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Health Law Diagnosed – The 2024 Election and Health Care Policy

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VIEWPOINT TOPICS

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In the latest episode of *Health Law Diagnosed*, host **Bridgette Keller** dives into potential health care policy changes on the horizon following the November 2024 election. She is joined by **Alex Hecht**, ML Strategies Executive Vice President & Director of Operations, Washington, DC, to unpack the impact of an all-Republican government and what stakeholders can expect in 2025.

Alex brings years of experience in navigating the legislative and regulatory landscape, and together, they explore the practical and policy implications for the health care industry, covering topics such as:

- **Medicaid Reform and Telehealth:** What do the new administration's priorities and policy changes mean for health care access and innovation?
- **Reconciliation Strategy:** How can budget reconciliation fast-track major reforms, and what are its limitations?
- **PBM Reform:** Given the bipartisan momentum to address transparency and accountability in pharmacy benefit management, what changes can be anticipated in upcoming legislation?
- **Administrative Action:** What key regulatory rollbacks and initiatives can we expect in the first 100 days?

Have questions or want to connect with the team? Reach out to us at **healthlawdiagnosed@mintz.com**.

Health Law Diagnosed: Post Election Analysis

Bridgette Keller (BK): Welcome back to *Health Law Diagnosed*, a Mintz podcast dedicated to health law, health policy, and social issues in the health care industry. I'm Bridgette Keller, your podcast host. Today I'm joined by my colleague Alex Hecht from ML Strategies, our bipartisan government relations team. We're going to discuss the impact of the 2024 election on health care policy and what we might see in 2025 under the new administration.

Alex is the Executive Vice President and Director of Operations at ML Strategies in Washington, DC,. He's an attorney with more than 10 years of senior level experience in Congress and trade associations, and he assists clients with their legislative and regulatory needs on a wide range of issues, including health care. Alex is regarded as one of the leading congressional staff specialists on the regulatory process and how federal agencies promulgate rules and regulations.

He has also developed numerous bills and amendments to reduce the regulatory compliance burden on business. I am very excited to have him as a guest on Health Law Diagnosed to share his expertise and insights with all of you.

Setting the Stage for 2025

So, to set the stage a little bit, we have these top line 2024 election takeaways. And so, I have them as Trump won the Electoral College. He won the popular vote which was different from 2016. We had the Senate flip to GOP control and we have the GOP maintaining control of the House. Ultimately, the GOP assumed control over the executive and legislative branches. Alex, what does this all mean and how do you see things shaking out on the hill in 2025?

Alex Hecht (AH): We're entering now into an all-Republican controlled Washington, DC, with historically narrow margins in the Senate and in particular the House of Representatives, and so the biggest question that comes up when one party or the other controls all the levers of government, is the ability to govern. That becomes the operative question in DC, and it reminds me a lot of the old cartoon of a dog that's catching a car. What does the dog do when it actually catches the car? Controlling all the levers of government is more challenging than it would seem, maybe from outside of Washington, DC.

It was interesting last week that Speaker Johnson was reelected to be speaker again for the Republicans in the House of Representatives with a narrow one-vote margin. I think he got assistance from president-elect Trump on that. That could be indicative that we may see the Republicans possibly be able to come together on some legislative achievements for this year. It's a signal that the dysfunction that was prevalent last Congress, maybe they'll be able to overcome it. But I have friends on both sides of the political aisle and one of their favorite sayings is “Never underestimate the ability of our party” and you can put in parentheticals, Republicans or Democrats to snatch defeat from the jaws of victory.

BK: That's very interesting! What do you think that this means for the overall process?

