

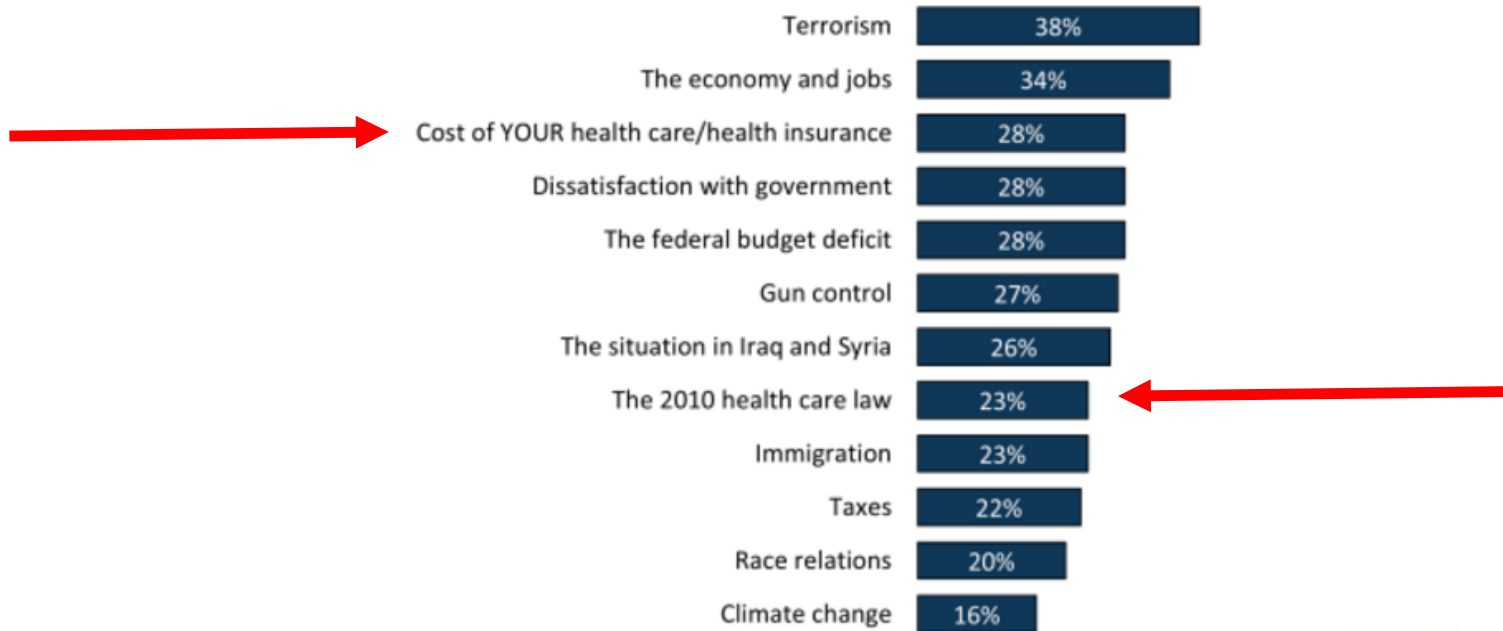


# Health Policy in the 114<sup>th</sup> Congress and 2016 Elections

Hon. Earl Pomeroy  
Senior Counsel  
Alston & Bird  
March 7, 2016



