

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop N2-20-16  
Baltimore, Maryland 21244-1850



Office of Strategic Operation and Regulatory Affairs/Openness/Transparency & Accountability Group

Refer to: Control Number 081920117023

**AUG 13 2012**

Mr. Andrew Walden  
Hawaii Free Press  
POB 5062  
Hilo, HI 96720

Dear Mr. Walden:

This letter is in response to your Freedom of Information Act (5 U.S.C. § 552) request of 8/9/11, which you sent to the Office of Assistant Secretary for Public Affairs (OASPA). OASPA forwarded your request to me because of my responsibility under the FOIA. Within that correspondence, you requested the 2011 HHS opinion, referred to by Hawaii Governor Neil Abercrombie, in his July 12<sup>th</sup> statement, issued in conjunction with his decision to sign Hawaii HB 1134 into law.

After a careful search of the Centers for Medicare & Medicare Services' (CMS') files, i.e., a search reasonably calculated to locate records responsive to your request and employing reasonable standards, we were unable to locate records responsive to your request.

If you view our response as an adverse determination, you may appeal. To do so, you must put your appeal in writing and mail it within 30 days of the date of this letter to: The Deputy Administrator and Chief Operating Officer, CMS, C5-16-03, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. Please mark your envelope "Freedom of Information Act Appeal" and enclose a copy of this letter with your appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Marquis".

Michael S. Marquis  
Director  
Division of Freedom of Information



Case No. 2012-0108KG

February 8, 2012

Mr. Andrew Walden  
Hawaii Free Press  
PO Box 5062  
Hilo, HI 96720

Dear Mr. Walden:

This is in response to your August 9, 2011, Freedom of Information Act (FOIA) request for all documents and communications between officials of the State of Hawaii and the U.S. Department of Labor (DOL) related to and including the 2011 DOL opinion referred to by Hawaii Governor Neil Abercrombie in his July 12th statement issued in conjunction with Governor Abercrombie's decision to sign Hawaii HB 1134 into law.

Your request was forwarded to this office by the DOL which located four (4) pages of responsive records, which are enclosed, related to your request that originated with the U.S. Department of Health and Human Services (DHHS).

There are no fees for FOIA services in this instance as the billable costs do not exceed our \$25 threshold for billing purposes.

Sincerely yours,

A handwritten signature in black ink that reads "Kimberly N. Epstein". The signature is written in a cursive style.

Kimberly Epstein  
Team Leader, FOI/Privacy Acts Division  
Office of Public Affairs

**From:** [Debbie.Shimizu@hawaii.gov](mailto:Debbie.Shimizu@hawaii.gov) [<mailto:Debbie.Shimizu@hawaii.gov>]  
**Sent:** Tuesday, June 21, 2011 08:35 PM  
**To:** [Amy.Asselbayer@hawaii.gov](mailto:Amy.Asselbayer@hawaii.gov) <[Amy.Asselbayer@hawaii.gov](mailto:Amy.Asselbayer@hawaii.gov)>  
**Cc:** Alborg, Eric (HHS/IGA); Schultz, Herb (HHS/IGA/ORD); Larissa Kick <[Larissa.Kick@hawaii.gov](mailto:Larissa.Kick@hawaii.gov)>  
**Subject:** Re: Priority - Re: Hawaii's prepaid health care act

Yes, these questions are correct. thank you.

Debbie Shimizu  
Legislative Liaison  
Office of the Governor  
State Capitol Room 415  
415 S. Beretania St.  
Honolulu, HI 96813  
Phone: 808-586-0073  
email: [Debbie.Shimizu@hawaii.gov](mailto:Debbie.Shimizu@hawaii.gov)

From: Amy Asselbayer/Gov/StateHIUS  
To: "Schultz, Herb (HHS/IGA/ORD)" <[Herb.Schultz@hhs.gov](mailto:Herb.Schultz@hhs.gov)>  
Cc: "Alborg, Eric (HHS/IGA)" <[Eric.Alborg@hhs.gov](mailto:Eric.Alborg@hhs.gov)>, "Larissa Kick" <[Larissa.Kick@hawaii.gov](mailto:Larissa.Kick@hawaii.gov)>, "Debbie Shimizu" <[debbie.shimizu@hawaii.gov](mailto:debbie.shimizu@hawaii.gov)>  
Date: 06/21/2011 01:45 PM  
Subject: Re: Priority - Re: Hawaii's prepaid health care act

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Herb - Yes, I am in the midst of a bunch of meetings, as I'm sure you are. Wednesday or Thursday will work and Larissa can follow-up on the timing. Debbie Shimizu will also be on the call and can clarify whether my best description of the questions is correct (see below).

