

**TIA INFORMATIONAL BRIEFING  
SEPTEMBER 3, 2009**

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  - D. **Elizabeth M. Dunne, Lawyers for Equal Justice**
  - E. **Micronesians United**
  - F. **Neal A. Palafox, MD MPH**
  - G. **Sheldon Riklon, MD.**
  - H. **Dr. Keola G.S. Downing, Ph.D.**



**The Senate**  
State of Hawaii

**NEWS RELEASE**

For Immediate Release  
September 2, 2009

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**SENATE HEARING TO CONSIDER LONG-TERM SOLUTIONS TO  
PACIFIC ISLANDER HEALTH CARE CUTS**

**Recent decision by U.S. District Court leaves open  
need for permanent solution.**

HONOLULU – A decision by a federal court judge in Honolulu preventing the state from implementing a new health care program that reduces benefits to citizens of the Compact of Free Association (COFA) nations does not answer all of the health care questions raised in recent weeks, said Hawai'i Senator J. Kalani English (District 6 - Hana, East and Upcountry Maui, Moloka'i, Lana'i and Kaho'olawe), chair of the Senate Committee on Transportation, International and Intergovernmental Affairs. His committee will conduct an informational briefing on Thursday, September 3, 2009 at 11:00 a.m. in State Capitol Room 211 to update the Senate on attempted changes to the Hawai'i Quest health care program and the status of an amendment to the federal health bill that provides medical eligibility to the citizens of COFA nations.

"Judge Seabright's decision came at a critical time for those in our community who were about to lose life-saving medical treatments," said English. "However, we cannot lose sight of the fact that the judge issued a temporary restraining order, and will hear a motion for a more

permanent injunction on October 19. It is possible that six weeks from now we will find ourselves in the same situation we were in on Monday, with people wondering how they will pay for their dialysis and chemotherapy.”

On Tuesday, Federal Judge Michael Seabright issued a temporary restraining order preventing the state from disenrolling COFA residents from the State-funded health programs in which they were participating prior to August 1, 2009. The order also required the state to re-enroll all COFA residents who were disenrolled based on their status as COFA residents, in the applicable QUEST, QUEST-Net, QUEST-ACE, QexA, SHOTT, or fee-for-service programs.

“We need to find out how the decision was made to exclude these patients,” English continued. “That’s the larger problem. We made a commitment to them. How are we going to ensure that we live up to our commitments? The Legislature, in the last session, included money in the budget to keep these programs going. The governor vetoed the measure, and we overrode the veto. Now she simply refused to release the money, and instead seemed content to let these people fend for themselves. I want to know how we got to that point, and why a federal judge had to order something that seems so fundamentally and instinctively right.”

The briefing will also receive an update on the status of federal legislation that would increase Medicaid reimbursements to the state, reducing the impact of providing health care services to COFA residents.

The committee will hear from a number of COFA dignitaries and experts, including: Federated States of Micronesia (FSM): Hon. Lorin Robert, Secretary of Foreign Affairs; Hon. Vita Skilling, Secretary of Health and Social Services; His Excellency Yosiwo P. George, FSM Ambassador to the United States; Mr. James Naich, Deputy Chief of Mission, FSM Embassy in Washington, DC; Mr. Akillino H. Susaia, FSM Consul General, State of Hawai’i; and Mr. Daniel Rescue, FSM Consulate Hawai’i Staff. Republic of the Marshall Islands: Hon. John Silk, Minister of Foreign Affairs; Mr. Noda Lojkar, Consul General, Honolulu, Hawai’i. State of

Hawai'i: Dr. Kenneth Fink, Administrator, MED-QUEST Division, Department of Human Services. Medical community: Dr. Neal Palafox, Chair, John A. Burns School of Medicine, Department of Family Medicine & Community Health; Dr. Sheldon Riklon, member, Micronesian Health Advisory Coalition. Organization: Mr. William J. Swain, representing Pa Emman Kabjere.

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# AP ARTICLE

**boston.com**

THIS STORY HAS BEEN FORMATTED FOR EASY PRINTING

## Judge: Hawaii can't cut migrants' health care

**AP** Associated Press

By Mark Niese, Associated Press Writer | September 2, 2009

HONOLULU --A federal judge ruled Tuesday that Hawaii's government must continue providing lifesaving dialysis and chemotherapy treatments to Pacific island migrants suffering from kidney disease and cancer.

U.S. District Judge J. Michael Seabright granted a temporary restraining order preventing the state from instituting a new, limited health insurance program intended to save \$15 million. The new health program was scheduled to start Tuesday.

His decision came as a relief to migrants from Micronesia, Palau and the Marshall Islands who argue the United States and the state weren't living up to a health obligation promised after U.S. nuclear weapons tests in Pacific islands a half-century ago.

The ruling keeps in place broad health coverage for dialysis, chemotherapy, prescription drugs and doctor visits.

"I'm very happy," said Philip Anungar, a Marshall Islands migrant with diabetes who attended the court hearing. "The judge's decision means we'll go back to what we had before."

Migrants from the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau are beneficiaries of the Compact of Free Association, a deal with the U.S. government providing financial assistance in exchange for defense rights.

"The ruling is a tremendous improvement over what the state was planning to do," said the migrants' attorney, Paul Alston. "They're going to get a lot more benefits."

Hawaii government officials declined to comment following the hearing. Department of Human Services Director Lillian Koller will review the restraining order with state attorneys Wednesday, said a spokeswoman for the department.

The cash-strapped state, facing a steep budget deficit, wanted to switch about 7,000 legal migrants to the new health insurance program. About 100 of them receive dialysis treatments paid by the state.

The state announced Monday it had found \$1.5 million in annual federal Medicaid funding that would continue dialysis coverage for two more years, but chemotherapy and many name-brand prescription drugs were not included.

Seabright prevented the new plan, called Basic Health Hawaii, from taking effect because its implementation may have violated due process rights guaranteed in the U.S. Constitution.

Basic Health Hawaii was announced less than a month ago and without public hearings. Because many of the migrants don't speak English as their first language, they weren't able to understand how their coverage would change when they received notification letters or called an English-speaking automated phone help line.

"It appears the state made a unilateral decision to decrease benefits with little or no notice," Seabright said.

Seabright didn't decide whether the new plan violated constitutional guarantees of equal rights for all legal U.S. residents.

A hearing on a more permanent injunction will be held Oct. 19. ■

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**TEMPORARY  
RESTRAINING  
ORDER**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

MANUEL D. SOUND and	)	CIVIL NO. 09-00409 JMS/KSC
THOMPSON PHILLIP, each	)	
individually and on behalf of those	)	ORDER GRANTING IN PART AND
persons similarly situated,	)	DENYING IN PART PLAINTIFFS'
	)	MOTION FOR A TEMPORARY
Plaintiffs,	)	RESTRAINING ORDER
	)	
vs.	)	
	)	
LILLIAN B. KOLLER, in her	)	
official capacity as Director of the	)	
State of Hawaii, Department of	)	
Human Services, and KENNETH	)	
FINK, in his official capacity as State	)	
of Hawaii, Department of Human	)	
Services, Med-QUEST Division	)	
Administrator	)	
	)	
Defendants.	)	
	)	

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS'**  
**MOTION FOR A TEMPORARY RESTRAINING ORDER**

**I. INTRODUCTION**

Plaintiffs bring claims against Defendants for violation of the due process clause and the equal protection clause of the Fourteenth Amendment stemming from Defendants' decision to decrease the level of medical benefits of certain individuals residing in Hawaii under the Compact of Free Association

("COFA") as well as immigrants who have been U.S. residents for less than five years ("New Residents"). These individuals had originally been enrolled in state medical benefit plans including QUEST, QUEST-Net, QUEST-ACE, QexA, SHOTT, or fee-for service programs, but Defendants recently announced that they will be enrolled in a plan that provides less benefits, Basic Health Hawaii, effective September 1, 2009.

Currently before the court is Plaintiff's Motion for Temporary Restraining Order, which asks the court to order Defendants to maintain the current level of benefits provided to COFA residents and New Residents. Based upon a review of the parties' submissions and the argument presented at the September 1, 2009 hearing, the court GRANTS in part and DENIES in part Plaintiffs' Motion for Temporary Restraining Order.

## **II. STANDARD OF REVIEW**

The standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction.

"A preliminary injunction is an extraordinary and drastic remedy [that] is never awarded as of right." *Munaf v. Geren*, 128 S. Ct. 2207, 2219 (2008) (citation and quotation signals omitted). In *Winter v. Natural Resources Defense Council, Inc.*, 129 S. Ct. 365, 374 (2008), the Supreme Court recently explained

that “[a] plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.”

### **III. DISCUSSION**

The court addresses and weighs each of the factors for a temporary restraining order.

#### **A. Likelihood of Success on the Merits**

Regarding likelihood of success on the merits, the court finds that Plaintiffs have carried their burden regarding their due process claim.<sup>1</sup>

##### ***1. Deprivation of a Property Interest***

To have a property interest in a benefit, a person must have “a legitimate claim of entitlement to it,” as opposed to a mere “abstract need or desire for it” or “a unilateral expectation of it.” *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972). The Supreme Court has explained:

Property interests . . . are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an

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<sup>1</sup> During the hearing, Plaintiffs agreed that limiting the likelihood of success analysis to only one of their claims would not affect the scope of a temporary restraining order. The court therefore does not address the likelihood of success on the merits of Plaintiff’s equal protection claim.

independent source such as state law -- rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

*Id.* at 577. Such “independent sources” may include “statutes, regulations, and ordinances, or express or implied contracts.” *Erickson v. U.S. ex rel. Dept. of Health & Human Servs.*, 67 F.3d 858, 862 (9th Cir. 1995) (citation and quotation signals omitted).

It is well established that “[t]he Fourteenth Amendment’s procedural protection of property is a safeguard of the security interests that a person has already acquired in specific benefits.” *Roth*, 408 U.S. at 576. While Plaintiffs have not identified the specific Hawaii law, regulation, or understanding that creates the right to medical benefits for citizens from COFA countries, the Hawaii Department of Human Services “has been providing State-funded medical assistance to COFA citizens by enrolling them in the QUEST, QUEST-Net, QUEST-ACE, QexA, SHOTT, or fee-for service programs.” Pl.’s Ex. D. Further, the change to Basic Health Hawaii is in fact a *decrease* in the level of benefits. Pl.’s Ex. D (“The Department can no longer afford to sustain the level of services that are being provided with State funds.”).

