

The Affordable Care Act and the Prepaid Health Care Act

Hazel G. Beh

Professor of Law, Director Health Law Policy Center

Wm. S. Richardson School of Law

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Health Reform

PHCA

- PHCA – An employer mandate to provide health insurance coverage to workers over 20 hours a week
- Qualified plans established an expectation of quality coverage in Hawai‘i

Patient Protection & Affordable Care Act

- Transforming Health Care through Affordability, Accountability, & Access Measures
 - Insurance Reform
 - Health Care as a Collective Responsibility (government, employer, individual)
 - Expanding Access Across Populations
 - Reducing Costs
 - Improving Quality
 - Tying Payment to Outcomes & Quality Measures
 - Creating Opportunities for State Initiatives
 - Strengthening workforce

Health Tracking Poll: Exploring the Public's Views on the Affordable Care Act (ACA)

Health Tracking Poll: Exploring the Public's Views on the Affordable Care Act (ACA) EMBED



The public has remained deeply divided on the health reform law since it was passed in March 2010. Click below to examine how specific groups feel about the law and how those opinions have changed or not changed over time.

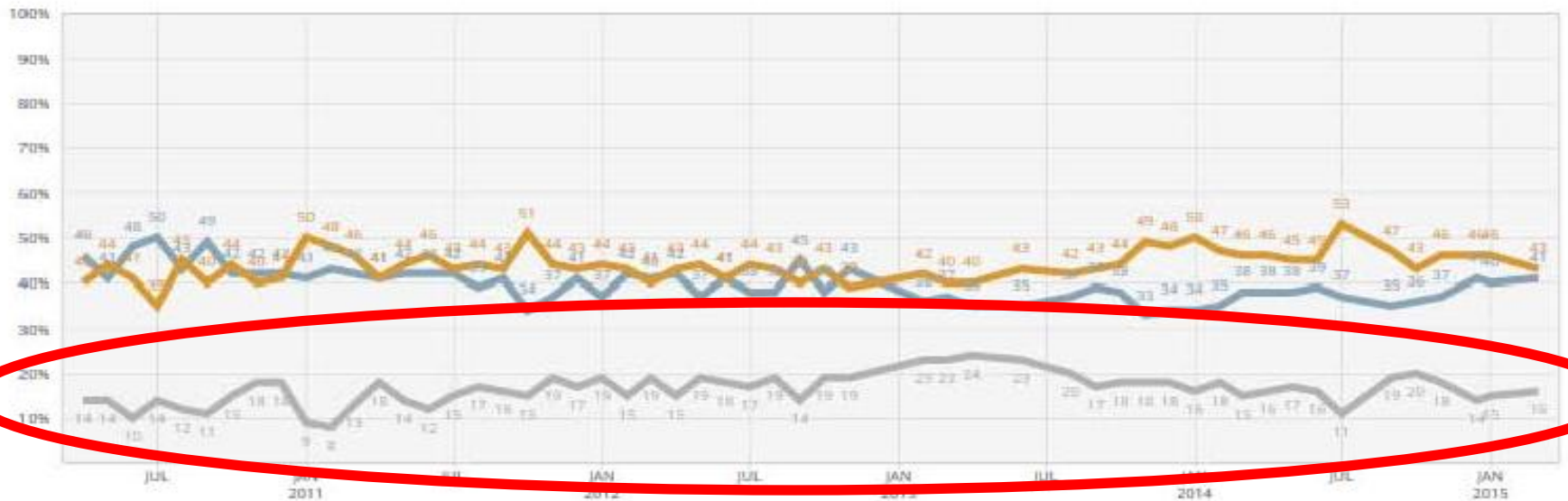
We asked: "As you may know, a health reform bill was signed into law in 2010. Given what you know about the health reform law, do you have a generally favorable or generally unfavorable opinion of it?"

VIEW TREND BY GROUP

| TOTAL | PARTY ID | INCOME | AGE | GENDER | RACE / ETHNICITY | INSURANCE STATUS |
|-------|----------|--------|-----|--------|------------------|------------------|
|-------|----------|--------|-----|--------|------------------|------------------|








- FAVORABLE
- UNFAVORABLE
- DON'T KNOW / REFUSED

TOTAL
Views of the ACA among all adults.



[Click here](#) for more details on the monthly Kaiser Health Tracking Poll, including the survey findings and methodology.

