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Health Reform Update – Week of November 5, 2012

CONGRESS

Affordable Care Act appears here to stay after Democrats hold White House and Senate

Key Democratic victories in yesterday's Presidential and Congressional elections have assured that the major provisions of the Affordable Care Act (ACA) will go into effect as planned in 2014.

President Barack Obama was re-elected despite exit polls showing that Americans remain fairly equally divided on whether to repeal the new health insurance reform law. However, record turnout among Latinos and other minority groups who more strongly support the ACA provided the President with a narrow but decisive margin of victory in all but one of the nine swing states that determined the election.

Democrats also gained one Senate seat and stand to add another to their four-seat margin if newly-elected independent Angus King of Maine decides to caucus as expected with Democrats. This outcome was inconceivable after Democrats lost six seats in the 2010 mid-term elections and had to defend 23 open seats this year compared to only 10 open seats for Republicans.

After the ACA was upheld last summer by the U.S. Supreme Court, all but two of the nation's Republican governors had either refused to implement key provisions of the ACA or taken a "wait and see" approach to determine whether Republicans could repeal all or part of the law by winning both the White House and Senate. As the election outcome assures that the ACA's major provisions will instead become effective in two years, these governors will now be under significant pressure to quickly move forward and comply with the "law of the land".

While Republicans remain the dominant party at the state level, key gains by Democrats will also assure that more states will create the state-based health insurance exchange under the ACA, as well as participate in the law's Medicaid expansion (see articles below). Although some governors will continue to resist, several conservative groups and states that had been spearheading legal challenges to the ACA appeared to accept the realization by week's end that implementation was now inevitable. The presidents of the Galen Institute and Freedom Works acknowledged that full repeal was no longer their goal, while the Republican Insurance Commissioners of Kansas (see below) and Mississippi urged their governors to drop their opposition and move forward. However, Americans for Prosperity urged Republican governors not to give up the fight to block every part of Obamacare.

Medicare voucher plan has little play in House elections as Democratic gains fail to materialize

The House-passed plan to privatize Medicare that was once viewed as a ticket to a Democratic House turned out to have little or no effect on House races last week.

Despite winning a majority of House votes overall, Democrats gained only a small number of seats on House Republicans who maintain a 35-seat advantage. In one of the most closely-watched races, Rep. Kathy Hochul (D-NY) lost her bid to hold on to the seat she gained through a special election in 2011. At the time, her victory in a conservative district from western New York was viewed as an electoral backlash to the Republican plan to give Medicare enrollees premium subsidies or "vouchers" to instead purchase private market coverage (see Update for Week of May 23, 2011). This backlash was fueled by predictions from the Congressional Budget Office and others that the "premium support" model would cut benefits and increase costs for Medicare enrollees (see Update for Week of April 4, 2011).

However, Rep. Paul Ryan (R-WI) ultimately softened his privatization plan so that Medicare enrollees had the option to remain in traditional Medicare. Exit polls showed that move appeared to largely neutralize the issue in the 2012 campaign as voters typically did not view the Ryan plan as threatening the core Medicare benefit, even though Democrats had emphasized that it would put Medicare in a "death spiral" by relegating sicker enrollees to Medicare while healthier enrollees could get private coverage. As a result, polls going into the election showed that Republican nominee Mitt Romney actually fared better on Medicare than President Obama among senior citizens despite the presence of Ryan on his ticket (see Update for Week of October 29th).

According to Kaiser Health News, at least one senior House Republican leadership aide trumpeted the results as evidence that voters endorse the "premium support" plan. However, a senior aide to former Senator Bill Frist (R-TN) who now heads the Bipartisan Policy Center insisted that the voter message on privatizing Medicare was muffled by recent redistricting that gave Republicans an advantage in several races. He warned that Republicans should pursue the hot-button issue with great caution, as Kaiser tracking polls and other surveys continue to show that a wide majority of voters react negatively when asked solely about the "premium support" model (see Update for Week of September 24th).

Overall, House Democrats did best in Illinois and New England races (where not a single Republican will return to the House next session). However, Republicans offset those losses by picking up five Democratic seats across Arkansas, Kentucky, and North Carolina.

Among the notable casualties was California's longest-serving member, Rep. Pete Stark, who was defeated by a fellow Democrat in his bid for a 21st term. The former chairman of the House Ways and Means health subcommittee drafted portions of the Affordable Care Act (ACA), but is best known as a Medicare expert who also co-authored the original COBRA legislation that requires employers to extend group health coverage to employees after they terminate employment.

Two of the few remaining conservative or "blue dog" Democrats who voted against the ACA survived tight races. Rep. Jim Matheson will serve in Utah's newly-created fourth district while Rep. Jim Barrow will continue serving the 12th district in Georgia although it was redrawn to favor Republicans.

