

NAHU *Washington Update*

The Road Ahead

Presented by: Marcy M. Buckner, NAHU Senior Vice President of Government Affairs

**Regulatory
and Judicial
Outlook**

Advocacy

**Get
Involved**

**Federal
Priorities**

COVID-19

**State
of the
Race**



Response to COVID-19 (Coronavirus)

Legislative

Regulatory

COVID-19 (Coronavirus) legislative Response

EMERGENCY SUPPLEMENTAL (Phase 1) <u>Coronavirus Preparedness and Response Supplemental Appropriations Act</u> (Public Law No. 116-123)	FAMILIES AND WORKERS (Phase 2) <u>Families First Coronavirus Response Act</u> (Public Law No. 116-127)	ECONOMIC STIMULUS (Phase 3) <u>Coronavirus Aid, Relief, and Economic Security (CARES) Act</u> (Public Law No. 116-136)	INTERIM SUPPLEMENTAL (Phase 3.5) <u>Paycheck Protection Program and Health Care Enhancement Act</u> (Public Law No. 116-139)
<p>Signed into law on March 6th</p> <p>\$8.3 billion supplemental appropriations package, comprised of \$500 million in mandatory spending for Medicare telehealth and \$7.8 billion in discretionary spending, including:</p> <ul style="list-style-type: none"> ➤ More than \$3 billion for R&D for vaccines, therapeutics, and diagnostics; ➤ \$2.2 billion in public health funding, including \$950 million for state and local agencies; ➤ \$1 billion for medical supplies healthcare preparedness, CHCs, and medical surge capacity; and ➤ \$1.25 billion for international efforts <p>Provides emergency aid to HHS, FDA, CDC, NIH, DOS, USAID, and SBA</p>	<p>Signed into law on March 18th</p> <ul style="list-style-type: none"> ➤ Paid leave: Expands family and medical leave as well as guarantees paid sick leave for certain workers, including those employed at companies with fewer than 500 employees. This would be made available through a refundable payroll tax credit to reimburse businesses ➤ Testing: requires free access to COVID-19 tests ➤ Food assistance: provides more than \$1 billion in food assistance to students and seniors and to other vulnerable populations through WIC, TEFAP, and EBT ➤ Unemployment: provides \$500 million in emergency administrative grants to increase state capacity to process unemployment applications ➤ FMAP: increases the federal medical assistance percentage (FMAP) the federal government provides to state Medicaid programs by 6.2% 	<p>Signed into law on March 27th</p> <p>The \$2 trillion package directs financial aid to many Americans, small businesses, and larger industries through several provisions, including:</p> <ul style="list-style-type: none"> ➤ \$300 billion in direct payments to households, including checks for up to \$1,200 per person and \$500 per child ➤ \$260 billion in expanded unemployment insurance (UI) ➤ \$350 billion in loans for small businesses (500 employees or fewer) ➤ \$500 billion in loans, loan guarantees, and other aid for large corporations, to be overseen by a Treasury Department inspector general/Congressional oversight ➤ \$150 billion in direct aid to states ➤ \$340 billion in supplemental spending, including more than \$100 billion for hospitals and healthcare workers 	<p>Signed into law on April 24th</p> <p>The nearly \$500 billion package – originally proposed as a \$250 billion stopgap to replenish the Paycheck Protection Program (PPP) – includes:</p> <ul style="list-style-type: none"> ➤ \$310 billion for PPP, with \$60 billion set aside for community banks and small lenders ➤ \$60 billion for emergency disaster loans and grants ➤ \$75 billion for hospitals ➤ \$25 billion for expanded COVID-19 testing <p>Notably, the package omits additional fiscal assistance for state and local governments</p>

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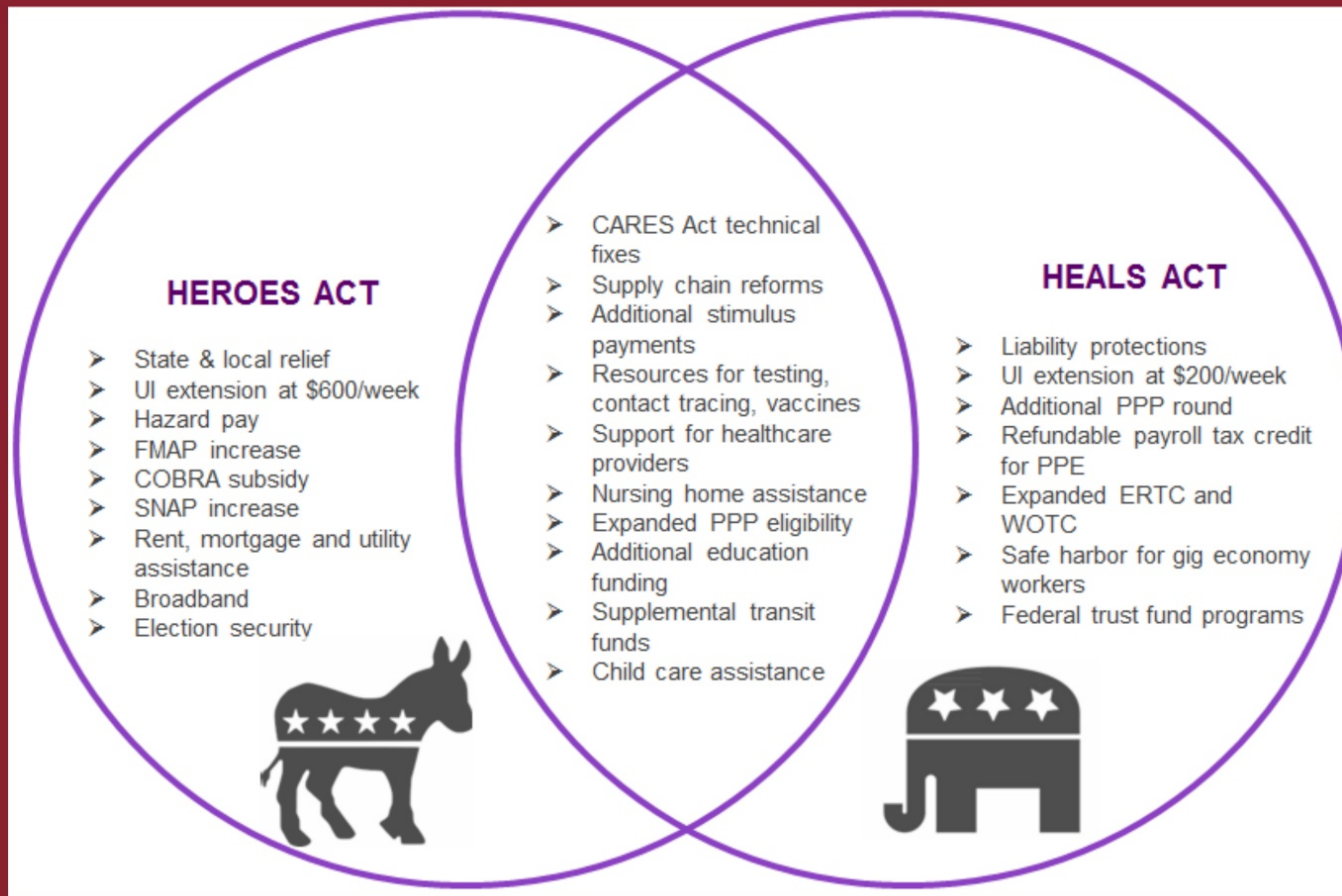
Current State-of-Play for Next Coronavirus Relief Package

- The House passed **H.R. 6800**, the **Heroes Act**, but has been widely opposed by Senate Republicans and the Administration and is considered dead on arrival.
 - The bill includes \$1 trillion in assistance to state and local governments, 8-week extension for the payment protection program, more direct payments to Americans, and establishes special enrollment periods for Medicare and Medicare Advantage as well as the ACA exchanges.
 - The bill would have the federal government cover 100 percent of the premium for COBRA benefits.
 - Also under the proposed legislation, cafeteria plans and health Flexible Spending Accounts would allow participants to carry over up to \$2,750 in unused benefits or contributions from 2020 to 2021.