Health Reform Timeline 2010-2020

| 2010 | 2011 | 2012 | 2013 | 2014 | 2018 | 2020 |
|---|---|--|--|--|--|--|
| <p>Insurance Reforms:</p> <ul style="list-style-type: none"> No Lifetime benefits limits-based on dollar amounts. No coverage cancellations Dependent coverage to age 26. New internal and external appeal processes. No pre-existing condition exclusions for dependent children. New health plan disclosure and transparency requirements. | <p>Insurance Reforms:</p> <ul style="list-style-type: none"> New uniform coverage documents and standard definitions. Minimum medical loss ratios. <p>Medicare Reforms:</p> <ul style="list-style-type: none"> Medicare Advantage cost-sharing limits. Medicare beneficiaries who reach the doughnut hole get a 50% discount on brand name drugs. Medicare Advantage plans begin having payments frozen. | <p>Hospitals, doctors and payers encouraged to join forces in "accountable care organizations."</p> <p>Hospitals with high rates of preventable readmissions facing reduced Medicare payments.</p> | <ul style="list-style-type: none"> Individuals making \$200,000 a year or couples making \$250,000 would have a higher Medicare payroll tax of 2.35% on earned income. A new 3.8% tax on unearned income, such as dividends and interest, also added. Contributions to flexible spending accounts limited to a \$2500 a year. The threshold for deducting medical expenses on taxes raises to 10%. | <p>Coverage mandates & Subsidies:</p> <ul style="list-style-type: none"> New Individual and employer coverage responsibilities. New Individual affordability tax credits and expanded small business tax credits. <p>Health Insurance Exchange & Insurance Reforms:</p> <ul style="list-style-type: none"> State individuals and small group health insurance exchanges operational. No more lifetime and yearly dollar limits for essential benefits. | <p>New tax ("Cadillac tax") on employer-sponsored health plans that offer policies with generous coverage levels.</p> | <p>Doughnut hole coverage gap in Medicare prescription benefit is fully phased out. Seniors continue to pay the standard 25% of their drug costs until they reach the threshold for Medicare catastrophic coverage.</p> |
|  <p>Dependent coverage up to age 26 is mandated.</p> | <p>Employers are required to report the value of health care benefits on employees' W2 tax statements.</p>  |  <p>Hospitals with high rates of preventable readmissions face reduced Medicare payments.</p> | <p>Individuals making \$200,000 a year have a higher Medicare pay-</p>  |  <p>Pre-existing condition exclusions are prohibited.</p> |  <p>"Cadillac tax" is imposed.</p> |  |
| <p>New Programs:</p> <ul style="list-style-type: none"> Temporary retiree reinsurance program. National risk pool Small business tax credit. \$250 rebate for Medicare members who reach the "doughnut hole." | <ul style="list-style-type: none"> Primary care doctors and general surgeons practicing in underserved areas to get a 10% bonus. <p>Other:</p> <ul style="list-style-type: none"> Yearly fee for brand-name drug manufacturers. Voluntary long-term care insurance program. Increased funding for community health centers to provide care for low income uninsured people | | <ul style="list-style-type: none"> Medical device manufacturers have a 2.9% sales tax on medical devices; with exemptions for some like eyeglasses, contact lenses and hearing aids. No more deduction for expenses allocable to Medicare Part D subsidy for employees who maintain prescription drug plans for their Medicare Part D- eligible retirees. | <ul style="list-style-type: none"> Guaranteed issue, guaranteed renewability, modified community rating and minimum benefit standards. <p>New taxes on health insurers.</p> <p>Medicaid & Medicare Reform:</p> <ul style="list-style-type: none"> Medicaid expanded to cover low-income individuals under age 65 up to 133% of the federal poverty level- about \$28,300 for a family of four. | | |

SOME CHANGES HAVE BEEN WELCOME AND SEAMLESS, BIG CHANGES AHEAD!

In the beginning...

PHCA – An employer-based program

- 1974 Hawai‘i enacted the Prepaid Health Care Act
- 1974 ERISA enacted and preempted Hawai‘i’s PHCA (*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).
- 1983 Congress exempts Hawai‘i’s PHCA from ERISA preemption.
- Hawaii is the only state with an ERISA exemption for employer sponsored health care.



The ERISA exemption allowed Hawai‘i to deliver health care to a sizeable portion of its population in manner that was unique to this state for over thirty years.

