

Predictions, Presumptions and Prognostications: A Look Ahead at 2009 and MemorialCare's Role in Health Care Reform

The long and protracted 2008 elections are over. The 111th Congress and the state legislature have both taken office and have begun their preliminary work for the new session. By any measure, 2009 will offer many prospects to alter the business of health care and, in turn, the manner in which service is provided. On a federal level, a robust, vigorous debate on health care reform is expected. State issues such as seismic relief and workforce development will be equally as impactful on our system. The unique relationship between our senior leadership, CEOs, and the campus-based government relations team affords MemorialCare a distinctive opportunity to offer our perspective on family centered, evidence-based, best practice medicine.

The Politics of it All

The state elections did not create significant changes in the legislature. The Senate remains at 25 Democrats to 15 Republicans (there is currently one vacancy in a safedemocratic seat). There are 40 Senate seats making a simple majority 21 and a 'super majority' 27. Democrats still need at least two Republicans to cross party lines and vote for any bill with a fiscal impact >\$150K, including the state budget. This proves to be an arduous task each budget season, and the current fiscal crisis is no different. Democrats are committed to fixing the current budget deficit through a combination of programmatic cuts and revenue enhancements (taxes and fees). Republicans have been equally committed to balancing the budget without any enhancements. Currently, there is some movement to change state law to allow a simple majority rule on fiscal matters. Republican leadership has expressed some early interest in debating the issue. SCA1 (a Constitutional Amendment eventually requiring voters' approval) would allow a simple majority if the current budget proposal does not exceed five percent year over year growth. California remains one of only three states requiring a two-thirds majority.

The 19th Senate District race in Santa Barbara was one of the costliest in history and the outcome was a great relief to our industry. Republican Tony Strickland prevailed over Democrat Hannah Beth Jackson by 857 votes out of 414,000 cast—less than one vote per precinct. Mr. Strickland was a strong supporter of hospital issues when he served in the Assembly. Had Ms. Jackson won, Dems would have only needed one Republican vote on any fiscal matter. Additionally, Mr. Strickland is much better aligned with our industry on labor and workforce issues.

MemorialCare has welcomed one new Senator to our delegation. Senator Mimi Walters (R – 33SD, replacing Dick Ackerman) has been a long-time friend to our system. Senators Tom Harman (R – 35SD) and Alan Lowenthal (D – 27SD) were re-elected to their last four-year terms.

Democrats have picked up three seats in the State Assembly, bringing the total to 51-29. A simple majority is 41 in the 80-member body, with a super majority of 54. Democrats still need three Republicans to cross over. To our industry's advantage, several freshman members of the Democratic caucus are strong, business-centered, fiscally conservative leaders. Their votes, of course, will tell their stories.

There are two new Assembly members representing MemorialCare. Diana Harkey (R – 73AD) covers Saddleback Memorial, both Laguna Hills and San Clemente; Bonnie Lowenthal (D- 54AD) represents Long Beach Memorial and Miller Children's Hospital. Bonnie was a strong supporter of our Miller Children's Pavilion.

Congress, as has been widely reported, is another story. President Obama's victory carried strong coat-tails for Democrats in both Houses. The final Electoral College tally was 365 for Obama and 173 for Senator John

McCain (270 is needed for victory). There are 435 seats in the House of Representatives, with 218 votes required to pass any legislation. House Democrats gained 21 seats in the election, bringing their total to 257-178. The House has shifted 51 seats since the 2004 Congressional elections. The Democratic caucus seems to be more liberal than the one it replaced.

There have already been a few power struggles between the left and moderate wings of the party. Speaker Pelosi will need to mediate any caucus fights before they wind up on the Floor, or in the press. The left wing of the party remains very loyal to organized labor. The more moderate wing attempts to reach out to businesses and is very fiscally conservative. These Blue Dog Democrats, as they are known, including Representative Loretta Sanchez in the Anaheim area do not vote in lock-step with the democratic caucus. Laura Richardson, representing Long Beach has strong union support and has shown her loyalty to Long Beach Memorial and Miller Children's Hospital on many occasions.