However, voting against the ACA cost two other "blue dogs" from Pennsylvania their House seats. Reps. Jason Altmire and Tim Holden were defeated in their primaries by more liberal opponents who pledged to support the new law. Only one of those two challengers, Matt Cartwright from the 17th district (Easton, Lehigh Valley) advanced to Congress this week.

House Majority Leader renews pledge to repeal Medicare cost-cutting board

House Majority Leader Eric Cantor (R-VA) wasted little time after his re-election this week to identify the Independent Payment Advisory Board (IPAB) in the Affordable Care Act (ACA) as the number one target for repeal by the next Congress.

Republican leaders including Speaker John Boehner (R-OH) acknowledged this week that repealing key provisions of the new law was no longer likely after Democrats held the White House and Senate (see above). As a result, the Majority Leader identified no other targets for repeal. However, he insisted that there still exists sufficient bipartisan support to repeal at least the controversial Medicare cost-cutting board, which several Republicans have equated to "Soviet-style central planning."

At least 20 House Democrats signed onto previous repeal legislation passed by the House (see Update for Week of March 19th). However, they dispute that the independent panel will ration Medicare benefits as Republicans allege, since the ACA statute specifically prohibits the IPAB from recommending cuts to benefits or higher cost-sharing. Instead, these Democrats are concerned like all politicians with ceding power to another entity.

Under the ACA, the IPAB is charged with making recommendations on Medicare payment cuts whenever program spending exceeds preset targets. Those recommendations will automatically go into effect if Congress fails to enact equivalent cuts.

Senate Majority Leader Harry Reid (D-NV) disputes Cantor's claims that most Senate Democrats would support IPAB repeal, since the Congressional Budget Office (CBO) estimated last spring that it would add $3.1 billion to the federal deficit over ten years (see Update for Week of March 5th).

Even if the repeal legislation fails, Senate Republicans could effectively prevent the panel from being created. Democrats will need 60 Senate votes to overcome a Republican filibuster and approve IPAB nominations, but will have no more than 55 votes in the next Senate (see above).

CBO says Republican bill to weaken insurer profit caps will add $1 billion to deficit

A Republican bill that will relax the medical-loss ratios (MLRs) imposed by the Affordable Care Act (ACA) will add $1 billion to the federal budget deficit according to a cost estimate released this week by the Congressional Budget Office (CBO).

The MLRs cap insurer profits by requiring all individual and small group plans spend at least 80 percent of premium revenue on medical care (or 85 percent for large groups). Those that failed to comply in 2011 had to rebate more than $1 billion to consumers by August (see Update for Week of June 18th).

However, brokers and agents have bitterly complained that by defining their fees and commissions as administrative costs, the Centers for Medicare and Medicaid Services ensured that individual and small group plans will simply eliminate their compensation in order to meet the 20 percent cap on administration, salaries, and profit (or 15 percent for large group plans). Both the National Association of Insurance Commissioners and Government Accountability Office have substantiated that to some extent this has already occurred (see Update for Weeks of November 21st and 28th).

As a result, the House Energy and Commerce committee passed legislation to exclude broker compensation from the MLR calculation of administrative costs. H.R. 1206 initially attracted the support of 25 House Democrats, although only one Democrat on the committee voted to pass it (see Update for Week of September 17th).

However, the CBO score may through cold water on this bill's momentum as it estimates that such a revision in the MLR definition for administrative costs would increase the deficit by $531 million from 2013-2017 and roughly $1.1 billion between 2013-2022. This means that under the "pay-as-you-go" principles on which House Republicans have insisted, Congress would have to come up with $1.1 billion on offsetting cuts or revenues in order to pass H.R. 1206. Such a steep offset may be very unlikely to pass at a time where Congress is fighting to avert the fiscal cliff that will result January 1st if they do not agree on $1.2 trillion in deficit reduction over the next decade (see article above).

Republican lawmakers raise conflict of interest concerns about federally-facilitated exchange

The ranking member on the Senate Finance Committee repeated concerns this week about the contractor selected by the Obama Administration to design the federally-facilitated exchange (FFE) in states that do not make substantial progress on a state-based exchange by January.

Quality Software Services, Inc. (QSSI) was awarded the $145 million contract last winter by the Centers for Medicare and Medicaid Services (CMS). It will build and operate the federal data services hub through 2017 for the online marketplace authorized by the Affordable Care Act (ACA).

However, QSSI has since been acquired by UnitedHealth Group, one of the nation's largest health insurers. This alarmed Senator Orrin Hatch (R) and other Republican lawmakers, who complained compared it to the "fox guarding the henhouse" since UnitedHealth is a likely exchange participant.

Senator Hatch had already sent a letter to the Secretary for the Department of Health and Human Services (HHS) demanded greater transparency in the FFE process, for which regulations have still yet to be issued.