Courts have found that individuals have a property interest in the continued level of benefits in similar state-provided health care plans and other

benefits programs. See *Greene v. Babbitt*, 64 F.3d 1266, 1272 (9th Cir. 1995) (“The decisions in both *O’Bannon* and *Punikaia* expressly distinguished an interest in continued treatment at a particular facility, affecting no property interest, from the denial of financial benefits that does affect a property interest.”); see also *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982) (noting that transfers of patients to lower levels of care implicated beneficiaries’ property interests given the concomitant decrease in Medicaid benefits, while transfers to higher levels of care did not); *Goldberg v. Kelly*, 397 U.S. 254, 261-62 (1970) (recognizing that federal and state regulatory frameworks had created a constitutional property interest in continued receipt of welfare benefits); *Pediatric Specialty Care, Inc. v. Ark. Dep’t of Human Servs.*, 364 F.3d 925, 930 (8th Cir. 2004) (“We find it entirely appropriate for the Plaintiffs to base their procedural due process claim on their clearly established right to have equal access to quality medical care as defined by [42 U.S.C. § 1396a(a)(30)(A)].”); *Reynolds v. Giuliani*, 35 F. Supp. 2d 331, 341 (S.D.N.Y. 1999) (“Plaintiffs also have an overarching property interest in their continued receipt of food stamps, Medicaid and cash assistance.”); *Dodson v. Parham*, 427 F. Supp. 97, 110 (D.C. Ga. 1977) (“[P]laintiffs’ legitimate claim to entitlement under the Medicaid provision extends only to their right to receive continued reimbursement ‘in an amount, duration, and scope reasonably necessary to



achieve' the purposes of the drug component . . .").

Accordingly, the court concludes that Plaintiffs have established a likelihood of success on the merits of proving a property interest in the continued level and quality of medical benefits they received under their current medical benefit programs.

**2. Denial of Adequate Procedural Protections**

Where benefits are taken away, "the right to some kind of prior hearing is paramount." *Roth*, 408 U.S. at 570; *see also Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974). The "right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (citing *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring)). Due process includes notice "reasonably calculated, under all the circumstances, to apprise interested parties" of the proceeding, and an opportunity to be heard. *S.E.C. v. McCarthy*, 322 F.3d 650, 659 (9th Cir. 2003) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, (1950)); *see also Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (stating that due process is the opportunity to be heard "at a meaningful time and in a meaningful manner").

To determine whether Plaintiffs received adequate procedural protections, the court must consider: (1) “the private interest that will be affected by the official action;” (2) “the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any of additional or substitute procedural safeguards;” and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 321, 335.

First, Plaintiffs have a substantial interest in continued receipt of their benefits, especially where the benefits that are no longer covered are critical life-supporting medical procedures such as dialysis and chemotherapy. *See Healey v. Thompson*, 186 F. Supp. 2d 105, 123-24 (D. Conn. 2001) (“For some beneficiaries, a denial in coverage amounts to a denial of services, because they may not have the means to pay for the services, or the wherewithal to secure substitute coverage, rendering them unable to access the appeals process.” (*overruled in other part by Lutwin v. Thompson*, 361 F.3d 146 (2d Cir. 2004))); *Kraemer v. Heckler*, 737 F.2d 214, 222 (2d Cir. 1984) (considering that the cost of medical care “diminishes the probability that a patient could choose to continue receiving medical care” while awaiting review). While the court recognizes that the State has represented that these life-saving procedures will be covered by other programs, such

representations do not diminish that the recipients will no longer receive these benefits through the current channels. Further, the State has admitted that Basic Health Hawaii is a decrease in coverage, and based upon the record presented, it appears that Basic Health Hawaii will not cover components of dialysis treatment such as non-generic prescription drugs or transportation services. Gibbons Decl. ¶ 14.

The second factor -- the risk of erroneous deprivation and the probable value of additional or substitute procedural safeguards -- also weighs in favor of Plaintiffs. As presented by Plaintiffs, it appears that the State made a unilateral decision to decrease health care benefits for COFA residents with little to no notice. The first that COFA residents heard of the changes (to take place on September 1, 2009) was in mid-August. Despite that many COFA residents do not speak English, the notification letter was largely in English and a telephone number provided to receive foreign language assistance was similarly unhelpful because it did not provide assistance for all languages and provided only automated service for periods of time. Additional procedural safeguards would ensure that individuals fully understand the changes to their benefits and allow them to raise and vet concerns before the changes take effect. Given the lack of any meaningful procedural safeguards afforded Plaintiffs, the court finds that the risk of erroneous

deprivation is high.

The third factor also appears to weigh in favor of Plaintiffs.

Defendants could have easily provided better notice to Plaintiffs by fully explaining the differences between the two programs in a manner ensuring that all COFA residents could understand, and most importantly, by providing Plaintiffs a meaningful opportunity to be heard.

The court therefore concludes that Plaintiffs have shown a likelihood of success in proving that they have been denied adequate procedural safeguards in Defendants' decision to reduce the level of their health care benefits. This factor weighs in favor of granting Plaintiffs' Motion for Temporary Restraining Order.

#### **B. Irreparable Harm**

The court further finds that Plaintiffs have shown a likelihood of irreparable harm if a temporary restraining order is not granted.<sup>2</sup> While Defendants

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<sup>2</sup> The court is aware that Plaintiffs are seeking class certification. For purposes of this motion only, the court evaluates irreparable harm as to the class. *Compare Dixon v. Love*, 431 U.S. 105, 111 & 111 n.9 (1977) (stating the district court granted temporary restraining order and that the class was never certified); *Roe v. Anderson*, 134 F.3d 1400, 1403 (9th Cir. 1998) (stating that district court issued temporary restraining order and later allowed the action to be maintained as a class action); *Bowlin v. Montanez*, 2005 WL 1389182 (D. Neb. June 13, 2005) (stating that court granted motion for temporary restraining order prior to certifying the class); *Pollar v. Judson Steel Corp.*, 1984 WL 161273 (N.D. Cal. Feb. 3, 1984) (granting a temporary restraining order prior to class certification); *with Nat'l Ctr. for Immigrants Rights, Inc. v. Immigration & Naturalization Serv.*, 743 F.2d 1365, 1371 (9th Cir. 1984) (asserting "that in the absence of class certification, [a] preliminary injunction may properly cover only the named plaintiffs.") (citations omitted); *Zepeda v. U.S. Immigration & Naturalization Serv.*, 753 F.2d 719 (9th Cir. 1983) (same).

have publicly asserted that chemotherapy and dialysis treatments will continue, the Basic Health Hawaii program is nonetheless a decrease in medical benefits previously provided to COFA residents. A denial in coverage can oftentimes amount to a denial of services, because individuals may not have the means to pay for the services or the ability to secure substitute coverage. Such lack of treatment clearly supports a finding of irreparable harm. Accordingly, this factor also weighs in favor of granting a temporary restraining order.

**C. Balance of the Equities**

This factor favors Plaintiffs. A temporary restraining order will effectively maintain the current status quo. Without a temporary restraining order, however, Plaintiffs are left unsure of what medical coverage they have, may now have to pay for medical procedures previously covered, and may even forego medical treatment altogether. In contrast, Defendants will incur the same costs and lose only the “cost savings” that they intended to receive as a result of switching COFA residents over to Basic Health Hawaii. Accordingly, this factor also weighs in favor of Plaintiffs.

**D. Public Interest**

Finally, the court finds that a temporary restraining order is in the public interest, but even it were neutral, the other factors clearly weigh in favor of

granting the temporary restraining order.

**E. Weighing the Factors**

Because all of the factors weigh in favor of granting Plaintiff's Motion for Temporary Restraining Order, the court finds that Plaintiffs are entitled to relief.

**IV. CONCLUSION**

The court therefore GRANTS in part and DENIES in part Plaintiffs' Motion for a Temporary Restraining Order. Specifically, the court orders Defendants to:

1. Stop disenrolling COFA residents and New Residents from the State-funded health programs in which they were participating prior to August 1, 2009; and
2. re-enroll all COFA residents and New Residents who were disenrolled based on their status as COFA residents and/or New Residents in the applicable QUEST, QUEST-Net, QUEST-ACE, QexA, SHOTT, or fee-for service programs.

The court does not, however, grant Plaintiff's request for an order requiring Defendants to continue to enroll all COFA residents and New Residents in the applicable old programs for which they would have been eligible prior to Defendants' change in policy because Plaintiffs have not established any irreparable

harm to individuals who were not receiving benefits in the old program.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, September 1, 2009.



/s/ J. Michael Seabright  
J. Michael Seabright  
United States District Judge

*Sound et al. v. Koller et al.*, Civ. No. 09-00409, Order Granting in Part and Denying in Part  
Plaintiffs' Motion for Temporary Restraining Order

SENATOR  
AKAKA'S  
LETTER



DANIEL K. AKAKA  
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## United States Senate

WASHINGTON, DC 20510-1103

August 31, 2009

COMMITTEES:  
ARMED SERVICES  
BANKING, HOUSING AND  
URBAN AFFAIRS  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
INDIAN AFFAIRS  
VETERANS' AFFAIRS

Honorable Linda Lingle  
Executive Chambers  
State Capitol  
Honolulu, HI 96813

Dear Governor Lingle:

I respectfully ask for the reconsideration of the decision to severely limit the health care services that can be accessed by citizens of the Freely Associated States (FAS) who reside in Hawaii. I have severe concerns that the actions taken by your administration will have inhumane consequences and jeopardize the ability of our health care providers to care for our communities. At the very least, I ask that implementation of the service cuts be postponed until adequate community and provider outreach has been done.

