Study of Mandatory Health Insurance for Newborn Infant Adoptees

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 94-14
October 1994

Foreword

This report was prepared in response to Act 268, Regular Session of 1991, which requested that the State Auditor report on the impact of mandating that insurers extend the same health insurance coverage to newborn adoptees as they extend to natural born children of insured parents.

We wish to express our appreciation for the cooperation and assistance of those state agencies, private insurers, and other interested organizations and individuals we contacted during the course of the study.

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Chapter 1
Introduction

This study was conducted in response to Act 268, Regular Session of 1991, which requested the State Auditor to report on the impact of that act in mandating that insurers extend the same health insurance coverage to newborn adoptees as they extend to natural born children of insured parents.

In enacting the law, the Legislature hoped to bridge a gap in insurance coverage faced by prospective parents in adopting newborn infants. The Legislature found that most health insurance companies required adoptive parents to produce a final adoption decree before the child could be enrolled in the insurance program. This could take three to twelve months or more. In the meantime, the adoptive family was liable for all medical expenses, which could run into the thousands of dollars, particularly when the child required special care.[1]

The law mandating insurance coverage for newborn adoptees is scheduled to be repealed on June 30, 1995. The State Auditor is to report to the Legislature, prior to the convening of the 1995 regular session, on its impact and implications.

Background on Mandated Health Insurance

Since the 1960s, states have enacted a variety of laws mandating the health coverage that insurers must provide. These laws have required insurers to cover specific medical conditions and treatments, particular groups of people, and the services of certain health practitioners. As of 1992, state governments nationwide had enacted over 950 mandates, up from 343 in 1978.[2] However, the growth of mandated coverage appears to be slowing.[3]

Arguments for and against mandated health insurance

Mandated health insurance may be appropriate in certain circumstances. However, proponents and opponents disagree about key issues: whether a particular coverage is necessary, whether it is justified by the demand, whether it will increase the costs of care and by how much, and whether it will increase premiums. Generally, providers and recipients of medical care support mandated health insurance, and businesses and insurers oppose it.

Proponents say gaps in existing coverage prevent people from obtaining the care they need. They believe the current system is not equitable because it does not cover all providers, medical conditions, or needed treatments and services. Proponents also argue that mandated coverage

could increase competition and the number and variety of treatments available. In some instances, it could also reduce costs by making preventive care, early treatment, or alternate care more available.

Opponents argue that mandated benefits add to the costs of employment and production and reduce other more vital benefits. They create particular hardships for small businesses that are less able to absorb rising premium costs. Opponents also argue that mandates reduce the freedom of employers, employees, and unions to choose the coverage they want. Insurers cite premium rates that may rise beyond what employers and consumers are willing to pay.

Types of insurance plans affected

Laws to mandate health insurance affect three main types of private insurance: (1) Blue Cross and Blue Shield plans, (2) health maintenance organization (HMOs), and (3) commercial insurance plans.

The Hawaii Medical Service Association (HMSA), the Blue Cross and Blue Shield insurer in Hawaii, offers traditional fee-for-service plans (sometimes called indemnity plans) that reimburse physicians and hospitals for services. HMSA also operates a managed care system in which beneficiaries may obtain services from a network of designated providers. In addition, HMSA has an HMO plan that offers a package of preventive and treatment services for a fixed fee. With a 1992 membership of 623,074, HMSA covers about 56 percent of Hawaii's civilian population.[4]

Kaiser Foundation Health Plan is a federally qualified health maintenance organization. As of 1993, Kaiser served 189,026 people in Hawaii, or about 16 percent of Hawaii's population.[5]

Commercial insurance plans such as HDS (Hawaii Dental Services) Medical, Island Care, and Straub Plan cover most of the remaining privately insured population. Some mainland insurance companies, such as Travelers and Aetna, also provide health insurance coverage in Hawaii.

Potential legal challenge

Hawaii's Prepaid Health Care Act, enacted in 1974, requires employers to provide a qualified prepaid health care plan to regular employees working at least 20 hours per week. A qualified plan is one with benefits that are equal to, or a medically reasonable substitute for, the benefits provided by the plan with the largest number of subscribers in Hawaii.

