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FEATURE STORY

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election 2004
implications for providers

After the presidential election, "healthcare change" won't be just a campaign promise any more. Depending on who wins, what can providers expect?

AT A GLANCE

It may be difficult to believe, but President Bush and Senator Kerry do agree on a few important issues such as the need for improved healthcare information technology. But in regard to medical liability reform, health care for small businesses, and Medicare managed care, there are significant differences between their proposals. No matter who wins the presidential election, healthcare providers are going to feel the impact—especially with more seniors in HMOs and more low-income families seeking health care.

Amid voter anxiety about the situation in Iraq, the state of the U.S. economy, and the preservation of America's domestic security, it is clear that health care remains at the forefront of issues as the country heads into the final months of the presidential campaign.

So, where *do* the candidates stand on key healthcare issues? And what are some of the repercussions for hospitals, skilled nursing facilities, and other providers, if Senator Kerry is elected or if President Bush is reelected?

Although neither candidate has even hinted at the kind of massive reform to the healthcare system that the Clinton administration proposed during its first term in office, both Senator Kerry and President Bush recognize that voters are deeply concerned about providing themselves and their families with affordable, high-quality health care. And although the candidates share many of the same core values in other areas—for example, the need to provide better educational opportunities for Americans, the importance of an effective military, and the need to build a robust economy—it is their perspectives and proposals on health care that highlight differences in their fundamental political philosophy. While President Bush's health care plan reveals his strong affinity for free market and private enterprise forces, Senator Kerry's plan shows his willingness to adopt or modify government programs to address healthcare needs.

THE CANDIDATES ON MEDICAL LIABILITY REFORM

Bush	Kerry
Caps of $250,000 on noneconomic damages, no caps for economic losses	No caps
Soft cap of "reasonable amounts" on punitive damages	Restricts punitive damages to cases involving intentional misconduct, gross negligence, or reckless indifference to life
Providers can offset their payments by amounts the plaintiff received from insurers	Would require "qualified specialist" to determine that reasonable claim exists
Malpractice judgments can be paid in installments	Mandatory sanctions for claims not warranted by existing law, or that reflect an argument that is without merit

This article highlights some of the healthcare issues affecting hospitals and other providers that figure to play the most prominent role in the 2004 campaign—and the proposals of President Bush and Senator Kerry regarding those issues. Of course, as with any political campaign, after all the pundits' debates, analyses, and evaluations, it is the voters who will make the final determination as to which candidate offers the "best" solutions to these and many other issues.

Medical Liability Reform

The long-running debate over what liability a provider should face as a consequence of medical malpractice once again takes its place at the head of the table of healthcare issues. The candidates' proposals raise a number of issues: Should there be a federally imposed limit on the amount of damages that a negligent provider pays in a malpractice action? Should there be a distinction between economic, non-economic, and punitive damages? And should there be a "gatekeeper" mechanism before a malpractice action can even be commenced?

A driving force behind this issue is the voters' perception that "frivolous" malpractice lawsuits and increasing medical malpractice liability insurance costs are significant contributors to the escalating healthcare premiums and the diminishing provider choice that many voters believe they are experiencing. Although one could debate until election day the degree to which the voters' perception is accurate, both candidates recognize voter anxiety over this issue and have responded in significant detail.

President Bush's proposal regarding medical malpractice reform focuses on the imposition of caps, or limits on awards, in malpractice cases. Specifically, the Bush plan is to limit injured patients' recovery for noneconomic damages, which include pain, suffering, and loss of consortium, to a maximum of $250,000. Regarding punitive damages (those designed to punish the wrongdoer, as opposed to compensating the plaintiff), the Bush proposal would impose a "soft" cap, limiting awards to unspecified "reasonable amounts." Other elements within the Bush proposal that would tend to limit or otherwise diminish the value of recoveries to plaintiffs include permitting providers to offset their payments by amounts that the plaintiff has received from insurers in compensation for the loss, and permitting malpractice judgments to be paid in installments over time rather than in a single payment.