AH: For health care stakeholders, there's a limited window of opportunity in 2025, and a lot of it will be driven by what is known as ‘budget reconciliation’, which would be a process that in the Senate requires 50 votes, not 60. It's an accelerated legislative process that allows for expedited consideration of measures that would have significant budgetary impact. The Republicans and Speaker Johnson – and he's reiterated this publicly – are going to learn from the experience back in 2017, when they spent months on a repeal and replace, and a Medicaid reform package on health care for their first reconciliation bill that, as you'll recall Bridgette, ultimately failed when John McCain opposed it in the middle of the night. They came up one vote short in the Senate. Back in 2017, the sequencing was health care first, and then tax reform, which they successfully got done in a second reconciliation package later that year. This time around, my expectation is the first reconciliation bill will likely focus on tax reform, likely to focus on immigration funding for border security, wall construction, and repeal of certain Inflation Reduction Act provisions. Conventional wisdom would be clean energy provisions that have been in funding that have been not obligated, and that the expectation for that would be get that done sometime before May. That's what Speaker Johnson has put out this week.

From a health care perspective, in that first package, stakeholders are going to want to keep an eye on health care provisions that might be considered as payment offsets to pay for the spending and tax continuation of some of the 2017 tax incentive package. That's ambitious, but it's achievable. Then Bridgette, after they've completed that later in the year, they come back to a second reconciliation package, and that's the one that would be more likely to dive into potential Medicaid reform, limiting the funding, the financing through mechanisms that are known as ‘block grants’ or ‘per capita spending’. That's a trickier package to get through. Even with the 50-vote threshold in the House, because we have Republican representatives and Senators in blue states like California and New York, and other red states that have expanded Medicaid eligibility, that's more challenging, and it's more of an open question whether or not that will get done.

So, they changed the sequencing this year, they learned from 2017, and that's a lot of what's going to drive some of the health care action on the Hill in this new Republican controlled environment.

BK: That's really interesting. And it's a great point to think back to, what could they have learned from 2017, especially because, like you pointed out, Alex, they had to move away from the entire first push. All the Medicaid reform just went away, and they were able to achieve tax reform in the second package. What then are you expecting and if anything related to health care in the first 100 days?

AH: I expect a wide swath of administrative action in the first 100 days from the incoming Trump administration: Executive orders with a focus on immigration, with a focus on reversing Biden administration's reproductive rights policies, doing away with diversity, equity, inclusion initiatives from the Biden administration, such things as January 6 pardons and I think also from the administration, anything that was in process by the Biden administration, but that hadn't been proposed or anything that had been proposed but not finalized, is going to get paused for review by the new Trump administration. Anything that had been proposed since the election, for example, there's new HIPAA security rule proposals, those are going to have close scrutiny from, from Trump White House, from the Trump HHS, they're going to want to put their own stamp on it. From friends who were fairly high up in the Biden administration, the working assumption was anything that they cared about,

the Biden administration on a regulatory side needed to be finalized by last April. This was to help protect against any kind of reversals, and what are known as Congressional Review Act challenges. You saw a huge amount of activity in the Spring and in April so expect to see the administration taking actions on those rulemakings that were final in April that are going to be using whatever kind of regulatory authority they have to either delay implementation dates or draw out or propose new regulations. Two that come to mind, are: There was a nursing home staffing rule that is going to be reopened and also a Medicaid access rule that included what's known as a “8020”, a medical loss ratio for Medicaid, and for home and community-based services. Both of those are on the short term for the administration to take either whatever action they can to delay implementation in the short term or reopen regulation by proposing new notice of proposed regulations that would start up a whole new administrative act process.

BK: That's really interesting to think about April being the deadline and all the things that have come out since April being on the table for additional scrutiny or new notice and comment process. It's fascinating.

AH: It's fascinating. It's pretty consistent with what happens in every single transition. We've just seen an increasing proliferation of activity that happens in the final year of an administration, but because of the threat of a Congressional Review Act, when you're in either an all- Dem controlled world or an all Republican controlled world, suddenly the Congressional Review Act would allow you to go in and look at those regulations that were proposed or finalized in the closing days of the administration and easily nullify them. The Biden administration was mindful of that, perhaps more so than any administration previously. It really took pains to finalize what they cared about earlier so that it would make it more challenging to undo.

Health Care Priorities for the New Year

BK: Are there any health care priorities that you think could see action early in 2025 or is there anything you're keeping a close eye on with regard to health care legislation?