The federal courts have ruled that Hawaii's Prepaid Health Care Act is preempted by the federal Employee Retirement Income Security Act (ERISA), which has a provision preempting state laws relating to

employment benefit plans. A subsequent congressional amendment exempted Hawaii's Prepaid Health Care Act from ERISA but the exemption applied only to the law as it was enacted in 1974. In effect, this has frozen the law at its original provisions since ERISA would preempt any subsequent amendments. It is possible, therefore, that in Hawaii any mandated benefit laws could be viewed, and challenged, as bypassing the limitations placed on the Prepaid Health Care Act.

Background on Act 268

In 1991, a number of adoptive parents expressed concern to the Legislature about their difficulties in obtaining health insurance coverage for their newborn adoptees. They testified that insurers were discriminating against them. Unlike natural born children, they said, adopted children were not being covered from birth. There was a gap between the time the child was born and the time coverage would be available. One prospective parent was told by an insurer that coverage would not be available until the adoption was finalized. During this period, the parent had to pay out of pocket for the mother's post-partum care and medical visits for the newborn.

Another adoptive parent testified that the child could not be insured because of a preexisting condition resulting from the use of crystal methamphetamine by the mother during her pregnancy. Still another parent testified that her adopted child had been transported to the Neonatal Intensive Care Unit at Kapiolani Hospital because of respiratory failure at birth. He stayed in the unit for 63 days at a cost totaling over $100,000. Although the adoptive parent had been told that the child would be covered from birth on, she had difficulty receiving reimbursements and had not been able to keep up with the medical bills.

A social worker testified that most insurers allowed the date of placement to be the date of enrollment. However, date of placement was at least 72 hours after birth (to allow the mother time to change her mind). During this period, parents could be responsible for thousands of dollars of hospital and doctor bills. In addition, preexisting conditions such as jaundice and prematurity were not covered.

Current coverage

Act 268 requires newborn adoptees to be extended the same health insurance coverage as natural newborns of insured parents. Act 268, codified as Section 431:10A-116(5) and Section 432:1-602.6, Hawaii Revised Statutes, requires an insurer to provide insurance coverage to newborn adoptees when (1) it is notified in writing of the insured's intent to adopt the child prior to or within 30 days of the child's birth or within the time period required for enrolling a natural born child (whichever is longer), or (2) it receives legal notification of the insured's

ability to consent to treatment of the child. Under the first instance, in effect, the insured would receive insurance coverage retroactive to the birth of the newborn adoptee. Under the second instance, which would apply if the specified time period since birth had passed, coverage would be effective the first day following receipt of notification of the ability to consent to treatment. Health maintenance organizations (HMOs) must also provide similar coverage. The law also sets forth the circumstances under which HMO coverage would be retroactive and those under which coverage would begin after the required notification is received.

Newborns receive coverage as a child or dependent of the insured member. In its basic plan, HMSA defines a child as someone who is wholly dependent upon the member and lives with the member. HMSA's insurance coverage for newborns includes all the customary benefits covered for individuals generally. These include basic medical services, surgical, and hospital benefits, and basic diagnostic and therapy benefits. Kaiser provides similar care for newborn children. HMSA's and Kaiser's basic coverage must meet with standards in Hawaii's Prepaid Health Care Act.

Mandated child health supervision services

In addition, the Legislature has emphasized health services for children. In 1988, it mandated insurance coverage for certain child health supervision services. Section 431:10A-115.5 requires all health insurance policies issued in the state to provide this coverage for children of insured persons from the moment of birth through five years. The required child health supervision services include 12 visits over certain specified intervals. The services are to include a medical history, physical examination, developmental assessment, anticipatory guidance, and appropriate immunizations and laboratory tests. In enacting the law, the Legislature believed that regular health visits for children would prevent serious and costly health problems.

