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April 3, 2003

VIA FACSIMILE # 593-2157 AND MAIL

Dr. J. N. Musto, Executive Director  
University of Hawaii Professional Assembly  
1017 Palm Drive  
Honolulu, HI 96814

Re: Hawaii Employer-Union Health Benefits Trust  
Fund

Dear Dr. Musto:

We understand that the Hawaii Employer-Union Health Benefits Trust Fund ("EUTF") has requested that the University of Hawaii Professional Assembly ("UHPA") provide it with certain information in order to facilitate enrollment of UHPA members in the EUTF's health and other benefit plans. Specifically, the EUTF has requested the following information for each UHPA member: name, social security number, date of birth, current plan (e.g. Kaiser or HMSA), and listing of dependents. You have raised a concern that providing the requested information would violate the Health Insurance Portability and Accountability Act ("HIPAA") privacy rule.<sup>1</sup> For the following reasons, we do not believe that the furnishing of such information would violate the HIPAA privacy rule.

First, as you know, health plans are not required to comply with the HIPAA privacy rule until April 14, 2003.

<sup>1</sup> 45 C.F.R. Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information.

Dr. J. N. Musto  
April 3, 2003  
Page 2

See 45 C.F.R. §164.534(b)(1). Thus, provision of the requested information prior to that date should not constitute a violation of the HIPAA privacy rule.

Second, there is a question as to whether the requested information is "protected health information" or "individually identifiable health information" as defined by the HIPAA privacy rule. The limited information requested does not relate to the past, present, or future physical or mental health or condition of an individual. Further, aside from identifying the current and possible future health plan provider, the requested information would not appear to relate to the past, present or future payment for the provision of health care to an individual. See 45 C.F.R. §160.103 and §164.501.

Third, under the HIPAA privacy rule, a covered entity may disclose protected health information to another covered entity for the payment activities of the entity that receives the information. See 45 C.F.R. §164.506(c)(3). "Payment" under the privacy rule includes activities undertaken by a health plan to "obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan." See 45 C.F.R. §164.501. Such activities include determining eligibility or coverage and billing, collection and related health care data processing. Ibid. We understand that the requested information is necessary for the EUTF to enroll potential employee-beneficiaries and dependent-beneficiaries and fulfill its responsibilities for coverage and provision of benefits. We understand that the requested information will be used in connection with determining eligibility or coverage, and later may be used in billing, collection and related health care data processing.

Fourth, under the HIPAA privacy rule, a covered entity may disclose protected health information to the extent that such is required by law. See 45 C.F.R. §164.512(a)(1). Under Section 87A-24(9), HRS, the EUTF board may require any department, agency or employee of the State to furnish information to the board to carry out the purposes of Chapter 87A. Under the regulations of the

Dr. J. N. Musto  
April 3, 2003  
Page 3

Hawaii Public Employers Health Fund ("PEHF"), employee organizations are required to furnish records and reports about their health benefit plans as requested by PEHF board, e.g., §6-34-9(3)(A), Title 6, Chapter 34, Hawaii Administrative Rules. Thus, disclosure of the requested information can be and is required by law.

Finally, we do not think that disclosure of the requested information violates the spirit or intent of the HIPAA privacy rule. One of the main concerns behind the HIPAA privacy rule was the potential harm that could result to individuals from the unwarranted dissemination of information about their physical or mental health or condition. In this case, no information about any individual's physical or mental health or condition is being disclosed. The disclosure will be only to the EUTF, which has to have this information anyway in order to enroll UHPA members into the EUTF's health and other benefit plans. As we understand it, the only further disclosure contemplated would be to send the information back to the individuals involved to help them enroll in the EUTF's new health benefit plans.

In closing, I would note that we cannot guarantee that the federal authorities or courts will adopt our view of this matter. If you need any further information, please let me know.

Very truly yours,

/s/

Mark J. Bennett  
Attorney General

MJB/BPA:mmc

cc. Mark Fukuhara, Administrator  
Hawaii Employer-Union Health Benefits Trust Fund