Current State-of-Play for Next Coronavirus Relief Package

- Leader McConnell released the latest Senate Republican COVID-response proposal on July 27, **The HEALS (Health, Economic Assistance, Liability Protections, and Schools) Act**.
- The one trillion dollar package includes:
 - Second round of direct stimulus payments for Americans;
 - Another round of loans for the Paycheck Protection Program (PPP);
 - Five years of liability protections for businesses, healthcare providers, and schools from lawsuits related to COVID-19;
 - Reduction of the unemployment additional payment to \$200 per week followed by a cap of 70% of lost wages;
 - \$16 billion for COVID-19 testing and contact tracing;
 - \$25 billion for provider relief;
 - and \$105 billion in funding for schools

General Areas of Agreement





Response to COVID-19 (Coronavirus)

Legislative

Regulatory

COVID-19 (Coronavirus) Regulatory Response

- In late April, the Departments of Labor and Treasury released an emergency final regulation regarding the COBRA-election period during the dates of the COVID-19 national emergency.
- The emergency rule took effect immediately and can be applied retroactively to March 1, 2020. The emergency rule allows more flexibility for:
 - Initial COBRA election period
 - Deadline for premium payments
 - Timeline for employers to provide COBRA election notices.
- NAHU submitted a letter to the IRS in regards to this emergency final regulation in late May.
 - In our comments, we requested some clarification related to both the FFCRA paid leave tax credits and the retention tax credit established by the CARES Act.
 - The recent changes to COBRA continuation of coverage requirements for the duration of the COVID-19 national emergency period also raised numerous issues and concerns.

NAHU Suggestions to Administration in Regards to COVID-19 Response

- NAHU submitted a list of suggestions to the Trump Administration in April and June, utilizing member input to convey what the various federal agencies should do during this time.
- With the assistance of the Compliance Corner Committee, we compiled a list of suggested guidance and regulation for the Department of Labor, IRS, HHS and CMS that we believe will allow more Americans to maintain or obtain health insurance coverage both in the group and individual market, as well as allow for employers to continue to stay in business and maintain employment.

NAHU Suggestions to Administration in Regards to COVID-19 Response

- Several weeks later, the Department of Labor released guidance that addressed many of the topics we included in our letter.
 - The DOL recognizes one of our main concerns that the COVID-19 outbreak may temporarily impede efforts to comply with various requirements and deadlines under ERISA.
 - Their guidance applies to employee benefit plans, employers, labor organizations and other plan sponsors, plan fiduciaries, participants, beneficiaries, and service providers subject to ERISA from March 1, 2020, the beginning of the national emergency declared by President Trump, until 60 days after the announcement of the end of the COVID-19 national emergency or any other date determined by the DOL in a future notice.
 - More specifically, for group health plans subject to ERISA or the Internal Revenue Code, the relief provides additional time to comply with certain deadlines affecting COBRA-continuation coverage, special enrollment periods, claims for benefits, appeals of denied claims and external review of certain claims.
 - Another concern of NAHU was the deadline for Form 5500 filings. The Administration is providing Form 5500 Annual Return/Report filing relief in accordance with IRS Sec. 7508 that allows for an extension in filing during a presidentially declared disaster.

NAHU Suggestions to Administration in Regards to COVID-19 Response

- In mid-May, the IRS released two sets of guidance that address some of the Section 125, FSA and HSA requests that we made in our April Letter.
 - Although the guidance is limited, there are actions being taken by Congress and the Administration to build on this new guidance.
 - **Notice 2020-29** provides for increased flexibility that NAHU requested with respect to midyear elections made under a Section 125 cafeteria plan during calendar year 2020 related to employer-sponsored health coverage.
 - **Notice 2020-33** increases the \$500 limit for unused amounts remaining in a FSA that may be carried over into the following year by making the carryover amount 20 percent of the maximum salary reduction amount under Section 125(i), which is indexed for inflation.

President Trump Announces Executive Orders After Stimulus Talks Break Down

- President Trump signed four executive orders on August 8th, including:
 - Actions to defer payroll taxes for Americans earning less than \$100,000 a year;
 - Implement a moratorium on evictions and give financial assistance to renters;
 - Add \$400 per week in extra unemployment benefits through the end of 2020 (requiring states to cover 25% of the additional benefits);
 - And postpone student loan interest and payments through the end of 2020.
- The White House's new executive actions will likely face legal challenges.



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2020 Political Outlook

**Current
Candidates**

**Health
Policy
Platforms**

**House/
Senate
Outlook**

Biden Has Formally Clinched the Democratic Nomination



- Since Senator Sanders announced the suspension of his campaign, Biden has received support from several high-profile Democrats.
- The endorsements include a 12-minute video from President Obama, a livestream conversation with Sen. Sanders, and an endorsement video from Sen. Warren. Biden has already been endorsed by other former challengers for the Democratic nomination, including Sen. Klobuchar, Mayor Buttigieg, Mayor Bloomberg, Sen. Harris, and Sen. Booker.

Biden Picks Kamala Harris as VP



Kamala Harris
U.S. Senator (D-CA),
Former CA Attorney
General


- Democratic nominee Joe Biden named Senator Kamala Harris (D-CA) as his running mate yesterday, ending months of speculation.
- Biden called Harris, a former rival in the Democratic primary, the best equipped to help him defeat President Trump and lead the nation through the coronavirus pandemic, economic downturn and racial divide.

2020 Republican Party Presidential Candidates



**Incumbent President:
Donald Trump**

In February 2019, the Republican National Committee voted to provide undivided support to Trump. Several states have decided to cancel their primaries and caucuses.



2020 Political Outlook

**Current
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**Health
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Health Policy Platforms

Joe Biden

With “Medicare for All” largely out of the conversation, how will Biden respond to continued calls to expand healthcare coverage?

Pillars of the Biden healthcare plan:

- **Expand government healthcare programs** by establishing a Medicare-type public option to compete with private insurance. Biden would also allow Americans ages 55-64 to buy into Medicare.
- **Allow Medicare to negotiate Rx drug prices.** Biden would also limit Rx launch prices, allow Health and Human Services (HHS)-certified Rx imports, impose penalties on Rx price increases greater than the general inflation rate, and establish an independent review board to assess prices of noncompetitive biotech drugs.
- **Prohibit surprise billing**
- **Double federal investment in community health centers (CHCs)**

Donald Trump

How will Trump address voters' increasing attention to healthcare issues?

Pillars of the Trump healthcare plan:

- **Continue efforts to limit implementation of the Affordable Care Act (ACA)**
- **Proceed with drug pricing rulemaking.** Trump previously issued notices of proposed rulemaking to allow the importation of certain Rx drugs from Canada, require manufacturers to include list prices in television advertisements, and reform rebates to pharmacy benefit managers (PBMs)
- **Promote efforts to pass a bipartisan, bicameral deal from Congress to reduce drug prices**
- **Combat surprise billing.** The administration proposed rules require hospitals and insurers to transparently display prices online.

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Ho
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2020 Political Outlook

