IDEAS IN ACTION

JANUARY 2012

MAINE PEOPLE'S ALLIANCE

Alliance for a Just Society convenes community and racial justice organizations nationwide on critical public policy issues, providing research and policy analysis and fostering public conversation.

3518 S. Edmunds
Seattle, WA 98118
Voice: (206) 568-5400
Fax: (206) 568-5444

www.allianceforajustsociety.org

KEEPING THE FOX OUT OF THE HENHOUSE

Protecting New Health Insurance Markets from Insurance Company Conflict of Interest

Introduction

In March 2010, Congress passed historic health reform legislation. It is now up to Maine lawmakers to implement reform in our state, including passing legislation to establish new health insurance exchanges through which individuals and small businesses can buy health insurance. These new exchanges are intended to provide an alternative to largely unregulated private insurance markets, where insurers faced little or no restraints on who they could turn down for coverage or what they could charge.

In order for the exchanges to provide an affordable, quality alternative, they need to be protected from health insurance industry influence. Each exchange will be governed by a board that will make key decisions about what kind of coverage will be offered and how much it will cost. It is essential that the legislation creating the exchanges protect the integrity of the exchange boards and keep them free of insurance company conflict of interest.

The Price of Influence – Health Insurance Companies' Lobbying Dollars in Maine

	2010	First half of 2011
America's Health Insurance Plans (Industry lobbying group in Washington D.C.)	$ 11,332	$ 17,000
Anthem Blue Cross Blue Shield	$ 35,000	$ 38,000
Aetna	$ 16,600	$ 30,000

Based on six anti-conflict of interest measures, this report card grades two proposals, the draft legislation proposed by the Advisory Committee on Maine's Health Insurance Exchange and LD 1498, introduced by Representative Sharon Treat in the 2011 legislative session and carried over to 2012. Based on these measures, the committee bill earns an F, compared to the B earned by LD 1498.

Health Insurance Companies Are Trying to Influence Health Reform Implementation

Health insurance companies do more than just sell health coverage. They also engage in politics, using premiums dollars to make campaign contributions to office-seekers, lobby lawmakers, and otherwise influence the public debate on key public policy issues. Although health insurance companies can't occupy elected positions, they can – and do – use their financial muscle to influence decisions that affect the way they do business and the way patients receive health care.

The methods of influence used by the health insurance industry are often far from transparent. Prior to the passage of health reform, the health insurance industry funneled more than $86.2 million into an anti-health reform media and lobbying campaign.[1] During the same period, the industry was publicly claiming that it supported reform.

Now, insurance companies are making campaign contributions and lobbying state lawmakers across the country to influence the legislation to create exchanges. Health insurance companies have contributed generously to statewide campaigns in Maine, with WellPoint (Anthem's parent company), giving out $70,716 since 2003 and Aetna making contributions of $37,000.[2]

On top of these contributions, health insurance companies are heavily involved in lobbying in Maine. America's Health Insurance Plans (AHIP), the industry lobbying group based in Washington, D.C., paid $11,332 to a Maine lobbyist firm for services in 2010 [3] and more than $17,000 in the first half of 2011. [4] Anthem paid more than $35,000 to lobbyists in 2010 [5] and more than $38,000 in the first half of 2011, [6] while Aetna's lobbying investment involved more than $16,600 in 2010 [7] and jumped to $30,000 in the first half of 2011. [8]

Undoubtedly, the health insurance industry is seeking the ear of lawmakers on key issues related to denial of benefits, quality of coverage, cost of health services, premium rates, and other matters of concern to consumers.

Governing the health insurance exchange

Under the Affordable Care Act (ACA), by 2014 every state is required to put into place a health insurance exchange through which individuals and small businesses can purchase health insurance. (As an alternate, states may join a federal exchange.) The exchange is intended to provide an alternative to the largely unregulated private health insurance marketplace, which has left many people uninsured or inadequately insured.

Through the exchange, private health insurance companies will offer health insurance plans, and consumers will choose which plan they want to purchase. The exchange will set standards and common rules for insurers wishing to sell their insurance products through the exchange. These rules and standards will address issues such as quality and affordability of coverage – in other words, what kind of coverage insurers can offer and at what cost. In particular, the exchange "must certify plans based on a determination of what 'is in the interests of qualified individuals and qualified employers' in the state."[9]

Accordingly, health insurance companies have a strong financial interest in the decisions made by the exchange's governing board. Health insurance companies' interest in maximizing profit often stands in conflict with patients' interest in getting high quality health care they can afford.

However, health insurance companies are not the only ones with a financial stake in exchange board decisions. Insurance brokers, physicians and other providers, clinics and hospitals, and others also stand to gain financially from exchange board decisions. Likewise, "navigator" agencies – which will receive funding through the exchange to help ensure that patients get the health insurance and health care they need – have a stake.

Finally, potential conflicts arise not only in exchange board decisions but in the day-to-day operation of the exchange. It would present a conflict, for example, if the state hired an insurance company to administer the exchange, since the insurance company has a financial interest in customers' choice of insurance products and in other issues related to exchange administration. Likewise, insurance brokers may have financial incentives to steer clients toward particular health policies. These and other incentives run counter to individuals' and small businesses' interest in the best possible health care at the best price.

The financial interests of health insurers and these other health care market participants may often conflict with the interests of patients, who need health care they can afford. Consequently, it is essential that the exchanges be insulated from industry influence.