However, not all damages would be capped under the Bush plan. Economic losses—those associated with such events as the loss of a job, as well as (under the Bush plan) the economic damages associated with the loss of the ability to provide unpaid services, such as caring for children or parents—would be compensated through "quick, unlimited" compensation.

In contrast to President Bush's proposal, Senator Kerry's health plan strongly opposes capping damages in medical malpractice lawsuits, stating that caps will neither reduce premium costs for providers nor lower the cost of health care for individuals. However, the Kerry plan does restrict punitive damages to cases involving intentional misconduct, gross negligence, or reckless indifference to life.

The Kerry plan also includes certain procedural steps designed to reduce the number of claims that go to trial, including prohibiting individuals from bringing malpractice actions unless a "qualified specialist" determines that a reasonable legal claim exists and requiring states to make nonbinding mediation available in all cases before permitting plaintiffs to proceed to trial on medical liability claims. In addition, mandatory sanctions would be imposed for claims and defenses that are presented for improper purposes, that are not warranted by existing law, or that reflect an argument that is without merit for modifying or making new law.

Despite the scrutiny that medical liability caps have received, the degree to which they can retard or reverse the rise in malpractice premiums and effect a decrease in health insurance premiums for consumers remains uncertain—and hotly debated by the candidates. And although clearly other factors have played a role in the increase in medical malpractice premiums (the departure of several major insurers from the market, and the diminished returns on investment experienced by insurers over the past several years in the stock market, for example), the relative impact of these other factors on premiums likewise remains unclear.

Health Care and Small Businesses

Over 99 percent of all employers in the United States are small businesses (those with fewer than 50 employees). They employ half of all Americans and generate an increasing number of new jobs in this country. However, although almost all large firms offer health insurance to their employees, only about 60 percent of small businesses offer a health plan. It should come as no surprise, then, that both candidates are actively courting the vote of small businesses, particularly through healthcare proposals tailored expressly for them.

Senator Kerry's plan, for example, would permit small businesses to participate in the Federal Employees Health Benefits Program through a plan dubbed the "congressional health plan."

Furthermore, small businesses would receive federal tax credits to cover as much as 50 percent of the cost of health insurance premiums for employees making less than 300 percent of the federal poverty level (about $55,000 for a family of four). Also, all small businesses—as with other employers—would be eligible for a premium rebate pool for certain high-cost health cases that would provide 75 percent of the cost of catastrophic cases above $50,000, provided that the employer offered "affordable" health insurance to all workers and that the business used the premium savings to reduce premium costs to employees.

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The Bush small business proposal, on the other hand, supports the creation of association health plans (AHPs), which would permit small businesses to band together to negotiate rates with health insurers, including managed care organizations. As envisioned in a bill approved by the Republican-controlled House of Representatives this spring, AHPs would permit small businesses across state lines to negotiate lower rates with insurers.

Although both sides claim that their proposals would significantly reduce the number of uninsured persons working for small businesses, each side is quick to point out the shortcomings—real or perceived—of the other side's plan. For example, while proponents of the Bush plan's AHPs argue that expanded health coverage will be made available at lower rates to small businesses, the Kerry campaign believes that AHPs will be allowed to bypass state laws that mandate coverage for certain critical healthcare services, as well as laws that require insurers to maintain stable premiums and to protect against their insolvency.

CAMPAIGN CENTRAL

For more on the Bush healthcare plan, visit www.georgebush.com/HealthCare

For more on the Kerry plan, visit www.johnkerry.com/issues/healthcare

THE CANDIDATES ON HEALTHCARE INFORMATION TECHNOLOGY

Bush	Kerry
Would authorize $100 million to support the development of health information technology	Would give financial incentives for providers that invest in modern information systems
Promotes development of EMRs (proposes to implement a national system within 10 years)	Seeks to ensure that all Americans have secure EMRs by 2008

Likewise, while the Kerry campaign claims that its small-business proposal will cut costs while diversifying healthcare options, President Bush believes it is an unnecessary intrusion of the federal government into the operations of private businesses.

