

HEALTH CARE REFORM – IMPACT ON EMPLOYERS

Douglas L. McSwain

WYATT, TARRANT & COMBS, LLP

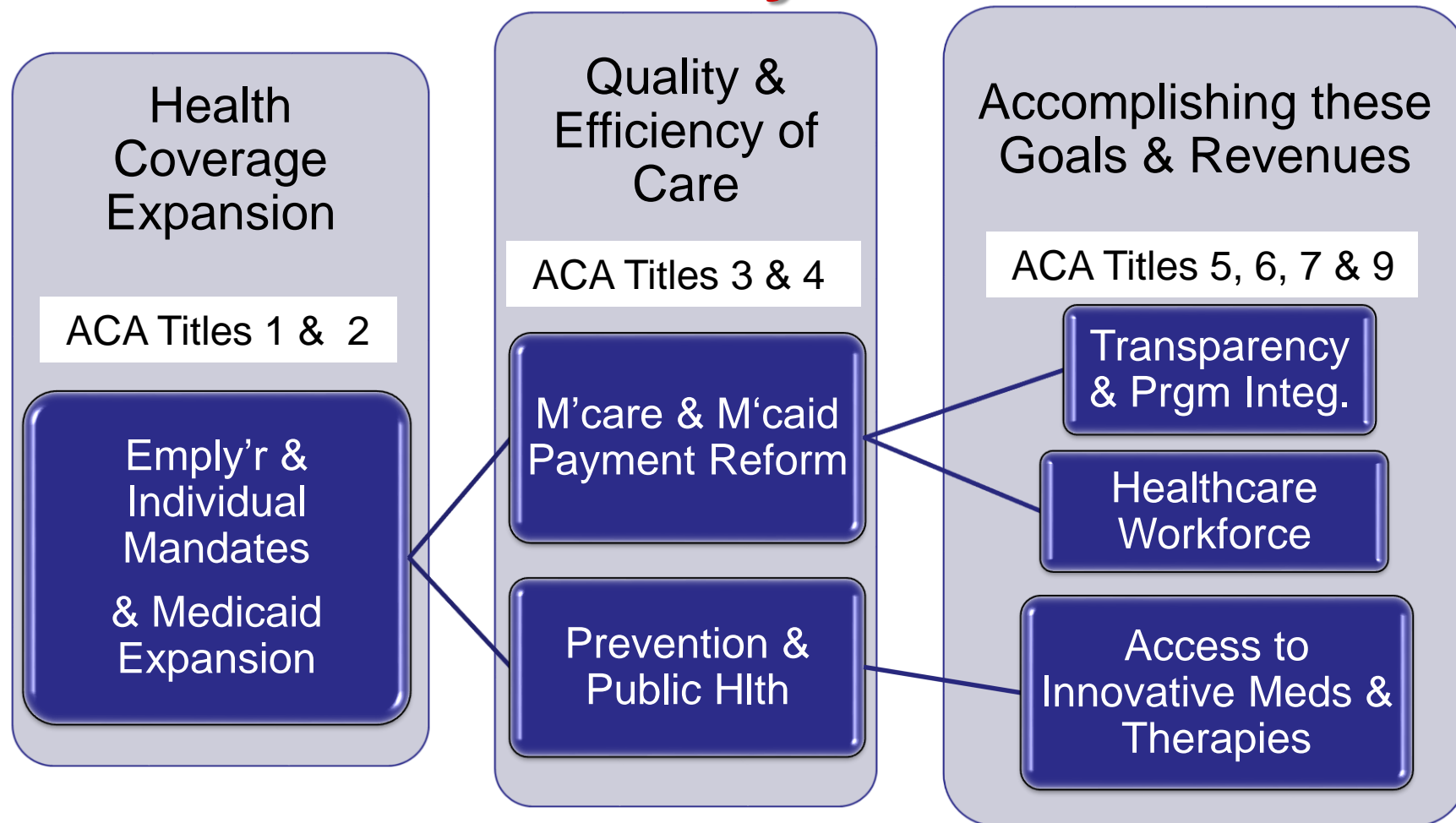
250 W. Main Street, Ste. 1600

Lexington, KY 40507

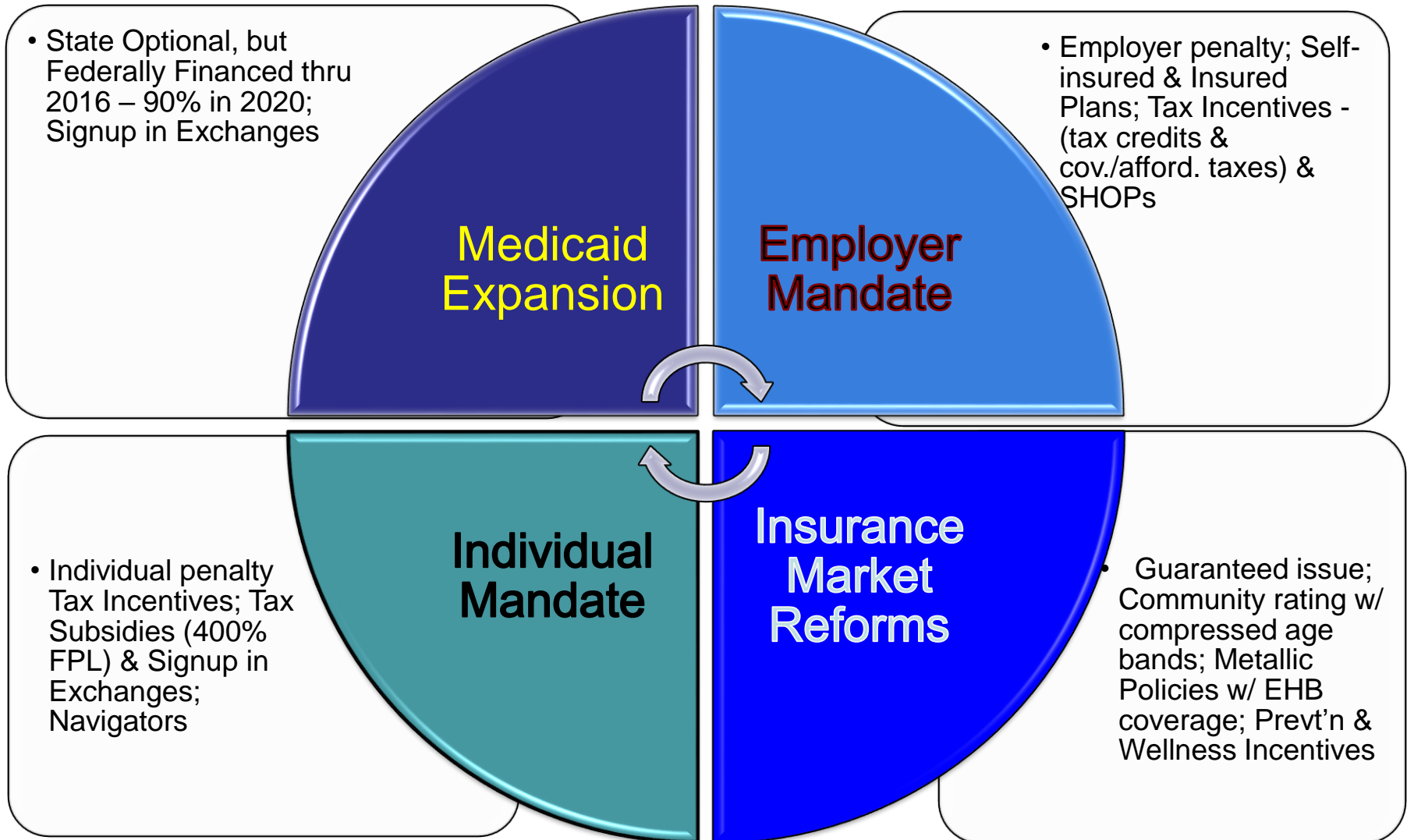
