

POLICY BRIEF

IMPACTS OF THE COMPACT OF FREE ASSOCIATION ON HAWAII'S HEALTH CARE SYSTEM

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INTRODUCTION

As a project of the Hawaii Institute for Public Affairs (HIPA), The Hawaii Uninsured Project (HUP) is developing solutions to cover Hawaii's medically uninsured population. HUP acts as a neutral convener and has formed various work groups to address targeted populations of the uninsured. One of these groups focused on the impacts of the Compact of Free Association (CFA) on Hawaii's health care systems. Given the complex nature of the CFA and the number of areas that it impacts, this brief will focus specifically on the CFA's impact on Hawaii's health care system. In particular, this brief will address how uninsured CFA migrants impact Hawaii's public and private health care systems.

The Compact of Free Association (CFA) and the renegotiation of provisions therein is a very complex issue, especially with respect to its international, political, military, and social implications. The costs borne by the U.S. and its individual states in providing assistance to signatory nations under the CFA, in exchange for strategic military benefits and the absolution of certain liabilities, begs the question - is the U.S. government accurately assessing the impact on the states of its "parenting" of needy nations through the granting of benefits and services normally reserved to citizens of the U.S.? This question is particularly intriguing when one of its own states, Hawaii, is being adversely affected by the agreement.

Although the benefits provided to immigrants of CFA nations significantly impact the economic well-being of Hawaii, the effects of the CFA do not seem to be carefully monitored or responded to by the federal government. The issue of negotiating with CFA nations whose total combined populations are approximately 157,848 (much less than that of the City and County of Honolulu - 881,295), seemingly pale in importance relative to the war in Iraq and the ongoing war against terrorism.^{1,2,3} As such, the economic impact of the CFA migrants may not be of great importance to Congress. But in Hawaii, the economic and social impact of state benefits provided to resident CFA migrants is very real – to our state, to our economy, to our systems and organizations, and to our residents.

CFA History and Background

The Compact of Free Association (CFA) is an international agreement between the United States Government and each of the following Pacific Island nations: the Republic of the Marshall Islands (RMI), the Federated States of Micronesia (FSM), and the Republic of Palau (RP). Collectively, these three nations make up what is often referred to as the Freely Associated States (FAS).⁴ The CFA between the RMI and FSM originally went into effect in 1986, while the CFA with RP went into effect in 1994. For the purposes of this brief, the CFA between the U.S. and RMI and FSM, will be the basis for discussion since the CFA with the RP has not expired. Under the original terms of the CFA, the provisions in Title II (Economic Relations) and Title III (Defense Relations) of the CFA were to be re-opened for negotiation fifteen years after the execution of the original CFA. The rest of the provisions of the CFA remain in force.

The RMI is made up of five islands and about 29 atolls located about 2,136 miles from Hawaii, with an estimated population of 56,000.⁵ The FSM comprises a group of over 600 islands located about 2,500 miles from Hawaii, with an estimated population of about 107,000. These two nations are among the poorest in the Pacific. For FSM, economic assistance made up more than 50 percent of its GDP and more than 70 percent for RMI.⁶

Through the CFA, the U.S. has use and access to strategic military defense points, particularly the denial of access to the airspace and waters that surround the FAS by potential adversaries; use of Kwajalein Atoll for missile testing and space operations; and settled all nuclear testing claims resulting from U.S. nuclear weapons testing on Bikini Atoll.⁷ Concurrently, the CFA offers the FAS “external sovereignty” (which carries international privileges), defense against external aggression, and economic assistance and aid from the U.S.⁸

In addition, the CFA also affords FAS citizens relatively broad migration rights (the right to reside and work) to the United States with no limitations on their length of stay and no visa or labor certification requirements.⁹ This includes the use of and eligibility for public services (e.g. health care and education) available to local residents. The U.S. Immigration and Naturalization Services (INS) categorizes FAS migrants as “Not Qualified Aliens” who are “Permanently Residing Under Color of Law (PRUCOL),” which means they are legally allowed to reside in the U.S. “...under statutory authority and those effectively allowed to remain in the United States under administrative discretion.”¹⁰

Understanding that the CFA could have unanticipated adverse impacts on U.S. territories and Hawaii, the CFA states that Congress will act “sympathetically and expeditiously” to rectify the unfavorable consequences of its implementation.¹¹

Impacts on Hawaii of the Compact of Free Association

The economic issues surrounding FAS migrants underscore the belief that the U.S. government has not honored its commitments to both the state of Hawaii and the FAS migrants regarding compensation for the adverse economic and social impacts of the CFA.

