

I Mina' Trentai Dos Na Liheslaturan Guåhan

Resolutions Log Sheet

Resolution No.	Sponsor	Title	Date Intro	Date of Presentation	Date Referred	Committee / Ofc Referred	Date Adopted
316-32 (COR)	Dennis G. Rodriguez, Jr. B.J.F. Cruz C hris M. Duenas	RELATIVE TO EXPRESSING THE CONCERNS OF I LIHESLATURAN GUÅHAN [32ND GUAM LEGISLATURE] RELATIVE TO THE APPLICABILITY OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT TO GUAM, AND REQUESTING EQUITABLE RECONSIDERATION OF ITS APPLICABILITY TO GUAM BY THE PRESIDENT OF THE UNITED STATES OF AMERICA, MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES, THE U.S. SENATE, SECRETARY, U.S. DEPARTMENT OF THE HEALTH AND HUMAN SERVICES.	2/5/14 12: 57 p.m.	SUB	2/5/2014	Committee on Health & Human Services, Health Insurance Reform, Economic Development, and Senior Citizens	02/14/14

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

Resolution No. 316-32 (COR)

As substituted by the Author.

Introduced by:

Dennis G. Rodriguez, Jr.
B. J.F. Cruz
Chris M. Dueñas
T. C. Ada
V. Anthony Ada
FRANK B. AGUON, JR.
Michael T. Limtiaco
Brant T. McCreddie
Tommy Morrison
T. R. Muña Barnes
Vicente (ben) C. Pangelinan
R. J. Respicio
Michael F. Q. San Nicolas
Aline A. Yamashita, Ph.D.
Judith T. Won Pat, Ed.D.

Relative to expressing the concerns of *I Mina'Trentai Dos Na Liheslaturan Guåhan* (the 32nd Guam Legislature), relative to the applicability of the Patient Protection and Affordable Care Act to Guam, and to requesting equitable reconsideration of its applicability to Guam by the President of the United States of America, Members of the U.S. House of Representatives and the U.S. Senate, and the Secretary of the U.S. Department of Health and Human Services.

1 **BE IT RESOLVED BY *I MINA'TRENTAI DOS NA LIHESLATURAN***
2 ***GUÅHAN*:**

3 **WHEREAS**, the Patient Protection and Affordable Care Act (PPACA) is
4 intended to promote healthcare for millions of Americans in the fifty (50) states

1 and the District of Columbia, by providing access to affordable healthcare,
2 ensuring quality through market reforms, and advancing prevention and public
3 health; and

4 **WHEREAS**, existing health insurance providers in the U.S. offshore
5 territories shall have to meet higher standards of minimum coverage pursuant to
6 the market reforms, which include: essential health benefits, guaranteed issue,
7 guaranteed renewability, prohibitions on excluding preexisting conditions, adjusted
8 community rating, and other consumer protections; and

9 **WHEREAS**, the PPACA also seeks to set up a healthcare exchange system
10 nation-wide, through which Americans could buy or purchase not only affordable
11 coverage, but coverage with better essential health benefits; and

12 **WHEREAS**, to help accomplish this in the fifty (50) states and Washington,
13 D.C., the PPACA additionally provides the means to partially offset the states'
14 costs of operating the exchanges, or the optional implementation of an equivalent
15 qualifying program, through what are known as the individual and business
16 mandates, as provided pursuant to specific applicable excise tax provisions of the
17 Internal Revenue Code; and

18 **WHEREAS**, the Public Health Services Act (PHSA), that includes benefits
19 for the territories, provides that, "The term "State" means each of the several
20 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American
21 Samoa, and the Northern Mariana Islands"(PHSA 2791(d)(14)); and

22 **WHEREAS**, in Title I of the PPACA, it amends the PHSA, and provides
23 that, "In this Title, the term "State" means each of the 50 States and the District of
24 Columbia" (ACA 1304(d)); and

25 **WHEREAS**, the U.S. Department of Health and Human Services has
26 determined that PPACA's Public Health Service Act provisions, to include market
27 reforms (e.g., guaranteed issue, guaranteed renewability, prohibitions on

1 preexisting condition exclusions, essential health benefits, adjusted community
2 rating, and other consumer protections), will apply to health insurance coverage
3 sold in the territories; and

4 **WHEREAS**, the U.S. Department of Health and Human Services has
5 determined that PPACA's individual and business mandates are not applicable to
6 Guam; and

7 **WHEREAS**, the individual and business mandates are necessary to help off-
8 set the costs of anticipated increases in health insurance premiums, the
9 implementation of which is directly impeded by the exclusion, and is further
10 exacerbated; and

11 **WHEREAS**, the selective inclusion or denial of applicability to Guam
12 places Guam in an untenable position, insofar that the market reforms are
13 applicable, but the means to partially fund it through the individual and business
14 mandates are specifically excluded; and

15 **WHEREAS**, the PPACA's inequitable and unequal applicability to
16 America's off-shore territories will likely have the unintended opposite impact of
17 driving up the cost of healthcare coverage if certain provisions are not amended so
18 as to properly include or exempt the territories to the extent necessary and
19 realistically practicable; and

20 **WHEREAS**, the Attorney General of Guam has raised in his response to a
21 Legislative inquiry (LEG 12-0708), that the government could find itself liable,
22 and stated, in part, "If we establish an Exchange, Guam will have to pay the
23 Advance Premium Tax Credit under U.S.C.A. §36B .This is an unfunded mandate
24 that Guam has to pay and it has been estimated that this will cost Guam 74 Million
25 Dollars per year. If Guam does not establish an Exchange, there is the possibility
26 that a class action lawsuit could be brought for payment of this credit much like the
27 Earned Income Tax Credit lawsuit in the past"; and

1 **WHEREAS**, Guam’s Insurance Commissioner has estimated that it would
2 cost the government of Guam a minimum of 74 Million Dollars annually to cover
3 the eligible members in an exchange, yet Guam’s share of the startup appropriation
4 under the PPACA is only 24 Million Dollars, which is a one-time subsidy, and is
5 not an annually recurring appropriation, a situation that, “if a territory elects to
6 implement health insurance exchanges, they will receive a limited allotment of
7 subsidy funding that only covers a fraction of needed funds” (see NAIC-October
8 16, 2013, letter to Secretary); and

9 **WHEREAS**, the individual and business mandates are tied into specific
10 excise tax provisions of the Internal Revenue Code, which are not applicable to
11 Guam, and it must be duly noted that Section 31 of the Organic Act (48 U.S.C.)
12 was enacted by the Congress primarily to relieve the U.S. Treasury of making
13 direct appropriations to the government of Guam. Although Congress delegated
14 collection and enforcement function of the income tax to the government of Guam,
15 the government of Guam is powerless to vary the terms of the Internal Revenue
16 Code as applied to Guam, except as permitted by Congress. [Bank of America v.
17 Chaco, C.A. Guam 1976, 539 F 2d 1226]; and

