

Hawaii

Over the past two decades, Hawaii has demonstrated an extraordinary commitment to ensuring the availability of health care for all of its residents. In 1974, Hawaii enacted the Prepaid Health Act, which requires all private employers within the state to provide coverage for their employees. In subsequent years, Hawaii took additional steps to ensure coverage for its citizens.¹ In 1989, Hawaii adopted the State Health Insurance Program, which provided insurance coverage to uninsured Hawaiians based upon their ability to pay.² In 1994, the state adopted the HealthQUEST Program, which provides Medicaid coverage to uninsured Hawaiians with incomes of up to 300 percent of the federal poverty line.

I. Government Funded Indigent Care

A. General Assistance

Hawaii law authorizes state funded health care to a very limited group of individuals under the state's General Assistance program.³ The General Assistance program provides benefits to three categories of individuals. Needy families with dependent children who do not qualify for federal financial aid to families qualify if the parents are unemployed for reasons other than voluntary separation or misconduct and are actively looking for work. Individuals who do not qualify for SSI, and have a medically determinable impairment that renders them unable to work for thirty hours or more a week are

¹In the late 1980s, the Hawaii Legislature became concerned about the increasing number of uninsured Hawaiians. Despite the existence of employer mandated health insurance, official studies noted that the number of uninsured Hawaiians rose from two percent of the state's population in 1978 to five percent of the state's population in 1987. Hawaii Senate Resolution 118 (April 9, 1987). For this reason, the legislature directed the Department of Health Services to study the problem of providing medical care to the indigent.

²The State Health Insurance Program (SHIP) covered Hawaiians who had too much money to qualify for Medicaid but too little money to purchase private insurance. Haw. Stat. Ann. § 431N-1 *et seq.* The SHIP Program provided coverage to the uninsured, including outpatient, primary and preventive care. Individuals enrolled in SHIP paid all or a part of the costs of their coverage on a sliding fee scale established by the Department of Health. In addition, the Department was charged with discouraging individuals who have adequate coverage from enrolling in SHIP. When Hawaii implemented its QUEST Program in 1994, the SHIP program was abolished and former SHIP recipients were folded into the state's Medicaid managed care demonstration project.

³Haw. Rev. Stat. Ann. § 346-71. While state statutes establish categorical eligibility standards for General Assistance, the Department of Social Services and Housing is vested with responsibility for establishing financial eligibility standards under the General Assistance program. *Puana v. Sunn*, 737 P.2d 867 (Hawaii 1987) (Department acted within its power in adopting lump sum rule to disqualify applicants for a period of months based upon the value of property received divided by the general relief monthly standard of need, but erred in failing to adjust standard of need to reflect recipient's higher shelter costs).

eligible for a year of aid on condition that they actively pursue treatment. Individuals who are diagnosed with substance abuse problems that render them unable to work are eligible for six months of aid on condition that they actively pursue treatment. Individuals who are able to work must do so as a condition of receiving aid.

Individuals who receive General Assistance are eligible for the full scope of medicaid benefits provided to Medicaid managed care enrollees under the HealthQUEST demonstration project.⁴

B. Mental Health Treatment

Hawaii maintains a state hospital for treatment of the mentally ill.⁵ State law also provides for the establishment of a community residential treatment center for the mentally ill. Community health facilities charge for their services based upon a sliding scale, but individuals cannot be denied treatment for failure to pay these charges.⁶

The Hawaii legislature frowns on the treatment of non-residents at county expense. Hawaii statutes provide that state agencies “shall cooperate in the deportation of all alien public charges admitted to state hospitals.”⁷ In addition, state law provides that non-resident public charges shall be returned to their last state of residence at public expense.⁸

C. Other Services

The Department of Health offers newborn screening for metabolic disorders,⁹ provides funds for

⁴Haw. Adm. Rules § 17-1727-15.

⁵Haw. Stat. Ann. § 334-101 *et seq.*

⁶Haw. Stat. Ann. § 334-128.

⁷Haw. Stat. Ann. § 336-1.

