




I MINA'TRENTAI UNU NA LIHESLATURAN GUAHAN
2011 (FIRST) Regular Session

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Bill No. 249-31(COR)

Introduced by:

D. G. RODRIGUEZ, JR. 
M. SILVA TAIJERON 
V. A. ADA 

AN ACT TO AUTHORIZE THE DEPARTMENT OF PUBLIC HEALTH & SOCIAL SERVICES DIRECTOR TO CHARGE THIRD PARTY PAYERS, FIRST, FOR SERVICES PROVIDED TO INDIVIDUALS WHO QUALIFY UNDER ANY WELFARE PROGRAM (MEDICAID, MEDICALLY INDIGENT PROGRAM, ETC.) BY ADDING A NEW ARTICLE 12 TO CHAPTER 2, TITLE 10, GUAM CODE ANNOTATED.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that there is no Medicaid or Medically Indigent Program recovery and reimbursement policy from third-party payers in the Guam statute. In the enactment of the Deficit Reduction Act of 2005 (PL. 109-761) every State and Territory participating under Title XIX of the Social Security Act must comply with the changes to the third-party liability policies of the Medicaid program under Section 6035 of the DRA amended section 1902 (a)(25). The amendment requires every State and Territory to:

(1) Clarify which specific entities are considered “third parties” and “health insurers” that may be liable for payment and that cannot discriminate against individuals based on their eligibility for Medicaid; and

(2) Require that states pass laws requiring health insurers: provide the state with coverage, eligibility and claims data needed by the state to identify potentially liable third parties; honor assignments to the state of a

1 Medicaid/Medically Indigent recipient’s right to payment by such insurers for
2 health care items or services; and not deny such assignment or refuse to pay
3 claims submitted by Medicaid or the Medically Indigent Program based on
4 procedural reasons

5 Any State or Territory not in compliance with this Act will be sanctioned.
6 The DPHSS has received numerous phone calls and letters from the federal
7 government inquiring on the status of compliance of the Deficit Reduction Act of
8 2005.

9 **Section 2.** A new Article 12 is hereby added to Chapter 2 of Title 10, Guam
10 Code Annotated, to read:

11 **“ARTICLE 12**

12 **§3000. Authority of the Department of Public Health and Social**
13 **Services.** The Department of Public Health and Social Services is hereby
14 authorized to recover from third-party payers for services provided to recipients of
15 Medicaid/Medically Indigent Program, etcetera.

16 **§3001 Third-Party Payer Basis and Purpose.** This Article sets forth the
17 Department of Public Health & Social Services’ (DPHSS) Medicaid and Medically
18 Indigent State Plan requirements concerning:

19 (a) The legal liability of third parties to pay for services provided under the
20 plan;

21 (b) Assignment to the DPHSS of an individual's rights to third party
22 payments; and

1 (c) Cooperative agreements between the DPHSS, Division of Social Services and
2 other entities for obtaining third party payments.

3 **§3002 Definitions**

4 (a) “DPHSS” shall mean the Department of Public Health & Social
5 Services;

6 (b) “Director” shall mean the Director of the Department of Public Health
7 & Social Services;

8 (c) “Health care insurer” shall mean a self-insured health benefit plan, a
9 group health plan as defined in section 607(1) of the employment retirement
10 income security act of 1974, a pharmacy benefit manager or any other party that by
11 statute, contract or agreement is responsible for paying for items or services
12 provided to an eligible person under this act,

13 (d) “Health care services” includes products provided or purchased through
14 an approved facility

15 (e) “Insurance, medical service, or health plan” includes a preferred
16 provider organization, an insurance plan described as Medicare supplemental
17 insurance, and a personal injury protection plan or medical payments benefit plan
18 for personal injuries resulting from the operation of a motor vehicle.

19 (f) “Private insurer” means:

20 (1) Any commercial insurance company offering health or casualty
21 insurance to individuals or groups (including both experience-rated
22 insurance contracts and indemnity contracts);

23 (2) Any profit or nonprofit prepaid plan offering either medical services
24 or full or partial payment for services included in the State plan; and

25 (3) Any organization administering health or casualty insurance plans for
26 professional associations, unions, fraternal groups, employer-

1 employee benefit plans, and any similar organization offering these
2 payments or services, including self-insured and self-funded plans
3

4 (g) “*Third-party payer*” means an entity that provides an insurance, medical
5 service, or health plan by contract or agreement, including an automobile liability
6 insurance or no fault insurance carrier, and any other plan or program that is
7 designed to provide compensation or coverage for expenses incurred by a
8 beneficiary for health care services or products.

9 (h) “*Title IV-D agency*” means the organizational unit in the State that has
10 the responsibility for administering or supervising the administration of a State
11 plan for child support enforcement under title IV-D of the Act.

12 **§3003. State Plan Requirements**

13 (a) The Division of Social Services State Plan must provide for:

14 (1) Identifying third parties liable for payment of services under the plan
15 and for payment of claims involving third parties.

