

Government Affairs and Advocacy Update

2018 Elections and the Impact on our Sector

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Today's Agenda Conversation, not Presentation

- Federal Election Update
 - Outcomes
 - Impact to the sector
 - Agenda for 2019
- State Election Update
 - Outcomes
 - Impact to the sector
 - Agenda for 2019-20
- Advocacy
 - What is it? Regulatory, Legislative, etc.
 - How to do it?
 - Ongoing advocacy

Federal Predictions Prior to Election

Did the pundits get it right?

- Most likely: Democrats take the House with a narrow margin and the Senate remains similarly composed and in Republican control.
- Less likely: Democrats take the Senate and have a larger margin in the House
- Least Likely: Republicans retain control of both the House and Senate

Election Overview – Themes, Takeaways

- Blue Wave – Sort of?
- The midterms produced a divided Congress that's emblematic of a split America, drifting further apart and pointing to gridlocked years ahead.
- The Democratic strategy of targeting women, minorities and the young was vindicated with the new House majority. We saw record liberal turnout in many suburbs.
- The Republican strategy of targeting men, whites and rural voters was vindicated with the larger Senate majority. We saw record conservative turnout in rural Trump country.
- The net result: Two parties with two wildly different bases and philosophies are pulling farther and farther apart — and are certain to double down on divisiveness heading into 2020.

More interesting facts

- At least 111 women were elected, including: 40 women of color who are headed to the House.
- Democratic turn-out yesterday helped to grow new governing trifectas in five (5) states, bringing the total Democratic control of both legislative chambers and Governors mansions up from seven (7) states to 12, come January; but Republicans will hold on to a plurality of both legislative chambers and Governors mansions, effectively maintaining control of 21 states. Trifecta control is critical to Congressional redistricting battles that will follow the 2020 elections.
- Democrats flipped control of Governors mansions in seven (7) states last night, bringing their post-election total to 23

Even more interesting facts...

- Democrats Made Significant Gains in Securing Legislative Majorities – With over 80% of all state legislative seats up last night, Democrats made significant legislative gains, flipping six (6) legislative chambers; Democrats picked up new supermajorities in the Oregon House and Senate.
- Democrats on Track to Take Majority of Attorneys General Offices – Democrats flipped the Colorado Attorney General office. Michigan, Nevada and Wisconsin Attorneys General races are still too close to call but the Democratic candidates are ahead in votes (Wisconsin would be the only incumbent defeat, if Josh Kaul wins; Nevada and Michigan are open seats).

Federal Election Summary

- Democrats have taken the House. Republicans will keep the Senate. Exactly how many seats will change hands, however, is still up in the air:
- As of this today in the US House, Democrats hold a 222-200 margin, with 218 needed to assume the majority. 13 unresolved races, Democrats leading in 10.
- So far, Democrats have flipped 39 seats. Republicans have only flipped two seats, for a net gain of 37.
- In the Senate, three races remain outstanding – Montana, Arizona and Florida. As of this morning, the margin is 51-46 in favor of Republicans. They only needed 50 to retain control with the Vice President being the tiebreaking vote in a 50-50 scenario.

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Federal Election Summary

- All Senate Democrats (Nelson, Donnelly, Tester, McCaskill, and Heitkamp) in states won by President Trump who voted against Supreme Court Justice Brett Kavanaugh's confirmation lost or could potentially lose their reelection bid.
- In Florida's Senate race, a recount will take place with Gov. Rick Scott currently ahead of Sen. Nelson by 0.4%. Under Florida law, a machine recount is conducted when the margin of victory is 0.5 percent or less. If the margin is 0.25 percent or less after the machine recount, a manual recount is conducted.
- Despite raising a record \$70 million, Rep. Beto O'Rourke was unable to defeat incumbent Sen. Ted Cruz in Texas, who won by more than 200,000 votes.
- There will be a runoff for the Mississippi Senate race between Republican Sen. Cindy Hyde-Smith and Democrat Mike Espy as none of the candidates secured a majority of the vote. Hyde-Smith is favored to win the seat.