18 **WHEREAS**, pursuant to the taxation limitations established in the Organic
19 Act of Guam, as previously provided by the U.S. Congress in 1950, Guam is now
20 prevented from unilaterally implementing under local law the individual and
21 business mandates, by way of Guam’s implementation of the mirrored excise tax
22 provisions taken from the Internal Revenue Code and established under local law;
23 and

24 **WHEREAS**, Guam’s four domestic health insurance carriers have stated, in
25 a January 23, 2014 briefing before the Guam Legislature, that the resulting impact
26 of the PPACA market reforms will cause carriers to raise premium rates to offset
27 the costs of implementing the applicable market reforms; and

1 **WHEREAS**, although the PPACA is intended to increase access to
2 affordable healthcare for millions of Americans in the fifty (50) States and the
3 District of Columbia, it will have the unintended opposite impact for Americans in
4 the off-shore U.S. territory of Guam; and

5 **WHEREAS**, the National Association of Insurance Commissioners (NAIC)
6 has duly considered the impact to the U.S. territories, and has stated, in a letter to
7 the U.S. Secretary of Health and Human Services, dated October 16, 2013, “We
8 urge you. . .to provide the Territories with the flexibility that they need to
9 determine whether and how the market reforms should be applied”; and

10 **WHEREAS**, the NAIC paper further states, “Though the statute itself is
11 unclear, (HHS) has determined that the ACA’s market reforms will apply to health
12 insurance coverage sold in the territories, while the individual and employer
13 mandates will not. If a territory elects to implement health insurance exchanges,
14 they will receive a limited allotment of subsidy funding that only covers a fraction
15 of needed funds. As a result, the threat of adverse selection driving up premiums is
16 much higher than it is in the states”; and

17 **WHEREAS**, the Guam Legislature takes due note of the NAIC paper which
18 highlights “the often-stated position taken by the ACA’s congressional sponsors
19 and the administration that these reforms are not possible without the individual
20 mandate and the subsidies”; and

21 **WHEREAS**, the Guam Legislature supports the veracity of the information
22 provided, and endorses the statement, findings and arguments put forward by the
23 NAIC to the Secretary; and

24 **WHEREAS**, Guam’s inability to participate is not from an unwillingness on
25 our part, but, rather, from a failure to duly consider the situation of Guam, the size
26 of our population and insurance risk pool, our economy, and the conflicting
27 statutes and unfunded mandates the Congress has unilaterally established; and

1 **WHEREAS**, the American citizens of the off-shore U.S. territory of Guam
2 must not be excluded from the opportunity to be legitimately included in the
3 PPACA; and

4 **WHEREAS**, it would only prove just and proper for the Secretary of the
5 U.S. Department of Health and Human Services, and the honorable Members of
6 the U.S. House of Representatives and the U.S. Senate, to duly consider the issues
7 and matters raised in this Resolution; and

8 **WHEREAS**, at the urging and request of Americans in the respective fifty
9 (50) states and District of Columbia, numerous extensions and accommodations
10 have been granted by the administration and the Secretary of the U.S. Department
11 of Health and Human Services, yet no extensions or accommodations have been
12 provided to the Americans in the off-shore U.S. territories; now therefore, be it

13 **RESOLVED**, that *I Mina'Trentai Dos Na Liheslaturan Guåhan* (the 32nd
14 Guam Legislature) does hereby, on behalf of the people of Guam, request that the
15 President of the United States, the U.S. House of Representatives, the U.S. Senate,
16 and the Secretary of the U.S. Department of Health and Human Services further
17 consider and amend, as necessary, the provisions of the PPACA so as to facilitate
18 its equitable implementation in the territories, which must be inclusive of a
19 determination to:

20 1. Include Guam in the mandates and provide for the phased-in
21 applicability of the provisions of the PPACA, and fully provide the
22 correlated premium subsidies and additional Medicaid subsidies; and


23 2. Finally address the October 16, 2013 letter the National
24 Association of Insurance Commissioners (NAIC) sent to Secretary Kathleen
25 Sebelius, U.S. Department of Health and Human Services regarding the
26 inequities and challenges that Guam and other U.S. territories are facing
27 with the implementation of PPACA; and be it further

1 **RESOLVED**, that the Speaker certify, and the Legislative Secretary attest
2 to, the adoption hereof, and that copies of the same be thereafter transmitted to the
3 Honorable Barack Obama, President, United States of America; to the Speaker of
4 the U.S. House of Representatives; to the President of the U.S. Senate; to the
5 Secretary of the U.S. Department of Health and Human Services; to the Secretary
6 of the U.S. Department of the Interior; to the Assistant Secretary of the Interior for
7 Insular Affairs; to the Honorable Jack Kingston, Chairman, Subcommittee on
8 Labor, Health and Human Services, Education, and Related Agencies, 113th
9 Congress, U.S. House of Representatives; to the Honorable Tom Harkin,
10 Chairman, Committee on Health, Education, Labor, and Pensions, U.S. Senate; to
11 the Honorable Madeleine Z. Bordallo, Guam's Congressional Delegate, 113th
12 Congress, U.S. House of Representatives; and to the Honorable Edward J.B.
13 Calvo, *I Maga'lahren Guåhan*.

DULY AND REGULARLY ADOPTED BY *I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN* ON THE 14TH DAY OF FEBRUARY 2014.



JUDITH T. WON PAT, Ed.D.
Speaker



TINA ROSE MUÑA BARNES
Legislative Secretary



I Mina'Trentai Dos Na Liheslaturan Guåhan

The 32nd Guam Legislature
155 Hesler Place, Hagåtña, Guam 96910 ·
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clerks@guamlegislature.org www.guamlegislature.com

February 25, 2014

The Honorable Barack Obama
President, United States of America
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

REF: Resolution No. 316-32 (COR)

Dear President Obama:

Transmitted herewith is **Resolution No. 316-32 (COR)**, “Relative to expressing the concerns of *I Mina'Trentai Dos Na Liheslaturan Guåhan* (the 32nd Guam Legislature), relative to the applicability of the Patient Protection and Affordable Care Act to Guam, and to requesting equitable reconsideration of its applicability to Guam by the President of the United States of America, Members of the U.S. House of Representatives and the U.S. Senate, and the Secretary of the U.S. Department of Health and Human Services,” which was duly and regularly adopted by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on February 14, 2014.

Sincerely,


TINA ROSE MUNA BARNES
Legislative Secretary

Enclosure



I Mina'Trentai Dos Na Liheslaturan Guåhan

The 32nd Guam Legislature
155 Hesler Place, Hagåtña, Guam 96910 ·
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February 25, 2014

The Honorable Tom Harkin
U.S. Senate Chairman, Committee on Health, Education, Labor and Pensions
United States Senate
731 Hart Senate Office Building
Washington, DC 20510

REF: Resolution No. 316-32 (COR)

Dear Chairman Harkin:

Transmitted herewith is **Resolution No. 316-32 (COR)**, “Relative to expressing the concerns of *I Mina'Trentai Dos Na Liheslaturan Guåhan* (the 32nd Guam Legislature), relative to the applicability of the Patient Protection and Affordable Care Act to Guam, and to requesting equitable reconsideration of its applicability to Guam by the President of the United States of America, Members of the U.S. House of Representatives and the U.S. Senate, and the Secretary of the U.S. Department of Health and Human Services,” which was duly and regularly adopted by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on February 14, 2014.

