State Legislatures Enter a New Political Environment in 2011

The 2010 elections held great significance in the states. After the decennial census, which most recently took place last year, Congress decides how to reapportion the 385 congressional districts that are apportioned by population (the first 50 seats are predetermined as one per state).

Congress decides the number of congressional districts that each state will receive according to the census results, but the states decide how those districts are shaped. Eleven states decide this by non-political commissions, but in 39 states the congressional districts are drawn by the state legislatures. Thus, the parties that are in power in the state legislatures during redistricting can draw the districts in such a way that permits them to gain or preserve as many congressional seats as possible.

Last fall, 88 of the 99 state legislative chambers held elections. Going into the election, Democrats held the majority in 52 of those 88 chambers. On Election Day, Republicans gained control of 19 of those 52 legislative chambers, putting them in control of 55 of the 88 chambers in 2011. The Oregon House and Alaska Senate are both tied for partisan control. This is the first time that Republicans have controlled the legislature in Alabama since Reconstruction, and for the first time in history, the Minnesota Senate will be controlled by the GOP.

For purposes of redistricting, 20 of the 39 state legislatures that create redistricting plans are completely controlled by Republicans; 14 are completely controlled by Democrats; 3 have split control; Nebraska has a non-partisan legislature; and New York is undecided.

Republicans also saw gains in the governorships. Thirty-seven gubernatorial elections were held in 2010. Going into the election, 26 of the 50 governors were Democrats. Now, 29 governors are Republicans, 20 are Democrats, and Lincoln Chafee, former Republican of Rhode Island won as an Independent.

All told, Republicans now have total control (entire legislature and governorship) of 20 state capitals, where Democrats only have total control in 10 states. The remainder of the states are either split or yet to be decided.

Metal-on-Metal Hip Arthroplasty

This past April, the British Medicines and Healthcare Products Regulatory Agency (MHRA) issued an alert about metal-on-metal implants. In the week preceding the AAOS Fall Meeting in October, selected Academy members and staff were alerted to a case report that would be published in the October 29th online edition of the Journal of Bone and Joint Surgery, outlining the outcomes and symptoms of two patients who developed cobalt poisoning post-THA. Josh Jacobs, MD, who is the recognized national research leader on metal ions in the bloodstream, contributed a supplementary commentary to JBJS about the rarity of such reported incidences, the importance of continued research, as well as the necessity of surgeon education and vigilance on this topic.

Case Report and Commentary available here: http://www.ebjs.org/cgi/reprint/JBJSJ00125v1

The Academy believes that a special effort to educate both patients and physicians across specialties is warranted, therefore we developed a member alert, a media advisory and posted information on orthoinfo.org to educate patients and the public. The Academy is working with the FDA to develop the best possible plan of action to manage these concerns and keep patients safe. We encourage our members to report any adverse outcomes to the FDA via the MedWatch program.

Patient Information: http://www.orthoinfo.org/topic.cfm?topic=A00625
Insights into the Healthcare IT “Alphabet Soup”

By Jackie Ryan, MPA - AAOS Practice Management Program Coordinator

Like it or not computerization of healthcare is here to stay. The recent push to implement Electronic Medical Records (EMRs) has resulted in a multitude of information and acronyms. Take ARRA and HITECH, mix in some HIPAA, CCHIT, HITSP, HL-7, and CDA and what do you get? A big bowl of HIT alphabet soup that even the most savvy IT professional has a difficulty remembering what each stands for. Many acronyms for healthcare technology are misused and misunderstood with EHR and EMR being the two most commonly misused and confused. The National Alliance for Health Information Technology developed the following definitions.

- **Electronic Health Records (EHR)** – The aggregate electronic record of health related information on an individual that is created and gathered cumulatively across more than one health care organization and is managed and consulted by licensed clinicians and staff involved in the individual’s health and care.

- **Electronic Medical Records (EMR)** – The electronic record of health related information on an individual that is created, gathered, managed, and consulted by licensed clinicians and staff from a single organization who are involved in an individual’s health and care.