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What does this all mean in DC? Lame Duck activity?

- Parties will spend 2018 getting organized to prepare for next Congress.
 - New member orientation; Leadership Elections
 - Not a great opportunity for major action in November and December.
- Nancy Pelosi (CA) is running for Speaker of the House. She will likely face a challenge
 - The Republicans may also have a race. Steve Scalise (LA) is very popular but indicated he would not challenge Kevin McCarthy (CA) for Speaker.
 - With the Republicans losing majority, I think you can expect the caucus to look for new leadership,
- Rounding out the Democratic leadership, Reps. Steny Hoyer (D-MD) and James Clyburn (D-SC), are favored to win leadership posts. At least one Democratic leadership position, Caucus Chairman, will be open as Rep. Joe Crowley (D-NY) lost in his primary election.

- Likely House agenda
 - Lowering health care costs, rebuilding infrastructure, giving legal status to "Dreamers", and strengthening background checks on gun purchases.
 - Oversight and investigation of the Trump Administration is expected to be a priority
 - A Democratic House could also potentially see an effort to reinstate earmarks that are publicly disclosed – similar to the policy when Democrats last controlled the House in 2010.
- Committees:
 - Congressman Richard Neal (MA) to chair Ways and Means
 - Congressman Frank Pallone (NJ) to lead Energy and Commerce.
 - Senator Chuck Grassley (IA) will chair the Senate Finance
 - Senator Ron Wyden (OR) remains lead Democrat on Senate Finance
 - Senator Lindsey Graham (SC) to chair the Senate Judiciary Committee
 - Dianne Feinstein (CA) will be the ranking Democrat on Senate Judiciary.

Federal Election – Impact to LTC

- *MEDICAID REFORM*: The election result takes the huge Medicaid discussion off the table. The 2017 proposal to create per capita caps, cut provider assessments, etc. isn't going to happen.
- *MEDICARE*: The Patient-Driven Payment Model (PDPM) will still happen on October 1, 2019. The election has no impact on that. We will need to continue to lobby for fair implementation of this brand new system.
- Regulation of Assisted Living
- Staffing: Increased focus on staffing in long term care by democrat members. A democratic majority in the House creates an opportunity for staffing legislation to pass. Will be important to monitor and ensure we are apart of the conversation.

- *REGULATORY OVERSIGHT* : Historically, Democrats have been interested in hearings related to all sorts of issues such as emergency preparedness, quality of care, and staffing. This is likely true not just on the skilled nursing side, but also the assisted living side. We will be ready because, if these are poorly managed, they can misrepresent that you all do and lead to terrible policy.
- *BUDGET CLIFFS* : Every year, Congress must fund the Government. And when power is divided, that can be a challenge. There is a huge budget cliff that hits on October 1, 2019. We will tell you much more about it as it approaches, but it offers all sorts of challenges that we need to overcome.
- *THE AGENCIES* : When Congress is deadlocked, the agencies become even more important. Most of what we will be able to accomplish will be at the Centers for Medicare and Medicaid Services (CMS), the Department of Health and Human Services (HHS), and various other agencies.

Pennsylvania

Pennsylvania Election Summary

- Governor Tom Wolf (D) easily won re-election, defeating Scott Wagner(R), 57%-40%
- US Sen. Bob Casey (D) cruised to victory against Rep. Lou Barletta (R), 55%-42%
- With the newly drawn maps at the Congressional level, we now have a 9-9 split in party representation.
- In the state legislature, the Democrats added five Senate seats, erasing the Republican supermajority and added 11 in the House, reducing the Republican majority.
- The Senate now stands at 29-21. The House is now 110 – 92 (both Republican majorities).
- Rep. Warren Kampf, the champion for our tort reform legislation, lost reelection.