The Secretary has refused to respond by the October 26th deadline set by the Senator, which demanded a copy of all contracts related to the FFE and a list of any HHS officials who approved them.

The Senator now is inquiring whether the HHS reviewed the UnitedHealth acquisition of QSSI to assure against conflicts of interest, particularly since the CMS official in charge of the division awarding the QSSI contract has since gone to work for a UnitedHealth subsidiary. A spokesperson for CMS insists that all contracts are reviewed to avoid conflicts of interest.

According to CQ HealthBeat, the prospect that UnitedHealth could have a role in calculating the reallocation of federal funds among rival health plans has unnerved some industry insiders, at least one of whom compared it to a professional baseball team hiring their own umpires.

These concerns are heightened by the fact that major details of the FFE remain unresolved. CMS has issued a guidance document stating that the FFE will not be an active purchaser of health plans. However, formal regulations have been delayed until after the election (see article below).

Virgin Island lawmaker proposes expanding PCIPs to territories

Delegate Donna Christensen (D-VI) introduced legislation this week (H.R. 6585) that would expand the temporary federal high-risk pools created by the Affordable Care Act (ACA) to include U.S. territories like the Virgin Islands, Puerto Rico, and Guam.

Congress allocated $5 billion for the Pre-Existing Condition Insurance Plan (PCIP) program but limited participation solely to the 50 states and the District of Columbia. However, because only 12,000 of the projected 375,000 people have enrolled (see PCIP Update for Week of October 15th), Christensen argues that the unused funds to incorporate the territories.

Puerto Rico in particular may likely have a significant number of residents eligible for the PCIP program, as more than 11 percent of the island's two million working age adults are uninsured. The territory voted for the first time this week in favor of becoming the 51st state. However, statehood will ultimately require Congressional approval.

If admitted, Puerto Rico would be subject to certain provisions of the ACA from which territories are exempt. This includes the mandate that residents purchase basic health insurance they can afford.

FEDERAL AGENCIES

HHS extends exchange deadline for states that waited to see if ACA could be repealed

The Centers for Medicare and Medicaid Services (CMS) announced this week that states will have an extra month to submit their blueprints for creating a state-based health insurance exchange pursuant to the Affordable Care Act (ACA). In addition, states wishing to pursue an initial federal-state exchange partnership will have until February 15th to decide.

The delay has long been suspected though CMS officially remained silent. Because all but two of Republican governors and a handful of Democrats postponed exchange implementation until after this week's elections, they simply will not be in a position to meet the November 16th deadline to submit their exchange plans and would have been forced to default to a federally-facilitated exchange (FFE).

CMS has taken several steps since last fall to boost the number of states that can build their own exchange. This includes extending establishment grants through most of 2014 and allowing states to initially partner with the federal government (see Update for Weeks of May 28th and June 4th).

Although states will still have to declare their intent to create a state-based exchange by November 16th, the delay now gives them until December 14th to submit their blueprints for the exchange model they intend to pursue. To date, 17 states and the District of Columbia have already submitted their plans, while ten states have stated that they will simply default to the FFE.

According to an analysis by Avalere Health, the number of FFE states was expected to jump to at least 17 if CMS did not extend the deadline (see below). The delay should allow states that want an exchange but have yet to start the process sufficient time to decide whether to initially partner with the federal government and move to full state control once they are ready to go.

Obama Administration starts to release backlog of rules withheld until after the election

The Department of Health and Human Services (HHS) is expected to begin releasing a long list of Affordable Care Act (ACA) regulations that have been developed but been withheld to avoid pre-election controversies.

Only days after this week's election, the Office of Management and Budget (OMB) has already received proposed rules governing the hot-button issues of implementing new market reforms under the ACA (i.e. pre-existing condition insurance denials, age rating limits) and defining the essential health benefits that non-grandfathered individual and small group plans must cover (see Update for Week of September 24th). The OMB typically grants the required paperwork clearance in 30 days, though this final stage of the rulemaking process can take several months.

State officials have stakeholders are still eagerly awaiting final rules on health insurance exchanges, in particular those that define how the federally-facilitated exchange (FFE) and federal-state exchange partnerships will operate (see Update for Week of July 2nd). Many state governors are also anxious to learn whether CMS will allow states to receive full federal funding for the Medicaid expansion if they only partially expand to those earning up to 100 percent of the federal poverty level (see Update for Weeks of August 6th and 13th).

Over the next 11 months, states and stakeholders can also expect rules defining how employers should define "full-time" and "part-time" employees, as well as how religiously-affiliated institutions can avoid the law's requirements to provide free coverage for preventive benefits like contraceptives.