# Voters: Healthcare Is One of the Most Important Issues

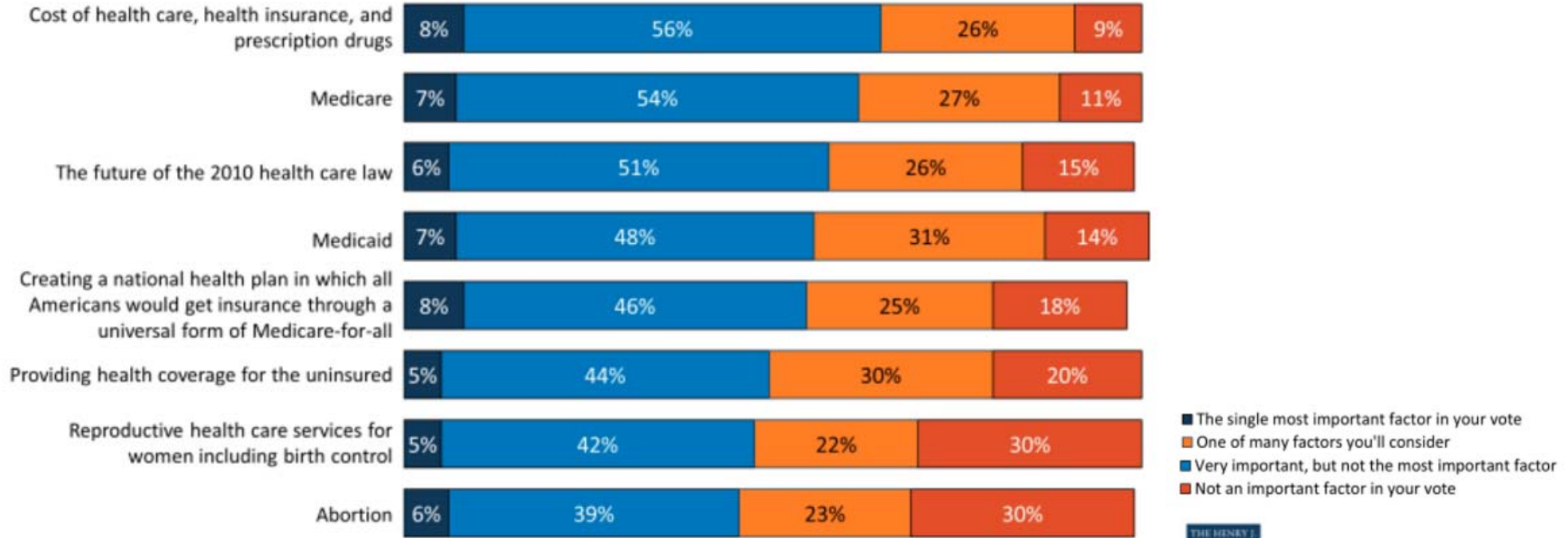


SOURCE: Kaiser Family Foundation Health Tracking Poll (conducted January 13-19, 2016)