It is clear that neither FAS citizens nor health care providers are prepared for the September 1<sup>st</sup> deadline. The State of Hawaii has chosen to pay entirely for the MedQuest benefits of FAS citizens in Hawaii since 1996. A sudden decision to reduce benefits, without sufficient community and health care provider input, has the potential to severely harm FAS citizens and hinder the ability of providers to meet the needs of communities.

Outreach efforts must be enhanced. FAS citizens have many unanswered questions about the cuts and how they will be able to access life sustaining treatments. There must be an accessible point person or information center at the Department of Human Services available to answer questions specific to FAS beneficiaries. There must be appropriate dissemination of this resource contact information to Micronesian-serving healthcare agencies and institutions. Interpreters must be available to ensure adequate dissemination of information. Technical assistance and education tools, such as plain language, translated fact sheets, should also be made available for Micronesian clients currently enrolled in MedQuest that address anticipated changes, allowable and non-allowable services and alternative resources for assistance.

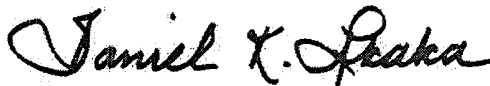
There appears to be significant confusion among health care providers about what the reduced benefits will be and how those changes will impact treatments and referrals of patients. It is unfair for the State to merely shift the costs of caring for FAS citizens to health care providers. Additionally, the ability of our health care providers to continue to care for our communities will be jeopardized. The ability of emergency rooms to handle an increase in demand, especially from renal failure patients, is an issue that must be addressed. Action plans need to be in place to avoid chaos during the transition to the reduced benefit program.

Honorable Linda Lingle  
August 31, 2009  
Page 2

I have been proud to help secure substantial federal assistance for our Medicaid program and restore some benefits for FAS citizens. The stimulus legislation provided significant resources for Hawaii's health care programs. Earlier this year, I worked to restore federal Medicaid and Children's Health Insurance benefits for FAS citizens that are pregnant women and children. Additionally, I have obtained \$52.5 million in federal Medicaid Disproportionate Share Hospital allotments for Hawaii since 2006. I encourage you to access as many federal dollars as have already been made available to help support our essential health care providers.

Thank you for your attention to my requests. I look forward to continuing to work with your Administration in addressing the health care needs of our communities.

Aloha pumehana,

A handwritten signature in black ink that reads "Daniel K. Akaka". The signature is written in a cursive, flowing style.

DANIEL K. AKAKA  
U.S. Senator

REP.  
ABERCROMBIE'S  
AMENDMENT

Thurs 7/30  
10:37  
B

AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.R. 3200

OFFERED BY MS. Eshoo + Mr. Engel

At the end of subtitle D of title VII of division B,  
add the following:

1 SEC. \_\_\_\_ . CLARIFICATION OF MEDICAID COVERAGE FOR  
2 CITIZENS OF FREELY ASSOCIATED STATES.

3 (a) IN GENERAL.—Section 402(b)(2) of the Personal  
4 Responsibility and Work Opportunity Reconciliation Act  
5 of 1996 (8 U.S.C. 1612(b)(2)) is amended by adding at  
6 the end the following:

7 “(G) MEDICAID EXCEPTION FOR CITIZENS  
8 OF FREELY ASSOCIATED STATES.—With respect  
9 to eligibility for benefits for the designated Fed-  
10 eral program defined in paragraph (3)(C) (re-  
11 lating to the Medicaid program), section 401(a)  
12 and paragraph (1) shall not apply to any indi-  
13 vidual who lawfully resides in the United States  
14 (including territories and possessions of the  
15 United States) in accordance with the Com-  
16 pacts of Free Association between the Govern-  
17 ment of the United States and the Governments  
18 of the Federated States of Micronesia, the Re-

1 public of the Marshall Islands, and the Republic  
2 of Palau.”.

3 (b) EXCEPTION TO 5-YEAR LIMITED ELIGIBILITY.—  
4 Section 403(d) of such Act (8 U.S.C. 1613(d)) is amend-  
5 ed—

6 (1) in paragraph (1), by striking “or” at the  
7 end;

8 (2) in paragraph (2), by striking the period at  
9 the end and inserting “; or”; and

10 (3) by adding at the end the following:

11 “(3) an individual described in section  
12 402(b)(2)(G), but only with respect to the des-  
13 ignated Federal program defined in section  
14 402(b)(3)(C).”.

15 (4) DEFINITION OF QUALIFIED ALIEN.—Section  
16 431(b) of such Act (8 U.S.C. 1641(b)) is amended—

17 (A) in paragraph (6), by striking “; or” at  
18 the end and inserting a comma;

19 (B) in paragraph (7), by striking the pe-  
20 riod at the end and inserting “; or”; and

21 (C) by adding at the end the following:

22 “(8) an individual who lawfully resides in the  
23 United States (including territories and possessions  
24 of the United States) in accordance with a Compact  
25 of Free Association referred to in section

1 402(b)(2)(G), but only with respect to the des-  
2 igned Federal program defined in section  
3 402(b)(3)(C) (relating to the Medicaid program).”.



# TESTIMONIES

**Statement**

**by**

**His Excellency Yosiwo P George  
Ambassador of the Federated States of Micronesia to the US**

**at Informational Hearings on the Reduction of Medical Services  
to the Citizens of the Federated States of Micronesia Residing in the State of Hawaii**

**Conducted by Senator J Kalani English  
Chair**

**Committee on Transportation, International, and Inter-Governmental Affairs  
House of Senate  
Hawaii State Legislature**

**03 September 2009**



Chairman English and Distinguished Members of the Committee,  
Esteemed Guests, Supporters and Friends of Micronesia; and  
Fellow Citizens of the Federated States of Micronesia

I wish to express on behalf of the Government of the Federated States of Micronesia our sincere appreciation for the opportunity afforded us to share with you our grave concerns about the adverse and very likely immediate impact of the cost-cutting measure taken by the State of Hawaii on the citizens of the Federated States of Micronesia in Hawaii who are currently receiving dialysis treatment and chemotherapy. We understand that the reduction in these medical services was scheduled to go into effect at the beginning of this month.

In sharing our grave concerns, I am duty-bound at the same time to express our heartfelt gratitude to the people and leaders of the State of Hawaii for the support and friendship that they have so generously extended to the people of Micronesia over the decades. Thank you indeed for being a kind host to us in the true spirit of Aloha and the Pacific Island Way.

Mr Chair and Senators --

Before going further, I would like to seek your indulgence to present to your Committee my colleagues from the FSM Government. I would like to begin with the Honorable Lorin S Robert, FSM Secretary of Foreign Affairs, and the Honorable Vita Skilling, Secretary of Health and Human Services. Also joining me today is Mr James Naich, Deputy Chief of Mission of the FSM Embassy in Washington DC; Mr Akillino Susaia, Consul-General of the FSM Consulate here in Honolulu; and Mr Daniel Rescue, Senior Vice Consul of our Consulate.

Mr Chair and Senators --

We are grateful for your deep understanding of our responsibility for the FSM citizens residing in your State and for your appreciation of our concerns for their well-being. Our immediate concern is for the welfare of the approximately 250 FSM citizens who are currently receiving dialysis treatment and chemotherapy from various health providers here in the State of Hawaii. Taking advantage of the visa-free and fairly

generous immigration provisions of the Compact of Free Association treaty between the FSM and US, a treaty that has been hailed as being mutually beneficial to both countries, our citizens come to Hawaii in search of medical services. Some of these medical services, especially kidney and cancer treatment, are either non-existent or available but only in severely limited supply in the FSM.

What will happen to these patients when they are suddenly taken off from dialysis treatment and chemotherapy? What other choices do they have? Should they not be given a chance?

Mr Chair and Senators –

It is our hope that our motive in appearing before your Committee – and in any representation that we may have with other agencies or officials of the Hawaii State government – is not misconstrued. It is not our intention to shirk our responsibility for our citizens residing in the United States, including the State of Hawaii. Neither is it our intention to unduly demand a right or a privilege.

We are very much aware that these are hard times for everyone, including the government of Hawaii. We therefore understand the need to undertake cost-containment measures. These are hard times that we believe call for collaboration so that we can effectively meet our challenges in our Pacific Island Way. These are hard times indeed that call for the best in everyone of us to work patiently together, in good faith, to seek creative solutions. We should be prepared to think outside of the box.

Mr Chair and Senators –

We in the Federated States of Micronesia recognize and have always applauded Hawaii's historic role as the gateway for the Pacific islands to the United States and the window on the outside world. We look to Hawaii in many ways for guidance and support. We acknowledge and take pride in the affinities between our peoples.

True, we have formal relations between our governments – which enable our people to migrate freely to our respective countries and further strengthen our cultural ties. We are proud of the contributions of men like Grand Master Navigator Mau Pialug in strengthening the historic links between our peoples and island societies. It has also been a source of pride for us in the FSM that, as a result of the special relationship between our two countries, our citizens serve along with US citizens in defending our common values and cherished principles.

It is our hope that the Micronesians who have come to Hawaii in the pursuit of the American Dream have, in their own ways, big or small, contributed positively to their newly adopted communities in exchange for the assistance that they have been receiving from the people of Hawaii. We are pinning high hopes on those FSM citizens who were

born in Hawaii – that one day, they will be in a position to help building the safety net for their families.

Mr Chair and Senators –

It is not my intention to downplay the importance of our formal government-to-government relations. They are important as they are as the source of our overall relations. But our historic and cultural ties should not be diminished as an element in further strengthening our formal relations; they do perform an enormously important role.

Encouraged by the special affinities between our peoples and the historic and cultural ties between our islands, my government kindly requests that the severe reduction in dialysis treatment and chemotherapy for the citizens of the FSM be deferred for a reasonable period of time. The postponement would give the FSM leadership the breathing room to see how it may address the situation and seek permanent solution.

Moreover, postponement would make it possible to wait for the outcome of the legislation proposed by Representative Neil Abercrombie. The intent of the proposed legislation is to make citizens of the Freely Associated States eligible for the federally funded Medicaid, among others. In short, there are areas in which we can collaborate our efforts to ensure that the needs of our patients on dialysis and chemotherapy are also met.

Mr Chair and Senators –

Thank you again for the opportunity extended to us to appear before your Committee. I am ready to take any question that you might have. Thank you.