Pennsylvania - DC

Congressional key races

- Brian Fitzpatrick (PA-1)—Bucks County
- Pat Meehan (PA-7)—Montgomery County
- Charlie Dent (PA-15)—Allentown/Harrisburg
- Perry/Kelly (PA-10 & PA-16)—GOP victories
- Lamb v Rothfus (PA-17)
- Matt Cartright (PA-18)

Pennsylvania Senate

- John Rafferty (R)
- Stewart Greenleaf, Jr. (R)
- Tom McGarrigle (R)
- Chuck McIlhinney's seat
- Randy Vulakovich's seat
- Special Election out west

Pennsylvania House

- Warren Kampf (R)
- Eric Roe (R)
- Becky Corbin (R)
- Duane Milne (R)
- Jamie Santora (R)
- Alex Charlton (R)
- Tom Quigley (R)
- Kate Harper (R)
- Leadership Elections
- New Committee Chairs

Pennsylvania Election – Impact to PA

- Philosophical lean
- 2019-20 budget fight (Governor Wolf vs. Legislature)
- Democrat vs. Republican priorities
- Trial Bar, Union influence

Pennsylvania Election – Impact to our Issues

- Medicaid Funding
- Tort Reform
- Regulatory Reform
- Staffing
- Unfunded mandates
- False Claims
- Presumptive Eligibility

ADVOCACY

LET YOUR VOICE BE HEARD!

Advocacy

What is it?

Grassroots advocacy is the act of a constituent communicating ideas and opinions to their government officials

Advocacy

Why is it Important?

There is nothing more valuable than the perspective of an experienced clinician/provider on the impact of a law or regulation on the clinician and the patient.

We are the experts!

Advocacy

- Effective Advocacy
 - Raise awareness – Employees, State Association
 - Legislative Priorities = Constituent Priorities
 - Leveraging State and National Associations
 - Involvement in Association Committees

Advocacy – Why?

- Participation is critical – Herding Cats!
 - Build a critical mass – Don't go it alone!
 - Use power of Associations
- Benefits for our employees in our facilities include: the facility, the company, and the residents.
- Influence the outcome of the political process by:
 - building a relationship
 - effectively communicating the message

The power of the association lies in the engagement of its members.

Advocacy - Value

- Relationship Building
 - Establish and foster relationships with elected officials and **staff**.
 - Relationships take time
 - Every contact strengthens the relationship
 - How?
 - Inviting legislators to your facility to meet with staff and residents
 - Attending legislative events to show support
 - Participating in PHCA annual advocacy day

Advocacy - Value

- Be a resource
 - Goal is to become an essential resource
 - Two way relationship – provide information and guidance to elected official and staff
 - Acknowledge when the legislator supports an initiative that is helpful to our residents
 - Go Beyond Developing A Need Based Relationship
 - Keep the legislator informed
 - Help the Legislator Help Us

PHCA Advocacy Checklist

- Visit the Offices of Your Legislators (bring a 'leave-behind'!)
- Have Your Legislators Visit Your Facility
- Email Your Legislators
- Call Your Legislators
- Write a Letter to Your Legislators
- Invite Your Legislator to an Event (open house, award ceremony, holiday celebration, etc.)
- Resident Communication with Legislators (letters, calls, visits)
- Participate in 'Hometown Advocacy' Initiatives
- Join us in Harrisburg for Rally Day

Advocacy - Influence

- Issues/Facts/Policies
 - Face to Face meetings – District and Harrisburg
 - Letter writing
 - Emails
 - Phone calls
 - Social Media – Facebook, Twitter, etc
- Money
- Relationships
- Votes

Advocacy Meeting Tips

- Be prepared to put it in writing
- Visit the district office
- Be brief
- Know what your “ask” is
- Localize your message
- Always say “thank you”
- Remind them of previous conversations
- Follow up with a handwritten note – not email

Ongoing Advocacy Efforts

- Pass the Nursing Home Workforce Quality Act
- Revise Provisions of the Requirements of Participation
 - Election impact
- Reform the Informal Dispute Resolution (IDR)/Independent Informal Dispute Resolution Process (IIDR)

