

# EDUCATING LAWMAKERS: A Lobbyist's Job

INDUSTRY ADVOCATES SEEK STABLE FINANCING, WORKFORCE ENHANCEMENT, AND BETTER QUALITY.

MEG LAPORTE

Lobbying for health care interests has become big business in the nation's capital. So big, in fact, that advocates shelled out nearly \$216 million last year employing lobbyists to advance issues such as Medicaid coverage of children, prescription drugs for seniors, and universal health care coverage.

Advocacy groups representing pharmaceuticals, health products, hospitals, health professionals, health services groups, and nursing facilities propelled their interests to a new level in the lexicon of American politics last year.

Having hovered among the top three rankings between 1998 and 2006, 2007 marked the first year that lobbying expenditures within the industry ranked highest among all industries, according to data from the Center for

Responsive Politics (CRP), Washington, D.C. The bulk of such spending was carried out by the pharmaceutical and health products sectors of the industry, which anted up more than \$114 million.

The hospital and nursing facility sector (combined into one category by CRP) ranked second highest in terms of lobbying expenditures in 2007, at nearly \$43 million. However, advocates for the nursing facility industry spent only a fraction of that amount in 2007—approximately \$2.9 million—while 92 percent of it came from hospital interest groups, who paid almost \$42 million lobbying for their specific interests.

Not surprisingly, health care also ranked among the top three most-lobbied issues last year, as evidenced by the

number of lobbyists registered per issue and the number of reports filed by lobbying organizations.

### On The Radar

With competition for access and power among health care advocates at

## ON THE RADAR FOR LONG TERM CARE

The following issues are among the key policy priorities of the American Health Care Association/National Center for Assisted Living:

- Secure current funding streams to ensure the maximum market basket update for skilled nursing facilities (SNFs) and strengthen market basket to recognize all operating expenses;
- Develop an episodic uniform assessment tool that values appropriate clinical outcomes regardless of site;
- Roll out and promote the long term care financing reform proposal;
- Extend the Centers for Medicare & Medicaid Services (CMS) therapy cap exceptions process until a new payment methodology and structure can be implemented;
- Assess CMS Quality Indicator Survey and expand nationwide, if appropriate;
- Ensure state and federal agencies include long term care in the development of practical disaster preparedness plans;
- Educate Congress and the administration with quantifiable data on the magnitude of the workforce crisis; and
- Eliminate co-pays for dual-eligible Part D beneficiaries in assisted living facilities.

unprecedented levels in a presidential election year, the nursing facility industry will likely face new and more daunting challenges this year.

In addition to elevating long term care within the campaign debates, advocates of the profession have pledged to fight for a stable financing system that enhances quality; an oversight system that is fair, consistent, and rewards quality; and a workforce that can meet the growing needs of the

sense that Congress won't do anything controversial, says Ken Preede, AHCA director of government affairs. "It will be a year of posturing."

Yarwood notes that the 2008 campaigns have thus far proved to be very different from those he has experienced during his 30 years in the industry. "It's all frontloaded; we'll know the candidates by February because many of the major primaries will be over by then," he says. "To have that known so



Fred Watson (center), president of the Georgia Health Care Association, and Jon Howell, vice president of governmental affairs, UHS Pruitt Corp., Norcross, Ga. (right), meet with Sen. Johnny Isakson (R-Ga.) in his office on Capitol Hill.

industry.

According to Bruce Yarwood, president and chief executive officer of the American Health Care Association (AHCA), the presidential elections will figure prominently in the industry's advocacy efforts this year for several reasons.

"The congressional schedule will be truncated—they usually go home in October to campaign—making it unlikely that anything significant will get done this year," he says. "But at the same time, it is important that AHCA is involved in the presidential race because long term care has been forgotten, and yet the system is broken."

The presidential elections will affect the legislative climate this year in the

early means that all of a sudden two people will be pairing off sooner than in previous elections."

### Election Year Climate Prevails

"Our aim is to elevate long term care within the presidential campaign," says Yarwood. "We're planning a strategy that includes a presence at both conventions. Our job is to make sure that accessibility is there."

Industry leaders will be present at both conventions, says Dave Hebert, AHCA senior vice president of legislative affairs. "We want to make sure they meet the VIPs from the party. Our goal is to ensure long term care is discussed during the campaign."

Part of the strategy in AHCA's

efforts to elevate the discussion of long term care included the placement of billboards in key primary states. The billboards appeared along New Hampshire and Iowa highways throughout the fall and winter.