**Current
Candidates**

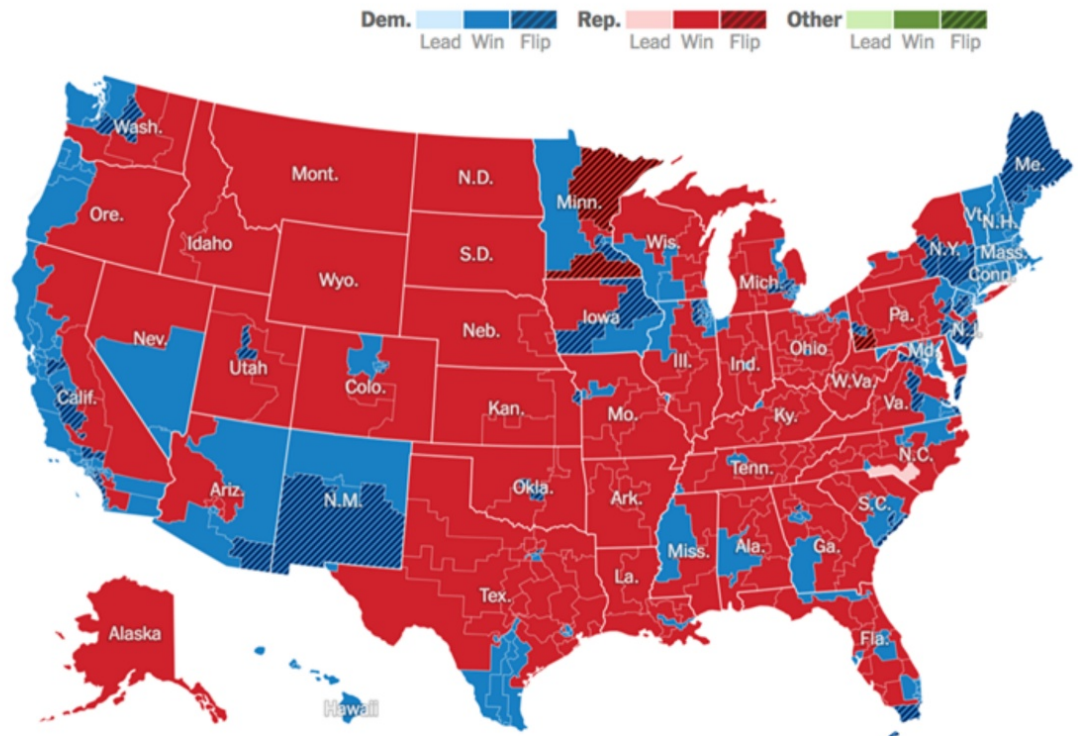
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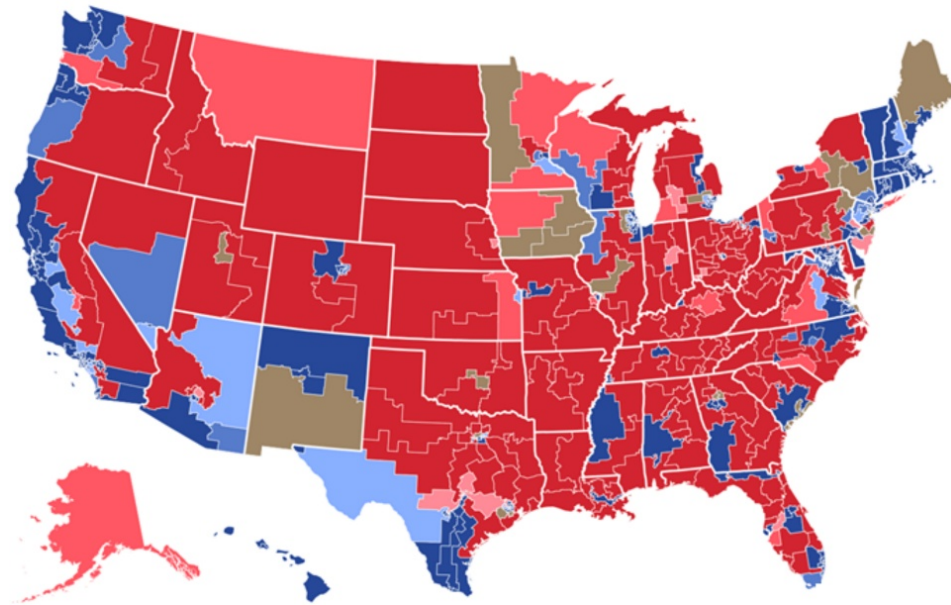
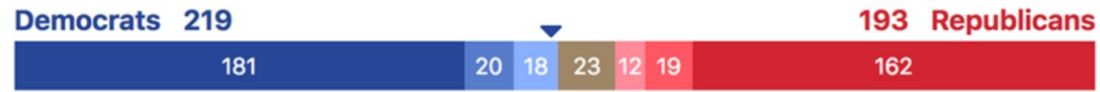
116th Congress: The House

