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CLIENT ALERT

## The New Political Landscape's Impact on Health Care Investing: 10 Takeaways from the Epstein Becker Green and Jefferies Post-Election Briefing

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The day after the 2016 U.S. presidential election, Epstein Becker Green, in conjunction with Jefferies LLC, hosted "[The Ballots Are Counted: How the New Political Landscape Will Shape Health Care Investing.](#)" The event was moderated by Edward M. Kennedy, Jr.,<sup>1</sup> and included several thought leaders as panelists to discuss risks and opportunities arising from the results of this 45th presidential election:

- Drew Willison, Chief of Staff, U.S. Senate Democratic Leader Harry Reid;
- Kimberly Brandt, Chief Healthcare Investigative Counsel, U.S. Senate Committee on Finance;
- William C. Oldaker, National Health Advisors (a bipartisan consultancy and an affiliate of Epstein Becker Green); and
- John J. Kelliher, Managing Director, Berkeley Research Group (a global strategic advisor).

Below are 10 takeaways from the discussion:

### 1. **Appointing an Administration Will Be a Slow Process, Marked with Uncertainty**

As of November 18, 2016, President-elect Donald J. Trump has yet to identify any potential leadership to transition to the Department of Health and Human Services. It can be anticipated that there will be a delay in such appointments, perhaps somewhat longer than usual, and in submitting a budget for the agency.

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<sup>1</sup> Mr. Kennedy serves not only as a Member of the Firm at Epstein Becker Green but also as a State Senator in the Connecticut General Assembly.

## **2. Administrative Positions Are Likely to Be Filled by Policymakers and Private Industry Leaders**

President-elect Trump has stated in the past that he would like to appoint leaders from the private sector to fill agency positions. However, there is no shortage of qualified Republican thought leaders, and policymakers, currently working on the Hill. Therefore, it can be anticipated that agency positions will be filled by both policymakers and private industry leaders alike. Regardless, policy will continue to come from the top, so the professional backgrounds of the appointees will not have a huge impact on the viability of the appointments, and it is apparent that industry lobbyists will have a role in this administration.

## **3. Despite Republican Control in the House and Senate, Health Care Reform Will Be a Slow Process**

Republicans currently control the House of Representatives and the U.S. Senate. They are led by the Speaker of the House, Paul Ryan, and the Majority Leader of the U.S. Senate, Mitch McConnell. Despite sharing a party affiliation with the President-elect, Speaker Ryan and Senate Majority Leader McConnell have differing ideas on what health care reform looks like and how to tackle the issues, specifically in regard to Medicaid expansion and repealing and replacing other aspects of the Affordable Care Act (“ACA”). President-elect Trump and his senior appointees might also have differing views. Because of this divergence in opinion, changes will not happen quickly.

## **4. A Complete Repeal and Replacement of the ACA Is Unlikely**

There are many challenges that must be overcome before the ACA can be successfully repealed. For instance, the U.S. Senate requires 60 votes to overcome a filibuster in the Senate and repeal the law. Achieving this 60-vote requirement will be difficult. There is also no agreement within the Republican Party as to how to replace the ACA. Even if the ACA were successfully repealed, there is no consensus plan to serve as its replacement. It is more likely that certain sections of the ACA will be repealed or altered, but it is too soon to tell which specific programs will be targeted.

## **5. Mental Health Parity Enforcement Efforts Will Continue**

Mental health parity enjoys much bipartisan support and is politically favored due to the attention that the opioid epidemic is getting and behavioral health concerns. This is an area that is stable and sustainable and has room for growth.

## **6. There Are Areas of Risk and Opportunistic Growth in the Health Care Sector**

Republican Party leadership has issued several suggestions for reforming the Medicaid program. For instance, Speaker Ryan advocates for the transformation of

Medicaid from an entitlement program to a block grant program, although it may be difficult to achieve filibuster-proof Senate consensus around such a path. The Medicaid waiver granted to Indiana under Governor Pence (now Vice President-elect Pence) is an example of Republican desire to introduce “consumer driven” and “personal health responsibility” elements in the Medicaid program. Alternatively, the areas of pharmaceutical development and biotechnologies are industries expected to face minimal risk and, instead, much growth. For instance, President-elect Trump’s administration seems to not be concerned with pursuing drug pricing reform policies and is committed to the importation of more affordable drugs from other countries. Since the election, while Speaker Ryan has indicated a willingness to tackle Medicare reform, it is unclear whether President-elect Trump is on board.

## **7. Health Plans Crossing State Lines Are Unlikely to Be Implemented**

Despite previous assertions that selling health insurance across state lines will lower high premium costs, the cost savings are no longer considered definitive. Therefore, this is not an area of high concern or an action to be implemented anytime soon.

## **8. Social Security and Medicare Are Likely Here to Stay with Continued Emphasis on Waste, Fraud, and Abuse**

Although the Republican Party has previously advocated entitlement reform, President-elect Trump has not focused on it. Since the number of Medicare beneficiaries is increasing, there will be a tendency to safeguard the financial sustainability of the Medicare program by focusing on waste, fraud, and abuse.

## **9. Bipartisan Action Will Continue to Be Necessary**

Now that the Republican Party controls both the legislative and executive branches, there will be pressure to try to act quickly and move bills forward. However, new programs and approaches and long-lasting success will require some degree of Democratic lawmaker support.

## **10. Federal Spending on Health Care Will Increase Less Rapidly Under a Trump Administration**

Under the new administration and as legislators and policymakers explore reform options, it can be expected that the flow of federal spending will continue to increase less rapidly.

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*This Client Alert was authored by **Mark E. Lutes**. For additional information about the issues discussed in this Client Alert, please contact the author or the Epstein Becker Green attorney or the EBG Advisors or National Health Advisors consultant who regularly assists you.*

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