In addition to the presidential race, congressional elections also present opportunities for advancing the industry's advocacy agenda, says Francesca Fierro O'Reilly, AHCA senior director of legislative affairs.

"Because the entire House of Representatives and one-third of the Senate are up for re-election, incumbents will be eager to participate in meet-and-greet events, photo opportunities, and places to hold town hall meetings," she says. "They'll want to maximize all of their public appearances, and our members will have an opportunity to seize upon their eagerness to meet with constituents."

O'Reilly notes that while it is important that she and her colleagues maintain communication with congressional staff, "the best messengers we've got are the folks at home because they're the ones that go in the voting booths and vote for these members."

"You don't have to live in D.C. to be a lobbyist for the nursing home industry," adds Cynthia Morton, AHCA senior director of congressional affairs.

### Tools Of The Trade

While elections will occupy a considerable chunk of the industry's advocacy agenda, lobbyists must remain vigilant over annual recurring events, such as the president's annual budget proposal. "I think in 2008 there will be a lot of similar things we've done in previous years," says Hebert. "Once the president's fiscal year 2009 budget proposal comes out we will likely issue a press release and notify [Capitol] Hill of how we stand in terms of its contents."

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FPO

The issues surrounding the annual budget plan, which is typically released in the second week of February, include the president's proposed Medicare cost-of-living increase for skilled nursing facilities (SNFs). "It could be a fight that lasts the entire year," says Preede. "And anytime Medicare is on the table, our funding is at risk. And typically in a presidential election year Congress will try to get out in September to do campaigning, so they will try to get everything done

before then." Adds Hebert, "The fact that Congress will not be in much next year would point to something quick and dirty in wrapping up the budget."

### Playing Defense

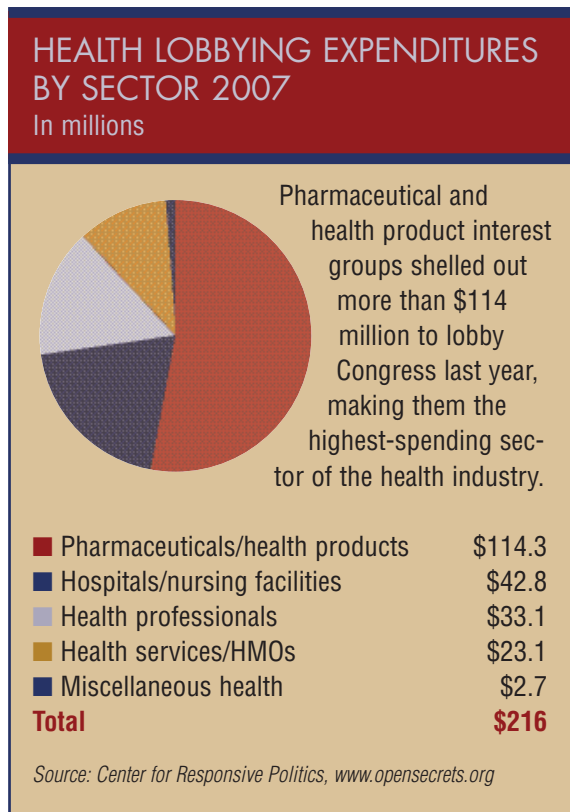
The industry faces a number of "defensive" challenges each year—in which it needs to respond to attacks from the media or lawmakers—and this year will be no exception, experts say. The issues of private-equity ownership and data transparency will keep advocates on their toes this year as well, says Hebert.

"There will be more hearings and more publicity" on these issues, Hebert says. "We will have to face the inevitable publicity associated with it and think about how it could impact legislation. It becomes a very defensive battle in terms of how we characterize the media perception of nursing homes—and could even impact legislation."

Some industry lobbyists estimate that roughly 80 percent of their efforts will involve defense. "Our posture for 2008 is going to be playing huge defense," says Yarwood. "We will certainly spend time promoting quality and Advancing Excellence and at the same time minimizing the impact of a survey system that is broken."

With that, Yarwood notes, AHCA's mission is to look down the road five to 10 years from now and create a system based on outcomes "and based on performance—not based on the punitive system we have now," he says.

Also playing into this dynamic is the fact that Democrats, who are traditionally sympathetic to labor unions, stronger oversight, and more regulation, now hold a majority in Congress. With this new majority came new congressional committee chairs and renewed attention to nursing



facility issues. Although Democrats are typically averse to cutting entitlement programs, there is a lack of understanding when it comes to providers, says Hebert.