# Public Concerns About Healthcare: No Issue Dominates

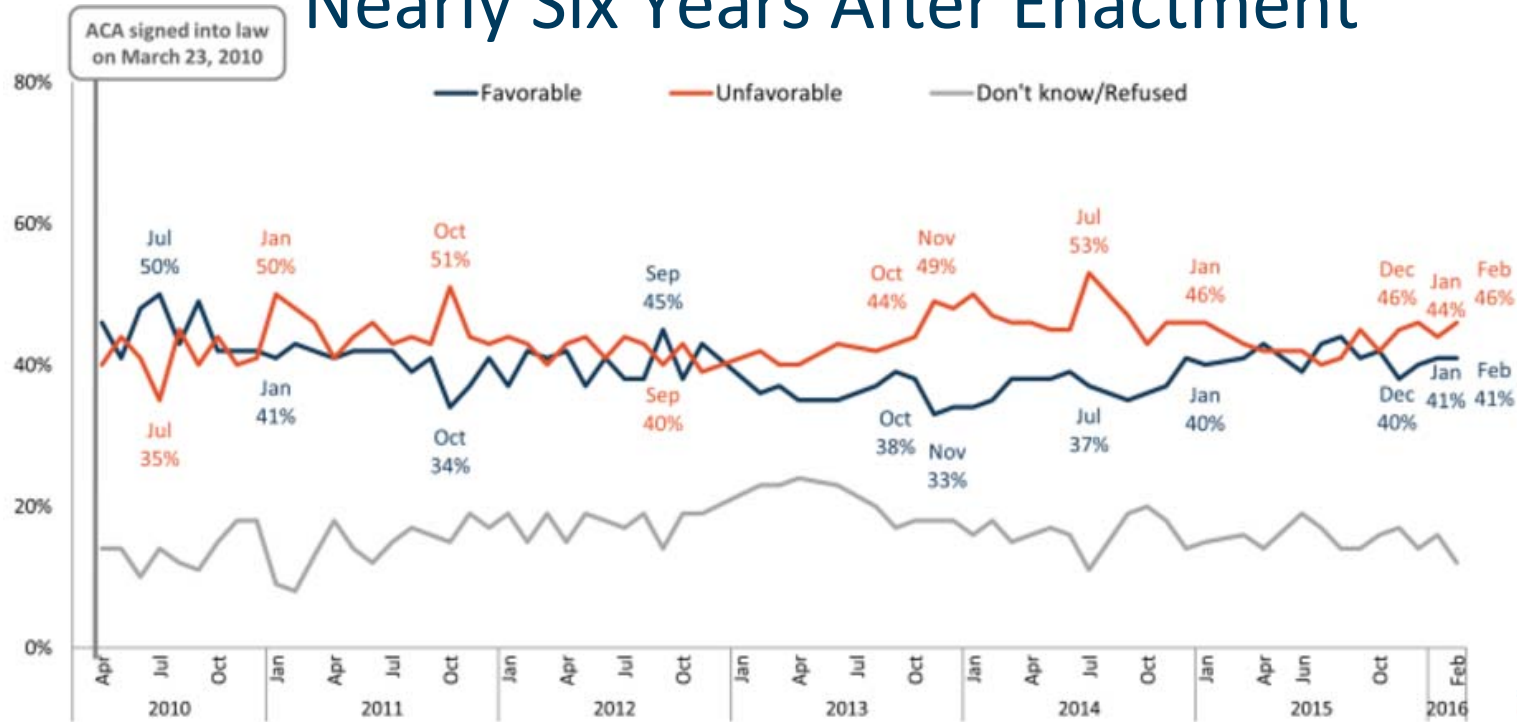


SOURCE: Kaiser Family Foundation Health Tracking Poll (conducted January 13-19, 2016)





# Public Opinion Remains Divided on ACA – Nearly Six Years After Enactment



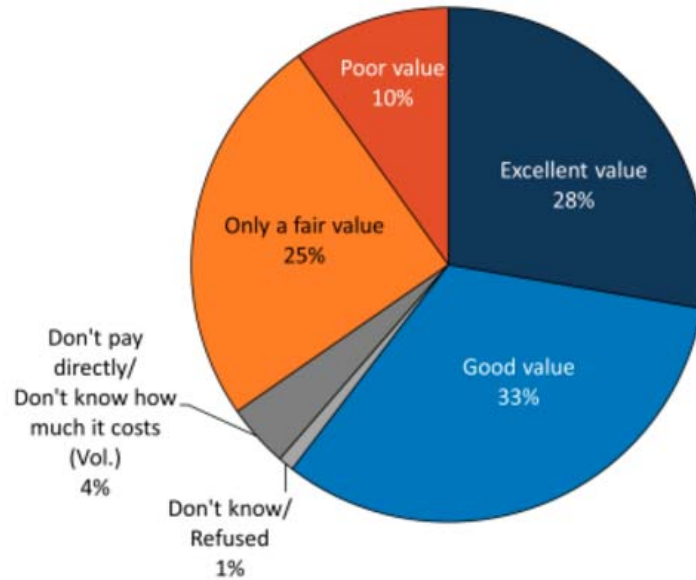
NOTE: Data not collected for Dec 2012, Jan 2013, May 2013, Jul 2013, Aug 2014, Feb 2015, May 2015, and Jul 2015.

