



**November 9, 2018**

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### **Special Post 2018 Midterm Election Edition**

The dust continues to settle from the 2018 Midterm elections which will break records in both dollars spent – nearly \$5.2 billion - and voter turnout. More than 47 percent of the voting-eligible population (110 million) cast a ballot in the midterm elections last Tuesday, according to early estimates from the United States Election Project. The big news of the night came in the race for the House of Representatives, where the Democrats took control of the majority for the first time since 2010. House Democrats will most likely end up with a 35 to 36 seat majority, although several races have not been called as of this writing. This is a slimmer margin than the current Republican majority of 45 seats.

Unlike in 2016, the 2018 midterm elections saw relatively few surprises and Republicans performed well where President Trump's approval rating was over 50%, and Democrats performed well where it was below 50. Most of the biggest changes materialized in the suburbs where previously Republican districts changed to Democratic control with college-educated suburban women putting several Democratic candidates over the top. Preliminary exit polls show that women voted for House Democrats by a 21-point margin, 60 percent to 39 percent, while men split (48 percent backed Democrats and 50 percent backed Republicans).

Key in all these races is that independents broke toward congressional Democrats for the first time since Barack Obama led the ticket in 2008. Exit polls show that the 3 in 10 voters who didn't identify with either party supported Democratic candidates by a 13-point margin, 54 percent to 41 percent. In 2016, for example, independents favored Republican candidates by a four-point margin.

Republicans will maintain control of the Senate with a slight increase in their majority (as many as 54 seats) but not filibuster proof. Republicans currently hold 51 seats to 44 Democrats +2 Independents that caucus with Democrats. Three races are still uncalled in AZ and FL where recounts are expected and MS, which heads to a run-off since no candidate there received 50% of the vote.

President Trump's 11-rally, six-day campaign swing helped Republicans far outperform expectations in the Senate. Candidates the President traveled to campaign for in the homestretch defeated Democratic incumbents in several states. North Dakota Rep. Kevin Cramer, Indiana businessman Mike Braun and Missouri Attorney General Josh Hawley – all pledged loyalty to Trump, as did Rep. Marsha Blackburn who defeated former Democratic governor Phil Bredesen in Tennessee to replace retiring GOP Sen. Bob Corker.

Exit polling on Tuesday also pointed to health care as a defining issue in the 2018 House elections. Democrats' seemed to have the advantage on the issue. Across the competitive Republican-held seats that Democrats needed to win to take the majority – health care was a defining issue for an overwhelming majority (63%) and Democrats had an 8-point advantage (52% to 44%) on the issue.

Specifically, protections for pre-existing conditions, health care costs, support for the ACA and drug pricing were defining issues.

**NEMPAC in the 2018 Elections**  
NEMPAC donated nearly \$2 million to candidates and national party committees during the 2018 elections.

227 candidates were supported – 203 for House races and 24 for Senate races. Nearly 84% of these candidates won their elections although some races supported by NEMPAC have not been called.

As many as 22 of the open seat and challenger candidates that NEMPAC supported will be coming to Congress next year. Several friendly republican incumbents that NEMPAC supported survived very tough re-elections including Rep. Andy Barr in KY, Jackie Walorski in IN, Rodney Davis in IL, Tim Walberg in MI, John Katko in NY, Brian Fitzpatrick in PA, and Cathy McMorris Rodgers in WA.

**Physicians Elected:** NEMPAC supported the successful campaigns of several new physician candidates: Dr. John Joyce (R-PA-13,) Dr. Mark Green (R-TN-07), and Dr. Kim Schrier (D-WA-08). Other physicians serving in Congress supported by NEMPAC were re-elected including Reps. Raul Ruiz (D-CA), emergency physician, Ami Bera (D-CA), Larry Bucshon (R-IN), Mike Burgess (R-TX), Ralph Abraham (R-LA), Neal Dunn (R-FL), Andy Harris (R-MD), Roger Marshall (R-KS), Phil Roe (R-TN) and Brad Wenstrup (R-OH). We also supported Jeff Van Drew, DDS in (D-NJ-02) who will join three other dentists currently serving in Congress. Unfortunately, not all new doctor candidates fared well in the elections. Six physicians supported by NEMPAC (including ACEP members Dr. Bob Solomon and Dr. Rob Davidson) were defeated.

Click [here](#) for a list of all health professionals that will serve in the 116th Congress.

NEMPAC also supported former HHS Secretary Donna Shalala in the FL-27 open seat. She is expected to play a major role in the health care policy space in Congress.

Click [here](#) for a list of all candidates supported by NEMPAC and their Won/Loss status.

**Meeting the New Members of the 116th Congress**  
ACEP is mounting an aggressive push throughout the next two months to meet as many of the new members as possible before or just after they are sworn in. Although we supported quite a few in their election bids, there may be more than 100 new members coming to Congress. We will be setting up local meetings between ACEP 911 Network members and the new members to introduce them to emergency medicine and our role in the health care delivery system and to establish a local contact in the health care space. The meetings will most likely be 30 minutes or less and we will provide tips for hosting ACEP members as well as a fact sheet for the new member. If you live or work in a congressional district of a new member of congress and are interested in hosting or participating in one of these meetings, please contact [Jeanne Slade](#) or [Caitlin Demchuk](#) in the ACEP Washington DC office for more details.

