

ORIGINAL

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UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII  
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

CV 09-00409 JMS KSC

MANUEL D. SOUND and  
THOMPSON PHILLIP, each  
individually and on behalf of  
those persons similarly situated,

Plaintiffs,

vs.

LILIAN B. KOLLER, in her  
official capacity as Director of  
the State of Hawai'i,  
Department of Human Services,  
and KENNETH FINK, in his  
official capacity as State of

Case No.  
[Civil Rights Action]  
[Class Action]

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF;  
EXHIBITS "A" and "B";  
SUMMONS**

Hawai'i, Department of Human  
Services, Med-QUEST Division  
Administrator,

Defendants.

## **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This class action seeks an injunction forbidding the State of Hawai'i, Department of Human Services (DHS) from violating the constitutional rights of persons residing in Hawai'i under the Compact of Free Association ("COFA") and immigrants who have been U.S. residents for less than five years by (1) discriminating in the provision of health care benefits on the basis of alienage; and (2) reducing their health care benefits without providing constitutionally adequate due process.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331 and 1343. Plaintiffs allege violations of the Due Process and the Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution.

2. Venue is proper in the District of Hawai'i pursuant to 28 U.S.C. § 1391(b) because the events giving rise to Plaintiffs' claims occurred in this District.

## **PARTIES**

### **PLAINTIFFS**

1. Plaintiff MANUEL D. SOUND ("SOUND") is a citizen of the Federal States of Micronesia, a country with a Compact of Free Association (COFA) agreement with the United States. He is 69 years old and he has been living in Hawai'i since 2002. SOUND has diabetes, high-blood pressure and kidney disease. The State of Hawai'i, Department of Human Services (DHS) had been providing medical coverage for SOUND under a program that includes dialysis treatment, but effective September 1, 2009, SOUND will be disenrolled from that program (QExA) and forced into a new health program, Basic Health Hawai'i, that does not provide coverage for this life-saving treatment.

2. Plaintiff THOMPSON PHILLIP is a citizen of the Marshall Islands who has lived in Hawai'i for four years. PHILLIP is 50 years old and suffers from kidney disease. DHS had been providing insurance coverage for PHILLIP'S dialysis treatment, but,

effective September 1, 2009, PHILLIP will be enrolled in a new health program, Basic Health Hawai'i, that does not provide coverage for this treatment.

### **DEFENDANTS**

3. Defendant LILIAN B. KOLLER, is the Director of the State of Hawai'i, Department of Human Services and is sued in her official capacity.

4. Defendant KENNETH FINK is the Administrator of the Med-QUEST Division, State of Hawai'i, Department of Human Services and is sued in his official capacity.

### **BACKGROUND**

5. Since approximately 1997, the State of Hawai'i, Department of Human Services (DHS) had been providing health coverage for persons from the Republic of the Marshall Islands, the Republic of Palau and the Federated States of Micronesia under the Compact of Free Association (COFA) with the United States (hereinafter "COFA Residents").

6. Prior to August 2009, DHS provided health care ~~benefits to COFA Residents by enrolling them a State-funded~~ programs, including QUEST, QExA, QUEST-Net, QUEST-ACT,

SHOTT, or fee-for-service programs (collectively the “Old Programs”), under which they received benefits the same as those provided by DHS to U.S. citizens residing in Hawai`i. Under these programs, the COFA Residents received comprehensive medical care, including dialysis and chemotherapy.

7. Prior to August 2009, DHS provided health coverage under the Old Programs to persons who were legal United States’ residents for less than five years (the New Residents”). The benefits provided to these persons were the same as those provided by DHS to U.S. citizens residing in Hawai`i. The benefits included comprehensive medical care, including dialysis and chemotherapy.

8. Effective August 31, 2009, DHS disenrolled from the Old Programs all COFA Residents and all New Residents who are not pregnant and age 19 or older. See Exhibit A, (Policy and Program Development Clarification, PC 09-057, attached). After being “disenrolled,” COFA Residents and certain New Residents are eligible to enroll only in a newly created program called Basic Health Hawai`i (“BHH”), which, as described in Exhibit B, provides only a limited array of benefits.

9. The transition to BHH, effective September 1, 2009, applies to non-pregnant COFA Residents and New Residents, age 19 or older, who were enrolled in the QUEST, QUEST-NET, QUEST ACT, QExA, and SHOTT or fee-for-service programs as of July 31, 2009.

10. The BHH program does not cover dialysis, chemotherapy, or other life-saving treatment for chronic and serious illnesses.

11. Effective August 1, 2009, DHS has also been denying all applications for non-emergency medical assistance for non-pregnant COFA Residents who are age 19 or older based on their alienage.