(859) 288-7415

dmcswain@wyattfirm.com

ACA Policy: Quality, Affordable Healthcare for Everyone

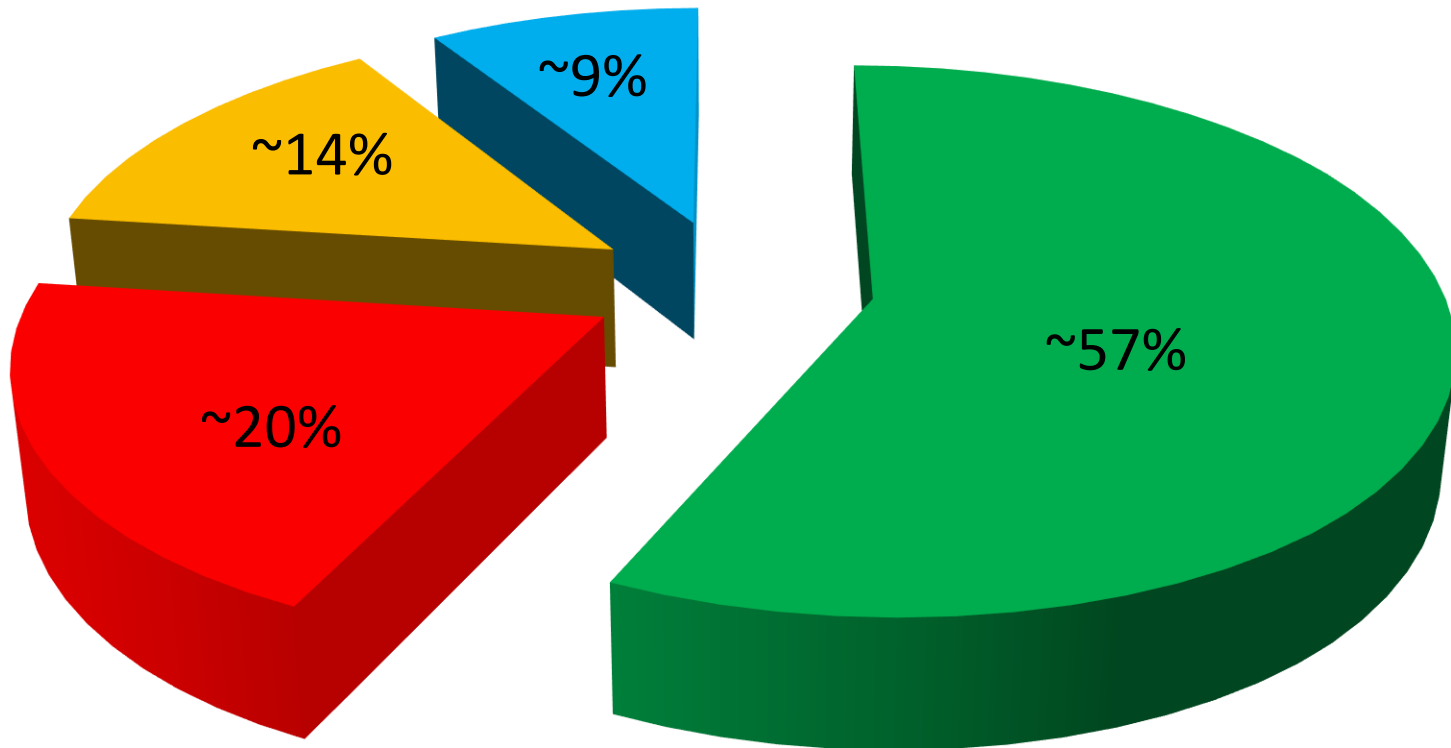


Expanded Healthcare Coverage



CBO's Health Coverage Projections 2011

■ Emp'r Plans ■ Uninsured ■ Medicaid/CHIP ■ Non-group/oth



Note: Figures are for non-Medicare pop. & incl. unauthorized persons;
Due to rounding and estimations, figures may not sum to 100%