In 1997, the U.S. Department of Interior estimated about 5,500 FAS migrants were living in Hawaii, many of whom were living in poverty.¹² Because FAS citizens are not required to produce documentation upon entry to and exit from the U.S., accurate statistics on FAS citizens are very difficult to capture. It has also been reported that the census undercounts the actual FAS migrant population.

Adverse Effects on the Health Care System

Hawaii is bearing much of the financial and social burdens of the CFA, with respect to the high costs of uncompensated health care, negative impacts to the public health system, and the state's payment of a disproportionate share of Medicaid expenses. Since 1997, Hawaii reports it has expended over \$140 million in assistance to FAS migrants.¹³ In 2002 alone, the State of Hawaii expended over \$32 million in FAS migrant assistance.¹⁴ The three areas of impact that are of particular importance to the state are: costs to the State for direct health services (provided by state departments and private entities), costs and impact to the State due to the lack of federal reimbursement for Medical Assistance (Medicaid/QUEST), and the impact to the State's public health system.

High Costs of Uncompensated Care

The Hawaii State Primary Care Association, which represents federally qualified health centers and clinics throughout the state, provides outpatient services to FAS migrants. In 2002, it reported over 8,000 visits for medical services by FAS migrants and estimated the total cost of care provided at approximately \$1.2 million.¹⁵ Similarly, the Hawaii Department of Health reported in 2002 an estimate of over \$1 million in expenditures for direct medical care, communicable disease services, and community health services.¹⁶

Arguably, these figures underreport the total actual amount expended within the state, because they do not include the costs of services provided by private providers. In 2002, over \$15 million in care was provided to FAS migrants by just three of Hawaii's major hospitals: Queen's Medical Center, Straub Hospital, and Kapiolani Medical Center for Women and Children. This illustrates the large adverse impact of providing uncompensated care to FAS migrants.¹⁷

Negative Public Health Impact

The migration of the FAS citizens has had an impact on the public health system in Hawaii as well, not just by way of financial costs, but also by serving as a public health threat to the system. Given the poor health status of these migrants, their costs of care are also considerably higher since they often lack the ability to pay or procure health insurance as reimbursement for services, making it difficult for the health care providers to continue to treat them.

According to the Hawaii Department of Health, FAS migrants have numerous health problems, particularly communicable diseases such as Hansen's Disease, Tuberculosis, and Hepatitis.¹⁸ An outbreak of Hansen's Disease was reported among Marshall Islanders on the Big Island in the mid-1990's. Outbreaks such as these threaten the health of both Hawaii and U.S. residents because these migrants are not required to pass any health screenings nor required to register as they leave or enter Hawaii to travel to other states. This lack of registration makes it nearly impossible to track FAS migrants and the diseases they may carry.¹⁹

Immunization rates for preventable diseases among the FAS migrant children are also low, further adding to the public health risk.²⁰ In addition to the general health problems and poor health status of the FAS migrants, educational efforts and treatment are often difficult and worsened by poverty, language and cultural barriers, poor living conditions, and poor health behaviors. Faced with these challenges, the State is placed in a very difficult position. If the State does not provide individual health services to FAS migrants, such inaction would not only jeopardize the health of Hawaii residents, but also jeopardize the general public health of all persons entering the Hawaii. Treating the ill FAS migrant, despite the cost, may be the only way to help ensure the overall health of the general public.

