

REPORT OF THE AFFORDABLE HEALTH INSURANCE WORKING GROUP

**In Accordance with Act 43
Session Laws of Hawaii 2017**

**Prepared by the
Legislative Reference Bureau
State of Hawaii**

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Chapter 1

INTRODUCTION

A. Background and Genesis of the Report

During the Regular Session of 2017, the Legislature adopted House Bill No. 552, House Draft 1, Senate Draft 2, Conference Draft 1, which Governor David Ige signed into law on June 20, 2017, as Act 43, Session Laws of Hawaii 2017 (hereinafter Act 43). Act 43 established the Affordable Health Insurance Working Group (hereinafter Working Group) to address the complexities of the health care system in Hawaii and the related uncertainty over the future of the federal Patient Protection and Affordable Care Act of 2010, Public Law No. 111-148 (hereinafter Affordable Care Act), in light of the current Presidential administration's pledge to repeal and replace the Affordable Care Act.

The Affordable Care Act is widely regarded as the most significant regulatory overhaul and expansion of health insurance in the United States since the establishment of Medicare and Medicaid in the 1960s. Among the Affordable Care Act's major provisions were requirements that most individuals be covered by health insurance and that insurers in applicable markets cover health benefits deemed essential, accept all applicants, and charge the same rates regardless of pre-existing medical conditions or gender.

During 2017, Congress considered, but did not approve, various proposals to repeal all or parts of the Affordable Care Act. This report reflects the evolving nature of the Working Group's discussions as Congress considered changes to the federal law. As of the publication of this report, the future of the Affordable Care Act and related administrative regulations remains uncertain.

B. Scope of the Report

Act 43 tasked the Working Group with considering and making recommendations on various policy issues, including:

- (1) Minimum standard coverage requirements for individuals;
- (2) Essential health care benefits;
- (3) Rate setting;
- (4) Medicaid expansion; and
- (5) Financial requirements and financing options.

The Working Group met three times during 2017: on September 6, October 24, and November 20. The Working Group reviewed information about applicable subject matter and entertained questions and comments from the public before recommending the drafting and introduction of legislation to preserve specific aspects of the Affordable Care Act under Hawaii law in the event the Affordable Care Act is repealed.

The remaining chapters of this report provide the following:

- (1) Chapter 2 provides background on Act 43 and the creation of the Working Group;
- (2) Chapter 3 provides a summary of the Working Group's informational briefings and other information presented to the Working Group;
- (3) Chapter 4 offers the Working Group's general observations and recommendations for future action; and
- (4) Chapter 5 provides a listing of related documents noted by the Working Group and links to where they may be located online.

Chapter 2

BACKGROUND

A. Act 43, Session Laws of Hawaii 2017

House Bill No. 552, House Draft 1, Senate Draft 2, Conference Draft 1 (H.B. No. 552, H.D. 1, S.D. 2, C.D. 1), relating to health insurance, was passed by the Legislature during the Regular Session of 2017 and was signed by the Governor on June 20, 2017, as Act 43, Session Laws of Hawaii 2017 (hereinafter Act 43).¹

Act 43, which took effect on July 1, 2017,² establishes the Affordable Health Insurance Working Group (hereinafter Working Group) to address the complexities of the health care system in Hawaii and the related uncertainty over the future of the federal Patient Protection and Affordable Care Act of 2010, Public Law No. 111-148, (hereinafter Affordable Care Act), in light of the current Presidential administration's pledge to repeal and replace the Act.³

Specifically, Act 43 directs the Working Group to consider and make recommendations on policy issues including:

- (1) Minimum standard coverage requirements for individuals;
- (2) Essential health care benefits;
- (3) Rate setting;
- (4) Medicaid expansion;
- (5) Financial requirements and financing options; and
- (6) Other issues that may arise, pursuant to the discretion of the working group.⁴

Furthermore, Act 43 requires the Working Group to officially convene no later than August 1, 2017.⁵

B. Affordable Health Insurance Working Group

Act 43 specified that the Working Group include:

- (1) The Chairs of the Senate Committee on Commerce, Consumer Protection, and Health and the House Committee on Health, to serve as chairs of the Working Group;

- (2) The Chairs of the Senate and House Committees on Human Services, to serve as vice-chairs of the Working Group; and
- (3) Representatives from administrative departments and agencies who are currently involved in discussions regarding the repeal of the Affordable Care Act and the effect such a repeal would have in Hawaii, including but not limited to the:
 - (a) Director of Labor and Industrial Relations;
 - (b) Director of Human Services;
 - (c) Administrator of the Department of Human Services, Med-QUEST Division; and
 - (d) Insurance Commissioner.⁶

At the conclusion of its September 6, 2017, informational briefing, the Working Group resolved to add the Director of Health to the Working Group.⁷

