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Health Care Policy in A Divided Government: What Comes Next

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VIEWPOINT TOPICS

- Health Care

Democrats won control of both chambers in the November 3 midterms, securing 56 Senate seats (including two caucusing independents) and 258 House seats as of November 23. With President Trump retaining the veto and broad executive authority, major partisan legislation faces steep obstacles, but drug pricing, pharmacy benefit manager (PBM) reform, transparency, and rural health may offer room for bipartisan action.

In this November 17 webinar, ML Strategies Executive Vice President & Director of Operations **Alex Hecht**; Mintz Member **Theresa C. Carnegie**; and ML Strategies Senior Vice Presidents **Anthony DeMaio** and **Traci L. Vitek** examine how the results could reshape federal health policy, congressional oversight, and the administration's regulatory agenda, and what health care stakeholders should watch as the 120th Congress begins.

Key Takeaways

Divided government will limit major legislation, but both sides hold leverage.

Democrats now control committee gavels and the oversight agenda, but the president retains the veto and most deals need 60 Senate votes, and thus Republican support. The administration can also act through executive orders, rulemaking, and enforcement. Expect stalemate, aggressive oversight, executive action, and targeted bipartisan deals.

Affordability will drive the Democratic agenda.

Priorities include restoring the enhanced Affordable Care Act (ACA) premium tax credits that expired at the end of 2025, reversing nearly $1 trillion in Medicaid cuts from the 2025 reconciliation law (H.R. 1), and lowering premiums and drug prices, including through expanded Medicare negotiation. Republicans are expected to defend H.R. 1 and offer health savings account alternatives to the ACA credits, but a deal codifying the administration's most-favored-nation (MFN) drug pricing agreements is a likely area for compromise.

Oversight may prove as consequential as legislation.

Expected leaders include Frank Pallone (Energy and Commerce), Bernie Sanders (Health, Education, Labor, and Pensions, or HELP), Richie Neal (Ways and Means), Ron Wyden (Finance), and Robert Garcia (Oversight). They are expected to scrutinize administration health policy, including Secretary Robert F. Kennedy Jr.'s, and industry practices such as drug pricing, private equity, and vertical integration. Hearings and subpoenas can shape policy and corporate behavior even without legislation.

Drug pricing and PBM reform are the strongest candidates for bipartisan action.

Both parties want lower drug costs, and President Trump wants Congress to codify MFN pricing. Separately, the Department of Labor's October 29 final rule requires PBMs to disclose fees, rebates, and compensation for plan years beginning on or after July 1, 2027, adding compliance work for PBMs and health plans. Vertical integration will likely draw further scrutiny.

A comprehensive 340B overhaul is unlikely — an unbundled package is more realistic.

A Senate-led package, potentially built on the bipartisan SUSTAIN 340B Act, is likelier than a full overhaul. The most likely areas of agreement are transparency (including a claims clearinghouse), the patient definition, and duplicate discounts. Contract pharmacies are the hardest issue, and courts and the Health Resources and Services Administration (HRSA) may resolve contract pharmacies and rebates first, including through the Department of Health and Human Services' (HHS) revised rebate pilot beginning January 1, 2027.

The administration will keep acting on its own.

Its priorities include lowering drug prices (MFN agreements with 26 drugmakers, TrumpRx.gov, and the threat of tariffs on patented drugs without a deal), its "Great Healthcare Plan," the Make America Healthy Again (MAHA) agenda, and curbing spending and fraud. Medicaid work requirements begin January 1, 2027, although enforcement against states is delayed until June 30.

Targeted bipartisan opportunities extend beyond drug pricing.

Candidates include rural health funding, Medicare telehealth extensions, site-neutral payments, price transparency, No Surprises Act reforms, Medicare Advantage prior authorization, FDA user fees, and Organ Procurement and Transplantation Network (OPTN) reform. The panel also cited clinical trial reform (such as the proposed Faster Clinical Trials Act), maternal health, and women's health technology.

Related Questions

What should Medicaid stakeholders prepare for?

Work requirements begin January 1, 2027, and state-directed payments must move into base rates by July 9, 2027. States should build verification systems and document good faith. Managed care organizations should model capitation impact, renegotiate provider contracts, and plan for enrollment loss.

How will Congress approach AI in health care?

Expect a light touch on clinician-facing AI, paired with human review, disclosure, and audits for AI-driven denials. Prior authorization is contested: the Centers for Medicare & Medicaid Services' (CMS) WISeR model uses AI in Traditional Medicare in six states, and the Medicare Advantage prior authorization bill has 297 House and 71 Senate cosponsors. State preemption is the swing issue. Only Congress can preempt state laws, despite the administration's December 2025 order.

What should organizations watch in early 2027?

Expect Democrats to start with coverage protection, with early House votes on Medicaid and ACA subsidies that face a likely veto. Deadline-driven provider payment issues, such as Medicare physician cuts due January 1, should follow, with benefit expansions last because they require offsets. Organizations should also track executive actions and engage early with Congress, HHS, and CMS.

For a broader look at what divided government could mean for businesses across health care, energy, technology and AI, tax, and trade, see **ML Strategies' post-election analysis**, and visit our **2026 US midterm elections hub** for updates in the coming weeks.

For questions about the subjects addressed in this webinar, contact the speakers or your regular Mintz attorney.

Authors



Alexander Hecht, Executive Vice President & Director of Operations

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.

Theresa Carnegie

Theresa C. Carnegie is a Mintz attorney who advises health care clients on a wide array of transactional, regulatory, compliance, fraud and abuse matters, and health law issues. She counsels health plans, pharmacy benefit managers, pharmacies, device manufacturers, and distributors.



Anthony M. DeMaio, Senior Vice President

Anthony DeMaio is a federal strategist with strong relationships throughout House Democratic Caucus, especially the New England delegation. With over 15 years of experience, he helps a broad range of organizations navigate Congress, federal agencies, and the administration.



Traci L. Vitek, Senior Vice President

Traci L. Vitek, Senior Vice President at ML Strategies in Washington, DC, advises clients on federal health care policy, legislative strategy, and executive branch engagement.