232 Democrats
197 Republicans
1 Independent

5 Vacancies: CA-25,
CA-50, MD-07, NY-27,
WI-07

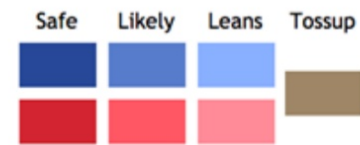


House Projections



Totals: 220 Democrat 191 Republican 24 Toss Ups

218 needed for majority



12 Lean Republican

19 Likely Republican

162 Solid Republican

Cook Political Report
270toWin

116th Congress: The Senate

53 Republicans

47 Democrats

Both Independent Senators Caucus with the Democrats

35 Seats up for election

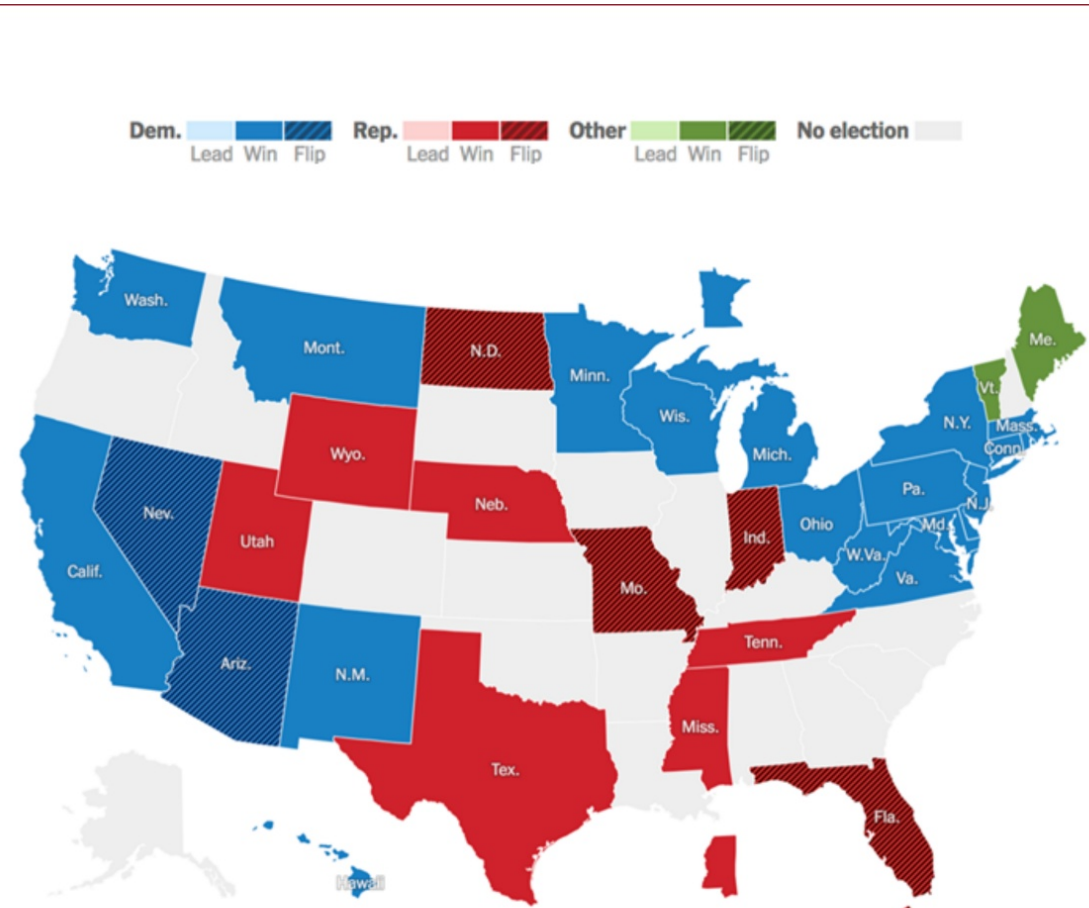
12 Democratic and 23 GOP

In order to take control of the chamber, Democrats must gain **4 seats**

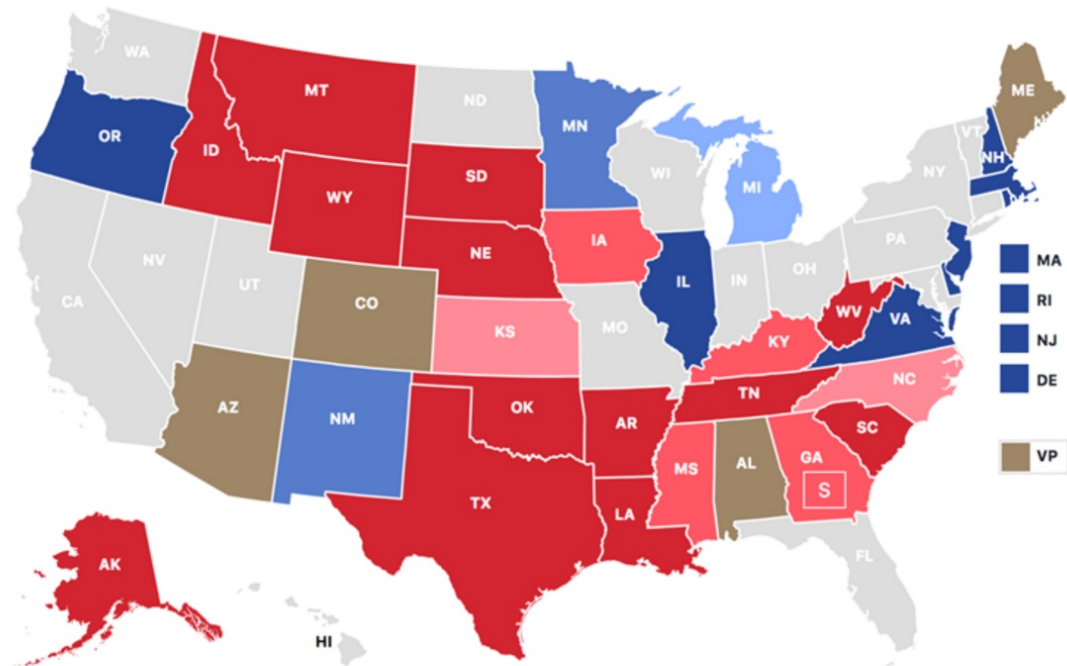
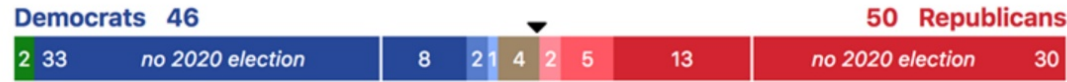
47 Democrats

35 Seats up for election

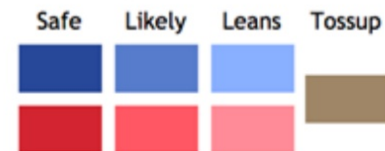
In order to take control of the chamber, Democrats must gain **4 seats**



Senate Projections



Totals: 46 Democrat 50 Republican 4 Toss Ups



2 Lean Republican

5 Likely Republican

13 Solid Republican

Cook Political Report
27otoWin


1 Lean Democratic

2 Likely Democratic

8 Solid Democratic

Time for Polling Question #1





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Review**

**Employer
Issues**

Medicare

**Healthcare
Costs**

**Single
Payer**

2019 in Review

Congress Fully Repeals Cadillac Tax and Hit

- Congress passed the fiscal year 2020 spending bill and companion tax extenders measure in December, which includes a permanent repeal of three ACA taxes: the Cadillac Tax, medical device tax and Health Insurance Tax (HIT).
- The legislation fully repeals the Cadillac Tax and repeals the HIT effective January 1, 2021, which means the HIT will still be in place for 2020.
- According to the Congressional Budget Office, repealing the Cadillac Tax will save consumers \$197 billion, and the HIT repeal will save consumers \$150 billion!
- This is a major milestone in our advocacy efforts to finally end these two ACA taxes and we thank all of you who have taken action to support these repeals!!





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Employer Issues

**Employer
Exclusion**

**Employer
Reporting**

Employer Exclusion

The employer-based system is highly efficient at providing American workers and their families with affordable coverage options through group purchasing and its associated economies of scale by spreading risk and avoiding adverse selection.

The success of this system is possible because of the preferential tax treatment of employer-sponsored insurance coverage, where employer-paid contributions for an employee's health insurance are excluded from that employee's compensation for income and payroll tax purposes.

Proposals that would cap the maximum value of the exclusion or eliminate it altogether would be detrimental to the stability of the employer-based market and would negatively affect middle-class Americans who currently benefit from this provision.



Employer Issues

**Employer
Exclusion**

**Employer
Reporting**

Employer Reporting

Establish a new voluntary reporting system, reduce the number of individuals and amount of information that would need to be reported, and eliminate the requirement to collect dependent social security numbers.

H.R. 4070 | Reps. Mike Thompson (D-CA) and Adrian Smith (R-NE)
S. 2366 | Sens. Mark Warner (D-VA) and Rob Portman (R-OH)



Employer Issues

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Medicare



COBRA

COBRA

Treat COBRA coverage as creditable coverage for Medicare, the same way that similar employer-sponsored insurance is already treated as creditable.

H.R. 2564 | Reps. Kurt Schrader (D-OR) and Gus Bilirakis (R-FL)
TBD | Sen. Todd Young (R-IN) and Sherrod Brown (D-OH)



Medicare

COBRA



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Healthcare Costs

**Balance
Billing**

**Prescription
Drugs**

Balance/Surprise Billing

NAHU is committed to working with policymakers at both the federal and state levels to address the issue of surprise and balance medical bills. The NAHU Legislative Council's special Balance-Billing Workgroup is specifically tasked with identifying potential solutions and proposing them to policymakers.

S. 1895 | Lower Health Care Costs Act
Sens. Lamar Alexander (R-TN) and Patty Murray (D-WA)

H.R. 3630 | No Surprises Act
Reps. Frank Pallone (D-NJ) and Greg Walden (R-OR)

H.R. 5800 | **Ban Surprise Billing Act**
Reps. Bobby Scott (D-VA) and Virginia Foxx (R-NC)

H.R. 5826 | **Consumer Protections Against Surprise Medical Bills Act of 2020**
(Arbitration)
Reps. Richard Neal (D-MA) and Kevin Brady (R-TX)

Balance/Surprise Billing

Fair Market Median Rate: Lowers overall costs for consumers and ends price-gouging by certain medical providers. Tying out-of-network reimbursement to privately negotiated, market-based rates would ensure reimbursement accurately reflect the cost of care in each market while directly addressing the extreme out-of-network outliers who continue to charge unconscionable rates.

Arbitration: Added bureaucracy with out-of-network rate setting decisions made by a third party would increase patients' health insurance premiums, drive up the cost of medical care and add to the federal deficit, and result in less overall transparency.

Recent Hearings & Announcements

June 26 - Senate HELP Committee markup advances **S. 1895** to full Senate

July 10 - House E&C Health Subcommittee markup advances **H.R. 3630** to full committee

July 18 - House E&C Committee markup advances **H.R. 3630**, adds arbitration amendment

December 8 - Leaders of Senate HELP Committee and House E&C announce they have come to an agreement. Under the compromise, bills under \$750 would be paid at a default price, based on in-network charges in the same region. However, bills over that amount could be brought to arbitration.

December 11 - The House Ways and Means Committee put out its own, rival proposal.

February 11 - The House Education and Labor Committee approve **H.R. 5800**, the Ban Surprise Billing Act, which follows the approach of the December Senate HELP and House E&C compromise.

February 12 - The House Ways and Means Committee approve **H.R. 5826**, the Consumer Protections Against Surprise Medical Bills Act of 2020, which relies on voluntary negotiation backed up by arbitration. This aligns more closely with the approach advocated by hospitals and physician groups.

February 26-Present All three committees of jurisdiction in House meet to come to an agreement on surprise billing legislation. *Discussions that balance billing language could be included in CARES 2.0 legislation.*



Healthcare Costs

**Balance
Billing**

**Prescription
Drugs**

Bipartisan Prescription Drug Efforts

H.R. 3, led by House Speaker Nancy Pelosi (D-CA), would authorize Medicare to negotiate drug prices, require drug makers to pay rebates for increasing prices beyond the rate of inflation (penalties starting at 65% of the manufacturer's annual gross sales of the drug, escalating by 10 percentage points every quarter of noncompliance to a maximum 95%), and limit out-of-pocket costs for Medicare beneficiaries.

- **HR 3** passed a Democrat controlled House in December 2019. However, the legislation appears dead on arrival in the Republican-controlled Senate and currently lacks the support of the Trump Administration.
- In response to **HR 3**, Senators Chuck Grassley (R-IA) and Ron Wyden (D-OR) passed the **“Prescription Drug Pricing Reduction Act”** through the Senate Finance Committee, which has the support of the White House, but continues to be unpopular among mainstream Senate Republicans. Senator Grassley reintroduced an updated version of the bill on 6/29/20, but without the support of Senator Wyden and other top Democrats.
 - The bill caps out-of-pocket costs for Medicare enrollees and requires drug makers to pay rebates if they hike prices faster than inflation.