C. Working Group Membership

The Working Group consisted of the following individuals:

- (1) Senator Rosalyn H. Baker, Senate District 6, Co-Chair;
- (2) Representative John H. Mizuno, House District 28, Co-Chair;
- (3) Senator Josh Green, Senate District 3, Vice-Chair;
- (4) Representative Bertrand Kobayashi, House District 19, Vice-Chair;
- (5) Linda Chu Takayama, Director of Labor and Industrial Relations;⁸
- (6) Pankaj Bhanot, Director of Human Services;
- (7) Dr. Judy Mohr Peterson, Administrator, Med-QUEST Division, Department of Human Services;
- (8) Gordon Ito, Insurance Commissioner, Insurance Division, Department of Commerce and Consumer Affairs; and
- (9) Dr. Virginia Pressler, Director of Health.

The previous Chair of the House Committee on Health, Representative Della Au Belatti, House District 24, also participated during the informational briefings.

D. Informational Briefings

Act 43 authorized the Working Group to hold informational briefings to gather input from the public on issues related to the potential repeal of the Affordable Care Act.⁹

E. Recommendations and Final Report

Act 43 directed the Working Group to recommend any legislative or administrative action that it deems appropriate to address access to affordable health insurance in Hawaii in the event of a repeal of the Affordable Care Act. Furthermore, Act 43 directed the Working Group to submit a final report, including recommendations for further action, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2018.¹⁰ Finally, Act 43 requested the Legislative Reference Bureau to provide staff, research, and drafting assistance to the Working Group.¹¹

Chapter 3

INFORMATIONAL BRIEFINGS AND DISCUSSION

The Affordable Health Insurance Working Group (hereinafter Working Group) conducted public informational briefings on September 6, October 24, and November 20, 2017.

(Notices of the informational briefings, minutes of the discussions, and related documents are available at:

<https://www.capitol.hawaii.gov/specialcommittee.aspx?comm=ahiwg&year=2017.>)

A summary of the topics covered and information presented at each Working Group informational briefing follows.

A. September 6, 2017, Informational Briefing

At the September 6, 2017, briefing, the Working Group discussed multiple matters relating to Hawaii's public health insurance programs and private health insurance markets. Over the course of the briefing, members of the Working Group made several general observations, including:

- Hawaii's Section 1115 Medicaid Demonstration Waiver¹² has been in effect since 1994, and it is subject to renewal every five years. The Med-QUEST Division expects to submit a renewal application to the federal Department of Health and Human Services by January 1, 2018. If approved, the renewed Medicaid Demonstration Waiver would take effect on January 1, 2019.
- The Affordable Care Act provided an option for states to expand Medicaid eligibility for persons with incomes up to 138 percent of the federal poverty level. States' costs of providing coverage for these new Medicaid enrollees would be covered by additional federal moneys available to states that choose to expand their Medicaid eligibility. Hawaii, like many other states, chose to expand the income threshold for its residents to qualify for coverage under Medicaid. Approximately 100,000 additional people in Hawaii receive Medicaid coverage due to the expansion. However, if the Affordable Care Act is repealed as a whole, or if the Medicaid expansion provisions of the Affordable Care Act are repealed, Med-QUEST would need to determine under what authority Hawaii could continue to provide coverage to its Medicaid expansion population. The State would also need to identify a source of funding to continue providing Medicaid coverage to the expansion population if federal funds are no longer available.
- Hawaii's existing Section 1115 Medicaid Demonstration Waiver may be allowed to continue in place, but it remains unclear whether future changes to federal policy will

allow the Centers for Medicare and Medicaid Services to approve future waiver renewals.

- The legislature's original intent in creating the Working Group was to address issues posed by the potential repeal of the Affordable Care Act. However, it no longer appears that Congress will repeal the act by the end of 2017.
- It will be important to consider programs and activities that may improve overall population health and alleviate increases in the cost of health care and insurance. The Working Group should consider initiatives that can be introduced in upcoming legislative sessions.

1. ACA Position Statement

The Working Group reviewed the State of Hawaii's ACA Position Statement,¹³ dated July 14, 2017. The ACA Position Statement was a multi-departmental collaborative effort that was originally provided to Hawaii's congressional delegation to address potential issues raised by the proposed Better Care Reconciliation Act of 2017 (hereinafter BCRA)¹⁴ as a replacement for the Affordable Care Act. The statement noted multiple potential concerns and classified them by the severity of impact on Hawaii's population and insurance markets.

