

What Do the Midterm Elections Mean for Healthcare?

November 15, 2018

- **Key Takeaways**
- Federal Implications
- Spotlight on State Outcomes

2018 Midterm Elections Significantly Impact Health Policy, Federally and Within States

- **A New House Means a Shift in Health Care Priorities** – Limited, bipartisan federal legislation that make some drug pricing changes and bolster popular ACA provisions are possible
- **States Remain at the Forefront** – States will remain the drivers of new ideas; increased one-party control in state government will be significant for health policy, particularly Medicaid
- **Courts and the Executive Branch Will Have a Say** – The Trump Administration and the courts will continue to put their stamp on health policy

Four key areas will dominate health care debates – federally and at the state level – in coming years:



Medicaid



Individual Market



Health Reform



Drug Pricing

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Congressional Election at a Glance

HOUSE

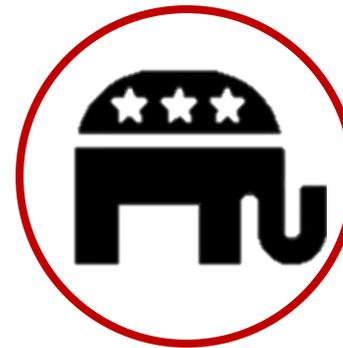


Democrats:
227 (+33)



Republicans:
199 (-33)

SENATE



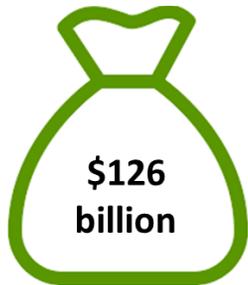
Republicans:
52 (+2)



Democrats:
47 (-2)

- A divided Congress has no path forward for major proposals – including Republican ACA repeal and replace, entitlement reform and “Medicare for All”
- Amidst 2019 budget pressures, Congress will need to find common ground on select issues
- Democrats will use majority to set the House agenda and intensely investigate Trump Administration actions – this oversight could impact the White House’s willingness to partner with House Democrats, even on mutual priorities

Budget Caps – a Platform for Bicameral Negotiation?



The Budget Control Act (BCA) will trigger automatic spending cuts in FY 2020 if Congress does not pass and the President does not sign legislation that reduces the federal deficit

Congress will have three options:

1. Lift the budget caps;
2. Extend the budget caps; *and/or*
3. Find \$126 billion in offsets (to fund FY 2020 alone)

Offsets may be discretionary or mandatory

Timing:

Jan. Feb. March April May June July Aug. Sep. Oct. Nov. Dec.

Congress will aim to reach agreement before starting FY 2020 appropriations

*FY 2020 begins
*Current BCA cap relief expires

Prospects for Health Care Legislation Possible but Slim

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A Democratic House will overwhelm the Administration with oversight hearings and investigations; but, there may be select areas of agreement

Oversight/ Investigations

House-led and GAO investigations will focus on health care issues like:

- Medicaid coverage waiver approvals (e.g., work requirements, premiums, lock-outs) and rulemaking (e.g., “public charge” rule)
- Policy changes that undermine health coverage for people with pre-existing conditions (e.g., AHPs, short-term plans, 1332 waiver guidance)

Select Issues with Bipartisan Potential

Democrats and Republicans may work together to pass legislation on select issues, including:

- Drug pricing
- Marketplace improvements, especially restoring federal reinsurance
- Price transparency (for providers, insurers, pharmaceutical manufacturers)

Key House Committees for Health Policy

	Jurisdiction	Likely New Chair	
Ways & Means	Tax, Medicare	Richard Neal (MA) <i>Health Sub: Lloyd Doggett (TX)</i>	Reps. Pallone , Scott, and Neal recently introduced legislation to eliminate the caps on ACA tax credits, halt AHPs, and bolster ACA protections (like EHBs)
Energy & Commerce	Medicaid, Public Health, Private Insurance	Frank Pallone (NJ)	
Education & Workforce	Employer Coverage	Bobby Scott (VA)	
Appropriations	Discretionary Spending	Nita Lowey (NY)	
Budget	Allocations	John Yarmuth (KY)	Cummings will lead the way in investigations of the White House. During 115 th , he requested at least 64 subpoenas that the majority rejected.
Oversight & Government Reform	Government Oversight	Elijah Cummings (MD)	