Testimony of Hon. John Silk, Minister of Foreign Affairs,  
Republic of the Marshall Islands  
Committee on Transportation, International and Intergovernmental  
Affairs  
Honolulu, HI  
September 3, 2009

Mr. Chairman, on behalf of the people and the Government of the Republic of the Marshall Islands (RMI), I would like to thank you for convening this important briefing for the Committee on Transportation, International and Intergovernmental Affairs.

Before I proceed, I would like to first recognize the members of this committee, our colleagues and friends from the Federated States of Micronesia, representatives from the State of Hawai'i, the medical community, and members of various organizations that have championed this effort.

Mr. Chairman, as stated in your invitation, the purpose of this briefing is for this committee to hear testimonies on the Hawai'i Quest program changes and also, status of the amendment to the federal health care bill that would provide Medicaid eligibility to the citizens of the Freely Associated States. I welcome this opportunity and look forward to fruitful discussions on these issues.

Mr. Chairman, I have written several letters expressing my concerns to Governor Lingle and U.S. Senators Inouye and Akaka. In my letters, I expressed the RMI Government's over the sudden change and implementation of the new Basic Health Hawaii program and elimination of the Hawaii Quest Program. The change would have an effect on approximately 50 Marshallese citizens on dialysis treatment, and a similar number receiving chemotherapy treatment.

Mr. Chairman, a number of Marshallese citizens have exercised their rights under the Compact of Free Association to live in the United States and have since settled in Hawaii. As you can understand, many of our citizens moved to the United States for better educational, medical and economic opportunities.

When the Compact, as amended was passed in the US Congress, funding for compact impact was allocated for the purpose of defraying additional expenses incurred by jurisdictions like the State of Hawaii for providing services to FAS citizens. As it turns out, the amount allocated to Hawaii is not nearly enough to cover the reported annual cost reported by the State of Hawaii. This, coupled with the economic realities of today, makes it understandable that tough decisions with regards to the budget have to be made. But as human beings, moral judgment transcends budgetary constraints, and I am grateful a two year extension as a temporary remedy.

Mr. Chairman, the RMI stands ready to work with the members of this Committee, the Governor's office and the Hawaii delegation to Congress in finding a long term solution to these problems. As you may already know, Congressman Neil Abercrombie has introduced an amendment to the Health Care bill in Congress to make citizens of the FAS countries eligible for

Medicaid. Senator Akaka had introduced a similar bill, in which he introduced in 2007, with the same basic principles.

As you can see Mr. Chairman, the foundation for a viable way forward has been laid in Washington, DC. We will do our part to assist in any way we can to ensure a favorable resolution to these issues.

Mr. Chairman, again, I take this opportunity to thank you and the members of this committee and I look forward to answering any questions you may have.

Mahalo and Kommool tata.

# Micronesians United

2229 North School Street\*Suite 202\*Honolulu 96819\*808-372-3406

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## Micronesians United UP-DATE SHEET

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The State of Hawaii Department of Human Services (DHS) announced to the general <sup>Public</sup> on July 28, 2009 that 7,500 Micronesians would be moved out of the Med Quest Program to a new one called BASIC HEALTH HAWAII.

Low-income pregnant women and children of Micronesia who are not U.S. citizens will continue receiving Medicaid insurance as a result of the Children's Health Insurance Program Reauthorization Act of 2009. This new Act 2009 was signed by President Obama in February of this year 2009.

When the 7,500 Micronesians move to the new state-funded program, some of the medical treatments will be cut off from the Micronesians. Dialysis treatment and chemotherapy are vital parts of the lives of some of these patients.

On the federal level, an amendment to the U.S. House version of the America's Affordable Health Choices Act of 2009 was introduced into the bill successfully by U.S. Rep. Neil Abercrombie from Hawaii. Under the amendment, state of Hawaii would receive matching funds for Medicaid offered to compact migrants.

On Wednesday, August 5, 2009, the Honolulu Advertiser editorially said this: 'It makes sense for the federal government to carry at least an equal share of the costs because the Compact itself is a commitment. Hawaii geographic location makes it a logical stopping point for U.S.-bound Micronesians, but the state should not be penalized for taking in a disproportionately large migrant population.'

On Saturday, August 7, 2009 Micronesians United and other supporters held a rally at the state Capitol asking/demanding that Governor Linda Lingle release funds for the Micronesians.

**At the rally, nearly 100 members of the Micronesian community came to the state Capitol.**

**On Wednesday, August 19, 2009, Micronesians United held a public meeting at the Kuhio Park Terrace (KPT) meeting hall. Over 100 people came and attended the meeting. Dr. Fink and two staff came with him representing the State of Hawaii, Department of Human Services. Dr Fink talked about the new program dubbed as BASIC HEALTH HAWAII. The meeting started at 4:00 pm to 6:00 pm.**

**At 6:00 pm on the same, Rep. John Muzuno invited the Micronesians to U.S. Rep. Neil Ambercrombie's campaign party for governor. About 20 Micronesians, including the former Lt Governor of Chuuk, Manuel Sound went to the meeting.**

**On Thursday, August 20, 2009 state Rep. John Muzuno held an Informational Briefing on the Med Quest issue at the state Capitol. Some Micronesians gave oral testimonies including the Foreign Minister of the Republic of the Marshall Islands. The event was on TV stations and in the press the next day, August 21, 2009.**

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**-The End-**



# Micronesians United

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## Micronesians United UP-DATE SHEET

# Health care cuts protested



RICHARD AMBO | The Honolulu Advertiser

Members of Micronesians United waited in Gov. Linda Lingle's office yesterday for a chance to talk to the governor or someone from her administration over a state plan to scale back their health care benefits.

### New plan to save state \$15M a year reduces benefits to Micronesians

BY MARY VORSINO  
Advertiser Urban Honolulu Writer

Micronesians United members rallied at the state Capitol yesterday and gathered in the governor's offices for more than an hour to protest a state plan to scale back health care benefits to about 7,500 adult Micronesians.

A group of about 30 people sat in a public area of the governor's offices, singing Micronesian songs and holding signs. They requested a meeting with the governor, but were told she wasn't available.



See a video of the Micronesians United rally at the state Capitol at

[HONOLULUADVERTISER.COM](http://HONOLULUADVERTISER.COM)

Elma Coleman, a member of Micronesians United, said she was disappointed no member of the administration came out.

"It seems like she doesn't care," Coleman said of Gov. Linda Lingle.

The group said it would be back on Monday to again request a meeting with the governor.

"We're hopeful it will send a message to her," said Tita Raed, vice president of Micronesians United.

The new health care plan goes into effect Tuesday, and is aimed at saving the state about \$15 million a

year.

It replaces a comprehensive health care plan the state started providing to low-income, adult Micronesians in 1996 — when Congress made them ineligible for federally funded care. State officials have said the state no longer has the money for the comprehensive plan, though it has stressed coverage for children and pregnant women will not change.

Of most concern is that the new plan doesn't cover dialysis treatment or chemotherapy.

The state estimates about 100 Micronesians currently get dialysis treatment paid for by the state.

Advocates put the number at

SEE RALLY, B4

Honolulu Advertiser - Sat. 8/29/09



Honolulu Advertiser - 8/29/09

# Rally

CONTINUED FROM B1

about twice that, however, and say without treatment those patients will die.

State Department of Human Services Director Lillian Koller said in a statement to The Advertiser, "We are working closely with providers to ensure that their critical health care needs, such as kidney dialysis and chemotherapy, continue to be met."

Koller said health care cutbacks are needed to meet a fiscal crisis that continues to worsen.

Hawai'i is the only state in the nation that provides free health care to migrants who

are under the Compact of Free Association, which offers benefits for those from Pacific nations where U.S. nuclear testing took place in the 1950s, Koller said. The compact also provides federal grants to states that offer free services to Micronesians, but those funds cover only a portion of all the costs.

Hawai'i, for example, gets about \$11 million a year in compact funds.

But it spends about \$100 million annually on services for compact migrants.

"It is a simple fact," Koller said, "that our taxpayers can no longer afford to fund the U.S. government's obligation."

Reach Mary Vorsino at [mvorsino@honoluluadvertiser.com](mailto:mvorsino@honoluluadvertiser.com) or 754-8286.





# Health plan faces legal challenge

*A shift in coverage for 7,500 noncitizens due to the state's revenue shortfall fuels concerns*

BY HELEN ALTONN  
haltonn@starbulletin.com

Lawyers for Equal Justice are considering legal action to delay implementation Tuesday of a new state health plan key legislators say "could be a death sentence" for some residents.

Because of the state's revenue shortage, the state Department of Human Services is transferring about 7,500 noncitizens from comprehensive medical assistance to a "Basic Health Hawaii" plan with limited benefits. Pregnant women and children are excluded.

"It's a good plan for healthy people," said Noda Lojkar, consul general of the government of the Republic of the Marshall Islands.

The Marshallese government, affected residents and organizations such as the American Cancer Society Hawaii Pacific Inc. are protesting the plan because life-sustaining dialysis and chemotherapy services are not covered.

"Basic Health Hawaii will

become the first program in Hawaii to kill individuals it is meant to help," George Massengale, a cancer society official, said in a letter to state Rep. John Mizuno (D, Kalihi), House Human Services Committee chairman.

Mizuno and Senate Human Services Chairwoman Suzanne Chun Oakland (D, Kalihi-Liliha) have asked Gov. Linda Lingle either to grandfather in people on dialysis and chemotherapy or delay the plan for six months.

Most of those affected are migrants from Micronesia, the Marshall Islands and Palau who have lived in Hawaii less than five years and are ineligible for federal assistance. Many Filipino noncitizen residents also will be affected, said Mila Medallon-Kaahanui, health care advocate.

Dr. Kenneth Fink, MedQUEST Division administrator, said he was directed to reduce the budget by \$42 million over two years, and he and his staff critically examined all programs. "But to get that kind of money, we had to start looking at reimbursement benefits or eligibility," he said.