STATES

Democratic gains should boost number of states that create ACA exchange, expand Medicaid

Democratic gains at the state level should facilitate full implementation of the Affordable Care Act (ACA) in several states and remove obstacles to creating health insurance exchanges and expanding Medicaid.

Minnesota and New York are two states that appear to be in the best position to immediately move forward on the exchange as their governors had already created the infrastructure via executive order before legislative control returned this week to Democrats (see articles below). Maine and New Hampshire are two other states that should now be able pass the needed authorizing legislation over the next year, though the Republican governor in Maine may continue to resist (see articles below). Colorado Democrats also intend to pursue the Medicaid expansion now that they control the House (see below).

Overall, high minority turnout in the Presidential race appears to have benefited Democrats down the ballot, as they appear to have captured more state legislative seats than Republicans (pending outstanding races) including a 120-seat gain to win back the New Hampshire House, reclaiming the Oregon House that was tied, and garnering supermajorities in the California Assembly and Senate (see below). They also ended the Republican supermajority in Florida (see below) and made major gains in the Iowa and Michigan Houses despite not claiming majorities. However, the final tally will be far short of the near record 700-seat gain made by Republicans in 2010 when minority turnout was down.

Republicans also now hold 30 governorships (the most since 2000) after adding North Carolina (see article below) and still control 24 state legislatures (down from 26). In addition to regaining control of the Alaska and Wisconsin Senates and supermajorities in North Carolina, the south is now entirely under Republican control after both chambers of the Arkansas legislature appear to have fallen to Republicans for the first time since Reconstruction (pending recounts), dealing Governor Mike Beebe (D) a major setback in his effort to expand Medicaid under the ACA.

By contrast, Democrats only hold 19 governorships and control 18 legislatures. According to the National Conference of State Legislatures, it appears that only three legislatures (Iowa, Kentucky, and New Hampshire) will have divided control, the lowest number since 1928. (Virginia is effectively under Republican control as the Lieutenant Governor can break ties).

Democrats appear to have regained control of seven total chambers that they had lost in 2010, but Republicans claimed four chambers previously controlled by the Democrats. However, control of the legislatures in states like Iowa, Nevada, New Hampshire, New Mexico, and New York could still be altered if recounts and absentee ballots change only a handful of races.

Avalere Health predicts that 33 states will run all or part of an ACA-compliant insurance exchange

An analysis released this week by Avalere Health predicts that 20 states will create their own health insurance exchanges pursuant to the Affordable Care Act (ACA) while at least 13 will initially partner with the federal government so that they can retain some control over their exchange.

The report is welcome news to the Obama Administration that has sought since last fall to boost the number of state-based exchanges (see Update for Weeks of November 21st and 28th). All but two of the 29 Republican governors had resisted moving forward on an exchange, either choosing to default to a federally-facilitated exchange or wait until the Presidential and Congressional elections this week to see whether Republicans would be able to repeal the ACA (see above).

Because so many states delayed implementation, Avalere predicted that they would not be able to meet the November 16th deadline to provide the Obama Administration with their exchange plans. However, the Administration has since extended the deadline (see article above).

California

New Democratic supermajority, tax referendum should facilitate ACA legislation next month

Governor Jerry Brown (D) was the big winner in statewide elections this week even though his name did not appear on the ballot.

The Governor has long-sought to raise taxes in order to prevent staggering budget deficits that have crippled state government on nearly an annual basis (see Update for Week of June 18th). The compromise budget he signed last summer to fill a $15.7 billion deficit was contingent upon voter approval of the tax referendum on this week's ballot (after Republicans failed to provide the two-thirds majority needed to raise taxes legislatively).

Proposition 30 passed with 54 percent of the vote, giving Governor Brown the authority to raise $8 billion in new revenues through a higher sales tax and a retroactive but temporary income tax for the wealthy. The funds will specifically address the chronic underfunding of education, although consumer advocates were quick to point out that it will stabilize funding for the rest of the budget including health programs. If Proposition 30 had not passed, an additional $6 billion in cuts would have been triggered on top of the massive cuts imposed on health programs over the last three budget cycles.

The state's top personal income tax rate was already the second highest in the nation at 10.3 percent before Proposition 30 passed. It will now rise to 13.3 percent for the next seven years, while the sales tax will rise 0.25 percent to 7.25 percent.

Governor Brown emphasized that despite the eye-popping tax rates, the state's overall burden is not exceptionally high due to low property and business taxes. The effective business tax of 5.3 percent is only barely above the five percent national average, according to the Council on State Taxation.

If initial vote totals hold after absentee ballots are counted, Democrats will have supermajority control of both chambers for the first time in 79 years. The Senate appears to have 28 Democrats, one more than needed to reach two-thirds, and the Assembly is on track for 54 Democrats, exactly two-thirds.