AH: Outside of the reconciliation process, the first-place stakeholders should look to provisions that were contained within the appropriations continuing resolution at the end of December. Continuing resolutions are usually date changes and they're kicking government funding for three months, six months, a year. The first version of this wasn't really a continuing resolution, it was an omnibus. It was hundreds upon hundreds of pages and it was the end-of-the-year vehicle that carried a great number of priorities for members, including some health care priorities. As the process played out last month, the different versions of the continuing resolution or CR, got smaller and smaller. So, looking to provisions that dropped out, I think makes sense. There were some PBM reform provisions that we can talk a little bit more about, that were dropped out of the final version. There is bipartisan energy around the issue of PBM reform, and a policy to keep an eye on. There was also language included in the initial CR that would offset a Medicare reimbursement cut for physicians. That's going to be something that's a huge issue for all of the provider groups, so expect to see action on that.

Additionally, There was a measure called the Support Act in the pandemic and the All Hazards Preparedness Act, or PAPA Support Act, that was funding for opioid treatment and federal support and also for pandemic preparedness- those dropped out. There's bipartisan support for that.

Finally, community health center funding and the Medicare telehealth flexibilities. Initially, they were extended for two years, final CR only extended them until March of 2025.

Everything I just outlined could be possibly considered for the next appropriations bill that comes together on or about March 14, which is sort of the deadline that the CR kicked to. That would seem to be a vehicle unless that kick gets kicked further. I'm not certain, and I'm fact I'm doubtful that all of those provisions could be included in a budget reconciliation bill, because there are strict limits on what could be included in a reconciliation bill. The closer you are to a provision that is just a revenue or a funding provision, the more you get into policy, the less likely something is going to be able to pass muster by the Senate parliamentarian to remain in a reconciliation bill.

Those are aspects that I think would be in play for the appropriations bill.

For tax reform, stakeholders are going to want to keep an eye on that affirmatively or defensively. Defensively, as I mentioned, the members on the Hill are going to be looking for policies that can raise federal revenue or offset the spending that they're going to be doing in a reconciliation bill, but they're also going to be looking to fix extend, address issues from the previous tax bill. What is interesting for a range of different companies, pharma companies, Medtech companies, the 2017 tax bill made some modifications to what's known as ‘Section 174’ of the Internal Revenue Code. It has to do with research and development expensing, R&D expensing, and what it basically did was it created a five-year amortization for R&D expenses, as opposed to allowing stakeholders to take the full deduction in year one. China saw this and created a super deduction, a 200% deduction, and this is something that's critically important to a wide range of stakeholders not just health care stakeholders. Expect to see action on that as part of the Health Care Bill.

Other areas for bipartisan cooperation, perhaps in artificial intelligence, AI and technology, there's really widespread support for telematics flexibilities.

There could be action on No Surprises Act. There's an impetus to really look at the dispute resolution process, the time frame, how implementation is going. Senator Cassidy, who's the new chairman of the Senate Help Committee, he's been very interested in that. He was a big champion of the No Surprises Act. So, what kind of bipartisan engagement will be realistic after a reconciliation process plays out? Because it's the most partisan thing that can happen legislatively, and it usually doesn't bode well for future bipartisan collaboration because one side is happy and one side, at that point, is really mad and wants to get to the midterms.

BK: You're saying the funding is usually the most partisan activity, and that the funding bill will create the most tension between the two parties?

AH: The funding bill, not so much. The budget reconciliation bill will. That's a vehicle because some of those provisions were included and because there's bipartisan support, there's a chance they could ride. But you also have to keep in mind that there was a reason why a lot of those provisions came out, and it

was because some sections, among other reasons, of the Republican Party, wanted smaller, not bigger at that point. The question is: What's their posture going to be this year? I would say reconciliation as that's the most partisan of it because there's no minority party involvement in that. It's a one-party exercise, a majority party exercise.

BK: Basically, whether or not there's willingness to work together beyond that will really be told after that first reconciliation bill process.