Six Ways to Protect Exchanges from Health Insurance Industry Conflict of Interest

Fortunately, there are provisions that Maine can adopt in its health insurance exchange legislation to protect the governing board from insurance company and other conflicts of interest. These include the following:

Percentage points earned	Grade
0-60	F
60-70	D
70-80	C
80-90	B
90-100	A

- ***No board seats for representatives of insurance companies*** or other entities with a direct financial interest in exchange board decisions (such as hospitals or pharmaceutical companies). Representatives include those who are employed by or receive compensation from an entity with a financial stake in exchange board decisions.
- ***Disclosure of financial interests and recusal in case of potential conflicts.*** To ensure sunlight on potential conflicts of interest, board members should be required to disclose financial interests, such as stock ownership, in companies with a stake in board decisions. Exchange board members should also be barred from participating in any board discussions or decisions in which they or a family member has a financial interest.
- ***No-revolving-door policy*** that bars, for a determined period: exchange board members from later being employed by an entity with a direct financial interest in exchange board decisions; or, assumption of exchange board positions by former employees of an entity with a direct financial interest in exchange board decisions.
- ***Conflict of interest requirements apply to senior exchange staff,*** in addition to exchange board members.
- ***Conflict of interest requirements apply to entities participating in the navigator program*** established by the exchange.
- ***Anti-steering provisions*** to prevent insurance agents and brokers from steering business away from the exchanges. The exchanges should monitor agents' enrollment rates inside and outside the exchange and exclude brokers that have a pattern of steering clients away from the exchange. The exchange legislation should also prohibit commission structures that encourage agents to steer enrollees to products outside the exchange.

Advisory Committee Legislation Earns an F, LD 1498 Earns a B

The draft legislation recommended by the Advisory Committee would establish an exchange governed by a board of nine voting members (and two non-voting, ex office members). The proposal specifically reserves at least one seat on the board for a health insurance company representative and an insurance broker representative and permits up to two additional seats for such representatives.

The proposal states that Maine conflict of interest law would apply to appointment of voting members of the board. However, it does not explicitly extend that law to the actions of members once they are appointed. In addition, the draft legislation contains no provision relating to disclosure and recusal, the revolving door, or any other conflict issue.

LD 1498 would establish a board composed of nine voting members (and four nonvoting, ex officio members). The bill states that no board member may be "employed by, a consultant to, a member of the board of directors of, affiliated with or otherwise a representative of a carrier or other insurer, an agent or broker, a health care provider or a health care facility or health clinic while serving on the board." The bill goes on to prohibit board participation by representatives of industry trade groups.

In addition to these protections, the bill requires board members to disclose potential financial conflicts and recuse themselves from voting on such matters, although it appears to allow them to participate in related discussions. LD 1498 allows insurance brokers to serve as navigators for small businesses but bars this role with regard to individual consumers. It does not include provisions with regard to the revolving door or apply conflict of interest provisions to senior staff.

	Advisory Committee		LD 1498	
No insurance company board seats	Fail	0	Pass	75
Disclosure & recusal	Fail	0	Incomplete	3
No revolving door	Fail	0	Fail	0
Applies to exchange seniors staff	Fail	0	Fail	0
Applies to navigators	Fail	0	Incomplete	2
Anti-steering provisions	Fail	0	Fail	0
GRADE	F	0	B	80

This report grades the Advisory Committee draft legislation and LD 1498 on the six standards included above. The most important thing states can do to insulate the exchanges from conflict of interest is bar participation of people with a direct conflict – representatives of health insurance companies or other entities with a direct financial stake in board decisions. For this reason, this standard accounts for 75 percentage points out of 100. For each remaining provision the state adopts, it receives five percentage points.

The two proposals perform as indicated in the accompanying table. The Advisory Committee draft legislation receives no points, as it requires insurance company representation on the exchange board and lacks a revolving door provision, disclosure and recusal provision, and any other provision relating to conflict of interest.

LD 1498 receives full credit for barring industry representatives from serving on the exchange board. It receives partial credit for its disclosure and recusal provision. (However, it does not receive full credit in this area because it allows members to participate in discussions of matters despite a potential conflict.) The bill also receives partial credit for barring insurance brokers from serving as navigators for individual consumers. It fails on the remaining measures.

Conclusion

Health reform represents a response to private health insurance companies' failure to deliver good, affordable coverage to a sufficient number of people in Maine and across the country. This failure arises from private health insurance companies' putting their financial interests above the public interest in health care.

Under health reform, consumers will now have the opportunity to purchase coverage through an exchange that sets rules and standards for health insurance. This is an important step forward. However, Maine is still not doing everything it needs to do to protect the exchange from health insurance company influence. Maine policymakers should incorporate strong conflict-of-interest provisions into the state's health exchange legislation to ensure that the health insurance exchange represents the people of Maine and not its health insurance companies.

1 Dave Eggens, "Health insurers' group gave U.S. Chamber $86.2 million in 2009 for lobbying," Washington Post, November 17, 2010, viewed at: http://www.washingtonpost.com/wp-dyn/content/article/2010/11/17/AR2010111706325.html.
2 Figures from the National Institute on Money in State Politics database, followthemoney.org.
3 Joseph Mackey, Joint Lobbyist/Client Annual Report for 2010 t the Commission on Governmental Ethics and Election Practices.
4 Joseph Mackey, Lobbyist Disclosure Reports, January – June 2011.
5 Kristine Ossenfort & James Mitchell, respective Joint Lobbyist/Client Annual Reports for 2010 t the Commission on Governmental Ethics and Election Practices.
6 Kristine Ossenfort & James Mitchell, respective Lobbyist Disclosure Reports, January – June 2011.
7 Edward Pineau, Joint Lobbyist/Client Annual Reports for 2010 t the Commission on Governmental Ethics and Election Practices.
Edward Pineau, Lobbyist Disclosure Reports, January – June 2011.
8 "Designing an Exchange: A Toolkit for State Policymakers," National Academy of Social Insurance, January
9 2011, p. 6, viewed at: http://www.nasi.org/research/2011/designing-exchange-toolkit-state-policymakers