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Introduction

An increasingly common feature of health care payment models is the transfer of financial risk from payers to providers for health care services delivered to a defined population of patients. In these “value-based payment” models, providers accept financial responsibility (i.e., liability for financial losses) should spending for most, or all, services for an attributed patient population exceed targeted levels. This financial liability is often shared with payers, and maximum risk exposure is typically capped. This State Health Policy Highlight reviews specific state considerations when overseeing risk-bearing organizations (RBOs). The longer issue brief, [Safeguarding Financial Stability of Provider Risk-Bearing Organizations](#), explores options for states as they consider oversight of RBOs, with a focus on states that have elected to act to protect against provider insolvency. An accompaniment to the issue brief, [Case Studies: State Examples of Safeguarding Financial Stability of Provider Risk-Bearing Organizations](#), provides a deeper dive into approaches in four states: California, Massachusetts, New York and Texas.

Types of State Oversight Mechanisms

Growth in provider acceptance of risk for managing population health has other potential implications, including provider financial stability. In fact, during an earlier period of provider risk-based contracting in the 1990s, multiple bankruptcies occurred among large provider organizations. For this reason, states should examine the implications of providers accepting financial risk, including significant financial distress or insolvency, and the impact those consequences could have on consumers and the health care delivery system. That consideration can inform states’ decisions about whether, and to what extent, they should oversee provider organizations that accept financial risk for the provision of health care services. Some states may opt to informally or formally place risk-bearing provider oversight in the hands of the health insurers with which those providers contract. Others may choose to regulate provider risk assumption directly.

Currently, legal treatment and state oversight of provider organizations engaging in risk-based payment arrangements vary widely across states. State approaches and mechanisms range from allowing the market to direct RBO operations (i.e., no RBO regulation) to state licensure of an RBO as a type of health plan. The Figure below provides a range of state approaches to RBO oversight.



State Oversight Regulatory Considerations

States may develop standards against which they will evaluate an RBO's financial position and which will trigger the required regulatory process (e.g., licensure, certification, etc.). State-defined categories, often determined by the amount of risk a provider accepts, may direct the type of financial review and safeguards an RBO must have in place, and the intensity of state oversight activities. Examples of the types of financial protection parameters or thresholds states may consider implementing include:

- Percent of provider revenue (e.g., reviewing the percentage of provider revenue coming from downside risk arrangements and setting a threshold, such as five percent, in which a RBO can apply for a waiver to obtaining a risk certification from the state);
- Percent of a specific payer's revenue (e.g., setting a threshold of downside risk exposure, such as 15 percent, in which an RBO may undergo a more intensive review and approval by the state);
- Absolute value of RBO-borne risk (e.g., setting a specific amount, such as \$1 million of annual payments at risk, may undergo more intensive review by the state); and
- Amount of specific risk-based payment (e.g., providing exemptions from parts of state regulations if prospective capitation payments from a managed care organization to an RBO are less than \$250,000).

Other factors states may wish to consider as they assess whether to regulate RBO risk assumption, and if so, how, include:

- Balancing the desire to support payer and provider contracting arrangements that test innovative and advanced accountable payment models with consumer protections;
- Assuring that the regulatory framework does not unfairly preclude some payers or providers from participating in RBO risk arrangements;
- Balancing RBO concerns regarding the confidentiality of contract and financial information with public policy transparency objectives;
- Maximizing opportunities to educate providers on the financial and operational implications of accepting financial risk; and
- Assessing the resource requirements to successfully implement and fulfill the scope of an RBO regulation.

Conclusion

Increasing attention to payment models that transfer financial risk for health care quality and outcomes to provider organizations requires that states examine ways in which they may or may not regulate RBOs. States should analyze the risks and implications of significant financial distress or insolvency brought on by providers accepting financial risk, and the resulting danger to consumers should providers not be able to meet their obligations. If a state concludes that the risks are high, and the arrangements pose too great a threat to providers and consumers, it may want to consider leveraging contractual and/or regulatory tools to increase oversight of RBOs.

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ABOUT BAILIT HEALTH

- This brief was prepared by Erin Taylor and Michael Bailit. Bailit Health is a health care consulting firm dedicated to ensuring insurer and provider performance accountability on behalf of public agencies and private purchasers. For more information on Bailit Health, see www.bailit-health.com.
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ABOUT GEORGETOWN UNIVERSITY CENTER ON HEALTH INSURANCE REFORMS

- This brief was prepared by JoAnn Volk. Georgetown University Center on Health Insurance Reforms is a nonpartisan, expert team of faculty and staff dedicated to conducting research on the complex and developing relationship between state and federal oversight of the health insurance marketplace. For more information, visit <https://chir.georgetown.edu>.