The supermajorities will give Democrats the ability to pass future tax hikes over the opposition of Republicans or put constitutional amendments before voters on their own. However, it could also enable them to override vetoes by Governor Brown and pursue their own legislative agenda.

As a result, business groups like the National Federation of Independent Businesses were quickly alarmed when some Assembly Democrats hinted that they want to raise taxes on oil companies and commercial real estate, while ending tax breaks in so-called enterprise zones. There were also murmurs that Democrats would target the popular Proposition 13 limit on property taxes, which passed while Governor Brown was in office in 1978. Democrats have long viewed Proposition 13 as an impediment to balancing the budget and argue that it should be relaxed at least for business property.

The Governor has already called a special session of the newly-elected legislature next month to pass legislation needed to fully implement the Affordable Care Act (ACA) (see Update for Week of August 20th). According to Assemblyman Bill Monning (D), last session's chair of the Health committee, the re-election of President Obama and new Democratic supermajorities should greatly facilitate the ability of the legislature to resolve outstanding implementation issues. Several bills stalled or were vetoed last session due to uncertainty over the fate of the ACA, such as the ban on pre-existing condition denials and new age rating limits (see Update for Week of October 1st). The legislature also still needs to address critical issues like whether to participate in the Medicaid expansion under the new law or create a Basic Health Plan option that would cut participation in the new health insurance exchange. Bills passed during the special session will be effective in 90 days instead of being delayed until January 2013.

Healthy Families enrollees receive notice of transition into Medicaid managed care plans

The Department of Health Care Services (HCS) sent 415,000 notices last week to inform Healthy Families SCHIP enrollees they will need to switch to Medi-Cal managed care plans on January 1st.

Over two dozen consumer and provider groups including the California Medical Association have continued to unsuccessfully lobby for a delay in the conversion that will put 880,000 children into capitated plans. Moving SCHIP enrollees into Medi-Cal managed care was part of the budget plan sought and signed into law by Governor Jerry Brown (D) last summer (see Update for Week of June 18th). He projects that consolidating all low-income children under 250 percent of the poverty level into one state program will save California more than $72 million per year, hold plans more accountable, and better prepare the state for the full implementation of the Affordable Care Act.

DHCS officials have already submitted its network adequacy assessment for the conversion to the legislature and also still need federal approval before the transition can begin. Consumers and providers are concerned that the rush to begin moving enrollees will jeopardize their quality and continuity of care. However, DHCS officials are adamant that the transition can proceed as scheduled.

Colorado

Democrats regain control of House, push Governor to expand Medicaid

Incoming Speaker Mark Ferrandino (D) declared this week that expanding Medicaid is a top priority of Democratic lawmakers after they regained control this week of the House of Representatives.

Although he is an overall supporter of the Affordable Care Act (ACA), Governor John Hickenlooper (D) has remained non-committal on whether he will participate in the law's Medicaid expansion, citing a potential cost burden for the state. He has been critical of Congress for not doing more in the ACA to control the rise in medical costs, claiming they tacitly approved perpetual 9-10 percent annual increases that are driving premium hikes.

Republicans, including Colorado Attorney General John Suthers, had previously warned the Governor that Colorado's costs for the expansion may soar to a billion dollars between 2016 and 2021; although an Urban Institute analysis projected the state would spend half that amount and receive a windfall from the 100 percent federal match through 2016 and at least 90 percent thereafter.

There is no deadline for the Governor to decide on the expansion. He has already made Colorado one of 17 states and the District of Columbia to notify the Obama Administration before the November 16th deadline of their blueprint for creating the state-based health insurance exchange authorized by the ACA (see above).

However, Republican control of the House forced the Governor to adopt the more passive "clearinghouse" exchange model and allow some insurer representation on the oversight board (see Update for Week of May 2, 2011). It remains to be seen what changes to the Colorado Health Benefit Exchange may result now that Democrats control both legislative chambers.

Florida

Republicans lose supermajorities and anti-ACA amendment, will consider expanding Medicaid

Slight gains by Democrats this week managed to dent the Republican power base that has prevented all implementation of the Affordable Care Act (ACA) in Florida.

Voters rejected a symbolic ballot measure this week that would amend the state constitution to bar penalties against those who fail to buy health insurance they can afford. Amendment 1 failed by 11 percent despite comparable referendums overwhelmingly being approved this week in Alabama, Montana, and Wyoming, and previously passing in Arizona, Missouri, and Oklahoma. Florida is the second state to reject such a measure after Colorado (see Update for Week of November 1, 2010).

Republican lawmakers had sought to place the measure on the 2010 ballot when an electoral backlash against the Affordable Care Act (ACA) was at its peak. However, the Florida Supreme Court removed it after it found the summary language to be "manifestly misleading" because it suggested that the individual mandate under the ACA would interfere with patient relationships with their physician (see Update for Week of August 30, 2010). Republican efforts to remove the justices who issued this ruling have failed over the past two elections (see Update for Week of March 7, 2011).

