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Hot Topics in New York Health Law: *State and Federal Legislative Update*

NYS Capital District Branch of the ABA

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Federal Update

- ✓ The Repeal and Replace Saga
- ✓ Federal Tax Reform: Individual Mandate Repeal and Pressure for Entitlement Reform
- ✓ Executive orders and administrative actions to undermine the ACA

State Update

- ✓ Review of key health legislation from 2017 Session
- ✓ Preview of key health legislation in 2018

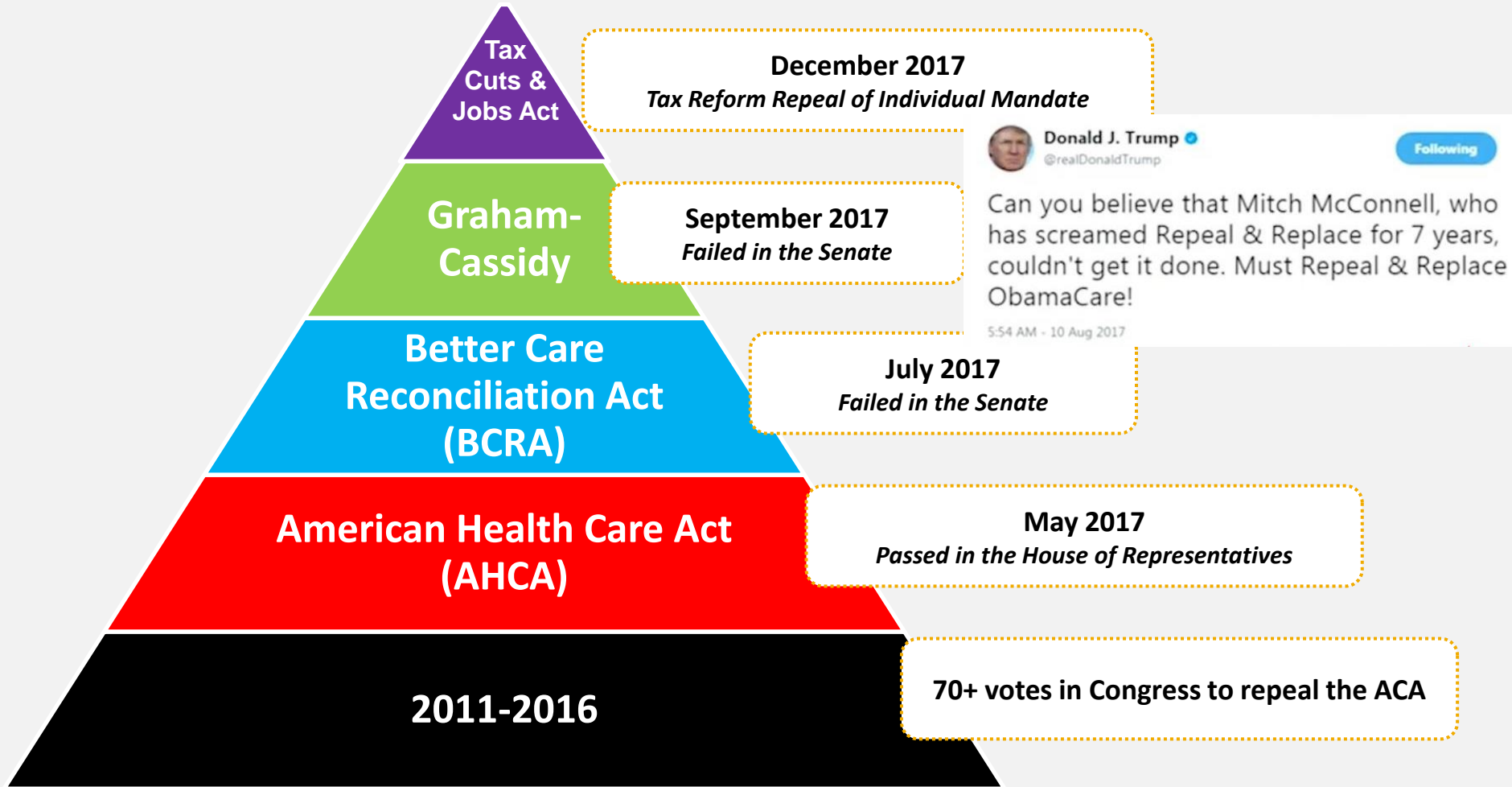
Status of Repeal and Replace Efforts

Repeat, replace, rinse and repeat



Cagle.com

Tracking Repeal and Replace Proposals



Key Features of Repeal and Replace Proposals

- Repeal Individual and employer mandates
- Transform Medicaid to per capita cap/block grant option
- Eliminate enhanced funding for Medicaid expansion
- Restructure tax credits for Marketplace/individual market coverage
- Eliminate most ACA taxes
- State waiver option to opt out of insurance premium rating protections and requirements relating to Essential Health Benefits

- Medicaid covers more than 6 million individuals and plays a critical role in health care finance in NYS
- Under every repeal and replace proposal, New York would have lost federal funds for:
 - ✓ The Medicaid expansion
 - ✓ The traditional Medicaid program as a result of a per capita cap
 - ✓ Marketplace subsidies/CSR payments
 - ✓ DSH payments
 - ✓ Essential Plan
- Under BCRA, e.g., cuts to federal funding due to phase out of Medicaid expansion and per capita caps, would have required New York to increase its own Medicaid spending by \$40 billion through FY 2026 to maintain its current program—and Graham-Cassidy was even worse.

- CBO estimates 10% premium increase and 13 million fewer Americans with coverage—but latest review of data may reduce that number
- Prior to termination of CSR Payments and mandate repeal, Kaiser study found insurer's medical loss ratios were improving and insurer margins were increasing in 2017
- Because mandate penalty was relatively modest, not entirely clear how large an impact it will have
- States considering state-based mandates to replace repealed federal requirement