**116th Congress Forecast: New Leadership and the Issues Ahead**  
IN THE HOUSE: Democrats face not only the challenge of a slimmer majority, but also the added

complexity of a divisive leader, as many Democrat members-elect pledged not to support Nancy Pelosi (D-CA) for Speaker of the House while campaigning. While many observers still expect Pelosi to be Speaker, it remains to be seen how Democratic leadership will shake out for the 116th Congress. On the Republican side, Kevin McCarthy (R-CA) is expected to be the Minority Leader though he faces a longshot bid from Rep. Jim Jordan (R-OH), and current Majority Whip Steve Scalise (R-LA) will become the Minority Whip.

New majorities tend to put an aggressive messaging agenda together for the first “100 days” of a new Congress. These are typically not extensive, policy-heavy, legislative changes, but rather a flurry of messaging bills that lay out the new majority’s goals for the rest of the Congress. Democrats have already stated that a major focus will be to increase Congress’ oversight role over President Trump and his Administration. As far as health care is concerned, House Democrats have signaled that issues such as ACA stabilization and fighting Administration health policies, drug pricing, Medicare-for-All/Medicare Buy-In, health care price transparency, and even another opioids package could be on the table for the 116th.

**IN THE SENATE:** In the Senate, Majority Leader Mitch McConnell (R-KY) and Minority Leader Chuck Schumer (D-NY) will remain in those positions. There will be some additional shifting on the Republican side as current Majority Whip John Cornyn (R-TX) is term-limited under the rules of the Republican conference. Sen. John Thune (R-SD), is expected to succeed Cornyn as Whip, and Sen. John Barrasso (R-WY), an orthopaedic surgeon, will fill the Conference Chairman role being vacated by Thune.

With a possible 54-seat majority, Mitch McConnell’s focus will likely center around an even-more aggressive push on federal nominations. On the health care front, Sen. Lamar Alexander (R-TN) will remain Chairman of the Health, Education, Labor, and Pensions (HELP) Committee, and with Senator Orrin Hatch (R-UT) retiring, the expectation is that Sen. Chuck Grassley (R-IA) will seek the chairmanship of the Senate Finance Committee. While there may be some bipartisan possibilities around issues of drug pricing, health care price transparency, and opioids, some still expect Senate Republicans to put forth efforts to support the Administration’s ongoing efforts to pick apart the ACA through the regulatory process. However, some have also speculated that Chairman Alexander and Ranking Member Patty Murray (D-WA) may try to revive their bipartisan work on an ACA stabilization bill, especially given the new Democrat majority in the House. ACEP will continue to monitor any developments as the dust settles from Tuesday’s elections.

### **ACEP Responds to Harvard Pilgrim Prudent Layperson Violations**

On Friday, ACEP responded to new Harvard Pilgrim policy that will be implemented in New Hampshire on January 1, 2019, that will apply a new 50 percent coinsurance for policyholders who seek care in an emergency department, if their final diagnosis is determined to be “nonemergent” based solely upon a list of diagnosis codes. In the letter, ACEP calls for Harvard Pilgrim to halt implementation of this dangerous policy that expects patients to be able to self-diagnose to seek emergency care.

This policy follows efforts by other insurers to limit coverage of vital emergency care, including a similar Anthem policy already in effect in New Hampshire and several other states. ACEP remains committed to preserving the Prudent Layperson Standard and continues fighting insurers’ attacks on emergency care at the state level.

Read the letter [here](#).

Read the list of codes [here](#).

### **CMS Releases Medicaid Managed Care Proposed Rule that Relaxes Network Adequacy Requirements**

On Thursday, November 8, CMS released a [proposed rule](#) related to Medicaid and CHIP managed care that aims to create more flexibility for States, reduce regulatory burden, and promote innovation. With respect to network adequacy, CMS is proposing to replace the current requirement for States to establish time and distance standards with more flexible “quantitative standards” that can consider new service delivery models like telehealth. Quantitative Standards that States may elect to use include, but are not limited to, minimum provider-to-enrollee ratios; maximum travel time or distance to providers; a minimum percentage of contracted providers that are accepting new patients; maximum wait times for an appointment; hours of operation requirement; and combinations of these quantitative measures. The proposed rule also clarifies that States have the authority to define “specialists” in the most appropriate way for their programs. ACEP has long advocated for CMS to enforce strong network adequacy standards in Medicaid managed care and will therefore take a close look at how these proposed changes would impact Medicaid patients’ access to the full range of health care services.

### **Secretary Azar Promotes Mandatory Alternative Payment Models**

On Thursday, November 8, the Secretary of the Department of Health and Human Services (HHS), Alex Azar, announced that the Centers for Medicare & Medicaid Services (CMS) would soon be introducing a [mandatory](#) Medicare payment model for cancer patients. The decision to introduce a model that requires participation from providers is a reversal from the position that the previous Secretary, Tom Price, took on this issue. Secretary Price, during his tenure, only supported voluntary payment models, especially when those models required providers to take on downside financial risk.

This announcement signals the Administration’s commitment to holding certain providers accountable for the cost and quality of care they deliver to patients. However, it does not mean that CMS will now solely be introducing mandatory models. In fact, the agency plans to unveil two new voluntary models related to cardiac care in the near future. ACEP has developed a voluntary payment model that was recently recommended to Secretary Azar for full implementation by a federal advisory committee called the Physician-Focused Payment Model Technical Advisory Committee (PTAC). ACEP looks forward to working with CMS on operationalizing the model.



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