All this, unless the Texas ruling declaring the ACA unconstitutional is upheld by the Supremes[4] .

Even though we believe new legislation will replace a lot of what is currently left in the ACA, the sheer spectacle of the decision will surely knock the sector off its axis – including M&A.

But not for long.

Because, from an operational strategy perspective, those unshakeable health care policy initiatives demand that it continues.

You see, with all due credit to Monty Python,

"I'm not dead yet."

[4] If you follow Washington from SCOTUS to POTUS, watch how Chief Justice Roberts rules in the Texas case. He was the justice that "flipped" to uphold the law several years back. Moreover, with the controversy surrounding the appointment of Justice Kavanaugh, the oft cited politically conscious Roberts may want to send a signal to the public that the court is not, in fact, a political body. And yeah, we get the irony of a politically informed decision to demonstrate that the court isn't political. Hey, it's Washington.

THE BRAFF GROUP

The Braff Group is the leading mergers and acquisitions advisory firm specializing exclusively in health care services, including home health and hospice, behavioral health, pharmacy services, digital health, urgent care, health care staffing, home medical equipment and ancillary health care services.

Since being founded in 1998, The Braff Group has completed more than 325 transactions. According to Thomson Reuters, The Braff Group has repeatedly been ranked among the top 5 health care mergers and acquisitions advisory firms.

FOR MORE INSIGHT, CONTACT ONE OF OUR INDUSTRY EXPERTS:

Dexter W. Braff
President
Pittsburgh

Pat Clifford
Managing Director
HME & Pharmacy Services
Chicago
888-922-1834
pclifford@thebraffgroup.com

Ted Jordan
Managing Director
Behavioral Health
Atlanta
888-290-7080
tjordan@thebraffgroup.com

Nancy Weisling
Managing Director
Behavioral Health
Chicago
888-290-7237
nweisling@thebraffgroup.com

Mark A. Kulik, M&AMI
Managing Director
Home Health & Hospice
Atlanta
888-922-1838
mkulik@thebraffgroup.com

Brett Mankey
Managing Director
Digital Health
Pittsburgh
833-203-2781
bmankey@thebraffgroup.com

Bob Leonard
Managing Director
Home Health & Hospice
Ft. Lauderdale
888-922-1836
bleonard@thebraffgroup.com

Reg Blackburn
Managing Director
Pharmacy Services
Atlanta
866-455-9198
rblackburn@thebraffgroup.com

Deirdre Stewart
Director of R&D
Pittsburgh

412-833-1355
dstewart@thebraffgroup.com

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THE END OF THE HEALTH CARE WORLD AS WE KNEW IT:

TWO YEARS LATER

Despite repeated attempts to repeal and replace the Affordable Care Act, with Clinton a lock to win the 2016 presidential election, there was little concern that the landmark legislation would be in any jeopardy.

But then…

Shortly thereafter we consulted the great oracle of M&A and predicted the fate of the ACA under a Trump presidency (See marketALERT: "Trump, Sir Isaac Newton, Health Care Reform, and M&A" (November 17, 2016).

Right off, we declared that, in fact, the world would not end.

"We believe that for the most part, regardless of how they are packaged, [any] changes will effectively be more iterative in nature than a fundamental retrenching of the program."

Specifically, we predicted the following:

- **A reworking of funding mechanisms from government subsidies to tax credits (which could have the added benefit of being positioned as a tax cut).**
- **A pairing down of benefits included in "base" policies to whittle away at insurance premiums.**
- **Initiatives to expand health savings accounts (funded again, in part, with tax credits).**
- **The elimination – or severe curtailment – of the employer or individual mandate.**
- **Initiatives to encourage (require?) states to allow providers to compete freely across state lines.**
- **A repackaging of Medicaid expansion into earmarked "block grants."**
- **As for guaranteed issue a.k.a. "pre-existing conditions" (among several other popular provisions contained in the law), we remarked that "some of the core elements of the ACA are extremely popular with the American public" and would therefore be quite difficult to roll-back.**

Finally, we envisioned what impact, if any, the above would have in our core health care service verticals:

"…[B]**ehavioral health,** ***home health and hospice***, and ***pharmacy services*** M&A will largely whistle past repeal and replace." However, with hospitals potentially facing reductions in ACA financed admissions, we suggested that, "we may see a leveling off of otherwise elevated activity [in ***health care staffing***]" (we didn't weigh in on ***home medical equipment*** as activity in the sector was well into a decade of decline, nor ***digital health***, which we did not cover at the time).

