

MINUTES OF THE INSURANCE RECOUPMENT WORKING GROUP
Wednesday, September 18, 2013
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, 1st Floor
Honolulu, HI 96813

Members Present: Gordon I. Ito (Insurance Commissioner and Working Group Chair), Lorrin Kim (Department of Health), Cori Woo (Department of Human Services), L. Martin Johnson (healthcare provider community/health care professional), Gail L. Tice (healthcare provider community/health care professional – participation via conference call), Jennifer Diesman (Hawaii Association of Health Plans/Hawaii Medical Service Association), Howard Lee (Hawaii Association of Health Plans/University Health Alliance), Catherine Xiao (Healthcare Association of Hawaii), Christopher D. Flanders (Hawaii Medical Association)

Members Excused: Robert Hirokawa (Hawaii Primary Care Association)

Others Present: Alyson Estrella (University Health Alliance), Tamera MezNarich, and Ann Le Lievre and Donna K. Ikegami (both from the Hawaii Insurance Division)

I. Call to Order

Pursuant to written notice, this meeting of the Insurance Recoupment Working Group (the "Working Group") was called to order and chaired by Gordon I. Ito, Insurance Commissioner, at 3:04 p.m. The meeting was held pursuant to the public notice filed with the Lieutenant Governor's Office on September 9, 2013.

The Working Group is established pursuant to Senate Concurrent Resolution No. 129, S.D. 1, of the Regular Session of 2013 (SCR 129). SCR 129 requested the Insurance Commissioner to convene a working group to study insurance recoupment and to serve as its chair.

II. Approval of Past Minutes

Commissioner Ito presented the minutes of the August 21, 2013 and September 4, 2013 Working Group meetings for the Working Group's consideration. A brief discussion ensued.

Motion, Seconded, and Carried (MSC): To approve the minutes of the August 21, 2013 Working Group, as presented.

MSC: To approve the minutes of the September 4, 2013 Working Group, as presented.

III. Discussion Topics and Presentations

Howard Lee's Comments

Howard Lee of the University Health Alliance ("UHA") presented his written comments, which he submitted to Commissioner Ito as a representative of the Hawaii Association of Health Plans ("HAHP"). Mr. Lee said that none of the members of HAHP engage in unreasonable insurance recoupment practices and noted that he was surprised that this happens. Mr. Lee expressed his frustration with not being able to clearly identify who is causing the insurance recoupment problem. He said that he did not want to develop policy on this issue without understanding the problem because statutorily establishing a recoupment deadline may have unintended consequences. Christopher D. Flanders of the Hawaii Medical Association ("HMA") noted that the bulk of the physician complaints to HMA within the last three to five years have been related to the Centers for Medicare & Medicaid Services.

Recovery Audit Program

Mr. Lee discussed the Recovery Audit Program, whereby third-party vendors are hired as Recovery Audit Contractors ("RAC") to conduct RAC audits to identify Medicare overpayments and underpayments to healthcare providers and suppliers. He noted that under the demonstration Recovery Audit Program from 2005-2008, over \$900 million in overpayments were returned to the Medicare Trust Fund. At the same time, it should be noted that nearly \$38 million in underpayments were returned to healthcare providers.

Mr. Lee explained that third-party vendors are typically hired as RACs and paid by commission. If the RAC finds an overpayment, the RAC would seek payment from the Medicare contractor, such as Hawaii Medical Service Association ("HMSA"), who would then go to the healthcare provider for recoupment. Mr. Lee said this appears to be a contractual issue between the plan and Medicare.

In the case of a third-party administrator for another entity similar to a union, if an overpayment is discovered through audit claim processing, the overpayment is returned to the union.

L. Martin Johnson's Comments

L. Martin Johnson's Recoupment Problem Statement was transmitted to the Working Group members via email before this meeting was convened. During the discussion, Dr. Johnson noted that there has been a trend for mainland firms to be third-party administrators. For example, a mainland employer (e.g., big box stores, hotels, airlines, etc.) has an employee in Tuscon, Arizona, but the employee lives in Honolulu. If the employee needs medical attention in Hawaii, the healthcare provider would have to deal with insurance carriers that are not from Hawaii. As a result, healthcare providers may deal not only with Hawaii insurance carriers, but with carriers from all over the U.S.

Dr. Johnson noted that he knew a psychologist who has been in practice for more than ten years, who had been using the same Current Procedural Terminology code for many years. After an audit was conducted, she was told that she had been using the wrong code and was penalized for using the wrong code. After she protested, additional penalties were made for additional years even though there was no attempt at fraud. It was not until she hired an attorney that this misunderstanding was resolved. Dr. Johnson acknowledged that the local carriers appear to have reasonable standards. At the same time, he said this is already a heavily regulated market and keeping things the way they are would

put all healthcare providers at a distinct disadvantage. He also noted that if things are left the way they are, the possibility exists for a solo practitioner to incur six-figure losses from recoupment overpayments.

