

The Latest ObamaCare Repeal and Replace Bill

Puerto Rico Health & Insurance Conference 2017

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Available Resources

EBG AND AFFILIATED ENTITIES

		 National Health Advisors
<ul style="list-style-type: none">Health care and life sciences law super-boutique founded 1973<ul style="list-style-type: none">125 health care attorneysNationwide reachLegal practice driven by federal and state law and regulation<ul style="list-style-type: none">Market AccessPolicyCompliance	<ul style="list-style-type: none">Health care and life sciences consultancy<ul style="list-style-type: none">PolicyRegulationPayment & ReimbursementMulti-disciplinary<ul style="list-style-type: none">Business StrategyPublic PolicyMedicine & ScienceData Security	<ul style="list-style-type: none">Bipartisan health care and life sciences consultancy dedicated to the provision of legislative and regulatory advocacyThe National Health Advisors are:<ul style="list-style-type: none">Legislative Policy ExpertsHealth LawyersFederal Regulatory Veterans

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The Future of the Health Care System

The Future of the Healthcare System

CANDIDATE TRUMP'S CAMPAIGN HEALTH PLAN

- Repeal the ACA
- Modify existing law that inhibits the sale of health insurance across state lines
- Allow individuals to fully deduct health insurance premium payments from their tax returns under the current tax system
- Allow individuals to use Health Savings Accounts (HSAs)
- Require price transparency from all healthcare providers so individuals can shop to find the best prices for procedures, exams or any other medical-related procedure
- Block-grant Medicaid to the states
- Remove barriers to entry into free markets for drug providers that offer safe, reliable and cheaper products
- <https://www.donaldjtrump.com/positions/healthcare-reform>

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TRUMP'S EXECUTIVE ORDER

- On January 20, 2017, President Trump issued an **Executive Order**:
 - Re-stated the Trump Administration's policy to promptly repeal the ACA
 - Directed HHS and other federal agencies to “waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the [Affordable Care] Act that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications.”
- The Executive Order did not grant any new legal or administrative authority to federal agencies, and instead directs how the agencies should be using their existing power
 - May include waiving, deferring, granting exemptions, or delaying elements of the ACA if the agency considers them to impose a fiscal burden

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LOOKING AHEAD – INPUT INTO REPEAL AND REPLACE

House

Senate

White
House

States

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AFFORDABLE CARE ACT: KEY SECTIONS

- **TITLE I: QUALITY AFFORDABLE HEALTH CARE FOR ALL AMERICANS**

- Individual and Group Market Reforms
- Health Benefit Exchanges
- Premium Tax Credits and Cost-Sharing Reductions
- Individual and Employer Responsibilities

- **TITLE II: ROLE OF PUBLIC PROGRAMS**

- Improved Access to Medicaid
- Medicaid Prescription Drug Coverage

- **TITLE III: IMPROVING THE QUALITY AND EFFICIENCY OF HEALTH CARE**

- Linking Payment to Quality Outcomes Under the Medicare Program
- Encouraging Development of New Patient Care Models

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AFFORDABLE CARE ACT: KEY SECTIONS

- **TITLE IV: PREVENTION OF CHRONIC DISEASE AND IMPROVING PUBLIC HEALTH**
- **TITLE V: HEALTH CARE WORKFORCE**
- **TITLE VI: TRANSPARENCY AND PROGRAM INTEGRITY**
- **TITLE VII: IMPROVING ACCESS TO INNOVATIVE MEDICAL THERAPIES**
- **TITLE VIII: CLASS ACT**
- **TITLE IX: REVENUE PROVISIONS**
 - Excise Tax on High Cost Employer-Sponsored Health Coverage
 - Imposition of Annual Fee on Health Insurance Providers
- **TITLE X: STRENGTHENING QUALITY, AFFORDABLE HEALTH CARE FOR ALL AMERICANS**

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THE PAUL RYAN PLAN 2016 – A BETTER WAY