Administration Maintains Control of Regulatory Authority

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A Democratic House will put pressure on the executive branch, but will have limited means to stop administrative actions

- The executive branch has the authority to set policy through regulations and administrative authorities – like state waivers
- Regulations are generally not subject to legislative roadblocks and are a crucial policymaking lever in a polarized political environment
- Under the Congressional Review Act, Congress can overturn an agency rule within 60 legislative days of release with a simple majority vote – but it is subject to the President's veto

The Judiciary May Thwart Administrative and Legislative Actions

The courts will weigh in, even as the Trump Administration continues judicial appointments without challenge given Senate control



Individual Market / ACA

- The court continues to work through lawsuits challenging major Marketplace initiatives, like cost-sharing reductions, risk corridor payments, and the federal risk adjustment methodology
- In *Texas v. U.S.*, twenty Republican-led states are challenging the constitutionality of the ACA; similarly, states and advocacy groups are filing lawsuits in support of the ACA and against Administrative changes



Medicaid

- Medicaid coverage waiver provisions, such as work requirements, are already facing legal challenges and the battle will continue

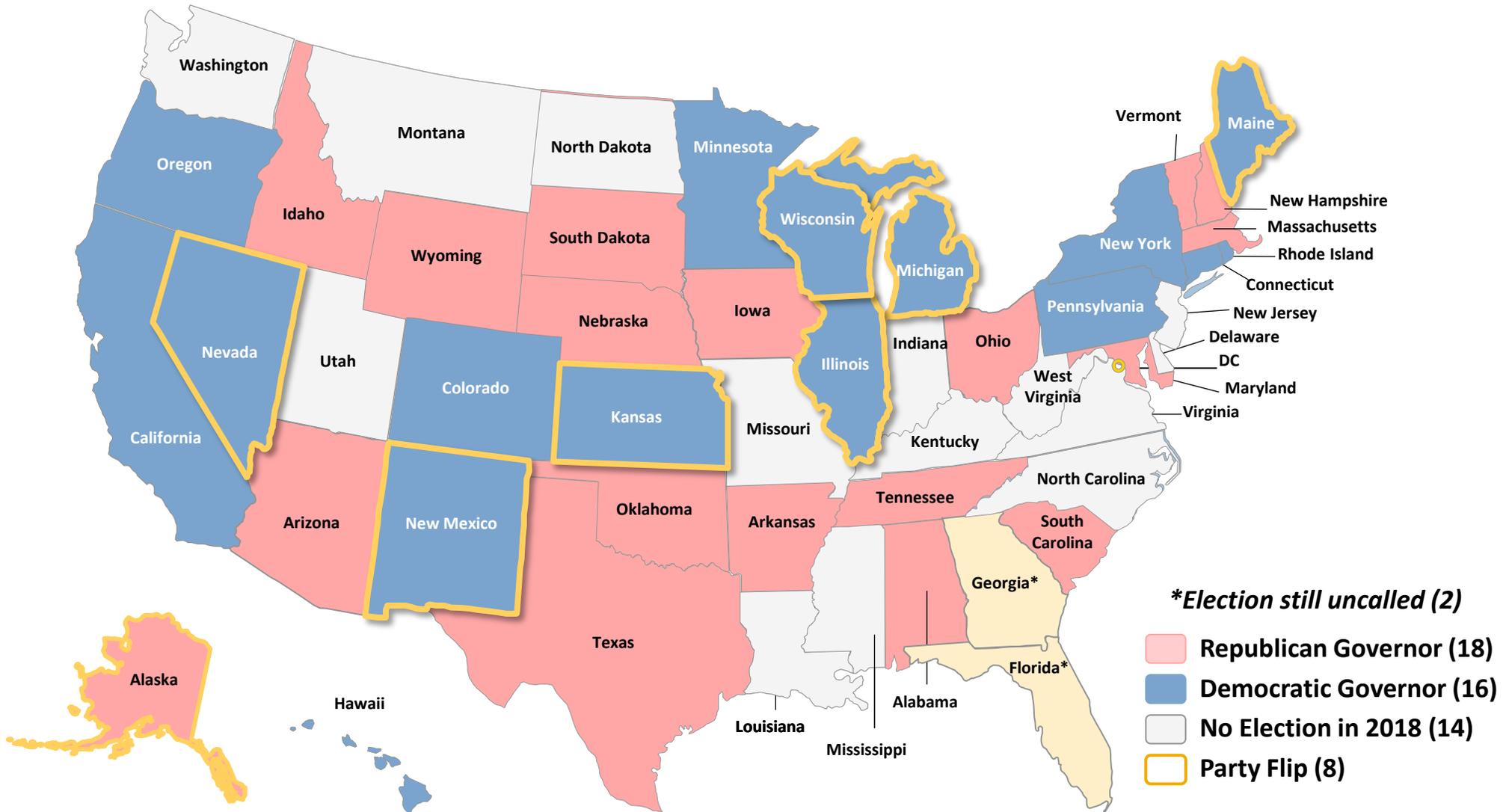


Drug Pricing

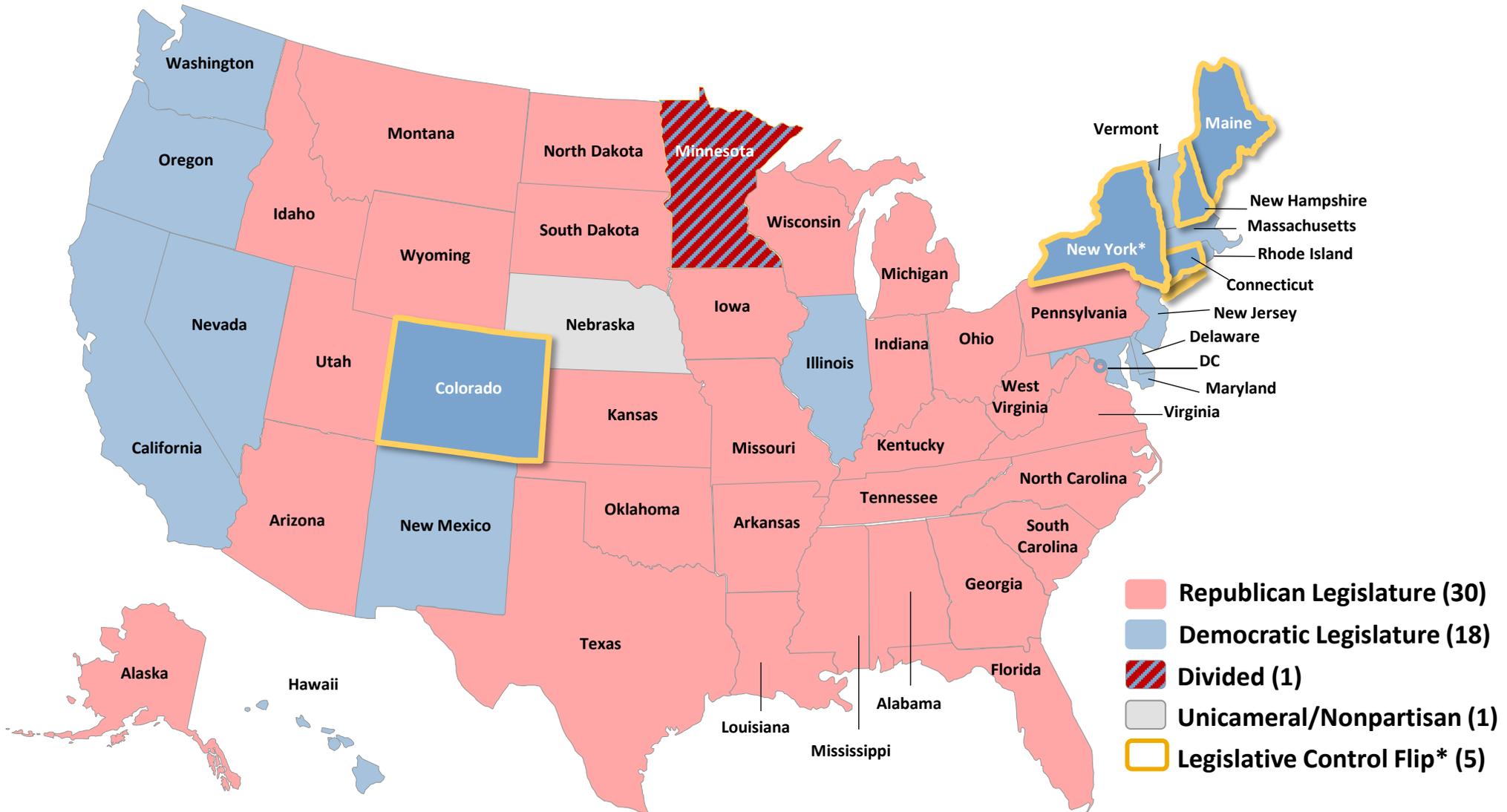
- Lawsuits about state price transparency laws will continue and new lawsuits about federal Administrative action are likely

