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* Legislative Progress Accurate As of April 29, 2011
Federal Reform’s Broad Objective

Extend health insurance coverage to 33+ million new US insureds by 2014
Federal Reform’s Implementation Focus

I. Improve dysfunctional & costly insurance markets for individuals & small businesses
   • By creating health insurance exchanges

II. Expand Medicaid coverage for the poor
   • By expanding Medicaid coverage to 133% of federal poverty level
Mechanism to Achieve Objective

- The individual mandate, enforced via Internal Revenue Code

Tax penalties after 2014 for those not securing coverage
An Initial Caveat:

Ask not what the liberal or the conservative position is;

Ask: “What might work?”
Presentation Roadmap

I. Federal Uncertainties
   a. Constitutional
   b. Political

II. Health Reform Complexities

III. How Can Hawaii Ride the Waves of Uncertainty?
   a. Option 1: Stick with Employer Mandate
   b. Option 2: Switch to Individual Mandate
   c. Option 3: Embrace Single Payer

IV. Special Hawaii Issues
   a. Longest US Life Expectancy
   b. Pacific Migrants Seeking HI Health Services
   c. Neighbor Island (& State) Remoteness
Nature of Federal Uncertainties

• Constitutional

• Political
1. Constitutional Uncertainties

• **Core Issue:** Is the individual mandate a valid exercise of Congressional power under its commerce clause jurisdiction?
Constitutional Uncertainties, cont.

U.S. Constitution (Art. I, Sec. 8, Cl. 3):

“The United States Congress shall have power . . . to regulate commerce . . . among the several States . . . .” and “to make all laws which shall be necessary and proper for carrying into execution the foregoing . . . .”
Constitutional Uncertainties, cont.

• Judicial scorecard thus far:

  3 Fed. Dist. Cts upheld indiv. mandate
  - Hawaii joined amicus brief supporting Affordable Care Act in Thomas More Law Center v. Obama (No. 10-2388)

  2 Fed. Dist. Cts held indiv. mandate unconstitutional, 1 of which also struck down entire Act

  Appeals on the merits pending in 4th, 6th, 11th, & DC Circuits
  (Oral arguments set for May & June)
Constitutional Uncertainties, cont.

Same kinds of arguments made when Medicare & Medicaid enacted in ‘65

and we all know how that turned out
Constitutional Uncertainties, cont.

My prediction: U.S. Supreme Ct will uphold constitutionality of Patient Care Act

– Supreme Court has long held Cong. power extends to regulating activities having substantial effect on interstate markets

– And to activities Congress needs to reach to make its inter-state market regulation effective
2. Political Uncertainties
Will the Patient Care Act Be Repealed?

Not before 2013, for sure:

Current Senate (51 D, 47 R, Ind) won’t vote to repeal,
- refused 2 weeks ago to deny implementation funding (53-47)
- but budget agreement did eliminate ‘free choice voucher program’ & rescind $2.2B in COOP start-up funding + $3.5B in SCHIP bonus payments
Will the Patient Care Act Be Repealed? (cont.)

President Obama would veto any attempts to repeal outright.
What About Repeal in 2013?

Reforms already implemented = popular

(26 implemented in 2010, 18 of 21 scheduled for 2011 implementation already in effect)
Impact of Partial Implementation

• Children Can Now Remain on Family Policies Thru Age 26
Medicare Part D Prescription Drug Donut Hole* Reduced

• $250 rebate in 2010
  – 50% prescription drug discount in 2011
  – By 2020, cost-sharing obligations within gap reduce to 25%

* Donut hole eliminates Medicare coverage of prescription drug expenditures between $2830 and $6440 (in 2010)
Pre-existing Conditions

- Insurers can no longer reject coverage for children with pre-existing conditions
- Or charge exorbitant rates
No Lifetime Limits on $ Value of Coverage

I’ll have someone come in and prep you for the bill.
No Prior Authorization Requirements for Women To See Ob-Gyns
No Co-insurance or Deductibles for Certain Preventive Services
Impact of Partial Implementation (cont.)

• **States** already gearing up for full implementation
  
  • State high risk ins pools established
  
  • Task forces to plan Medicaid expansion
  
  • Legislation to establish ins exchanges
Impact of Partial Implementation, cont.

