

Policy and Politics in the New Washington

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Election recap

Senate

- ✓ 52
Republicans
- ✓ 48
Democrats
(includes 2 Ind.)

House

- ✓ 238
Republicans
- ✓ 193
Democrats
(four vacancies)

States

- ✓ Republicans hold 33 governorships and 66 of 99 legislative chambers.

The Trump Era: Key themes

- Difficult to overstate just how **dramatically** the Washington policy/political landscape **has changed**
- Recent crises have **raised questions** about whether policy agenda will be **overwhelmed** by ethics issues



The Trump Era: Key themes

- **Slow pace of nominations/confirmations** is holding up agenda
 - More than 450 key positions for which no one has even been named
- **Chaos** is the new reality: President Trump prefers going **without a script**
- Trump's **patience with slow-moving Congress** is wearing thin
- 100-day mark: Washington is a **circus** – but market performance has been **strong**
- **Investors and business leaders should not over-react to the day-to-day swings of the news cycle.**

Key issues: Tax Reform

- New Trump proposal reads like a **wish list**:
 - Three individual rates (10%, 25%, 35%)
 - Eliminate estate tax, AMT, Net Investment Income Tax
 - Double standard deduction; eliminate other deductions except charitable contributions, mortgage interest
 - 15% corporate tax rate (but 20-25% more realistic)
- Border adjustment tax is **dead**
- Retirement savings could go **all-Roth**
- **Devil is in the details**: every credit and deduction has a champion
- If comprehensive reform stumbles, **corporate tax cut** is the fallback

Key issues: Budget reconciliation

- **Only chance** of getting health care reform or tax reform done
- Parliamentary tool with **strict rules**
- Must **directly affect** revenue/spending
- Limited debate, limited amendments, **cannot be filibustered**
- Can pass Senate with a **simple majority**
- Used in 2001 and 2003 to pass Bush tax cuts; 2010 for Obamacare

Key issues: Retirement

- How will retirement savings be **impacted by tax reform**?
 - If there is an “all-Roth” effort, will there be additional changes? Contribution limits? Increased Saver’s credit? Change in RMD age?
- Congress votes to **repeal rule for state retirement plans**
- Congress may **push for legislation** to allow small businesses to form open multiple-employer plans (MEPs)
- Expect **high-profile lawsuits** about excessive fees to continue (universities like MIT, Yale, Duke and NYU were sued in 2016)

Other issues: Lots of uncertainty

- Agreement reached to **fund government** for rest of this year; focus now turns to FY2018 budget and possible **government shutdown** in the fall
- Debt ceiling battle **looms** later this year
- Infrastructure **plans on back burner**
- Fall is shaping up to be **impossibly busy**: health care, tax reform, 2018 budget and debt ceiling
- Key question already being asked: How does the market react if the big promises from Trump and the GOP **take much longer than hoped...or never happen** at all?

Regulatory agenda: Era of deregulation

- Deregulation is the part of Trump's agenda **sure to move forward**
- **Rollback** of key rules underway
- **90+ executive orders, memoranda and proclamations** already signed
 - “2-for-1” order essentially makes it impossible to issue a new regulation
 - Agency-by-agency review of existing regulations
 - Streamline and reorganize federal government
 - Roll back Obama-era climate change regulations
 - Review offshore drilling

Regulatory agenda: Era of deregulation

- **Rewrite of Dodd-Frank Act** underway – but House, Senate not on same page
 - 600-page Financial CHOICE Act likely to pass House but may be non-starter in Senate
 - Senate approach likely to be more surgical – fixes that both parties approve
- Vacancies at SEC, Fed, other regulators afford President Trump to **shape financial regulation landscape** for years to come

Regulatory agenda: DOL fiduciary rule

- Executive memorandum calls for **review and possible rewrite**
- DOL **delayed** April 10 applicability date to **June 9**
- **Uncertain** what happens next
 - Delaying rule beyond June 9 will be tricky
 - Revising the rule requires new evidence that rule is harming investors
 - New Labor Secretary Acosta likely will want to put his stamp on this issue
 - Legal challenges likely await no matter what

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ACA v. AHCA—On to the Senate

May 2017

Agenda

- Congress and the American Health Care Act
 - Impact on Employers
 - Impact on Individual Insurance Market
 - Impact on Medicaid Financing
- The Affordable Care Act enters Year 8
 - Assessing the ACA's track record
 - Pluses and minuses
 - The ACA's risk pool
 - Insurers and the ACA
- The Trump Administration and the ACA
 - Stabilizing the Public Exchanges
 - Possible Executive Actions
- Next steps for the AHCA