Federal Employee Retirement Income Security Act (ERISA)

Recently in 1993, Congress amended ERISA to expand private health plan coverage for adopted children. The amendment requires group health plans to extend the same benefits to adopted children of participants as are given to natural children regardless of whether the adoption has become final. In addition, a plan may not restrict benefits on the basis of a preexisting condition when a child would otherwise be eligible for coverage, so long as the adoption occurs while the parent is eligible to participate in the plan.

Objectives of the Study

The objectives of the study were to:

1. Identify and describe the characteristics, numbers, and health status of newborn adoptees, and the time from birth to adoption;

2. Assess the current insurance coverage for newborn adoptees and the problems in getting coverage; and

3. Describe the financial effects of mandating coverage.

Scope and Methodology

Act 268 requires the State Auditor's report to include, but not be limited to, the number of families affected by the act, the cost of providing the coverage prescribed in the act, any resultant increase in premiums or dues, who currently pays for medical services for newborn adoptees, the relative health status of newborn adoptees, and the time from birth to adoption.

It is important to note that our study examined the impact of mandated *insurance coverage* for newborn infant adoptees and not the impact of the medical services themselves. We reviewed literature on health insurance coverage for newborn adoptees and federal and other states' laws on the subject. We interviewed and requested data from various for-profit and nonprofit adoption agencies and health insurance carriers. We did not test the data provided.

Our work was performed from January through August 1994 in accordance with generally accepted government auditing standards.

Chapter 2

Impact of Mandating Insurance Coverage for Newborn Adoptees

In this chapter, we report on the impact of mandating health insurance coverage for newborn adoptees. To the extent possible, we present the specific data requested by the Legislature on the characteristics of the insured population. We then report our findings relating to the impact of Act 268.

Summary of Findings

1. Act 268 appears to have eliminated problems relating to insurance coverage faced by parents in adopting newborn children.

2. The financial impact of the mandated coverage is probably negligible.

Attributes of the Insured Population

Act 268 specifically requested that we provide information on the number of families affected by the bill, the time from birth to adoption, and the relative health status of newborn adoptees.

Number of newborn adoptees

Data on the number of newborn adoptees is limited and had to be assembled from various sources. The Department of Health, the agency responsible for vital statistics, does not maintain statistical data on newborn adoptees. However, we were able to locate some data from the Department of Human Services (DHS). Its Planning Office tabulates data that it receives from the Judiciary's Family Courts in each circuit on the number of adoption petitions granted and the sex and age of child at time of placement. Exhibit 2.1 shows the number and age of adoptees for the calendar years 1991, 1992, and 1993.

Exhibit 2.1
Number and Age of Adoptees
1991 to 1993

	1991		1992		1993	
	No.	%	No.	%	No.	%
TOTAL ADOPTEES	592	100	557	100	404	100
Under 1 month old	133	22.5	119	21.4	94	23.3
1 month to under 3 months	24	4.0	23	4.1	9	2.2
3 months to under 6 months	26	4.4	21	3.8	29	7.2
Over 6 months old	409	69.1	394	70.7	272	67.3

Source: Department of Human Services Planning Office
Family Courts Adoption Cards

The data show that from calendar year 1991 to 1993, the number of adoptions decreased from 592 to 404. Newborns adopted within one month of their birth constituted a little over 20 percent of the number of children adopted each year. The time from birth to adoption varied, with the majority placed after they were more than six months old.

Time until placement

The length of time between birth and the placement of newborn adoptees with the adoptive parents was generally two to three days. Exhibit 2.2 shows the time from birth until placement for 42 children who were born in calendar year 1992 or 1993 for whom a date of placement was available and for whom an adoption decree was granted in FY1992-93.

Exhibit 2.2
Time From Birth Until Placement

	No. of Days						
	0-2	3-5	6-10	11-20	21-30	30+	Total
No. of Newborns	11	11	5	3	2	10	42
% of Newborns	26.2	26.2	11.9	7.1	4.8	23.8	100

Source: Family Courts Adoption Cards for adoption decrees granted in FY1992-93.

It is important to note that the data may not be representative of all children who are adopted. The exhibit includes only children who were born in 1992 and 1993 because we wanted the most recent data. Furthermore, the data do not include potential adoptees who were not placed since no data are available on these.