- Coverage for everyone: Provides a refundable tax credit payment of \$5,700 for every family or \$2,300 for every individual, which is paid regardless of whether your employer provides health coverage. The plan protects existing benefits for seniors on Medicare
- Plans Like Members of Congress Have: Allows everyone to use this tax credit to select from a group of comprehensive health insurance plans that fit their specific needs—just like Members of Congress and federal employees do now
- Transparent Prices: Lowers costs by requiring insurance and health care providers to disclose prices and compete for our business if they want us to use our tax credit to buy their product. Those offering the best care at the best prices will attract more patients
- Portable Insurance: Makes health care insurance portable, as the tax credit is not tied to your employer and moves with you from job to job. Unemployed workers and the self-employed, who receive no benefit now, would still receive the tax credit
- No Cherry Picking: Prevents insurers from denying coverage for pre-existing conditions and subsidizes care for those deemed “uninsurable”

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RECENT SENATE REPLACEMENT PROPOSALS

- **Cassidy-Collins Bill: “Patient Freedom Act of 2017” (S. 191)**

- Provides 3 options, one of which allows states to keep the ACA as is
 - Other 2 options both repeal individual and employer mandate, reduce EHBs to only mental health and substance use disorder, and requires coverage for those with pre-existing conditions who maintain continuous coverage
 - Option 2: provides federal funding for programs like ACA subsidies and Medicaid expansion
 - Option 3: no federal funding

- **Rand Paul Bill: “Obamacare Replacement Act” (S. 222)**

- Repeals many ACA provisions (individual and employer mandate, required EHBs, MLR and other insurance mandates)
- 2-year period for those with pre-existing conditions to get coverage that would have to be continuously maintained
- Expands HSAs with \$5,000 tax credit per individual
- Removes exclusion of employer-sponsored plans from taxation

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DEMOCRATS DRAW THE LINE

- **Obama, Schumer, And Pelosi Reactions To Replace And Repeal**
 - In his final days in office, **Obama** went to Capitol Hill to rally Democrats to defend the ACA
 - Senate Minority Leader Chuck **Schumer** (D-NY) said that the Republicans' plan to repeal the ACA will “make America sick again,” creating chaos in the health care system and even affect private health insurance
 - House Minority Leader Nancy **Pelosi** (D-CA 12) has vowed to fight Republicans on the repeal and replacement effort

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INSURANCE INDUSTRY REACTIONS TO REPEAL AND REPLACE

- America's Health Insurance Plans' (AHIP) position:
 - “Replacing the individual mandate with strong, effective incentives, such as late enrollment penalties and waiting periods, can help expand coverage and lower costs for everyone”
 - But called on lawmakers to “ensure that people’s coverage – and lives – are not disrupted”
 - Open to health savings accounts and high risk pools
 - Encourages Congress to fund the reinsurance program through the end of 2018
 - Wants Congress to create strong incentives to buy insurance and to ensure the government continues to make good on payments it owes insurers under the ACA
 - Open to working with Congress on replacement plans for the ACA

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IMPACT OF REPEAL ON INDUSTRY

- **“Estimating the Impact of Repealing The ACA on Hospitals”**
 - A December 6, 2016 report by the Federation of American Hospitals (FAH) and the American Hospital Association (AHA) considered the impact on hospitals between 2018-2026 if Congress repealed the ACA and did not replace coverage
 - The loss of coverage would have a net impact on hospitals of \$165.8 billion with the restoration of Medicaid DSH reductions
 - The ACA Medicare reductions are maintained and hospitals will suffer additional losses of \$289.5 billion from reductions in their inflation updates
 - Full restoration of Medicare and Medicaid DSH payment reductions embedded in ACA would amount to \$102.9 billion

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THE IMPACT OF AGENCY APPOINTMENTS

- **Dr. Tom Price – Secretary of the Department of Health and Human Services (HHS)**
 - A leading advocate of curtailing federal involvement in health care
 - In favor of a free-market framework built on privatization, state flexibility, and changes to the tax code
 - Called for less spending on coverage and less regulation of doctors
 - Developed one of the more elaborate ACA replacement plans – known as the Empowering Patients First Act