Providers already participating in service delivery reforms

- P4P value-based payment
- Pilot programs on payment bundling
- Quality reporting
HMSA and Queen’s finalize contract

By Kristen Consillio
POSTED: 01:30 a.m. HST, Apr 05, 2011

Hawaii Medical Service Association and The Queen’s Health Systems have finalized a new performance-based contract that fundamentally changes the way the hospital is paid for medical services.

The three-year contract comes 10 months after the health care giants agreed to a payment system that shifts away from the former model, which primarily paid for the quantity of services performed rather than the quality of care.

Queen’s expects to sign the agreement within the month.

A major goal of the new payment model is to improve quality such as decreasing readmission and infection rates, and ensure a viable health care system for the long term by rewarding hospitals and physicians for coordinating care to produce positive health outcomes while controlling costs.

The contract sets a precedent for future negotiations with smaller health care providers in Hawaii.

“Health plans across the country are implementing pay-for-quality programs, including other Blue Cross and Blue Shield plans,” said Bob Hiam, HMSA president and chief executive officer. “The outcomes-based reimbursement model has become more prevalent because it puts the focus on the patient and aims to deliver the right care in the right setting at the right time.”

By the end of the contract, up to 15 percent of total reimbursements may be based upon meeting performance measures, and hospitals that don’t meet the goals could even get paid less.

“Obviously what we bill is dependent upon volume, but this model does move us away from quantity payments,” said Rick Keene, chief financial officer at Queen’s. “There certainly is incentive to improve quality metrics because it does impact reimbursements. If a hospital didn’t achieve its quality metrics, it very well could be paid less than another hospital for the same procedure.”

Hawaii Health Systems Corp., the 14-member quasi-public hospital system, agreed earlier this year to a four-year contract under the so-called pay-for-performance model built on a sliding scale with HMSA’s payments increasing as the hospital network meets various performance metrics.
Impact of Partial Implementation (cont.)

Insurers moving to full implementation

- Aetna & Cigna both say profits will grow in 2011 despite PCA’s req that 80-85% of premiums go on care-related costs

- Temporary re-ins. program for employers giving health ins coverage to Medicare-ineligible over-55 retirees going well
Impact of Partial Implementation (cont.)

1168 temp. fed. waivers granted re $750K minimum annual coverage limits req*

• Apply only to low-value ‘mini-med’ plans
• Cover <2% of private ins market
• Stopgap measure to avoid loss of coverage until state ins exchanges open in 2014
• “Not a bug but a feature”

* As of April 2, 2011
At One Year Anniversary, Views on Health Reform Remain Divided

“As you may know, a health reform bill was signed into law early last year. Given what you know about the health reform law, do you have a generally favorable or generally unfavorable opinion of it?”

Source: Kaiser Family Foundation Health Tracking Polls
Majority Want to Keep Major Elements of Law, Except Individual Mandate

“I'm going to read you several elements of the health reform law. For each, please tell me if you think lawmakers should keep it or repeal.”

- **Tax credits to small businesses**: 82% Keep, 15% Repeal
- **Gradually close the Medicare “doughnut hole”**: 76% Keep, 19% Repeal
- **Guaranteed issue**: 74% Keep, 22% Repeal
- **Financial help for low and moderate income Americans in need of coverage**: 72% Keep, 24% Repeal
- **Increase Medicare payroll tax on wealthy individuals**: 58% Keep, 36% Repeal
- **Individual mandate**: 27% Keep, 67% Repeal

Note: Question responses abbreviated. See Topline: [http://www.kff.org/kaiserpolls/8166.cfm](http://www.kff.org/kaiserpolls/8166.cfm) for complete wording. Keep it but make changes (vol.) and Don’t know/Refused answers not shown. Source: Kaiser Family Foundation Health Tracking Poll (conducted March 8-13, 2011)
So Does the Public Want . . .

• To have its cake?

• And eat it too?
Uwe Reinhart’s 3-legged stool

• Reforming the mkt for small or non-group ins is pointless unless you have:
  1. Universal mandate (everybody in)
  2. Insurers must accept all comers
  3. Subsidies for those who can’t afford ins
The Light Dawns?

Raise taxes on wealthy, and keep hands off Medicare and Medicaid

That’s how Americans want government to attack the staggering budget deficit, a new poll shows >> A3
So Will Patient Care Act Be Repealed?