Repealing and Replacing the Affordable Care Act



Congress and the American Health Care Act

The House

238 Republicans | **193 Democrats**
4 vacancies



Paul Ryan (R-WI)
Speaker of the House



The Senate

52 Republicans | **46 Democrats**
2 Independents



Mitch McConnell (R-KY)
Senate Majority Leader

Rules on Repealing the ACA

Repealing the ACA's taxes and spending

Needs a majority vote in each house

Cannot be filibustered in the Senate

Doesn't repeal other parts of the ACA



Repealing the rest of the ACA

Needs a majority vote in the House

Needs 60 votes in the Senate to break a filibuster

Republicans have only 52 votes in the Senate

AHCA—Impact on Employers and Employer Group Health Plans

Repeals:

- Individual mandate penalty (retroactive to 2016)
- Employer mandate penalties (retroactive to 2016)
- 2.3% medical device tax (2017)
- Health insurer fee (2017)
- Net investment tax (2017)
- Rx drug tax (2017)
- .9% Medicare high earner tax (2023)
- Deduction limit on health insurance provider compensation > \$500K (2017)

Delays:

- Cadillac tax to 2026



AHCA—Impact on Employers and Employer Group Health Plans

Reinstates:

- “Double dip” deduction for expenses allocable to Medicare Part D retiree Rx subsidy (2017)
- Reimbursement of OTC medications through FSA, HRA, HSA (2017)
- Unlimited health FSA contributions (2017)

HSAs (2018)

- Increases maximum limit for HSA contributions to out-of-pocket limits
 - \$6,550 for individuals
 - \$13,100 for families (2017)
- Allows both spouses to make catch-up contributions to same HSA
- Allows certain medical expenses incurred before establishment of HSA to be reimbursed if HSA established within 60 days of date HDHP coverage begins



AHCA—Impact on Individual Health Insurance Market

Age-Related and Income-Based Tax Credits (2020)

- Refundable, advanceable tax credits to buy health insurance *on or off* public exchange (capped at \$14,000 per family)
 - Under age 30: \$2,000
 - 30 to 39: \$2,500
 - 40 to 49: \$3,000
 - 50 to 59: \$3,500
 - 60 and over age 60: \$4,000
- Cannot be eligible for other health plan coverage (e.g., group health plan, Medicare, TRICARE)
- Tax credits are reduced by \$100 for every \$1,000 of taxpayer's income over
 - \$75,000 (single)
 - \$150,000 (joint), adjusted for inflation

Continuous Health Insurance Coverage Incentive

- Replaces individual mandate penalty
 - Similar in concept to old HIPAA certificates of coverage
 - Applies to open enrollments in 2019 and special enrollments in 2018
- Late enrollment penalty applies to individual with lapse in coverage of more than 63 days during 12 month lookback period
 - Will pay 30% premium penalty upon enrollment in individual or small group market
 - 30% premium penalty will apply for plan year regardless of health status
- In lieu of late enrollment penalty, health insurer can charge late enrollee with preexisting condition for health status only if State
 - Waives community rating rule **and**
 - Establishes high risk pool or participates in Federal Invisible Risk Sharing Program (“FIRSP”) to subsidize coverage

AHCA—Impact on Individual Health Insurance Market

State Insurance Market Reforms

- AHCA changes permissible age variation in adult health insurance premiums from 3:1 to 5:1
- States may obtain HHS waivers to:
 - Increase age rating ratio above 5:1 ratio beginning in 2018;
 - Specify essential health benefits beginning in 2020; and
 - Replace AHCA’s late-enrollment penalty with health status rating for preexisting conditions beginning in 2019
 - State must operate high-risk pool or participate in FIRSP
 - Health status rating may not be waived for individuals who maintain continuous coverage
- States requesting waivers must attest that the purpose of the waiver is to—
 - Reduce average premiums
 - Increase enrollment in health insurance coverage
 - Stabilize individual health insurance market
 - Stabilize premiums for individuals with pre-existing conditions or
 - Increase choice of health plans in state

AHCA—Impact on Individual Health Insurance Market

State Insurance Market Reforms (continued)

- AHCA repeals actuarial value (AV) standard that requires plans to label offerings as Bronze, Silver, Gold, and Platinum (2020)
- AHCA establishes Patient and State Stability Fund of \$100 billion that would
 - Help high-risk individuals enroll in health insurance coverage
 - Reduce patient out-of-pocket costs (copayments, coinsurance, premiums, and deductibles)
 - Stabilize the individual and small group markets
 - Promote access to preventive services, dental care, vision care, maternity coverage and newborn care and MH/SUD
- AHCA establishes FIRSP (2018 through 2026)
 - Subsidizes insurers that cover sick, expensive patients
 - \$15 billion over ten years to subsidize health care of high-cost patients, similar to earlier ACA reinsurance program
 - Upton amendment added \$8 billion