- Tax reform otherwise may precipitate another serious attempt at Medicaid (and Medicare) restructuring

2017: Repeal and Replace Failed, But Not Dead

- Republicans agreed on repeal but their differences on replace proved unbridgeable
- Conservatives wanted big cuts in Medicaid and deregulation of Marketplaces
- Medicaid cuts split expansion and non-expansion states
- Moderates unwilling to repeal pre existing condition protections, which drive most of the new cost in the Marketplaces: Jimmy Kimmel test
- Moderates wanted incremental changes to limit market disruption and improve CBO score on coverage losses
- Conservatives could not find way to achieve large tax savings and rollback regulations without large coverage losses
- Graham-Cassidy was final effort to enact a Republican only bill by the Sept 30 deadline, but its failure has not ended the debate about finding a “repeal and replace” strategy that can pass with 50 Republican votes

Executive Actions



Donald J. Trump 
@realDonaldTrump

Following

ObamaCare will explode and we will all get together and piece together a great healthcare plan for THE PEOPLE. Do not worry!

 Twitter

- Shortening Open Enrollment Period for Federal Exchange
- Reducing funding for outreach and enrollment
- October 13th Executive Order
 - Goal is to enhance affordability and flexibility in coverage by:
 - ✓ Promoting Association Health Plans
 - ✓ Authorizing Short-Term, Limited Duration Insurance
 - ✓ Promoting Health Reimbursement Arrangements
 - No immediate impact: requires regulatory actions

- Cost-Sharing Reductions serve to reduce out of pocket costs—CSRs are paid in advance to insurers to reduce cost-sharing amounts, work in tandem with tax credits
- Congress explicitly made a permanent appropriation for tax credits but was not so explicit with CSRs—led to litigation by GOP House
- On October 11th, AG Sessions informed Treasury Department and HHS that CSR payments could no longer be made—and CSR Payments discontinued as of October 12th
- Senators Lamar Alexander (R-TN) and Patty Murray (D-WA) introduced the Bipartisan Health Care Stabilization Act of 2017, which would maintain funding for CSR payments, though 2019

