

On exchanges, devil's in the details

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For some of the states that managed to pass exchange bills this year, the fight over implementing health reform is far from over.

Showing that no battle is too small when it comes to health care reform, patient advocates are worried about the insurance industry influencing governance boards overseeing the health exchanges. That's because the governance boards could be tapped to handle a lot of the heavy lifting on key policy questions, such as which health plans can sell on the exchanges and how to finance the online insurance marketplace and prevent conflicts of interest.

Exchange governance boards will be busy between now and January 2013, when Health and Human Services must determine whether a state's exchange passes muster. Building an exchange — an online marketplace where consumers can shop and compare health plans — will require information technology expertise, as well as an intimate understanding of how insurance markets operate. Ultimately, the boards will be responsible for striking the right balance between meeting consumer needs and supporting viable insurance marketplaces for the 24 million projected to enroll in exchanges by the end of the decade.

"It's the governing body that is going to have to lay out the vision and make the day-to-day decisions to help the exchange go forward," Stephen Finan, senior policy director of the American Cancer Society Cancer Action Network, said Wednesday during a panel on health exchanges.

So patient advocates are worried insurance industry stakeholders, including the health plans, brokers and agents, will have a seat at the governance table. To advocates, it's the equivalent of the fox guarding the hen house.

"Since some of the decisions need to be made by exchanges include whether to retain or drop a health plan in the exchange, it's very hard to have confidence in a governance system if there's a conflict of interest," said Ron Pollack, executive director of the pro-reform Families USA.

However, an exchange rule issued by the Obama administration in July bucks that view. The rule allows health insurers, brokers, agents and anyone else licensed to sell insurance to serve on governance boards with the caveat that they don't dominate membership.

"We thought that was a very reasonable approach not to have the board dominated by insurer interests or insurer-affiliated interests," Center for Consumer Information and Insurance Oversight Director Steve Larsen said. "These are to be run for the benefit of the health care consumer. We wanted to make sure the majority of the board is health care consumers."

But patient advocates in Colorado say that's exactly what's happened on their exchange board, despite the law's requirement that the majority of members "are not directly affiliated with the insurance industry." The Colorado law allotted five appointments to Gov. John Hickenlooper, while allowing one each for the top Democrat and Republican in both chambers of the state's Legislature.

Advocates are now upset that four of the nine members are managed-care or insurance company executives and a fifth is an IT executive with ties to some of the companies represented on the board. A sixth member, Michael Fallon, is an emergency room doctor whose opposition to health care reform inspired him to launch an unsuccessful bid for Congress last year.

"The devil seems to be in the details," said Dede de Percin, executive director of the Colorado Consumer Health Initiative.

Lorez Meinhold, Hickenlooper's policy lead on health reform, said there are no plans to replace any board members.

"All of our exchange board members are committed to the success of the exchange," she said.

Advocates in North Carolina fought a similar battle earlier this year over an exchange bill that would have given the insurance industry four of 11 seats on the governance board. The bill cleared the state Legislature's lower chamber, but the Senate is unlikely to take up the bill in special session.

"We're concerned that insurance companies would essentially be regulating themselves if they're on the board," said a North Carolina consumer advocate. "They'll fight any proposal to put any new restrictions on the insurance industry."

Advocates point to Connecticut, California and Maryland as states that passed exchange language with strong conflict of interest language. While California and Maryland have already tapped members to its governance board, patient advocates in Connecticut — the insurance capital of the world — are closely watching how the state's board shapes up.

"There was general agreement that the board needs to be strictly independent of interested stakeholders, especially the insurance industry," said Ellen Andrews, executive director of the CT Health Policy Project. "We all hope that the appointed board members with long ties to that industry honor that understanding."

Meanwhile, West Virginia and Oregon serve as examples of states that provide a direct path for insurance industry representation. West Virginia's exchange legislation, approved in April, calls for one agent and one insurer on its 10-member board. The Oregon exchange allows up to two insurance-affiliated members on its nine-person board, while also requiring at least two consumer representatives.

Since federal reform was enacted, just 13 states have signed exchange bills into law, and most of those states have Democrats leading at least the governor's office or the legislature. It will be interesting to see how purely red states — if they reluctantly enact exchange legislation — handle the governance question.

Robert Zirkelbach, spokesman for America's Health Insurance Plans, said insurers deserve a role at the governance table, noting that the new exchange rule paves a path for them.

"These boards are going to have broad representation from a variety of stakeholders to make sure exchanges are meeting the needs of consumers," Zirkelbach said. "Health plans are the ones providing coverage options to consumers, so it makes sense that they would be involved in the discussion about what works and what doesn't in providing these options."

Pollack said insurance stakeholders should have input on exchange decisions but in an advisory role.

"You don't have to be on the board to have input on the board," he said.