CBO's Health Coverage Projections 2016

■ Emp'r Plans

■ Uninsured

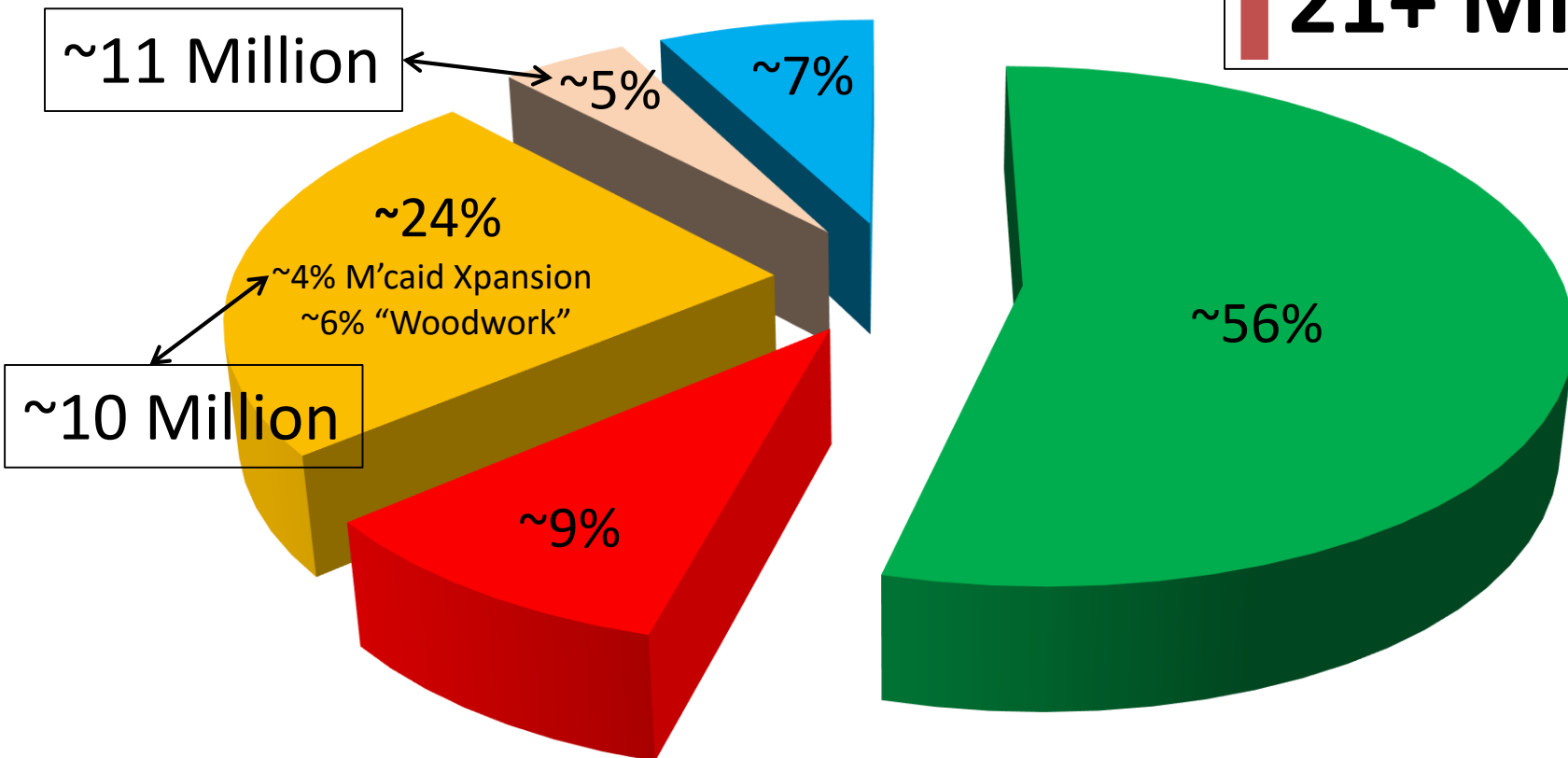
■ Medicaid/CHIP

■ FFM/SBMs/BHB

■ Non-group/non-HIX/Oth

~11 Million

↑ **21+ Million**



Note: Figures are for non-Medicare pop. & incl. unauthorized persons;
Due to rounding and estimations, figures may not sum to 100%