Sincerely,


TINA ROSE MUÑA BARNES
Legislative Secretary

Enclosure



I Mina'Trentai Dos Na Liheslaturan Guåhan

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February 25, 2014

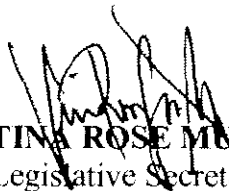
The Honorable Jack Kingston
U.S. House of Representatives Chairman, Subcommittee on Labor, Health and
Human Services, Education and Related Agencies
United States House of Representatives
2372 Rayburn House Office Building
Washington, D.C. 20515-1001

REF: Resolution No. 316-32 (COR)

Dear Chairman Kingston:

Transmitted herewith is **Resolution No. 316-32 (COR)**, “Relative to expressing the concerns of *I Mina'Trentai Dos Na Liheslaturan Guåhan* (the 32nd Guam Legislature), relative to the applicability of the Patient Protection and Affordable Care Act to Guam, and to requesting equitable reconsideration of its applicability to Guam by the President of the United States of America, Members of the U.S. House of Representatives and the U.S. Senate, and the Secretary of the U.S. Department of Health and Human Services,” which was duly and regularly adopted by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on February 14, 2014.

Sincerely,


TINA ROSE MUÑA BARNES
Legislative Secretary

Enclosure



I Mina'Trentai Dos Na Liheslaturan Guåhan

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February 25, 2014


The Honorable Madeleine Z. Bordallo
Guam Delegate to the United States Congress
House of Representatives
120 Father Duenas Avenue, Suite 107
Hagåtña, Guam 96910
Washington, D.C. 20515-1001

REF: Resolution No. 316-32 (COR)

Dear Congresswoman Bordallo:

Transmitted herewith is **Resolution No. 316-32 (COR)**, “Relative to expressing the concerns of *I Mina'Trentai Dos Na Liheslaturan Guåhan* (the 32nd Guam Legislature), relative to the applicability of the Patient Protection and Affordable Care Act to Guam, and to requesting equitable reconsideration of its applicability to Guam by the President of the United States of America, Members of the U.S. House of Representatives and the U.S. Senate, and the Secretary of the U.S. Department of Health and Human Services,” which was duly and regularly adopted by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on February 14, 2014.

Sincerely,


TINA ROSE MUÑA BARNES
Legislative Secretary

Enclosure



I Mina'Trentai Dos Na Liheslaturan Guåhan

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February 25, 2014

The Honorable Edward J.B. Calvo
I Maga'låhen Guåhan
Office of the Governor of Guam
Ricardo J. Bordallo Governor's Complex
Adelup, Guam 96910

REF: Resolution No. 316-32 (COR)

Dear Governor Calvo:

Transmitted herewith is **Resolution No. 316-32 (COR)**, “Relative to expressing the concerns of *I Mina'Trentai Dos Na Liheslaturan Guåhan* (the 32nd Guam Legislature), relative to the applicability of the Patient Protection and Affordable Care Act to Guam, and to requesting equitable reconsideration of its applicability to Guam by the President of the United States of America, Members of the U.S. House of Representatives and the U.S. Senate, and the Secretary of the U.S. Department of Health and Human Services,” which was duly and regularly adopted by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on February 14, 2014.

Sincerely,


TINA ROSE MUÑA BARNES
Legislative Secretary

Enclosure



I Mina'Trentai Dos Na Liheslaturan Guåhan

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February 25, 2014

The Honorable Sally Jewell
Secretary, U.S. Department of the Interior
Department of the Interior
1849 C Street, NW
Washington, DC 20240

REF: Resolution No. 316-32 (COR)

Dear Secretary Jewell:

Transmitted herewith is **Resolution No. 316-32 (COR)**, “**Relative to expressing the concerns of *I Mina'Trentai Dos Na Liheslaturan Guåhan* (the 32nd Guam Legislature), relative to the applicability of the Patient Protection and Affordable Care Act to Guam, and to requesting equitable reconsideration of its applicability to Guam by the President of the United States of America, Members of the U.S. House of Representatives and the U.S. Senate, and the Secretary of the U.S. Department of Health and Human Services,**” which was duly and regularly adopted by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on February 14, 2014.

Sincerely,


TINA ROSE MUNA BARNES
Legislative Secretary

Enclosure



SENATOR DENNIS G. RODRIGUEZ, JR.

February 14, 2014

Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'Trentai Dos Na Liheslaturan Guåhan
155 Hesler Place
Hagåtña, Guam 96910

VIA: The Honorable Benjamin J.F. Cruz.
Acting Chairperson, Committee on Rules

RE: Committee Report – Resolution No. 316-32 (COR) as Substituted by the sponsor

Dear Speaker Won Pat:

- Transmitted herewith, for your consideration, is the Committee Report on Resolution 316-32 (COR)- Relative to expressing the concerns of I Liheslaturan Guåhan relative to the applicability of the Patient Protection and Affordable Care Act to Guam, and requesting equitable reconsideration of its applicability to Guam by the President of the United States of America, members of the U.S. house of representatives, the U.S. Senate, Secretary, U.S. Department of Health and Human Services.; Introduced by Sen. Dennis G. Rodriguez, Jr., B.J.F. Cruz, & C.M. Duenas, and referred to the Committee on Health & Human Services, Health Insurance Reform, Economic Development and Senior Citizens. Resolution No. 316-32 (COR) was publicly heard on February 12, 2014.

Committee votes are as follows:

5 TO PASS
NOT TO PASS
ABSTAIN
4 TO REPORT OUT ONLY
TO PLACE IN INACTIVE FILE

Senseramente,

Senator Dennis G. Rodriguez, Jr.
Chairman

Attachments

2014 FEB 14 PM 5:57

COMMITTEE REPORT
ON
RESOLUTION NO. 316-32(COR) as
Substituted

Sponsored by Senator Dennis G. Rodriguez
Jr., B.J.F. Cruz, C.M. Duenas

**RELATIVE TO EXPRESSING THE
CONCERNS OF *I LIHESLATURAN
GUÅHAN* [32ND GUAM LEGISLATURE]
RELATIVE TO THE APPLICABILITY OF
THE PATIENT PROTECTION AND
AFFORDABLE CARE ACT TO GUAM,
AND REQUESTING EQUITABLE
RECONSIDERATION OF ITS
APPLICABILITY TO GUAM BY THE
PRESIDENT OF THE UNITED STATES OF
AMERICA, MEMBERS OF THE U.S.
HOUSE OF REPRESENTATIVES, THE U.S.
SENATE, SECRETARY, U.S.
DEPARTMENT OF THE HEALTH AND
HUMAN SERVICES.**



SENATOR DENNIS G. RODRIGUEZ, JR.

