORT REFORM
- PROVIDER PRICE TRANSPARENCY
 - Promote Consumerism
- REMOVE PRESCRIPTION DRUG BARRIERS
 - Write rules to allow access to imported, safe and dependable drugs from foreign sources



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PAYING FOR IT

- MEDICARE AND ENTITLEMENT REFORM
- TAXES (IT'S INEVITABLE)
- PHASE OUT OF TAX-PREFERENCE ON EMPLOYER SPONSORED GHPS
 - Cost of Coverage Model
 - Income/Premium Model



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- **BEWARE STATE ACTION**
 - Massachusetts Universal Healthcare Presents a Model
 - Charlie Baker Has Already Promoted Re-Introduction in MA
 - Even states that don't implement overhaul may introduce new requirements
 - The Lesson of Amendment 69 in Colorado—will it be learned?



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EXECUTIVE ORDERS & THE NEW REGULATORY REGIME

- FIRST EXECUTIVE ORDER
- MORE TO COME
- REPEAL OF EXECUTIVE ORDERS & OTHER ACTION
 - Certain Preventive Care Benefits
 - Little Sisters of the Poor
- TRANSGENDER BENEFITS
- THE CANDIDATE'S PLEDGE: FOR EVERY ONE—TWO MUST GO



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EXECUTIVE ORDER ON THE ACA

- The order directs HHS and other agency heads to exercise all available authority and discretion to grant exemptions from or delay the implementation of any provision of the ACA that would impose a fiscal burden on states, individuals, families, providers, insurers, purchasers of health insurance, or makers of medical devices
- NO DIRECT IMPACT ON EMPLOYERS
 - To the extent that following the order would require revision of regulations issued through notice-and-comment rulemaking, the agencies will need to comply with the Administrative Procedures Act
- ACA REPORTING CONTINUES TO BE ENFORCEABLE LAW AT THIS TIME



Other New Developments

ACA REPORTING, HHS NOTICE OF BENEFIT & PAYMENT PARAMETERS

- IRS will begin sending employer mandate penalty notices for 2015 “early in 2017”
- IRS has begun sending “applicable large employer” notices to employers (requests for Forms 1094-C / 1095-C)
- IRS will not systematically reject “silent returns” that don’t indicate whether the taxpayer maintained health insurance coverage
- Federal Poverty Level Released for 2017: \$12,060
- FPL-affordable coverage in 2017 = \$97.38 / month
- OOP limits for 2018: \$7,350 (individual) / \$14,700 (family)
- CMS confirms that involuntary loss of Marketplace coverage is a HIPAA special enrollment event for entry into an employer’s plan



IRS Guidance on Fixed Indemnity Plans

- **PROVIDES GUIDANCE ON FIXED INDEMNITY PLANS**
- **ADDRESSES POTENTIALLY ABUSIVE ARRANGEMENTS**
 - Programs that claim they can be implemented at no cost to the employer and without impact to an employee's net take-home pay and will result in:
 - Employers saving an average of \$1,000 in FICA taxes per employee per year;
 - Employees receiving an average of \$2,000 per year in additional benefits
 - Memo provides that payments under a fixed-indemnity plan are taxable when premiums are paid pre-tax



Questions?



2017 Mid Atlantic Benchmarking Survey

If you are a Mid Atlantic employer with 50 or more employees, then you are invited to participate in the 2017 Mid Atlantic Benchmarking Survey

By completing this survey, you will be able to find out:

- How your employee benefits compare to other employers in the Mid Atlantic
- The types of strategies other employers are using in this health care reform era
- If your wellness and disease management plans are on par with your peer
- The prevalence of high-deductible health plans in your area
- Cost control strategies other employers are utilizing

www.silbs.com/benchmarking - Link opens in March!



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UPCOMING HR ROUNDTABLE

MARCH 23rd: Healthcare Bluebook

Speaker: Will Brockman, Healthcare Bluebook

REGISTER TODAY: www.silbs.com/sig-university



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MARCH 8, 12PM – 1PM EST

HR Trends

MARCH 22, 12PM – 1PM EST

How Mid-Market Employers Purchase Health Care like a Fortune 500

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