16 (2) Assignment of rights to benefits, cooperation with the agency in
17 obtaining medical support or payments, and cooperation in identifying
18 and providing information to assist the State in pursuing any liable
19 third parties; and

20 (3) Assuring the requirements for cooperative agreements and incentive
21 payments for third party collections are met.

22 (4) On or before January 1 of each year, the Director shall publish a
23 report on health care insurer compliance with the claims data

24 **§4004. Health care services incurred on behalf of covered beneficiaries;**
25 **collection from third-party payer.**

1 (a) In the case of a person who is a covered beneficiary, the DPHSS shall
2 have the right to collect from a third-party payer reasonable charges for health care
3 services incurred by the DPHSS on behalf of such person through a health facility
4 to the extent that the person would be eligible to receive reimbursement or
5 indemnification from the third-party payer if the person were to incur such charges
6 on the person's own behalf. If the insurance, medical service, or health plan of that
7 payer includes a requirement for a deductible or copayment by the beneficiary of
8 the plan, then the amount that the DPHSS may collect from the third-party payer is
9 a reasonable charge for the care provided less the appropriate deductible or
10 copayment amount.

11 (b) A covered beneficiary may not be required to pay an additional amount
12 to the DPHSS for health care services by reason of this section.

13 (c) No provision of any insurance, medical service, or health plan contract
14 or agreement having the effect of excluding from coverage or limiting payment of
15 charges for certain care shall operate to prevent collection by the DPHSS under
16 subsection (a) if that care is provided:

- 17 (1) Through an approved facility;
- 18 (2) Directly or indirectly by a governmental entity;
- 19 (3) To an individual who has no obligation to pay for that care or for
20 whom no other person has a legal obligation to pay; or
- 21 (4) By a provider with which the third party payer has no participation
22 agreement.

23 (d) Under regulations prescribed under subsection (e), records of the facility
24 that provided health care services to a beneficiary of an insurance, medical service,
25 or health plan of a third-party payer shall be made available for inspection and

1 review by representatives of the payer from which collection by the DPHSS is
2 sought.

3 (e) To improve the administration of this section the Director may prescribe
4 regulations providing for the collection of information regarding insurance,
5 medical service, or health plans of third-party payers held by covered beneficiaries.

6 (f) Information obtained under this subsection may not be disclosed for any
7 purpose other than to carry out the purpose of this section

8 (g) Amounts collected under this section from a third-party payer or under
9 any other provision of law from any other payer for health care services provided
10 at or through an approved facility shall be credited to the appropriation supporting
11 the maintenance and operation of the facility and shall not be taken into
12 consideration in establishing the operating budget of the facility.

13 (h) In the case of a third-party payer that is an automobile, liability insurance
14 or no fault insurance carrier, the right of the DPHSS to collect under this section
15 shall extend to health care services provided to a person entitled to health care
16 under this Act.

17 **§3005. Obtaining health insurance information: Initial application and**
18 **redetermination processes for Medicaid eligibility.**

19 (a) If the Medicaid agency determines eligibility for Medicaid, it must,
20 during the initial application and each redetermination process, obtain from the
21 applicant or recipient such health insurance information as would be useful in
22 identifying legally liable third party resources so that the agency may process
23 claims under the third party liability payment procedures. Health insurance
24 information may include, but is not limited to, the name of the policy holder, his or

1 her relationship to the applicant or recipient, the social security number (SSN) of
2 the policy holder, and the name and address of insurance company and policy
3 number.

4 (b) Cooperation in establishing paternity and in obtaining medical support
5 and payments and in identifying and providing information to assist in pursuing
6 third parties who may be liable to pay.

7 **§3006. Confidentiality of information obtained.** Any information
8 obtained by the director or the administration under this section shall be
9 maintained as confidential as required by the health insurance portability and
10 accountability act of 1996 (p. l. 104-191; 110 stat. 1936) and other applicable law
11 and shall be used solely for the purpose of determining whether a health care
12 insurer was also providing coverage to an individual during the period that the
13 individual was an eligible member, for the purposes of avoiding payments by the
14 system for services covered through other insurance and for enforcing the
15 administration's right to assignment

16 **§3007. Legal proceedings, compromise, settlement or waiver.**

17 (a) The DPHSS may institute and prosecute legal proceedings against a
18 third-party payer to enforce a right of the DPHSS under this section.

19 (b) The Director may compromise, settle, or waive a claim of the DPHSS
20 under this section.

21 **§3008. Reports.** The agency must provide such reports with respect to the
22 data exchanges and trauma code edits set forth, as the Director prescribes for the
23 purpose of determining compliance under and evaluating the effectiveness of the
24 third party liability identification system.

1 **§3009. Rules and Regulations.** The DPHSS, Welfare Division shall adopt
2 necessary rules and regulations for the purposes of this Act and submit to the *I*
3 *Liheslaturan Guâhan* as per the Adjudication Act.

4 **§3010. Severability.** *If* any provision of this Law or its application to any
5 person or circumstance is found to be invalid or contrary to law, such invalidity
6 shall *not* affect other provisions or applications of this Law which can be given
7 effect without the invalid provisions or application, and to this end the provisions
8 of this Law are severable.”