The Working Group first discussed the most critical concerns, referred to as "Class A" concerns, and made the following observations and comments:

- It is not clear whether the current presidential administration will continue to fund Cost Sharing Reductions¹⁵ (hereinafter CSR) after October 2017. Approximately 16,711 of the individual health insurance plans¹⁶ purchased in Hawaii are purchased from the federal insurance marketplace.¹⁷ Of those insurance plans, 59 percent are eligible for a CSR. If CSRs are no longer federally funded, Hawaii will lose about \$9,500,000 in subsidies.¹⁸
- Uncertainty over federal action is affecting premiums in the Hawaii insurance marketplace. The Insurance Commissioner predicts that premiums in the individual market may increase by 5 to 7 percent if federal funding for CSRs is not continued.
- Hawaii's application for a State Innovation Waiver under Section 1332 of the Affordable Care Act¹⁹ proposed to exempt small business insurance plans sold in Hawaii from the federal insurance marketplace. The Department of Health and Human Services approved Hawaii's waiver, effective from January 1, 2017, to December 31, 2021.
- There are concerns that proposals to allow insurance sales across state lines would threaten coverage requirements under Hawaii's Prepaid Health Care Act²⁰ because laws of other states would determine coverage levels, instead of Hawaii law.

- There are concerns that proposals to repeal the individual mandate provisions of the Affordable Care Act would make risk-pooling more difficult in Hawaii’s individual insurance market because healthier persons may delay a decision to purchase insurance. This would leave insurance pools with more high-cost utilizers of medical services and fewer low-cost users of services.²¹ Younger, healthy insureds are needed in the individual market to broaden the risk pool and reduce premium costs for all insured persons.

The Working Group then discussed “Class B” concerns, considered important but of lesser priority, and made the following observations and comments:

- Proposed Congressional amendments to the Affordable Care Act appear to continue to prohibit insurers from denying coverage or charging premiums based on a person’s health status or gender.²²
- Hawaii encourages the federal government to allow states to define the benchmark for Essential Health Benefits that must be included in insurance plans sold in the state.²³
- Med-QUEST helps to provide health insurance to residents of Hawaii who are citizens of states that have entered into the Compact of Free Association (hereinafter COFA) with the United States, but who do not meet citizenship eligibility for Medicaid.²⁴ Currently, Med-QUEST provides funding for premium assistance for about 3,500 members of the COFA population who reside in Hawaii, and whose insurance is purchased through the Affordable Care Act’s federal insurance Marketplace. The BCRA, if passed, would adversely impact insurance coverage for this population,²⁵ as they would be excluded from coverage through the federal insurance Marketplace. To provide coverage for this population, without federal subsidies available for Marketplace plans under the Affordable Care Act, may negatively impact the State’s budget.

The Working Group noted third priority concerns, “Class C” concerns, and made the following observations and comments:

- Health insurers should remain prohibited from imposing lifetime and annual dollar amount limits on coverage and from rescinding coverage.²⁶
- It appears that Hawaii will be allowed to preserve its Section 1332 State Innovation Waiver, but the State recommends that reporting metrics be required annually, instead of quarterly, to provide more accurate information.
- At the time of the meeting, the federal government had not released expected moneys to be deposited to the State’s Premium Supplementation Fund, pursuant to the terms of the State’s Section 1332 State Innovation Waiver.²⁷

- The Affordable Care Act allows adult dependent children to remain on their parents' health insurance until age 26.²⁸ It appears that proposed amendments to the Affordable Care Act would not affect this popular provision.

2. *Hawaii Insurance Commissioner's Presentation*

The Insurance Commissioner presented information on the pricing of insurance plans.²⁹ During the presentation, the Working Group made the following observations and comments:

- Federal funding for insurance marketplace outreach and advertising, including the navigator program, has been severely cut.
- Small insurance pools with high morbidity have resulted in requests by insurers for higher health insurance premium rates.³⁰
- Rising health insurance premiums should be addressed, because they account for a significant amount of patients' personal budgets.
- It is estimated that by 2026, annual employer premiums in Hawaii could be as high as \$14,000 per person or \$42,000 for a family of four if no changes are made to the cost curve.³¹ The Insurance Commissioner also estimated that by 2026, government spending on premiums may grow to about \$9,000,000,000, while total spending on premiums may reach about \$13,000,000,000, if current growth rates do not change.
- Some factors that lead to higher health costs (and thus higher premiums) include federal regulatory restrictions on negotiating prescription drug prices and an aging population.
- If the State intends to establish a state reinsurance program to help control premium costs, then Hawaii will need to start a new Section 1332 State Innovation Waiver application process. Hawaii would not be alone in considering such an option, as several other states, including Alaska, Minnesota, and Oklahoma, have already submitted applications to create reinsurance programs.

B. October 24, 2017, Informational Briefing

At the October 24, 2017, briefing, the Working Group discussed potential impacts of federal government policies and decisions on Hawaii's public health insurance programs, private health insurance markets, and related matters.