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“EMPOWERING PATIENTS FIRST ACT” – PRICE’S ACA REPLACEMENT

- **Main Concept:** remove government from the doctor-patient relationship
- Other key concepts:
 - Offers fixed tax credits so people can buy their own insurance on the private market, starting at \$1200 per year, which rises with age. But, it’s not adjusted for income
 - Expands Health Savings Accounts
 - Utilizes high-risk pools
 - People with existing conditions can only be denied coverage if they didn’t have continuous insurance for 18 months prior to selecting a new policy
 - Limits on the amount of money companies can deduct from their taxes for employee health insurance benefits

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THE IMPACT OF AGENCY HEAD APPOINTMENTS

- **Seema Verma** – nominated to lead the **Centers for Medicare & Medicaid Services (“CMS”)**
 - Best known for her work on Medicaid issues and her close ties to Vice President-elect Mike Pence
 - She designed Indiana’s Medicaid expansion model – known as Healthy Indiana Plan 2.0 for then **Governor Mike Pence**
 - She has worked on other high-profile Medicaid expansion proposals and advised several Republican states on how to add conservative elements, such as health savings accounts and employment requirements, to their Medicaid programs
 - Verma built her reputation on Medicaid expansion through a section 1115 waiver program and was also instrumental in designing Indiana’s expansion

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VERMA'S IMPACT ON INDIANA MEDICAID – HEALTHY INDIANA PLAN 2.0

- After six years of demonstrated success with HIP 1.0, Indiana sought to replace traditional Medicaid for all non-disabled adults ages 19-64 and expand HIP to those who fall below 138% of the federal poverty level (FPL) through its HIP 2.0 Section 1115 waiver
- HIP 2.0's core objectives:
 - Make people healthier
 - Provide new coverage pathways for the uninsured
 - Promote employer sponsored health insurance
 - Create incentives for people to transition from public assistance to stable employment
 - Promote personal responsibility and engage participants in making health care decisions based on cost and quality

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Timing and Current Action

Timing and Current Action

AFFORDABLE CARE ACT – DOES IT HAVE A FUTURE?

- Original strategy was to delay the effective date of repeal for up to 3 years
- Now, strategy is to “repeal and replace” much more quickly:
 - On January 12 & 13, 2017, Senate (51-48) and House (227-198) voted to direct committees to draft repeal legislation by January 27
 - Speaker Ryan’s roadmap presented at Republican retreat in Philadelphia on January 25, 2017:
 - Fast-track ACA repeal bill for passage in March or April 2017
 - HHS take administrative actions to stabilize the insurance market
 - Pass any needed replacement legislation
 - Potential Issue: will need Democratic support in Senate to get to 60-vote threshold
- A complete repeal and replacement of the ACA is unlikely
 - There are many challenges that must be overcome before the ACA can be successfully repealed and replaced
 - It is more likely that certain sections of the ACA will be repealed or altered

House Republican Repeal and Replace Bill

DRAFT BILL UNVEILED ON MARCH 6, 2017

- The “The American Health Care Act” **repeals** the Affordable Care Act and **replaces** it with reforms President Trump laid out. Key provisions:
 - Repeals the ACA taxes
 - Eliminates the individual and employer mandate penalties
 - Continues prohibition on denying coverage; but new penalties for extended periods of non-coverage
 - Continues dependents permitted to stay on their parents’ plan until they are 26
 - Establishes fund for states to use to reduce health costs and stabilize exchanges
 - Changes Medicaid to a per capita system
 - Repeals Medicaid expansion funds after 2019; grants non-expansion states new uncompensated care funds
 - Expands the allowable size of Health Savings Accounts
 - Provides a monthly tax credit – between \$2,000 and \$14,000 a year – for low- and middle-income individuals and families who do not receive insurance through work or a government program

New Timeline for Repeal

DEFINITELY AMBITIOUS – IMPOSSIBLE GIVEN POLICY DIFFERENCES???