LEGAL ISSUES & Potential Aftershocks in Insurance Markets

- ***House of Representatives v. Burwell* – ACA's OOP cost subsidies**
 - ✓ 2/21/17 briefs due
 - ✓ Congressional fix via budget bill?
- **12+ Risk Corridor cases - \$8.3B @ stake for 2014 & 2015 only**
 - ✓ 1/4/17 - Class action granted in *Health Republic*
 - ✓ 2/9/17 - *Moda Health* awarded \$214M
 - ✓ QHP Insurer “escape clause”

QHP “ESCAPE CLAUSE”

2017 QHP insurer agreements “acknowledge that [qualified health plan issuer] has developed its products for the [federal Exchange] based on the assumption that APTCs and [cost subsidies] will be available to qualifying Enrollees. ***In the event that this assumption ceases to be valid during the term of this Agreement, CMS acknowledges that Issuer could have cause to terminate this Agreement subject to applicable state and federal law.***”

Trump Campaign's 7-Point Plan



- **Repeal Obamacare “completely”**
- **Insurance across state lines**
- **Individual tax deductions, not just businesses**
 - ✓ “No one slips through the cracks”
 - ✓ “Review basic options for Medicaid”
- **More HSAs**
- **Provider transparency so patients can “shop”**
- **Block-grant Medicaid**
- **Remove pharmaceutical market barriers to increase Rx competition; allow imported Rx’s**
 - ✓ **Permit Medicare to negotiate Rx prices**

Trump's Inaugural Day EXECUTIVE ORDER

“[E]xercise all authority and discretion . . . *to waive, defer, grant exemptions from, or delay . . . any provision or requirement of the ACA . . . that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, . . . healthcare providers, health insurers, patients, recipients of healthcare services, [etc.]. . .*; provide greater flexibility to States . . .; and encourage . . . a free and open market in . . . the offering of healthcare services and health insurance, with the goal of achieving . . . maximum options for patients and consumers.”

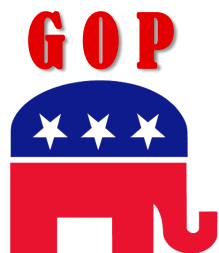
INDIVIDUAL MARKET STABILIZATION MEASURES – 2018

- **2/15/17 rule for 2018 FFM**
 - ✓ SEPs restricted
 - ✓ Signup times limited to 11/1 – 12/15
- **2/17/17 Proposed Bulletin**
 - ✓ Revised rate filing guidelines for 2018
 - ✓ Revised key dates for filing
 - Rate templates due 6/21/17 (instead of 5/3)
 - Service area changes moved to 8/4/17 (instead of 8/9)
 - States to send final recommendations as to QHPs by 9/27 (instead of 9/15)

INDIVIDUAL MARKET

DE-STABILIZING EVENTS – 2018

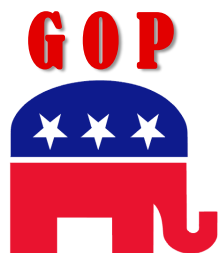
- IRS will not require tax filers to check off whether they had insurance
- Humana announces it will not participate
- “Death spiral” fear?
- New Mindset: “Obamacare” to “Trumpcare” to “R-care”
 - ✓ Polling on “Obamacare” is fluid (changing daily and dramatically)



