

MINUTES OF THE INSURANCE RECOUPMENT WORKING GROUP
Wednesday, August 21, 2013
Queen Kapiolani Conference Room
King Kalakaua Building
335 Merchant Street, 2nd Floor
Honolulu, HI 96813

Members Present: Gordon I. Ito (Insurance Commissioner and Working Group Chair), Lorrin Kim (Department of Health), L. Martin Johnson (healthcare provider community/health care professional), Gail L. Tice (healthcare provider community/health care professional), Jennifer Diesman (Hawaii Association of Health Plans), Catherine Xiao (Healthcare Association of Hawaii), and Robert Hirokawa (Hawaii Primary Care Association)

Members Excused: Pat McManaman (Director of Human Services) and Christopher D. Flanders (Hawaii Medical Association)

Others Present: Stan Inkyo, 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, the first meeting of the Insurance Recoupment Working Group (the "Working Group") was called to order and chaired by Gordon I Ito, Insurance Commissioner, at 9:10 a.m.

II. Public Notice/Sunshine Law

The meeting was held pursuant to the public notice filed with the Lieutenant Governor's Office on August 2, 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.

Commissioner Ito noted that while the Working Group was convened pursuant to resolution, the Working Group does not fall within the statutory definition of a "board" as defined in the State's Sunshine Law (Chapter 92, Hawaii Revised Statutes). However, in the interest of promoting open government Commissioner Ito said the Working Group would follow the Sunshine Law. Discussions among members should occur in open hearing.

III. Introduction of Working Group Members

SCR 129 specified that the Working Group be composed of the following:

- (1) Insurance Commissioner (Gordon I. Ito), who shall serve as chair;
- (2) Director of Health (Loretta J. Fuddy), or the Director's designee;

- (3) Director of Human Services (Pat McManaman), or the Director's designee;
- (4) Representatives from the health care provider community/health care professionals (L. Martin Johnson);
- (5) Representatives from the health care provider community/health care professionals (Gail L. Tice);
- (6) Representatives from the Hawaii Association of Health Plans (Jennifer Diesman);
- (7) A representative from the Healthcare Association of Hawaii (Catherine Xiao);
- (8) A representative from the Hawaii Medical Association (Christopher D. Flanders); and
- (9) A representative from the Hawaii Primary Care Association (Robert Hirokawa).

All of the members in attendance introduced themselves.

IV. Scope of Work, Organization, and Deadlines

A. Scope

SCR 129 requested the Working Group to:

- 1. Assess the problems of insurance recoupment, if any;
- 2. Study the impact of limiting the period allowed to initiate any recoupment or offset demand efforts; and
- 3. Review how other states mandate recoupment.

B. Organization

SCR 129 designates the Insurance Commissioner as the Chair of the Working Group.

C. Deadlines

SCR 129 requests that the Working Group report its findings and recommendations, including any proposed legislation, to the Legislature no later than 20 days prior to the convening of the Regular Session of 2014. Commissioner Ito stated that the subject matter considered by the Working Group is straightforward and that he hoped to wrap things up by the end of October or early November, at the latest.

V. Discussion Topics and Presentations

During the discussion, Martin Johnson explained why SCR 129 was originally introduced. Dr. Johnson said healthcare providers face significant business liability because health insurance carriers can demand recoupment of funds previously paid at any time without any limitation. He said there is an unlevel playing field for healthcare providers because health insurance carriers also control the appeals process. He said that 30 states have laws in place to set limits on insurance recoupment.

Dr. Johnson said he knew of healthcare providers who have gone out of business because they were subject to multiple recoupments costing hundreds of thousands of dollars. He is concerned that there are not enough healthcare providers in the State and that insurance recoupment practices create a gaping liability over which healthcare providers have no control.

Health Insurance Focus

It was noted that nothing can be done for insurance recoupment related to Medicare and Medicaid. In addition, the scope of this Working Group will not include workers' compensation, but will focus solely on health insurance.

Fraud

There was consensus that insurance recoupment time limits should not apply when fraud is involved.

Claims Against Facilities v. Individual Healthcare Practitioners

It was noted that claims against facilities often involve third parties and involve much more time than claims involving individual healthcare practitioners.

Medical Necessity/Mental Health Substance Abuse Parity

It was suggested that medical necessity and mental health substance abuse parity should not be within the purview of discussion as this would sidetrack the Working Group from its mission.

Commissioner Ito noted that while he appreciated hearing Dr. Johnson's perspective as a psychologist, it would be beneficial for the Working Group to have an opportunity to hear from healthcare providers in other specialty areas about how they have been affected by insurance recoupment practices in Hawaii. In addition, Commissioner Ito noted that while he appreciated the participation of the Hawaii Medical Service Association as part of the Hawaii Association of Health Plans, he hoped that other Hawaii health plans would share their perspectives in future meetings of the Working Group.

Commissioner Ito said that he hoped that the Working Group would gain a better understanding of the scope of its mission at its next meeting. It was recommended that the members consider the following at future meetings:

- Gain a better understanding of how Medicare and Medicaid define "recoupment"
- What healthcare specialties are impacted the most by insurance recoupment practices?
- Solicit involvement from the Hawaii Medical Association
- Solicit involvement from other health insurance carriers
- Consider other solutions in addition to legislation

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

No written testimony was presented by interested parties or members of the public at the meeting.

VII. Scheduling of Next Meeting

The next meeting will take place on Wednesday, September 4, 2013, at 10 a.m. at a location to be announced at a later time.

VIII. Adjournment

The meeting was adjourned at 9:45 a.m.