AHCA—Reforming Medicaid

AHCA rolls back federal financing of Medicaid expansion (2020)

- States that expanded Medicaid eligibility would continue to receive matching Federal funds
- Starting in 2020, Federal funding would be reduced for newly eligible Medicaid enrollees
- AHCA also provides “safety net funding” for states that did not expand Medicaid
 - Restores Disproportionate Share Hospital funding in those states

AHCA reforms Medicaid funding (2020)

- AHCA would transition Federal financing of Medicaid to a choice of per capita allotment or block grant
- State would receive Federal Medicaid financing under per capita allotment for major beneficiary categories (aged, blind and disabled, children, and adults) times number of enrollees in each group
- Permits states flexibility on designing Medicaid programs
 - Could impose work requirement or drug testing
- AHCA freezes Medicaid funding
 - Allotment determined by state’s average 2016 Medicaid spending, adjusted for inflation

AHCA—CBO Report (March 2017)

No CBO report yet on AHCA as passed by House

- Impact of state waivers difficult to project
- Earlier CBO report had projected AHCA would
 - Increase uninsured by 14 MM in 2018 and by 24 MM by 2027
 - Lower federal deficit by \$337 billion over ten years
 - Reduce Medicaid spending
 - Increase premiums by 15% to 20% in short term and lower premiums by 10% in long term

Impact on employer health care coverage

- CBO had projected 7 MM fewer individuals would enroll in employer coverage by 2026
 - Fewer employees would take coverage in absence of penalty
 - Fewer employers would offer health care coverage

The Affordable Care Act in Year 8

The Pluses

- ✓ Uninsured rate dropped from 15.1% in 2010 to 8.8% in 2016 due to
 - ✓ Medicaid expansion
 - ✓ Adult child rule
 - ✓ Public exchanges
- ✓ Health insurance policies offer more comprehensive coverage
- ✓ Did not trigger mass exit of employers from offering health insurance coverage
- ✓ Federal deficit reduced by more than 67% from 2009
 - ✓ Impact of ACA on deficit reduction?

The Minuses

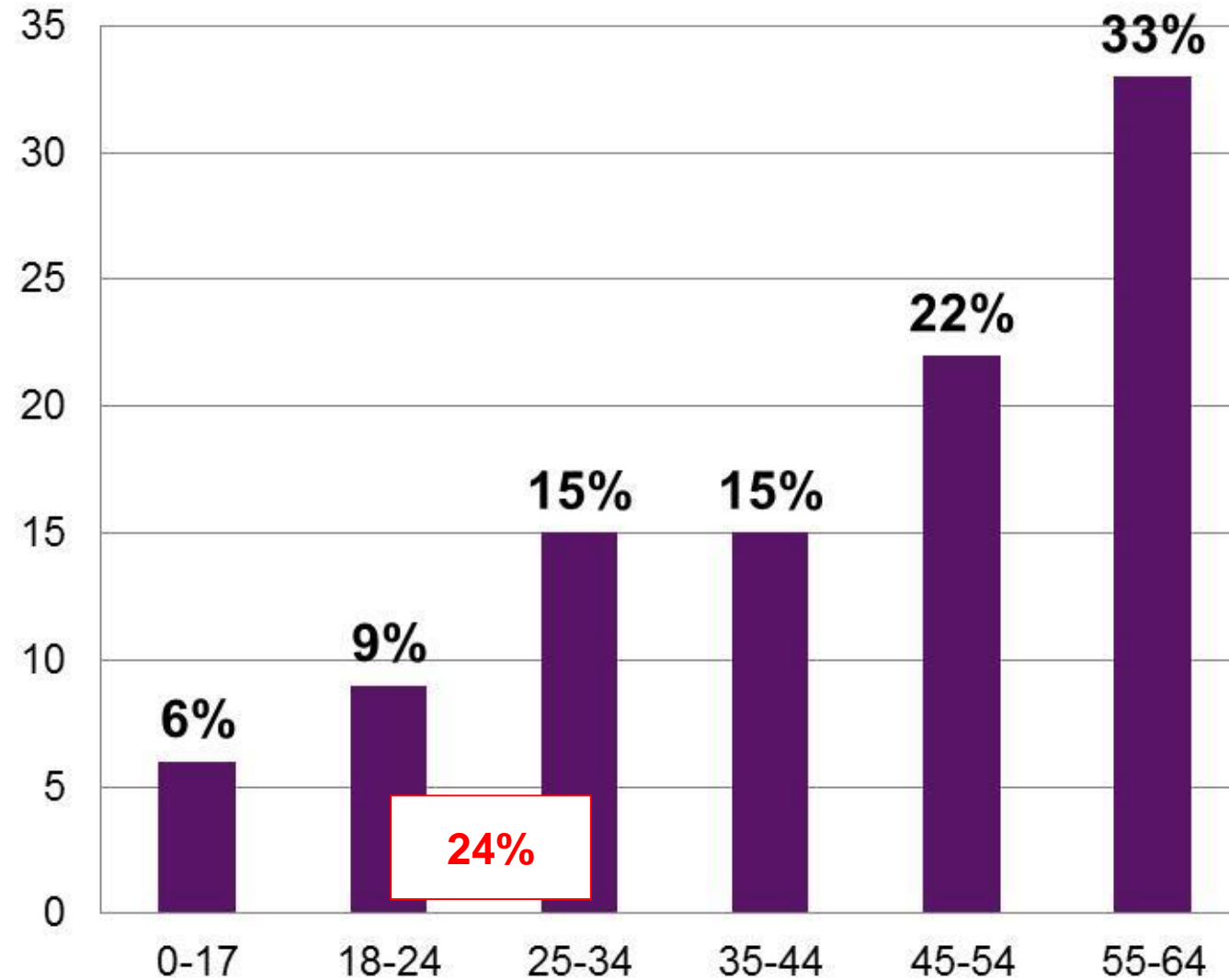
- Individual health insurance market still challenged
 - Average benchmark premium increase of 22% in 2017
 - ACA policies offer narrow provider networks, higher deductibles, and higher out-of-pocket limits
- No measurable impact to date on health care quality or national health care spending
- Insurers suffering losses and exiting public exchange
- Impact of ACA on Federal deficit is unclear
 - Sequester had most impact on deficit reduction
 - ACA spending lower than projected due to
 - Fewer enrollees, therefore fewer subsidies
 - Nineteen states not expanding Medicaid