Current timeline proposed by Congressional Republicans

- Week of March 6 - Mark-up by Ways & Means and Energy & Commerce Committees
- Week of March 13 – Mark up by House Budget Committee
- Week of March 20 – Passage on House floor
- Week of April 3 – Passage by Senate

New Timeline for Repeal

DEFINITELY AMBITIOUS – IMPOSSIBLE GIVEN POLICY DIFFERENCES???

- Serious disagreement remains among Senate Republicans
- Assumption that legislation can pass the House of Representatives (Republican votes only)
- Senate needs 50 Republican votes to pass
 - Passing spending related provisions only with simple majority
 - Vice President Pence can break a tie in the Senate
 - 52 current Republicans in the Senate
- 3 categories of Republican opposition to House bill
 - Conservatives consider tax credits to be a new federal entitlement
 - Senators from states that expanded Medicaid want to preserve those programs
 - Moderate Republicans oppose cuts to Planned Parenthood
 - 8 Republican Senators on record opposing House legislation

New Timeline for Repeal

MARCH 9 UPDATE

- Ways & Means Committee completed mark-up early Thursday morning
- Energy & Commerce mark-up ongoing
- BlueCross BlueShield Association asks Congress to remove provision imposing a penalty for dropping coverage, arguing it would keep younger, healthier people out of the market
- AHIP wants tax credits based on age and income, instead of only age, and is concerned that Medicaid proposal could result in disruptions in coverage

Impact for Puerto Rico

MINIMAL IMPACT BUT SOME GOOD NEWS

- Puerto Rico excluded from legislation
 - PR was already carved out of most of the ACA's coverage and quality provisions
- No new Medicaid funds for Puerto Rico; no reform of Puerto Rico Medicaid program
 - Congress intends to address PR Medicaid separately this summer as part of reauthorization of the Children's Health Insurance Program
- Repeal of Health Insurance Tax (HIT)
- Currently HIT is used to fund exchanges and premium subsidies in the 50 states but the tax is applied to insurers in PR as well
 - House bill would repeal the HIT in 2018

ACA Provisions Unchanged by House Bill

UNLIKELY TO CHANGE – 60 VOTES NEEDED IN SENATE

- Medical Loss Ratio requirements – requiring at least 85% of plan revenue go to patient care, excluding administrative expenses
- Essential Health Benefits Requirements
- Eliminates lifetime and unreasonable annual limits on benefits, with annual limits prohibited in 2014
- Prohibits rescissions of health insurance policies
- Provides assistance for those who are uninsured because of a pre-existing condition
- Prohibits pre-existing condition exclusions for children
- Requires coverage of preventive services and immunizations
- Extends dependant coverage up to age 26
- Develops uniform coverage documents so consumers can make apples-to-apples comparisons when shopping for health insurance