“Democrats look at entitlement programs strictly as beneficiary programs, and so there tends to be less thought as to how the services get to the beneficiaries,” he says. “So when they look at providers, they may be more inclined to cut their funding, while at the same time they’re asking us to increase quality to improve services for beneficiaries. So we have to fight that disconnect that legislators often have.”

Legislators oftentimes do not understand that when they cut money to already underfunded providers, it can ultimately affect the residents, who are increasingly older and sicker, adds MaryAnne Sapio, AHCA director of legislative affairs.

### Educating Lawmakers

Educating legislators and other policy makers about the issues serves both a defensive and offensive role in any successful advocacy plan. “We really spend time with the freshman class [first-term lawmakers] and others to educate them about what long term care is, what a SNF is, and what the difference between a SNF and a long term acute-care facility is, for example,” explains O’Reilly. “Most of these folks know very little about nursing homes. They may never have set foot in a facility.”

Among the timeworn tools of the trade utilized to educate policy makers is a document that outlines substantive proposals for reform. Sometimes called a white paper or position statement, a reform proposal typically explains the issue at hand and lays out proposals for addressing or alleviating major indus-

## LOBBYING EXPENDITURES BY INDUSTRY 1998-2007

In millions

Insurance	\$978.9
Electric utilities	\$872.8
Computers/Internet	\$686.0
Business associations	\$649.0
Education	\$614.6
Real estate	\$596.3
Oil and gas	\$574.2
Hospitals/nursing facilities*	\$540.6
Misc. manufacturing/distributing	\$527.4
Pharmaceuticals/health products	\$114.3

*\*Hospitals contribute far more to this category than do nursing facilities.*

## LOBBYING EXPENDITURES BY INDUSTRY 2007

In millions

Health	\$216.0
Finance/insurance/real estate	\$203.4
Miscellaneous business	\$164.7
Communications/electronics	\$154.2
Energy/natural resources	\$125.0
Transportation	\$108.8
Other	\$107.8
Ideological/single issue	\$67.6
Defense	\$60.7
Agribusiness	\$51.6
Labor	\$21.8
Construction	\$20.5
Lawyers/lobbyists	\$13.8

*Source: Center for Responsive Politics, www.opensecrets.org*

try concerns. It was in this vein that AHCA, the National Center for Assisted Living (NCAL), and the Alliance for Quality Long Term Care recently unveiled their joint proposal for long-term and post-acute finance reform.

Described as a “workable, relevant policy proposal that meets the needs of patients and addresses the threatening financing crisis,” the document sketch-

es out a plan for “reforming and rationalizing Medicare post-acute care benefits by creating a new system that is focused on patients’ post-acute care needs rather than the care setting,” the executive summary says.

The intent of the proposal is to create a sustainable, patient-centered, and cost-effective long term care system, according to AHCA. Some of the key components include:

- A new federal catastrophic long term care program that provides Medicare-eligible individuals with federally endorsed long term care financing vehicles;

- Individual contributions to a federal long term care program that requires individuals to finance \$100,000 of long term care that will be adjusted on a sliding-scale basis according to beneficiaries’ incomes;

- Cash benefits to pay for community-based services, SNF or assisted living facility services, and enrollment in a Medicare Advantage plan that provides a long term care benefit and arranges for services;

- Nationally uniform financial products, such as improved reverse mortgages, federally endorsed long term care insurance products, and new long term care savings accounts;

- State and federally coordinated consumer education campaigns that promote both the new federal long term care program and its personal responsibility component;

- New patient assessment tools that determine patient placement, care plan development, continued stay and discharge decision making, developing of quality indicators, and payment calculation; and

- A new Medicare post-acute payment system based primarily on the

# A NEW FRIEND ON THE HILL

Until last summer, U.S. Sen. Tom Harkin (D-Iowa) had not played a key role in the industry's advocacy efforts, but his position as chair of the Labor, Health and Human Services (HHS), Education, and Related Agencies subcommittee placed him smack in the center of a key issue last July when the omnibus spending bill was marked up in his committee.

As consideration of the Labor, HHS spending package began in July, the American Health Care Association (AHCA) aimed its lobbying efforts in his direction. The goal: persuade him to remove a provision that would fund the Centers for Medicare & Medicaid Services nursing facility revisit user fee program—a program that providers feared would impose a prohibitive expense on facilities that were already strapped for cash.