(1) Will the passage of the bill jeopardize Hawaii's ERISA waiver?

(2) What is the view of DoL and/or DHHS on the language in ACA attempting to protect the mandate under Hawaii's Prepaid Healthcare Act?

Mahalo -  
Amy

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**From:** "Schultz, Herb (HHS/IGA/ORD)" [Herb.Schultz@hhs.gov]  
**Sent:** 06/21/2011 12:47 PM AST  
**To:** Amy Asselbaye  
**Cc:** "Alborg, Eric (HHS/IGA)" <Eric.Alborg@hhs.gov>  
**Subject:** Priority - Re: Hawaii's prepaid health care act

I can coordinate a Wed or Thurs call. Possible to give us a few questions so I have all right players? What works for you?

**From:** [Amy.Asselbaye@hawaii.gov](mailto:Amy.Asselbaye@hawaii.gov) [mailto:[Amy.Asselbaye@hawaii.gov](mailto:Amy.Asselbaye@hawaii.gov)]  
**Sent:** Monday, June 20, 2011 11:59 PM  
**To:** Schultz, Herb (HHS/IGA/ORD)  
**Subject:** Re: Hawaii's prepaid health care act

Just checking in when you have a minute - we are approaching our June 27th deadline to announce intent for any vetoes

Mahalo -  
Amy

**From:** "Schultz, Herb (HHS/IGA/ORD)" <Herb.Schultz@hhs.gov>  
**To:** "Amy.Asselbaye@hawaii.gov" <[Amy.Asselbaye@hawaii.gov](mailto:Amy.Asselbaye@hawaii.gov)>  
**Date:** 06/14/2011 01:57 PM  
**Subject:** Re: Hawaii's prepaid health care act

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I have one last discussion early am tomorrow and will reach back to you. Have talked with various divisions. Did not want you to think I forgot.

**From:** [Amy.Asselbaye@hawaii.gov](mailto:Amy.Asselbaye@hawaii.gov) [mailto:[Amy.Asselbaye@hawaii.gov](mailto:Amy.Asselbaye@hawaii.gov)]  
**Sent:** Wednesday, June 01, 2011 09:15 PM  
**To:** Schultz, Herb (HHS/IGA/ORD)  
**Subject:** RE: Hawaii's prepaid health care act

speaking of - he's meeting with an LGBT group about promoting civil unions travel to Hawaii

**From:** "Schultz, Herb (HHS/IGA/ORD)" <Herb.Schultz@hhs.gov>  
**To:** "Amy.Asselbaye@hawaii.gov" <[Amy.Asselbaye@hawaii.gov](mailto:Amy.Asselbaye@hawaii.gov)>  
**Date:** 06/01/2011 03:14 PM  
**Subject:** RE: Hawaii's prepaid health care act

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Look forward to it. Please give my best to the governor!

Herb

Herb K. Schultz  
Regional Director  
U.S. Department of Health and Human Services, Region IX  
90 Seventh Street, Suite 5-100

San Francisco, CA 94103  
(415) 437-8500 - Main Number  
(415) 437-8502 - Direct Number  
(415) 265-7049 - Cell Phone  
(415) 437-8505 - Fax

[herb.schultz@hhs.gov](mailto:herb.schultz@hhs.gov)

**From:** [Amy.Asselbayer@hawaii.gov](mailto:Amy.Asselbayer@hawaii.gov) [<mailto:Amy.Asselbayer@hawaii.gov>]

**Sent:** Wednesday, June 01, 2011 6:13 PM

**To:** Schultz, Herb (HHS/IGA/ORD)

**Subject:** RE: Hawaii's prepaid health care act

ok - thanks, Herb.

Talk to you then.

Amy

**From:** "Schultz, Herb (HHS/IGA/ORD)" <[Herb.Schultz@hhs.gov](mailto:Herb.Schultz@hhs.gov)>  
**To:** "[Amy.Asselbayer@hawaii.gov](mailto:Amy.Asselbayer@hawaii.gov)" <[Amy.Asselbayer@hawaii.gov](mailto:Amy.Asselbayer@hawaii.gov)>  
**Date:** 06/01/2011 03:09 PM  
**Subject:** RE: Hawaii's prepaid health care act

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I can witch a call at 1 our time, 10 yours. Will that work?