The Affordable Care Act in Year 8—Impact on Employers

- **Cadillac tax looms as effective in 2020**
 - 40% tax on high cost health care plans
 - Guidance still needed on calculation and administration of tax
- **Employer mandate** remains in effect
 - ACA reporting rules
 - ACA penalties
 - Service tracking for “full-time employees”
 - Compliance obligations for affordability and minimum value rules
- **Individual mandate** still in effect, but not very effective
 - **13 MM 2015 income tax returns** claimed an exemption
 - **6.5 MM 2015 income tax returns** paid penalty
 - Average penalty of \$470
 - IRS will accept 2016 tax returns with Line 61 blank (health care coverage question)

Public Exchange Demographics (2014)

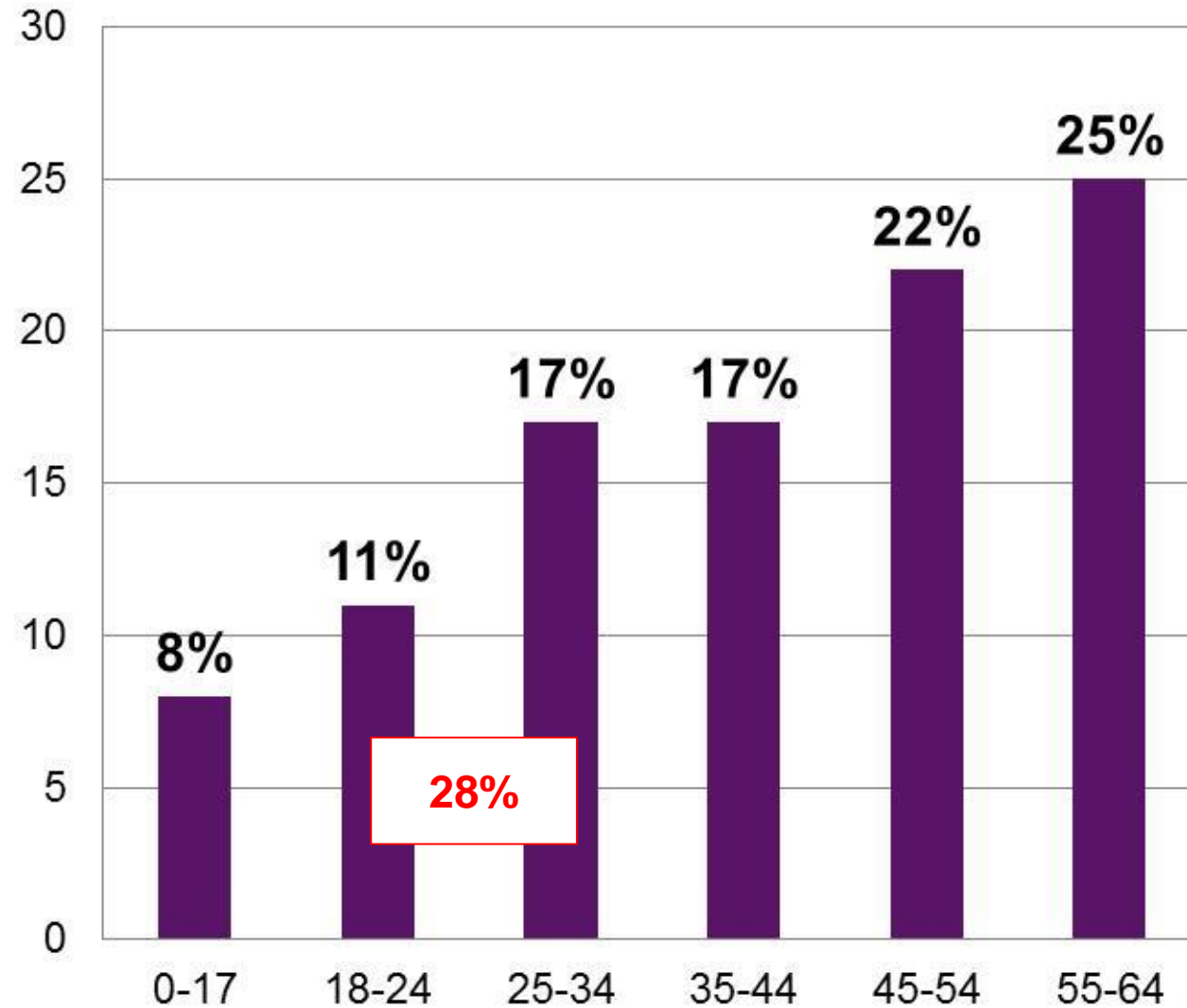
- **Age**
 - 70% over age 35
 - 55% over age 45
 - 24% ages 18-34
- **Male/Female Ratio**
 - 44%/56%
- **Enrollees Receiving Subsidies**
 - 79%
- **Plan Selection**
 - Bronze: 20%
 - Silver: 60%
 - Gold: 13%
 - Platinum: 7%
 - Catastrophic: 1%



Source: Department of Health and Human Services

Public Exchange Demographics (2015)