Healthcare Costs

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Single-Payer

NAHU is fully opposed to any form of single-payer, be it through incremental approaches such as a public option or Medicare or Medicaid buy-in, or a more sweeping federal takeover of the entire healthcare system to implement a single standardized government-run plan.

NAHU and the **Partnership for America's Health Care Future** are actively working to oppose single-payer, promote employer-sponsored health coverage and preserve Medicare, Medicaid, and other existing health programs.

**Key
Issues**

**Medicare
For All**

Buy-In

States

Key Issues Affecting the Election

Healthcare was the #1 cited issue among 2018 voters, beating economy for first time in a decade.

Despite media narrative on Medicare-for-All, voters signaled they want pragmatic, bipartisan solutions to the challenges in the healthcare system.

- Among competitive elections:
 - 71% of Democrats who won (32 of 45) did not support Medicare for all.
- Among Democratic pickups from Republicans:
 - 86% of Democrats (30 of 35) did not run on Medicare for all.
- Only 2 of the 967 ads run by Democrats in competitive House races since Labor Day mentioned Medicare for all.

By the Numbers:

- Medicare for All would add \$32.6 trillion to national health spending over 10 years, paid for by taxpayers. (The Washington Post)■
- The public option could put more than 1,000 rural U.S. hospitals in 46 states “at high risk of closure.” (Navigant Health)■
- Over a decade, up to two million American patients could lose their coverage as insurers exit the marketplace under the public option. (FTI Consulting)■
- Paying for a Medicare for All system would require doubling the income taxes Americans pay. (CRFB)■
- Under the public option, 20 percent of state marketplaces could no longer offer a single private health insurance option by 2028. (FTI Consulting)■
- 70 percent of voters would rather keep their current coverage than buy it through the public option. (Voter Vitals)■
- 67 percent of voters would rather build on our current health care system than replace it with something new.(Voter Vitals)

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**Key
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**Medicare
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Buy-In

States

Medicare For All

S. 1129 | Sen. Bernie Sanders (I-VT) + 14 original co-sponsors

H.R. 1384 | Rep. Pramila Jayapal (D-WA) + 106 original co-sponsors

- Implements a single-payer system to include health, dental, vision, prescription drug, and long-term care coverage.
- Existing individual and employer-based coverage would be replaced by the plan, and it would be illegal for any private insurance to compete with the government run plan, although limited private coverage would be available for any services not covered by the plan.
- Transition period: Coverage would be available at the end of the first transition year for current Medicare enrollees, people over age 55 and those under 19. Individuals could buy into coverage through the ACA marketplaces and employers would be able to purchase the public plan for their workers. All Americans would be automatically enrolled by the end of the second year (fourth year for Senate version).

CBO Report on Single-Payer

"Medicare For All 'Could Adversely Affect Access To And Quality Of Care'"

"Substantial Uncertainty...from political and budgetary processes"

"Patients might face Increased Wait Times And Reduced Access To Care"

"Participants Would Not Have A Choice Of Insurer Or Health Benefits"

"Might Not Address The Needs Of Some People"

"Would Probably Reduce The Amount Of Care Supplied"

"Could Lead To A Shortage Of Providers, Longer Wait Times"

Single-Payer

NAHU is fully opposed to any form of single-payer, be it through incremental approaches such as a public option or Medicare or Medicaid buy-in, or a more sweeping federal takeover of the entire healthcare system to implement a single standardized government-run plan.

NAHU and the **Partnership for America's Health Care Future** are actively working to oppose single-payer, promote employer-sponsored health coverage and preserve Medicare, Medicaid, and other existing health programs.

**Key
Issues**

**Medicare
For All**

Buy-In

States

Medicare/Medicaid Buy-In

NAHU strongly opposes all single-payer health insurance proposals, to include Medicare for All, Medicare buy-in, Medicaid buy-in, or a public option.

"Medicare for More" (allows those aged 50-64 to buy into current Medicare coverage)

S. 470 | Sen. Debbie Stabenow (D-MI) +20 co-sponsors

H.R. 1346 | Rep. Brian Higgins (D-NY) +45 co-sponsors

Medicare "X" Buy-In (public option plan parallel to Medicare coverage)

S. 981 | Sen. Michael Bennet (D-CO) + 11 co-sponsors

H.R. 2000 | Rep. Antonio Delgado (D-NY) +18 co-sponsors

Medicare "E" Buy-In (allows everyone, including with private/employer plans, to buy Medicare)

S. 1261 | Sen. Jeff Merkley (D-OR) +14 co-sponsors

H.R. 2463 | Rep. Cedric Richmond (D-LA) +5 co-sponsors

Medicaid Buy-In (allows states to create a Medicaid buy-in program for all residents)

S. 2489 | Sen. Brian Schatz (D-HI) +22 co-sponsors

H.R. 1277 | Rep. Ben Ray Lujan (D-NM) +50 co-sponsors

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States as Policy Laboratories

Single-payer concerns:

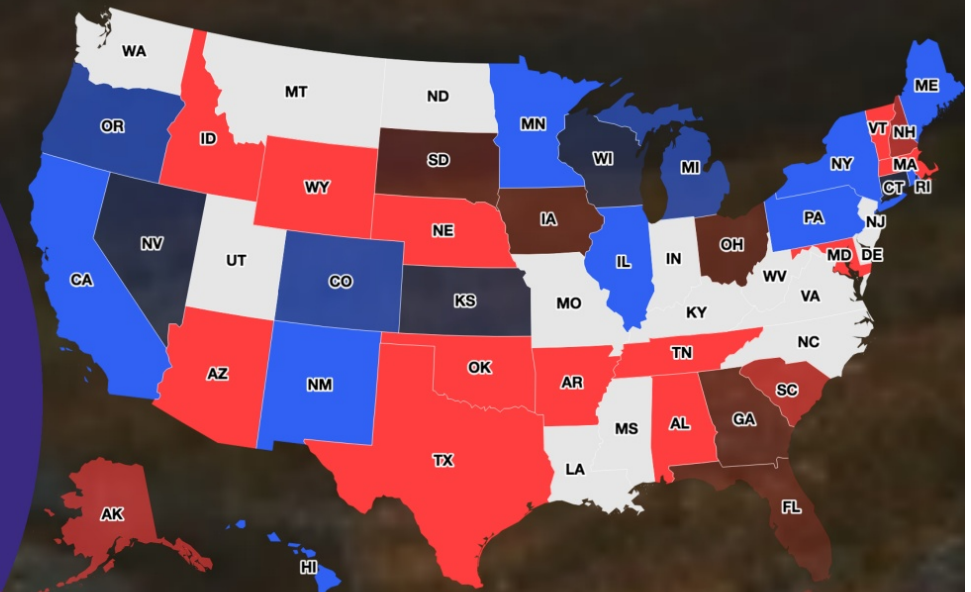
CA: Dems control gov, senate 28-12, house 57-43

CO: Dems control gov, senate 19-16, house 41-24

NY: Dems control gov, senate 40-23, house 107-43

Democrats now control 23 governorships
(+7 since 2018)

Democrats now control 37 state legislative
chambers
(+6 since 2018)



**Recent
State
Proposals**

2019 State Single Payer, Buy-In/Public Option Legislation

CA - AB 190 | Enacted budget expands many ACA-related provisions, including medical coverage

***CO - HB 19-1004** | Requires state to craft a proposal on a new state option for health insurance

*CT - SB 134 | Allows individuals and small employers (1-50) to buy into the State Employee health plan

MA - S 697 | Establishes a public health insurance option

*ME - LD 109 | Establishes a public health insurance option

*MN - HF 3 | Public option: OneCare Buy-In through MNsure website

*MO - HB 554 | Initiates investigation on the merits of a Medicaid Buy-In program

*NJ - S 3380 | Expands availability of NJ FamilyCare Advantage program (Medicaid buy-in)

NY - A 5248 | Establishes single-payer health plan for all residents, outlaws private coverage

*NM - HB 416 | Medicaid Buy-In program that would be ready for customers in 2021

*OR - HB 2009, HB 2012, HB 3185 | Medicaid buy-in (w/ individual mandate, employer buy-in option)