12. In August 2009, DHS sent a letter to approximately 7500 COFA migrants and other immigrants impacted by the benefit cuts and the transition to the new BHH program.

13. The majority of individuals impacted by these benefit cuts and the transition to the BHH program did not receive this letter until sometime the week of August 17, 2009 and some did not receive it at all.

14. The DHS letter does not provide timely and adequate notice of the termination of insurance coverage for life saving treatments, such as dialysis.

15. The notice letter was written only in English, even though it was addressed to persons who do not speak English as their first language. The letter contains a notice written in a variety of languages that advised the recipients to call 1-800-316-1052 for help if they do not understand the letter. That phone number is answered—in English—by a voicemail system that provides no advice in any of the foreign languages in the notice. The letter does not explain (a) that the new BHH program provides no coverage for treatments, such as dialysis and chemotherapy; or (b) that some COFA Residents and some New Residents are entitled to continued benefits under QExA, instead of BHH.

16. As a result of this inadequate notice, many individuals impacted by the benefit cuts do not know whether, if, or from where, they will be able to receive certain lifesaving treatments and fear they will die.

## **CLASS ACTION ALLEGATIONS**

17. Plaintiffs bring this action on behalf of themselves and on behalf of a class of all those similarly situated pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The proposed class consists of:

All individuals who were disenrolled from an Old Program in August 2009, and enrolled in the BHH effective September 1, 2009 and all individuals who have been or will be denied non-emergency medical assistance, effective August 1, 2009 based on their alienage (the "Class").

18. Membership of the Class is so numerous in number that joinder of all members is impractical. There are more than 7500 COFA Residents and New Residents who are impacted by implementation of the new Basic Health Hawai'i plan

19. Common questions of law and fact exist, and include whether the DHS has violated the due process and equal protection rights of the Class.

20. The claims of the named Plaintiffs are typical of the claims of the other members of the Class, in that they have been denied health coverage based on their alienage and have been given

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inadequate notice of the termination of coverage under the Old Programs.

21. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs intend to prosecute this action rigorously in order to secure remedies for the entire Class. Counsel of record for Plaintiffs are experienced in federal civil rights litigation and class actions, including systemic litigation against state defendants challenging disability discrimination.

22. A class action is the only realistic method available for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation makes it impracticable for members of the class to seek redress individually for the wrongful conduct herein alleged. Were each individual member required to bring a separate lawsuit, the resulting multiplicity of proceedings would cause undue hardship and expense for the litigants and the Court and create the risk of inconsistent rulings which would be contrary to the interest of justice and equity.

23. Defendants have acted, refused to act, and/or failed to act in a manner that violates the constitutional rights of the

Class members entitling the Class to declaratory and injunctive relief.

## **CAUSES OF ACTION**

### **Cause of Action I**

#### **Violation of Due Process Clause of Fourteenth Amendment of the U.S. Constitution** **(Pursuant to 42 U.S.C. 1983)**

24. Named Plaintiffs reallege, as if fully set forth, each allegation set forth above.

25. The Defendants failed to provide constitutionally adequate notice of their impending disenrollment from the Old Programs to the Class, thereby denying the Class due process under the fourteenth amendment of the equal protection clause of the U.S. Constitution

### **Cause of Action II**

#### **Violation of Equal Protection Clause of Fourteenth Amendment of the U.S. Constitution** **(Pursuant to 42 U.S.C. 1983)**

26. Named Plaintiffs reallege, as if fully set forth, each allegation set forth above.

27. The Defendants are providing inferior health care benefits to the Class solely on the basis of alienage and the duration of their presence in the United States. The Class is being discriminated against on the basis of alienage and the duration of

their presence in the United States, in violation of the equal protection clause of the U.S. Constitution

**DECLARATORY AND INJUNCTIVE RELIEF  
ALLEGATIONS**

28. Named Plaintiffs reallege, as if fully set forth, each allegation set forth above.

29. An actual and immediate controversy has arisen and now exists between Plaintiffs and Defendants, which parties have genuine and opposing interests and which interests are direct and substantial. Defendants have violated, and continue to violate, Plaintiffs' constitutional rights to due process and equal protection. Plaintiffs are entitled to a declaratory and injunctive relief.

30. Plaintiffs have no adequate remedy at law. Unless enjoined by the Court, Defendants will continue to infringe Plaintiffs' constitutionally protected rights and will continue to inflict irreparable injury. This threat of injury to Plaintiffs from continuing violations requires temporary, preliminary and permanent injunctive relief.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and behalf of all persons similarly situated, respectfully request that this Court:

1. Assume jurisdiction over this action;

2. Issue a declaratory judgment stating that

Defendants have violated the due process and equal protection clauses of the United States Constitution;

3. Grant all injunctive relief necessary to cease

Defendants violations of Plaintiffs' constitutional rights;

4. Grant such other declaratory and injunctive relief

as may be appropriate;

5. Award Plaintiffs reasonable attorneys' fees,

reasonable expert witness fees, and other costs of the action

pursuant to 42 U.S.C. § 1988, and other application laws; and

6. Order such other relief as this Court deems just and

proper.

