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STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
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December 26, 2019

The Honorable Ronald D. Kouchi
President and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott Saiki
Speaker and Members of the House
of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

SUBJECT: REPORT IN ACCORDANCE WITH ACT 155, SESSION LAWS OF HAWAII 2019, RELATED TO EARNED INCOME DISREGARD OR "KAL'S LAW"

Dear President Kouchi, Speaker Saiki, and members of the Legislature,

Attached is the following report submitted in accordance with:

- REPORT IN ACCORDANCE WITH ACT 155, SESSION LAWS OF HAWAII 2019, RELATED TO EARNED INCOME DISREGARD OR "KAL'S LAW."

In accordance with section 93-16, HRS, copies of these reports have been transmitted to the Legislative Reference Bureau Library and the reports may be viewed electronically at http://humanservices.hawaii.gov/reports/legislative-reports/.

Sincerely,

Cathy Betts
Deputy Director

Ecopy only:
Office of the Governor
Office of the Lieutenant Governor
Department of Budget & Finance
Legislative Auditor
Senator Russell E. Ruderman, Chair, Senate Committee on Human Services
Representative Joy A. San Buenaventura, House Committee on Human Services & Homelessness

Report to the Thirtieth Hawaii State Legislature 2020

In Accordance With Act 155, Session Laws of Hawaii 2019, Related to Earned Income Disregard or "Kal's Law"

DEPARTMENT OF HUMAN SERVICES
MED-QUEST DIVISION
December 2019

Overview

Governor David Y. Ige signed Act 155, Session Laws of Hawaii (SLH) 2019, also known as "Kal's Law", into law on June 26, 2019. In the Act's preamble, the Legislature "concluded that it is advantageous for economic development in the State and in the best interests of Hawaii's citizens with disabilities to establish programs and policies that encourage their employment."

The Act requires the Department of Human Services (DHS) to implement an earned income disregard program as an intermediate step to implementing a full Medicaid buy-in program. Under Act 155, DHS is to allow an earned income disregard of one hundred thirty-eight per cent of the federal poverty level for people with disabilities who are between the ages of sixteen and sixty-four when determining eligibility for Medicaid or of similar intent.

The earned income disregard program is evaluated at least annually. DHS must also assess whether, when, and how a full Medicaid buy-in program may be implemented. DHS must submit a report to the legislature no later than twenty days prior to the convening of the regular sessions of 2020, 2021, and 2022, providing an update on the earned income disregard program and the viability of implementing a full Medicaid buy-in program.

This report provides an update for the earned income disregard program and the viability of implementing a full Medicaid buy-in program. The following sections describe the initial research undertaken by DHS, its planning work with stakeholders, and its efforts to receive federal authority to implement the earned income disregard program.

DHS does not recommend implementing a full Medicaid buy-in program at this time. DHS believes that the earned income disregard program should be implemented and evaluated before a decision is made on a full Medicaid buy-in program.

Results of DHS Analysis

For its first step toward implementing Act 155 (SLH 2019), DHS conducted an analysis of current Medicaid eligibility policy toward disabled individuals who are working. DHS also reviewed other incentives for disabled individuals who are working, such as Plans to Achieve Self-Support (PASS) and continued Medicaid coverage while working under the Section 1619(B) provision of the Social Security Act. DHS found that multiple strategies may need to be implemented to encourage and enable disabled individuals to work and retain their Medicaid benefits.

In particular, DHS found the following:

- **Medicaid Eligibility Policy**. Currently, disabled individuals who are working are allowed special deductions as part of the income methodology used to determine eligibility for Medicaid benefits. These deductions include impairment related work expenses (IRWE) for items such as service animals, attendant care services, and transportation, as well as modifications to an individual's home, car, or van to allow you an individual to work. This methodology can reduce countable income by more than 50% depending on the amount of IRWE the individual has incurred.
- **PASS (Plans to Achieve Self-Support)**. The PASS is a Supplemental Security Income (SSI) provision to help individuals with disabilities return to work. PASS lets a disabled individual, who receives or qualifies for SSI to set aside money and resources to pay for items or services needed to achieve a specific work goal. These may also be disregarded for Medicaid purposes.