## Grassroots Campaign

AHCA then rolled out a tried-and-true advocacy tool—a grassroots letter-writing campaign—to get constituent providers to write their representatives in Washington, D.C., while lobbyists leveraged their Capitol Hill connections in an effort to educate key members about the onerous impact of the rule.

Meanwhile, in Estherville, Iowa, a member of the Iowa Health Care Association (IHCA) was holding a fund raiser for state Sen. Jack Kibbie (D), president of the Iowa Senate.

"We were already losing over \$11.00 [per patient day] in Medicaid funding," says Steve Ackerson, executive director of IHCA. "User fees would have cost providers an additional \$1 million dollars."

The fund raiser presented an opportunity for Iowa providers to update Sen. Kibbie on their issues, including the user fees.

"I explained to him how much of a negative impact the fees would have on care in our facilities, and then I asked him, point blank, if he would go to D.C. with me to discuss the issue with Sen. Harkin," Ackerson says. "And he said, 'absolutely.'"

## FPO

Following his encounter with Sen. Kibbie, Ackerson and his staff set out to mobilize Iowa members to send their own letters to Sen. Harkin—something that Ackerson says played a key role in motivating Harkin to remove the user fee funding from the bill.

"We sent probably hundreds of letters to Sen. Harkin," he says. "Our members wrote absolutely wonderful letters about how the user fees would take away from direct care."

Sen. Kibbie's longstanding friendship also contributed to their success, says Ackerson. "You have to understand that Sen. Harkin was previously

not allowing any trade associations to talk to him about it."

Ackerson flew to Washington, D.C., several weeks later, joined by Sen. Kibbie, and two IHCA members. "We met with key people on Harkin's staff prior to meeting with him, then Sen. Harkin came in and spent a lot of time with us," Ackerson recalls. "We brought him examples of how we would have to pay revisit user fees; we estimated that it would cost our providers over \$1 million in the next year. Then we asked him to remove it."

## Team Effort

In the end, Ackerson emphasizes that the successful outcome was really a team effort. "I have to give credit to MaryAnne Sapio [AHCA director of government relations] and the rest of the AHCA legislative staff," Ackerson says. "They did a wonderful job."

Several weeks after meeting with Harkin for a second time, Ackerson got word that funding for the user fee program would be removed from the bill.

The experience has solidified IHCA's relationship with the senator, reports Ackerson, who is currently working with Harkin's office to apply for a grant that would help with some workforce initiatives. "We hope this great relationship we're developing will lead to bigger and better things for us."

Accounts like this one are not unusual for industry advocates. Groups like AHCA depend on their members to boost their lobbying efforts through grassroots and grassroots educational campaigns for many of their major policy issues.

condition, needs, and characteristics of patients in a post-acute care setting of their choice.

While the three organizations released the plan at a news conference in January, additional plans for rolling out the proposal include garnering the support of interest groups and stakeholders, such as the National Governors Association and AARP, and sharing it with presidential campaigns. “We’re basically going to tee up as much support for it as possible for 2009, since the election year is not expected to yield much activity,” says Hebert.

### Eight Steps

When it comes to strategizing, Yarwood directs his team of lobbyists and consultants to employ a strategy that encompasses the use of nearly every function of the organization. The following eight steps are taken when tackling every one of AHCA’s policy issues:

1.) *Define the “ask.”* Determine what you are asking for,” says Yarwood. “For example, in terms of maintaining a stable financing system for providers, we determine that we don’t want to lose the annual cost-of-living increase for skilled nursing facilities. So, we go through each issue and say, what is it going to take?”

2.) *Back it up with facts and data.* “Our research department examines the data and undertakes numerous studies for every issue,” says Yarwood. “For instance, with the SNF cost-of-living update, our research consistently shows that while providers may make money on Medicare, they are losing on Medicaid.”

3.) *Utilize the data to educate policy makers.* “We arm the lobbyists with the data; the most important part of the lobbying is that we all say the same thing, whether it’s the Alliance or other nursing facility organizations, we

## TOP ISSUES LOBBIED BY NUMBER OF LOBBYISTS REGISTERED 1998-2007

Issue	Number Of Registered Lobbyists
Federal budget/appropriations	35,225
Taxes	31,580
Health issues	28,758
Trade	21,238
Transportation	17,711
Defense	17,432
Energy/nuclear power	17,149
Medicare/Medicaid	16,284
Environment/Superfund	16,137
Education	14,341

## TOP ISSUES 2007

Issue	Number Of Reports*
Federal budget/appropriations	3,849
Health issues	2,909
Taxes	2,885
Energy/nuclear power	2,091
Defense	1,827
Trade	1,823
Medicare/Medicaid	1,658
Education	1,533
Transportation	1,523
Environment/Superfund	1,488

\*Each semiannual filing (mid-year and year-end) is treated as a separate report, and each may mention multiple issues.