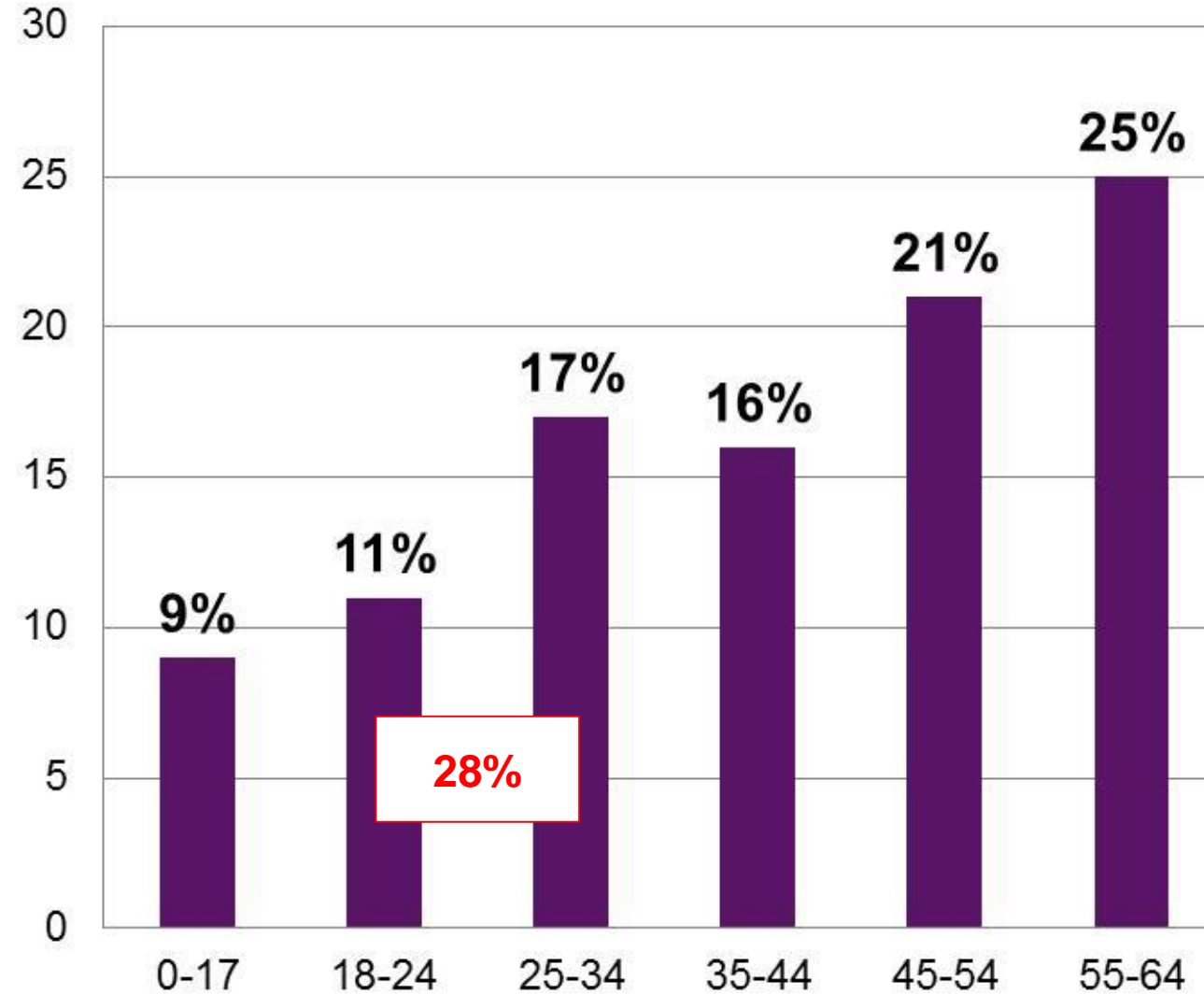
- **Age**
 - 64% over age 35
 - 47% over age 45
 - 28% ages 18-34
- **Male/Female Ratio**
 - 46%/54%
- **Enrollees Receiving Subsidies**
 - 86%
- **Plan Selection**
 - Bronze: 22%
 - Silver: 67%
 - Gold: 7%
 - Platinum: 3%
 - Catastrophic: 1%



Source: Department of Health and Human Services

Public Exchange Demographics (2016)

- **Age**
 - 62% over age 35
 - 46% over age 45
 - 28% ages 18-34
- **Male/Female Ratio**
 - 46%/54%
- **Enrollees Receiving Subsidies**
 - 85%
- **Plan Selection**
 - Bronze: 21%
 - Silver: 71%
 - Gold: 6%
 - Platinum: 1%
 - Catastrophic: 1%