***WA - HB 1523** | Creates a public health plan set up by 2021 with insurers offering qualified plans

*Passed and signed into law

*2019 Legislation dead

States as Policy Laboratories

Single-payer concerns:

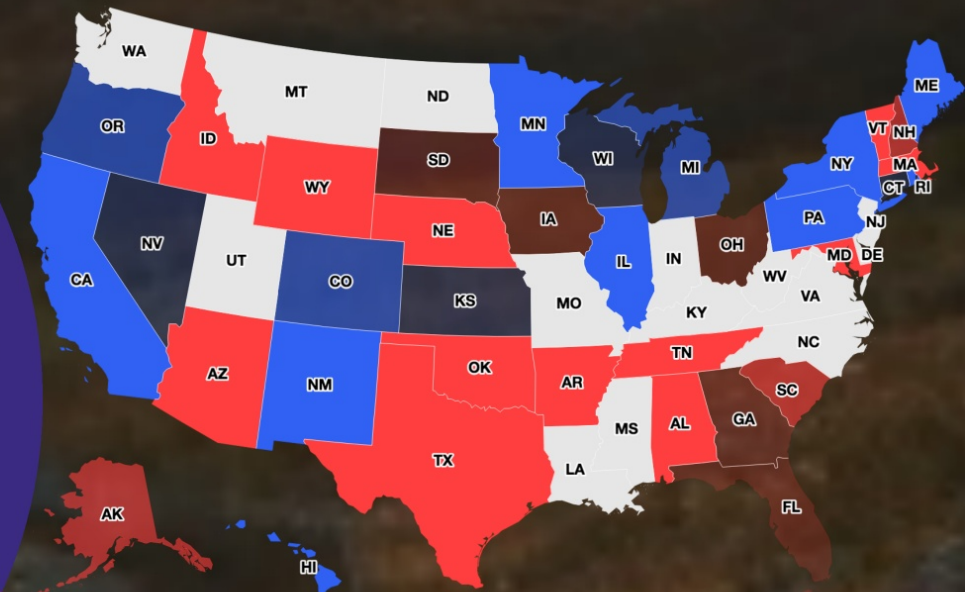
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States



Summer 2020 NAHU's Legislative Priorities

**2019
in
Review**

**Employer
Issues**

Medicare

**Healthcare
Costs**

**Single
Payer**

NAHU *Washington Update*

The Road Ahead

Presented by: Marcy M. Buckner, NAHU Senior Vice President of Government Affairs

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2020 Regulatory & Judicial Outlook

Regulatory

Judicial

President Trump Signs Four Executive Orders Aimed at Lowering Prescription Drug

- The **first executive order** would require federally qualified health centers (FQHCs) to pass on to patients the discounts the health centers receive on insulin and epinephrine through Medicare's 340B Drug Discount Program.
- The **second executive order**, which hasn't yet been published publicly, would establish an international pricing index that would set the price Medicare Part B pays for the costliest medications covered under the program to the lowest price in other economically advanced countries.
 - However, President Trump said his administration will hold the order until Aug. 24 because he may not implement it. Pharmaceutical executives are slated to visit the White House to discuss this order and he could choose to drop it if the executives come up with a better alternative by the Aug. 24 deadline.
- The **third executive order** aims to lower the prices Americans pay for pharmaceutical drugs by supporting the "safe importation of prescription drugs."
 - More specifically, the order would require HHS to facilitate "grants to individuals of waivers of the prohibition of importation of prescription drugs" that would allow patients to import FDA-approved medicines from abroad, so long as doing so would result in lower costs.
- The **fourth executive order** would end drug rebates used by "health plan sponsors, pharmacies or [pharmacy benefit managers (PBMs)] in operating the Medicare Part D program," instead requiring affected entities to pass those rebates directly to patients.

President Signs Executive Orders Expanding Telehealth and Boosting Rural Healthcare

- President Trump signed an executive order permanently expanding telehealth services as well as setting up a potential payment model aimed at providing hospitals in rural communities a more consistent stream of Medicare payments based on delivering high-quality care.
 - The order instructs Medicare to leverage its authority to test new pilot projects that offer financial incentives for rural providers who deliver higher-quality care to patients.

DOL Final Rule on Electronic Disclosure Safe Harbor for Retirement Plans

- In late May 2020, the Department of Labor issued a final rule on modernizing ERISA disclosure rules for retirement plans through a new safe harbor allowing an increased use of technology for plans to furnish information to participants.
- Largely mirroring the proposed version of the rule, the final rule allows employers to deliver disclosures to plan participants electronically by default, with the ability for participants to opt in to paper mailings if preferred.
- NAHU submitted comments to DOL on the proposed rule in November, in which we expressed support for the new safe harbor but noted disappointment that the proposal excludes ERISA health and welfare plans.
 - We specifically requested that the final rule allow both types of arrangements to take advantage of any new safe harbor.
 - We also made several recommendations for improving the overall disclosure process and effectiveness for average plan participants, including the use of focus groups and partnering with private sector entities to develop more effective resources.

IRS Rules Proposed for Direct Primary Care Arrangements, Healthcare Sharing Ministries


- The IRS issued proposed rules, **REG-109755-19**, on the treatment of amounts paid for certain medical care arrangements, including direct primary care arrangements and health care sharing ministries.
 - Section 213 allows individuals to take an itemized deduction for expenses for medical care, including insurance for medical care, to the extent the expenses exceed 7.5% of adjusted gross income.
 - Under the proposed regulations, payments for direct primary care arrangements and for membership in a health care sharing ministry would qualify as expenses for medical care under Section 213 and may be deductible medical expenses under Sec. 213(a).
 - Also, these payments may be reimbursed by a health reimbursement arrangement (HRA) an employer provides.

IRS Rules Proposed for Direct Primary Care Arrangements, Healthcare Sharing Ministries

- NAHU recently submitted comments on the IRS proposed rule:
 - The comment letter states that in some instances, the proposed rule will help American business owners and employees access direct primary care (DPC) more efficiently.
 - However, we also raise some significant concerns about how this measure will effectively eliminate DPC access for the millions of Americans with health savings accounts (HSAs).
 - We also identify some practical concerns for consumers and employers regarding the proposed treatment of healthcare sharing ministry shares as medical insurance through IRC §213.

Trump Administration Releases Proposed Rule on Grandfathered Plans

- The DOL, HHS and the Treasury issued a new proposed rule regarding flexibility of grandfathered group health plans under the ACA.
 - The proposed rule seeks to adjust current requirements that group plans must follow to maintain their status and, if finalized, the rule would allow group plans to impose higher cost-sharing requirements while maintaining grandfathered status.
 - It is important to note that these changes would apply only to group grandfathered plans.
 - The proposed rule would not affect grandfathered individual coverage.



2020 Regulatory & Judicial Outlook

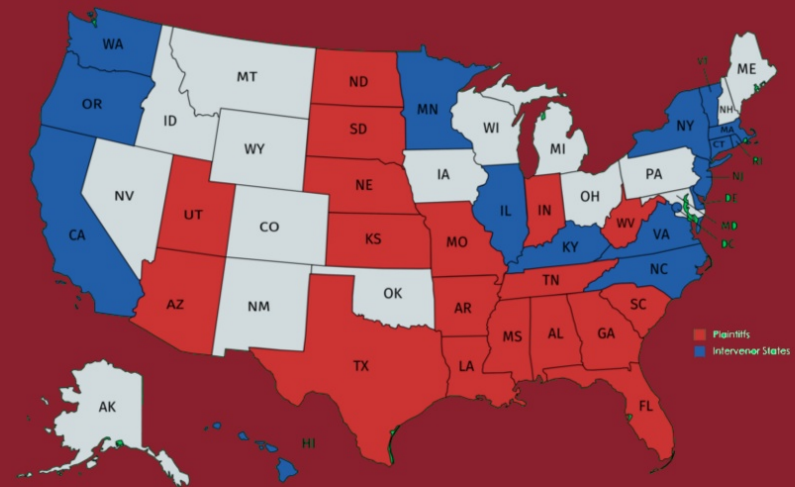
Regulatory

Judicial

Texas v. United States

The Trump Administration and Republican-led states are seeking to fully overturn the ACA, arguing that while the individual mandate was upheld as constitutional in the landmark 2012 *NFIB* case, that because the penalties have been zeroed out, there is no longer a tax being levied, and therefore, the mandate itself is not constitutional and the rest of the law cannot stand without the mandate.