SOURCE: Kaiser Family Foundation Health Tracking Polls





# Most Insured Americans Like Their Coverage: Greater Risk from Dramatic Changes in Health Policy Than Reward for Health Reform



SOURCE: Kaiser Family Foundation Health Tracking Poll (conducted January 13-19, 2016)



## Little-Known Fact:

Republicans and Democrats in Congress agreed on important health policy issues in 2015:

1. Value of Medicare Advantage plans
2. Repeal of Sustainable Growth Rate (SGR) cuts on Medicare reimbursement)
3. Delay of Cadillac Tax





## Driving Bipartisan Consensus

1. Reining in health costs through payment reform.
2. Moving away from Fee-For-Service in favor of:
  - a) Incentive payments aligned with potential savings.
  - b) Target interventions to help high-cost, high-need individuals avoid unnecessary hospitalization or emergency room use.
  - c) Aligning policies among public and private insurers.





# Elements of Payment Reform

- Capitated rate
- Value-based purchasing
- Blended, bundled, global payment models
- Financial reward
- Financial risk







March 3, 2016:

- 30% of Medicare A&B (excluding Medicare Advantage) tied to Alternative Payment Models
- Additional goals: 30% of entire health care system by 2016  
50% by end of 2018





“The success of these efforts will depend greatly on the ability to develop metrics that are viewed by a broad spectrum of stakeholders as accurate measures of performance—an endeavor that has made great progress but still faces substantial challenges.”

–Institute of Medicine, *Vital Signs: Core Metrics for Health and Health Care Progress* (Washington, D.C., National Academies Press 2015)



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## Most Significant Change to ACA to Date:

- Two-year reprieve from the Cadillac Tax  
*-HR 2029, Consolidated Appropriations Act, 2016*





# Health Care Under Debate in 2016 Election





# Principle points of health reform raised by GOP Presidential candidates

- Repeal ACA
- Affordability
  - Tax credits to help individuals purchase coverage on identical basis for employer-provided coverage and individually purchased
  - New limits on employee exclusion
  - Enhanced competition by sales across state lines
- Repeal coverage requirements
  - Minimum essential coverage
  - Prohibition of medical underwriting
  - Addition of subsidized high-risk pools
  - Mandated coverage
- Entitlement reform
  - Medicaid converted to block grants (not Trump)
  - Medicare evolves to defined contribution





## Will the Presidential campaign produce a debate on the risk shift inherent in likely GOP plan?

- Employee exclusion limits
- Medicaid block grants
- Medicare premium support reforms





# Sen. Sanders Sticks with Single-Payer

- Would create a federally administered single-payer health care program.
- Would cover the entire continuum of health care:
  - from inpatient to outpatient care; preventive to emergency care; primary care to specialty care, including long-term and palliative care;
  - vision, hearing and oral health care;
  - mental health and substance abuse services; as well as
  - prescription medications, medical equipment, supplies, diagnostics and treatments.

**MEDICARE** *for* **ALL**  
LEAVING NO ONE BEHIND.





# Clinton plan: Continue ACA and add to coverage

- Insurance coverage available through exchanges regardless of immigration status (no subsidy without documentation)
- Public option available as state option
- Tax credit up to \$5,000 to offset out-of-pocket and premium costs over 5% of income
- Ceiling exposure of 8.5% income for exchange participants
- Government action to reduce Rx drug costs
- State option for public option