To help navigate through the maze of acronyms the AAOS has developed a glossary of common acronyms you may encounter as you consider implementing an EMR or other technology in your medical practice. Visit the AAOS Practice Management Center (www.aaos.org/pracman) (member login required) to download the HIT alphabet soup glossary. Are you ready to take the EMR Plunge? Physicians looking to take the EMR plunge can listen and learn from their colleagues as they present key aspects of the EMR process. This three part webinar originally broadcast in November/December 2010 will be available on CD ROM at the 2011 AAOS Annual Meeting in San Diego, CA.

AAOS and the 112th Congress

The Republican Party saw significant gains as a result of the 2010 elections. In the House of Representatives, Republicans have a solid majority for the 112th Congress. In the Senate, Republicans picked up key seats narrowing the lead held by Senate Democrats. The Senate remains controlled by Democrats who will continue to have a strong role in shaping legislation.

Preliminary review of PAC contributions during the 2009-2010 election cycle indicates that the Orthopaedic PAC contributed to 237 Congressional campaigns. Out of the 27 Senate campaigns that received contributions from the Orthopaedic PAC, 26 candidates were elected (96 percent success rate). The Orthopaedic PAC donated to 210 House campaigns, supporting a total of 180 victories (86 percent success rate), with 5 races still undecided.

In the 112th Congress, committee structure and leadership positions changed. In the House, Rep. John Boehner (R-OH) became Speaker of the House, and Nancy Pelosi (D-CA) was elected the Democratic Minority Leader. In the Senate, leadership remains the same for both parties; Sen. Harry Reid (D-NV) is Majority Leader and Sen. Mitch McConnell (R-KY) is the Minority Leader.

**U.S. Senate**

The Senate in the 112th Congress currently consists of 51 Democrats, 2 Independents who caucus with the Democrats and 47 Republicans. The margins for the 112th Congress will significantly impact the way the Senate moves legislation; neither party is close to having a filibuster proof majority. In order to achieve the 60 votes which is needed to move legislation forward, Senators will need to reach across the aisle, resulting either in bipartisan cooperation or gridlock.

With many retirements and quite a few new faces, AAOS is reaching out to these legislators to establish relationships and work on advancing orthopaedic surgeons’ issues.

**U.S. House of Representatives**

The House in the 112th Congress currently consists of 193 Democratic seats and 242 Republican seats. With this majority, it is likely the Republicans will attempt to follow through on campaign promises such as repealing health care reform. However, with Democrats controlling the Senate and the White House, successfully delivering a full repeal is unlikely.

Control of the House not only affords the new leadership the opportunity to set a new legislative agenda, but also to control the purse of the Federal government. All revenue related legislation must originate from the House, giving Republicans significant leverage in this Congress. This means that Republicans may be successful in dismantling unfavorable components of health care reform, such as the Independent Payment Advisory Board (IPAB). The IPAB is an independent body which focuses solely on reducing costs within the Medicare program. The Board does not have full authority over all aspects of the health care system, but rather is required to selectively cut Medicare reimbursements in areas under its jurisdiction, such as physicians. The IPAB was developed by the Senate during health care reform and has been extremely unpopular in the House among Republicans and Democrats. With the new Republican majority, it is likely that major components of health care reform, such as the IPAB, are revisited early in the 112th Congress.

AAOS has met with many of the new members of the House and many of our Fellows have established relationships with these new members. AAOS will continue to work with leadership from both parties to advance orthopaedic issues.
The Orthopaedic PAC Update

Adapted from “Congress delays SGR cuts for a full year: Is a permanent solution possible?” by Mary Ann Porucznik (AAOS Now, January 2011)

In 2010, Congress voted to override cuts to Medicare payments to physicians five times. In 2011, doctors hope that Congress will only vote once—on a permanent fix to the flawed sustainable growth rate (SGR) formula that has calculated continued reductions in physician payments since 2002.

Orthopaedic surgeon Sen. John A. Barrasso, MD (R-Wyo.), was among the leaders who helped pass the “Medicare and Medicaid Extenders Act of 2010” (MME) and was at its signing on Dec. 15, 2010. The legislation freezes payments to physicians under the Medicare and Tricare programs at current levels for one-year, thus eliminating fears of physician payment cuts scheduled under the SGR, including an almost 25 percent cut that was to be implemented on Jan. 1, 2011. Delaying the cut will cost the government an estimated $19 billion. The costs will be offset in two ways—by using funds (approximately $275 million) from the Medicare Improvement Fund, and by recapturing any subsidy over-payments under the Patient Protection and Affordable Care Act (PPACA). PPACA capped the amount of such repayments at $250 for individuals and $400 for all families with incomes under 400 percent of the federal poverty level, currently $22,050 for a family of four. These limits will increase on a sliding scale basis and the recaptured amounts applied to pay for the MME.