So, two years later, how has it all played out – and how crystal was our ball?

You be the judge.

Reworking funding mechanisms to tax credits

In various versions of the House Bill to repeal the ACA, tax credits took center stage. According to *HealthAffairs*[1]:

> "The [ways and means] bill creates a new age-adjusted tax credit available for individuals purchasing insurance in the individual market beginning in 2020."

Although **passed by the House**, the bill, including these credits, famously received a **thumbs down in the Senate at the eleventh hour.**

Pairing down base (minimum coverage) policies

Again, according to *HealthAffairs*[2]:

"On August 1, 2018, the Departments of Health and Human Services, Labor, and Treasury (the tri-agencies) issued a final rule to dramatically expand access to short-term, limited-duration insurance coverage."

Nailed it.

[1] HealthAffairs Blog: "Examining The House Republican ACA Repeal And Replace Legislation" (Timothy Jost, March 7, 2017)

[2] HealthAffairs Blog: "The Short-Term, Limited-Duration Coverage Final Rule: The Background, The Content, And What Could Come Next" (Katie Keith, August 1, 2018)

Expanding access to health savings accounts

A theme we have seen throughout the debate on health care reform, while **the House passed HR 6199 and HR 6311**, which, among other things, nearly doubled the caps on contribution limits to HSAs, it appears that the bill has **stalled in the Senate.**

Elimination, or curtailment, of the Individual or Employer mandate

Technically, the individual mandate remains in place. However, it **effectively bit the dust when the penalty for not complying was eliminated** as part of President Trump's signature tax bill.

And although it has taken more hits than Rocky, the **employer mandate lives on.**

Insurance carriers to provide coverage across state lines

On October 12, President Trump signed an executive order allowing insurers to offer health care coverage across state lines. The catch? **The order applies only to "association" plans,** described by AHIP (America's Health Insurance Plans) as those plans that "enable small businesses to come together at an association level and pool their employees as a group. The goal? Taking advantage of the additional value and reduced administrative expenses that larger-group plans offer."

So, this one was **kinda, sorta, enacted**.

Medicaid converting to block grants

Not surprisingly, with block grants making repeated appearances in Speaker Ryan's multiple attempts to pass a budget, it was practically a given that they would pop up again—**and pass – in the house's** Sisyphean attempts to repeal and replace.

But in a vote that was as predictable as another presidential tweet, it **fizzled in the Senate**.

As for items we didn't predict, but you know, meant to, the administration tossed in a few other grenades in an attempt to blow up the ACA.

Among them, there was (a) the elimination of subsidies reimbursing insurers for lowering deductibles and co-pays for low-income enrollees, (b) severe cuts to advertising designed to encourage more potential beneficiaries to sign up, and (c) shortening the window for enrollment.

And then there was this:

Remember the elimination of the penalty for not complying with the individual mandate?

It turns out that this sleight of hand had far more impact than was likely anticipated.

You see, it is essentially the cornerstone for a **Texas federal judge's December 2018 ruling that could topple the ACA.** Summarized nicely in a piece appearing in the *New York Times*, the argument is that

> "with the penalty zeroed out, the individual mandate had become unconstitutional – and the rest of the law could not be severed from it."

Why?

The Judge ruled that absent the penalty, "the individual mandate requiring people to have health insurance 'can no longer be sustained as an exercise of Congress's tax power[3]'" (which, you may recall, was the lynchpin supporting the constitutionality of the penalty in the first place when it came before the Supreme Court).

Since then, the Judge has stayed his own order while the case works its way through various challenges.

Our early read on this? Even if the law is technically stricken, public pressure will mount to pass new legislation to reinstate much of what remains popular today (among others, guaranteed issue and Medicaid expansion), albeit, in different forms.

The market's read?

A bit more jaded – at least for now.

In the immediate aftermath of the judge's ruling, the S&P 500 Healthcare Index fell 11.5%. Since the initial jolt, the sector has gained back a good portion of what it lost and is now down only 4.1%.

So what effect have all these fits and starts had on health care services M&A?

Well, in technical terms, bupkis.

As illustrated in the accompanying chart, there was clearly no catastrophic fall-off of activity.

