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What governors can do to lower health care costs: Guest commentary

By Shirley Svorny

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Senate Minority Leader Mitch McConnell recently wrote to GOP governors asking them for ideas to reform the Affordable Care Act. Clearly governors are seen as key to Republican efforts to identify reforms Americans support. However, the governors are in a position to make an even bigger impact at the state level. Much of what could be done to increase access to care and reduce costs is illegal in many states.

For example, 36 states have some type of “certificate of need” law. These laws establish state-level planning agencies that decide when and where new health facilities, such as long-term acute care, free-standing imaging centers and ambulatory surgical centers, should be built. State planners control a wide range of facilities and services.

Full-service hospitals worry that, without certificate of need laws, they will lose profitable procedures to specialty hospitals, including stand-alone facilities that focus on cardiac care or orthopedic surgery. They will. There are other innovations in care that we can’t even imagine. New facilities may be more efficient and better able to serve patients due to differences in scale, location or services provided.

Other state laws that restrict entry, competition and innovation are those that preclude the corporate practice of medicine and physician ownership of specialty hospitals.

In response to pressures by the medical lobby, it is common for states to restrict advanced practice nurses, physician assistants, pharmacists and other medical professionals from offering primary care services they are trained to provide. Doctors say these “scope-of-practice” restrictions protect consumers but, of the many studies available, none support that view. Governors could use their influence to encourage state legislatures to eliminate artificial scope-of-practice restrictions.

Under existing state laws, the American Medical Association effectively determines which medical schools are good enough. This gives the AMA power to limit the supply of physicians. Other associations of medical professionals use state licensing to impose education requirements that limit competition. For example, the professional associations that accredit training programs for advanced practice nurses, physical therapists and audiologists have successfully imposed the requirement of a clinical doctorate for all new entrants, adding a third year to graduate training programs.

Medical professional associations justify their actions on the basis that they protect consumers, but this is not true. Medical professional liability insurers, health maintenance organizations, hospitals and other medical care providers are liable for medical malpractice. To protect themselves, they verify education and experience, examine malpractice claims and evaluate a clinician's knowledge and skills. This annual assessment goes far beyond any protection state licensing offers consumers.

To increase access to care, state governors would be well advised to move to shutter state licensing boards. Governors should shift funding for physician discipline, which the state boards have managed poorly, to the criminal justice system.

To negotiate lower prices or require terms of participation to improve the provision of health care, managed care organizations use the promise of new patients to get physicians to sign on. However, many states have "any willing provider" or "freedom of choice" laws that take this leverage away. Where these laws are enforced, all physicians are eligible to serve the managed care organization's members; the managed care organization can't promise it will direct patients to participating physicians. State physician lobbies support these laws because they deter managed care organizations from entering their states. Governors would be smart to put pressure on legislators to repeal these laws.

Changes to state regulation are critical if the U.S. is to improve health care. Governors should use their influence to educate voters and legislators and to press for regulatory reforms that would increase access to care and lower health care costs.