Recoupment Limits

During the discussion on HMSA's written comments, Jennifer Diesman of HMSA and HAHP noted that from HMSA's perspective, she was not aware of any major concerns with their recoupment policy or experience. She also noted that most HMSA provider contracts only allow them to recover for a period of 18 months from date of payment, and a few provide a 24-month recovery period.

Ms. Diesman said most recoupment cases are government-related, and there is nothing HMSA can do to fix that problem. She said that even if the law were changed, this would not necessarily correct the recoupment problem. While HMSA has an 18-month standard, HMSA may be forced to go back beyond 18 months if Medicare demands it. She did not support introducing recoupment legislation, adding that more data and analysis would be needed before recoupment legislation can be considered.

Mr. Lee agreed with Ms. Diesman, indicating his willingness to address healthcare provider concerns without legislation. Mr. Lee said unintended consequences could result from any changes to the law. In addition, Mr. Lee said that if the Working Group were to recommend a recoupment bill that exempts Medicare and fraud, the bill may not address the problem at hand.

Mr. Lee suggested evaluating healthcare provider contracts to see if contractual provisions can be amended to address recoupment problems. Commissioner Ito said that the Insurance Division generally does not get involved in healthcare provider-insurer contractual disputes. He said that the Insurance Division regulates statutory and regulatory requirements set forth in the Hawaii Insurance Code and Hawaii Administrative Rules. Contractual disputes are outside the scope of the Insurance Division's jurisdiction. However, he said it may be possible for the Insurance Division to get involved if there is a violation of the unfair methods of competition and unfair and deceptive acts and practices in the business of insurance in article 13, chapter 431, Hawaii Revised Statutes.

When asked by Gail L. Tice, Ms. Diesman said all healthcare providers (including social workers, physical therapists, etc.) contracted with HMSA fall under the 18-month period. Ms. Diesman added that it also applies to hospitals. When asked by Dr. Tice, Mr. Lee similarly responded that all healthcare providers contracted with UHA fall under the one-year period.

Fraud

Discussion ensued regarding fraud. Mr. Lee said fraud needs to be proven in court. If a health plan claims fraud, it takes time to get through the judicial system. As a result, in many cases, the claim is often settled or terminated.

Dr. Flanders said that since fraud involves the element of intent, the Working Group needs to keep in mind the potential calamity for physicians with coding problems. Dr. Johnson also raised concerns about DSM-5 (Fifth edition of the American Psychiatric Association's (APA) Diagnostic and Statistical Manual of Mental Disorders) coding.

Commissioner's Recommendations and Other Business

Commissioner Ito told the Working Group that he would like to wrap up the activities of the Working Group and begin preparing the draft report. He noted that if health plans, such as HMSA and UHA, already have recoupment time frames established with healthcare providers, there is little value in enacting a law since this is a contractual matter. While anecdotal cases have been discussed in past Working Group meetings, Commissioner Ito noted that most of them are related to Medicaid or Medicare. As a result, the state cannot change federal law. Commissioner Ito also noted that if a recoupment law is passed, the Insurance Division would be responsible for enforcing the law.

The representatives of HAHP agreed to obtain contract information from the other plans, in addition to HMSA and UHA. Although Mr. Lee said that the Insurance Division has the authority to get copies of healthcare provider-insurer contracts, Ms. Diesman said it would only be necessary to get the time frames without looking at each contract.

Dr. Johnson noted that he is disappointed that steps would not be taken to reconcile this institutional inequity. He said that leaving the inequity as it stands is problematic, even though the local insurance companies have been reasonable in their policies, because it puts all healthcare providers at an unfair disadvantage.

Commissioner Ito pointed out that what Dr. Johnson is requesting is beyond the purview of what state law can provide. He also stated that the passage of state law would not necessarily rectify the problem. Commissioner Ito said he would initiate the preparation of the draft report and schedule the next meeting upon the completion of the draft report to provide the Working Group members a chance to review and comment on the draft before the next meeting.

III. Submission of Testimony by Interested Parties and Members of the Public

Dr. Johnson's Recoupment Problem Statement was transmitted to the Working Group members via email before this meeting was convened. He recommended introducing legislation to establish a 12-month recoupment period with an exception for fraud.

Mr. Lee provided written comments stating that HAHP is not willing to change limits until the problem is clearly identified. He also distributed copies of a description of the Centers for Medicare & Medicaid Services Recovery Audit Program to provide background information for the Working Group members.

Ms. Diesman submitted comments on behalf of HMSA, stating that while HMSA understands there may be specific cases of concern to certain providers, HMSA does not believe they warrant regulatory or statutory action.

IV. Scheduling of Next Meeting

The next meeting will be scheduled upon completion of the Working Group's draft report of its findings and recommendations.

V. Adjournment

The meeting was adjourned at 3:50 p.m.