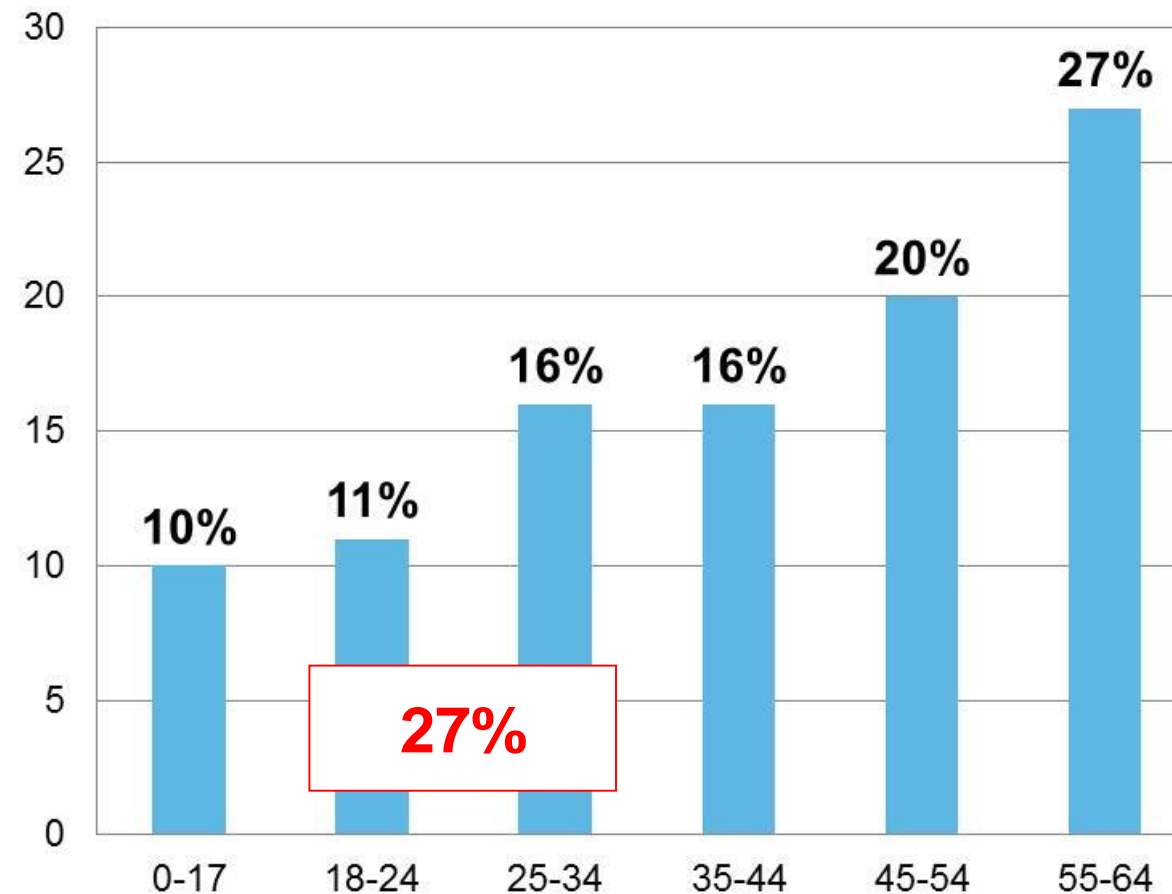


Source: Department of Health and Human Services

Public Exchanges (2017)—Still not enrolling enough “Young Invincibles”

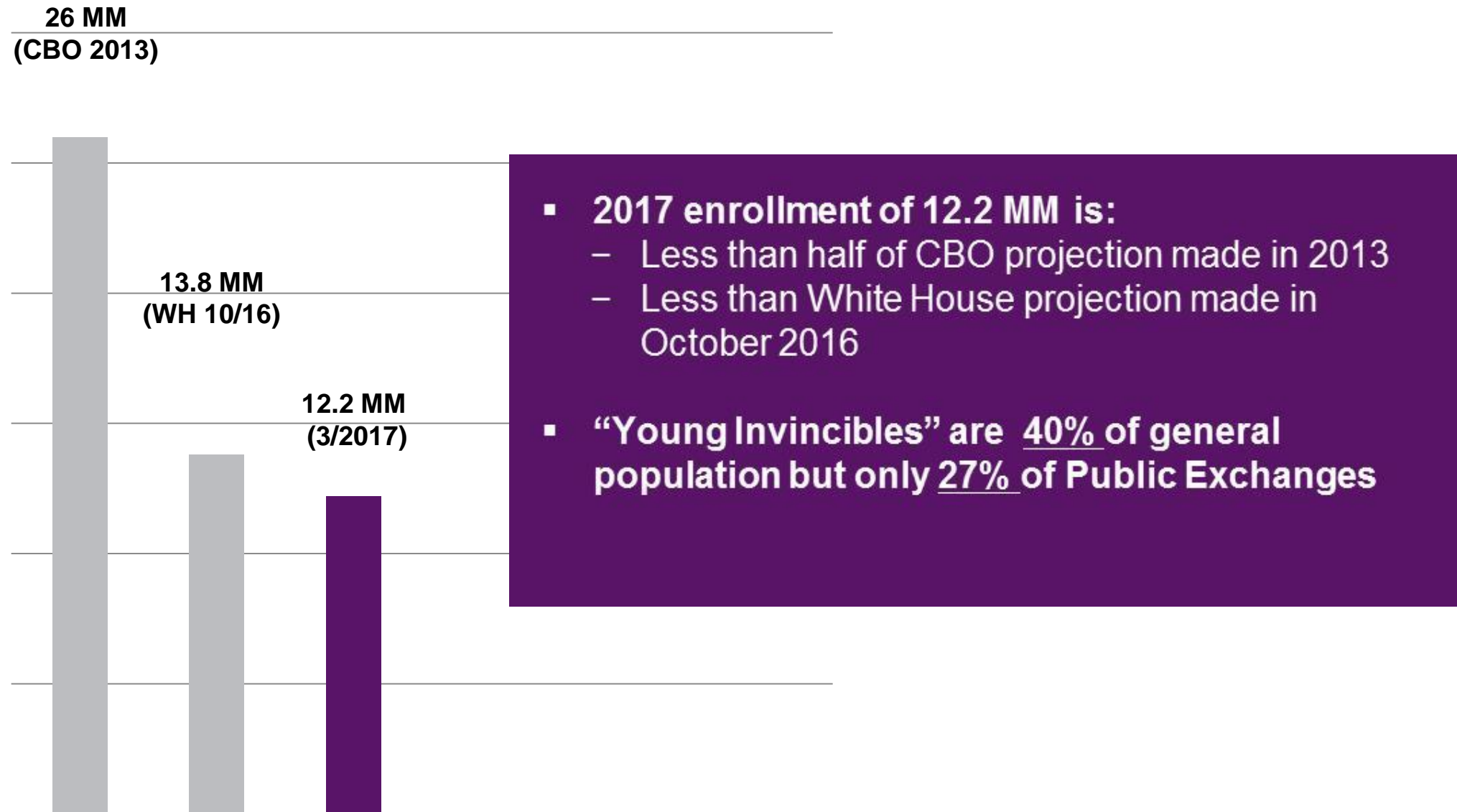
- **Age**
 - 63% over age 35
 - 47% over age 45
 - 27% ages 18-34
- **Male/Female Ratio**
 - 46%/54%
- **Enrollees Receiving Subsidies**
 - 83%
- **Plan Selection**
 - Bronze: 21%
 - Silver: 74%
 - Gold: 3%
 - Platinum: 1%
 - Catastrophic: 1%