- *Guidance on Work Requirement Provisions in Medicaid 1115 Waivers.* On January 11, CMS released guidance on section 1115 waiver demonstrations that require work and community engagement as a condition of qualifying for Medicaid
- *HHS Secretary Nominee Alex Azar.* HHS Secretary nominee Alex Azar appeared before the Senate Finance Committee on Tuesday and, while the hearing included intense questioning, the Committee is expected to endorse his nomination. Mr. Azar offered signals about his stance on several policy priorities, along with support for at least some provisions of the defeated Graham-Cassidy legislation, including “allowing states to run their own budgets.”
- *Reinsurance Waivers 2.0.* After three reinsurance waivers were approved in 2017, a number of states are considering similar waivers this year, including Idaho, Washington, Maine, and Colorado
- *Government Shutdown.* Implications for Child Health Insurance, Community Health Center Funding,

State Legislative Update

- **Bill Volume:** This past legislative session generated the fewest new laws since Governor Cuomo took office in 2011—thanks, in part, to a relatively healthy veto to approval ratio of 1:5.

Year	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>
Approvals	502	519	589	552	558	505	610
Vetoed	101	100	133	109	87	61	68

- **Budget Legislation:**
 - Raise the Age of Criminal Responsibility
 - Excelsior Scholarship
 - Funding for Direct Support Professionals
 - Authorized Ride-Sharing Businesses in Upstate New York
 - Tax on millionaires.

Regulation of Healthcare Delivery

- *Delivery of **Telehealth** in Child Care, Educational and Adult Care Settings*
- *Create **Rural Health Council***
- *Extend **Certificates of Public Advantage***
- *Vetoed **Certificate of Need for Assisted Living Programs***

Insurance, Managed Care and Medicaid

- *Coverage of **Tomosynthesis***
- ***Vetoed** Prohibition of **Discounts on Uncovered Dental Services***
- ***Vetoed** Medicaid Coverage of **Allergy Testing, Oxygen Therapy, Complex Rehabilitation Technology, Payments for Reserved Days and Coverage of Clinical TBI Services***
- ***Vetoed** Carve-Out of **Blood Clotting Factor Products***
- ***Vetoed** Enhanced **Safety Net Hospital Program***

Organ Donation and Transplantation

- *Made **Lauren's Law** Permanent*
- *Expand Authority for **NYS Transplant Council***

Pharmacy-related

- ***Interchangeable Biological Products***
- ***Include PTSD among Medical Marijuana Diagnoses***
- ***Require DOH to Publicize Practitioners with Medical Marijuana Authority***
- ***Vetoed*** bill that would have required chain and mail order pharmacies to operate ***safe disposal sites***

Mental Health, Developmental Disability and Substance Use Disorder

- ***Require List of Providers of Maternal Depression Treatment***
- ***Extend Designation of Comprehensive Care Centers for Eating Disorders***
- ***Extend Kendra's Law***
- ***Clarify standard for Involuntary Care and Treatment***

Professional Regulation

- ***BSN in ten***
- ***Authorize Nurse Practitioners to Issue DNRs***

Public Health

- ***Vetoed Asthma Studies***
- ***Sexual Offense Kits Requirements***
- ***Disaster Planning for Homecare and Hospice***
- ***Sepsis Awareness***
- ***Newborn Health and Safe Sleep Pilot Program***

