

An unexpected opportunity

As the lead lobbyist for the largest association of nursing home operators in the country, Clifton J. Porter II is accustomed to scraping and clawing to get what his members need — even if it means fighting to retain a less-than-ideal status quo. But since November's elections handed Republicans control of the White House and both chambers of Congress, there are new, brighter options to consider. Porter spoke with *McKnight's* Editor James M. Berklan about the new possibilities.

Q: The November elections ran counter to what many experts predicted. How has AHCA/NCAL adjusted on the political and policy fronts?

A: While the outcome was not necessarily expected, it wasn't something we didn't consider. When you think about the way it plays out, certainly for us in the regulatory environment we're in, the opportunity for relief and change is significant.

I'm an old administrator and the things I despised were the burdens, the many things we had to do that were duplicative or unnecessary that prevented us from taking care of patients. It's almost like a mission of mine in this role to do anything we can to alleviate that burden, to minimize it for the folks who are at the bedside every day. If we've done that, I feel like we've done a good day's work.

Q: Is it fair to say the results will be better for your members, at least from a regulatory perspective?

A: I think that's a safe assumption. Obviously, the proof's in the pudding. But if you look at everything that's traditionally happened when this party's in control, the focus is on fewer regulations. That being the case, we're

optimistic we'll have opportunities.

There are three ways regulations can change: Executive Orders, the Congressional Review Act and the normal rule-making process. In all three cases, we're more or less compiling a list of things that fall into one of these categories: duplicative, unnecessary or woefully negative. We're assessing all of this in live time.

Q: How has AHCA been able to adjust its objectives for the year ahead?

A: The fact that we're as regulated as we are, that becomes priority Number 1, and what we want to do is exploit the opportunity.

We're used to dealing with risk — risk and sort of keeping the Huns off the walls. This is kind of different. We get to think about how to be more on the offensive, and leverage opportunities we have, and try to make sure that our issues get elevated high enough



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that they get consideration.

If I can relieve a nurse from completing a sheet of paper, that's five more minutes that person can spend with a patient. That's priority one.

We're always concerned about CMS having ideas about how payment should be changed. We have real concerns about their current ideas and we're doing our best to ensure that the new [CMS] administrator will address those issues. We at least want to make sure they consider our perspectives before anything is finalized. We're working with the agency to ensure that any changes to the payment system are intelligent and smart.

Q: Would the Affordable Care Act's destruction be good or bad for members?

A: It depends. On the repeal side, our members didn't gain anything. Other industries did. In our case, we just got cuts. There's no other way to describe it. We got no real upside or benefits from Obamacare. From the repeal side, there are no negatives and positively positives.

The employer mandate being eliminated provides great options from the perspective of what we can offer. There may be some efficiency gains from repeal. From the replace perspective, it's impossible to tell. There are always risks when you're dealing with replacement.

I'm very confident the leadership in both the House and Senate clearly know and understand our population is largely old, on multiple medications, with multiple comorbidities, and they're poor. I'm confident they'll consider the impact on this population with any change they offer.

Q: How do you see things playing out regarding Medicare and Medicaid?

A: Largely unchanged. I think



Photo: AHCA

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the real question will be what the administration will do considering our payment system. That's going to take some time to get clarity on. We have ideas. I'm optimistic, at least at this stage, that the administration is looking to us to offer ideas how it should look.

I think we'll definitely get an open ear. That seems to be the tenor the administration is offering. They need to listen to business, to the folks out there doing the work before they do a lot that doesn't make sense in real life.

The real question for us is: Are we going to be able to successfully differentiate our population from the rest of healthcare and make folks sensitive to the patients we have?

On the Medicaid front, at least for our group in the near term, we'll see the status quo

and maybe some of the tangential changes. I hate saying “status quo” because the status quo isn't great — they only reimburse us 89 cents on the dollar. That's the other argument we're making. Not only are these folks [residents] poor, but [the government] is only paying 89 cents on the dollar!

Q: What do you see for bundled payments?

A: I'm optimistic that the experimenting with bundled payments is going to continue. That train has left the station. The real opportunity is: Will there be opportunity from the regulatory perspective to have voluntary participation rather than mandatory? We have members who like the arrangement in some parts of the country where

it's actually working. For others, it's a disaster.

That's the kind of experimenting that needs to go on. As long as there's a measured, targeted approach with prompt review of the results. Find out if it's working, and why. Different parts of the country have different business environments. One size doesn't work everywhere.

I'm optimistic there will be a lot more consideration whether something is working, and using data to drive future considerations. A lot of these things that are mandatory will become voluntary.

The exact same thing is true for [accountable care organizations].

Q: How about the future of arbitration clauses?

A: The election outcome plays heavily in our favor on that issue. We're working it through the legal system, but even from a regulatory standpoint, we've already made a request through the Congressional Review Act that the nursing home requirements of participation [necessary to partake in federally funded programs] will be reversed, mainly the [ban on arbitration clauses].

Obviously, we have a more sympathetic ear in the White House and in Congress than before. I feel good about our prospects there. I've also always thought we had a strong legal case, and we'll stand by that.

Q: So you're hoping the entire 700-plus page requirements of participation that was introduced in September is taken away?

A: The whole thing. It's supposed to cost us \$800 million the first year, or something like that. And some of the less-publicized parts are clearly over-regulation. ■