February 14, 2014

MEMORANDUM

To: **ALL MEMBERS**
Committee on Health & Human Services, Health Insurance Reform, Economic Development and Senior Citizens.

From: **Senator Dennis G. Rodriguez, Jr.** *DR*
Committee Chairperson

Subject: **Committee Report on Resolution no. 316-32 (COR), as Substituted by the Sponsor**

- Transmitted herewith, for your consideration, is the **Committee Report on Resolution 316-32 (COR)- Relative to expressing the concerns of I Liheslaturan Guåhan relative to the applicability of the Patient Protection and Affordable Care Act to Guam, and requesting equitable reconsideration of its applicability to Guam by the President of the United States of America, members of the U.S. house of representatives, the U.S. Senate, Secretary, U.S. Department of Health and Human Services.;** Introduced by Sen. Dennis G. Rodriguez, Jr., B.J.F. Cruz, & C.M. Duenas, and referred to the Committee on Health & Human Services, Health Insurance Reform, Economic Development and Senior Citizens.

This report includes the following:

- Committee Voting Sheet
- Committee Report Narrative/Digest
- Copy of Resolution No. 316-32 (COR) and substituted copy of Resolution No.316-32
- Public Hearing Sign-in Sheet
- Copies of Submitted Testimony and Supporting Documents
- Copy of COR Referral of Resolution No. 316-32 (COR)
- Notices of Public Hearing (1st and 2nd)
- Copy of the Public Hearing Agenda
- Related News Articles (Public hearing publication of public notice)

Please take the appropriate action on the attached voting sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact me.

Si Yu'os Ma'åse'!

Attachments



SENATOR DENNIS G. RODRIGUEZ, JR.

COMMITTEE VOTING SHEET

Resolution 316-32 (COR) - Relative to expressing the concerns of I Liheslaturan Guahan relative to the applicability of the Patient Protection and Affordable Care Act to Guam, and requesting equitable reconsideration of its applicability to Guam by the President of the United States of America, members of the U.S. house of representatives, the U.S. Senate, Secretary, U.S. Department of Health and Human Services; Introduced by Senator Dennis G. Rodriguez, Jr.

	SIGNATURE	TO PASS	NOT TO PASS	ABSTAIN	REPORT OUT ONLY	PLACE IN INACTIVE FILE
DENNIS G. RODRIGUEZ, Jr. Chairman		✓ 2/14				
V. ANTHONY ADA Vice Chairman						
BENJAMIN J. F. CRUZ Vice-Speaker		✓				
TINA ROSE MUNA-BARNES Legislative Secretary		✓				
FRANK B. AGUON, Jr.						
VICENTE C. PANGELINAN					✓	
RORY J. RESPICIO						
ALINE A. YAMASHITA, Ph.D.					✓	
THOMAS MORRISON					✓	
MICHAEL LIMTIACO					✓	
BRANT T. MCCREADIE		✓				
CHRISTOPHER M. DUENAS		✓ 2/14				



SENATOR DENNIS G. RODRIGUEZ, JR.

COMMITTEE REPORT DIGEST

Resolution No. 316-32 (COR)

- I. OVERVIEW:** The Committee on Health & Human Services, Health Insurance Reform, Economic Development and Senior Citizens conducted a public hearing on February 12, 2014. The hearing convened at 2:30PM in I Liheslatura's Public Hearing Room. Among the items on the agenda was the consideration of **Resolution 316-32 (COR)- Relative to expressing the concerns of I Liheslaturan Guåhan relative to the applicability of the Patient Protection and Affordable Care Act to Guam, and requesting equitable reconsideration of its applicability to Guam by the President of the United States of America, members of the U.S. house of representatives, the U.S. Senate, Secretary, U.S. Department of Health and Human Services; Introduced by Senator Dennis G. Rodriguez, Jr.**

II. Public Notice Requirements

Notices were disseminated via hand-delivery/fax and/or email to all senators and all main media broadcasting outlets on January 28, 2014 (5-day notice), and again on February 5th and 10th, 2014 (48-hour notice).

Senators Present

Senator Dennis G. Rodriguez, Jr.	Chairman
Vice Speaker B.J.F. Cruz	Committee Member

The public hearing on agenda item Resolution No. 316-32 (COR) was called to order at 2:32PM.

II. SUMMARY OF TESTIMONY & DISCUSSION.

See Attached

There being no other testimony, or comments by Senators, Chairman Rodriguez declared the bill as having been heard, and concluded the public hearing on Resolution No. 316-32 (COR).

PPACA Resolution

Wednesday, February 12th, 2014 2:30 p.m.

Senators Present: Chairman Senator Rodriguez and Vice Speaker

Chairman Rodriguez: Hafa Adai, good afternoon again, the committee on health and human services, health insurance reform, economic development, senior citizens reconvenes this public hearing. The time now is 2:36pm. The only item on the agenda this afternoon is Resolution 316-32, which is relative to expressing the concern of the I Liheslatura Guahan relative to the applicability of the Patient Protection Affordable Care Act to Guam and requesting equitable reconsideration of its applicability to Guam by the president of the United States of American, members of the United States House of Representatives, US Senate, Secretary, US Department of Health and Human Services. And what I like to thank Vice Speaker Cruz for being here this afternoon and joining me and being one of the main cosponsors for the resolution. What this resolution what this document really is it compiles all the arguments that our island territory has been sending to the federal government since the passage of PPACA which is also known as Obama Care. There are certain provisions that have already kicked in and have been in place here in our island. There are also a lot of challenges that we face and so what this does here is that this sends our official expressions sends our concerns to the US Government in terms of what needs to be done direct are needed in order for us to move forward here. I'd like to thank of course the stake holders, insurance companies, people from our government, the insurance commissioner, and also all other stakeholders that have been with us in different round tables that we have had and putting this together and laying out our story and laying out our concerns and how important it is us for our federal government to hear us. I also need to recognize others in a national level Alaskan Senator, Senator Lisa Mcrowsky who has written to the US Secretary of Health and Human Services as well, stating her concerns on how our territories are being treated. We're reaching out to her federal government I want to share with you that I was at the AFFLEC had this event about two weeks ago and they had a representative from their national group there and so when I shared how our challenges are and our experiences in implementing certain provisions of PPACA they were very shocked number one and number two very interested to see how they can help as well in getting our message across. They have a political action committee set up and we're going to use every avenue we could to get our voices heard. If we're going to stand in the highest mountain here we're going to do that to ensure this resolution that if it is pass by this body appropriate individual. I like to call on Mr. John Carless who is representing Insurance commissioner if you could join us and also Mr. Frank Ampillo and anyone else who wishes to provide a testimony I invite you to come up here.