• Shifting political landscape


  – Which way will the pendulum swing next year?
One in Five Think the Health Law Has *Already* Been Repealed, Another Quarter Not Sure

“Q: As far as you know, which comes closest to describing the current status of the health reform law that was passed last year:”

- **22%** It has been repealed and is no longer law
- **48%** It is still the law of the land
- **26%** Don’t know/Refused

Source: Kaiser Family Foundation *Health Tracking Poll* (conducted February 3-6, 2011)
Health Reform Complexities

- Health care
- Health reform
- Health sector . . . are all
The 800# Gorilla

You Can't Ignore the 800 Pound Gorilla
Public Perceptions = A Double-Edged Sword

Can be an Asset

. . . or a Liability

ObamaCare

A Shovel Ready Project
Donald Berwick, M.D.
Director, Center for Medicare & Medicaid Services

• “. . . [All] improvement is change, and human systems resist change . . . Improvement requires a source of tension, discomfort with the status quo, sufficient to overcome this inertia.”
How can Hawaii best ride the waves of federal change uncertainty?
Hawaii Has 3 Options

1. Stick with employer mandate
2. Switch to individual mandate
3. Emulate Vermont & embrace single payer
Option 1: Stick with Employer Mandate

- Has ‘worked’ for 36 years
  - 90+ % of population covered
  - Health ins costs = lowest in country
  - Population health status = highest in country

- Advantage of familiarity

- Patient Care Act can ‘supplement’ (not replace) Patient Care Act provisions
Hawaii’s Prepaid Health Care Act

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

- Employee contributions capped @ 1.5% of pay
- ERISA waiver = amendment cap
Patient Care Act:

(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 [ERISA] exemption for Hawaii'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)).
Hawaii’s Prepaid Health Care Act

Statute sunsets if & when federal law “provides for voluntary prepaid health care for the people of Hawaii 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).  [emphasis supplied]
Legislation Pending to Eliminate Sunset Provision

• S.B. No. 41 would repeal sunset provision because:

  – “... While the legislature wholeheartedly supports the efforts ... to bring the nation closer to universal health coverage, the legislature continues to believe that the prepaid health care act provides superior benefits to the people of Hawaii than does federal legislation on its own.”

Status as of 4/29: Bill passed by Senate and House; Senate disagrees w House amendments. Senate has appointed conferees, House has not.
Stick with Employer Mandate

• But incorporate federal reforms to expand coverage the for 10% of Hawaiians currently uninsured by:
  – Expanding Medicaid eligibility, &
  – Creating Health insurance exchange
Expand Medicaid Eligibility

• Federal reforms expand Medicaid eligibility to all individuals under 65 with incomes <133% of federal poverty level*

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

* $33,728 for family of four in Hawai`i (2010)
Establish Hawaii Health Benefit Insurance Exchange

• Bill to establish exchange (S.B. 1348) currently in legislature*
  - Purpose: “Facilitating the purchase and sale of qualified health plans in compliance with the federal act”

• Express Priority of Governor Abercrombie

* Status as of 4/29: in conf. com., which reconvened @ 11:00 this morning
State Health Insurance Exchanges

Help families with incomes >133% - 400% of federal poverty level* procure,

Via organized *state run* health insurance exchanges,

— community-rated,
— publicly subsidized,
— *private* health insurance.

• Also help employers secure affordable group health ins for employees

*about $33,728 for a Hawaii family of four in ‘10
Encourage Medicare Accountable Care Organizations (ACOs)

- ACOs = provider groups resp. for care of defined pool of Medicare beneficiaries
  - Eligible for annual incentive bonuses if they achieve threshold levels of savings
- Goal = transform the delivery system
  - “incentivize fragmented providers to abandon their silos & offer services jointly”
Encourage Medicare Accountable Care Organizations (ACOs)

• CMS issued ACO Regs March 31
  – Antitrust enforcement agencies issued policy statement re expedited antitrust review for ACO applicants same day
  – Office of Inspector General issued proposed waivers of Stark, anti-kickback, etc. laws for ACO shared savings same day as well

• ACO formation proceeding apace on mainland

• ? Re Hawaii
Option 2: Switch to Individual Mandate

A non-starter for Hawaii at current time

– See prior slide re bill to repeal the sunset provision in the Patient Care Act

– *But see,* Hawaii joined *amicus* brief supporting Patient Care Act in *Thomas More Law Center v. Obama* (No. 10-2388)
But Keep an Eye on 4-year MA Experience w Indiv. Mandate

MA Health Care Reform Act of 2006

– 98% of MA residents now have health insurance

  • Only 89% of MA residents insured in ‘06

– MA now has highest rate of health insurance coverage in US
Massachusetts Experience, cont.