The governor said children and pregnant women could not be affected, and

the state agency did not want to cut any programs drawing matching federal funds, he said. That left state-funded programs, the biggest of which covers medical benefits to noncitizens who have lived in Hawaii under five years and are ineligible for federal aid, he said.

Human Services Director Lillian Koller said the department is working with dialysis and chemotherapy providers to ensure that critical health care needs will continue.

"That said, it is undeniably a federal — not a state — responsibility to compensate Compacts of Free Association migrants for the extensive harm caused to their islands in the 1940s and 1950s by the U.S. government's nuclear weapons testing program," Koller added in a statement.

Guam has dropped medical coverage for the migrants, and Hawaii is the only state giving them free health insurance, with federal reimbursement at about 10 cents on the dollar, Koller said.

"It is time for the U.S. government to stand up and fulfill its legal and moral obligations" to the so-called COFA migrants, she said. "It is also time for federal

officials to fully reimburse Hawaii taxpayers for all we do to improve the lives of COFA migrants."

U.S. Rep. Neil Abercrombie has included an amendment in the House health care reform bill to reinstate Medicaid benefits for compact migrants totaling about \$15 million a year.

Fink said the federal government dropped Medicaid coverage for the Pacific islanders in 1996, but Hawaii continued comprehensive state-funded coverage without any federal help until 2003.

The state since has received \$10 million to \$11 million a year as a share of impact funding, but it has spent more than \$100 million a year on that population, Fink said.

Aside from humanitarian issues and federal policy, the state is not going to save any money from the new plan, Dr. Neal Palafox, Family Medicine and Community Health chairman in the John A. Burns School of Medicine, said at a community meeting held by Mizuno on the issues.

Palafox, who spent many years in the Marshall Islands, said the cost simply will be shifted because the new plan covers emergency services.

It will be five times more expensive for people to go to emergency rooms for dialysis and chemotherapy and will cause many problems at hospitals, he said.

Victor Geminiani, executive director of Lawyers for Equal Justice, said he had just done a preliminary review of the issues, but he sees "constitutional failures" in the adverse action notice to clients from the Human Services Department about the new plan.

It was printed only in English with a number to call if someone needed help, he said. "People had no clue what it was. They didn't understand."

He also cited questions of equal protection, short notice to clients and lack of outreach to 230 to 260 people expected to lose kidney dialysis and chemotherapy coverage.

Fink said the federal compact with the Freely Associated States says "it's not the intent of Congress that the compact adversely affect any jurisdiction, but that does not appear to be the case."

He said "very difficult decisions" had to be made because of the state's unprecedented economic situation.

**"Basic Health Hawaii will become the first program in Hawaii to kill individuals it is meant to help."**

**George Messengale**  
*American Cancer Society official*

# State finds \$1.5M for dialysis

BY B.J. REYES  
bjreyes@starbulletin.com

Micronesians receiving kidney dialysis treatments will continue to get such care once the state shifts them to a new, more limited health care coverage plan, state officials said.

The new cost-saving plan, known as "Basic Health Hawaii," goes into effect today, transferring about 7,500 noncitizens from comprehensive medical assistance to the plan with more limited benefits. Pregnant women and children are excluded.

Advocacy groups for Micronesians, who make up most of the noncitizens

being transferred, said the new plan would cut kidney dialysis treatment for about 100 patients and chemotherapy for 130 to 160 cancer patients.

Micronesians community groups held sit-ins in the governor's office last week and yesterday to call attention to their cause.

Yesterday, Human Services Director Lillian Koller announced the state had identified a source of federal funds that could be used to cover dialysis treatments as an emergency service, without added cost to the state. The state will receive about \$1.5 million annually in Medicaid reimbursements to fund dialysis for patients in



the new Basic Health Hawaii plan.

Meanwhile, she said the department

continues to work with hospitals on ensuring continued chemotherapy treatment for cancer patients.

Chemotherapy does not meet the federal criteria for emergency treatment, so similar federal funds are not available, Koller told the community members.

However, she said the Queen's Medical Center has said it will continue providing chemotherapy to

noncitizens who came to Hawaii under the Compact of Free Association with the federal government, stemming from U.S. nuclear weapons tests in isolated Pacific islands a half-century ago.

An attorney for Lawyers for Equal Justice said the advocacy group still plans to challenge the implementation of Basic Health Hawaii.

"We think there are a number of questions that still have to be answered, and we think that the process that was engaged in by the government was contrary to legal requirements in the state," said Victor Geminiani, executive director of Lawyers for Equal Justice.

Star Bulletin  
Tuesday 9/1/09



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[ ISLAND COMMENTARY ]

## State morally obligated to help Micronesians

BY JULIA MATSUI ESTRELLA

When Gov. Linda Lingle proposed a new health care program for Micronesians as a cost-cutting measure, migrants from the Compact nations (Compact of Free Association) saw the action as a death sentence. When a governor declares a policy that has life or death implications, people of faith need to stand up and say 'no' to such policies.

By removing Micronesians from Medquest and providing instead a basic health program that does not include kidney dialysis or chemotherapy, starting today, more than 100 recipients of such services are faced with a death sentence. However, if these recipients are told to go to hospital emergency rooms for services, the governor's plan to save \$15 million becomes a sham because emergency services would cost five times more than what is being charged presently. So the question is, why is the governor implementing such an expensive program in the name of cost-cutting?

Many Micronesians come to Hawaii because they are survivors of our U.S. military detonation of 67 atomic and nuclear bombs. Just one bomb, the BRAVO blast, went 25 miles into the stratosphere and rained nuclear particles and residue throughout the Pacific; BRAVO was also 1,000 times stronger than the Hiroshima blast.

The state of Hawaii needs to find the funds to pay for at least the dialysis and chemotherapy patients until the federal government comes up with the funds to pay for this. For example, the governor can tap the "stimulus funds" that the federal government has made available to the state. She can also tap the funds that were passed by the Legislature to be used for the hospitals.

It is the state of Hawaii's moral obligation to find the funds — even if it means appealing to the public to raise the funds through United Aloha Way.

*Julia Matsui Estrella is a member of Waipahu Filipino United Church of Christ and a member of Pacific Islander and Asian American Ministries (PAAM).*

*Editor's note: The state late yesterday said it would pay for dialysis for affected patients. See story in Local News section.*



**Micronesians are shown at a Friday sit-in in Gov. Linda Lingle's office over medical-care changes.**

CRAIG T. KOJIMA /  
STAR-BULLETIN



Honolulu Advertiser.Com  
Tuesday, Sept 1, 2009



BRUCE ASATO | The Honolulu Advertiser

Masae Kintaro and Merko Route listen to explanations about changes to the state health care program that covers Micronesians.



More photos and a video about the health care program can be viewed at

[HONOLULUADVERTISER.COM](http://HONOLULUADVERTISER.COM)

## New program won't threaten Micronesian lives, state says

BY DAVID WAITE  
Advertiser Staff Writer

The Lingle administration vowed yesterday that a new, state-sponsored medical insurance program for legal immigrants will not endanger the lives of Micronesians in Hawai'i who need kidney dialysis or chemotherapy.

But advocates for the Micronesians filed legal challenges in federal and state courts to stop the new program, Basic Health Hawai'i, which begins today. A rally is also scheduled today at the state Capitol and at least one advocate plans a hunger strike if the legal chal-



Koller

lenges are unsuccessful.

About 30 members of Micronesians United met with Gov. Linda Lingle's senior policy adviser, Linda Smith, and state

Department of Human Services director Lillian Koller for more than an hour yesterday morning to air their concerns about the new insurance program.

The community group tried to persuade the state to postpone the new program in hopes the federal government would increase payments to Hawai'i to

recover the cost of providing health insurance to legal immigrants from Micronesia.

Smith and Koller said concerns about dialysis and chemotherapy were caused largely by a misunderstanding over what the new insurance program will cover.

Koller said the state believes it may be eligible for additional federal money that would fund dialysis for Micronesians for another two years.

According to a recent estimate, about 100 Pacific Islanders received dialysis and another 120 to 160 relied on chemother-

SEE HEALTH, B4

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# Health

CONTINUED FROM B1

apy under the former state insurance program.

Koller said Arizona recently signed a consent decree with the federal government that agreed that kidney dialysis should be considered an emergency medical treatment.

The federal government agreed to reimburse Arizona for dialysis provided to legal immigrants there during the past two years, Koller said. She said Hawai'i will file a similar claim, hoping to recoup about \$3 million. That would allow continuation of dialysis services for about two years.

While the federal government does not consider chemotherapy an emergency treatment, almost all of the Micronesians who undergo chemotherapy do so as inpatients. That means the costs will be covered by Basic Health Care Hawai'i, Koller said. The Queen's Medical Center, where the vast majority of Micronesians go for chemotherapy, has pledged to continue the service uninterrupted. Smith said state officials were able to identify only two Micronesian patients who received chemotherapy as outpatients.

About 7,500 adult Micronesians live in Hawai'i and are subject to the terms of a Compact of Free Association. Officials estimate that it costs the state about \$100 million a year to provide health insurance to Micronesian legal migrants. The new Basic Health Hawai'i plan is expected to shave \$15 million a year from those costs.

The Compact of Free Association made between the United States and the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau allows for citizens of those nations to travel freely, work and live in the United States



BRUCE ASATO | The Honolulu Advertiser

William Swain, an advocate for Marshallese patients, expresses his concerns about the Basic Health Hawai'i plan.

But there was no provision in the compact for medical care. The federal government did allow COFA nation citizens to be eligible for Medicaid, but that ended in 1996.

Since then — even though it was not required — Hawai'i continued to provide the same level of medical assistance to the COFA migrants without receiving any money from the federal government. No state except Hawai'i offers medical benefits to citizens of COFA nations.

In 2003, Hawai'i began receiving a partial reimbursement — less than 10 percent — from the federal government for the money Hawai'i spends annually on COFA migrants.

Smith said Hawai'i's congressional delegation is asking Congress to "step up to its responsibility" to reimburse Hawai'i for costs associated with providing assistance to the Micronesians.

Some of those who attended the meeting thanked Smith and Koller for warding off what they said could have been a health care crisis.