John Carless: Good afternoon Mr. Chairperson. Good afternoon Vice Speaker Cruz. The insurance Commissioner mainly my boss, is in favor of this resolution. The resolution states in several ways the hardships and the challenges of Guam as one of the five territories that we're left out in having some of the more substantial provisions of the affordable care act for instance we don't have the employer mandate it doesn't apply to Guam the individual mandate does not apply to Guam. Guam does not have the subsidy that is afforded to the citizens and the residents of the 50 states and the District of Columbia in terms of payment of advance premium tax credit particularly those ranging from 133% public level,

140% federal public level. We have some challenges in the sense that the insurance companies are required to observe the market provision on the public health service act guaranteed issues on policy individuals guaranteed renewal guaranteed you can renew it. It is also guaranteed that in 2015 that if you buy a health insurance policy health insurance plan this will have a tendency to increase without the individual insurance companies will have a hard time to and the interest of the company those are the challenges that are facing us. This resolution lays out those problems to the national government and we as one island as one voice would probably be sending one message with this resolution there should be more provisions to be made applicable to Guam and subsidy. We have submitted our written comment by a way of e-mail and to take it into consideration.

Chairman Rodriguez: Thank you very much and we did receive your suggestions and we want to make sure we include them. Mr. Frank Ampillo?

Frank Ampillo: Thank you. Good afternoon Senators. I call the statements that were made by Mr. Carlos and all I ask is if we move this resolution as quickly as possible. There is a meeting in DC of the agencies what is called the interagency at the end of the month. It is very very important that they get a hold of this document if we were able to get this document ahead of time that will be very helpful.

Chairman Rodriguez: Absolutely, thank you very much and Frank I want to thank you round table hearing we asked, we finally asked. We've been meeting we know the problems here now for your recommendation this is one route send a united voice from a way of resolutions. I want to thank you for that and thank you for the input you provided in my office. Vice Speaker, do you have comments? We do have others in the audience, not to testify, but are in favor of the resolution. But if you change your mind and would like to say a few words, and testify I invite you to do so now. If not, oh yes, we have Melissa. Thank you.

Melissa: It's Melissa Wyble from the Guam Surgery Center. My testimony is that I commend the Senator for putting this resolution together and sending it to our government in the United States. I think unfortunately the territories of Guam are forgotten but yet they include us in its advocacy which causes us great problems. I am in huge favor in this moving forward and I want to commend those who worked on it.

Chairman Rodriguez: Thank you very much. If there is no one else who wishes to testify we will adjourn this public hearing. We will move as fast as we could to make it in time for that meeting. Thank you very much and that's 2:47 and this meeting is now adjourned.



SENATOR DENNIS G. RODRIGUEZ, JR.

III. FINDINGS AND RECOMMENDATIONS

The Committee on Health & Human Services, Health Insurance Reform, Economic Development and Senior Citizens, hereby reports out Resolution No. 316-32 (COR), with the recommendation to
TO PASS.

MINA' TRENTAI DOS NA LIHESLATURAN GUAHAN
2014 (SECOND) Regular Session

Resolution No. 316 -32 (COR)

Introduced by:

D.G. RODRIGUEZ, JR. ✓
B.J.F. CRUZ
C.M. DUENAS

RELATIVE TO EXPRESSING THE CONCERNS OF I
LIHESLATURAN GUAHAN [32ND GUAM LEGISLATURE]
RELATIVE TO THE APPLICABILITY OF THE PATIENT
PROTECTION AND AFFORDABLE CARE ACT TO GUAM,
AND REQUESTING EQUITABLE RECONSIDERATION OF
ITS APPLICABILITY TO GUAM BY THE PRESIDENT OF
THE UNITED STATES OF AMERICA, MEMBERS OF THE
U.S. HOUSE OF REPRESENTATIVES, THE U.S. SENATE,
SECRETARY, U.S. DEPARTMENT OF THE HEALTH AND
HUMAN SERVICES.

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1 BE IT RESOLVED BY MINA' TRENTAI DOS NA LIHESLATURAN
2 GUAHAN:

3 WHEREAS, the Patient Protection and Affordable Care Act is intended to
4 promote healthcare for millions of Americans in the 50 States and the District of
5 Columbia, by providing access to affordable healthcare, ensuring quality through
6 market reforms, and advancing prevention and public health; and

7 WHEREAS, existing health insurance providers in the U.S. offshore
8 territories shall have to meet higher standards of minimum coverage pursuant to
9 the market reforms, which include: essential health benefits, guaranteed issue,
10 prohibitions on excluding preexisting conditions, adjusted community rating, and
11 other consumer protections; and

1 **WHEREAS**, the ACA also seeks to set up a healthcare exchange system,
2 nation-wide, through which Americans' could obtain not only affordable coverage,
3 but coverage with better essential health benefits; and

4 **WHEREAS**, to help accomplish this in the 50 States and Washington, D.C.,
5 the PPACA additionally provides the means to partially offset the states costs of
6 operating the exchanges, or the optional implementation of an equivalent
7 qualifying program, through what are known as the individual and business
8 mandates, as provided pursuant to specific applicable excise tax provisions of the
9 Internal Revenue Code; and

10 **WHEREAS**, the Public Health Services Act (PHSA), that includes benefits
11 for the territory's, provides, "*The term "State" means each of the several States,*
12 *the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa,*
13 *and the Northern Mariana Islands"*(PHSA 2791(d)(14)); and

14 **WHEREAS**, in Title I of the PPACA, it amends the PHSA, and provides,
15 "*In this Title, the term "State" means each of the 50 States and the District of*
16 *Columbia"* (ACA 1304(d)); and

17 **WHEREAS**, the U.S. Department of the Health and Human Services has
18 determined that PPACA's market reforms (e.g., guaranteed issue, prohibitions on
19 preexisting condition exclusions, essential health benefits, adjusted community
20 rating and other consumer protections) will apply to health insurance coverage sold
21 in the Territory's; and

22 **WHEREAS**, U.S. Department of the Health and Human Services has
23 determined that PPACA's individual and business mandates are not applicable to
24 Guam; and

1 **WHEREAS**, the individual and business mandates are necessary to help off-
2 set the costs of an exchange, the implementation of which is directly impeded by
3 the exclusion, and is further exacerbated by the situation that, *“if a territory elects*
4 *to implement health insurance exchanges, they will receive a limited allotment of*
5 *subsidy funding that only covers a fraction of needed funds” (see NAIC-October 16,*
6 *2013, letter to Secretary); and*

7 **WHEREAS**, the selective inclusion or denial of applicability to Guam places
8 Guam in an untenable position, in so far that the market reforms are applicable, but
9 the means to partially fund it through the individual and business mandates are
10 specifically excluded; and

11 **WHEREAS**, the PPACA’s inequitable, unequal applicability to America’s off-
12 shore territory’s will likely have the unintended opposite impact of driving up the cost
13 of healthcare coverage if certain provisions are not amended so as to properly include
14 or exempt the territories to the extent necessary and realistically practicable; and