“Policy Brief & Resources” – 2/16/17



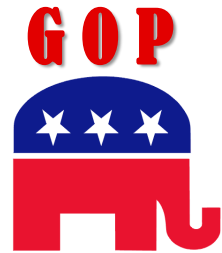
- **Repeal Obamacare’s individual & employer mandates (penalties)**
- **Repeal provider/insurer taxes & deduction limits**
 - ✓ **Nothing said about high-income earners’ increased Medicare tax**
- **Universal advanceable, refundable tax credit – *age*-adjusted only (≠ income-adjusted)**
 - ✓ **Useable for individual market coverage or COBRA, not employer plans or gov’t programs**
 - ✓ **Nothing said re: how much?**
 - ✓ **Hyde Amendment restrictions**



“Policy Brief & Resources” – 2/16/17



- Increase HSA contribution limits & liberalize HSA spending restrictions to cover OTCs
- Phase out enhanced Medicaid funding & move to *per capita* or block grant funding
- Repeal Medicaid’s DSH cuts
- Innovation grants to states to fund
 - ✓ High risk pools
 - ✓ Reduce OOP costs
 - ✓ Reinsure health plans
 - ✓ Use for preventative services, etc.
- Increase employer coverage “flexibility” (self-insured?)

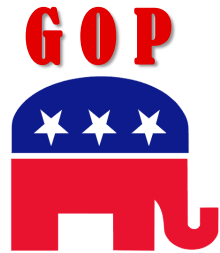


2016's



"A Better Way"

- **Cap employer-provided coverage tax deductibility****
- **Insurance across state lines****
- **Small group plan pooling - association health plans****
- **No pre-existing cond't'n exclusion w/ continuous cov'rge**
- **Stay on parents' plan up to age 26**
- **Broaden age-rating bands from 3:1 to 5:1**
- **Keep insurer rescission protections**
- **Medical liability reform (damage caps & other forms)**
- **Preserve employee wellness programs**



2016's



"A Better Way"

- **Review antitrust exemptions in insurer markets**
- **Provider "conscience protections" & no \$\$ for abortion plans**
- **Permit states flexibility w/ M'caid populations via "enforceable" premiums or limiting benefits**
- **Medicare – premium support**
 - **Repeal IPAB, CMMI, ban on physician-owned hospitals**
 - **Medicare VBID flexibility in MA plans & benefit redesign for fee-for-service**
 - **Unified deductible for Medicare A & B by 2020**
 - **Repeal cuts to DSH, create new unified UCC program**
 - **Raise eligibility age to match Social Security's**

“RECONCILIATION”

H.R.3762 - To provide for reconciliation pursuant to section 2002 of the concurrent resolution on the budget for fiscal year 2016 – **Vetoed Jan. 2016**

- **Individual & employer mandates repealed**
- **APTCs repealed after 12/31/17**
- **DSH increased**
- **Planned Parenthood cut**
- **Stop Medicaid for childless adults after 2017**
- **No link in exchanges to Medicaid after 2017**
- **Numerous tax repeals & reduced HSA taxes**

➤ **Note: GOP “*Policy Brief & Resources*” Fits!**

CBO

- H.R. Res. 5 – 115th Cong. – Jan. 3, 2017 (no budgetary projections on any ACA repeal/reform legislation)
- CBO coverage impact projections on bill similar to H.R. 3762 (from 2016) – 1/17/2017
 - 18M uninsured Y1
 - 32M uninsured Y10
- No “*Policy Brief & Resources*” Scoring

YET!

CASSIDY/COLLINS

➤ State options

- 1st – Keep Obamacare if state chooses (@ 95%)
- 2nd – Or, if state wants: repeal/replace with
 - 95% of Obamacare \$\$'s to be used for
 - Beneficiary grants or advanceable, refundable tax credits
 - But, \$\$'s to be deposited into HSAs
 - Keeps ban on pre-existing & <26 & MH
- 3rd – State designed health insurance market for its population's needs w/ no federal \$\$'s

WHAT'S IT ALL ABOUT: “REPEAL” “REPLACE” “DELAY” “REPAIR”?

- **HHS Secretary Tom Price**
- **Sen. Rand Paul & “Freedom Caucus” (S. 222)**
- **GOP directional splits**
- **What does this all mean for employers?**