⁸Haw. Stat. Ann. § 336-2. Hawaii law similarly provides for the Director of Health to pay for the expenses of transporting non-residents and aliens who have become public charges due to hospitalization for Hansen’s disease, tuberculosis, or other chronic diseases requiring prolonged hospitalization. Haw. Stat. Ann. § 336-11. Permanent residents are exempt from transportation to their countries of origin under this provision. Individuals are considered residents of the state if they resided in Hawaii for one continuous year preceding their admission to a state facility for treatment. The validity of this provision is highly questionable, in light of federal decisions that protect the rights of the poor to freedom of movement. *See e.g., Memorial Hospital v. Maricopa County*, 415 U.S. 250, 264 (1974) (ordinance imposing durational residence requirement as a condition of county funded medical care unreasonably infringed on rights of the poor to freedom of movement). While the statute in question has not been tested, recent decisions have held that the forcible transportation of homeless people violates the right to travel. *Ketchum v. City of West Memphis*, 974 F.2d 81 (8th Cir. 1992).

⁹Haw. Stat. Ann. § 321-291.

the treatment of hemophilia for individuals unable to afford care,¹⁰ genetic counseling for veterans exposed to Agent Orange,¹¹ immunizations for indigent patients,¹² school-based health services,¹³ substance abuse treatment,¹⁴ children's mental health services,¹⁵ financial assistance for treatment of chronic renal disease,¹⁶ treatment for children with special health needs,¹⁷ cancer diagnosis and treatment, maternal and child health programs,¹⁸ prenatal health services,¹⁹ early intervention services for infants and toddlers to prevent developmental disabilities,²⁰ and a statewide program for testing newborn hearing.²¹ State law also authorizes the County of Kauai to appoint a county dentist to administer free care to indigent residents.²²

II. State Efforts to Expand Coverage or Care for the Uninsured.

A. Prepaid Health Plan

In 1974, Hawaii established the Prepaid Health Care Act—the only law ever implemented by any state that requires private employers to provide health insurance coverage to their employees. Under the Prepaid Health Care Act, every private employer with one or more employees must provide coverage for employees who work at least eighty seven hours a month.²³ Employers may require their employees to contribute up to fifty percent of the costs of premiums or one and one half percent of their salaries,

¹⁰Haw. Stat. Ann. § 321-281.

¹¹Haw. Stat. Ann. § 321-268.

¹²Haw. Stat. Ann. § 321-38.

¹³Haw. Stat. Ann. § 321-241.

¹⁴Haw. Stat. Ann. § 321-191.

¹⁵Haw. Stat. Ann. § 321-175.

¹⁶Haw. Stat. Ann. § 321-122.

¹⁷Haw. Stat. Ann. § 321-51.

¹⁸Haw. Stat. Ann. § 321-45.

¹⁹Haw. Stat. Ann. § 321-321.

²⁰Haw. Stat. Ann. § 321-331.

²¹Haw. Stat. Ann. § 321-361.

²²Haw. Stat. Ann. § 65-3. Patients may not be charged for these services.

²³Haw. Stat. Ann. § 393-12(a).

whichever is less.²⁴ Employers are responsible for paying the balance of the cost of premiums. Employers are also required to bear the full cost of premiums for employees who fall sick for up to three months.

Employers are not required to cover employees who are covered by Medicare, Medicaid, other federally or state funded health benefits, or as dependents under another prepaid health plan. In addition, any employer who employs eight employees or fewer may request state funds to cover premium costs that exceed one and a half percent of the total wages payable to any employee.²⁵

The benefits under the plan must be equal to those provided by the plan with the largest number of subscribers in the state. In addition, the plan must cover at least 120 days of inpatient hospital care a year, surgery, outpatient services, office visits, lab and x-ray services, drug treatment, including three inpatient admissions per year for up to 21 days per admission, and alcohol treatment, including three inpatient admissions per year for up to 7 days per admission.²⁶

In 1977, the United States District Court for the District of Hawaii struck down the Prepaid Health Care Act.²⁷ The court found that the law was preempted by the federal Employee Income Security Act of 1975, which expressly superceded all state laws that “relate to an employee benefit plan.”²⁸ Under ERISA, employee benefit plans encompass “any plan maintained by an employer or an employer organization that provides medical, surgical, or health care or benefits.”²⁹ Because Hawaii’s Prepaid health Care Act directly related to employer’s obligations to provide these benefits, Hawaii’s law was effectively nullified by ERISA.