That said, if you haven't eaten and you're feeling a wee cranky, you might be inclined to make the case that since the election, volume is slightly down. However, with such a modest decline – and activity remaining at elevated levels – you'd be hard-pressed to conclude that the change is (a) significant, or (b) due to Trump's health care policies.

[3] New York Times: "Texas Judge Strikes Down Obama's Affordable Care Act as Unconstitutional" (December 14, 2008)

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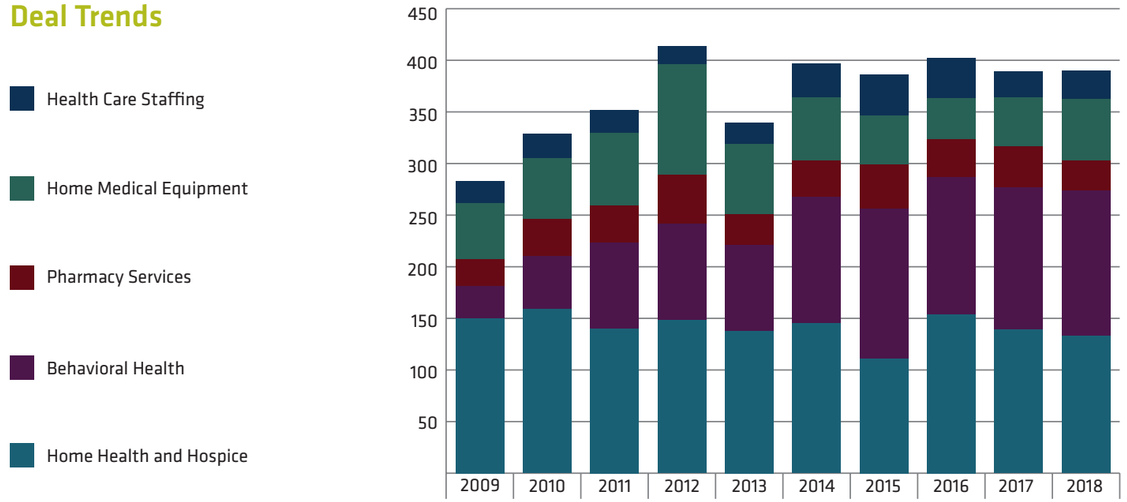
Health Care Services Deal Trends



So, what can we expect next?

With the House turning over, as sure as the sun rises in the East and Mr. Wonderful will propose a deal with royalties on Shark Tank, we will see a reverse reprise of the GOP's attempts to kill the ACA. This time, it will be the Dems that strut out bills to restore the ACA's luster (that the Senate will dispatch with nary a thought).

On a more productive note (if you AOK'd the ACA), Medicaid expansion will expand even further as a result of the mid-term elections. As detailed in an excellent post-mortem penned in *The Washington Post's* Health 202, as many as six more states may avail its citizens of this benefit.

- Ballot initiatives to expand Medicaid were approved in **Idaho, Utah,** and **Nebraska.**
- Democrats won gubernatorial races in **Wisconsin** and **Kansas**, two Republican helmed states that had balked at expansion and could very well reverse course.
- And then there's **Maine**, where voters had approved expansion in a 2017 ballot question, only to have it slow-walked to a stand-still by its Republican governor, Paul LePage. With a newly elected Democrat in office, it might actually be implemented.

So, big picture, legislatively, if uncertainty regarding the ACA played any role in tamping down M&A activity (and we don't think it did), it will be replaced by the certainty that nothing meaningful will happen until one party or another takes control of the White House and both chambers of Congress (with a filibuster-proof 60 seats in the Senate).

As for those 60 seats, the next Senate election isn't until 2020. But this time around, the map favors the Democrats (much like the most recent round favored the Republicans). But enough to flip 13 seats? Doubtful.

The result?

Another two years of the ACA limping along in its current form.

Another two years for it to become that much more entrenched.

And two years of relative market stability – the very conditions that boost both acquisition interest, and valuation.

Most important of all, the health care policy initiatives that have given rise to the beginning phase of a new wave of consolidation – notably alternative payment models that have replaced the single segment, national footprint consolidation strategy with a multi-discipline, regional approach – will almost assuredly remain in place. The reason? Because (a) they work, and (b) they don't draw the political ire from the Rs and Ds.

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