



Cavarocchi-Ruscio-Dennis Associates

Health Policy Report: Special Post-Election Report

December 1, 2006

Overview

Whether you consider what happened November 7 to be an election or an intervention, the Democratic takeover of both houses of Congress dramatically alters the government's balance of power.

By a margin considered almost inconceivable just weeks before the election, Democrats regained control over the House of Representatives for the first time in 12 years and now hold a one-seat majority in the Senate.

Political pundits and commentators are going to great pains to tell us why and how this happened. But it seems safe to say that voters in districts across America turned away from the familiar Tip O'Neill dictum and voted national politics, not local. What turned out to be the largest number of competitive races in recent memory unfolded as a referendum on the Iraq war, presidential and congressional competence and leadership, economic security and corruption.

By ending an era of one-party control the electorate seemed to be sending politicians a message: Focus less on ideology and political bickering and more on bipartisan problem-solving.

The Impact on Health Issues

“Elections have consequences” and nowhere is that bromide truer than in health policy (except maybe for Iraq policy). On issue after issue, Democrats and Republicans have staked out positions that are sometimes marginally different and sometimes diametrically opposed. However, with the Democratic ascendancy and the party’s emphasis on restoring the congressional oversight function, we expect a fairly confrontational and charged atmosphere on health care issues in the 110th Congress.

Medicare Part D. - Revising the Medicare Part D program has become a bit of an article of faith in the Democratic litany. Candidates from one coast to the other have promised to address the program and the primary focus has been on mandating the Centers for Medicare and Medicaid Services (CMS) to negotiate discounts from the pharmaceutical companies that participate in the program. Importantly, it is not only the liberals. Even among the more conservative newcomers to the Democratic Caucus, this program is a target.

That being the case, and with the likely ascendancy of Congressman Pete Stark (D-CA) to the chairmanship of the Ways and Means Committee’s Health Subcommittee, we expect House action fairly early in the new Congress. To be clear, we are not necessarily predicting enactment of changes. The 51-49 Senate and the White House are likely to be less than responsive to the House’s action. However, in the interim, the House will create a difficult environment for the pharmaceutical industry in which pricing issues generally will be aired in public forum.

In addition to Congressman Stark’s antipathy, we believe that the House Government Reform Committee, chaired by Congressman Henry Waxman (D-CA), may also plan oversight hearings, designed to build the case for enactment of reforms to the Medicare program, addressing both Part D and the Medicare Advantage program. The last time Congressman Waxman was in the majority, he was chair of the Health Subcommittee of the Energy and Commerce Committee and was dogged in his pursuit of industry.

Health Disparities. - In the broad subject area covered by this general heading, we expect more congressional action in 2007 than we have seen in the last twelve years. Ideologically and politically, Democratic leaders feel a strong need to address this subject area which has consistently grown more significant in recent years. Addressing health disparities will help the Democrats deliver on promises to minority communities and can potentially improve the output of the health care system.

While there are a number of legislative proposals pending in the 109th Congress that will not be enacted, it is entirely possible that we will see an effort to address it comprehensively by combining a number of bills into a broad effort. For example, there may be an attempt to reauthorize Title VII of the Public Health Service Act and use it as a vehicle to encourage the education of a greater number of minority health professionals. This can be done for relatively little money by simply changing emphasis in the existing program. Likewise, coverage issues—particularly targeted programs like SCHIP—are

very likely to become health disparities issues, or at least reflect a greater focus on health disparities, in the new Congress than we have seen previously.

Congress may also decide to address mental health coverage issues within this context. While traditionally having a racial and ethnic focus, health disparities are also a significant problem for patients with mental illness. With strong Republican advocates like Senators Pete Domenici (R-NM) and Gordon Smith (R-OR), and with Chairman Ted Kennedy (D-MA) setting the agenda of the Senate Health, Education, Labor and Pensions Committee, the chances for substantive legislative action have increased significantly.

Medicare physician payment fix. - While the outgoing chair of the Ways and Means Health Subcommittee, Rep. Nancy L. Johnson (R-CT), would like to address Medicare physician payment reform during the lame-duck session, we think that is unlikely to happen, although efforts are still underway. If this issue is not resolved, it will roll over into the 110th Congress in January.

Congress has yet to determine whether it will simply block the proposed 5.1 percent cut scheduled to take effect January 1, 2007 by freezing payments, or propose a more comprehensive reform that includes quality reporting. The Congressional Budget Office estimates that a simple one-year fix would cost \$13 billion over five years, while a complete revamping of the payment system is tagged at \$58 billion over five years and \$218 billion over 10 years. Some lawmakers have hinted that some off-sets could come from the managed care stabilization fund contained in the 2003 Medicare prescription drug law. While there is bipartisan agreement that physicians' pay should not be cut in 2007, key House Democrats are skeptical of Republican plans to include pay-for-performance (P4P) measures in a reform proposal, saying there is insufficient time to craft a serious P4P system before the cuts take effect. On the other side of the Capitol, incoming Finance Committee chairman Senator Max Baucus (D-Montana) supports elements of quality reporting but his future course is unclear, as yet.