The intervenor states (Democratic AGs) argue that the zeroing out of the penalty is akin to a suspension of the myriad of other ACA taxes, such as the Cadillac/excise tax and health insurance tax, and that it is not repealed but merely not generating revenue—a condition that is not required under the Constitution.



Texas v. United States

Timeline of legal challenge

Tax Cuts and Jobs Act is enacted, reduces ACA individual mandate penalty to \$0

Dec 2017

20 Republican attorneys general file *Texas* lawsuit that ACA is invalid without mandate penalties

Feb 2018

DOJ joins Republican AG lawsuit, will no longer defend the ACA; Democratic AGs are granted standing to defend the law

June 2018

Federal Court rules in favor of Trump Admin. & Republican AGs, strikes down ACA; decision is stayed pending appeal

Dec 2018

House votes to join Democratic AGs in defending the ACA

Jan 2019

5th Circuit Court of Appeals hears oral arguments on July 9

July 2019

Federal Appeals Court voids ACA individual mandate penalty, but sends lawsuit back to federal judge in Texas who previously axed the entire law. The judge is supposed to decide how much of ACA can survive without the mandate

Dec 2019

The Supreme Court denied a request from 21 Democratic attorneys general and the U.S. House of Rep. to expedite review of *Texas v. United States*.

Jan 2020

Mar 2020

The Supreme Court announced that it will hear *Texas v. United States*—now refashioned as *California v. Texas*. This appeal was filed by a coalition of 21 Democratic attorneys general, led by California. The hearing could potentially be held in early or mid-October 2020, right before the 2020 election.

June 2020

A Texas-led coalition of 18 Republican states, two individuals, and the Department of Justice filed opening briefs in *California v. Texas*

Texas v. US Briefs

- On June 25, 2020, a Texas-led coalition of 18 Republican states, two individuals, and the Trump administration filed briefs in California v. Texas
- All parties maintained their position that the entire ACA should be declared invalid by the Supreme Court
- Not all briefs argue all of these points but the respondents collectively argue that:
 - At least one of the parties (whether the two individual plaintiffs, the Texas-led states, or both) have standing to sue;
 - The individual mandate, with a \$0 penalty, is unconstitutional;
 - The mandate is inseverable from the rest of the ACA; and
 - The district court was correct to declare the entire ACA invalid on a nationwide basis



Supreme Court upholds Trump exemptions to ACA contraceptive mandate


- On July 8th 2020, the U.S. Supreme Court ruled in 7-2 decision to uphold President Trump's move to let more employers opt-out of the Affordable Care Act mandate guaranteeing no-cost contraceptive services for women.
- The case involved a 2018 regulation from the Department of Health and Human Services exempting any employer with a religious or moral objection to contraception from a requirement that such coverage be included in an employee's health insurance plan.

Trump Administration Price-Transparency Upheld

- At the end of June 2020, U.S. District Court Judge Carl Nichols ruled against the American Hospital Association in its lawsuit attempting to block an HHS rule pushing for price transparency.
- The judge ruled in favor of the department, which requires hospitals to reveal private, negotiated rates with insurers beginning Jan. 1.
- The American Hospital Association said it will appeal the ruling that upholds the Trump administration's mandate.

Time for Polling Question #2





2020 Regulatory & Judicial Outlook

Regulatory

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NAHU *Washington Update*

The Road Ahead

Presented by: Marcy M. Buckner, NAHU Senior Vice President of Government Affairs

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Legislative Advocacy



NAHU regularly works directly with policymakers to support or oppose legislation and regulations that impact our industry.

In some situations, bringing less attention to an issue may be the most beneficial to achieving our policy objective.

Operation Shout! is NAHU's premier grassroots tool for members.



In order to amplify our message and maximize our reach, we utilize Operation Shout for NAHU members to send messages to their legislators asking them to support or oppose certain bills or to alert them of major legislative issues.

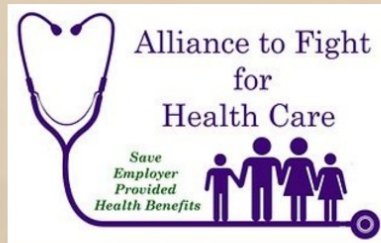
With the combined voice of our members we can help to underscore the importance of our message and the extensiveness of our agent and broker community.

Regulatory Advocacy

NAHU staff develop and submit comments on behalf of membership in response to federal regulations, in consultation with the Legislative Council, Legislative Management Team and Board of Trustees, and guidance through established policy positions

Coalition Efforts

NAHU belongs to several industry related coalitions that help to amplify our message in Washington and work strategically to achieve the best results for our policy issues.



Media

Media allows NAHU to:

- Project a positive image about our industry
- Generate understanding of role in healthcare
- Educate public about insurance
- Identify NAHU members as credible source of information
- Provide balanced commentary
- Advance legislative agenda

Interview/
background

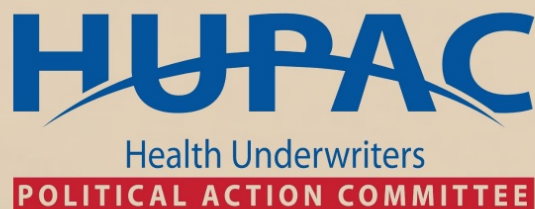
Op-Ed

Letter
to the
Editor

Press
Release

Media
Advisory





NAHU's legislative efforts are made possible because of our longstanding relationships that we have forged with Senators and members of Congress who support our issues and backed legislation to help agents, brokers, employers, and consumers alike.

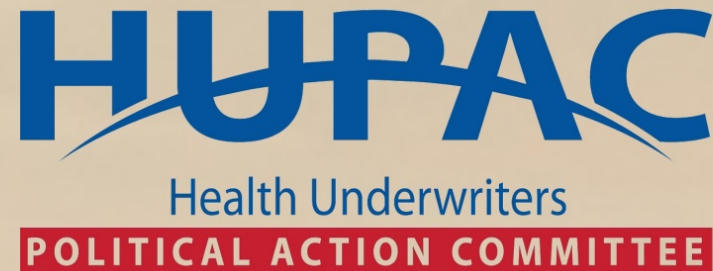
Through its combined contributions of agents and brokers across the country, HUPAC is able to support legislators who have a proven record of fighting on our behalf.

HUPAC funds allow NAHU to have a seat at the table and a voice in the discussion as policymakers consider healthcare reform legislation.

Contribute!

Few other industries are as heavily regulated as health insurance. Your success, and that of your clients, is directly dependent upon the actions of Congress. It is absolutely critical that we help those Congressional candidates who support private sector health insurance.

Support legislators who fight for agents and brokers and the employer-based system



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November 13, 2018

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FURTHER: Understanding Further, an essential conversation... [Read More](#)

INDUSTRY HEADLINES

Smart benefits: Certain wellness program incentive limits eliminated Jan. 1
WASHINGTON Post
In 2016, the EEOC issued final rules describing how ADA and GINA apply to employer-sponsored wellness programs. The final ADA rule said that incentives to employees who answer disability-related questions or undergo medical exams as part of a program couldn't exceed 30 percent of the total cost of self-only health coverage, while the final GINA rule stated that employers could offer an incentive of up to 30 percent of the total cost of coverage to an employee whose spouse provides information about their health status as part of the employer's wellness program. [READ MORE](#)

Annoying robo-calls are at 'epidemic levels' this health open-enrollment season
WASHINGTON Post
With health insurance open-enrollment season underway, automated phone calls offering Affordable Care Act or other health plans are spiking — and driving many consumers to the brink. California residents may have it worst, because its open-enrollment period is twice as long as in other parts of the country. "It's at epidemic levels at this time of year," said Aaron Foss, founder of Nomorobo, who estimates his spam-call-blocking service, based in Long Island, headed off more than 850,000 health-related robo-calls in October alone — nearly five times the interceptions for September. [READ MORE](#)

Commercial, managed care insurance sectors profits [f w t](#)

CELEBRATING THE 100TH BIRTHDAY OF NAHU
WASHINGTON UPDATE

November 9, 2018

Fast Facts

- As a result of Tuesday's midterm elections, Democrats will control the House of Representatives and Republicans have expanded their Senate majority for the 116th Congress beginning in January.
- Several states held ballot measures on healthcare-related issues, including Idaho, Nebraska and Utah, which voted to expand their Medicaid programs.
- Congress will return next Tuesday through mid-December for a lame-duck session. They will need to pass a spending package by December 7 to avoid a government shutdown. NAHU is advocating further delays or permanent repeals of the Cadillac Tax and Health Insurance Tax before the end of the year.
- NAHU CEO Janet Traubwein will review the impact of the elections on next Thursday's LIVE from NAHU webinar at 12:00 p.m. Eastern.
- The Healthcare Happy Hour podcast features an extended discussion on the election results as they relate to NAHU's policy priorities for the lame-duck session and the new Congress.

