Federal Health Reform: Its Impact on Hawai`i

Fran Miller, Visiting Professor of Law
William S. Richardson School of Law
University of Hawai`i @ Mānoa
Presentation Road Map

I. Federal reform basics

II. The issue re Hawai`i’s Prepaid Health Care Act

III. Federal reforms impacting Hawai`i

IV. Medicare & Medicaid
   I. Hawai`i’s non-Medicaid-eligible uninsured Reforms unrelated to Prepaid Health Care Act

V. Health ins. provisions applicable in HI

VI. Who benefits from federal reforms?

VII. The elephant everyone knows is in the room

VIII. How did the individual mandate work out?
The Patient Protection & Affordable Care Act of 2010

“Comprehensive reform with an incremental soul”

- Ezra Klein, Washington Post
I. Fundamental Focus of Reforms

1. Improve dysfunctional & costly insurance markets for individuals & small businesses

2. Expand Medicaid coverage for the poor
Fundamental Culture Shift at the Federal Level

Purchase of “affordable” health ins = individual responsibility & obligation (with employer & govt contributions)
Uwe Reinhart’s 3-legged stool

1. Universal mandate
2. Subsidies for those who can’t afford ins
3. Insurers must accept all comers
Re Federal Comprehensiveness

Individual mandate added >20 million new US insureds by 2017

Q: How many of those new insureds were Hawai`ian?
A: See slide #51
The Basics Re Expanded Coverage

- U.S. Citizens & Legal Residents Had to Have “Qualifying Coverage” by 2014
  - Medicaid expansion added 11 M insureds
  - New ins exchanges enrolled 10.3 M more
  - 2.6 M children stayed on parents’ plans from age 19 to age 26
Medicaid Expansion

• Medicaid expanded to all individuals under 65 with incomes <138% of federal poverty level*

States received 100% federal funding for newly enrolled Medicaid Beneficiaries (2014-2016) . . . 90% federal funding in 2020 & thereafter

*34,638 for family of four in Hawai`i (2019)
New State Health Benefit Exchanges & Small Business Health Options Programs

• Link individuals lacking access to employer-sponsored insurance, &

• Firms w <100 workers

• To “affordable” health insurance plans
Premium & Cost-Sharing Subsidies to Purchase Health Insurance

- Individuals & families w incomes between 138 - 400% federal poverty level* get refundable & advanceable premium credits to buy insurance thru state or federal ins exchanges

- Cost-sharing premium subsidies for eligible individuals & families

* Up to $100,400 for family of four (2019)
All Health Plans Required to Offer ‘Minimum Essential Coverage’

• Which includes 10 required health services

- Outpatient care: the kind you get without being admitted to a hospital
- Trips to the Emergency Room
- Treatment in the Hospital for Inpatient Care
- Care before and after your baby is born
- Mental Health and Substance Use Disorder Services
  - Behavioral health treatment, counseling, and psychotherapy
- Your Prescription Drugs
- Services and Devices
  - To help you recover if you are injured, have a disability or chronic condition
- Your Lab Tests
- Preventive Services
  - Including counseling, screenings, and vaccines to keep you healthy and care for managing a chronic disease
- Pediatric Services
  - This includes dental care and vision care for kids
Individual Mandate Enforced Through Internal Revenue Code

Starting in 2014, Individuals faced increasing tax penalties if no health insurance
Tax Penalty

• $695/year up to max of 3x that amt ($2,085)/family, or 2.5% of household income (by 2016)
• Annual cost-of-living adjustments post-2016
• Exemptions for financial hardship, religious objections, those w incomes below tax filing threshold,* etc.