Republicans are faced with similar in-fighting. Given the major losses in the last two election cycles, the party is trying to re-define itself. The question at hand—how do they do so? Moderate Republicans are attempting to broaden the base, and create a 'bigger tent'. Conservatives are blaming the losses on the moderates and claiming that the messages of smaller government, lower taxes, and strong borders have been lost in an attempt to gain votes. This struggle can be seen very clearly in the Republican National Committee Chair elections. Absent a national leader at this time, the Republican Party is struggling to find a clear, concise voice.

The U.S. Senate has also experienced a major shift in party alignment.

While the 2006 elections ended with a 49-49 tie, two Independents chose to caucus with the Democrats giving them a 51-49 lead and allowing them to set the agenda. Trivia point: If it had ended in a 50-50 tie, Vice President Cheney would have exercised his position as Senate President and broken the tie in the Republican's favor. The 2008 election was much more decisive. Democrats gained eight seats putting the Senate at 59-41, assuming that the Independents continue to caucus with them. As of this writing, the Minnesota race remains undecided, subject to a court ruling, though the Election Commission has certified Democrat Al Franken as the winner. This final vote tally is very important as 60 votes are needed for cloture—a parliamentary rule which ends the debate on any issue. Democrats failed to reach that magic number. This should prove valuable to our industry on several policy issues.

MemorialCare's Congressional delegation remains unchanged; Democrats Laura Richardson and Loretta Sanchez represent Long Beach Memorial and Anaheim Memorial respectively, with Republicans Dana Rohrabacher, John Campbell and Ken Calvert representing Orange Coast Memorial, and Saddleback Memorial, Laguna Hills and San Clemente.

Issues in 2009

Federal Issues

A recent Kaiser Family Foundation Health Tracking Poll revealed 62 percent of registered voters (RV) believe it is "more important than ever to take on health care reform" but 34 percent believe "we cannot take in health care reform right now" (n=1,217 RV). Health care reform is now tied with the war in Iraq at 13 percent as the most important issue in voting for a president; the economy ranked #1 at 62 percent. Of those polled, 50 percent held that making health care and health insurance more affordable was most important. Twenty-three percent of Americans want to see health insurance coverage for the uninsured expanded, while only six percent wishes to see the country spend less.

President Obama campaigned heavily on the need for health care reform. To that end, he has also created a new White House Office of Health Reform to work along with the incoming Secretary of Health and Human Services. Initially, the president nominated former Senator Tom Daschle as Secretary. Mr. Daschle had spent 26 years in Congress and knows the legislative process well, a skill which will be much in demand as the various

reform plans are debated. Daschle subsequently withdrew his name from consideration, and Obama has promised to fill the vacancy shortly with an equally well qualified candidate. The importance of this work lies in the ongoing commitment to reform the delivery system and ensure providers are reimbursed fairly and responsibly.

Obama considers health care “an emergency” and directly related to the current economic crisis. He has often said that the economy will not recover unless we reform the way health care services are delivered. As he announced the Daschle nomination in December, Obama stated...“it’s not something we can sort of put off because we’re in an emergency... this is part of the emergency.” In his inauguration speech, Mr. Obama declared, “We will restore science to its rightful place and wield technology’s wonders to raise health care’s quality and lower its costs”.

Few details are known about the administration’s plan to reform the delivery system. A comprehensive reform plan is not expected until the 3rd or 4th quarter of 2009. However, the president mentioned several priorities throughout the campaign:

- Expanding eligibility for Medicaid (Medi-Cal in California) and the State Children’s Health Insurance Plan (SCHIP: Healthy families in CA). Congress has passed SCHIP expansion and the president signed the bill on February 4, 2009. The program is expanded to cover nearly 11 million—mostly low-income children, reducing the total uninsured children in America by half. The measure will be paid primarily by increasing the federal tax on cigarettes by 61 cents. SCHIP was the president’s first health care related bill.
- Pay or Play mandate. This provision would require large employers to provide health coverage to their employees or pay a specified percentage of health benefits to a pool in which employees may purchase coverage. This is very similar to Governor Schwarzenegger’s health care reform proposal, which MemorialCare and the California Hospital Association (CHA) strongly supported. The president does not support an individual mandate.
- Guarantee issue. Insurance plans would be required to cover all pre-existing conditions, and would be prohibited from ‘cherry-picking’ potential enrollees.
- The creation of a National Health Insurance Exchange which would sell health coverage to individuals and families who do not have access to employer sponsored insurance.
- Coverage for children. The president supports mandated coverage of children and young adults up to 25 years. In contrast, he does not support mandating adult coverage or single-payer universal care.
- Comparative Effectiveness. An independent institute would be established to guide reviews and research. MemorialCare is well equipped to offer the expertise of our Best Practice Teams.
- The campaign estimated costs at \$50-60 billion annually. The Lewin Group estimates \$1.6 trillion over 10 years.
- Prior to debate on the president’s health care reform platform, Congress will be discussing the elements listed above, among others, within the context of other reform bills.
- Senator Max Baucus (D-Mo) is Chair of the Senate Finance Committee and has authored a bill he calls “A Call to Action: Health Reform 2009”. Contrary to the president, Baucus does support individual mandates. His plan would cover all Americans; it allows individuals aged 55-64 to buy-in Medicare and expands Medicaid. Tax credits would be made available to small employers who purchase insurance for their employees. Health Information Technology (HIT), pay for performance, guaranteed issue, and quality improvement are also included. No cost estimates are available.

- Representative Pete Stark is Chair of the Health Subcommittee of the House Ways and Means Committee and has introduced the AmeriCare Health Care Act. This bill creates a new federal entitlement, which will provide universal coverage and will be modeled after Medicare. Individual and employer mandates are included.

Clearly, stimulating the economy is of primary importance to the president and the public. Following weeks of intense debate and negotiations, Congress has passed H.R.1, the president's stimulus plan on a near party-line vote. There were no Republican votes in the House, where as explained, Democrats hold a clear majority. Three Republicans were needed to pass the bill out of the Senate. Moderate Republicans Snowe, Collins and Specter broke ranks with their caucus and drafted a less expansive package of personal income tax cuts, tax incentives aimed at business and programmatic spending. The \$789 billion American Recovery and Reinvestment Act of 2009 was signed by the president on February 17. There are many elements of the Act which will potentially benefit California, our industry, and MemorialCare.

Federal Medical Assistance Percentages (FMAP):

FMAP formula calculates the federal match to our Medi-Cal contribution. The Act will potentially increase the federal match by \$87 billion. These funds are intended to increase Medicaid reimbursements to hospitals, physicians and other providers. The bill does not include a Maintenance of Effort provision which would mandate each state to use these funds for the purpose intended. This omission has allowed Governor Schwarzenegger to apply these funds directly to the state's general fund to begin closing the current \$42 billion gap. In an effort to continue building a strong working relationship with the governor, CHA has chosen not to oppose this decision in the hopes that other avenues for increased reimbursements will be made available to hospitals.

Consolidated Omnibus Budget Reconciliation Act (COBRA):

COBRA gives workers and their families who lose their health benefits the right to choose to continue group health benefits provided by their previous group plans for a specified period. A recent analysis by The Commonwealth Fund found that only nine percent of eligible unemployed workers took up coverage under COBRA in 2006, the last year figures are available. It is estimated that a one percent increase in the unemployment rate creates one million new uninsured. Studies have concluded that absent a medical home, the uninsured tend to delay care. Ultimately, this population will wind up in MemorialCare's and others' emergency departments seeking care for ailments which might have been prevented with minimal preventative care. The act seeks to expand COBRA by subsidizing 65 percent of premiums for up to nine months. Additionally, persons 55 and older or those with 10 years of tenure or more at their jobs would be able to continue COBRA until they either find a new job that offers coverage, or they reach age 65 and are Medicare eligible. This provision may have a significant impact on our ED cases.

