DEPT. COMM. NO. 277

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STATE OF HAWAII
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December 23, 2020

The Honorable Ronald D. Kouchi,
President and Members of the Senate
Thirty-First State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki, Speaker
and Members of the House of
Representatives
Thirty-First State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

Enclosed is the following report submitted in accordance with the provisions of Act 155, Session Laws of Hawaii 2019, Related to an Earned Income Disregard Program or "Kal's Law."

In accordance with section 93-16, HRS, the report is available to review electronically at the Department's website, at https://humanservices.hawaii.gov/reports/legislative-reports/.

Sincerely,

Cathy Betts
Director

Enclosure
c:
Governor's Office
Lieutenant Governor's Office
Department of Budget & Finance
Legislative Auditor
Legislative Reference Bureau Library (1 hard copy)

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Report to the Thirty-First Hawaii State Legislature 2021

In Accordance with Act 155, Session Laws of Hawaii 2019, Related to an Earned Income Disregard Program or "Kal's Law"

DEPARTMENT OF HUMAN SERVICES MED-QUEST DIVISION

December 2020

This report is made in accordance with Act 155, Session Laws of Hawaii (SLH) 2019, relating to an earned income disregard program. Act 155 is also known as "Kal's Law."

Overview

Governor David Y. Ige signed Act 155, Session Laws of Hawaii (SLH) 2019, also known as "Kal's Law," into law on June 26, 2019. In the Act's preamble, the Legislature "concluded that it is advantageous for economic development in the State and in the best interests of Hawaii's citizens with disabilities to establish programs and policies that encourage their employment."

The Act requires the Department of Human Services (DHS) to implement an earned income disregard program as an intermediate step to implementing a full Medicaid buy-in program. Under Act 155, DHS is to allow an earned income disregard of one hundred thirty- eight per cent of the federal poverty level for people with disabilities who are between the ages of sixteen and sixty-four when determining eligibility for Medicaid or of similar intent.

The earned income disregard program is evaluated at least annually. DHS must also assess whether, when, and how a full Medicaid buy-in program may be implemented. Act 155 further requires DHS to submit a report to the legislature no later than twenty days prior to the convening of the regular sessions of 2020, 2021, and 2022, providing an update on the earned income disregard program and the viability of implementing a full Medicaid buy-in program.

This report provides an update for the earned income disregard program and the viability of implementing a full Medicaid buy-in program. The following sections describe the research DHS conducted and its efforts to receive federal authority to implement the earned income disregard program. DHS recommends implementing a full Medicaid buy-in program using a phased approach.

Results of DHS Analysis

DHS conducted an analysis of current Medicaid eligibility policy toward disabled individuals who are working. DHS also reviewed other incentives for disabled individuals who are working, such as Plans to Achieve Self-Support (PASS) and continued Medicaid coverage while working under the Section 1619(B) provision of the Social Security Act. DHS found that multiple strategies may need to be implemented to encourage and enable disabled individuals to work and retain their Medicaid benefits.

Specifically, DHS found the following:

Medicaid Eligibility Policy: Currently, disabled individuals who are working are allowed special deductions as part of the income methodology used to determine eligibility for Medicaid benefits. These deductions include impairment related work expenses (IRWE) for items such as service animals, attendant care services, and transportation, as well as modifications to an individual's home, car, or van to allow you an individual to work. This methodology can reduce countable income by more than 50% depending on the amount of IRWE the individual has incurred.

PASS (Plans to Achieve Self-Support): The PASS is a Supplemental Security Income (SSI) provision to help individuals with disabilities return to work. PASS lets a disabled individual, who receives or qualifies for SSI to set aside money and resources to pay for items or services needed to achieve a specific work goal. These may also be disregarded for Medicaid purposes.

The drawback of the PASS is that it can be a difficult and complicated process. It involves many steps for approval, and once approved, requires monitoring and attention to many details and documentation to maximize benefits, and to ensure continued Medicaid eligibility.

1619(b): Section 1619(b) of the Social Security Act provides some protection for SSI beneficiaries who would lose their Medicaid eligibility due to income if not for this provision. To qualify for continuing Medicaid coverage, an individual must have been eligible for a SSI cash payment for at least one month, still meet the disability requirement, all other non-disability SSI requirements, need Medicaid benefits to continue to work, and have gross earnings that are insufficient to replace SSI, Medicaid, and publicly funded attendant care services.

The Social Security Administration (SSA) uses a threshold amount to measure whether a person's earnings are high enough to replace his or her SSI and Medicaid benefits. The 2020 threshold amount in Hawaii is $42,387 annually or $3,500 per month. This threshold is based on the amount of earnings which would cause SSI cash payments to stop in the individual's state and the average Medicaid expenses in that state.

If a SSI beneficiary has gross earnings higher than the threshold amount, SSA can determine if the individual's income is below the threshold by deducting impairment-related or blind work expenses, a plan to achieve self-support (PASS), costs for a personal attendant whose fees are publicly-funded, or Medical expenses not covered by insurance. If after allowable deductions the individual's income is less than the threshold amount, he or she would be granted

1619(b) status and Medicaid coverage may not be terminated. However, this option is for SSI recipients only. An individual in receipt of Social Security Disability income (SSDI) would not qualify for this status.

Proposed State Plan Amendment (SPA) – Revised in 2020

The SPA was drafted in early 2020 to implement an earned income disregard. However, due to the COVID-19 public health emergency, the SPA was revised to address the changes to Hawaii's economy and the lack of state funds available for this new coverage group. The SPA revisions used the Federal Poverty Limit (FPL) instead of an earned income disregard based on the federal rules around this new eligibility group under the Ticket To Work Program. Using the FPL is similar to the intent of Act 155, and with this approach the intended eligibility group will be able to earn 38% more net income and have a higher resource limit. The revised SPA is in process to be formally submitted to CMS for approval. DHS will work closely with our federal partners to process the SPA as quickly as possible.