The exhibit shows that the majority of children included were placed with their adoptive parents within five days of birth. More than three-quarters were placed within a month of birth.

Time until adoption decree

The time between the date of birth and the date the adoption decree was granted by Family Court varied. For newborn adoptees who were born in 1992 and 1993 and whose adoption decree was granted in FY1992-93, the time ranged from 11 days to 15 months. Again, these data must be viewed with caution since they do not include those who were adopted but born before January 1992 and those who were never adopted.

Health status of newborn adoptees

The health status of newborn adoptees is unknown since insurers and health maintenance organizations do not maintain data for newborn adoptees that is separate from that of other newborns. Adoption agencies report that almost all of the children they place are healthy. HMSA reports that newborns are generally healthy.

The Hawaii Birth Defects Monitoring Program collects information on each infant diagnosed with any of over 1,180 different reportable birth defects. Defects ranged from moderate to severe. From 1991 and through 1993, the average annual rate of birth defects was 35 per thousand deliveries. This is the rate for all deliveries, live and stillborn. If this rate were applied to the approximately 100 newborns who were adopted, it would mean that about 4 newborn adoptees could have birth defects. However, this number would be high since we are applying the rate to live newborn adoptees only and not including stillborn births.

Adoptive Parents Are Receiving Coverage for Newborns

It appears that Act 268 has been effective in correcting the problems formerly faced by adoptive parents. The two largest health benefits programs, HMSA and Kaiser, have both changed their policies to reflect the new law.

HMSA reported that prior to Act 268, it had already been giving a loose interpretation to its contracts that was favorable to adoptive parents. Since Act 268, HMSA enrolls the newborn adoptee retroactively as a dependent. A dependent is defined as someone who is wholly dependent on the subscriber and lives with the subscriber. HMSA has no preexisting condition exclusions.

Kaiser also adds newborn adoptees as dependents. Kaiser defines a family dependent as any person who meets certain eligibility requirements, is enrolled, and for whom Kaiser has received the required prepayment. A newborn who is the subject of a petition for adoption

filed in the appropriate court by the subscriber qualifies as a family dependent. Kaiser requires a copy of the petition to adopt.

Kaiser covers a newborn from birth who is the subject of a petition for adoption if the newborn is enrolled within 30 days of the date the subscriber notifies Kaiser of the intent to adopt, and the newborn is treated from birth at a hospital or medical office by a physician. A newborn who has not been treated from birth by a hospital or medical office by a physician is covered from the first day following (1) the receipt of a document authorizing the subscriber to consent for treatment of the newborn, and (2) receipt by Kaiser of a properly completed enrollment application.

The insurers and health maintenance organizations that we contacted reported no problems in implementing the new law. Some had already been interpreting enrollment requirements liberally in favor of adoptive parents. However, none of them was able to provide any specific data on the impact of Act 268 because they did not maintain separate data on newborn adoptees.

We also contacted several agencies and organizations involved with or interested in adoptions. None of them reported any complaints from adoptive parents about being unable to obtain health insurance coverage for their newborn adoptees. One agency said that it used to get calls from adoptive parents but has not had any since the law was passed.

It appears that Act 268 has been successful in resolving the problems brought to the Legislature by adoptive parents in 1991. Public and private organizations involved in adoptions, and employer and employee organizations that we contacted, reported that they had heard no complaints or demands relating to insurance coverage for newborn adoptees.

Financial Impact of Law Is Probably Negligible

The financial impact of Act 268 is not identifiable since none of the health insurers or HMOs keep separate data for adoptees. They do not track adopted newborns separately from all newborns. Consequently, they are unable to identify the number of adopted children that have been enrolled. Without information on the number of adoptees or the type of care they received, insurers say they are unable to identify the cost of coverage under Act 268. They do believe, however, either that premiums have not increased because of the act or that any increase has been negligible.

Costs of coverage

The cost of covering newborn adoptees could not be clearly identified. HMSA does not track newborn adoptees separately, but it located correspondence relating to three adopted babies. HMSA reported it paid $1,376 in medical costs for baby I from May 1992 through December 1993; $605 for baby II from December 1992 through December 1993; and $776 for baby III from March 1992 through December 1993.