Of particular concern was an executive order (hereinafter EO) approved by the President on October 12, 2017, entitled "Promoting health care choice and competition across the United States."³²

- The EO, in pertinent part, establishes as official federal policy the facilitation of purchasing insurance across state lines and the overall expansion of choices for health care options.³³
- Working Group members were concerned about the potential impacts of the EO on health insurance and the delivery of health care in Hawaii. In particular, concerns were expressed about section 6 of the EO, which directs federal agencies to report to the President details regarding: the extent to which state and federal laws, regulations, guidance, requirements, and policies do not conform with policies described in the EO; and actions that states or the federal government could take in furtherance of the policies described in the EO.
- Specifically, the continued validity of Hawaii's Prepaid Health Care Act is dependent upon an exemption from the federal Employees' Retirement Income Security Act, and the exemption might be affected or jeopardized by the EO.
- Potential impacts of the EO remain unclear, and the order is being analyzed by state agencies including the Department of the Attorney General, Department of Health, and the Insurance Division of the Department of Commerce and Consumer Affairs.

The Working Group discussed various related issues and potential impacts of the EO, including the following:

- The potential expanded use of Association Health Plans³⁴ (hereinafter AHP) under the EO may provide some consumers with access to more competitive health insurance rates but may also have other damaging effects on the insurance market. For example, AHPs could fragment and destabilize the small group insurance market by encouraging employers with younger and healthier workforces to move employees from the group health insurance market to AHPs, which would likely result in higher premiums for many small businesses outside an AHP and leave higher-risk patients remaining in non-AHP insurance pools.
- The potential expansion of AHPs and general loosening of regulations could expand the eligibility of various entities to join an AHP. However, there are concerns that, if AHPs are self-funded, high insurance claims could deplete an AHP's funds and cause it to cease operations, leaving health care providers and patients with unpaid bills for care.
- Changes to the structure of AHPs could conflict with Hawaii's Prepaid Health Care Act. Further, noncompliant AHPs could be introduced into the Hawaii market while remaining based outside Hawaii, thus limiting Hawaii agencies' regulatory authority over those AHPs.
- The increased use of Short-Term, Limited-Duration Insurance (hereinafter STLDI) plans may provide very limited coverage that is not designed for long-term use.

There is concern that consumers may purchase STLDI coverage and extend it for long periods of time without being fully aware of its limitations.³⁵

- The increased use of STLDI plans could also require an increase to the financial reserves that insurers must make available to address the potential for insolvency.
- Health Reimbursement Arrangements, or accounts used to reimburse employees for fixed medical expenses, may be allowable if paired with insurance plans that are compliant with Hawaii's Prepaid Health Care Act.

The Insurance Commissioner related that his agency supports an application for a second Section 1332 State Innovation Waiver, which would require legislative authorization. The Insurance Commissioner envisions the creation of a program that helps to insure high-risk individuals, and the agency has begun meeting with insurers to discuss implementing insurance rates for 2019 or 2020.

Working Group members discussed the need to invest in preventative health care programs and efforts to increase awareness about major health risks such as obesity, diabetes, and cancer.

The Working Group also discussed the potential of significant reductions in federal funding for Medicaid programs and the need for Hawaii to plan for the continued provision of Medicaid coverage.

C. November 20, 2017, Informational Briefing

At the November 20, 2017, meeting, the Working Group discussed the creation of a state reinsurance program and possible legislative proposals for the upcoming 2018 legislative session. The Working Group also reviewed a presentation from the Med-QUEST Administrator on new initiatives to be undertaken by the Med-QUEST Division.

1. State Reinsurance Program

The Insurance Commissioner updated the Working Group on the possible implementation track for a state reinsurance program to help manage the rising cost of health care claims. The Commissioner discussed a goal of establishing a plan in 2018 or 2019 that would apply to 2020 insurance rates. Establishing a reinsurance program for Hawaii would appear to require federal approval of a second Section 1332 State Innovation Waiver. After discussions between the Insurance Division and the relevant federal agency, it is anticipated that the State will be able to submit its application for a Section 1332 State Innovation Waiver while a bill to authorize the State to seek such a waiver is pending in the Legislature.

The Insurance Commissioner also explained that the agency plans to seek the assistance of an actuarial firm to model the possible economic effects of a reinsurance program on the State's insurance markets.

The Working Group supported the introduction of draft legislation during the 2018 session to authorize the State to apply to federal agencies for a new Section 1332 State Innovation Waiver.

