

US State Officials, Advocates: Health Reform Could Undermine Authority

Some advocates and officials across the political spectrum said they believe federal health care reform could undermine states'

rights and responsibilities -- a mutual conclusion reached from different perspectives.

Fourteen Republican state attorneys general advised Senate Majority Leader Harry Reid, D-Nev., and House Speaker Nancy

Pelosi, D-Calif., that they are plotting a legal challenge in the event the final health care bill includes a "constitutionally flawed"

provision that gave special Medicaid treatment to Nebraska. The "Cornhusker Compromise" provided increased federal funding

for the home state of Sen. Ben Nelson, D-Neb.

Meanwhile, every Democratic House member from California and Maine warned Reid and Pelosi that both the Senate and

House bills now the subject of reconciliation talks include interstate compact language that could lead to a "race to the bottom"

in insurance regulation. In a letter, the 31 House members -- approximately one-eighth of the Democratic caucus -- said

provisions that could allow insurers to domicile in one state while selling policies in others would undermine consumer

protections as companies make their regulatory homes in less-stringent states.

The Nelson deal "was a wonderful political tool given to the GOP," said Alan Katz, a health care consultant and former

president of the National Association of Health Underwriters. The attorneys general will have an issue if the provision stays

intact and can claim a political victory if it is stripped from the final legislation, he said.

"It's great PR, but it's not going to be in the final bill and it will dissipate in the light of day," Katz said.

"It put every other

senator in an awkward position."

The Medicaid provision that won Nelson's support is "not fair" to the other 49 states, said Kansas Insurance Commissioner

Sandy Praeger. She said states that currently provide a higher-than-average level of support to Medicaid enrollees -- many of

which are already cash-strapped -- will particularly bear the burden of new Medicaid mandates projected to cost billions of

dollars.

"We couldn't be doing a Medicaid expansion at a worse time for state budgets," said Praeger, chairwoman of the National

Association of Insurance Commissioners' Health Insurance and Managed Care Committee.

Praeger said she is heartened that Senate and House negotiators are working from the Senate bill, which "is closer to what

state regulators can work with." State regulators are concerned about potential federal pre-emption of state practices. The

Senate bill includes state-based insurance exchanges and an opt-out provision for states. It specifies certain roles for state

regulators and the National Association of Insurance Commissioners in developing rules and regulations.

"If there's a national exchange, pre-emption almost has to go along with it," Katz said.

According to Consumer Watchdog, 17 states representing 54% of the U.S. population could be the most strongly affected.

Those states have more than 50 health benefit mandates.

Some standardization between state systems is a natural area for reform, Katz said. "Logically, it seems there should be some savings in standardization between the states. If states are allowed to do whatever they please, that disparity will continue," he said.

What form of federal involvement will occur in the exchanges and in cross-border insurance offerings is still in flux. Beyond the final legislation, it is the details of implementing rules and regulations that supporters of state autonomy will follow closely. To the degree an eventual federal statute offers states' flexibility, those issues will be subject to state-based debates.

In a letter to Reid and Pelosi expressing the viewpoint of the NAIC, President and West Virginia Insurance Commissioner Jane

Cline said state-based health insurance exchanges would "streamline the process of purchasing coverage and make meaningful comparisons of health insurance plans much easier." Cline also said Congress should "insist that nationally sold plans be subject to all statutes and regulations that apply to other plans being sold to the same population and that they remain subject to the oversight of state insurance regulators."

The pending return of health care reform debates to statehouses influenced Betty Ahrens' decision to not seek another term as a National Association of Insurance Commissioners-appointed consumer representative. The executive director of the Iowa Citizen Action Network said she expects to focus her energies on the state level (BestWire, Dec. 21, 2009).

Praeger said she favors a federal-state mix akin to that of Medicare supplemental policies, with state regulators developing standards, Congress establishing them and states providing enforcement. "That's a good combination," she said.

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