Local newspapers mostly ridiculed the measure and urged voters to vote against it, emphasizing that it was rendered moot by the U.S. Supreme Court decision last summer that upheld the individual mandate (see Update for Week of June 25th). Because federal law is always supreme to conflicting state laws, passage of the measure would have had no practical effect.

Republicans largely blamed record voter turnout from minority groups that largely support the new law for the defeat of Amendment 1. This same turnout not only narrowly gave Florida to President Obama but allowed Democrats to gain the handful of seats needed to end the Republican supermajorities in the House and Senate. However, Republicans still hold 74 of the 120 House seats and 26 of the 40 Senate seats (one short of a supermajority).

Several Republican lawmakers were quick to urge Governor Rick Scott (R) to drop his steadfast refusal to implement any part of "Obamacare" now that Democratic victories at the federal level have removed any opportunity to repeal the new health insurance reforms.

One of Florida's longest serving lawmakers, Senator Mike Fasano (R) (who is moving to the House), indicated that Republicans will have to "take a hard look" at participating in the Medicaid expansion next session, regardless of the Governor's continued opposition. He insisted that Florida can no longer afford to miss out on the millions in new revenue that the ACA expansion would bring in; as well the higher costs of uncompensated care that will be imposed on Florida hospitals should the state opt-out of the expansion in 2014.

Kansas

Republican insurance commissioner says "it's time to stop resisting" Obamacare

Insurance Commissioner Sandy Praeger (R) requested a meeting with Governor Sam Brownback (R) to renew her recommendation that he move "full steam ahead" on implementing key provisions of the Affordable Care Act (ACA).

Governor Brownback has been an ardent critic of the new law and returned the state's $31.5 million exchange establishment grant last year (see Update for Week of August 8, 2011). He subsequently refused to make any decisions on implementation until after this week's national elections.

Praeger, a moderate Republican who served under Brownback's Democratic predecessor, has been one of the few Republican supporters of the ACA. She headed a National Association of Insurance Commissioner task force developing model guidance for exchange implementation and has been very vocal in her criticism of Governor Brownback for not moving forward, either on the exchange or the Medicaid expansion. Most recently the Governor rejected her recommendation for the benchmark plan to define essential health benefits under the ACA (see Update for the Week of September 24th).

As a result, Commissioner Praeger declared this week that "it's time to stop resisting" as Democratic victories at the national level removed any chance of the ACA being repealed and heightened the importance for Kansas to move quickly in order to avoid defaulting to a federally-controlled exchange. She emphasized that the only option remaining for Kansas is to apply for the initial federal-state exchange partnership allowed by federal regulations (see Update for Week of May 14th). Her department also needs the Governor's approval to obtain additional federal grants for the partnership.

A spokesperson for the Governor agreed to the meeting but squelched any consideration of a federal partnership, insisting that he would pursue "only Kansas solutions" and discuss only those alternatives being pursued by "like-minded states".

Maine

Loss of Republican legislature puts pressure on tea-party Governor to implement ACA

If final vote tallies hold, both chambers of the Maine Legislature have returned to Democrat control this week after falling to Republicans in 2010.

Tea-party backed Governor Paul LePage (R) did not have any immediate comment on how the sea of change will impact his decision not to implement key provisions of the Affordable Care Act (ACA). However, Republican leaders were quick to note that "it certainly changes the dynamics" and sought to strike a conciliatory tone that contrasts sharply with the Governor's previous agenda to roll-back some of the state's most popular consumer protections like guaranteed issue and community rating (see Update for Week of June 13, 2011).

The Governor had taken a "wait and see" approach to the state-based exchange he initially supported but later opposed , while refusing to consider participating in the Medicaid expansion under the ACA that will greatly reduce uncompensated care costs for hospitals. Democratic lawmakers quickly pledged this week to pass legislation authorizing implementation of both provisions.

While the Governor may veto these measures, it is not yet clear that a handful of more moderate Republicans in Maine would not join with Democrats to override them. Democrats are likely to hold solid margins in both chambers (ten-seat advantage in the Senate with one independent and one undecided race, 25-seat advantage in the House with four independents).

The loss of Republican control may also force the Governor to back-off from seeking federal approval for severe Medicaid eligibility cuts that were approved by the prior legislature (see Update for Week of October 29th). Democrats immediately pledged to reverse these cuts (including the elimination of benefits for those aged 19-20) as well as appoint an Attorney General who "will not be suing the federal government anymore to impede [the ACA]". The Governor had unsuccessfully sued to force the Obama Administration to approve the cuts even though they are explicitly prohibited by the ACA (see Update for Week of September 10th).