Herb K. Schultz  
Regional Director  
U.S. Department of Health and Human Services, Region IX  
90 Seventh Street, Suite 5-100  
San Francisco, CA 94103  
(415) 437-8500 - Main Number  
(415) 437-8502 - Direct Number  
(415) 265-7049 - Cell Phone  
(415) 437-8505 - Fax

[herb.schultz@hhs.gov](mailto:herb.schultz@hhs.gov)

**From:** [Amy.Asselbayer@hawaii.gov](mailto:Amy.Asselbayer@hawaii.gov) [<mailto:Amy.Asselbayer@hawaii.gov>]

**Sent:** Wednesday, June 01, 2011 6:06 PM

**To:** Schultz, Herb (HHS/IGA/ORD)

**Subject:** Re: Hawaii's prepaid health care act

tomorrow I'm free after 10 am, before 2 pm (Hawaii Std Time) - anytime in there good for you?

**From:** "Schultz, Herb (HHS/IGA/ORD)" <[Herb.Schultz@hhs.gov](mailto:Herb.Schultz@hhs.gov)>  
**To:** "[Amy.Asselbayer@hawaii.gov](mailto:Amy.Asselbayer@hawaii.gov)" <[Amy.Asselbayer@hawaii.gov](mailto:Amy.Asselbayer@hawaii.gov)>  
**Date:** 06/01/2011 03:03 PM  
**Subject:** Re: Hawaii's prepaid health care act

Always happy to chat/help. My cell is 415-265-0709. I am free after 7 PM (PT) tonight and later or is tomorrow better.

**From:** [Amy.Asselbayer@hawaii.gov](mailto:Amy.Asselbayer@hawaii.gov) [mailto:[Amy.Asselbayer@hawaii.gov](mailto:Amy.Asselbayer@hawaii.gov)]  
**Sent:** Wednesday, June 01, 2011 08:39 PM  
**To:** Schultz, Herb (HHS/IGA/ORD)  
**Subject:** Hawaii's prepaid health care act

Herb - Last week after a good interview for our healthcare coordinator, I wanted to call you but couldn't find a number for you in all my various contact lists. So, this issue we have with a bill from the Hawaii State Legislature reminded me that I actually have a couple things to contact you about.

(1) The Governor asked if I could contact CMS on how they might view HB1134 (see link below). I understand that you and others may have spoken to HMSA during the recent legislative session about this bill. The Governor wants to know if you could suggest who I should reach out to for an opinion (formal or informal) on the bill. The questions surround the concern that even slightly amending Hawaii's Prepaid Health Care Act to remove the "sunset clause" could spur a legal challenge that could bring down our whole employer mandate/pre-emption to ERISA. Your advice?



Aloha -  
Amy

----- Forwarded by Amy Asselbayer/Gov/StateHIUS on 06/01/2011 12:53 PM -----

From: Debbie Shimizu/Gov/StateHIUS  
To: Amy Asselbayer/Gov/StateHIUS@StateHIUS  
Date: 05/06/2011 04:28 PM  
Subject: hb1134 re: prepaid health care act

Amy, the Attorney General thought it would be better to contact the Feds first before I speak with Sen. Baker. Would you mind checking with "the DC folks" on their take on our prepaid health care act issue?

Here is a list of who HMSA spoke with: U.S. Department of Health and Human Services, meeting organized through Center for Consumer Information and Insurance Oversight in the Centers for Medicare and Medicaid Services: [leslie.shah@hhs.gov](mailto:leslie.shah@hhs.gov), [amanda.cowley@hhs.gov](mailto:amanda.cowley@hhs.gov), [Barbara.menard@hhs.gov](mailto:Barbara.menard@hhs.gov), [Jennifer.Snow@cms.hhs.gov](mailto:Jennifer.Snow@cms.hhs.gov), [Shelley.Bain@hhs.gov](mailto:Shelley.Bain@hhs.gov), and [Chiquita.Brooks-LaSure@hhs.gov](mailto:Chiquita.Brooks-LaSure@hhs.gov).

- Well aware of Prepaid and see no conflict between the Affordable Care Act and Prepaid; willing to work with us on allowing Prepaid to coexist with ACA

Here is a link to the bill that passed the Legislature: [http://www.capitol.hawaii.gov/session2011/bills/HB1134\\_SD2 .pdf](http://www.capitol.hawaii.gov/session2011/bills/HB1134_SD2.pdf)