

A Floor Not a Ceiling for Health Reform

by Richard N. Gottfried

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All eyes are now on Washington's health care reform efforts. But since the 1980s, health care reform in this country has largely been generated at the state level. There is a critical danger that the health care legislation being developed in Washington will legally block state initiatives. The power of interest groups limits what we can realistically expect from Congress, so it is important that the legislation protect and promote the ability of states to do more.

Here's some of what states have done -- with New York in the forefront. Programs for prenatal care for low-income pregnant women began at the state level in the early 1980s and later led to national legislation to provide federal support. Senior citizen prescription drug programs were created in many states long before Medicare Part D was enacted, and many would agree that the state programs are better designed. The Child Health Insurance Program, or CHIP, began with state programs in a few states and then was supported by federal matching funds. The recent change to let CHIP cover children in more moderate-income families was a response to state efforts to expand the highly successful program. Several states expanded publicly-funded health coverage for low- and moderate-income adults.

State governments have led the way in protecting consumers in the private insurance market. Laws limiting restrictions on pre-existing conditions, rules protecting consumers and health care providers from being unfairly denied payment for medically necessary services, and other reforms have come from our state capitols, not Washington.

In some states, giant multinational drug companies have been reined in by state legislation restricting marketing and pricing abuses.

Letting States Do More

Each state is different. Some will want to do more than Washington does, and some won't. This is America, after all. The federal legislation should be a floor, not a ceiling.

"Pre-emption" is the legal term for one level of government taking over a field of law and barring other levels of government from acting in that area. Sometimes federal law explicitly pre-empts state or local laws. Even when there is no specific pre-emption language, the courts often rule that a federal law has pre-empted the field.

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Major corporate interest groups often push for language in federal legislation to pre-empt state or local government action. They don't want state laws to give consumers more protection than a federal law provides. On the other hand, federal law can also specifically allow state or local governments to enact additional legislation.

In this instance, health insurance companies and big employers will argue that allowing state initiatives will make it impossible for them to operate across the country. That doesn't hold water. Multi-state companies have always worked with different state laws on insurance or consumer protection, different labor markets, and even different zoning or environmental laws. Anyone smart enough to run a multi-state company can handle that complexity.

We should be more concerned about families who will need help from their state government in dealing with gaps in coverage and consumer protection that will likely be left when Congress is done.

Some lobbyists say they want to "let" people buy health insurance from out-of-state companies. But insurance companies can already sell policies to people in other states -- as long as they obey the state's insurance laws. What the lobbyists want is a clause in the federal legislation to make it easy for out-of-state insurance companies to sell without complying with state laws.

I hope Congress will enact strong legislation to give all of us access to quality affordable health care. But no matter how optimistic one might be, let's also be realistic. With special interest lobbyists sitting at the health care reform table in Washington, at the end of the day there will be a lot of room for improvement. Families and health care providers will need somewhere to turn.

If Congress pre-empts state health reform initiatives, it will shut down the engine that has done the most in recent decades to help Americans get the health care they need.

No matter what Washington does, we will continue to need the new ideas and improvements that can come from the 50 states -- whether it is expanding access to affordable coverage or protecting consumers and health care providers. Congress must guarantee that state reform efforts can go forward.

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Richard N. Gottfried is the state assembly member from the 75th district on Manhattan's West Side and chairs the Assembly's Committee on Health.