15 **WHEREAS**, the Attorney General of Guam has raised in his response to a
16 Legislative inquiry (LEG 12-0708), that the government could find itself liable, and
17 stated, in part, *“If we establish an Exchange, Guam will have to pay the Advance*
18 *Premium Tax Credit under U.S.C.A. §36B . . . This is an unfunded mandate that*
19 *Guam has to pay and it has been estimated that this will cost Guam \$74 million*
20 *dollars per year. If Guam does not establish an Exchange, there is the possibility that*
21 *a class action lawsuit could be brought for payment of this credit much like the*
22 *Earned Income Tax Credit lawsuit in the past”*; and

23 **WHEREAS**, Guam’s Insurance Commission has estimated that it would cost
24 the government of Guam a minimum of \$74 million dollars annually to cover the
25 eligible members in an exchange, yet Guam’s share of the startup appropriation under

1 the PPACA is only \$24 million, which is a one-time subsidy, and is not an annually
2 recurring appropriation; and

3 **WHEREAS**, the individual and business mandates are tied into specific excise
4 tax provisions of the Internal Revenue Code which are not applicable to Guam, it must
5 be duly noted that, Section 31 of the Organic Act (48 U.S.C.) was enacted by the
6 Congress primarily to relieve the US Treasury of making direct appropriations to the
7 Government of Guam. Although Congress delegated collection and enforcement
8 function of the income tax to the Government of Guam, the Government of Guam is
9 powerless to vary the terms of the Internal Revenue Code as applied to Guam, except
10 as permitted by Congress. [*Bank of America v. Chaco*, C.A.Guam 1976, 539 F.2d
11 1226]; and

12 **WHEREAS**, pursuant to the taxation limitations established in the Organic
13 Act for Guam, as previously provided by Congress in 1950, Guam is now
14 prevented from unilaterally implementing under local law the individual and
15 business mandates, by way of Guam's implementation of mirrored excise tax
16 provisions taken from the Internal Revenue Code and established under local law;
17 and

18 **WHEREAS**, Guam's four domestic health insurance carriers have stated, in
19 a January 23, 2014 briefing before the Guam Legislature, that the resulting impact
20 of the PPACA market reforms will cause carriers to raise premium rates to offset
21 the costs of implementing the applicable market reforms; and

22 **WHEREAS**, the PPACA is intended to increase access to affordable
23 healthcare for millions of Americans in the 50 States and the District of Columbia,
24 it will have the unintended opposite impact for American's in the off-shore U.S.
25 Territory of Guam; and

1 **WHEREAS**, the National Association of Insurance Commissioners (NAIC)
2 has duly considered the impact to the Territory's, and stated, in a letter to the U.S.
3 Secretary of Health and Human Services dated October 16, 2013, "*We urge you. .*
4 *.to provide the Territories with the flexibility that they need to determine whether*
5 *and how the market reforms should be applied*"; and

6 **WHEREAS**, the NAIC paper further states, "*Though the statute itself is*
7 *unclear, (HHS) has determined that the ACA's market reforms will apply to health*
8 *insurance coverage sold in the territories, while the individual and employer*
9 *mandates will not. If a territory elects to implement health insurance exchanges, they*
10 *will receive a limited allotment of subsidy funding that only covers a fraction of*
11 *needed funds. As a result, the threat of adverse selection driving up premiums is*
12 *much higher than it is in the states*"; and

13 **WHEREAS**, the Guam Legislature takes due note of the NAIC paper which
14 highlights, "*the often-stated position taken by the ACA's congressional sponsors and*
15 *the administration that these reforms are not possible without the individual*
16 *mandate and the subsidies*"; and

17 **WHEREAS**, the Guam Legislature supports the veracity of the information
18 provided, and endorses the statement, findings and arguments put forward by the
19 NAIC to the Secretary; and

20 **WHEREAS**, Guam's inability to participate is not from an unwillingness on
21 our part, but, rather, from a failure to duly consider the situation of Guam, the size of
22 our population and insurance risk pool, our economy, and the conflicting statutes and
23 unfunded mandates the Congress has unilaterally established; and

1 **WHEREAS**, the American citizens of the off-shore U.S. Territory of Guam
2 must not be excluded from the opportunity to be legitimately included in the PPACA;
3 and

4 **WHEREAS**, it would only prove just and proper for the Secretary, U.S.
5 Department of the Health and Human Services, the Honorable Members of the
6 U.S. House of Representatives and the U.S. Senate, to duly consider the issues and
7 matters raised above; and

8 **WHEREAS**, at the urging and request of Americans in the respective 50
9 States and District of Columbia, numerous extensions and accommodations have
10 been granted by the administration and the secretary of the U.S. Department of
11 Health and Human Services, yet no extensions or accommodations have been
12 provided to the Americans in the off-shore U.S. Territories and now, therefore, be
13 it

14 **RESOLVED**, that the people of Guam request that the President of the
15 United States, the U.S. House of Representatives, the U.S. Senate and the
16 Secretary, U.S. Department of the Health and Human Services further consider and
17 amend, as necessary, the provisions of the PPACA so as to facilitate its equitable
18 implementation in the Territory's, which must be inclusive of a determination to:

- 19 1. Include Guam in the mandates and provide for the phased-in applicability
20 of the provisions of the PPACA, and fully provide the correlated
21 premium subsidies and additional Medicaid subsidies; and
- 22 2. Finally address the October 16, 2013 letter the National Association of
23 Insurance Commissioners (NAIC) sent to the Secretary Kathleen
24 Sebelius, U.S. Department of Health and Human Services regarding the

1 inequities and challenges that Guam and other U.S. Territories are facing
2 with the implementation of PPACA; and be it further

3 **RESOLVED**, that the Speaker certify and the Legislative Secretary attests
4 to, the adoption hereof, and that copies of the same be thereafter transmitted to the
5 Honorable Barack Obama, President, United States of America, the Speaker of the
6 U.S. House of Representatives, the President of the U.S. Senate, Secretary, U.S.
7 Department of the Health and Human Services, the Secretary of the U.S.
8 Department of the Interior, the Assistant Secretary of the Interior for Insular
9 Affairs, the Honorable Jack Kingston, Chairman, Subcommittee on Labor, Health
10 and Human Services, Education, and Related Agencies, 113th Congress, U.S.
11 House of Representatives, the Honorable Tom Harkin, Chairman, Committee on
12 Health, Education, Labor, and Pensions, U.S. Senate, the Honorable Madeleine Z.
13 Bordallo, Guam's Congressional Delegate, 113th Congress, U.S. House of
14 Representatives, and the Honorable Edward J.B. Calvo, *I Maga'låhen Guåhan*.

Duly and Regularly Adopted on the _____ Day of February, 2014.