Ongoing Advocacy Efforts

- H.R. 6986, the Nursing Home Workforce Quality Act
 - Background: Under OBRA 1987 a nursing facility that was determined to have a deficient practice subject to a civil monetary penalty greater than \$10,000, would be prohibited from training certified nursing assistants for a two year period.
 - CNA Training prohibition applies even if deficient practice is unrelated to quality of care or the CNA Training Program.
 - \$10,000 CMP threshold was established in 1987 AND has not been increased due to inflation.
 - HR 6986 modifies the statutory provision included in OBRA 1987 that places a 2 year prohibition of CNA Training for any facility that receives a CMP greater than \$10K, allowing training to resume once the deficient practice is resolved.
 - Increases CMP threshold from \$10,000 to \$20,628
 - Gives the Secretary of Health and Human Services greater flexibility in determining whether a facility' nurse aide training program is terminated or reinstated

Ongoing Advocacy Efforts

- NPRM to Revise the Requirements of Participation
 - Background: On September 28, 2016, the Centers for Medicare & Medicaid Services (CMS) issued updated federal nursing home regulations (Requirements of Participation for Long-Term Care Facilities). This is the first comprehensive revision to the regulations since they were issued in 1991. The provisions of the requirements of participation are being implemented in three phases: Phase 1- November 28, 2016; Phase 2 - November 28, 2017; and Phase 3-November 28, 2019.
 - Several provisions of the requirements of participation were determined to be excessively burdensome. AHCA collaborated with providers across the country to collect feedback regarding concerns related to the requirements of participation and this information was provided to CMS.
 - Patients Over Paperwork
 - CMS had the opportunity to visit centers across the country gaining first hand experiences of the impact of regulations on patient care.
 - Red Tape Initiative
 - CMS asked for information from providers to identify duplicative or burdensome regulations.

Ongoing Advocacy Efforts

- Requirements of Participation
- “This proposed rule would **reform the requirements** that long-term care facilities must meet to participate in the Medicare and Medicaid programs, that CMS has identified as **unnecessary, obsolete, or excessively burdensome on facilities**. This rule would increase the ability of healthcare professionals to devote resources to improving resident care by **eliminating or reducing requirements that impede quality care** or that **divert resources away from providing high quality care.**”
- “This proposed rule would **create ongoing cost savings** to long-term care facilities in many areas. In addition, various proposals would **clarify existing policy** and **relieve some administrative burdens.**”

Ongoing Advocacy Efforts

- Notice of Proposed Rule-making for Revisions to the Requirements of Participation
 - Next Steps
 - NPRM anticipated release mid-late November
 - Congressional Support
 - Submit Comments
 - Then....

Ongoing Advocacy Efforts

- Creating Timeliness and Transparency in the IDR/IIDR Process
 - IDR
 - Informal Dispute Resolution
 - Federal law requires CMS and each State to develop an informal dispute resolution process (42 CFR 488.331 and 488.431) providing the facility an opportunity, at the facilities request, to dispute survey findings upon receipt of the facility's official statement of deficiencies.
 - IIDR
 - Independent Informal Dispute Resolution
 - Provides an opportunity for an independent nursing facilities, upon the facilities request, when civil monetary penalties are imposed, to dispute cited deficiencies that result from:
 - A federal or state survey
 - A compliant investigation
 - A follow-up survey/revisit

Ongoing Advocacy Efforts

- Creating Timeliness and Transparency in the IDR/IIDR Process
 - Mandate:
 - Completion of IDR/IIDR process within **45 days** of the facility request
 - An **independent entity** to conduct the IDR/IIDR process
 - A **written statement of the rationale** if CMS or the state disagree with the IDR/IIDR recommendation

Thank you-and Next Steps

- Get Involved – Let your voice be heard!
- Build relationships now with new legislators.
- PHCA Freshman Breakfast
- PHCA Rally Day
- Legislative Visits – Drive Ins
- Questions

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