DATED: Honolulu, Hawai'i, August 31, 2009.



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PAUL ALSTON

J. BLAINE ROGERS

ZACHARY A. MCNISH

Attorneys for Plaintiffs

## POLICY AND PROGRAM DEVELOPMENT CLARIFICATION

**PPD NO/PC NO:** 09-022, PC 09-057  
**SUBJECT:** MEDICAL ASSISTANCE FOR CITIZENS FROM COUNTRIES WITH A  
COMPACT OF FREE ASSOCIATION WITH THE UNITED STATES  
**ORIGINATOR(S):** P. Higa/28137, S. Morishige/65729  
**EFFECTIVE DATE:** 08/01/09  
**ISSUE DATE:** 08/10/09

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### FOR INFORMATION:

This is to inform staff that effective 08/01/09, the State shall no longer enroll non-pregnant adults (age 19 years and older) from countries that have a Compact of Free Association (COFA) agreement with the United States (U.S.) into the QUEST, QUEST-Net, QUEST ACE, QExA, the State of Hawaii Organ and Tissue Transplant (SHOTT) or fee-for-service programs. The COFA countries are the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. PPD 07-01, "Aliens Covered by Compacts of Free Association" (S. Kawada, issued 02/10/97) is rescinded.

Citizens from a COFA country have not been eligible for federally-funded medical assistance, except for emergency services, since 08/96. The Department 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. The Department can no longer afford to sustain the level of services that are being provided with State funds. A new State-funded program, Basic Health Hawaii (BHH), will provide medical coverage effective 09/01/09 to certain aliens who do not qualify for federally funded medical assistance. Eligible individuals shall be enrolled in a BHH health plan that will provide coverage of contracted medical services similar to the QUEST-Net and QUEST-ACE programs.

Non-pregnant COFA adults who are enrolled in the QUEST, QUEST-Net, QUEST ACE, QExA, SHOTT, or fee-for-service programs as of 07/31/09 will be transitioned to BHH effective 09/01/09. COFA pregnant women and children under age 19 will remain in their current programs because they qualify for federally-funded medical assistance. Staff shall receive operational instructions on how to transition these enrollees to BHH in a subsequent document.

### FOR ACTION

Effective 08/01/09, non-pregnant COFA adults that apply for medical assistance shall only be eligible for emergency medical assistance under the provisions of H.A.R. Chapter 17-1723, "Medical Assistance to Aliens and Refugees". Staff shall deny applications for non-emergency medical assistance for a non-pregnant COFA individual who is age 19 and older. The basis of the denial shall be the HAR §17-1714-28 which specifies that aliens must meet the definition of a qualified alien in order to receive medical assistance. A COFA individual does not meet the definition of a qualified alien under HAR §17-1714-2. A COFA who is under age 19 years or who is a pregnant woman may be eligible for Medicaid coverage under the provisions of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). Thus, eligibility determinations for COFA children and pregnant women shall continue to be made in the appropriate categories (refer to PPD 09-019, "CHIPRA: Immigrant Children and Pregnant Women", issued 07/09/09).

Exhibit A

**Medical Only Applications**

1. Screen the application for non-pregnant COFA adults (age 19 and older).
2. If the application is only for the non-pregnant COFA adult, register the application and deny the application on the appropriate "ED" screen with denial code "AI" (citizenship). Send denial notice M208 and check box for failure to meet citizenship or alien status requirements (HAR §17-1714-28).
3. If there are other family members who are not a non-pregnant COFA adult, register the case in the appropriate program/category of the family members. Use "MT" as the participation code for the non-pregnant COFA adult. Process eligibility for the other family members. Send denial notice M208 for the non-pregnant COFA adult.

**Financial Applications**

Effective 08/01/09, staff shall deny medical assistance for a non-pregnant COFA adult when a financial assistance application is approved. Other household members who are children under 19 years of age, a pregnant woman, or U.S. citizens shall be determined eligible for medical assistance when the financial application is approved. These procedures are changed from the instructions issued in the BESSD memorandum. These procedures were not intended to change the Standard Operation Procedures (SOP). The Neighbor Island Branch shall follow the Standard Operation Procedures (SOP) and implement these procedures.