Judith T. Won Pat
Speaker

Tina Rose Muna-Barnes
Senator and Legislative Secretary

**MINA' TRENTAI DOS NA LIHESLATURAN GUAHAN
2014 (SECOND) Regular Session**

Resolution No. 316-32 (COR),
as Substituted by the Sponsor

Introduced by:

D.G. RODRIGUEZ, JR.
B.J.F. CRUZ
C.M. DUENAS

**RELATIVE TO EXPRESSING THE CONCERNS OF /
LIHESLATURAN GUÅHAN [32ND GUAM LEGISLATURE]
RELATIVE TO THE APPLICABILITY OF THE PATIENT
PROTECTION AND AFFORDABLE CARE ACT TO GUAM,
AND REQUESTING EQUITABLE RECONSIDERATION OF
ITS APPLICABILITY TO GUAM BY THE PRESIDENT OF
THE UNITED STATES OF AMERICA, MEMBERS OF THE
U.S. HOUSE OF REPRESENTATIVES, THE U.S. SENATE,
SECRETARY, U.S. DEPARTMENT OF THE HEALTH AND
HUMAN SERVICES.**

1 **BE IT RESOLVED BY MINA' TRENTAI DOS NA LIHESLATURAN**
2 **GUÅHAN:**

3 **WHEREAS,** the Patient Protection and Affordable Care Act is intended to
4 promote healthcare for millions of Americans in the 50 States and the District of
5 Columbia, by providing access to affordable healthcare, ensuring quality through
6 market reforms, and advancing prevention and public health; and

7 **WHEREAS,** existing health insurance providers in the U.S. offshore
8 territories shall have to meet higher standards of minimum coverage pursuant to
9 the market reforms, which include: essential health benefits, guaranteed issue,
10 guaranteed renewability, prohibitions on excluding preexisting conditions,
11 adjusted community rating, and other consumer protections; and

1 **WHEREAS**, the ACA also seeks to set up a healthcare exchange system,
2 nation-wide, through which Americans' could buy or purchase ~~obtain~~ not only
3 affordable coverage, but coverage with better essential health benefits; and

4 **WHEREAS**, to help accomplish this in the 50 States and Washington, D.C.,
5 the PPACA additionally provides the means to partially offset the states costs of
6 operating the exchanges, or the optional implementation of an equivalent
7 qualifying program, through what are known as the individual and business
8 mandates, as provided pursuant to specific applicable excise tax provisions of the
9 Internal Revenue Code; and

10 **WHEREAS**, the Public Health Services Act (PHSA), that includes benefits
11 for the territory's, provides, "*The term "State" means each of the several States,*
12 *the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa,*
13 *and the Northern Mariana Islands"*(PHSA 2791(d)(14)); and

14 **WHEREAS**, in Title I of the PPACA, it amends the PHSA, and provides,
15 "*In this Title, the term "State" means each of the 50 States and the District of*
16 *Columbia"* (ACA 1304(d)); and

17 **WHEREAS**, the U.S. Department of the Health and Human Services has
18 determined that PPACA's Public Health Service Act provisions, to include market
19 reforms (e.g., guaranteed issue, guaranteed renewability market reforms (e.g.,
20 guaranteed issue, guaranteed renewability, prohibitions on preexisting condition
21 exclusions, essential health benefits, adjusted community rating and other
22 consumer protections) will apply to health insurance coverage sold in the
23 Territories; and

1 **WHEREAS**, U.S. Department of the Health and Human Services has
2 determined that PPACA’s individual and business mandates are not applicable to
3 Guam; and

4 **WHEREAS**, the individual and business mandates are necessary to help off-
5 set the costs of anticipated increases in health insurance premiums, ~~an exchange~~,
6 the implementation of which is directly impeded by the exclusion, and is further
7 exacerbated by ~~the situation that, “if a territory elects to implement health~~
8 ~~insurance exchanges, they will receive a limited allotment of subsidy funding that~~
9 ~~only covers a fraction of needed funds” (see NAIC October 16, 2013, letter to~~
10 ~~Secretary); and~~

11 **WHEREAS**, the selective inclusion or denial of applicability to Guam
12 places Guam in an untenable position, in so far that the market reforms are
13 applicable, but the means to partially fund it through the individual and business
14 mandates are specifically excluded; and

15 **WHEREAS**, the PPACA’s inequitable, unequal applicability to America’s
16 off-shore territory’s will likely have the unintended opposite impact of driving up
17 the cost of healthcare coverage if certain provisions are not amended so as to
18 properly include or exempt the territories to the extent necessary and realistically
19 practicable; and

20 **WHEREAS**, the Attorney General of Guam has raised in his response to a
21 Legislative inquiry (LEG 12-0708), that the government could find itself liable,
22 and stated, in part, *“If we establish an Exchange, Guam will have to pay the*
23 *Advance Premium Tax Credit under U.S.C.A. §36B . . . This is an unfunded*
24 *mandate that Guam has to pay and it has been estimated that this will cost Guam*
25 *\$74 million dollars per year. If Guam does not establish an Exchange, there is the*

1 *possibility that a class action lawsuit could be brought for payment of this credit*
2 *much like the Earned Income Tax Credit lawsuit in the past”; and*

3 **WHEREAS**, Guam’s Insurance Commission has estimated that it would
4 cost the government of Guam a minimum of \$74 million dollars annually to cover
5 the eligible members in an exchange, yet Guam’s share of the startup appropriation
6 under the PPACA is only \$24 million, which is a one-time subsidy, and is not an
7 annually recurring appropriation, a situation that, “if a territory elects to implement
8 health insurance exchanges, they will receive a limited allotment of subsidy
9 funding that only covers a fraction of needed funds” (see NAIC-October 16, 2013,
10 letter to Secretary); and

11 **WHEREAS**, the individual and business mandates are tied into specific
12 excise tax provisions of the Internal Revenue Code which are not applicable to
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15 appropriations to the Government of Guam. Although Congress delegated
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17 Guam, the Government of Guam is powerless to vary the terms of the Internal
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19 *America v. Chaco*, C.A.Guam 1976, 539 F.2d 1226]; and

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23 business mandates, by way of Guam’s implementation of mirrored excise tax
24 provisions taken from the Internal Revenue Code and established under local law;
25 and

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3 of the PPACA market reforms will cause carriers to raise premium rates to offset
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5 **WHEREAS**, the PPACA is intended to increase access to affordable
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12 *.to provide the Territories with the flexibility that they need to determine whether*
13 *and how the market reforms should be applied*”; and

14 **WHEREAS**, the NAIC paper further states, “*Though the statute itself is*
15 *unclear, (HHS) has determined that the ACA’s market reforms will apply to health*
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17 *mandates will not. If a territory elects to implement health insurance exchanges,*
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19 *of needed funds. As a result, the threat of adverse selection driving up premiums is*
20 *much higher than it is in the states*”; and

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22 which highlights, “*the often-stated position taken by the ACA’s congressional*
23 *sponsors and the administration that these reforms are not possible without the*
24 *individual mandate and the subsidies*”; and