Source: Center for Responsive Politics, [www.opensecrets.org](http://www.opensecrets.org)

know there’s an armada of lobbyists we have, and we all try to keep on the same page,” Yarwood says.

4.) *Grassroots lobbying.* It’s important that the members out in the field, whether they are administrators, owners, nurses, or nurse assistants, tell their stories to their representatives in Washington, Yarwood says.

5.) *“Grasstops” lobbying.* The role of public relations is important to this strategy, as it involves mobilizing prominent political, business, and community leaders in each community

who can reach lawmakers at the federal, state, and local levels. Another strategy may include arranging for personal contact between coalition leaders and decision makers.

6.) *Coalition building.* Developing and building relationships with other stakeholder organizations, such as the Alzheimer’s Association, AARP, or the American College of Health Care Administrators, is important in order to marshal the collective resources of all organizations.

7.) *Legal analysis.* “We look into whether or not there should be legal action taken to rectify the issue,” says Yarwood.

8.) *Political action committee (PAC).* “We use the PAC to create opportunities to get our message across,” Yarwood says. “You’re certainly not buying any votes by any stretch of the imagination, but, for example, having the opportunity to have dinner with a key legislator means that we can spend two hours educating him or her about an issue.”

### Laying The Groundwork

For the second time in two years, AHCA has drafted a bill that attempts to tackle nearly all of the industry’s major concerns. As the centerpiece of AHCA/NCAL’s advocacy agenda,

the Long Term Care Quality and Modernization Act of 2007 lays the groundwork for resolving the industry issues of financial stability, workforce, and quality.

The measure, which was introduced by Sens. Gordon Smith (R-Ore.), Blanche Lincoln (D-Ark.), and Susan Collins (R-Maine) in the Senate and by Reps. Earl Pomeroy (D-N.D.), Shelley Moore Capito (R-W.V.), and Tom Allen (D-Maine) in the House last year, promotes investments in capital improvements and health information

technology; encourages collaboration between providers and surveyors; and helps to create a well-trained, stable workforce.

Although it is not expected to succeed intact, the purpose of the bill's introduction is multiple. Legislation that contains a laundry list of provisions supportive to the industry can aid in advancing one or more of those provisions in other measures, says Preede. "So it's important to get the right peo-

issues. It sometimes is the tipping point to getting it to the table."

Finally, Preede says, the fact that the bill has bipartisan support gives it more legitimacy, from both a public relations and a political standpoint.

Such strategies appeared to have yielded some successes for the industry last year, according to Preede. A provision in the 2006 version of the bill called for a SNF-specific wage index to be used, as opposed to the current use

Congress before the Deficit Reduction Act of 2005 mandated that CMS develop an exceptions process for Part B beneficiaries with certain conditions that exceed the cap for services received in 2006. The process, which was intended to be in place through 2007 and was recently further extended through June of 2008 by Congress, recognizes the acuity and unique vulnerability of SNF residents, according to AHCA.

Medicare beneficiaries in the SNF setting are the most harmed by the imposition of the cap (\$1,780 per beneficiary per year) because they are the most chronically ill and the oldest of the Part B beneficiaries—by an average of 10 to 15 years, according to AHCA.



**Rep. John Barrow (D-Ga.) meets with residents at the Georgia War Veterans Nursing Home, in Augusta. AHCA's grassroots program brings legislators to member facilities to meet with residents and staff.**

#### **Fair Oversight A Priority**

Since CMS is the arbiter of nursing facility survey and oversight, advocates always maintain a watchful eye on the agency. In particular, a new Quality Indicator Survey (QIS) pilot initiative is on the industry's radar screen. At press time, CMS was expected to release its evaluation of the initiative at any time, and AHCA is working with its members to determine the efficacy of the program and its potential for nationwide expansion.

According to Lyn Bentley, AHCA director of regulatory services, the QIS will likely be the survey of the future for all Medicare-certified nursing facilities. However, there are several concerns that must first be addressed.

