

ACT 83

H.B. NO. 1921

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Under the Omnibus Budget Reconciliation Act ("OBRA") of 1993, states are mandated to adopt legislation to fully implement certain group health insurance and medicaid program requirements which impact on states' insurance laws. It is imperative to act on this legislation as failure to do so will result in the significant penalty of the withholding of federal medicaid match funding of the State's medicaid plan.

The Health Care Financing Administration (HCFA) agrees that the federal statute is vague, but its position is that states must adopt the language as it is written and that any deviation or alteration from the federal code is seen as an "interpretation" of federal law. HCFA has advised that the courts are the appropriate forum for interpretation of the law. States must adopt laws dealing with adopted children, prohibiting insurers from taking medicaid eligibility into account when providing coverage, and several provisions relating to coverage of dependents involved in child support situations. Although there are areas of the federal law which might conflict with existing state law, HCFA has advised that state laws in conflict are preempted.

The purpose of this Act is to add a new chapter to the Hawaii Revised Statutes to fully implement the OBRA of 1993 requirements as mandated by federal law.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER
MEDICAID-RELATED MANDATES**

§ -1 **Insurers prohibited from taking medicaid status into account.** Any health insurer (including a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, a health service benefit plan, a mutual benefit society, a fraternal benefit society and a health maintenance organization) is prohibited, in enrolling an individual or in making any payments for benefits to the individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance under 42 U.S.C. section 1396a (Section 1902 of the Social Security Act) herein referred to as medicaid, for this State, or any other state.

§ -2 **State's right to third party payments.** To the extent that payment has been made under the state plan for medical assistance in any case where a third party has a legal liability to make payment for such assistance, the State has in effect laws under which, to the extent that payment has been made under the state plan for medical assistance for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services.

§ -3 **Coverage of children.** (a) No insurer shall deny enrollment of a child under the health plan of the child's parent for the following grounds:

- (1) The child was born out of wedlock;

- (2) The child is not claimed as a dependent on the parent's federal tax return; or
 - (3) The child does not reside with the parent or in the insurer's service area.
- (b) Where a child has health coverage through an insurer of a noncustodial parent the insurer shall:
- (1) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage;
 - (2) Permit the custodial parent (or the provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent; and
 - (3) Make payments on claims submitted in accordance with paragraph (2) directly to the custodial parent, the provider, or the state medicaid agency.
- (c) Where a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, the insurer shall be required:
- (1) To permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;
 - (2) If the parent is enrolled but fails to make application to obtain coverage for the child, to enroll the child under family coverage upon application of the child's other parent, the state agency administering the medicaid program, or the state agency administering the child support enforcement program; and
 - (3) Not to disenroll (or eliminate coverage of) the child unless the insurer is provided satisfactory written evidence that:
 - (A) The court or administrative order is no longer in effect; or
 - (B) The child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of disenrollment.
- (d) An insurer may not impose requirements on a state agency, which has been assigned the rights of an individual eligible for medical assistance under medicaid and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.

§ -4 **Employer obligations.** Where a parent is required by a court or administrative order to provide health coverage, which is available through an employer doing business in this State, the employer is required:

- (1) To permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any enrollment season restrictions;
- (2) If the parent is enrolled but fails to make application to obtain coverage of the child, to enroll the child under family coverage upon application by the child's other parent, by the state agency administering the medicaid program, or by the state agency administering the child support enforcement program;
- (3) Not to disenroll (or eliminate coverage of) any such child unless the employer is provided satisfactory written evidence that:
 - (A) The court or administrative order is no longer in effect;
 - (B) The child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment; or
 - (C) The employer has eliminated family health coverage for all of its employees.

- (4) To withhold from the employee's compensation the employee's share (if any) of premiums for health coverage and to pay this amount to the insurer.

§ **-5 Recoupment of amounts spent on child medical care.** The department of the attorney general may garnish the wages, salary, or other employment income of, and withhold amounts from state tax refunds to, any person who:

- (1) Is required by court or administrative order to provide coverage of the cost of health services to a child eligible for medical assistance under medicaid; and
- (2) Has received payment from a third party for the costs of such services but has not used the payments to reimburse either the other parent or guardian of the child or the provider of the services,

to the extent necessary to reimburse the department of human services for its costs, but claims for current and past due child support shall take priority over these claims.

§ **-6 Requirements for coverage of an adopted child.** (a) In any case in which a group health plan provides coverage for dependent children of participants or beneficiaries, the plan shall provide benefits to dependent children placed with participants or beneficiaries for adoption under the same terms and conditions as apply to the natural, dependent children of the participants and beneficiaries, irrespective of whether the adoption has become final.

(b) A group health plan may not restrict coverage under the plan of any dependent child adopted by a participant or beneficiary, or placed with a participant or beneficiary for adoption, solely on the basis of a preexisting condition of the child at the time that the child would otherwise become eligible for coverage under the plan, if the adoption or placement for adoption occurs while the participant or beneficiary is eligible for coverage under the plan.

(c) As used in this section:

“Child” means, in connection with any adoption, or placement for adoption, of the child, an individual who has not attained the age of eighteen as of the date of such adoption or placement for adoption.

“Placement for adoption” means the assumption and retention by a person of a legal obligation for total or partial support of a child in anticipation of the adoption of the child. The child's placement with a person terminates upon the termination of such legal obligation.”

SECTION 3. This Act shall take effect upon its approval.

(Approved May 25, 1995.)