Health Information Technology (HIT):

Of all the economic and health care-specific issues proposed by the administration and Congress, none holds any greater impact for our enterprise than HIT. MemorialCare has a very distinctive and respectable story to tell: the creation of one of the first (if not the first) physician-led evidence based Best Practice Teams; extraordinarily productive and precise launches of our electronic medical records (EMR) system, MC*21; and the commitment to take the next logical step—Ambulatory Electronic Medical Records (AEMR). As proven by MemorialCare, HIT increases efficiency, reduces costs, and reduces medical errors. As part of the \$789 billion plan, the House has approved \$19 billion for use in EMRs. These funds will probably be appropriated to the states and used as 'block grants' for hospitals and physicians to access. Under the HIT provision of the Act, hospitals would be eligible for payments of at least \$2 million beginning in FY 2011 if they install an EMR; physicians would be eligible for up to \$65K. In light of the ongoing debate over Medicare physician payment, some members of the Republican caucus are concerned about this particular provision. These members are

favoring a “fix” to the Sustainable Growth Rate, the very complex formula used to calculate physician reimbursement that runs a sizeable deficit each year.

Taking Obama’s commitment to HIT to the other extreme, hospitals and physicians would be subject to reductions in Medicare reimbursements beginning in 2016 if they do not implement EMRs. Of utmost importance in this debate is the question of interoperability. Indeed, the administration and members of congress agree that offering financial assistance to providers such as MemorialCare without overseeing a national plan to ensure each system can interact with others would be fruitless and a waste of taxpayers’ dollars. MemorialCare continues to advocate for full interoperability through our government relations team, physician integration and local HIEs (Health Information Exchanges) and RHIOs (Regional Health Information Organizations). As we well know, how we get there is complicated.

The HIT provision is not without its own controversy. There had been language debated which would strengthen privacy protections for patients and increase penalties for improper disclosure and prohibitions on some uses of the records. Many health care industry groups opposed this language for being too restrictive and feared that it might prevent routine uses of medical records. Due to strong advocacy work by the Health Care Leadership Council of which MemorialCare serves as a member, new and useful language was agreed upon. Potential language restricting hospitals soliciting donations from grateful patients was amended allowing for a simple “opt out” of further fundraising communication.

Comparative Effectiveness

The Act appropriates over \$1 billion for the federal government to compare effectiveness of different treatments of the same illness. Comparative Effectiveness, as it is known throughout the health care industry is precisely what MemorialCare’s Best Practice teams have developed over the past 12 years. Our physician-led Best Practice Teams study and debate the value of differing pharmaceutical treatments, medical devices and physical treatments. The teams’ findings become MemorialCare’s protocol. Federal researchers through the National Institutes of Health and other agencies will be studying the same issues that our Best Practice teams are considering. MemorialCare has developed the clinical expertise through physician integration and is committed to working with the administration on our lessons learned.

There is one other federal issue of utmost importance to our system—a labor sponsored bill known as “card check”. The Employee Free Choice Act would eliminate the secret ballot at any organizing election. Employees may choose to join a union by simply checking a box on an index card and signing it. All of this occurs in public where any one can have immediate influence on the employee. A similar bill passed the House in the previous Congress, but did not receive enough votes in the Senate to continue debate (goes to the point above regarding the need to secure 60 votes in the Senate to pass legislation). It has been argued that transcending the important issue of respectful labor relations, this bill would eliminate the fundamental right to vote privately.

State Issues

Budget

Clearly, the number one issue facing our state, and in turn each industry, is the mounting budget crisis. We are barely midway through the 2008-09 fiscal years, and the state is experiencing a budget deficit approaching \$14.8 billion. If you include the current and budget year though June 2010, the state is facing a record breaking \$42 billion deficit. The current year budget included 10 percent reductions in Medi-Cal reimbursements to all non-contracting hospitals. In our system, this includes Anaheim Memorial, Orange Coast Memorial and Saddleback Memorial. The Governor and Controller John Chiang have announced that the state will literally run out of cash in February. Public works projects have been slowed or stopped, furloughs for state employees have been ordered and many vendors and service providers will not be paid. Democratic and Republican leadership continue to negotiate on a regular basis and another vote is expected in mid-February. While further cuts in

reimbursement are not on the table (at this date), the administration and legislature are debating many structural changes to the delivery system which will affect our industry and MemorialCare.