It wasn't paradise, but pretty good before the ACA

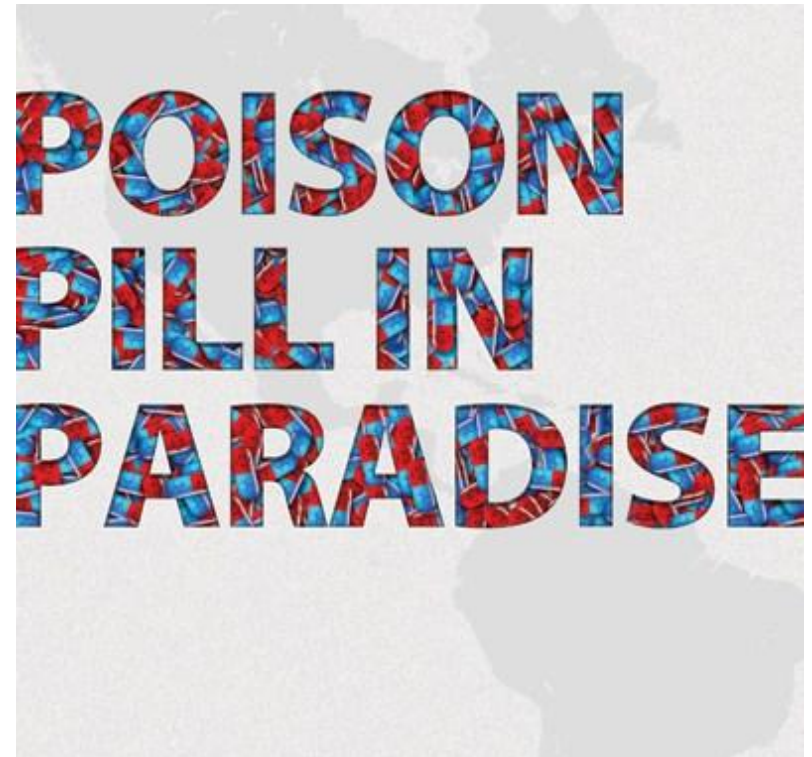
- Over 90% of Hawai'i population had health insurance
- Our uninsured were mostly adults between 19-64 (77%) and children (21%)
- Disproportionately Native Hawaiian & Pacific Islander (14%)
- Disproportionately Neighbor Islands
- 1 / 3 of uninsured were working
- 1/2 were below 200% of the Federal Poverty Level



In 2011, nationally, about 16% of the population lacked health insurance and the rate was increasing.

PHCA Vulnerability After the ACA: Death By Its Own Hand?

- By its terms, the PHCA sunsets when federal law establishes mandatory or voluntary pre-paid health care that is “at least as favorable”
- Hawai‘i’s ERISA waiver “froze” PHCA in 1983. No substantive amendments are permissible.
- Although the 2010 State Legislature repealed the sunset provision, we do not know if that repeal was permissible under the terms of our ERISA waiver.



Did we ride off into the sunset?

- ERISA’s preemption waiver froze Hawai‘i to the 1974 law, 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.”
- PHCA sunsets 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.”

Great law school questions: Is ACA as favorable as the PHCA? Is Hawai‘i’s repeal of the sunset provision valid under the terms of Hawai‘i’s ERISA waiver?

Did the ACA Actually “Save” PHCA

(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 exemption for Hawaii's Prepaid Health Care Act... under ... Employee Retirement Income Security Act.



- Does not exempt Hawai‘i from the ACA
- Does not deny Hawai‘i citizens or employers the rights/burdens of the ACA
- Does not obligate the federal government to coordinate or alter ACA requirements
- Does not give the PHCA superiority over the provisions of the ACA in a conflict
- Does not ensure compatibility

The ACA Gives States Some Latitude and Invites Statutory Constructions That Preserve State Laws

- No interference with state regulatory authority
- Rule of construction to allow benefits in excess of essential health benefits
- Empowering consumer choice and state discretion
- State flexibility to allow innovation

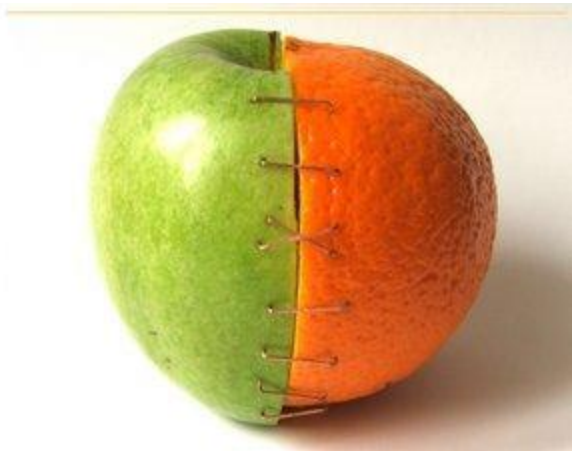


Making Them Work Together



Side-by-Side Versus Integration of Laws

- Hopeless side-by side comparisons
- Bridgeable differences versus fatal differences
- Building on ACA provisions providing state flexibility and latitude