2. *Med-QUEST Overview*

Hawaii's Med-QUEST Administrator made a presentation to the Working Group on the Med-QUEST Division's vision for its programs.³⁶ The following are notable points from the presentation:

- Hawaii's Medicaid programs serve about 375,000 persons in Hawaii, which is approximately 25 percent of the State's population. The programs serve about 45 percent of all children in Hawaii.
- Hawaii's Medicaid program operates as a managed care program³⁷ under a Section 1115 Demonstration Waiver.³⁸ Waivers must be renewed by the Centers for Medicare and Medicaid Services every five years. The Med-QUEST Division is in the process of developing concepts for the next waiver period, and it expects to submit its waiver application to the Centers for Medicare and Medicaid Services in early 2018. The Division anticipates negotiating waiver terms and renewal conditions by mid- to late 2018, with the new waiver period beginning on January 1, 2019.
- Med-QUEST's waiver application will outline the Hawaii Medicaid Health Innovation Project (hereinafter HIP), a five-year plan to achieve a vision of "healthy families, healthy communities." The overall goals of HIP are to:
 - Achieve the "triple aim" of better care, better health, and lower cost; and
 - Align state programs and funding around a common framework: A multigenerational, culturally appropriate approach that invests in children and families over the life cycle to nurture well-being and improve individual and population health outcomes.
- The Med-QUEST Division intends to pursue the following strategies to meet the goals of HIP:
 - Improving health through overall health promotion, prevention, and early disease mitigation over the entire lifetime;
 - Improving care provided to high-needs, high-cost individuals;

- Promoting population health by strengthening capacity and linkages between health delivery systems and community resources; and
- Promoting quality and financial alignment to transition to an outcome-based payment system that achieves the “triple aim” (better care, better health, and lower cost).
- Critical to the success of the Med-QUEST Division’s goals are:
 - Using health information technology and data analytics effectively to drive health care transformation and clinical care;
 - Increasing health care workforce capacity and flexibility to alleviate provider shortages and meet the needs of Hawaii’s population; and
 - Continuously improving the quality and efficacy of care through performance measurement and evaluation.

3. *Premium Supplementation Funds*

The Director of Labor and Industrial Relations explained that federal funding for premium supplementation has been received by the State, and small businesses are expected to be able to access available funds for plan year 2020.

4. *Possible Legislative Proposals*

The Working Group considered possible proposals for the 2018 session. Specifically, the Working Group agreed that bills should be introduced to:

- Authorize the State to apply for a second Section 1332 State Innovation Waiver to pursue a state reinsurance program to assist in managing the rising cost of insuring high-cost medical claims;
- Prohibit health insurers in Hawaii from excluding persons from coverage based on a pre-existing health condition;
- Prohibit insurers in Hawaii from setting premiums or contributions that discriminate based on a person’s gender; and
- Allow adult dependent children to remain covered by a parent’s health insurance plan, policy, or contract up to age 26.

Chapter 4

OBSERVATIONS AND RECOMMENDATIONS

Based on the information presented to the Affordable Health Insurance Working Group over the course of its meetings and deliberations, the Working Group offered the following observations and recommendations.

A. Observations

- The legal landscape for health care and health insurance is changing, and Hawaii officials need to remain aware of those changes and how they will affect Hawaii's population. Although the proposed Better Care Reconciliation Act, which would have repealed or amended significant parts of the current federal health insurance laws, failed to pass in Congress in 2017, it is not clear whether further attempts will be made to change the existing health insurance laws. Future changes could have sweeping effects on health insurance, including minimum benefits, plan costs, federal subsidies, and coverage. Health care stakeholders and policymakers in Hawaii will need to remain up-to-date on any such proposals and ways they could affect Hawaii's health insurance markets and the provision of health care to Hawaii's population.
- In addition to ongoing awareness of developments in proposed federal legislation, Hawaii health care stakeholders and policymakers should remain watchful of federal administrative actions that similarly could affect the quality or availability of health insurance coverage in Hawaii. Of particular concern are directives to federal agencies to adopt rules facilitating the use of association health plans, short-term limited duration insurance plans, and health reimbursement arrangements.³⁹ The Working Group believes that the state Attorney General and other Hawaii officials should be aware of any such administrative actions and, if necessary, be prepared to challenge provisions that might interfere with the Hawaii Prepaid Health Care Act or negatively affect Hawaii's health insurance market.
- The cost of health insurance is rapidly increasing. Total annual health insurance premium costs in Hawaii in 2005 were approximately \$2.7 billion, and premium costs rose to over \$6.3 billion by 2015. Insurance premiums are only expected to increase in coming years as the cost of providing health care increases. Among the cost drivers are physician, facility, and pharmaceutical costs; expensive technologies and procedures; fragmented care; and unhealthy behavior and lifestyle choices.⁴⁰ In coming years, it will be critical to identify ways to reduce health care costs and health insurance expenditures before the price of health insurance to individuals, government, and employers in Hawaii becomes unaffordable. The Working Group recognizes that continued emphasis on programs to improve preventative care and encourage healthy lifestyles will be critical in reducing illness in Hawaii, thus reducing overall health care costs.