Medi-Cal eligibility will certainly be tightened leaving many more Californians without coverage and lacking a medical home. Many optional benefits including adult dental will be eliminated. As indicated above in reference to COBRA, MemorialCare can expect a jump in ED cases if these and other reductions are codified.

Seismic Retrofit

Compliance with Senate Bill 1953, the seismic retrofit mandate has grown to be an even greater burden on our industry due to the current fiscal crisis. The tightened credit market has rendered large-scale borrowing virtually nonexistent. MemorialCare will be working closely with CHA to secure legislation to modify the seismic deadlines and push them back as far as possible. For both organizations, this remains the number one state policy issue for 2009. In addition, we will work with CHA to obtain financial support for those hospitals unable to meet the mandates. Bi-partisan support is needed to shift the retrofit deadlines. To that end, MemorialCare has been working with both Republicans and Democrats in our districts to ensure success. So far, members from both sides of the aisle agree that the current deadlines are unreasonable and have expressed willingness to work with us to address this issue.

Quality Improvement

In 2008, MemorialCare once again stood as a leader in our industry during the debate on testing and reporting of Methicillin Resistant Staphylococcus Aureus (MRSA). We offered constructive amendments based on proven clinical facts which would have protected public health from the spread of MRSA, but in a more fiscally responsible way. There is little doubt that the legislature will propose new bills that burden hospitals with redundant and many times unnecessary, reporting mechanisms that do not protect the health and well-being of our patients and their families. And, once again, our Best Practice Teams and Physician Society will be prepared to offer expert opinions and testimony.

Physician-Hospital Effectiveness

CHA has committed to work with organizations representing physicians to build better working relationships. MemorialCare addresses these issues on a daily basis through our Physician Society and the physician-led Best Practice Teams. We remain the only system in the state that travels to Sacramento with our physician leaders to advocate with one voice on behalf of our communities. We meet annually with the California Medical Association to discuss issues of mutual concern. MemorialCare has successful collective experience in engaging physicians and is willing to help CHA and other hospitals replicate our programs.

The New Players

Secretary of Health and Human Services

President Obama has made a commitment that his administration will work in a bi-partisan way and govern from the “center” honoring the principles and concerns from both parties. As mentioned earlier Mr. Daschle has withdrawn his nomination for Secretary of Health and Human Services. However, many of his ideas for reform have been acknowledged by the administration as plausible and sensible, including the possibility of a federal health care board. Health care advocates anticipate many of Daschle’s ideas as explained below will be incorporated in health care reform in 2009.

Daschle recently wrote a book entitled “Critical: What We Can Do about the Health Care Crisis” in which he describes his framework for reforming the system. As with many of his Democratic colleagues, he does support individual mandates, employer pay or play, individual tax credits and the creation of a purchasing pool. There is one tenet of his plan which is rather unique—the creation of a Federal Health Board modeled loosely on the

Federal Reserve System. This board would be a quasi-governmental organization and consist of clinicians, health benefit managers, economists, researchers and “other respected experts” (at the moment we must assume he includes hospital operators). Criteria for membership on the board would include stature in the community, knowledge, and health care experience. Each governor, appointed by the president, would be subject to Senate confirmation for a 10-year term. Regional boards would be set up to debate local issues and roll-up to the national board.

Daschle is leaving the powers of the board to Congress, but believes that it should include overseeing the expansion of the Federal Employees Health Benefits Program (the private health plans offered to federal employees and members of Congress) to the private sector; researching and making recommendations on evidence-based, best practice medicine; creating incentives for providers based on health outcomes— pay for performance; and promoting quality and cost savings through transparency. The latter element is one that had been debated before and potentially offers complications for providers, but can indeed support the public in making educated decisions if promoted properly.

The formation of this health board was not discussed at the January 9 hearing. It is important to remember that President Obama did not advocate a health board in his campaign. Perhaps the questionable effectiveness of the Federal Reserve Board, in light of the economic meltdown, might curtail further debate.