* $9,350 for singles, $18,700 for couples in ‘09
We All Know What Happened to That

• 2017 Tax Reforms Eliminated the Individual Mandate
II. To Cut To the Chase re Hawai`i

Basic Issue: How does Hawai`i’s employer mandate co-exist with the federal individual mandate?
Hawai`i’s Prepaid Health Care Act

- Established **employer** mandate in 1974
  - Part-time employees, etc., exempt

- Employee contributions capped
- ERISA waiver = amendment cap
Hawai`i’s Prepaid Health Care Act

Statute sunsets if & when federal law “provides for voluntary prepaid health care for the people of Hawai`i in a manner at least as favorable . . . , or upon the effective date of federal legislation that provides for mandatory prepaid health care for the people of Hawai`i.” Haw. Rev. Stat. § 393-51 (2009).
(b) Rule of Construction Regarding Hawaii's Prepaid Health Care Act—Nothing in this title . . . shall be construed to modify or limit the application of the exemption for Hawaii`i's Prepaid Health Care Act (Haw. Rev. Stat. 393-1 et seq.) as provided for under section 514(b)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1144(b)(5)).
Federal reforms have impacted much in Hawai`i
All Provisions Affecting Medicare & Medicaid Apply in Hawai`i
Medicare Expansion

• Extended Medicare payment protections for small rural hospitals
Medicare Pilot Programs

- Pay doctors & institutions based on quality, not quantity, of services
- Encourage new medical groups to coordinate better re chronically ill care
Medicare Prescription Drug Changes

• Part D donut hole* filled by 50% prescription drug discount in 2011
• By 2020, cost-sharing obligations within gap reduce to 25%

* Donut hole eliminated Medicare coverage of prescription drug expenditures between $2830 and $6440 (in 2010)
III. Provisions Unrelated to Prepaid Health Care Act Apply in Hawaii
More Money for Community Health Centers

- $11 billion to expand access to health care in communities where most needed
Loan Repayment Exclusions for Physicians in Underserved Areas
Community First Choice Option

• States can offer home- & community-based services to the disabled, rather than only institutional care
Comparative Clinical Effectiveness Research

- Established non-profit Patient-Centered Outcomes Research Institute to compare clinical effectiveness of medical treatments
2-Yr Credit (up to $1B) to Encourage Investment in New Therapies for Disease Prevention & Treatment
Feeding Facilities Required for Nursing Mothers

• Businesses with >50 employees must make available to nursing mothers:
  – reasonable time breaks &
  – facilities for lactation (not in rest rooms)
Calorie Counts Required in Chain Restaurants

Chain restaurants w >20 locations must show calorie info beside food on standard menus
Tax on Tanning Parlors

• 10% tax on indoor tanning services bills*

*(after July 1, 2010) (Replaces proposed tax on cosmetic surgery)
Tort Liability Reform Funding

• Federal funding for state demonstration programs to evaluate alternative liability reform models*
Enhanced Fraud & Abuse Oversight & Enforcement

I WANT YOU
TO HELP CONGRESS FIND
WASTE, FRAUD & ABUSE
IV. Provisions Relating to Health Insurance Generally

• Probably applicable to Hawai`i’s Employer Insurance Mandate
No Prior Authorization Requirements for Women To See Ob-Gyns
No Co-insurance or Deductibles for Certain Preventive Services for Women
Insurers Must Accept All Applicants, Regardless of Health Status
Pre-existing Conditions

• Insurers can no longer reject applicants with pre-existing conditions
• Or charge them exorbitant rates
No Rescission of Existing Policies for Illness
Lifetime Caps on Insurance Benefits
Eliminated after 2014
Insurers Must Permit Children to Remain on Family Policies Thru Age 26
V. Who Benefits from Reforms?