In addition to reversing the physician payment cuts, the MME includes the following provisions that affect physicians:
- Extends the Medicare work geographic adjustment floor by 1 percent
- Extends the exceptions process for Medicare therapy caps
- Extends the 5 percent payment increase for certain mental health services
- Extends the outpatients hold-harmless provision

In his message to members, American Association of Orthopaedic Surgeons (AAOS) President John J. Callaghan, MD, noted, “Now, the real work begins.” Congress has a new look this session, and the AAOS and other physician organizations hope that the year-long extension will give them time to educate newly elected legislators on the importance of a permanent fix to the SGR. “We will work with our Congressional champions in the next 13 months to permanently repeal the flawed SGR formula and replace it with a viable solution that provides appropriate reimbursement for services and protects our patients from instability,” said Dr. Callaghan.

It seems that finally, after years of temporary measures, a permanent fix might be possible. President Obama has pledged to work with Congress “to address this matter once and for all.” According to a White House blog posting, “We all agree that this formula needs to be changed. Now’s the time to get it done.”

AAOS Playground Build

Join us in San Diego, Calif., on Tuesday, February 15—the day the 2011 Annual Meeting begins to build a Family Fitness and Fun Park. The Family Fitness and Fun Park will provide children, parents and grandparents the opportunity for physical activity together. The AAOS and San Diego Youth Services (SDYS) have partnered together to transform the former Spring Valley Elementary Campus, located in the La Mesa/Spring Valley School District just outside of San Diego. It will be a fantastic day of building with fellow orthopaedic surgeons, allied health, orthopaedic industry, and of course, San Diego community volunteers. For more information, to volunteer, and to see a concept image, please visit the Web site at www.aaos.org/fitnessbuild

The Orthopaedic PAC Update

The Orthopaedic PAC will continue to support Democrats and Republicans who support medical liability reform, a new method for generating Medicare physician payments, and smooth implementation of health information technology, along with a host of other initiatives that will benefit the orthopaedic community. In addition, the PAC continues to encourage orthopaedic surgeons to participate in the political process. Orthopaedic surgeons who may have relationships with members of the 112th Congress are urged to contact the Orthopaedic PAC. During the 2009-2010 election cycle, the Orthopaedic PAC raised over $3.7 million from over 26 percent of AAOS members.

Thank you for your continued support of the Orthopaedic PAC!
Advocacy Resources for State Societies

Advocacy Resource Development: Legislative materials including fact sheets, position statements, talking points, visual aids and other useful information are developed on an ongoing basis and made available through the AAOE website. Upon request, materials may be produced and tailored to meet the specific needs of individual states.

Legislative and Regulatory Research: Research assistance such as data collection and case study development on legislative and regulatory issues is available to state orthopaedic societies.

Lobbying Assistance: The AAOS is available to advise states on the hiring, management and evaluation of state society lobbyists.

Grassroots Development: Assistance in developing strategies to mobilize state society members for advocacy efforts is offered to state society leaders.

Model Legislation: Model legislation is sent to state orthopaedic societies prior to the start of each legislative session to facilitate proactive advocacy efforts.

Legislative Strategy Development: State legislative strategy development based on best practices, opposition tactics and the state society’s unique strengths is provided to state orthopaedic societies confronting legislative issues.

State Legislative Tracking: State legislative and regulatory tracking is conducted at the national level to monitor trends and identify bills and proposed regulations of interest to individual states.

Legislative Alerts: Periodic alerts concerning bills and regulations requiring a response from the orthopaedic community are sent to state societies as necessary.

Weekly Bill Status Reports: Customized weekly bill status reports are available to each state orthopaedic society informing state society leaders of legislative action in their state.

Coalition Building: Assistance in developing contacts and forging legislative coalitions with other state health care groups is provided to state societies seeking to broaden their government relations programs.