Secretary of Labor

President Obama has selected Los Angeles Democratic Congresswoman Hilda Solis as Secretary of Labor. Solis was elected to Congress in 2000 and had previously served in the California State Assembly and Senate and the Rio-Hondo Community College District. Solis is particularly close to Speaker Pelosi, but does have a reputation for working with Republican colleagues to ensure passage of her bills. Beyond all else, she is a staunch supporter of organized labor and has co-sponsored card check legislation. The business community has expressed concern over her nomination and has questioned her membership on the board of American Right to Work. While a California legislator, she authored bills raising the minimum wage, and limiting the placement of landfills in poor communities. For this work, she was awarded the John F. Kennedy Profiles in Courage Award by Caroline Kennedy. MemorialCare will be reaching out to the new Secretary to offer an alternative perspective on card check. Despite Republican concerns over Solis’s support of card check, confirmation is expected. MemorialCare has held close ties with Ms. Solis throughout her career.

Secretary of the Treasury

Timothy Geithner, president of the New York Federal Reserve since 2003 has been nominated as Secretary of the Treasury, and will oversee the use of the Troubled Assets Relief Program (TARP) funds as well as the president’s stimulus package. Geithner brings a deep understanding of Wall Street and has enjoyed close relationships with Ben Bernanke, the Chairman of the Federal Reserve, and the current Secretary, Henry Paulson.

Known as a non-partisan, Geithner had worked closely with Lawrence Summers and Robert Rubin—two of Clinton’s treasury secretaries, and Paul Volker, all of whom are Obama financial advisors. His good relations with Republicans are currently being tested as the Senate Finance Committee is holding hearings and is questioning past income tax defaults. In the early hearings, Geithner spoke frequently of the importance of health care reform, particularly HIT in the overall economic recovery plan. Mr. Geithner was sworn in as the 75th Treasury Secretary on January 26, 2009.

Office of Management and Budget

The Senate confirmed Peter Orszag as Director of the White House Office of Management and Budget. The OMB advises the president on budgetary, legislative, and regulatory functions of his policies and programs. Mr.

Orszag focused on health policy in his role as Director of the Congressional Budget Office (CBO) and is widely considered an expert on Medicare and Medicaid. Orszag wrote an entry on the CBO blog that indicates his strong support for health care reform within context of economic recovery.

Our Partners

Advocating for comprehensive, fiscally responsible health care reform, and sound health policy cannot be held to any one organization or segment of our industry. Rather, it must be handled in partnership with trade associations, other health care providers, policy makers and their staffs, and other industry experts. MemorialCare works closely with each of our State Senate and Assembly and Congressional offices, both locally and in Sacramento and DC. We have built a strong reputation as respectable community partners and providers of expert patient and family-centered care. We work collaboratively with the CHA, the American Hospital Association, the Healthcare Leadership Council, and Washington based health care/business roundtable. With the support of senior leadership, our CEOs, members of governance and our government relations team, MemorialCare sends more advocacy letters than any of our hospital colleagues. 2009 will prove to be a very impactful year on the health care industry. For the first time in many years, the delivery system will be examined and debated on both the federal and state levels. The federal and state budgets have been compromised as never before. Every aspect of the industry will be scrutinized and questioned for its patient care and cost effectiveness. MemorialCare employs and partners with the finest and most expert physicians and administrative leadership the hospital industry offers. Our team is ready to offer testimony, patient experiences, and fiscal expertise as these debates continue.

MemorialCare is committed to grow its role as a leader in the hospital community through its commitment to world class care to our patients, their families, and our communities. Ensuring sound, fiscally responsible, health care public policy is a part of this commitment.

For more information regarding health care reform and public policy, please contact your MemorialCare Government Relations Representative: CJ Harmatz (Long Beach Memorial), Sandy King (Miller Children's Hospital), Beth Hamblton (Orange Coast Memorial), Susie Caskey (Saddleback Memorial), Jim Thornton (HIT issues), and Peter Mackler (MemorialCare).