- Establishing a state reinsurance program could be part of a strategy to control high insurance premium costs. Ideally, a reinsurance program would offset insurers' reimbursements for high-cost medical claims. This would allow insurers to avoid spreading the total cost of high claims onto the broader pool of insured persons. This, in turn, would slow the rise in premium costs for the wider insurance pool but still allow patients with high medical costs to access health insurance. The Affordable Care Act allows states to apply for waivers to implement such programs, and several other states, including Minnesota, Alaska, and Oklahoma, have pursued similar strategies to address high-cost medical claims and slow the rise in insurance premiums. The Working Group believes that the State should apply for a State Innovation Waiver under Section 1332 of the Affordable Care Act to develop and implement a state reinsurance program that will meet the needs of Hawaii's residents, control health insurance costs, and stabilize Hawaii's health insurance markets.
- Hawaii's Medicaid program, Med-QUEST, provides insurance coverage to a significant portion of Hawaii's population, including a large percentage of its children. The Med-QUEST program operates under a Section 1115 Demonstration Waiver that allows it to offer managed care insurance coverage to qualifying low-income persons. As the Med-QUEST Division moves forward with its application to renew its Section 1115 waiver for another five years, the Division expects to proceed with a health initiative that emphasizes: lifetime health promotion, preventative care, and early disease mitigation; improved care for high-needs individuals; stronger health delivery systems; and improved quality and financial alignment.
- Hawaii historically has been an innovator in ensuring access to quality health insurance. The Hawaii Prepaid Health Care Act provides access to quality coverage for Hawaii's workers, and the Med-QUEST program offers comprehensive coverage for Hawaii's low-income residents. Hawaii should continue to seek new and innovative solutions to create a healthy and vibrant population, including broader access to insurance coverage, improved access to care for Hawaii's chronically homeless and migrant populations, and community-wide disease prevention and wellness initiatives. Other states' ideas and methods may be instructive, and policymakers are encouraged to look beyond Hawaii for effective strategies.

B. Recommendations

State Innovation Waiver: The Working Group recommended that the State submit an application to the federal Department of Health and Human Services for a second Section 1332 State Innovation Waiver. The purpose of the waiver would be to authorize the Insurance Commissioner and other relevant state agencies to develop a state reinsurance program to help manage the costs of insuring individuals with high-cost medical conditions. Accordingly, the Working Group recommended that a bill be introduced in the 2018 regular session that would specifically authorize the State to seek a State Innovation Waiver, with the intent that the waiver provisions be implemented by the start of the 2020 plan year.

Insurance Policy Prohibitions: The Working Group recognized that the Affordable Care Act contains many provisions that guarantee the quality of health insurance coverage and prohibit discriminatory practices by health insurers. Further recognizing that these protections may become less substantial if the Affordable Care Act is amended or repealed, the Working Group recommended that a bill be introduced in the 2018 session that would:

- Prohibit health insurers in Hawaii from excluding a person from coverage based on a pre-existing condition; and
- Prohibit insurers in Hawaii from setting premiums, deductibles, or other contributions that are discriminatory, based on a person's gender.

Coverage for Adult Dependent Children: The Working Group recognized that the Affordable Care Act allows adult dependent children to remain covered by a parent's health insurance plan up to age 26. This is a popular provision of the federal law that often permits young adults to pursue higher education or other early career options with fewer worries about the cost of buying expensive medical insurance or paying for expensive uninsured medical care. While it is not clear that this provision of the Affordable Care Act will be repealed or amended by future federal legislation, the Working Group believes that Hawaii law should include this provision to assist and protect the State's young people. Accordingly, the Working Group recommended that a bill be introduced in the 2018 session that would allow an adult dependent child to remain covered by the child's parent's health insurance plan until the child reaches age 26.

Chapter 5

RELATED DOCUMENTS AND LINKS

Act 43, Session Laws of Hawaii 2017

Act 43, Session Laws of Hawaii 2017, established the Affordable Health Insurance Working Group to address the complexities of the health care system in Hawaii and the related uncertainty over the future of the federal Patient Protection and Affordable Care Act of 2010, Public Law No. 111-148.

http://www.capitol.hawaii.gov/session2017/bills/GM1143_.PDF

ACA Position Statement

The State of Hawaii's ACA Position Statement, dated July 14, 2017, raised numerous issues related to the proposed Better Care Reconciliation Act as a potential replacement for the Affordable Care Act. The Working Group discussed this statement at length during its September 6, 2017, meeting.

<https://www.capitol.hawaii.gov/session2017/studies/ACAPositionStatement.pdf>

***Health Plan Week* articles**

Health Plan Week, Volume 27, Number 29, dated August 21, 2017, contained several articles that addressed uncertainties related to the potential repeal of the Affordable Care Act. The Working Group included this publication on its website for background information.