“Young Invincibles” are **40%** of general population but only **27%** of Public Exchanges



Source: Department of Health and Human Services

The ACA in Year 8—2017 Enrollment (Projected v. Actual)



Insurers and the Public Exchanges

- Two of three market mechanisms for stabilizing public exchanges expired in 2016
 - Transitional reinsurance fee (expired)
 - Risk corridors (expired)
 - Risk adjustment mechanism (permanent)
- Insurers—Who's in, who's out
 - UHC withdrew in 2017
 - Humana will withdraw in 2018
 - Aetna CEO said ACA is in a “death spiral”
 - Aetna and Wellmark will withdraw from Iowa
 - Medica considering leaving Iowa
 - BCBS remains dominant insurer in Public Exchange
- CBO report says “individual market is stable” under ACA or AHCA

Trump Administration — Executive Actions



Delay ACA **implementation** “to the maximum extent permitted by law”

Trump Administration—Stabilizing the Public Exchanges

Final Regulations on Exchange Enrollments

- Shorter annual enrollment period
- Special enrollment restrictions
- Eligibility verification
- Premium payment requirement for enrollment
- Shorter premium payment grace period
- State insurance rate reviews
- Deadline for insurers to file for 2018 moved to June 21 from May 3



Trump Administration—Possible Administrative Actions

- Reduce advertising support (again) for next enrollment season for ACA health plans
- Drop lawsuit in *U.S. House of Representatives v. Price*
 - District court ruled Obama Administration illegally reimbursed insurers for cost sharing reductions that insurers paid to exchange enrollees
 - Congress did not appropriate funds for reimbursements
 - Trump Administration could drop appeal or not make CSR payments during appeal
 - Trump Administration has said it will continue to make CSR payments
 - Failure to make CSR payments threatens insurer participation in public exchanges
- Refuse to settle risk corridor lawsuits
 - Insurers are suing Administration to recover for losses incurred in selling policies on public exchanges
 - Trump Administration can hold to position that insurers are not entitled to reimbursements
- Give states latitude to impose work requirements on able-bodied adults to qualify for Medicaid

Next Steps for U.S. Senate

Senate GOP Health Care Work Group

- **Mitch McConnell** (Kentucky)(Majority Leader)
- **John Cornyn** (Texas)(Majority Whip)
- **John Thune** (South Dakota)(Senate GOP Conference Chair)
- **John Barrasso** (Wyoming)(Senate GOP Policy Committee Chair)
- **Lamar Alexander** (Tennessee)(HELP Committee Chair)
- **Mike Enzi** (Wyoming)(Budget Committee Chair)
- **Orrin Hatch** (Utah)(Finance Committee Chair)
- **Ted Cruz** (Texas)
- **Mike Lee** (Utah)
- **Tom Cotton** (Arkansas)
- **Cory Gardner** (Colorado)
- **Rob Portman** (Ohio)
- **Pat Toomey** (Pennsylvania)

Next Steps for Congress?

Status Quo 49%

ACA survives with minimal structural changes

Continued compliance efforts; increased cost-sharing; emerging provider network solutions; and consumer/patient engagement strategies

Repeal and Replace 51%

ACA repealed, replaced with GOP alternative

Determine impact of new law and implications for employer-provided health care

Repeal w/o Replace 0%

Congress repeals ACA without a replacement

Understand consequences of changes (good and bad); modify strategy; monitor political debate



Questions?

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