AH: Correct.

Will Medicare Telehealth Disappear?

BK: You just touched on so many things that I know impact my practice on an almost daily basis, a lot of interest to our listeners and our clients. I don't want to put you totally on the spot, but in terms of the Medicare telehealth, for example, being extended, how likely do you think that is to come back in the next reconciliation bill?

AH: The pandemic really was such a huge accelerant to the deployment, adoption, and acceptance of telehealth technologies. I don't see that we're going back, so there's a really good likelihood that those flexibilities get extended.

BK: I agree with you. It's hard to imagine walking that back a bit.

AH: I think the nominees that president-elect Trump has put forward, in particular Doctor Oz for HHS, has been very outspoken about the benefits of telehealth. I don't view that necessarily as a partisan issue, I almost view it as a good government, efficient health care delivery, market modernization and technology adoption type of issue.

I'm not sure that the extension of the flexibilities is going to be problematic at this point. And because they were initially considering a much longer extension, and it got winnowed down to the date of the CR. I sort of feel like it will get kicked out.

Where Does PBM Reform Stand?

BK: I want to ask you about the PBM reform package and we worked closely on that together. We've been tracking federal and state activity to regulate PBMs and the original proposal that was initially included in the bill was pretty substantial from a PBM-reform perspective. And it's interesting to hear what you say in terms of what's more policy driven and what is funding driven or revenue driven, I should say. It seems it's more policy driven. That's a non-expert opinion for me is that it seems a little bit more policy driven. But it obviously has bipartisan support. Do you have any thoughts on PBM reform or what we might see either in the next reconciliation bill or what Congress might be doing on PBM reform?

AH: Given the bipartisan interest in PBM reform, that some version of what we saw in the initial version of the continuing resolution, which had been percolating all through the 118th Congress, and as various measures were passing through the Senate Finance Committee, they weren't passing on a 1 or 2 vote margin. There was widespread bipartisan support for the banning of spread pricing, for requiring PBMs to pass along all rebates to plans sponsors, to limiting PBM service fees, and decoupling PBM compensation to more transparency. Those are provisions, though, that would have a challenging time passing the rules and requirements of a reconciliation bill. There may be elements contained within them that could be included, but because they go into policies, I think they would have to rise either as freestanding measures or as part of a broader vehicle. Maybe like the next continuing resolution. But interestingly, you could see these measures being reintroduced in the House, passed in the House, coming over to the Senate, and because they've had such widespread support, maybe it's possible that there could be a separate freestanding package. The chances of that go up if it's addressed prior to a reconciliation package or reconciliation packages, again, because that complicates the willingness of the minority party to want to maybe give the majority party wins. Most Democrats may not want to be working in a bipartisan basis right now. They would if there wasn't a reconciliation bill.

The other thing I would say is, keep an eye on the Senate Help Committee. The new chairman of the Senate Help Committee is Doctor Bill Cassidy, Senator from Louisiana, physician by training, and our firm and others did an industry event for him just before the election. On his list of priorities for this year was PBM reform. That was 1A, 1B, 1C, and everything else followed behind that. So, there's an energy for it.

BK: He has been pretty outspoken and vocal, especially at a lot of the hearings held over the last year or two years. I agree with you there.

Alex, thank you so much. This has been a really interesting discussion, and I think it gives our listeners and me, of course, a lot to think about in terms of what we're going to see and to think about how we can prepare our clients from a business perspective and an advocacy perspective. I really appreciate you joining us today and taking the time to be on *Health Law Diagnosed*.

Listeners, thank you for tuning in. If you have any questions for Alex, please feel free to reach out to either of us directly or email us at **healthlawdiagnosed@mintz.com**.

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Alex Hecht is a trusted attorney and policy strategist with over 20 years of experience advising clients across a broad range of industries on how to navigate complex policy environments. His strategic insight and hands-on experience in both legislative and regulatory arenas empower clients to advance their priorities with clarity and confidence in an evolving policy landscape.