

Breakout Group Three

Grassroots and Communications

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The Colorado Political Environment

At the time the Health Care Availability Act (HCAA) was enacted in the late 80s and for several years after, Colorado enjoyed a very stable political environment for maintaining its hard earned reforms. But this environment began to shift in the 90s due to a series of citizen initiatives and legislative referenda that have affected the nature of representative government in Colorado (e.g., TABOR and term limits). At almost the same time, both the Republican and Democratic parties' moderate members and long-time leadership began to be replaced by the ideological and militant elements of the two parties. This has been especially noticeable in the Republican party, which has forced primaries between moderate incumbents and much more conservative challengers, often won by the latter; the Democrats have been less likely to follow this path, though there are a number of hard liberal Democrats in the General Assembly.

Since the 2000 election, the Colorado General Assembly has been very unstable. Majority party status has cycled between the two parties, and although the Democrats are currently in a better strategic position to maintain their majority status, their position is somewhat tenuous. The shifting sands of electoral politics have led to very strong domination by the party leadership and a general decline in individual legislator influence. An example of this phenomenon that affects health care policy is the State Senate and House leadership dynamics concerning the Colorado Trial Lawyers Association-advocated (CTLA) SB08-164 and HB09-1344, both of which were designed to completely dismantle the HCAA cap.

Over the years, we have watched tort reform evolve into a wedge issue used by Republicans to raise money from business, physicians, and the insurance industry. At the same time, we can see from campaign records that the personal injury bar has donated sizeable amounts to Democratic candidates.

COMPAC Election Cycle Strategy: Identify and Support Candidates Who Support Our Position

In anticipation of CTLA initiatives to roll back tort reform, COMPAC instituted a rule for the 2006 election cycle requiring all state and congressional legislative candidates to be interviewed by local physician screening committees prior to any COMPAC endorsement. With generous support from COPIC, COMPAC conducted training sessions to prepare physicians and Connection members for the local candidate interviews. A strong bipartisan slate of candidates expressed a position in support of maintaining the HCAA. Virtually all of these candidates were elected and subsequently were instrumental in turning back CTLA's SB08-164.

This base of legislative support not only held, but expanded during the 2008 election cycle as COMPAC continued the local interview rule, gaining additional candidate commitments during the process. A bipartisan slate of 39 House members – virtually all of whom were endorsed by COMPAC – voted in opposition to HB09-1344.

These results demonstrate the value of acquainting candidates with CMS' views on priority issues and using the candidates' responses as a factor in determining COMPAC contribution targets.

Assumptions

Given the forgoing review of the relatively unstable nature of the political environment in Colorado, and health care reform as a top-tier priority, CMS public affairs strategists make the following assumptions:

- The defeat of SB08-164 was not a triumph of policy, but rather was determined by the application of political power through an extraordinary commitment of resources by the physician community at the grassroots level.
- The debate and ultimate defeat of HB09-1344 demonstrated an evolving understanding by the General Assembly that any alteration in the balance between plaintiffs and defendants in a medical malpractice case is linked to broader policy concerns and that there are trade-offs between system costs, patient compensation, access to essential medical services, and patient safety.
- After two resounding back-to-back defeats, CTLA will increase its efforts to increase the cap on noneconomic damages to unprecedented levels. It will cast itself as the agent of needed reform for patients and, when opportunity presents itself, attempt to repeal or weaken other medical liability reforms (e.g., peer review, confidentiality of settlements, etc.).
- Because of the cases currently pending in the judiciary, we expect to see an adverse decision that will damage the stable medical liability climate.
- There will likely be at least one high-profile medical negligence case in the next two years (e.g., the Fishbein case) that will become a rallying point for efforts to raise caps, or open confidential settlement orders and disciplinary proceedings.
- While the Colorado political environment will remain in turmoil, urban moderate Democrats are expected to maintain control of both chambers; the race for Governor is expected to be highly competitive.
- There will be at least two vacancies on the Colorado Supreme Court during the term of Governor Ritter, who may appoint a plaintiff attorney or a lawyer sympathetic to CTLA's cause to at least one of these vacancies.
- Legislative redistricting following the 2010 census (district boundaries to be in place for the 2012 election) will see a further concentration of population and representation in the core cities and suburban districts with a decline in population in the rural and ex-urban areas. This shift will favor CTLA, which has been more likely to gain traction with urban Democrats than with rural legislators of either party.

- The cadre of physicians who were leaders in the tort reform movement of the late 1980's will decrease in both numbers and leadership positions over the next five years to be succeeded by physicians who have never practiced in a high-cost, unstable liability climate.
- CTLA will aggressively move to expand its influence with various consumer interest groups and may begin to use the Colorado Deceptive Trade Practices Act and elder abuse laws to circumvent the medical liability statutes.

Offense as the Best Defense

While CMS is still willing to work with CTLA, we should pursue our own proactive legislative strategy at the same time. CMS and its allies may run a package of patient safety legislation in the 2010 Legislature. The BME sunset legislation could be part of the package while stand-alone bills could address peer review and quality assurance, and statutory authority for a demonstration or pilot program creating an alternative to the current litigation model for addressing accountability and compensation. It is important to recognize that CTLA is likely to strenuously oppose any and all of these efforts.

Breakout Instructions

In order for CMS and its allies to succeed with a major legislative agenda in 2010, we must be able to activate our members for outreach to legislators and shore up the funds that support those advocacy efforts. Discuss the following questions to help CMS create the grassroots strategies that can maximize the success of the 2010 legislative package.

1. What short term (now until the end of the year) measures should occur to thank and maintain the Democratic swing votes who stood with medicine against the trial lawyers? (This does not mean we will in any way overlook our Republican supporters; however, the "swing" Dems will need more focused attention). What long-term measures (now through November, 2012) should occur?
2. How can CMS engage those physicians who live and work in swing vote districts in the grassroots efforts needed to maintain these votes? What kind of outreach should we pursue? What kind of messages should we use?
3. In addition to direct mail and membership renewals, what methods can CMS employ to recruit members to join the Small Donor Committee (SDC) and COMPAC? (Note: The SDC requires a \$50 membership fee; state law allows a maximum SDC contribution of \$4000 to any one legislator. COMPAC requires a \$200 membership fee, with \$100 forwarded to AMPAC to support Colorado's federal election candidates. State law allows a maximum contribution of \$400 to any one legislator).