The drawback of the PASS is that it can be a difficult and complicated process. It involves many steps for approval, and once approved, requires monitoring and attention to many details and documentation to maximize benefits, and to ensure continued Medicaid eligibility.

- **1619(b)**. Section 1619(b) of the Social Security Act provides some protection for SSI beneficiaries who would lose their Medicaid eligibility due to income if not for this provision. To qualify for continuing Medicaid coverage, an individual must have been eligible for an SSI cash payment for at least one month, still meet the disability requirement, all other non-disability SSI requirements, need Medicaid benefits to continue to work, and have gross earnings that are insufficient to replace SSI, Medicaid, and publicly funded attendant care services.

The Social Security Administration (SSA) uses a threshold amount to measure whether a person's earnings are high enough to replace his/her SSI and Medicaid benefits. The 2019 threshold amount in Hawaii is $42,099 annually or $3,500 per month. This threshold is based on the amount of earnings which would cause SSI cash payments to stop in the individual's state and the average Medicaid expenses in that state.

If a SSI beneficiary has gross earnings higher than the threshold amount, SSA can determine if the individual's income is below the threshold by deducting impairment-related or blind work expenses, a plan to achieve self-support (PASS), costs for a personal attendant whose fees are publicly-funded, or Medical expenses not covered by insurance. If after allowable deductions the individual's income is less than the threshold amount, he or she would be granted 1619(b) status and Medicaid coverage may not be terminated. However, this option is for SSI recipients only. An individual in receipt of Social Security Disability income (SSDI) would not qualify for this status.

DHS found from current Medicaid data that these options are rarely used in Hawaii. This may have contributed to the decision to pursue other options, such as the additional earned income disregard for the working disabled, to provide an easier pathway for disabled individuals to work. However, as there are currently options that are not widely used, DHS found that communication strategies may need to be developed to inform stakeholders and the public about the PASS and 1619(b) programs. This would help support the earned income disregard program and disabled individuals who are working.

Stakeholder Process

To implement Act 155, DHS partnered with advocates and stakeholders to discuss next steps for the earned income disregard program, including:

- Daintry Bartoldus, Executive Administrator of the Hawaii State Council on Developmental Disabilities;
- William Mihalke, Center on Disability Studies, University of Hawaii;
- Leslie Dorman, Grants Director, University of Hawaii;
- Chin Lee, University of Hawaii;

- Ronald Deese, Academic Support, Center on Disability Studies, Community Work Incentives Coordinator, Hawaii WIPA; and
- Lou Erteschik Hawaii Disabilities Rights Center.

Beginning in August 2019, the group met several times to discuss previous work done for this population. Also discussed at these meetings were new strategies to help draft a new Medicaid State Plan Amendment (SPA) to be submitted to the Centers for Medicare & Medicaid Services that would best align with the goals of providing more opportunities for employment, self-sufficiency and community growth. The SPA would be the pathway for DHS to receive federal approval to implement the earned income disregard program.

DHS will continue to meet with this group and work on other options available to assist the working disabled.

Proposed State Plan Amendment

The SPA is still in draft stage and will be submitted early next year. DHS will propose to apply the income disregard for the working disabled after exhausting current allowable deductions for this group. In 2019, the current countable income limit is $1,199 monthly (100% Federal Poverty limit).

With this added earned income deduction, a disabled individual may earn around $5,000 per month and still be eligible for Medicaid. DHS has started to discuss the additional elements to implement a Medicaid Buy-In program, such as aligning current asset limits with other Medicaid programs. However, the immediate focus is on implementing the earned income disregard program.

The approval process may take six (6) months or more. However, DHS will work closely with our federal partners to process the SPA as quickly as possible.