In affirming this decision, a federal appellate court, noted that only state unemployment insurance, worker’s compensation and disability insurance laws are exempted from the broad reach of ERISA’s preemption provisions. The court concluded that while “the broad preemption of all other compulsory plans prevents state experimentation with other types of programs...[t]his question...is one of policy for Congress and not of statutory interpretation for the court.”³⁰ Congress subsequently enacted an exemption to ERISA preemption for Hawaii’s Prepaid Health Care Act.³¹ In subsequent years, however,

²⁴Haw. Stat. Ann. § 393-13. Collective bargaining agreements may specify greater employee contributions.

²⁵Haw. Stat. Ann. § 393-45.

²⁶Haw. Stat. Ann. § 393-7.

²⁷*Standard Oil Co. of California v. Agsalud*, 442 F.Supp. 695 (D. Haw. 1977) *aff’d* 633 F.2d 760 (9th Cir. 1980) *cert. denied* 102 U.S. 79 (1981).

²⁸29 U.S.C. § 1144(a).

²⁹29 U.S.C. § 1002(1) and (3).

³⁰*Standard Oil Co. v. Agsalud*, 633 F.2d at 765.

³¹29 U.S.C. § 1122(b)(5)(A).

Congress has refused to grant similar exemptions to other state statutes that mandate employer-based coverage. As a result, Hawaii is still the only state that has successfully implemented employer mandates to expand health care coverage for private employees.

B. HealthQUEST

In 1994, Hawaii received permission from the federal government to implement a Medicaid managed care demonstration project under Section 1115 of the Social Security Act.³² As initially implemented, HealthQUEST provides coverage to U.S. citizens, permanent residents and individuals permanently residing in the United States under color of law with family incomes at or below 300% of the federal poverty level.³³ Individuals with incomes above this level could also participate in HealthQUEST to the extent they paid 100% of the capitated rate for the plan.³⁴ HealthQuest had no asset test—eligibility was determined based upon income alone.

Individuals age sixty-five or older, blind and disabled individuals and individuals eligible to receive employer sponsored coverage and children receiving child welfare services were ineligible for HealthQUEST.³⁵ These recipients continued to rely upon fee-for-service Medicaid services, to the extent they met financial eligibility criteria for such services.

HealthQUEST enrollees with family incomes above 133% of the Federal Poverty Level and pregnant women and infants with family incomes above 185% of the Federal Poverty Level were required to pay a share of the cost of their premiums as a condition of receiving coverage.³⁶ This share of cost was scaled based upon income.

By 1996, however, the state found that demand for HealthQUEST far exceeded their projections. In its first year of operation, HealthQUEST enrolled 157,000 members, 47,000 more than the state had projected would enroll in HealthQUEST.³⁷

To reduce costs, the state significantly altered the HealthQUEST Program. Enrollment in HealthQUEST has now been capped at 125,000 enrollees.³⁸ Individuals whose assets exceed a threshold

³²42 U.S.C. § 1315.

³³Haw. Adm. Rules § 17-1727-12 and former § 17-1727-14.

³⁴Haw. Adm. Rules § 17-1727-16.

³⁵Haw. Adm. Rules § 17-1727-13.

³⁶Haw. Adm. Rules § 17-1727-41.

³⁷HAWAII DEPARTMENT OF HUMAN SERVICES, DRAFT QUEST II WAIVER, at IV-II.