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Opportunities for Change

Opportunities for Change

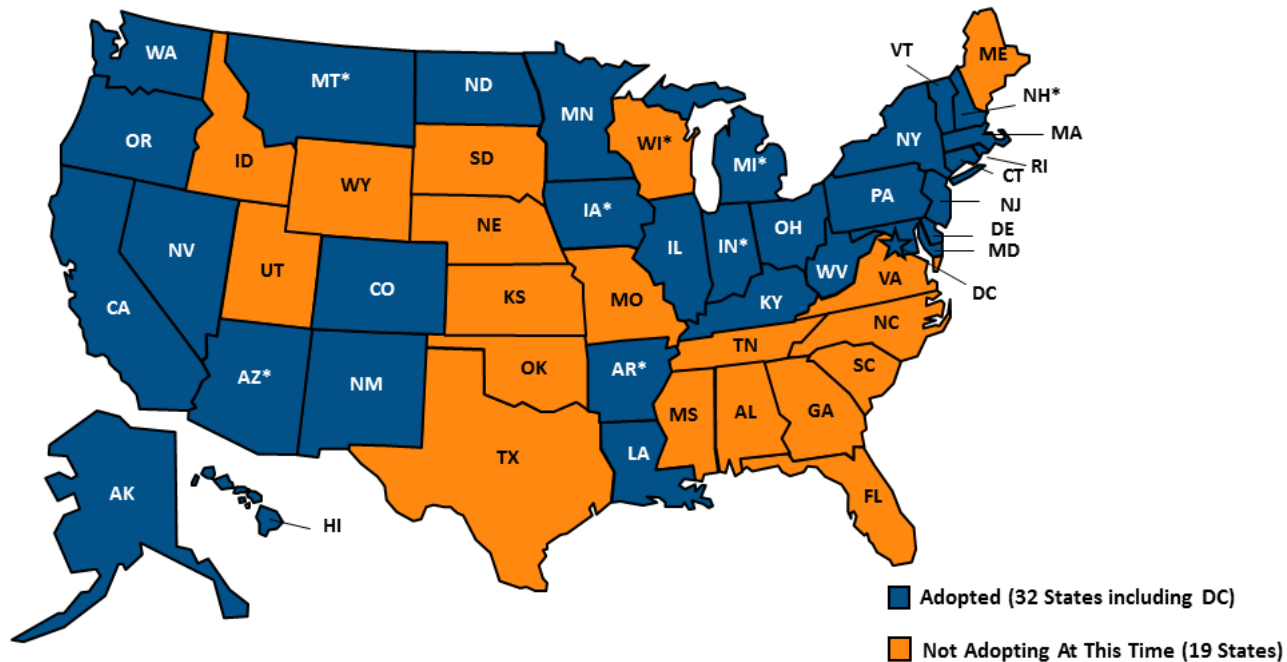
AREAS OF RISK & POTENTIAL FOR GROWTH IN MEDICAID

- Medicaid uncertainty
 - Speaker Ryan (R-WI 1) has suggested transitioning Medicaid from an entitlement program to a block grant program
 - Other Republicans have suggested allocating per capita payments to states to fund Medicaid
- Potential growth
 - Congress likely will not act precipitously to take coverage away from new eligibles
 - Some of the 19 states that did not embrace expansion (e.g., TN, FL, UT, and NC) previously could do so now
 - CMS could use its existing Section 1115 waiver authority to approve pending and new expansion initiatives

Opportunities for Change

LOOKING AHEAD -- MEDICAID EXPANSION

Current Status of State Medicaid Expansion Decisions



NOTES: Current status for each state is based on KCMU tracking and analysis of state executive activity. *AR, AZ, IA, IN, MI, MT, and NH have approved Section 1115 waivers. WI covers adults up to 100% FPL in Medicaid, but did not adopt the ACA expansion.

SOURCE: "Status of State Action on the Medicaid Expansion Decision," KFF State Health Facts, updated October 14, 2016.

<http://kff.org/health-reform/state-indicator/state-activity-around-expanding-medicaid-under-the-affordable-care-act/>



Source: Kaiser Family Foundation

Opportunities for Change

LOOKING AHEAD – REPUBLICAN GOVERNORS

Robert J. Bentley (AL)	Doug Ducey (AZ)	Asa Hutchinson (AR)	Rick Scott (FL)	Nathan Deal (GA)	Butch Otter (ID)	Bruce Rauner (IL)
Eric Holcomb (IN)	Terry Branstad (IA)	Sam Brownback (KS)	Matt Bevin (KY)	Paul LePage (ME)	Larry Hogan (MD)	Charlie Baker (MA)
Rick Snyder (MI)	Phil Bryant (MS)	Eric Greitens (MO)	Pete Ricketts (NE)	Brian Sandoval (NV)	Chris Sununu (NH)	Chris Christie (NJ)
Susana Martinez (NM)	Doug Burgum (ND)	John Kasich (OH)	Mary Fallin (OK)	Nikki Haley (SC)	Dennis Daugaard (SD)	Bill Haslam (TN)
	Greg Abbott (TX)	Gary Herbert (UT)	Phil Scott (VT)	Scott Walker (WI)	Matt Mead (WY)	