<http://www.capitol.hawaii.gov/session2017/studies/healthplanweek.pdf>

Bipartisan Governors Blueprint

In a letter dated August 30, 2017, eight state governors recommended to congressional leaders that the federal government: (1) Take immediate action to stabilize insurance markets; (2) Make responsible reforms to preserve recent coverage gains and control costs; and (3) Join in an active federal/state partnership to improve overall health system performance. The Working Group included this letter on its website for background information.

<http://www.capitol.hawaii.gov/session2017/studies/bipartisangovernorsblueprint.pdf>

Insurance Commissioner's Presentation

During the September 6, 2017, meeting of the Working Group, the Insurance Commissioner provided the slide presentation, “Health Care, Health Insurance on the Threshold of...” The presentation addressed factors behind the rising costs of health care and health insurance.

<http://www.capitol.hawaii.gov/session2017/studies/SlideshowAHIWGComm.pdf>

Governor's Letter

In a letter dated October 11, 2017, Governor David Ige wrote to United States Senator Ron Johnson (R-Wis.), Chairman of the Committee on Homeland Security and Governmental Affairs, concerning the Senator’s request for information on Hawaii’s Medicaid expenditures. The Working Group included this letter on its website for background information.

<http://www.capitol.hawaii.gov/session2017/studies/1710049-Gov%20reply.pdf>

Executive Order Talking Points

An October 19, 2017, talking points memorandum drafted by several Hawaii state agencies expressed concerns regarding President Trump’s October 12, 2017, Executive Order, and the President’s attempts to expand the availability of Short-Term, Limited-Duration Insurance; Health Reimbursement Arrangements; and Association Health Plans. The Working Group discussed this matter at length during its October 24, 2017, meeting.

<http://www.capitol.hawaii.gov/session2017/studies/ExecOrderTalkingPoints.pdf>

Hawaii Med-QUEST Presentation

During the November 20, 2017, meeting of the Working Group, the Administrator of the Med-QUEST Division provided the slide presentation, “Hawai’i Medicaid Vision and Waiver Renewal.” The presentation addressed various aspects of the Med-QUEST program and its upcoming initiatives.

http://www.capitol.hawaii.gov/committeefiles/special/AHIWG/Hawaii_Medicaid_Vision_and_Waiver_Renewal.pdf

Endnotes

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- ¹ See the legislative status sheet for H.B. No. 552, introduced during the Regular Session of 2017, at http://www.capitol.hawaii.gov/Archives/measure_indiv_Archives.aspx?billtype=HB&billnumber=552&year=2017.
- ² Section 3, Act 43, Session Laws of Hawaii 2017.
- ³ Section 2(a), Act 43.
- ⁴ *Id.*
- ⁵ Section 2(g), Act 43.
- ⁶ Section 2(b), Act 43.
- ⁷ Pursuant to section 2(b)(3) of Act 43, the list of Working Group members who are from the administrative departments and agencies is non-exclusive. Specifically, section 2(b)(3) provides that the group shall include, but is not limited to, the specified members.
- ⁸ Shortly after the final informational briefing of the Working Group, Governor Ige appointed Director Takayama as the Director of the Department of Taxation.
- ⁹ Section 2(c), Act 43.
- ¹⁰ Section 2(e), Act 43.
- ¹¹ Section 2(f), Act 43.
- ¹² Section 1115 of the federal Social Security Act authorizes the Secretary of Health and Human Services to grant waivers to individual states for demonstration projects that promote the objectives of the Medicaid program. Waivers allow states to design their own innovative approaches to meeting the health and wellness needs of their Medicaid populations.
- ¹³ ACA Position Statement, Prepared by: Executive Departments, July 14, 2017 (hereinafter ACA Position Statement), available at <https://www.capitol.hawaii.gov/session2017/studies/ACAPositionStatement.pdf>.
- ¹⁴ Better Care Reconciliation Act of 2017, H.R. 1628, Senate Discussion Drafts, available at <https://www.budget.senate.gov/bettercare>. The BCRA was offered by the Senate as an amendment, in the nature of a substitute, to H.R. 1628.
- ¹⁵ The ACA provides for Cost Sharing Reductions as a discount to qualifying individual policyholders to lower the price of premiums and the amount of deductibles and coinsurance. Policyholders must meet certain income criteria and enroll in plans with certain coverage specifications in order to be eligible for Cost Sharing Reductions. General information on Cost Sharing Reductions may be found at <https://www.healthcare.gov/glossary/cost-sharing-reduction/>.
- ¹⁶ Individual policies are health insurance policies that are not provided in connection with employment.
- ¹⁷ ACA Position Statement at 1-2.
- ¹⁸ *Id.* at 1.
- ¹⁹ Patient Protection and Affordable Care Act, § 1332 (2010) (codified as amended at 42 U.S.C. § 18052 (2010)). Section 1332 of the ACA allows states to apply for State Innovation Waivers to implement strategies for providing access to health care for their residents. The Secretary of Health and Human Services and the Secretary of the Treasury are authorized to grant waivers from certain provisions of the ACA, provided that a state's proposal provides access to care that is at least as comprehensive as without the waiver, provides coverage to a comparable number of residents as without the waiver, and does not increase the federal deficit. General information on Section 1332 State Innovation Waivers may be found at https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-.html. Hawaii's State Innovation Waiver application may be found at https://governor.hawaii.gov/wp-content/uploads/2014/12/REVISED-Hawaii-1332-Waiver-Proposal_-August-10-2016.pdf.
- ²⁰ Chapter 393, Hawaii Revised Statutes. Generally, the Hawaii Prepaid Health Care Act requires private employers in Hawaii to offer health insurance coverage to their full-time employees. Under Chapter 393, health insurance coverage offered to employees must meet certain minimum coverage requirements.
- ²¹ ACA Position Statement at 2.
- ²² *Id.* at 3.
- ²³ *Id.*