98% of population complied
  • No Libertarian taxpayer revolt

70% of population approves

% of employers offering coverage increased

Wait times barely changed
Massachusetts Experience, cont.

Cost containment legislation* pending to:

• Establish Accountable Care Organizations
• Phase out fee-for-service
• Shift to widespread global payments

Broad consensus acknowledges *status quo* “unsustainable”

Private sector (BC/BC, Partners Healthcare) half-way there already

* An Act improving the Quality of Health Care and Controlling Costs by Reforming Health
Never Let This Man Deny Responsibility for Establishing MA Individual Mandate

Gov. Romney *signed legislation he supported* into law 6 days after passage
Option 3: Emulate Vermont & Switch to Single Payer

Vt Senate passed Gov. Shumlin’s single payer health care proposal (already approved by Vt House) April 25. Bill puts Vt on path to implement single payer as early as 2014.

*Akin to French system:
- Publicly financed Green Mountain Care for all citizens
- Supplemental private ins on top of govt package
Single Payer for Hawaii?

• Resolution supporting single payer endorsed by Hawaii Medical Ass’n in March, 2009

• Governor Abercrombie committed to universal coverage
  – Sangled out SB 1348 creating health insurance exchange as a legislative priority earlier this month
  – But reportedly favors single payor concept

Act 11 (2009) creating Hawaii Health Authority, passed over Gov. Lingle’s veto, would:

- reform state health care system
- so as to achieve universal coverage

Gov. Lingle declined to appoint authority members, but Gov. Abercrombie indicates he will do so.

Q re fit with proposed health ins exchange?
Single Payer for Hawaii?

- Hawaii Balanced Choice proposes single-payer legislation for physician services*

- Dovetails with HR 676, Congressional “Expanded & Improved Medicare For All Act”

Special Hawaii Issues

• Longest life expectancy in the country
• Pacific migrant population seeking health services pursuant to COFA compact
• Neighbor Island (& state) remoteness
Longest Life Expectancy in the US

• Hawaii life expectancy currently 80.8 yrs, 3 yrs longer than US average

• Ethnic disparities persist; 9 year differential between Chinese & Hawaiians/part Hawaiians
Pacific Migrants Seeking HI Health Services

**Compact of Free Association with the United States [COFA]** has given certain Pacific nationals right to live & work as “migrants” in U.S. since 1986
COFA Migrants Seeking HI Health Services (cont.)

- State Dept Notified COFA migrants in 2009 it had “no commitment” to provide US medical care to them*

Nonetheless, approx. 7,500 of these Pacific Islanders get health services in Hawaii

Cost of COFA Migrants’ Health Services

Hawaii spends >$120 M/yr on their social services; $50 M of which is for health care

— Originally thru Medicaid

• No federal match because not encompassed in Medicaid eligibility definition
• Federal govt. contributes only $11 M annually
Cost of Pacific Migrants’ Health Services (cont.)

Escalating costs prompted state to shift migrant coverage to Basic Health Hawaii

– Sharply reduced benefits
– Preliminary injunction 12/13/10 kept state from excluding COFA residents from state Medicaid program*
– Political “solution” pending?

* Korab v. Koller, 2010 WL 5158883
Neighbor Island (& State) Remoteness

Some good news here . . . .
Neighbor Island (& State) Remoteness

• Hawaii Health Information Exchange $5.6M federal grant to help ease the pain*

– Promotes PCP conversion to EHRs

• PCA contains $44K (Medicare) & $63,750 (Medicaid) incentive payments for MD investment in EMRs

*Grant will help doctors go digital, Star Advertiser, Apr. 20
More Money for Community Health Centers

- $11 billion to expand access to health care in communities where most needed
Neighbor Island (& State) Remoteness

- PCA Has Loan Repayment Exclusions for Physicians in Underserved Areas
One Final Thought

• Let’s consider health reform as a glass \( \frac{1}{2} \) full, rather than \( \frac{1}{2} \) empty.