Opportunities for Change

LOOKING AHEAD – INPUT INTO REPEAL AND REPLACE

House

Senate

White
House

States

Opportunities for Change

TRUMP ADMINISTRATION EXPECTATIONS: PHYSICIANS

Opportunities:

- Pro-physician HHS leadership with focus on relieving regulatory and administrative burdens
 - Fixing risk adjustment with CMMI demos
 - More paths to qualify for APM track of MACRA
- Loosened Stark regulation: more co-investment, gainsharing options
- APMS that focus on physicians providing care out of hospital

Threats/Headwinds:

- MACRA cuts in out-years
- More downside risk for physicians in models qualifying as Advanced APMs under MACRA
- Select networks; crackdown on out-of-network providers
- Challenges to specialties with episode/bundling exposure
- Financial pressure on hospitals could impact employed physicians

Opportunities for Change

TRUMP ADMINISTRATION EXPECTATIONS: HOSPITALS

Opportunities:

- New organizational models for physician alignment to drive quality outcomes and cost management
- Bundled payments
- Joint ventures around ASCs, imaging, laboratory, behavioral health, post-acute care
- Privatization of the VA

Threats/Headwinds:

- ACA Repeal: more uninsured and uncompensated care
- Part A payment reform (e.g., further development of site-neutral payment policies)
- Competitive challenges from physician backed non-acute diagnostic and treatment facilities

Opportunities for Change

TRUMP ADMINISTRATION EXPECTATIONS: INSURERS

Opportunities:

- Individual market oriented insurers have opportunity to manage state high risk pools in various ACA replacement proposals
- Medicare Advantage to see continued enrollment growth, providing political protection from future cuts

Threats/Headwinds:

- ACA repeal upends individual and small-group markets
- If ACA preexisting condition and guaranteed issue continue, challenges for new market entrants
- Hospital price increases post-consolidation
- Provider and venture based entities may be too small to successfully manage risk and OON leakage

Opportunities for Change

TRUMP ADMINISTRATION EXPECTATIONS: COMPLIANCE / FRAUD & ABUSE ENFORCEMENT

Opportunities:

- Increased focus on fraud, waste and abuse in federal programs will drive creation of more compliance guidance and related laws (e.g., new AKS safe-harbors and Stark exceptions)
- Sally Yates leaving the DOJ, unclear whether Individual criminal and civil fraud liability for corporate wrongdoing likely to continue (Yates memo)
 - Complicated ability to seek out fraud

Threats/Headwinds:

- Always been supported on a bipartisan basis
- Trump repeatedly singled out fraud and abuse in federal health care programs, noting that enforcement could provide a windfall to the government

Opportunities for Change

NEW CONGRESSIONAL BALANCE

President Obama – January 20, 2009 – January 20, 2017

President Trump – January 20, 2017 – January 20, 2021

	112th Congress (January 2, 2011 – January 3, 2013)	113th Congress (January 3, 2013 – January 3, 2015)	114th Congress (January 3, 2015 – January 3, 2017)	115th Congress (January 3, 2017 – January 3, 2019)
Senate	47 Republicans 53 Democrats	45 Republicans 55 Democrats	54 Republicans 46 Democrats	52 Republicans <i>Must defend 8 seats in 2018 re-election. Of those, 6 are from states Trump won.</i> 48 Democrats <i>Must defend 25 seats in 2018 re-election. Of those, 10 are from states Trump won.*</i>
House of Representatives	191 Republicans 241 Democrats 3 Vacant	233 Republicans 205 Democrats 3 Vacant	247 Republicans 188 Democrats	241 Republicans** 194 Democrats***

* The 10 Democratic seats up for re-election in states Trump won include Florida, Indiana, Michigan, Missouri, Montana, North Dakota, Ohio, Pennsylvania, West Virginia, and Wisconsin.

**California and Georgia are each facing one potential vacancy in the House of Representatives that is currently held by a Republican.

***Only approximately 50 seats that may be competitive - where the House winner had 55% or less of the vote.