Differences

PHCA

- Employees over 20 hours
- All employers regardless of size
- Cost sharing 50% but not more than 1.5% of wages
- Penalties by the day
- “A” and “B” plans (approximately platinum and gold)
- Benefits include state mandates such as IVF

ACA

- Employees over 30 hours
- Only employers of over 50
- Employer provides qualified plan and employees share of costs cannot exceed 9.5% of income
- Penalties for noncompliance triggered by individuals seeking tax credits in the individual exchange
- Metal Plans: bronze (60%) Silver (70%) Gold (80%) & Platinum (90%)

Strength of Plans Is Different

PHCA

- 393-7(a) plans – equal to largest subscriber plans (assumed equivalent of platinum)
- 393-7(b) plans – demonstrate that it provides sound basic care. If more limited than (a), employer contributes $\frac{1}{2}$ the cost of dependents as well (assumed equivalent of gold)

Small Business Health Options Program (SHOP)

- Metal Plans (bronze -60%; silver- 70%; gold 80%; platinum 90%)
- Metal = actuarial value of plan based on cost sharing between insured and insurance

Bridge-building

EMPLOYERS MUST SATISFY BOTH THE ACA AND PHCA

- All Hawai'i employers falling under both laws must meet the requirements of both
- Employers of <50, must comply with the PHCA even though not mandated by the ACA
 - < 25 Buy through SHOP to obtain tax incentives and competitive pricing
 - < 50 Buy through SHOP to obtain competitive pricing

ACA SHOP EXCHANGE PLANS MUST SATISFY PHCA REQUIREMENTS

- The ACA allows the State to choose a Benchmark plan among its dominant plan, at least through 2016
- Offer PHCA compliant plans (gold and platinum) in the SHOP. Silver (non-compliant) only to those employers exempt from PHCA.
- Employers who share premiums in accord with PHCA always exceed ACA mandate
- Noncompliance incurs penalties under both laws
- SHOP Plans supplemented to meet State mandates

What would we lose if we lost Prepaid?

- Employers of under 50 would not need to provide health insurance
- Workers at 20-30 hours would lose coverage
- Those workers would have to buy on the individual exchange
- Bronze (60%) or Silver (70%) plans, available on the individual exchange, would be more common. These plans would increase out of pocket costs and would force Hawaii's health providers to collect larger share of fees from patients
- Employee's share of premium (up to 9.5% of income) would be higher for than the Prepaid (50-50 but no more than 1.5% of wages)

Do we need the ACA too?

- The ACA helps Hawaii's uninsured and uninsurable
- Expands access and affordability in the individual market
- Was intended to spark competition in the individual and small group markets
- Eliminates pre-existing condition exclusions and lifetime caps
- Allowed Medicaid expansion to low-income adults – this was one of our largest uninsured populations
- Encourages the health industry to implement health infrastructure improvements including reforms in payment and accountability
- Tax credits and subsidies in the individual small business market
- Reforms within insurance industry to contain costs, increase transparency, and curb abuses

Still Left Behind

- **Undocumented immigrants** (ineligible for Medicaid or the exchanges)
- Eligible but not signed up for Medicaid
- Gamblers (don't participate in the exchanges, risk the tax penalty)
- The working poor (can't afford the exchange even with the subsidies, but above income is above Medicaid level) (no penalty incurred if insurance amounts to $>8\%$ of household income)
- Religious exemptions
- **5 year immigrants & COFA migrants** (although as lawfully present, eligible for subsidies through the Exchange) remain Hawai'i's responsibility (non-qualified Medicaid immigrants under PRWORA)

Nationally, it is estimated that 6% of nonelderly will not have insurance under the ACA.

2017 – A State Innovation Waiver?

- Basic Requirements
 - Provide coverage at least as comprehensive as the ACA exchanges
 - Coverage and cost-sharing that are at least as affordable as the ACA exchanges
 - Coverage to at least a comparable number of residents as under ACA
 - Will not increase the Federal deficit
 - Application must be backed by state law
 - Waivers can last up to five years, but are renewable