Disproportionate Share of Medicaid Costs to the State

In 2002, the Hawaii Department of Human Services saw a 20 percent increase as compared to 2001, in the number of FAS migrants served, at a cost of over \$11 million in financial assistance (\$4,521,240) and medical assistance (\$6,746,008).²¹ The amount expended for FAS migrants on Medical Assistance is of particular concern. Normally, the federal government, by way of its Federal Medical Assistance Percentage (FMAP) share for Medical Assistance, shares the cost of financing public assistance programs with the State. Currently, 58.77 percent of QUEST (a managed care Medicaid program) costs are covered by the federal government with the remainder covered by the State.²² However, pursuant to the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), FAS migrants became ineligible for federal public assistance benefits.²³

Originally, PRUCOL immigrants were considered “Qualified Aliens” which made them eligible for public benefits. The PRWORA immigration provisions changed the status of the PRUCOL immigrants from “Qualified Aliens” to “Not Qualified Alien” status (as defined in Section 431 of Public Law 104-193) thereby making FAS migrants ineligible for any public benefits covered by PRWORA unless a specific exception applies.²⁴ Thus, the State now covers the entire costs of the FAS migrant when they enroll in QUEST and other medical and financial assistance programs. Under PRWORA, only treatment of emergency medical conditions may be submitted for federal reimbursement.

The effect of PRWORA burdens the State to underwrite the costs associated with the provision of financial or medical assistance to FAS migrants, rather than a cost share with the federal government. The State could make a compelling case that given the provisions of the CFA, the costs of covering CFA migrants under QUEST should actually be 100 percent federally funded; then the State will truly bear no unfair costs due to this federally sponsored agreement. This “termination” of federal reimbursement for medical and financial assistance programs possibly best illustrates the state’s case that it is being adversely impacted by the CFA.

Consequently, Hawaii is in a difficult situation since FAS migrants are still given unrestricted access to the U.S. and its services, but Hawaii’s Medicaid funds (as is many other states) are not enough to cover the current needs of Hawaii’s citizens, let alone underwrite the costs for FAS migrants. Having the State cover what is actually the federal government’s share, is not only unfair but it depletes State resources in Medicaid that would otherwise be allocated to cover Hawaii’s citizens.

Recognizing the adverse impact of the CFA, the Hawaii State Legislature introduced and passed resolutions outlining the impact of the CFA on Hawaii and urged Congress to provide financial assistance to reimburse the state and private providers for services provided to FAS migrants, and to reinstate FSA migrants' eligibility for federal Medicaid funds.²⁵

Compact Renegotiations and Federal Legislation

The impact of the CFA on Hawaii is a clear example of state problems that should be resolved at the federal level. Hawaii’s congressional delegation introduced legislation to address the problems in the CFA. H.J. Res. 63 (S.J. 16, the Senate version), among others, was introduced to reduce the negative impact of the CFA on Hawaii, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and American Samoa. H.J. Res. 63 addresses the issues of particular concern to Hawaii including, but not limited to: providing Compact Impact Aid (CIA) to establish a steady annual funding stream to the areas impacted by the CFAs; establishing programs to address control and prevention of communicable diseases; allowing private debt relief; and developing a national policy to advance economic self-reliance and maintenance of economic and political stability of the FAS.²⁶ H.R. 2716 and S. 1632 was introduced to reestablish eligibility of FAS migrants to federal means tested programs like non-emergency

Medicaid, TANF (Temporary Assistance for Needy Families), SSI (Supplemental Security Income), and Food Stamps.^{27,28}

Based on data collected and experience with the negative impact of the CFA, the negotiation of the CIA would most expediently resolve state problems with the CFA. Currently, the CIA is considered on a year-by-year basis. Since the implementation of the CFA, the State has received about \$6 million in aid from the federal government by way of Hawaii's congressional delegates' efforts.²⁹

Current federal legislation establishes a stable funding stream for the first time to Hawaii and the other impacted U.S. territories – Guam and CNMI. The legislation also includes an appropriation of \$30 million to be proportionately split among Hawaii, Guam, and CNMI, based on the results of a census of FAS migrants in these affected areas as partial reimbursement/compensation. Hawaii's share of the \$30 million will then be divided among the various sectors and agencies that are/were impacted by the CFA, e.g., education, health care, social services, etc. Unfortunately, the final amount that is allocated toward health care may likely be minimal.