State Legislative Updates: A summary of action on state legislation affecting orthopaedic surgeons across the country is sent to state orthopaedic societies and published in AAOS Now on a quarterly basis.

Financial Assistance: Financial assistance to state societies engaged in advocacy efforts is available through the State Orthopaedic Society Health Policy Action Fund. The AAOS also assists state societies in identifying external sources of financial support.

For more information please contact Ashlen Anderson at aanderson@aaos.org.

Advocacy in the States

New York Revisits Podiatry Scope of Practice Expansion

Under current law, New York is one of only a handful of states that does not permit podiatrists to treat the ankle. This is due in no small part to the advocacy efforts of the New York State Society of Orthopaedic Surgeons, which has successfully argued to maintain the existing patient safety standards in New York by limiting podiatrists to procedures that fall within their training and education. In 2011, yet another bill has been introduced that would expand the podiatry scope of practice to include the ankle. The NYSSOS has already engaged in conversations with legislators to ensure that the measure does not pass.

PTs in Missouri May Gain Direct Access

Missouri is currently the only state in the country where physician ownership of physical therapy is prohibited by statute (it is prohibited by other means in two other states). Now, legislators in Missouri are considering providing direct access to physical therapy services without a physician’s prescription. If this law were to pass, it would effectively remove physicians completely from the oversight and delivery of physical therapy services in the state of Missouri.

Medical Liability Reform Proposals Abound

The Kentucky legislature is considering legislation that would expand its existing “good Samaritan” law to include immunity not only for physicians treating individuals in emergency situations but also in any case where the physician received no remuneration. If this bill passes, physicians’ liability would be limited in charity care cases. On the other side of the issue, legislation has been introduced in Virginia that would raise the cap on total damages in medical liability lawsuits. After the law instituting the cap was passed in 1999, the $1.5 Million cap increased incrementally every year until it reached $2 Million in 2008. Then, the increases stopped in accordance with the law. The legislature is now considering a similar law that would set the cap at $2 Million this year and increase by $50,000 in each subsequent year.

AAOE Offers Myriad Opportunities

Diagnostic imaging accreditation…maximizing reimbursement…strategic planning…capturing income opportunities…Are these some of the challenges facing your orthopaedic practice?

In these economic times, it’s more important than ever to run an efficient, cost-saving, and revenue-producing practice. Whether your practice administrator is a seasoned veteran or just starting out, the educational, networking, and hands-on opportunities available at the American Association of Orthopaedic Executives’ (AAOE) annual conference will help him or her achieve that goal.

For example, practice executives from groups of similar sizes can connect on relevant topics to compare approaches. Educational sessions such as “How Managed Care Companies are Likely to Respond to Government Competition” and “Orthopaedic Ancillaries Update on Financial/Operations Benchmarks and Regulatory Developments” bring practice executives up-to-date on the impact of legislation.

To ensure appropriate levels of revenue, practice executives may want to consider attending the “CPR For Your Revenue Cycle” or “Are You Getting the Right Reimbursement” courses.

A few other courses to make note of include, “If Disney Ran Your Hospital”, with presenter Fred Lee, “Joint Ventures: Clinics, Ancillaries, Mergers” and “EHR and Meaningful Use Criteria”. These are only a handful of the more than 50 educational courses available at the conference.

Saving time and money

Because practice executives are often involved in purchasing decisions, the AAOE annual conference offers opportunities to comparison shop and get immediate feedback from others who have used the systems or products you are considering. Membership in the AAOE is a bargain—just $300 per person, regardless of practice size. Membership isn’t limited to practice executives; orthopaedic surgeons—particularly those in small practices or solo practitioners who manage their own practices—are also welcome. Even billing and coding staff can benefit from membership.

Sign up now

The AAOE annual conference will take place May 22–24, 2011, at the Rosen Shingle Creek Resort in Orlando, Florida. The registration fee until April 4th is $550 for AAOE members. Because nonmember registration is $1,050, joining the AAOE and then registering for the conference is another cost-saving measure. Membership information, the preliminary program, and conference registration are all available online at the AAOE Web site, www.aaoe.net.

If you have any questions or would like further information, call (800) 247-9699 or email info@aaoe.net

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