"We are concerned because unseasoned surveyors may be too easily swayed by the results of the program and accept the results despite some questions," says Bentley. "On the other hand, seasoned surveyors may be offended by having a computer make the decisions and supersede their professional judgment."

In addition, the method for determining survey outcomes is unknown, and CMS has not released the details of the process. AHCA's job is to improve the transparency of the pro-

ple to support it. It provides built-in support for other key legislation."

For example, AHCA lobbyists may have an opportunity to push to have included a provision from the measure into larger health care-related bills that may be introduced, such as a Medicare package. "Policy makers don't have to be in there writing a new provision for another bill," Preede points out. "They can insert something that's already written and supported by a host of key legislators."

Timing of the bill's introduction is yet another strategy, says Preede. "It allows us to build up support for the second year of the congressional session. The key is to sign on more co-sponsors and make them aware of our

of the hospital wage index. "We didn't get it," says Preede, "but there was a law passed that required the Medicare Payment Advisory Committee to look at the pros and cons of using only a hospital wage index."

#### **Therapy Caps Rank High**

High on AHCA's agenda are efforts to persuade Congress to direct the Centers for Medicare & Medicaid Services (CMS) to modernize the payment policy for outpatient therapy services (speech language pathology, physical therapy, and occupational therapy) through the development of a permanent, condition-based payment system.

Several moratoria were passed by

gram so industry can gain a clear understanding of how it works, says Bentley.

Additional regulatory issues include monitoring the CMS Special Focus Facility initiative, ensuring the absence of funding for the revisit user fee in the 2009 fiscal year budget, and inclusion of long term care in state and federal agencies' development of disaster preparedness plans.

In 2008, NCAL will continue to

level. In order to shape the future of our profession, we need to prepare to be at the table for such a debate."

During 2008, NCAL will encourage its members to become more politically active and participate in AHCA-PAC and political grassroots activities, including developing relationships with their federal elected representatives, says Polzer.

NCAL also will continue lobbying Congress to eliminate Medicare Part

last year aimed at organizing nursing facilities. "Long term care is one of its identified targets for collective bargaining," says O'Reilly. "So that's something our folks will have to get their arms around."

SEIU represents an array of service-related workers, including health care employees, janitors, security guards, public service employees, home care workers, building service workers, and probation and parole officers. And with the highest proportion of immigrants of any major union, the union pays close attention to immigration issues—also on AHCA's plate as workforce issues bear down on the growing elderly population.

What's more, SEIU is expected to have 40,000 to 50,000 people "on the ground" for the elections, says Hebert. "They will be working on campaigns, getting out the vote."

As an indication of their power, labor unions donated more than \$20 million to candidates for this election cycle, with SEIU ranking No. 15 on the list. The union has thus far given well over half a million dollars to federal candidates, 98 percent of whom were Democrats, according to CRP. Moreover, for the 2006 election cycle, SEIU spent more than \$1.6 million on candidates.

Albert Einstein was once quoted as saying that politics is far more complicated than physics. His observation is well-illustrated in the advocacy efforts of the long term care industry and will continue to play out as the 110th Congress moves into its final year and the campaigns intensify.

In the final analysis, no issue is simple.

"Some issues we deal with are really messy. It takes a long time to get them resolved; it's an incremental process when you're working with Congress and agencies," says Morton. "It's rare that you have an immediate resolution. Typically, there is nothing that flips the switch, and oftentimes it's the small steps that get us there." ■



**Bruce Yarwood, AHCA president and CEO (center), testifies before the House Ways and Means Subcommittee on Health last May.**

work to keep assisted living regulation at the state level. However, its policy goals also include preparing for what appears to be an inevitable national debate over financing and regulating long term care facilities, including assisted living, says Karl Polzer, NCAL senior policy director.

"Given the changing political climate, the aging population, and the trend toward increasing acuity levels in assisted living, we anticipate greater scrutiny by federal policy makers," says Howie Groff, president of Tealwood Care Centers in Bloomington, Minn., and NCAL's new chair. "The reality is that it's a matter of when, not if: At some point there will be a push for regulating assisted living at the federal

D prescription drug co-payments for the more than 120,000 assisted living residents covered by Medicaid and work to protect federal funding streams, including Medicaid, that help pay for assisted living services for residents with low incomes.

#### **The Union Factor**

Labor unions will continue to play a larger role in long term care and will likely complicate the industry's advocacy efforts in the months and years to come. In particular, the Service Employees International Union (SEIU) has set its sights on the long term care industry.

The 1.5 million-member organization launched a health care initiative