When are vetoes not really vetoes

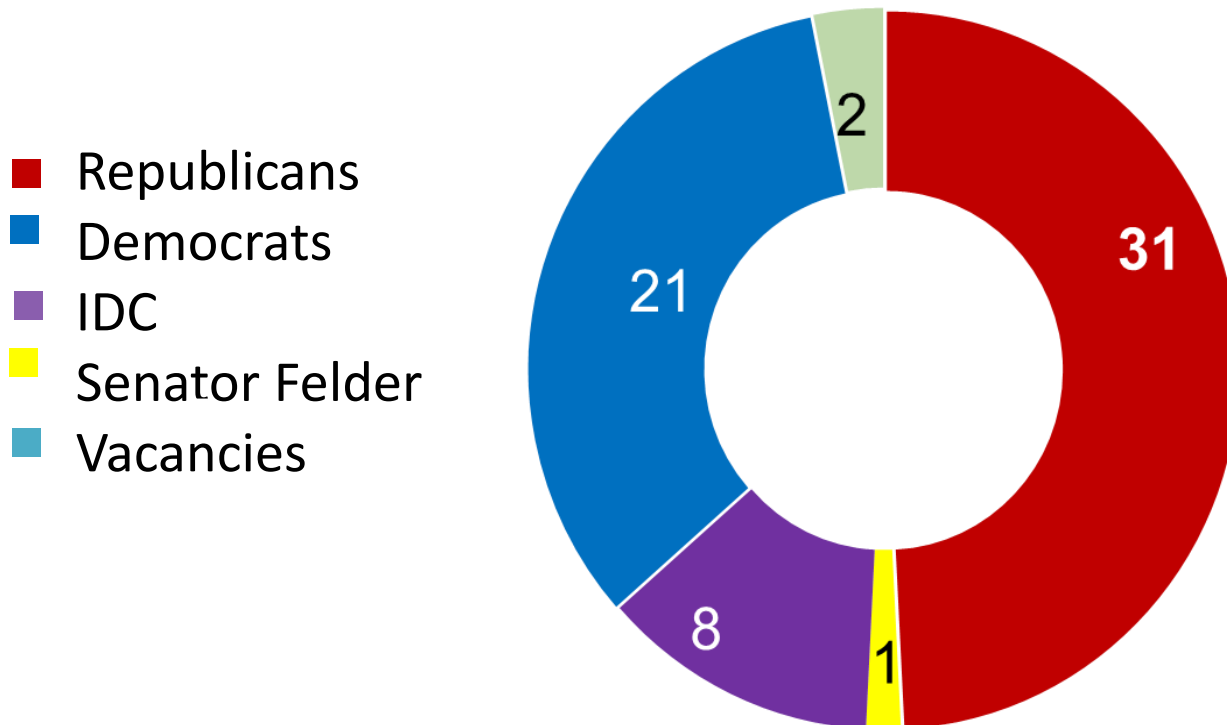
- ***Carve-out of School-Based Health Centers***
- ***Institutional Accreditation of Specialized Higher Education Programs***
- ***Nurse-Family Partnership and home care regulation***

Medical Malpractice Legislation: Lavern's Law

- ***Would establish **discovery** standard for SOL for **negligent cancer diagnosis*****
- ***Still not acted upon by Governor***
- ***Discussions focus on potential clarifying amendments and extent of revived claims***

2018 Preview: Control of the New York State Senate

- Republicans maintain 31 seats in 63-seat Senate
- One Democrat has always conferenced with GOP, bringing total to 32
- 8 member IDC allied now with GOP, may realign with 21 Democrats
- Two vacancies (Diaz and Latimer seats) as of January 1
- Senate rules make mid-session change in leadership unlikely: 2019 control hinges on 2018 elections



Governor's Budget Proposals

- **Healthcare Shortfall Fund**
- *Allow State to Secure Assets from Proposed **Conversion of Health Plan***
- *Impose Healthcare Insurance **Windfall Profit Fee***
- *Expand OMIG Authority to Recover **Overpayments from MCOs***
- ***Align State False Claims Act Penalties** with Federal Penalties*
- **Retail Healthcare Services Standards**
- *Contingency Authority to Revise **Child Health Insurance Program***
- *Enact Regulatory Modernization Initiatives in **Telehealth, Primary Care/Mental Health Care integration, Deployment of Emergency Medical Personnel***

Other 2019 Issues

- **Nurse-Staffing Ratios**
- **Medical Aid-in-Dying Legislation**
- **New Sexual Harassment Requirements**
- **Single Payor Proposal**
- **State Individual Mandate**



“Nobody knew health care could be so complicated.”