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Republicans Now Hold 25 Governorships, Democrats Hold 23 (with 2 states still being contested)



Republicans Now Control 30 Legislatures, Democrats Control 18



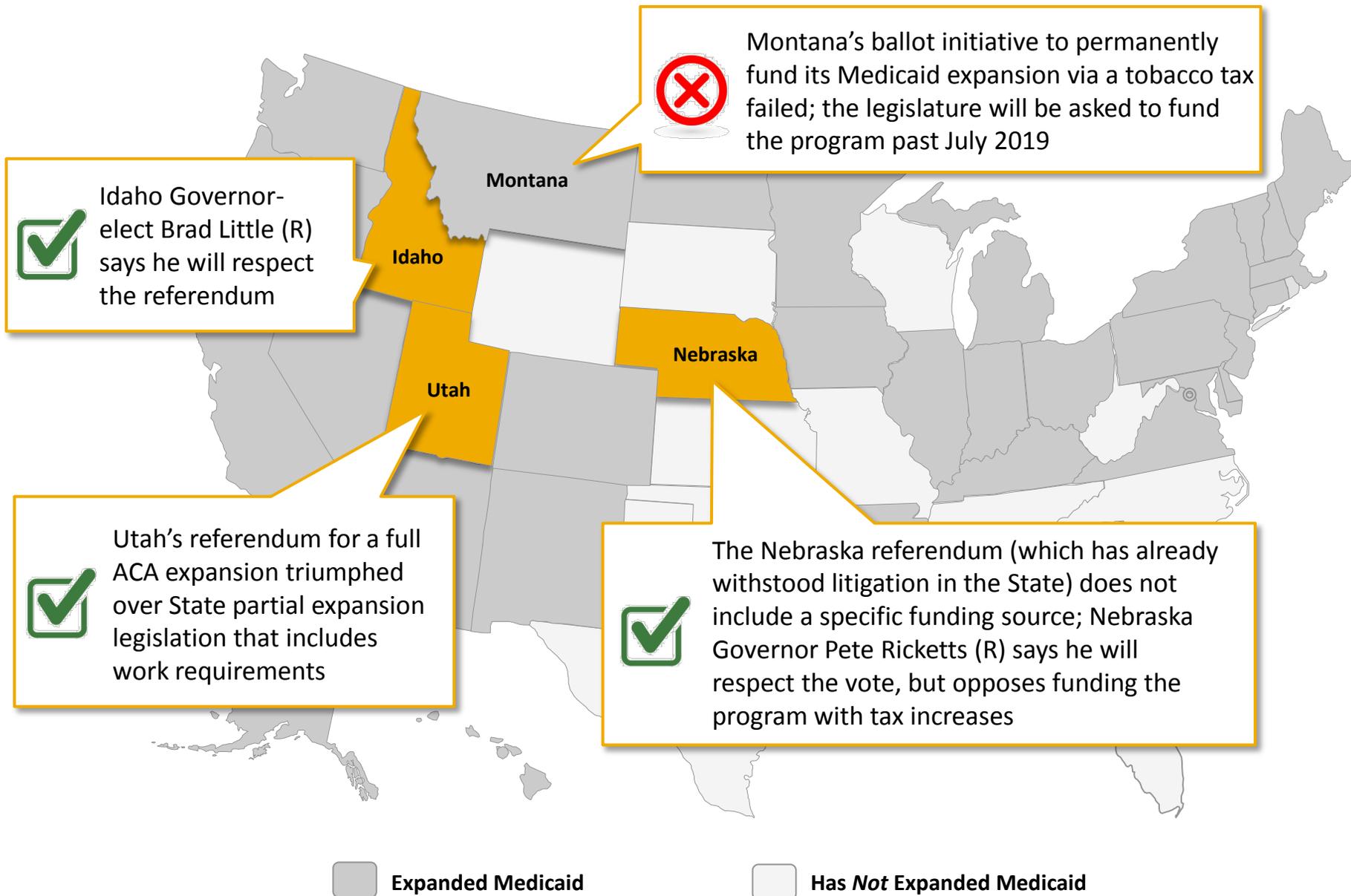
**The New York Senate was previously Republican controlled on the basis that one Democrat conferred with the GOP*