However, Democratic leaders have yet to indicate whether they will seek to restore consumer protections that were eliminated or weakened by the Governor, which they insist have only increased premiums for Mainers (see Update for Week of September 24th). This includes the state-subsidized Dirigo Health Plan for low-income small business workers and the uninsured, which was very popular but beset by funding issues and may no longer be needed once the ACA exchanges are operational in 2014 (see Update for Week of June 20, 2011).

Minnesota

Democrats gain control of House and Senate, clearing way for health insurance exchange

Democrats have regained control of both legislative chambers that they lost in 2010, clearing the way for Governor Mark Dayton (D) to implement the state-based health insurance exchange that he is already creating via executive order.

Despite being well ahead of most other states in exchange progress, the Governor was forced to delay key decisions on the exchange until the elections this week determined the composition of the legislature (see Update for Week of October 1st). Republican lawmakers had erected a major roadblock for the Governor by refusing to authorize any part of the exchange, including the Governor's use of the $42.5 million federal exchange establishment grant that he recently obtained (see Update for Week of September 24th). Governor Dayton could not make the exchange operational without legislative approval.

The new 12-seat Democratic margin in the House and 11-seat Senate advantage appear to remove any possibility that Republicans could continue to impede operation of the exchange. Senator Tony Lourey, now the highest-ranking Democrat on the key Health and Human Services Committee, expressed confidence this week that Democratic lawmakers would fully support the exchange.

Governor Dayton also has the support of key stakeholders including the Minnesota Chamber of Commerce, which had been pressuring Republicans to stop resisting exchange implementation.

Consultant Joel Ario, who formerly headed the exchange office for the U.S. Department of Health and Human Services, indicated this week that Minnesota has already made substantial progress and should have little problem meeting federal deadlines, even if they had not been extended (see above). The Governor has already secured more than $70 million in federal grants, obtained recommendations from two task forces, and awarded a $41 million contract to a Virginia company to design the online marketplace. As a result, Ario expects Minnesota to be one of the first states to get federal approval.

Missouri

Passage of voter referendum means Missouri certain to have federally-facilitated exchange

Voters in Missouri approved a ballot referendum this week that will prevent newly re-elected Governor Jay Nixon (D) from creating a health insurance exchange that complies with the Affordable Care Act (ACA) without legislative or voter approval.

The measure appears all but certain to force Missouri to default to a federally-facilitated exchange in 2014. Governor Nixon has previously declined to follow the lead of his counterparts in Minnesota, New York, and Rhode Island and start creating the exchange via executive order. He also has not pursued a federal-state partnership as allowed under federal regulations (see Update for Week of May 14th).

New Hampshire

Voters give Democrats, women control over most of New Hampshire government

New Hampshire made history this week by electing an all-female delegation. Governor-elect Maggie Hassan (D) will replace John Lynch (D) in January, while new Representatives Carol Shea-Porter (D) and Ann McLane Kuster (D) will join with New Hampshire's two female Senators in Congress.

New Hampshire was considered a battleground state in the Presidential election but a 20-point margin for President Obama among women swung the state to his column by a decisive margin and likely contributed to the success of female candidates statewide. It also spurred a surprising comeback for Democrats in the state legislature. Democrats lost both chambers in the Republican wave of 2010. However, a 120-seat gain in the House now gives them a 44-seat margin while they came only two seats away from regaining control in the Senate.

Republican control of the legislature forced Governor Lynch earlier this year to abandon his plans for either a state-based exchange under the Affordable Care Act, or a federal-state exchange partnership. House Republicans repeatedly voted to block funding or approval for implementing any part of the ACA (see Update for Week of April 30th); though they were rebuffed in several instances by their more moderate counterparts in the Senate (see Update for Week of March 5th).

It is not yet clear if the new legislature will give Governor-elect Hassan the approval she needs to eventually create a state exchange or federal exchange partnership, as well as participate in the Medicaid expansion under the ACA. However, Governor-elect Hassan will now have until February 15th to pursue the exchange partnership after the deadline was extended this week (see article above).

New York

Absentee ballots to determine control of Senate, progress of health insurance exchange

Democrats surprisingly maintain a one-seat margin in the New York State Senate as election officials continue to count absentee ballots in two outstanding races in which Democrats lead.

Governor Andrew Cuomo (D) refrained this week from commenting on whether Democratic control of both chambers would finally give him the legislative authorization he needs to make a state-based health insurance exchange operational. The Governor was forced to circumvent opposition by Senate Republicans earlier this year by starting work on the exchange via executive order (see Update for Week of April 9th). However, he acknowledges that the exchange will not be able to start on schedule in 2014 without House and Senate approval.