But Elma Coleman was taking a wait-and-see approach, and repeatedly asked Smith and Koller to postpone implementing the new health insurance plan and to talk to the leaders of the various Pacific island nations before doing so.

"The new plan still seems very limited for the people," Coleman said

Masai Kintaro of Palau said Micronesians in Hawai'i have been very nice and very patient, but told Smith it was time for the government to deliver "on the legacy of your nation."

"We are up to here," Kintaro said, raising her hand to her neck. "We call the hospitals, and they don't give us the right medicines, the right services. We are human beings, you know."

Mitauo Anis of Chuuk thanked Smith and Koller through an interpreter.

Before the meeting, Anis, a dialysis patient, said he was afraid he would die in a matter of days if the state insurance program no longer paid for his treatments.

Victor Geminiani, executive director of Lawyers for Equal Justice, said the lawsuits allege that migrants have an equal protection right to health care and that the Lingle administration did not follow proper administrative procedures when converting to the new insurance program.

Advocates, who appeared with state lawmakers at a press conference yesterday afternoon at the state Cap-

itol, said there are also questions about whether migrants would receive transportation to treatment appointments and brand-name prescription drugs under the new program.

Manuel D. Sound, a former lieutenant governor of Chuuk, said he has lived in Hawai'i for seven years and relies on the state's dialysis coverage. He said there is no dialysis treatment available to him back home.

"I got really scared," Sound said of the potential loss of dialysis treatment, which could leave him vulnerable and trigger emergency care at a hospital. "I thought I was going to die."

William Swain, a community organizer who represents people from the Marshall Islands, said he and others would stage a hunger strike at the Capitol if the legal challenges fail and nothing changes. He said his people have been asked by the United States to sacrifice for

nuclear and missile defense testing and that the federal government should honor its obligation to migrants.

"I have not asked much. But you have asked that I sacrifice the very life and my existence. You have asked that of my grandparents. You are asking that today of my people, at least with the Marshallese patients that I represent. And you are going to ask me tomorrow because my kids will serve in your military forces," he said.

Advertiser government writer Derrick DePledge contributed to this report. Reach David Waite at [dwaite@honoluluadvertiser.com](mailto:dwaite@honoluluadvertiser.com).

Hon Advertiser  
Tuesday Sept 1, 2009



# Micronesians United

2229 North School Street\*Suite 202\*Honolulu 96819\*808-372-3406

## Micronesians United UP-DATE SHEET

# U.S. judge blocks Micronesian health care cut

### Request for similar order in state court is denied

BY MARY VORSINO

Advertiser Urban Honolulu Writer

A federal judge has blocked the state's cuts to health benefits for about 7,500 adult Micronesians from

taking effect yesterday as planned.

In U.S. District Court yesterday morning, Judge Michael Seabright issued a temporary restraining order against the state, requiring it to continue providing the same level of medical care to Micronesians until a decision on whether the state followed the law on the proposed cuts

is made or a new order is issued.

Micronesians have rallied at the state Capitol against the cuts, saying that the changes would leave many patients without critical care.

"I think the group is pretty happy about the outcome of the federal court," said Elma Coleman, of Micronesians United.

She said the order will give receiving state-funded medical more time to consider their opt

The next hearing on the case for Oct. 19.

Meanwhile, a temporary restraining order sought in state court

SEE CUTS, A2

Wednesday, Sept. 2, 2009 Hon. Advertiser

## Cuts

CONTINUED FROM A1

denied yesterday.

Toni Schwartz, a spokeswoman for the state Department of Human Services, which oversees the medical program, said yesterday that DHS officials would discuss the federal restraining order today with state attorneys. She declined further comment.

DHS has said the cuts are needed to address a worsening budget crisis.

The state's planned cuts to medical services for Micronesians come in the form of a new health care plan, which is aimed at saving the state about \$15 million a year.

The new plan, called Basic Health Hawai'i, was to replace comprehensive health care benefits the state started providing to low-income adult Micronesians in 1996.

### CHRONICALLY ILL

Of most concern about the new plan was its coverage for the chronically ill, including those who need dialysis treatments or chemotherapy.

Initially, the state had said it would no longer cover dialysis for about 100 Micronesians. Then, on Monday, the state Department of Human Services announced it would seek federal money so it could continue to provide dialysis treatments for two years.

State officials have argued that medical care for Micronesians is the responsibility of the federal government, and that the state can no longer afford to pay for the health benefits.

They have stressed that health care for Micronesian children and pregnant women will not be cut back.

Micronesians travel to

the United States freely under the Compact of Free Association, which offers benefits for those from Pacific nations where U.S. nuclear testing took place during the 1950s.

The state spends about \$28 million a year on health care for adult Micronesians (excluding pregnant women). The state gets about \$11 million a year in federal grants to compensate states for services, including health care costs, they provide to Micronesians covered under the Compact of Free Association.

Advocates for Micronesians say they understand the tough spot the state is in, but are disappointed by the push to cut medical benefits.

They also say Micronesians getting health care benefits were informed in writing just weeks ago

about the changes to the medical plan, and were not given information on those changes in their own languages.

DHS announced changes to Basic Health Hawai'i in a news release on July 28.

Victor Geminiani, executive director of Lawyers for Equal Justice, which filed suit against the state on behalf of those getting medical care, said the new plan was "thrown together behind closed doors without any kind of comment period."

He added, "The process was so deficient. I was appalled."

State Rep. John Mizuno, House Human Services Committee chairman, has also come out against the cuts. He said there are federal funding sources available that would help cover costs — or at least pay for other programs to free up state money for the health care program.

"Basic Health Hawai'i was ill-conceived," said Mizuno, D-30th, (Kamehameha Heights, Kalihi Valley, Fort Shafter).

Reach Mary Vorsino at [mvorsino@honoluluadvertiser.com](mailto:mvorsino@honoluluadvertiser.com) or 754-8286.

"The process was so deficient. I was appalled."

VICTOR GEMINIANI | executive director, Lawyers



# Micronesians United

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## Micronesians United UP-DATE SHEET

Star Bulletin - Wednesday 9/2/09

### Limited health care plan blocked

*The state must continue treatments for Pacific islanders, a judge rules*

**BY MARK NIESSE**  
Associated Press

A federal judge ruled yesterday that Hawaii's government must continue providing lifesaving dialysis and chemotherapy treatments to Pacific island migrants suffering from kidney disease and cancer.

U.S. District Judge J. Michael Seabright granted a temporary restraining order preventing the state from instituting a new, limited health insurance program intended to save \$15 million. The new health program was planned to start yesterday.

His decision came as a relief to migrants from Micronesia, Palau and the Marshall Islands who argue the United States and the state were not living up to a health obligation promised after U.S. nuclear weapons tests in Pacific islands a half-century ago.

The ruling keeps in place broad coverage for dialysis, chemotherapy, prescription drugs and doctor visits.

"I'm very happy," said Philip Anungar, a Marshall Islands migrant with diabetes who attended the court hearing. "The judge's decision means we'll go back to what we had before."

Hawaii government officials declined to comment after the hearing.

The cash-strapped state wanted to switch about

7,000 legal migrants to the new health insurance program. About 100 of them receive dialysis treatments paid by the state.

The state announced Monday it had found \$1.5 million in annual federal Medicaid funding that would continue dialysis coverage for two more years, but chemotherapy and prescription drugs were not included.

Seabright prevented the new plan, called Basic Health Hawaii, from taking effect because its implementation may have violated due process rights guaranteed in the U.S. Constitution.

Basic Health Hawaii was announced less than a month ago and without public hearings.

A hearing on an injunction will be held Oct. 19.

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**Committee on Transportation, International, and Intergovernmental Affairs  
Informational Briefing**

**Date: 9/3/09**

**Place: Conference Room 211 at 11:00 a.m.**

Aloha Chair Kalani, Vice Chair Gabbard, and Members of the Committee:

We are pleased to announce that we have obtained both state and federal court orders, which together, reinstate all of the health benefits provided by the State of Hawai'i, Department of Human Services (DHS) to citizens from countries under Compacts of Free Association (COFA) with the United States ("COFA Residents") and to immigrants who have been here for less than five years ("New Residents").

The DHS had planned to disenroll all COFA Residents and New Residents from their current health programs and to enroll them in a new program called Basic Health Hawaii, effective September 1, 2009, which would have provided far fewer benefits. The benefit cuts would have immediately impacted dialysis and chemotherapy patients by denying them coverage for life-saving treatments and medications. Since June 2009, DHS had also been implementing a new policy of denying health coverage to COFA Residents based on their citizenship status.

On Monday afternoon, we filed complaints and motions for temporary restraining orders in both state and federal court. On Tuesday, the United States District Court held that plaintiffs had shown a likelihood of success on their claim that DHS had violated the Due Process Clause of the Fourteenth Amendment of the United States Constitution by making a unilateral decision to decrease health care benefits with little or no notice. Many community members impacted by these cuts were stressed, panicked, and had no time to prepare.

The federal court ordered DHS: (1) to stop disenrolling COFA Residents and New Residents from the State-funded health programs in which they were participating prior to August 1, 2009; and (2) re-enroll all COFA Residents and New Residents who were disenrolled based on their citizenship status in the applicable QUEST, QUEST-Net, QUEST-ACE, QExA, SHOTT, or fee-for-service programs.

Today, the Attorney General's office admitted that DHS failed to comply with Hawai'i's Administrative Procedures Act (HAPA) in implementing its new rules and policies regarding the eligibility of COFA Residents and New Residents for State-funded health benefits. DHS'

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failure to follow the rulemaking process is a clear violation a law intended to give the public notice and an opportunity to comment when there is a change in policy as is the case here.

The parties have agreed to a stipulated order for injunction in the state case. The order prohibits DHS from applying any new polices regarding the scope or availability of State-funded medical benefits to COFA Residents or New Residents until it complies with the HAPA. DHS must also restore benefits to all COFA Residents and New Residents who were disenrolled and reimburse them for all medical benefits they obtained at their own expense during the time they were wrongfully disenrolled. Finally, DHS is required to enroll all COFA Residents and New Residents in the State-funded health programs for which they were otherwise eligible under Defendants' pre-existing rules, policies, and practices and provide to those persons all benefits to which they would have been entitled under the pre-existing rules if their applications had been timely approved.