³⁸Haw. Adm. Rules § 17-1727-26. Individuals are exempt from the cap if they (1) are eligible for Medicaid benefits under federal Medicaid rules, (2) General Assistance recipients, or (3) individuals whose coverage under an employer sponsored plan has terminated due to loss of employment within 45 calendar days of the date of application.

amount are now ineligible for HealthQUEST.³⁹ In addition, with some exceptions, HealthQUEST enrollees with incomes above one hundred percent of the federal poverty line are required to pay the entire cost of their coverage.⁴⁰

The state has implemented a scaled-down program of benefits for individuals who are ineligible for HealthQUEST benefits or who have voluntarily terminated from HealthQUEST. This program, called QUEST-Net, provides benefits to individuals with family incomes below 300% of the federal poverty level.⁴¹ To be eligible, an individual must have assets that fall below thresholds that are higher than those allowed under the HealthQUEST Program. Children eligible for benefits under Quest-Net receive the same services available to children enrolled in HealthQUEST.⁴² QUEST-Net provides maximum benefits to adult patients of ten days of hospital care per year, twelve physician visits per year, one maternity visit to confirm pregnancy per year, necessary visits to terminate pregnancy, three ambulatory surgical procedures per year, specified health assessments, bona fide emergency room visits, six mental health visits per year, over-the-counter and prescription drugs limited by a strict formulary and family planning services.⁴³ Coverage is excluded for custodial care, skilled nursing care, out-of-state emergency care, organ transplants, transfusions provided on an outpatient basis, vision care, hearing care, durable medical equipment unless provided during a hospital inpatient stay, non-emergency dental services, obesity treatment, medical transportation, hospice services, home health services, outpatient renal dialysis and a host of other services.⁴⁴ Like HealthQUEST, QUEST-Net requires individuals with incomes above 100% of the federal poverty level to bear the entire cost of their health care premiums.⁴⁵

In one respect, eligibility for HealthQUEST has been expanded. HealthQUEST no longer excludes individuals from benefits based upon the fact that they are disabled.⁴⁶ In fact, the state's exclusion of the disabled from coverage from 1994 to 1996 has rendered the state potentially liable for

³⁹Haw. Adm. Rules § 17-1727-14.

⁴⁰Haw. Adm. Rules § 17-1727-42. Individuals with family incomes above 100% of the federal poverty line, pregnant enrollees and infants with family incomes above 185% of poverty and enrollees between the ages of one and six with family incomes above 133% of poverty are required to pay all of the premiums required to maintain their health care coverage. In addition, self-employed recipients and their spouses are required to pay half of the costs of their coverage, regardless of income.

⁴¹Haw. Adm. Rules § 17-1728-9.

⁴²Haw. Adm. Rules § 17-1728-32.

⁴³Haw. Adm. Rules § 17-1728-18.

⁴⁴Haw. Adm. Rules § 17-1728-19.

⁴⁵Haw. Adm. Rules §§ 17-1728-26 and 17-1728-36.

⁴⁶Order Granting in Part Plaintiff's Motion for Partial Summary Judgement in *Burns-Vidlak v. Chandler*, Civil No 95-00892 ACK (D. Hawaii, April 12, 1996), Slip Opn. at 3.

violation of the federal Americans With Disabilities Act ("ADA").⁴⁷

III. Government imposed obligations for provider financed care

A. Emergency Care

Hawaii statutes provide that ambulance services and other emergency services may not be denied based upon lack of ability to pay or insurance status.⁴⁸

⁴⁷*Id.* In *Burns-Vidlak v. Chandler*, the United States District Court for the District of Hawaii granted summary judgment to plaintiffs challenging the state's exclusion of disabled individuals on the issue of liability. The court rejected the state's argument that the decision of the federal Health Care Financing Administration (HCFA) to grant Hawaii a Section 1115 waiver under 42 U.S.C. § 1315 exempted the Health QUEST Program from the requirements of the ADA and Section 504. The court concluded that the Social Security Administration lacks the authority to waive state compliance with the ADA and Section 504. The court also noted that under 42 U.S.C. § 12202, Congress has waived the state's Eleventh Amendment from liability under the ADA. Acknowledging the broad potential impact of its decision, the court certified its order for immediate appeal and stayed further proceedings in the case pending the outcome of that appeal.

This ruling has broad potential application outside of the context of Hawaii's QUEST Program. In implementing Medicaid managed care, a number of states have carved out disabled individuals based upon the higher costs of providing benefits to this population. Under the rationale of the *Burns-Vidlak* decision, if the state offers disabled individuals a less generous package of benefits than that provided to managed care enrollees, such a "carve out" would violate the ADA.

⁴⁸Haw. Stat. Ann. § 321-322(b).