In either case, and regardless of who wins the presidency this fall, hospitals and other providers should anticipate—and monitor—significant federal legislative activity in 2005 regarding the enormous healthcare insurance needs of small businesses and their employees. And whether through AHPs or the congressional health plan, providers should anticipate a large number of newly insured persons accessing providers and provider networks through innovative means previously unavailable to them.

Information Technology

One area of health care on which both candidates agree is the need for improved health information technology (IT) and IT networks to reduce medical errors, improve communication between providers and payers, reduce administrative expenses, and generate faster response times to queries from patients and insureds.

For example, President Bush's FY05 budget would authorize $100 million to support the development of health IT, including funding for IT projects to improve healthcare quality and grants for IT development and adoption. In addition, through an executive order this spring, the president appointed the nation's first National Health Information Technology coordinator. The coordinator is tasked with developing and implementing the country's strategic plan for national healthcare information standards, including evaluating the costs and benefits associated with interoperable health IT systems, and the privacy and security issues related to interoperability. A key element of the Bush administration's health IT initiative includes the promotion of e-prescribing and the development of electronic medical records (EMRs). The Bush administration predicted this spring that the federal government would implement a national EMR system in less than 10 years.

Senator Kerry's health IT proposals include financial incentives (a "technology bonus") for healthcare organizations and providers that invest in modern information systems, including EMRs, patient registries, and reminder systems designed to improve the quality of care and reduce wasteful spending. The Kerry health plan also includes economic incentives to hospitals, clinics, and other providers that use computerized prescribing systems to reduce medication errors. The Kerry plan seeks to ensure that all Americans have secure, private EMRs by 2008.

Regardless of who wins in November, the movement toward EMRs and electronic-based health information standards is strong, growing, and broadly supported, yet in many ways in its infancy. National technical standards and requirements, for example, permitting physicians and hospitals to share EMRs while ensuring patient privacy are yet to be established, but are on the 2004 agenda of the National Health Information Technology Office. Consequently, now is the time for stakeholders in the healthcare system, including hospitals and other providers, to become engaged in this national discussion and to become active participants in the formation of the policies and requirements that will shape the future and direction of health care.

Medicare Managed Care

Concerns regarding the impact of the baby boomers, whose "leading edge" will reach age 65 in seven years, are driving many of the most heated debates regarding the U.S. healthcare system. Among these debates is the access to and use of HMOs and other managed care organizations by senior citizens, and whether, as the Kerry campaign has argued, the Bush administration's plan will "force" seniors into HMOs.

Under last year's Medicare Prescription Drug, Improvement, and Modernization Act, the Medicare managed care program known as Medicare+Choice was renamed Medicare Advantage (MA). Approximately 10 percent of Medicare beneficiaries are enrolled in MA plans, and estimates for the number who will enroll in MA plans over the next five years range from 12 percent (the Congressional Budget Office) to over 30 percent (the Bush administration). Although some MA plans are fee-for-service, the majority are HMOs.

In large measure, the debate about the MA plans arises from the extra $1.3 billion in aggregate payments to be made to these plans in 2004 and 2005. Senator Kerry argues that seniors will be "forced" into HMOs as many plans use the increased revenue to lower premiums to Medicare beneficiaries. To the contrary, responds the Bush campaign, the increased payments to MA plans merely increase the choices for seniors, and do not "force" any beneficiary to do anything.

What is beyond debate is that one of the most significant changes that hospitals and other providers will experience in the years to come is an increase in the role of private health plans—particularly HMOs—in Medicare. And once again, it will fall to providers to ensure the quality of the health care delivered to Medicare beneficiaries, regardless of the stability (or lack thereof) of MA plan participation and enrollment, and in spite of the level of satisfaction (or dissatisfaction) of plan participants with their MA plans. ●

About the author

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NOT THE LAST WORD

For another perspective on the differences between the Bush and Kerry healthcare platforms, see "More than a Hill of Beans' Difference," by Jeanne Schulte Scott, JD (page 30).