34 States are Controlled by a Single Party

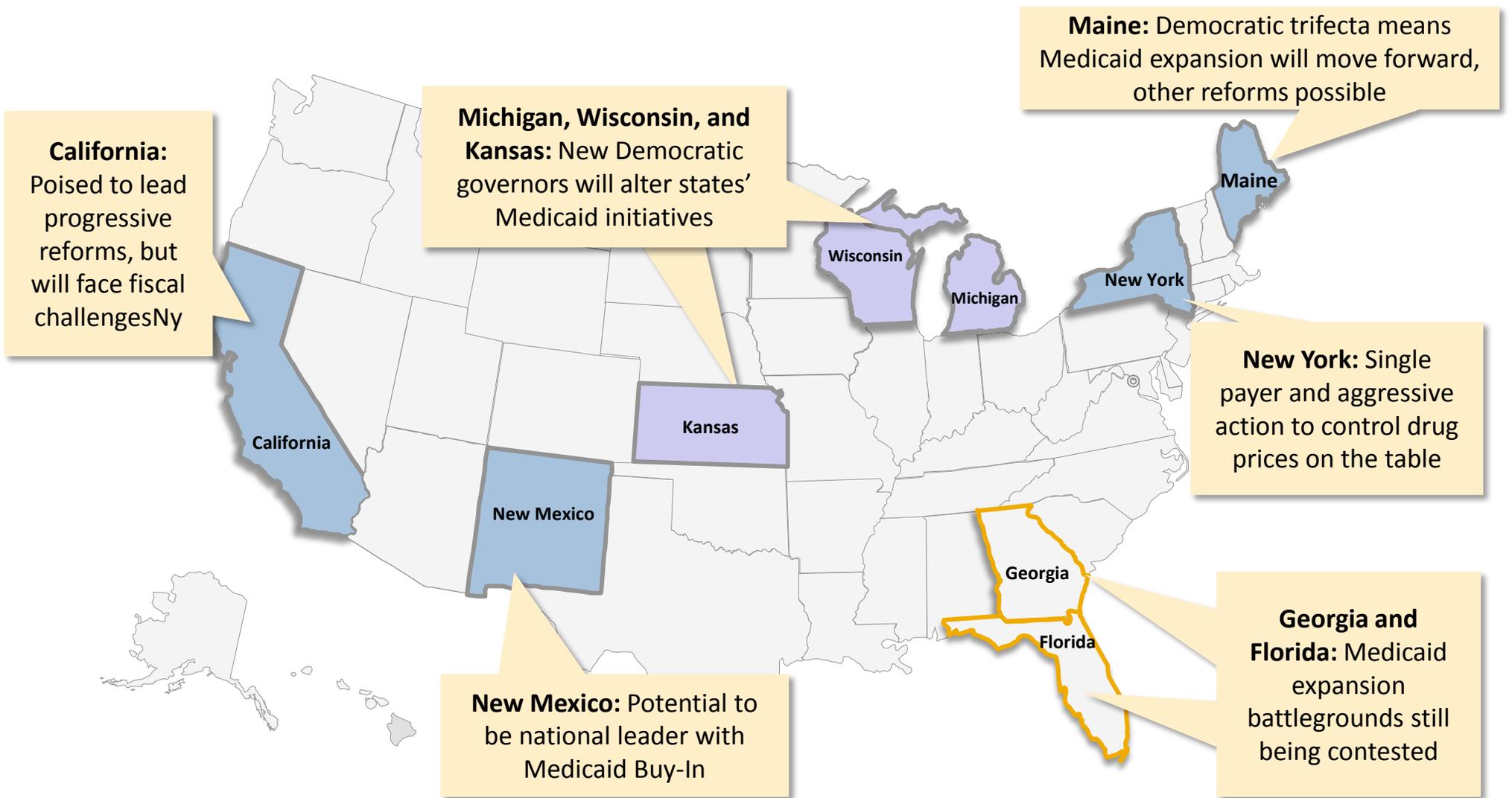
	Before Midterm Elections	After Midterm Elections
 Democratic Trifecta	8 states	14 states
 Republican Trifecta*	25 states	20 states <i>May increase if Republicans win the governorships in Florida and/or Georgia</i>
 Split Control	16 states	13 states