Midterm Election Results in Split Government and Opportunity to Advance NAHU's Priorities
The midterm elections on Tuesday resulted in a return to divided government, as Democrats will reclaim the House of Representatives and Republicans expanded their Senate majority. [Read More](#)

NAHU Seeks Repeal of Cadillac and Premium Taxes in Lame Duck
Congress will be returning to Washington, DC, next week for a brief lame-duck session through mid-December. Much of their attention is expected to be focused on... [Read More](#)

Healthcare Happy Hour: Can Divided Government

Coronavirus Information

NAHU has been keeping informed about the Coronavirus. [Click for more information.](#)

[MORE INFORMATION](#)

COVID-19 RELIEF FUND [f w t](#)

2020 VIRTUAL ANNUAL CONVENTION [f w t](#)

CORONAVIRUS INFO [f w t](#)

Webinars

Filter By

APR 04 [f w t](#) Recent DOL & IRS Guidance: Impacts and Considerations
Compliance Corner members Debbie Gordon and Jonathan Weisman review the recent guidance from the Employee Benefit Security Administration and the IRS. They cover employer benefit plan notification steps and best practices design for special circumstances, COVID administration and communicating key provisions. [READ MORE](#)

MAY 27 [f w t](#) Paycheck Protection Program Loan Forgiveness
Compliance Corner members Kimberly Reichard and Jonathan Weisman review the Paycheck Protection Program, the loan forgiveness application, business assistance, and answer some key questions about the program. [READ MORE](#)

MAY 28 [f w t](#) How to Improve Productivity & Work Life Balance While Working From Home
MAY 19, 2020 [CORONAVIRUS INFO - WEBINAR ON DEMO](#)
Watch the webinar to discover essential tips on the best way to work from home in the most efficient and safe way. [READ MORE](#)

Search...

Save & Save
New fee for saving & meeting system

NAHU Weekly COVID-19 Update

June 8, 2020

Below are links to updates on legislation, regulation and guidance on the federal and state levels in response to COVID-19. Please visit the [Coronavirus Information section](#) of the NAHU website for more resources.

The [NAHU COVID-19 Relief Fund](#) has been created to provide financial support to NAHU members and their families that have been most impacted by the COVID-19 pandemic. Financial support could provide monetary assistance with out of pocket medical expenses, unanticipated funeral expenses, or other special circumstance COVID-19 related expenses for members in good standing and their legal dependents.


If you or fellow member has been impacted and you would like to apply for assistance, please [click here](#). If you are in a position to make a contribution to help support your fellow NAHU member, we ask that you please [donate here](#). These contributions are tax-deductible.

Congress

- President Trump signed [H.R. 7010](#), the Paycheck Protection Program Flexibility Act of 2020, into law.
- Senate Majority Leader Mitch McConnell (R-KY) [indicated](#) the Senate is working on COVID-related legal liability protections "so our nation's schools, healthcare workers and employers are not swamped with frivolous lawsuits."
- Lawmakers on both sides of the aisle have [expressed support](#) for expanding the employee retention tax credit (ERTC) established under the CARES Act.
- Senators Rob Portman (R-OH), Ben Cardin (D-MD), James Lankford (R-OK) and Cory Booker (D-NJ) introduced the [Paycheck Protection Program Second Chance Act](#).
- Senators Shelley Moore Capito (R-WV), Cory Gardner (R-CO) and Kyrsten Sinema (D-AZ) introduced the [Combating Egregious Advertising Through Sentencing Enhancement \(CEASE\) Act](#), which would greatly increase the Federal Trade Commission's fines and punishment for false advertising during the COVID-19 pandemic.

Get Engaged!

NAHU activates **Operation Shout** to help members make their voices heard by policymakers.



Operation Shout!

Take Action

NAHU is very concerned about ongoing discussions in Congress that would undermine the employer-sponsored health insurance system by eliminating or placing a cap on the **employer tax exclusion** for health insurance. More than 175 million Americans currently receive their coverage through this system, largely due to the tax exclusion where employers provide contributions for an employee's health insurance that are excluded from that employee's compensation for income and payroll tax purposes. Eliminating the exclusion would eliminate the incentive for employers to provide health insurance while capping it would degrade the benefit and serve as a tax increase for middle-class Americans.

The employer-based system is highly efficient at providing American workers and their families with affordable coverage options through group purchasing and its associated economies of scale by spreading risk and avoiding adverse selection. Eliminating the exclusion would eliminate most of the benefits of employer-sponsored insurance, including the means for spreading risk among healthy and unhealthy individuals and group purchasing efficiencies. Capping the exclusion for employees would devalue the benefit and result in a significant tax increase for middle-class Americans, forcing many to drop employer-sponsored insurance, including dependent coverage. Employers would be incentivized to only offer coverage to their employees that would fall below the value of the cap in order to avoid paying any increased taxes, potentially resulting in a race to the bottom for employers to sponsor insurance that wouldn't meet the cap's thresholds and further shifting costs onto employees. Many of the inherent problems with the **Cadillac excise tax** would exist for eliminating the employer exclusion such as setting a tax credit sufficiently high enough to cover the significant contribution made by employers today. Also, indexing a credit would need to be set to medical inflation if it is to keep up with the typical rise in healthcare expenses.

The employer exclusion tax benefit makes employer-sponsored health insurance a valuable benefit for workers. We urge Congress to maintain the system that has worked for Americans for decades, and preserve employer-sponsored health insurance through the continuation of the employer exclusion because it preserves the employer system for health insurance for the vast majority of Americans. Over the coming weeks, as Congress discusses various healthcare reform proposals, we want to be sure that they hear directly from agents, brokers and employers about the value of the employer tax exclusion. You can help us spread the message by taking action below:

1. **Contact your senators and representative.** Send an Operation Shout today asking your federal legislators to oppose the elimination or cap of the employer tax exclusion of health insurance in any healthcare reform legislative proposals. You can also call your legislators at the numbers below.
2. **Tell your employer clients to take action.** Your employer clients would be most directly impacted by the elimination or cap of the employer tax exclusion. Tell them to take action sharing why the exclusion must be preserved in any healthcare reform legislative proposals. Tell them to take action [here](#).
3. **Share your story.** As a licensed insurance specialist who works closely with employers to help them offer and utilize employer-sponsored health insurance, you know personally about how the employer tax exclusion directly impacts your clients. Stories from your clients will demonstrate the value of the exclusion and the need to preserve it. We will share your stories with appropriate legislators and staff. You can share your story [here](#).

Take action today and tell your federal legislators to keep the employer exclusion tax benefit!

Take Action

Don't want to send an email? No problem, you can also reach your legislators by phone:
Rep. George Holding (R) can be reached at (202) 225-0022.
Sen. Richard Burr (R) can be reached at (202) 224-3164.
Sen. Thom Tillis (R) can be reached at (202) 224-6342.

This call to action is designed as an email message to your legislators. You are welcome to use the prepared text as talking points to call your legislators, or to expand on the prepared message to share your personal story on how

Resources

As insurance brokers trained in risk management, it is our job to analyze and identify risks that might adversely affect our client's business objectives. Compliance with federal statutes and regulations in the areas of insurance, labor and taxes is a daunting task for many of our employer clients.

With the NAHU Compliance Corner, you now have a one-stop place to find the majority of federal statutes that affect the employee benefits world.



Certification



Q and A

Marcy M. Buckner

Senior VP of Government Affairs
mbuckner@nahu.org



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Presented by: Marcy M. Buckner, NAHU Senior Vice President of Government Affairs

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