LDS Social Services is the only organization that keeps track of the cost of newborn adoptee care since it pays for all costs before the newborn is covered by the adoptive parents. LDS reports total medical costs of $25,900 for the 19 adopted newborns it placed between 1991 and 1994 for an average cost of $1,363.

Conclusion

The data indicate that Act 268 has been implemented without any significant difficulty and has been successful in removing problems relating to enrolling newborn adoptees in health plans.

HMSA and Kaiser reported that they are uncertain as to what they will do when the law sunsets in 1995. They do not believe that sunsetting the law would significantly change the availability of insurance coverage for newborn adoptees.

It is possible that coverage will not change if the law sunsets. The federal Omnibus Budget Reconciliation Act of 1993 amended the federal Employee Retirement Income Security Act (ERISA) to establish rights for adopted children regardless of whether the adoption has become final. Group health plans must extend participation and benefits under the same terms and conditions for adopted children of participants as they do for natural children. Group health plans may not restrict coverage of adopted children solely on the basis of a preexisting condition. A child is eligible for coverage when being placed for adoption, that is, when the participant has the legal duty for the total or partial support of the adopted child.

ERISA will provide protection to adoptive parents. However, ERISA does not cover group health plans of federal, state, and local governments, charities, and churches that do not wish to participate. If the Legislature wishes to ensure that the former problems encountered by adoptive parents do not recur, it could amend Act 268 to remove the repeal date of June 30, 1995.

Recommendation

The Legislature should consider retaining the mandated health insurance coverage for newborn adoptees by amending Act 268 of 1991 to remove the repeal date of June 30, 1995.

Notes

Chapter 1

1. Conference Committee Report No. 106 on Senate Bill No. 1822, Special Session of 1991.

2. Susan S. Laudicina, *Impact of State Basic Benefit Laws on the Uninsured*, Blue Cross and Blue Shield Association, December 1992, p. 1; Jon R. Gabel and Gail A. Jensen, "The Price of State Mandated Benefits," *Inquiry*, vol. 26, Winter 1989, p. 420.

3. Laudicina, *Impact of State Basic Benefit Laws on the Uninsured*, p. 2.

4. Information provided by HMSA to the Office of the Auditor, November 17, 1993.

5. Letter to the Office of the Auditor, from Francie Boland, Counsel, Kaiser Permanente, November 16, 1993.

Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this report to the Department of Health on September 12, 1994. A copy of the transmittal letter to the department is included as Attachment 1. The response from the department is included as Attachment 2.

The Department of Health responded that it agrees with our recommendation to retain mandated coverage for newborn adoptees.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

September 12, 1994

The Honorable Peter Sybinsky
Acting Director
Department of Health
1250 Punchbowl Street
Honolulu, Hawaii 96813

Dear Mr. Sybinsky:

Enclosed for your information are three copies, numbered 6 to 8 of our draft report, *Study of Mandatory Health Insurance for Newborn Infant Adoptees*. We ask that you telephone us by September 15, 1994, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than September 26, 1994.

The Governor and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

ATTACHMENT 2

JOHN WAIHEE
GOVERNOR OF HAWAII

PETER A. SYBINSKY, Ph.D.
[redacted]
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to:
File: DDHR 24808

September 14, 1994

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OFC. OF THE AUDITOR
STATE OF HAWAII

Ms. Marion M. Higa, State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Ms. Higa:

Study of Mandatory Health Insurance for Newborn Infant Adoptees

We have reviewed the draft report on the Study of Mandatory Health Insurance for Newborn Infant Adoptees.

Based on your report, Act 268 has been effective in correcting the problems formerly found by adoptive parents. We also noted that insurers and health maintenance organization reported no problems in implementing the law and that premium increase has not occurred or has been negligible.

We, therefore, agree with the recommendation to retain mandated coverage for newborn adoptees.

Sincerely yours,

PETER A. SYBINSKY, Ph.D.
Director of Health