## The begrudging, astonished view of Trump candidacy by D.C. political class:

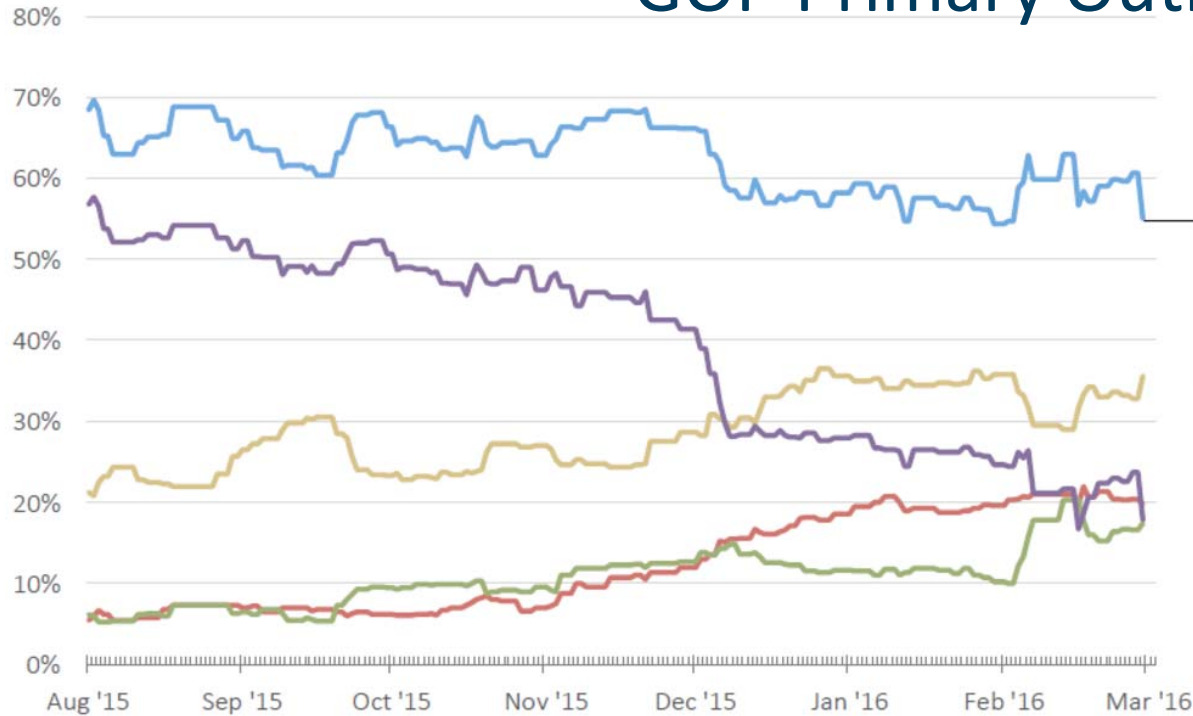
“I keep thinking Trump should be held back by his lack of qualifications, his erratic temperament, his questionable mental stability and his disinclination to work with others. But so far, these defects seem to be having little or no effect. Right now, Trump is on a trajectory to win...[the nomination].”

– Charlie Cook in *National Journal*, March 2, 2016





# GOP Primary Outlook



■ Combined Non-Trump  
■ Trump ■ Cruz ■ Rubio ■ Other

55% of Republican primary voters support candidates other than Donald Trump...but there is also little evidence that... voters will coalesce behind a single “anti-Trump” candidate.

Wilson Andrews, Kitty Bennett and Alicia Parlapiano, “2016 Primary Results and Calendar,” *The New York Times*, March 3, 2016.



## Legislative realities required for ACA repeal in next Congress

- GOP control of White House, House and Senate
- Filibuster-proof margin in Senate: 60 votes
- Simple majority in Senate can repeal using Budget Reconciliation Act, but limitations apply





# 2016 Budget Reconciliation Act reveals extent of repeal possible using this strategy

## Was repealed:

- Cadillac Tax
- Health insurance exchange subsidies (beginning 2018)
- Medicaid expansion
- Individual mandate
- Employer mandate
- Reinsurance, risk corridors and risk adjustment programs
- Medical device tax
- Medicare payroll tax increase for upper income taxpayers
- Net investment income tax increase (capital gains) for upper income taxpayers



# 2016 Budget Reconciliation Act reveals extent of repeal possible using this strategy

## Remained untouched :

- Prohibition on denial of coverage for pre-existing conditions
- Guaranteed issue and renewability
- Community rating
- Essential health benefits requirements
- Restrictions on annual/lifetime insurance limits of dollar value of coverage
- Actuarial value requirements for exchange plans
- Prohibition on rescission of coverage
- \$500 billion+ in Medicare payment cuts to finance coverage expansion



Thank you!

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