Health Information Technology - It seems unlikely that a final compromise on health IT will be reached during the lame duck session, given the election results and the disparate positions the House and Senate have taken in their respective versions of the legislation. The Senate bill calls for federal grants to help organizations transition to electronic medical records and the House creates safe-harbors in federal anti-kickback laws. With Reps. John Dingell (D-Michigan) and Charles Rangel (D-New York) poised to take over the chairmanships of the House Energy and Commerce and Ways and Means Committees, respectively, postponing work on the legislation until early next year would allow more time to address House Democrats' concerns about privacy, the lack of federal funding for IT acquisition and the omission of a date certain requirement for implementation of new health IT standards.

On the Senate side, Senator Bill Frist (R-Tennessee), one of the co-authors of the Wired for Health Care Quality Act (S. 1418), is retiring, leaving Senators Ted Kennedy (D-Massachusetts), Hillary Clinton (D-New York), and Mike Enzi (R-Wyoming) to advance this legislation. The Senate-passed bill enjoyed strong bipartisan support from the start

and included extensive federal funding for health IT acquisition in the form of grants. It is unlikely that this bipartisan support will dissolve when the Democrats take control of the Senate. In the meantime, the Centers for Medicare and Medicaid Services (CMS) will move ahead with regulations encouraging physicians' use of health IT. Acting CMS Administrator Leslie Norwalk has said that she intends to implement IT policies favored by the Bush administration, viewing them as key to improving the quality of health care service and to reducing costs.

Congress by the Numbers

Democratic candidates were able to secure a majority in the House by capturing about 30 seats currently held by Republicans. When all results are finalized, it appears the Democrats will hold 232 seats and Republicans will hold 203. The outcome of two House races will be decided in December run-off elections and we are anticipating the Louisiana seat will remain in Democratic hands and the Texas seat will remain in Republican hands.

By winning races in Rhode Island, Pennsylvania, Ohio, Missouri, Montana and Virginia, Democrats secured a razor-thin 51-49 voting majority in the Senate. More specifically, the Senate in the 110th Congress will consist of 49 Democrats, 49 Republicans, and two independents – Senator Joseph Lieberman (Connecticut) and Senator-elect Bernie Sanders (Vermont) – both of whom will caucus with the Democrats.

Democrats picked up Republican House and Senate seats from New Hampshire to California, although most came from the Northeast and Midwest regions of the country. In the House, Democrats were able to capture 10 seats from the Northeast, 8 seats from the Midwest, 5 seats from the South and 5 seats from the West. Pennsylvania produced the most new seats (4) for the Democrats, followed by 3 each from Indiana and New York.

Voter turnout played a significant part in the election, with swing independent voters—26 percent of this year's electorate—voting 2 to 1 for Democrats. And to some extent, moderate Republicans have been replaced by moderate-to-conservative Democrats: Republicans lost 7 representatives and 1 senator who are members of the moderate Republican Main Street Partnership. Two additional members of this group retired.

Of the 30 Democratic victors in the House, 8 have already pledged to join the Blue Dog Coalition in Congress – a group of moderate to conservative Democrats formed after the Republican sweep in 1994. The Coalition will grow to 44 members in the 110th Congress – presenting a clear challenge to the more liberal ideological wing of the party.

What Difference Does It Make?

Whether consciously or not, the electorate opted to return to a divided government, which is most likely to check each party's excesses. While the elections triggered a dramatic shift in the *balance* of power, left unchanged is the close *margin* of power that has been

in place for the past 12 years. In fact, only twice before in this nation's history—from 1877 to 1887 and 1947 to 1957—has Congress been so closely divided for so long a period.

If the last dozen years are any indication of what may be ahead, and apart from issues like the Iraq war, this close partisan balance means that there is no predominant majority or any mandate to force policy changes. In practical terms, it also means that while Democrats have a numerical majority in Congress, they do not have a *governing* majority. In the Senate, where 60 votes are needed to overcome a filibuster, the Democrats come up nine votes short. In the House, the Democrats hold 232 seats—only a 14-seat margin—so to get things done they will have to either overcome, or accommodate, intra-party factions like the more conservative Blue Dog Democrats or the party's progressive wing. (Republicans will need to do the same with their more conservative Republican Study Committee members.)

Being in the majority certainly carries benefits: Democrats will be empowered to call hearings, conduct investigations, determine which issues get on the legislative calendar, and what amendments are in order. But those perks of power will be of little value unless a governing majority is formed to tackle the big issues, like energy costs, declining job and retirement security and the affordability of health care. The prospects for major policy changes in these and other areas will also depend on how President Bush decides to govern during his final two years in office. How important is a policy legacy to him? And is he willing to take a conciliatory approach that risk offending some elements of his party's political base?

Here again, the electorate seemed to put lawmakers on notice not to spend the next two years just shoring up their re-election prospects, but instead to rise above partisanship and work together toward sensible policies.

The Fiscal Realities

In the run-up to this year's elections, Democrats unveiled a wide-ranging agenda, called *A New Direction for America*, that calls for rebuilding the military, bolstering homeland security, college access for all and affordable health care. But the agenda also calls for bringing the federal budget deficit under control by imposing pay-as-you-go requirements. In other words, any new spending or tax cut proposals would have to be accompanied by an offset.