*Does not include Nebraska, which has a unicameral/nonpartisan legislature

Voters in Three Red States Passed Medicaid Expansion Ballot Initiatives



Spotlight States Illustrate the Election's Impact on Health Care Policy



Michigan: Governor and Legislature Face Off about Medicaid Work Requirements

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AT A GLANCE

▪ 5.2% Uninsured

▪ Expanded Medicaid

▪ State-Partnership Marketplace

Governor:

House:

Senate:



Gretchen Whitmer



58 R – 52 D



22 R – 16 D

Party Flip

Dynamics:

- Whitmer will oppose the State's Medicaid waiver request (currently under CMS review) to impose work requirements and cost-sharing – but detailed state legislation mandates many waiver elements and will be challenging to amend
- Whitmer also campaigned on:
 - ✓ Addressing drug pricing by: instituting drug price transparency laws, allowing for drug importation from Canada, repealing State laws that give pharmaceutical companies in immunity from prosecution
 - ✓ Reinstating family planning funding and repealing State abortion laws
 - ✓ Repealing the State's spend-down requirement for Medicaid long-term care eligibility

Wisconsin: Legislature Likely to Resist ACA Medicaid Expansion

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AT A GLANCE

- 5.4% Uninsured

- Has *Not* Expanded Medicaid

- Federally-Facilitated Marketplace
- State 1332 Reinsurance Waiver

Governor:



Tony Evers

Party Flip

House:



64 R – 35 D

Senate:



19 R – 14 D

Dynamics:

- Evers campaigned on ACA Medicaid expansion – but the legislature is expected to resist
- Evers may modify components of the State’s recently-approved Section 1115 waiver including work requirements and mandatory premiums, within the limits of existing legislation
- Evers also campaigned on:
 - ✓ Removing Wisconsin from *Texas v. U.S.*, in which plaintiffs seek ACA repeal
 - ✓ Addressing prescription drug costs by giving a prescription drug price review board increased authority, requiring increased manufacturer and PBM price/rebate transparency, allowing for prescription drug importation from Canada, and entering pay-for-performance purchasing arrangements
 - ✓ Reinstating family planning funding

Maine: *Fully-Democratic Government Will Instill a New Health Reform Philosophy*

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AT A GLANCE

- 8.1% Uninsured
- Expanded Medicaid via Ballot Measure (*not implemented*)
- State-Partnership Marketplace

Governor:



Janet Mills

Party Flip

House:



89 D – 57 R – 5 I

Senate:



21 D – 14 R

Party Flip

Dynamics:

- Mills is a vocal supporter of Medicaid expansion and will work to quickly implement the program, ending ongoing legislative and judicial fights
- Mills also campaigned on:
 - ✓ Developing a public health insurance option that aggregates state health plans and allows small businesses and individuals to “buy in”
 - ✓ Addressing prescription drug costs by increasing drug pricing transparency; exploring opportunities to pool public health plans’ purchasing power, implementing a payment cap on certain drugs, and increase PBM accountability
 - ✓ Codifying ACA protections while also promoting AHPs, provided they are “well-regulated and provide a reasonable product with robust and affordable benefits to all”
 - ✓ Rebuilding the State’s public health and welfare infrastructure

Florida and Georgia: *Republican Trifectas Would Leave Expansion Behind, Consider Medicaid Work Requirements*