The State's unlawful actions have caused needless confusion, stress, and suffering among this population.

We are working to help ensure that DHS implements procedures to prevent persons who are entitled to coverage from being denied. Anyone who previously tried to enroll and was denied coverage based on citizenship status or who was enrolled prior to September 1, 2009 and is denied coverage should contact DHS or ask their health care provider or pharmacy to do so. Anyone who is, or has been, denied coverage and needs help should call the Legal Aid Society of Hawai'i at (808) 536-4302.

Mahalo for this opportunity to testify.

Paul Alston  
Alston Hunt Floyd & Ing-Lawyers

Elizabeth M. Dunne  
Lawyers for Equal Justice

**Personal testimony to the Senate's Committee on Transportation, International, and Intergovernmental Affairs on the Hawai'i Quest program changes and the status of the amendment to the federal health bill that provides Medicaid eligibility to the citizens of the Compact of Free Association Nations**

**submitted by Neal A. Palafox MD MPH  
Thursday, September 3, 2009**

Chair: Senator Kalani English

My name is Neal Palafox. My testimony is a personal opinion and does not represent the institutions I work with. I am presently a physician and serve as the Professor and Chair of the Department of Family Medicine and Community Health at the John A. Burns School of Medicine. My experience with COMPACT Nations health issues includes: living working in the Republic of the Marshall Islands as the Medical Director for Preventive Health Services (Ministry of Health 1983 through 1992), directing the dialysis unit of the RMI between 1983-1986, having worked with the Republic of the Marshall Islands, the Federated States of Micronesia, and Republic of Palau with Comprehensive Cancer Prevention and Treatment Strategies 1999 to present under US National Cancer Institute and US Center of Disease Control Grants. I was an appointed member of

the Hawaii Uninsured Project Committee which produced a report on the COMPACT Nations Health impact in Hawaii in July 2004 and appointed to the Compact Impact Committee Task Force for the State of Hawaii in 2008. Between 1998 and December 2008 I served as the Principal Investigator for a US Federally Funded Program to provide clinical care for the Marshall Islands who were affected by the US Nuclear Bravo Hydrogen Bomb detonation.

There are several points I wish to make:

The COMPACT nations Peoples must seek health care in other nations and Hawaii as their health infrastructures cannot support their health care needs. The average United States per capita (per person) health care expenditure is over \$5700 per year. Medicare spends over \$600 / month per medicare covered life or \$7200 per year in the State of Hawaii. The average annual per capita health care expenditure in the Marshall Islands is only \$250.00 (two hundred fifty) , and in Chuuk State FSM \$125.00 (one hundred twenty five) . The amount of money the New Basic Health Plan is expected to save for its 7000-7500 enrollees is 15 million dollars which is more than double

the annual health budget for the entire Chuuk Health system which cares for 60,000 people.

Currently there is no hemo-dialysis in Chuuk or the Marshall Islands. The Marshall Islands had a dialysis unit established in the early 70's and was closed because the cost and infrastructure for that unit could not be sustained. There is no chemotherapy provided on site in the Federated States of Micronesia or the Republic of the Marshall Islands, and no mammogram services available to any of the women in the Federate States of Micronesia (Chuuk, Yap, Kosrae and Pohnpei). The Ministries of Health have stretched the health dollar as far as it can go, send many of their patients to the Philippines for extraordinary health care as the cost of health care in the Philippines is about ¼ the cost of that in the US, have rationed medical services, and have created health policies that limit health care alternatives for their people.

Many of Hawaii's people feel that the COMPACT Nations do not do enough for themselves. The COFA health services in fact have worked hard for many years in challenging financial environments to solve their health care issues. The June 2006 United States Government Accountability Office

Report to Congress that evaluates the impact / support of the COMPACT funds states that the “Development prospects for the Marshall Islands and the Federated States of Micronesia is limited” and notes that COMPACT funding will decrease over the years to an already stressed system. The people from the COMPACT nations will likely keep coming to Hawaii—they have little alternative for basic health care.

The COMPACT Impact on health care in Hawaii has been extensively described and studied in two existing Hawaii State Reports. One is the July 2004 Hawaii Un-insured Policy Brief entitled Impacts of the Compacts of Free Association on Hawaii’s Health Care System. This report was developed by the Hawaii Institute for Public Affairs. The second report is the COMPACT of Free Association Task Force Report whose committee was established by Hawaii Legislature Senate Resolution Nos 142 SD 1 in 2007, This report was submitted to the 2009 State Legislature. I was asked to serve on both these committees.

These two reports clearly articulate the history and situation with the COMPACT nations as it relates to health care in Hawaii. Both reports note that the impact was initiated and is being sustained by US Federal policies or

The burden of chronic illness is high the COFA population. Dr Riklon will speak to this in his testimony. As cancer care and chemotherapy is presently an issue with the New Basic Health Care Program, I note a 2004 US National Cancer Institute report on the US Nuclear Weapons Testing program and cancer in the Marshall Islands. According to this report, the US Nuclear testing in the Marshall Islands will likely cause more than 500 cancers above the natural background of cancers in the Marshall Islands population. More than half of these cancers will occur in the population after 2004. I would suggest that some of the cancers whose treatment the basic plan will deny were in fact have been caused by our US nuclear testing program.

In a democracy, a great nation and State is defined not by how it protects its majority population but how it cares for, advocates for and protects its most vulnerable, disenfranchised and needing peoples. These include the poor, children , elderly and populations such as those from the COFA nations.

Thank you.



Personal testimony to the Senate's Committee on Transportation, International, and Intergovernmental Affairs on the Hawai'i Quest program changes and the status of the amendment to the federal health bill that provides Medicaid eligibility to the citizens of the Compact of Free Association Nations submitted by  
Sheldon Riklon, MD, Asst Professor & Member, Micronesian Health Advisory Coalition  
Thursday, September 3, 2009

I would like to take this opportunity to thank Senator Kalani English, Chair of the Committee on Transportation, International, and Intergovernmental Affairs & the members of this committee for holding this meeting to further discuss the proposed Hawai'i Quest program changes that will adversely affect about 7,500 Compact of Free Association (COFA) citizens, especially the estimated 230 – 260 patients requiring lifesaving dialysis and cancer treatments.

Today, I am testifying in front of this committee as a practicing physician in the state of Hawaii, a Marshallese citizen, and a member of the newly formed Micronesian Health Advisory Coalition. My main focus of testimony will be on the new plan, Basic Health Hawaii, its negative impact on the health status of the patients that it's suppose to cover, reasons why it will NOT save the State the projected \$15 million dollars, and reasons why both short and long term outcomes of such a change will be a lose-lose situation for all involved.

The Basic Health Hawaii plan reduces coverage to include 12 outpatient doctor visits per year, 10 hospital days, 6 mental health visits, 3 procedures, up to 5 generic drug prescriptions a month, and emergency medical and dental care for the 7,500 Pacific Islanders.

Although the Basic Health Hawaii program is a good plan for a healthy person, not all of the 7500 clients are healthy. As a clinician who practiced in the Marshall Islands the past 8 years and currently practicing in Hawaii, I can draw several conclusions on these 7500 patients. There is a good number of patients with multiple chronic medical conditions that require closer monitoring & more frequents outpatient visits. Given the inherent nature of their complicated chronic medical conditions, a good number of them will end up in the hospital. A good number of them will require more than 5 generic medications a month. Several of the medications that they require to manage their medical conditions do not come in the generic form. And I have not even discussed the 230 – 260 dialysis and cancer patients that the above issues are even more vital when it comes to keeping them alive or just maintaining their quality of life.

Patients with end stage renal disease require dialysis 2-3 times a week for hours at a time. A significant number of dialysis patients also suffer from hypertension, diabetes, hyperlipidemia, diabetic retinopathy, leg ulcers, cardiac disease, peripheral vascular disease, and other conditions. One cannot just treat the kidney disease and not manage the rest. One medication will not treat all the medical conditions. The patient will require more than 1 medication & some of

the needed medications do not come in the generic form. Dialysis alone will not be sufficient to address the other medical conditions.

In fact, because of several of the medications that the dialysis patients require do not come in the generic form, one of our local providers was working hard to find ways to seek assistance from the pharmaceutical companies in supplying these types of medications free of charge by the September 1<sup>st</sup> deadline, when the Basic Health Hawaii was to take effect. We thank her & all the other providers for their unselfish dedication & assistance to the patients. But, surely, that cannot be the long term solution to this problem. The same can be said about the cancer patients that require surgical, radiation, chemotherapy and pain control treatments for their cancer diagnoses.

My message in making the points is that when these patients with kidney failure, cancer, diabetes, hypertension, hyperlipidemia, cardiac disease, etc., are not managed well, they will develop more medical complications that will eventual lead to more extensive and expensive medical care. Developing more complications will lead to more 911 calls, more ambulance calls, more HFD/HPD calls (as first responders), more ER visits, more hospitalizations, more loss of employment days by the patient and/or family members caring for the patient, more school days missed by the children in the household because either their parents/guardians are with the patient in the hospital or are themselves the hospitalized patients. These adverse outcomes will add more to the financial burden of the State of Hawaii within a few weeks after the institution of the new plan with worse medical, social, economic outcomes in the long run.

Benjamin Franklin, the oldest of founding fathers of this great nation said: "An ounce of prevention is worth a pound of cure." Dr. Richard H. Carmona, 17th US Surgeon General, stated "As a nation, we pride ourselves on our ingenuity and our history of finding ways to improve our quality of life."

We need to be PROACTIVE and NOT REACTIVE in our approach. To actually save the State of Hawaii money, more emphasis should be put in the front end of the healthcare system. There needs to be more focus & resources invested into prevention, whether it is primary, secondary, or tertiary prevention. There needs to be increased or improved INFORMED access into the healthcare system. Meaning that an interpreter should always be available for patients that English is not their primary language. For most of the Marshallese patients in the clinic where I practice, I am involved in one way or the other because I speak their language & understand their culture. Providers out in the community can relate & understand what I'm referring to because it's common for the provider not to feel uncomfortable at the end of the patient visit. In other, it's hard for them to gauge if the non-English speaking patient fully understand the management plan or instructions. Thus, it can be conjectured that these patients are probably not receiving adequate or good medical care. This relates to more frequent visits, more added medications,

more blood tests, more ancillary services, more medical complications, and thus more healthcare dollars spent by the state & federal governments.

