

State health care act looks healthy

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"I think the intent was pretty clear," said Senate Health Chairman David Ige. "I suppose if you're an attorney you might want to try and muddy the waters, but I think was very clear: The Congress did not want to, in any way, impact Hawaii's Prepaid Health Care Act."

Hawaii's law that requires employers to provide insurance for full-time workers has been in place since 1974.

But Gov. Linda Lingle recently voiced concerns that the new federal health care reform law may have triggered an automatic repeal in the state law.

"There is a state law that says once there is national health care, that the Prepaid Health Care Act will no longer exist, and we are trying to look into that situation right now," Lingle said last week.

According to state law, the Prepaid Health Care Act "shall terminate upon the effective date of federal legislation that provides for voluntary prepaid health care for the people of Hawaii 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 Hawaii."

Attorney General Mark Bennett said a court could interpret that language and say that the state's law terminated as soon as the federal legislation was signed by President Barack Obama.

"Our view now is that a court would not find that," he said.

Bennett said a more likely interpretation would be that Hawaii's prepaid law would be repealed only once the requirements of the national health care plan take effect and start to affect island residents, which is still a few years away.

"We think it's unlikely a court would say passage of federal legislation immediately repeals this chapter, but there is an argument," Bennett said. "I think it would turn on the meaning of 'effective date.'"

"We are still looking at it, but I think it's unlikely that a court would find that our health care act was repealed upon enacting of that (federal) statute."

Ige (D, Aiea-Pearl City) said he is confident Hawaii's congressional delegation made clear the intent for Hawaii's law to be exempted in the new federal law.

U.S. Rep. Mazie Hirono had said previously that Hawaii's law was protected, and U.S. Sen. Daniel Akaka's office confirmed that the federal health insurance reform law specifically exempts Hawaii's Prepaid Health Care Act.

Specifically, the law states, "Nothing ... shall be construed to modify or limit the application of the exemption for Hawaii's Prepaid Health Care Act."

"I think they had adequate language in the federal law to leave our law intact," said Sen. Josh Green (D, Milolii-Waimea), vice chairman of the Senate Health Committee.

"It's more likely that as we approach 2014, when the bigger pieces of the health care reform bill take effect — like mandates, specifically — that's when we may have to reaffirm that Hawaii's law isn't effected," he added. "I haven't lost any sleep over the impact of the federal law on Hawaii's law."

FEDERAL AND HAWAII HEALTH CARE WORDING

A look at the language in state law and the federal "Patient Protection and Affordable Care Act" recently signed by President Barack Obama with regard to Hawaii's Prepaid Health Care Act of 1974.

Hawaii Revised Statutes, Section 393-51: This chapter shall terminate upon the effective date of federal legislation that provides for voluntary prepaid health care for the people of Hawaii 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 Hawaii.

Patient Protection and Affordable Care Act: Rule of construction regarding Hawaii's Prepaid Health Care Act. Nothing in this title (or an amendment by this title) shall be construed to modify or limit the application of the exemption for Hawaii's Prepaid Health Care Act (Haw. Rev. Stat. SS 393-1 et seq.) as provided for under section 514(b)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)(5)).

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