However, the appropriation serves as an important step to later increase funding that will hopefully provide for full reimbursement for all costs associated with the provision of services and aid to FAS migrants. It also signifies a sincere step by the federal government toward honoring their commitment to Hawaii, Guam, and CNMI that the CFA should not cause an "adverse impact" to the State and other territories.

Also included in the renegotiation legislation is a provision for Hawaii's public and private hospitals to be reimbursed for services that they provided to the FAS migrants. This is a very important inclusion, as generally the federal government does not provide for reimbursement to private entities. Reimbursement is almost always given to state entities unless specific authority for hospital reimbursement is included in the measure. By adding this provision, additional authority is given for reimbursement by the State to private entities.

It is also important to note that any legislation that furthers the "development of a national policy to advance economic self-reliance, and to maintain economic and political stability of the FAS states" should be encouraged. Any decline in the above mentioned areas may lead to even more migration of FAS citizens to Hawaii, CNMI, Guam, and American Samoa. Targeting U.S. assistance to aid the FAS nations in the development of their national systems (particularly in health and education), may reduce some of the motivation for migration since migrants will no longer have to seek services outside of their respective nations.³⁰

CONCLUSION

Although it was not the intent of Congress for the CFA to have any “adverse effects” on Hawaii, the state has been adversely impacted by way of uncompensated health care (and other) services, underwriting the full cost of public benefits, and a threat to the public health system in Hawaii. Based on the data collected by the State of Hawaii (by way of direct services and financial assistance), and private providers of services, the State is able to make a compelling argument that it is indeed “adversely affected” and significantly impacted by the CFA and the federal government should act “sympathetically and expeditiously” in rectifying this inequity.³¹

Both the Hawaii State Legislature and the U.S. Congress have passed measures addressing the adverse impact of the CFA on Hawaii. The State Legislature introduced and passed resolutions urging Congress to provide financial assistance to reimburse the state and private providers for services to FAS migrants, as well as to reinstate FSA migrants’ eligibility for federal Medicaid funds. Congressional action included resolutions introduced to reduce the negative impact of the CFA on Hawaii, the CNMI, Guam, and American Samoa by providing CIA, establishing programs, and developing national policy. Binding legislation was introduced to reestablish eligibility of FAS migrants to federal means tested programs.

The responsibility for capturing the data on FAS migrants has been a point of contention between the compact impact areas (Hawaii, Guam, CNMI, and American Samoa) and the federal government. Since then, there has been resolution of the issue and in the current CFA, the compact impact areas have been determined to be responsible for obtaining and reporting the data. However, the State has had a difficult time in yielding the true costs of care for the FAS migrants for a number of reasons. The reporting provision also provides no real incentives or penalties for collecting or not collecting and reporting the data. This is particularly true if the compact impact aid reimbursement amount will be determined based only on the FAS migrant census. Nonetheless, it is in the State’s best interest to continue to collect data on the actual costs of care for FAS migrants since it will more than likely prove that the State is impacted at a much higher level than its census reimbursement allows for, thereby potentially justifying a higher reimbursement level for the future. Based on past estimates of costs, it is nonetheless apparent that the \$30 million appropriation to be shared by Hawaii, Guam, CNMI, and American Samoa falls drastically short of the estimated impact.

The original provisions of the CFA have not been accomplished. The CFA was supposed to assist the FAS states in developing their own systems of education, healthcare, and private and public sector development so that they would become less dependent on foreign aid.³² While there are financial allocations to address these areas, unless the U.S. provides other forms of assistance (experience, human resources, oversight) in the planning and development of these sectors, it is likely that the funds will have limited impact.³³ Until the U.S. is truly committed to aiding the self-sustainability of these nations, emigration of FAS citizens to Hawaii will persist and the State will continue to be adversely affected by the CFA.

For more information on The Hawaii Uninsured Project, visit our web site at
www.HealthCoverageHawaii.org

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