• Patients: almost everyone insured
• Doctors: more insureds = more reimbursement
• Hospitals: more insureds = less uncompensated care
• Ins. Companies: more insureds = bigger market
• Pharmaceutical Manufacturers: more insureds = bigger markets
VI. The Elephant in the Room That Everyone Sees: Costs
Costs of Federal Reform

• Predicted to cost gov’t about $938 billion over 10 years, acc. to nonpartisan Congressional Budget Office,

• Predicted to reduce the federal deficit by $138 billion over decade
Limits on Insurance Adm. Costs & Executive Compensation

• New limits on adm. costs & executive compensation*

• Violations will trigger consumer rebates
Medicare Payment & Service Delivery Reforms

• Value-based purchasing programs

• Quality reporting

• Pilot programs on payment bundling
Cost Controls: Individual Incentives

- Excise tax on “Cadillac Plans” starting in 2020

- Threshold for itemized medical expense deduction increased from 7.5% of adjusted gross income to 10% of AGI
State Health Insurance Rate Oversight

• Additional funding for states to review unreasonable increases in insurance rates
Insurance Costs

• ½ of enrollees in nongroup plans will qualify for federal subsidies

• Average costs lowered for middle- and moderate-income families by about 60 percent
VII. How Has Obamacare Worked Out Thus Far?

• 91% of US population had health insurance by 2017 (up from 84% in 2010)
  – Only 5% of Hawaii’s population remained uninsured
    (110,000 adults gained coverage thru Medicaid expansion + 20,000 were exchange enrollees*)

*Incl many family
State Health Insurance Marketplace Types, 2018

- **State-based Marketplace (11 states and DC)**
- **State-based Marketplace- Federal platform (5 states)**
- **State-partnership Marketplace (6 states)**
- **Federally-facilitated Marketplace (28 states)**

NOTES: This map displays the marketplace type for the individual market. For most states, the marketplace type is the same for the small business, or SHOP, marketplace; however, AR, MS, NM, and UT operate State-based SHOP Marketplaces.

SOURCE: State Health Insurance Marketplace Types, 2018, KFF State Health Facts:
15 States + DC Exceeded Last Year's ACA Marketplace Signups

(Modest 3.7% overall drop in signups)

SOURCE: KFF State Health Facts
Current Status of State Medicaid Expansion Decisions

NOTES: Current status for each state is based on KFF tracking and analysis of state executive activity. *AR, AZ, IA, IN, KY, MI, MT, and NH have approved Section 1115 expansion waivers. KY initially adopted expansion through a state plan amendment but received CMS approval for the Kentucky HEALTH expansion waiver on January 12, 2018; implementation will start in April 2018 with full implementation by July 2018. ME adopted the Medicaid expansion through a ballot initiative in November 2017; the ballot measure requires submission of a state plan amendment within 90 days and implementation of expansion within 180 days of the measure’s effective date. WI covers adults up to 100% FPL in Medicaid, but did not adopt the ACA expansion. SOURCE: “Status of State Action on the Medicaid Expansion Decision,” KFF State Health Facts, updated January 16, 2018. http://kff.org/health-reform/state-indicator/state-activity-around-expanding-medicaid-under-the-affordable-care-act/
Figure 1

Gap in Coverage for Adults in States that Do Not Expand Medicaid under the ACA

Limited to Specific Low Income Groups

- 0% FPL Childless adults
- 44% FPL $8,985 for parents in a family of three

No Coverage

Marketplace Subsidies

- 100% FPL $12,060 for an individual
- 400% FPL $48,240 for an individual

Median Medicaid Eligibility Limits as of January 2017
Bad news: Individual mandate repeal (via the 2017 tax reforms) has unbalanced the individual market.

Good news: It’s only the individual market.
Repeal Doesn’t Affect Medicare, Medicaid or Employer-Provided Insurance
Nonetheless . . . .

- Executive Action
- Congress
- & States

Are nibbling away at the ACA
& That’s a Subject for Another Day
Cost Containment = Next Step

Some options on the table

• Pay-for-Performance?
• Capitation/patient?
• Eliminate/curtail fee-for-service?
• Capitation/episode of care?
• Bundle provider payments?
“The path to fiscal responsibility must run directly through health care.”

Peter Orszag, OMB Dir., @ White House Fiscal Resp. Summit

New York Times
February 23, 2009