²⁴ The Compacts of Free Association are international agreements between the United States and the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. Pertinent parts of the agreements allow citizens of those nations to live and work in the United States visa-free and receive certain benefits.

²⁵ ACA Position Statement at 3.

²⁶ *Id.* at 3.

²⁷ Hawaii's Section 1332 State Innovation Waiver exempts small employers in Hawaii from participating in a federal small employer health insurance exchange. This waiver is intended to preserve provisions of the Hawaii Prepaid Health Care Act that are more beneficial than the federal law. Under the waiver, federal tax credits that would otherwise be paid to small employers in Hawaii under the federal law will instead be paid to the Premium Supplementation Fund established in Chapter 393, Hawaii Revised Statutes. Information on this provision of Hawaii's Section 1332 State Innovation Waiver may be found at <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Hawaii-1332-Letter-final-and-signed.pdf> and <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-HI-letter.pdf>.

²⁸ ACA Position Statement at 4.

²⁹ Health Care, Health Insurance, on the Threshold of... Prepared by: State of Hawaii Insurance Commissioner, Sept. 6, 2017, (hereinafter Insurance Commissioner's Presentation), available at <https://www.capitol.hawaii.gov/session2017/studies/SlideshowAHIWGComm.pdf>.

³⁰ *Id.* at 30.

³¹ *Id.* at 30.

³² Presidential executive order promoting health care choice and competition across the United States. Oct. 12, 2017. Available at <https://www.whitehouse.gov/the-press-office/2017/10/12/presidential-executive-order-promoting-healthcare-choice-and-competition>.

³³ *Id.*, section 1.

³⁴ The use of Association Health Plans potentially would allow small businesses and small employers to pool employees as a group for the purpose of purchasing health insurance. Many Association Health Plans are formed around a common professional interest such as a trade association. In theory, these plans would allow small employers to avail themselves of lower costs and premiums that are often offered by large-group insurance plans. General information on Association Health Plans is available at https://www.ahip.org/wp-content/uploads/2017/10/Association_Health_Plans_10-6-2017.pdf.

³⁵ Short-Term, Limited Duration Insurance plans are designed to provide limited, temporary insurance coverage, such as for individuals who are between jobs. Federal rules limit these plans to a duration of three months. STLDI plans typically do not offer the same benefits and protections as insurance plans that are compliant with the ACA. General information on STLDI plans may be found at <https://www.ahip.org/wp-content/uploads/2017/10/AHIP-Compare-of-ST-plans-10-12-17-FINAL.pdf>.

³⁶ "Hawai'i Medicaid Vision and Waiver Renewal," Nov. 20, 2017, available at http://www.capitol.hawaii.gov/committeefiles/special/WorkingGroup/Hawaii_Medicaid_Vision_and_Waiver_Renewal.pdf.

³⁷ Currently, managed care enrollment is divided among five insurers in Hawaii: United Healthcare Community Plan, Ohana Health Plan, Kaiser Permanente, Hawaii Medical Service Association, and AlohaCare.

³⁸ General information on Section 1115 Demonstration Waivers is available at <https://www.medicaid.gov/medicaid/section-1115-demo/about-1115/index.html>.

³⁹ The Working Group discussed association health plans, short-term limited duration insurance plans, and health reimbursement arrangements at its October 24, 2017, informational briefing. A description of these insurance provisions and their possible ramifications may be found in the Executive Order Talking Points, available at <http://www.capitol.hawaii.gov/session2017/studies/ExecOrderTalkingPoints.pdf>.

⁴⁰ A thorough description of health insurance premium cost increases is available in the Insurance Commissioner's Presentation.