Experts in both parties acknowledge that President Obama's 25-percent victory in New York provided Senate Democrats with the coattails they needed to achieve a majority, despite being far outspent by Republican challengers. However, Senate Democrats have been so fractured over the past year that it is not clear if they could keep their coalition together enough to even elect a majority leader.

Democrats lost control of the Senate last year after four unhappy Democrats created a new independent conference that caucused with Republicans. The leader of this group, Senator Jeffrey Klein, would only commit this week to a "strong, stable government" while another member Senator Simcha Felder indicated that he was still open to allying with Republicans.

North Carolina

New Republican governor, supermajority face quandary on ACA implementation

Newly-elected Governor Pat McCrory (R) is already under pressure from provider and consumer groups this week to participate in the Medicaid expansion under the Affordable Care Act (ACA) and partner with the federal government on a health insurance exchange. However for either to happen, McCrory will need the support of his own party who gained supermajorities in the General Assembly and preserved their majority on the state Supreme Court.

McCrory will become the 30th Republican governor in the nation when is takes over in January for Governor Bev Perdue (D), who chose not to run for re-election while facing poll numbers that were among the lowest for any state governor. The former Charlotte mayor lost to Perdue in 2008, but easily prevailed over her Lieutenant Governor this week.

McCrory faces an immediate minefield on the ACA. Perdue's popularity tanked as she fervently sought to implement the ACA against the opposition of a Senate that was Republican for the first time in a century. She vetoed legislation that sought to block "Obamacare" and obtained over $13 million in federal exchange implementation grants, but was prevented from using it for several months by Republican leaders in the House and Senate.

The Governor also convened an advisory group headed by the North Carolina Institute of Medicine that recommended the state establish the exchange as a non-profit quasi-governmental entity. However, the exchange-authorizing legislation she sought incited controversy among fellow Democrats for allowing health insurers to serve on the board that oversees participating exchange plans. Although both chambers ultimately passed legislation declaring their intent to create a state-based exchange, only the House passed the subsequent authorizing bill.

Senate President Phil Berger (R) took a "wait and see" approach until the election determined whether the ACA would be repealed. Even though tea-party backed Republicans remain steadfastly opposed to implementing any part of "Obamacare", Senator Berger has not ruled out pursuing an initial federal-state exchange partnership so that North Carolina retains control over some exchange functions in 2014 while deciding whether and how to proceed. Republican leaders now have until February 15th to decide whether to apply for a partnership after the deadline was extended this week (see article above).

Senator Berger and Republican leaders have also remained largely non-committal on whether to accept federal funding to expand Medicaid, which the North Carolina Institute of Medicine estimated would bring the state 18 times more revenue than the $138 million per year it would cost to expand. The study also predicted that over at least the first six years of the expansion, the 93 percent federal match would reduce average annual state costs per Medicaid enrollee from $6,000 to only $188 per year.

Intense hospital association lobbying is also giving Republicans pause. While the co-chair of the Joint Health and Human Services oversight committee remains opposed to expanding Medicaid, other Republicans fear a "political backlash" if uncompensated care costs jump after the ACA reduces disproportionate share payments in 2014 for hospitals that serve high numbers of indigent patients.

Virginia

Governor confirms that he will allow federally-facilitated health insurance exchange

Governor Bob McDonnell (R) acknowledged this week that continued Democratic control of the White House and U.S. Senate made implementation of the Affordable Care Act (ACA) inevitable. However, he joined with his counterpart in South Carolina in affirming that he still remains unwilling to participate in the law's Medicaid expansion or create the health insurance exchange that it authorizes.

The Governor has already refused to call a special session to pass exchange-authorizing legislation, all but ensuring that Virginia will cede control to a federally-facilitated exchange (FFE) unless he applies by February 15th for an initial federal-state partnership (see article above). However, McDonnell insisted this week that he still lacks clear federal guidance on both the partnership and the Medicaid expansion, as the Centers for Medicare and Medicaid Services has yet to respond to questions he submitted last summer on behalf of the Republican Governors Association that he chairs (see Update for Week of July 2nd).

Defaulting to a FFE would be somewhat of a reversal from the position that Governor McDonnell and the General Assembly took last year, when he signed a law giving him the authority to plan for implementing a state-based exchange. An advisory council created by the Governor had also recommended last year that Virginia not cede control to a FFE (see Update for Week of December 5th).

However, the Governor has yet to respond to these recommendations and urged House Speaker William Howell (R) to block several bills last session that would have authorized the exchange. Senator John Watkins (R) stated this week that he will reintroduce legislation in January to create a state-based exchange and would be open to the Governor pursuing a federal partnership while it is being created.

Governor McDonnell is term-limited next year and the incoming Governor could still opt to participate in both the exchange partnership and Medicaid expansion upon assuming office in 2014.