To save \$15 million dollars, the Department of Human Services REACTED by instituting a limited health insurance plan & terminating the vital medical services such as dialysis and cancer treatments. This is ill-conceived & an error in judgment in my opinion for all the reasons stated above.

I, and surely the patients & families to be affected by the new plan, acknowledge & appreciate all that the State of Hawaii has offered us. But, there are better options that will save the State of Hawaii money & save life in the process. We understand that it's a federal obligation for the US Government to care of us & not a state obligation per se. But, please allow time for our government officials to work with the federal and state government to come up with a better solution for all of us. There are various resource people in the COFA nations community in this great state that are willing to devote their time & energy to pursue a more feasible, more economical, more effective, and more humane solution.

Thank you & Komol tata for you time !



**Ui Ui Ka Manu**  
Marshallese Interpretation and Translation

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**A Personal Letter of Concern for COFA Migrants**

Health Equity in Hawai'i, and the Human Impact of the new Basic Health Hawai'i Plan

To: Senator J. Kalani English, Chairman

COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS  
THE HAWAII STATE SENATE – TWENTY-FIFTH LEGISLATURE INTERIM OF 2009

It has come to our attention that there are changes to the **Med-Quest Health Care Program** which most lower income Micronesians, living in Hawai'i, have been a part of for many years. The change to the new **Basic Health Hawai'i Plan** is a sudden and surprising move on the part of the State of Hawai'i to "adjust to the severe economic times" and reduce spending for COFA Migrant members of the comprehensive Quest health care program, by automatically moving those people to the new Basic Health Hawai'i Plan which is a far less comprehensive plan.

We feel that a **full & transparent study** of the costs involved, and an analysis of the resulting loss of "life saving" treatments like; Kidney Dialysis, Chemotherapy, and other long term treatment programs for many COFA Migrants, has been too limited, mismanaged, or lacking altogether. We can only see that as of September 1, 2009 many COFA Migrants will become severely ill because of the less comprehensive treatments that they will be eligible for under this new plan. When death and drastic increases to Emergency Room care results, there is no possibility for the State of Hawai'i to save money. Therefore we have come to the following conclusions:

1. A Change to Basic Health Hawai'i requires further study and should not take place on September 1, 2009! It should only be made after a much more thorough resolution of the costs and effects of the change has been made in a completely transparent way with all the stake holders fully understanding the ramifications. It needs to be presented to the COFA Migrant recipients in their own languages so that they can completely understand the change.
2. If such a change in the Department of Human Services policy should occur, there needs to be more time for COFA Migrants to understand their responsibilities and requirements to successfully make such a change. They need to have much better notice of the new plan and what it will mean to their care. All the ways that they might cause any revocation to their current health care should be explained to them in their own language, so that if they decide that Basic Health Hawai'i is something that they wish to continue with, they understand what they must do to keep in good standing with the new Plan.

3. Although, for “basically healthy” COFA Migrants, the new Plan may indeed be a way for the State of Hawai`i to cut back on the costs involved in providing health care for COFA Migrants, all Kidney Dialysis, Chemotherapy, and long term care recipients of the current comprehensive health care program provided by Quest, need to be exempted from the new Basic Health Hawai`i Plan.

4. For reimbursement of the costs to the State of Hawai`i for whatever the expenses are determined to be, by an open and transparent study, an increase in the “Compact Impact Funding” from the Federal Government is the more appropriate avenue for dealing with this very important problem. The COFA Migrants themselves are not the cause of this increase of health care costs to the State of Hawai`i, but the indemnification of the U.S. Federal Government from paying it's normal share in these costs is the cause. We should therefore seek redress to this problem from the U.S. Federal Government rather than causing the death and illness for the COFA Migrants who are legally living in our State under the guidelines of Compact II.

5. We can see the use of the new Basic Health Hawai`i Plan as a way to reduce the increasing costs to the Department of Human Services, but the new Basic Health Hawai`i is only reasonable for those who are basically already healthy and not involved in long term care.

It is our position that any move to disregard the health care of long term patients such as; Kidney Dialysis, Chemotherapy, or other chronic health care patients, by placing them on the new, and greatly reduced, Basic Health Hawai`i Plan will in effect make the State of Hawai`i guilty of genocide! This then becomes a matter of concern between the all of the Compact Associated States throughout Micronesia and the United States.

Such action is a matter of “Nation to Nation” negotiation, more appropriately handled by the United States Department of State, and not by the Governor of the State of Hawai`i. Our Governor, is herself, disregarding a “Legislative Override” to her “Veto” of SB 423 which would have made a very reasonable “short term” solution to the cost of keeping all low income COFA Migrants on the comprehensive Quest Health Care Plan.

The death of any COFA Migrant to save an estimated \$30 million dollars from the State of Hawai`i Department of Human Service's budget is an act that will be recognized as genocide on the part of the current administration in Hawai`i, and the ensuing legal actions from the families of any victims of this act, will no doubt reduce or eliminate any possible “cost savings” that are supposed to accrue to the State of Hawai`i. To add insult to the terrible injury to these families, the “savings” accomplished by this “wrong minded” act will in fact save no money at all, because the Department of Human Services in their own words will USE the savings to: “provide health insurance for non-citizens and expand prescription drug coverage for QUEST-ACE and Quest-Net Medicaid clients.”

We cannot help but wonder if this action by the State of Hawai`i Department of Human Services, and the refusal of our Governor to release appropriated funds will cause either a flurry of **“Class Action Law Suites”** or even a **“Civil Rights Action”** against the State of Hawai`i. In any case, it is a clear **“Human Rights Violation”** of all that is good and moral in the view of the entire world.

Death for innocent COFA Migrants living in Hawai`i legally, to save \$15 million dollars out of a \$5 billion dollar budget, (and in disregard to a legislative override) will bring an outcry of **“Human Rights Abuse”** against the **“People of Hawai`i”**. This is also unfair, because our representative members in the Hawai`i State Legislature have clearly appropriated the necessary funds to deal with this problem until other ways (already introduced into the new Federal Health Care Reform legislation by amendment) are found for a long term solution to Hawai`i's problem.

Are we now facing the **“wrong minded”** actions of a Hawai`i State **“Despot”** who sets law and causes changes by refusing to release appropriated funds? Is this kind of action allowed? Will it be found illegal only after the death of COFA Migrants? How much will this mistake cost Hawai`i in the future?

Indeed these are questions which need to be answered before any COFA Migrant deaths occur. We are forced to consider that an injunction against this terrible travesty may be the only way to stop the almost certain loss of life, financial hardship to our hospitals, and major crisis in health care all over Hawai`i.

We urge you to use whatever power and influence you can to at the very least include all lifesaving procedures for COFA Migrants as a part of the exception to the change to Basic Health Hawai`i. Again I point out that for healthy people, this may indeed be a solution to the need to reduce costs that will work. We are planning ways to explain and help our COFA Migrant brothers and sisters understand, so that they know what will happen and what they have to do in order to keep their health care services working for them.

Although it will be far more difficult for some people, if there is an exception to the change to the new Basic Health Hawai`i Plan for those who need **“life saving”** procedures, I feel certain that our COFA Migrants will work hard to make the new plan successful for them. This is only one way that they are ready to share in the work, the expenses, and the community responsibility they have willingly assumed as productive members of our **“Greater Hawai`i Family”**. They are hard workers, and they do jobs that very few people are willing to do. They pay taxes and spend their hard earned money in our economy. They are teaching their children the ways of life here in the United States and they are putting down their roots in this **“A New Homeland”** for them.

Their Micronesian homelands are rapidly disappearing below the Global Sea Rise, for which they are not at all responsible. When their homeland is gone, they intend to live their lives as many of our ancestors did by adopting the United States of America as their new home. Particularly poignant are the people from those places in Micronesia

where their homeland is already gone. With 67 atomic tests conducted in Micronesia, there are many places where humans can no longer live. Some locations are in fact, already gone, having been vaporized into white light during the years of atomic testing.

What would you do if your homeland was turned into light, buried under the sea, or made un-inhabitable to human beings forever. In fact the people of Micronesia are incredibly forgiving to the United States of America for wrongs already done to them in the past. How can we make these new "death sentences" for a people who were invited, under the rules of the Compact of Free Association, to live and work and build a new life anywhere in America? If you or I were exposed to so much radiation that it would be the same as 1.7 Hiroshima sized Atomic Bombs every morning for 12 years, would we be so forgiving of the perpetrators? Would we indeed be willing to live in a country that had done that to our families?

Micronesians are a very loving and peaceful people. We are very lucky to have their cultural heritage added to this wonderful mix of cultures here in Hawai`i.

Their deep and admirable responsibility to their expanded family relations is a "Community Value" that we should admire. We in Hawai`i, should be very happy to meet them, and learn from them. We must not abuse their kindness, their peaceful way of life, and their willingness to share all that they have with us as our new neighbors. This is only a small portion of what they offer us, here in Hawai`i, by coming to live with us and be a productive and loving part of our community.

Let us work together to prevent the loss of life, and at a very minimum, add an exception to the guidelines for the new Basic Health Hawai`i Plan, so that we do not have to learn that even a single COFA Migrant to Hawai`i has died because of the loss of "critical health services" due to the budget shortfall. We can help these people to find solutions to living with us, with out killing them. This is the only "Human" way for us to act. We must not allow the genocide of sick people for political or even for economic reasons. That is not what the "People of Hawai`i", the "People of Aloha" want! We simply must not allow this to happen.

Mahalo

A handwritten signature in black ink, appearing to read "George Andrew Downing". The signature is written in a cursive, somewhat stylized font.

Dr. Keola G.A. Downing, Ph.D.

**A Micronesians United – Big Island Supporter &  
Care Coordinator for Compact Of Free Association Migrants At Bay Clinic**