The Democrats' plan may have made for good political rhetoric, but the challenge will be to implement it in today's fiscal climate.

In early October, the Congressional Budget Office reported that the 2006 budget deficit is \$248 billion, or less than what was projected earlier this year. (Notably, that better-than-projected number was the result of an unanticipated increase in revenues, not of any legislative action taken in Congress.) But those results would be far more heartening if

they signaled a declining trend. Instead, the deficit is projected to rise from FY2006 to FY2007.

Under the circumstances, it is difficult to envision that Democrats will be able to advance bold new initiatives while simultaneously bringing the deficit under control. In the short run, they will probably have to settle for incremental change.

As for more immediate concerns—namely, next year’s budget debate—regardless of which party had won the majority, the narrow partisan margins combined with a pre-2008 election mentality that will soon overcome Capitol Hill, will make a budget agreement very hard to come by. All things being equal, the traditional split between Democratic budget hawks and the rest of their party will likely be as prevalent as it was before. The major difference could be that after spending more than a decade in the minority, most Democrats may be more inclined to work together behind the scenes. This could occur because the budget resolution itself does not make specific changes in spending or taxes; that work is left to congressional committees later in the year.

The New Power Brokers

Over the next several weeks, we will get a clearer picture of how Democrats plan to operate. For example, will Democrats revert to a tradition of authorizing committee chairs to draft legislation and advance it through the process? During the past 12 years, the House Republican leadership, in particular, has run a highly-centralized legislative operation. Committee chairs were often told what to pass and when, or were by-passed altogether; legislation was often advanced without hearings or mark-ups, having been drafted by leadership teams; and the House Rules Committee tightly controlled the number and scope of amendments.

Over the longer term, we will also see the degree to which various House caucuses will guide strategy and substance, including the Congressional Black Caucus (43 members), the Congressional Hispanic Caucus (21 members), the conservative/moderate Blue Dog Coalition (44 members), the business-oriented New Democrat Coalition (45 members), and the Progressive Caucus (59 members) – any of which could try to exert its influence in a narrowly-split House of Representatives.

In the meantime, the first order of business is for Congress to select its leaders. Following is a roadmap of the various leadership decisions made.

Senate Leadership

- Sen. Harry Reid (Nevada), the current Minority Leader, has been elected Majority Leader without opposition. Sen. Richard Durbin (Illinois), the current Minority Whip, will become Majority Whip without opposition.

- Sen. Mitch McConnell (Kentucky), the current Majority Whip, has been elected Minority Leader, replacing retiring Sen. Bill Frist (Tennessee), without opposition.
- Sen. Trent Lott (Mississippi), the former Majority Leader, will become the new Minority Whip, defeating Senator Lamar Alexander (R-TN) by one vote.

House Democratic Leadership

- Rep. Nancy Pelosi (California) is expected to ascend to Speaker of the House when the 110th Congress officially convenes January 4.
- Rep. Steny Hoyer (Maryland), the current Minority Whip, was challenged for Majority Leader by Rep. John Murtha (Pennsylvania). Hoyer defeated Murtha 149-86.
- Rep. James Clyburn (South Carolina), who currently chairs the Democratic Caucus, will be the new Majority Whip.
- Rep. Rahm Emanuel (Illinois), the current chair of the Democratic Congressional Campaign Committee, will become the chair of the Democratic Caucus.

House Republican Leadership

- Speaker Dennis Hastert (Illinois) announced that he would not seek a leadership post in the 110th Congress. Rep. John Boehner (Ohio), the current Majority Leader, was elected Minority Leader over Rep. Mike Pence (Indiana), who currently heads the 109-member conservative Republican Study Committee.
- Rep. Roy Blunt (Missouri), who is currently the Majority Whip and third-ranking in the GOP leadership, has been elected Minority Whip over Rep. John Shadegg (Arizona). Like Pence, Shadegg is considered a leader among conservative Republicans.
- Rep. Adam Putnam (Florida), the current Republican Policy Committee chair, the fifth-highest position in the Republican leadership, has been elected as Republican Conference chair.
- Rep. Kay Granger (Texas) has been elected vice chair of the Republican Conference.

Conclusion

The 110th Congress promises to be a very different place than the last six congresses. Priorities will be different; processes will change. Those who have been out will be in – and vice versa.

The challenge to SGIM will be to adapt its agenda for 2007 to the new Democratic majority. This is, of course, imminently doable as the SGIM agenda is a better fit with a Democratic majority than a Republican one. But the challenge will also be to take advantage of the opportunities that this change in leadership will cause.

While there is a natural tendency to think that this Congress will be a more responsive and friendly one, that will not happen on its own. Remember, a number of other program areas have been short-changed over the past several years. Therefore, it is important that every SGIM member become an advocate for general internal medicine and for patients. In the coming months, the Health Policy Committee and its Membership Development Subcommittee will be reaching out, asking for your help and your support. Please watch for their emails, respond to their legislative alerts, and help SGIM take the field to new heights.