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AT A GLANCE	Georgia	▪ 13.4% Uninsured	▪ Has Not Expanded Medicaid	▪ Federally-Facilitated Marketplace
	Florida	▪ 12.9% Uninsured		



Governor:

- Republican Candidate: Brian Kemp
- Democratic Candidate: Stacey Abrams

Legislature: Republican-control



Governor:

- Republican Candidate: Rob DeSantis
- Democratic Candidate: Andrew Gillum

Legislature: Republican-control

Dynamics:

- The Governor's races in both states remain too close to call; if the Republican candidates maintain their lead, both states will become Republican-controlled trifectas
- In **Florida**, DeSantis opposes Medicaid expansion and wants to expand access to non-ACA compliant health plans. Gillum supports expansion and would seek additional reforms under divided state control.
- In **Georgia**, if Kemp ultimately defeats Abrams, he will seek to introduce work requirements to the existing Medicaid program. If Abrams prevails, she will seek to expand Medicaid, but will face an uphill battle to craft a proposal that clears the Republican legislature – which in 2014 passed a law requiring legislative approval to expand

New Mexico: *Leading Momentum for State-Led Market Options*

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AT A GLANCE

- 9.1% Uninsured

- Expanded Medicaid

- State-Based Marketplace-Federal Platform (*considering SBM*)

Governor:

Senate:

House:



Michelle Lujan Grisham



26 D – 16 R



45 D – 23 R (2 undecided)

Party Flip

Dynamics:

- With a Democratic legislature, Grisham will have the opportunity to leverage the State's purchasing power to introduce a public option or Marketplace stability programs, including the Medicaid buy-in currently being studied by the State legislature
- Grisham also campaigned on:
 - ✓ Maximizing federal funding for Medicaid and opioid addiction treatment
 - ✓ Rebuilding the State's behavioral health provider infrastructure
 - ✓ Using the State's purchasing power to drive down drug costs
 - ✓ Increasing the healthcare workforce in rural communities

California: *Aspirational, but Tempered by Fiscal Prudence*

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AT A GLANCE

- 7.2% Uninsured

- Expanded Medicaid

- State-based Marketplace

Governor:



Gavin Newsom

Senate:



28 D – 12 R

House:



57 D – 23 R

Dynamics:

- The legislature will propose a progressive healthcare agenda, requiring Newsom to weigh State budget constraints – Newsom will look for incremental coverage gains over single payer proposals
- Newsom campaigned on:
 - ✓ Moving the State’s Medicaid “whole person” comprehensive care pilots focused on the coordination of health, behavioral health, and social services, into a long-term solution that addresses issues like homelessness
 - ✓ Building on Covered California’s active purchaser approach to drive delivery system reform

New York: *Single Payer Debate and Drug Pricing Controls*

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AT A GLANCE

- 5.7% Uninsured

- Expanded Medicaid

- State-based Marketplace

Governor:



Andrew Cuomo

Senate:



40 D – 23 R

House:



107 D – 43 R

Party Flip

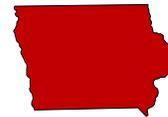
Dynamics:

- With a Democrat-controlled legislature, a single payer bill will pass both chambers, forcing Cuomo to sign the bill or advance coverage alternatives
- Cuomo will continue efforts to:
 - ✓ Oppose federal off-Marketplace alternatives, and may advance reforms to increase Marketplace affordability
 - ✓ Push the Legislature on efforts to curb drug pricing and enhance pharmacy benefit management regulations
 - ✓ Transform Medicaid through DSRIP/VBP, enforcing the State's unique cap on pharmacy costs, and global cap on State Medicaid expenditures

Republican Trifectas Seeking to Redirect Some Subsidies Off-Marketplace



Idaho: Interested in approving underwritten plans without a 1332 waiver; would test whether such plans “substantially comply” with ACA

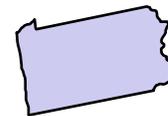


Iowa: Potential to refile 1332 waiver that shifts subsidies toward off-Marketplace coverage and tests limits of new federal 1332 guidance

Split Control States Seeking Bipartisan Solutions



Minnesota: Democratic governor will seek to expand MNCare with split legislature



Pennsylvania: Democratic governor will aim to strengthen Marketplace with Republican legislature

Thank you!

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