Pieces of a Puzzle: Will Hawai‘i’s Prepaid Health Care Act Survive?

1) In 1974 Congress enacted the Employee Retirement Income Security Act (ERISA). Although ERISA did not mandate employers to provide any particular employee benefits, ERISA provided that federal law would regulate the management of benefit plans provided to employees. ERISA expressly and broadly preempted “any and all State laws” that “relate to” employee benefit plans. 29 U.S.C. §§ 1001-1461 (2008).

2) By coincidence, in 1974 Hawai‘i enacted its Prepaid Health Care Act (PHCA), requiring employers to provide certain employees with health coverage. Hawai‘i Revised Statutes §§ 373 et seq.

3) PHCA contains a provision that sunsets or repeals itself if and when federal law “provides for voluntary prepaid health care for the people of Hawai‘i in a manner at least as favorable as the health care provided by this chapter, 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).

4) In Standard Oil Co. v. Agsalud, 633 F.2d 760 (9th Cir. 1980), aff’d. mem., 454 U.S. 801 (1981), PHCA was held to be preempted by ERISA.

5) In 1983, Hawai‘i’s Congressional delegation saved PHCA by getting Congress to amend ERISA to waive the ERISA preemption just for Hawai‘i’s PHCA. However, it also had the effect of “freezing” PHCA by invalidating “any amendment of the Hawai‘i Prepaid Health Care Act enacted after September 2, 1974, to the extent it provides for more than the effective administration of such Act as in effect on such date.” 29 U.S.C. 1144(b)(5)(B)(ii).

6) In Council of Hotels v. Agsalud, 594 F. Supp. 449 (D. Hawaii 1984), ERISA’s waiver provision was construed strictly and therefore a PHCA amendment regarding collectively bargained plans was invalidated because it was interpreted as a substantive change to PHCA.

7) In 1994, the Hawai‘i State Legislature desired to, but also recognized that it could not, repeal the sunset provision in the PHCA unless and until ERISA was changed to allow Hawai‘i to make substantive changes to PHCA. Therefore, it enacted Act 99. Act 99 repeals the sunset provision within PHCA if and when ERISA was amended to allow changes to PHCA. That law provides “This Act shall take effect upon the effective date of any federal act permitting the amendment of the Hawai‘i Prepaid Health Care Act.” Hawai‘i’s ERISA waiver has not been amended.

8) In 2010, the federal government enacted the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010. It provides:

(b) Rule of Construction Regarding Hawaii’s Prepaid Health Care Act.--Nothing in this title (or an amendment made by this title) shall be construed to modify or limit the application of the 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)).

9) Here are some of the issues that now confront Hawai‘i as to the remaining vitality of PHCA.

A. Under state law, will PHCA be automatically repealed because the federal government has enacted “mandatory prepaid health care”?

B. Under state law, will PHCA be automatically repealed because the federal government has enacted voluntary prepaid health care that is “at least as favorable” as PHCA?

C. Can Hawai‘i repeal the state law repeal provision or is that a change to the PHCA that is precluded by our ERISA waiver?

D. If PHCA is not subject to automatic repeal under state law, can the Patient Protection and Affordable Care Act and PHCA co-exist, and if so, how will the requirements of each be reconciled?