1. Screen the application for non-pregnant COFA adult(s) (age 19 and older).
2. When the household consists of only non-pregnant adult COFA applicants:
  - a. If the household is eligible for financial assistance, deny medical by inputting code "AFI" on the MESE screen, and use the start date of the financial assistance. Send notice A286 (Note: This notice is being revised to address the COFA adult denial). For the Neighbor Islands Unit, this applies only if the denial has not been completed by the MQD unit.
  - b. If the financial assistance application is denied, send the appropriate denial notice for financial assistance and forward the medical assistance application to the appropriate MQD Unit. This does not apply to the Neighbor Islands as the medical application is sent to MQD when the application is initially received in the BESSD unit.
3. When the household consists of a non-pregnant COFA adult and other applicants:
  - a. If the household is eligible for financial assistance, deny medical assistance for the non-pregnant COFA adult by inputting code "AFI" on MESE screen (for the non-pregnant adults only), and use the start date of the financial assistance. Send the denial notice A286 (for the non-pregnant adults). For the Neighbor Islands Unit, this applies only if the denial has not been completed by the MQD unit.
  - b. If the financial assistance application is denied, send appropriate denial notice for financial assistance and forward medical assistance application to the appropriate MQD

Unit. This does not apply to the Neighbor Islands as the medical application is sent to MQD when the application is initially received in the BESSD unit.

If there are any questions, please contact MQD/Systems Office or PPDO for assistance.

/s/ Patricia Johnson  
For MQDA

/s/ Luanne Murakami  
For BESSDA

c: MQD Branches (CSB, HCMB, MSB), MQD Staff Offices (FO, SO, TO), BESSDA, A-SSDA, AAO, MSO (QC), OIT



# BASIC HEALTH HAWAI'I



## What is Basic Health Hawai'i?

Basic Health Hawai'i is a health insurance program. It is for non-pregnant adults, age 19 or older. You must be a qualified alien or non-immigrant. You must live in Hawai'i. You must not be eligible for Federal Medicaid programs.

## Basic Health Hawai'i Benefits Per Benefit Year

- 12 Outpatient physician visits per year
- 10 Inpatient hospital days per year and inpatient physician visits for medically necessary medical care, surgery, psychiatric care and substance abuse treatment
- 6 Mental health visits per year
- 5 generic medication prescriptions per month to include insulin, plus specific contraceptives and diabetes supplies
- Emergency room services

## Do I Have To Pay For These Services?

No

## Also, Dental Services Per Benefit Year

Only for Dental emergencies to eliminate dental pain, infection and acute injuries.

To ask questions, call Med-QUEST Customer Service:

- Statewide (toll-free) 1-800-316-8005
- Statewide V/TTY Users (toll-free) 1-800-603-1201

Free interpreter available to provide help

Ren aninnis-ren pekin chiaku non fosun fonuomw kopwe kokori 1(800) 316-8005.  
 Ne kwaikuj jibañ kin kajin eo am, kir lok 1 (800) 316-8005.  
 Ma komw anahne sawas ni mahsen en Pohnpei, eker delepwohn nempe 1-800-316-8005.  
 Faanra gabaadag ni nge ayweg gem be' nima non nu wa'ab, mu call nag e 1(800) 316-8005.  
 A chomousbech a ngeseu el tekof er a beluam e momkedong er a 1(800) 316-8005.  
 Pang nu ke 1(800) 316-8005 kom fin enenu kasruh in kas Kosrae.  
 To get help in your language call 1(800) 316-8005.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

MANUEL D. SOUND and  
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Case No.  
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**SUMMONS**

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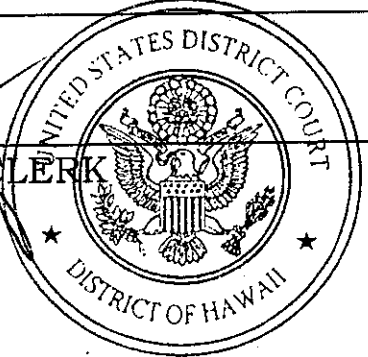
To the above-named Defendants:

You are hereby summoned and required to serve upon  
ALSTON HUNT FLOYD & ING, attorneys for Plaintiffs, whose  
address is 1001 Bishop Street, Suite 1800, Honolulu, Hawai'i  
96813, an answer to the Complaint for Declaratory and Injunctive

Relief which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint for Declaratory and Injunctive Relief. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

DATED: Honolulu, Hawai'i, AUG 31 2009

**SUE BEITIA**  
\_\_\_\_\_  
CLERK  
\_\_\_\_\_  
(BY) DEPUTY CLERK

The seal of the United States District Court, District of Hawaii, is circular. It features an eagle with spread wings in the center, perched on a shield. The words "UNITED STATES DISTRICT COURT" are written in a circle around the eagle, and "DISTRICT OF HAWAII" is written at the bottom. Two stars are positioned on either side of the bottom text.