1 **WHEREAS**, the Guam Legislature supports the veracity of the information
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3 NAIC to the Secretary; and

4 **WHEREAS**, Guam's inability to participate is not from an unwillingness
5 on our part, but, rather, from a failure to duly consider the situation of Guam, the
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7 statutes and unfunded mandates the Congress has unilaterally established; and

8 **WHEREAS**, the American citizens of the off-shore U.S. Territory of Guam
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- 2 of the provisions of the PPACA, and fully provide the correlated
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 11 Honorable Barack Obama, President, United States of America, the Speaker of the
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 13 Department of the Health and Human Services, the Secretary of the U.S.
 14 Department of the Interior, the Assistant Secretary of the Interior for Insular
 15 Affairs, the Honorable Jack Kingston, Chairman, Subcommittee on Labor, Health
 16 and Human Services, Education, and Related Agencies, 113th Congress, U.S.
 17 House of Representatives, the Honorable Tom Harkin, Chairman, Committee on
 18 Health, Education, Labor, and Pensions, U.S. Senate, the Honorable Madeleine Z.
 19 Bordallo, Guam's Congressional Delegate, 113th Congress, U.S. House of
 20 Representatives, and the Honorable Edward J.B. Calvo, *I Maga'låhen Guåhan*.

Duly and Regularly Adopted on the _____ Day of February, 2014.

Judith T. Won Pat
Speaker

Tina Rose Muna-Barnes
Senator and Legislative Secretary

**MINA' TRENTAI DOS NA LIHESLATURAN GUAHAN
2014 (SECOND) Regular Session**

Resolution No. 316-32 (COR),
as Substituted by the Sponsor

Introduced by:

D.G. RODRIGUEZ, JR.
B.J.F. CRUZ
C.M. DUENAS

**RELATIVE TO EXPRESSING THE CONCERNS OF /
LIHESLATURAN GUÁHAN [32ND GUAM LEGISLATURE]
RELATIVE TO THE APPLICABILITY OF THE PATIENT
PROTECTION AND AFFORDABLE CARE ACT TO GUAM,
AND REQUESTING EQUITABLE RECONSIDERATION OF
ITS APPLICABILITY TO GUAM BY THE PRESIDENT OF
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U.S. HOUSE OF REPRESENTATIVES, THE U.S. SENATE,
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7 **WHEREAS,** existing health insurance providers in the U.S. offshore
8 territories shall have to meet higher standards of minimum coverage pursuant to
9 the market reforms, which include: essential health benefits, guaranteed issue,
10 guaranteed renewability, prohibitions on excluding preexisting conditions,
11 adjusted community rating, and other consumer protections; and

1 **WHEREAS**, the ACA also seeks to set up a healthcare exchange system,
2 nation-wide, through which Americans' could buy or purchase not only affordable
3 coverage, but coverage with better essential health benefits; and

4 **WHEREAS**, to help accomplish this in the 50 States and Washington, D.C.,
5 the PPACA additionally provides the means to partially offset the states costs of
6 operating the exchanges, or the optional implementation of an equivalent
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8 mandates, as provided pursuant to specific applicable excise tax provisions of the
9 Internal Revenue Code; and

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14 **WHEREAS**, in Title I of the PPACA, it amends the PHSA, and provides,
15 "*In this Title, the term "State" means each of the 50 States and the District of*
16 *Columbia"* (ACA 1304(d)); and

17 **WHEREAS**, the U.S. Department of the Health and Human Services has
18 determined that PPACA's Public Health Service Act provisions, to include market
19 reforms (e.g., guaranteed issue, guaranteed renewability market reforms (e.g.,
20 guaranteed issue, guaranteed renewability, prohibitions on preexisting condition
21 exclusions, essential health benefits, adjusted community rating and other
22 consumer protections) will apply to health insurance coverage sold in the
23 Territories; and

1 **WHEREAS**, U.S. Department of the Health and Human Services has
2 determined that PPACA’s individual and business mandates are not applicable to
3 Guam; and

4 **WHEREAS**, the individual and business mandates are necessary to help off-
5 set the costs of anticipated increases in health insurance premiums, the
6 implementation of which is directly impeded by the exclusion, and is further
7 exacerbated; and

8 **WHEREAS**, the selective inclusion or denial of applicability to Guam
9 places Guam in an untenable position, in so far that the market reforms are
10 applicable, but the means to partially fund it through the individual and business
11 mandates are specifically excluded; and

12 **WHEREAS**, the PPACA’s inequitable, unequal applicability to America’s
13 off-shore territory’s will likely have the unintended opposite impact of driving up
14 the cost of healthcare coverage if certain provisions are not amended so as to
15 properly include or exempt the territories to the extent necessary and realistically
16 practicable; and

17 **WHEREAS**, the Attorney General of Guam has raised in his response to a
18 Legislative inquiry (LEG 12-0708), that the government could find itself liable,
19 and stated, in part, *“If we establish an Exchange, Guam will have to pay the
20 Advance Premium Tax Credit under U.S.C.A. §36B . . . This is an unfunded
21 mandate that Guam has to pay and it has been estimated that this will cost Guam
22 \$74 million dollars per year. If Guam does not establish an Exchange, there is the
23 possibility that a class action lawsuit could be brought for payment of this credit
24 much like the Earned Income Tax Credit lawsuit in the past”*; and

1 **WHEREAS,** Guam’s Insurance Commission has estimated that it would
2 cost the government of Guam a minimum of \$74 million dollars annually to cover
3 the eligible members in an exchange, yet Guam’s share of the startup appropriation
4 under the PPACA is only \$24 million, which is a one-time subsidy, and is not an
5 annually recurring appropriation, a situation that, “if a territory elects to implement
6 health insurance exchanges, they will receive a limited allotment of subsidy
7 funding that only covers a fraction of needed funds” (see NAIC-October 16, 2013,
8 letter to Secretary); and

9 **WHEREAS,** the individual and business mandates are tied into specific
10 excise tax provisions of the Internal Revenue Code which are not applicable to
11 Guam, it must be duly noted that, Section 31 of the Organic Act (48 U.S.C.) was
12 enacted by the Congress primarily to relieve the US Treasury of making direct
13 appropriations to the Government of Guam. Although Congress delegated
14 collection and enforcement function of the income tax to the Government of
15 Guam, the Government of Guam is powerless to vary the terms of the Internal
16 Revenue Code as applied to Guam, except as permitted by Congress. [*Bank of*
17 *America v. Chaco, C.A.Guam 1976, 539 F.2d 1226*]; and

18 **WHEREAS,** pursuant to the taxation limitations established in the Organic
19 Act for Guam, as previously provided by Congress in 1950, Guam is now
20 prevented from unilaterally implementing under local law the individual and
21 business mandates, by way of Guam’s implementation of mirrored excise tax
22 provisions taken from the Internal Revenue Code and established under local law;
23 and

24 **WHEREAS,** Guam’s four domestic health insurance carriers have stated, in
25 a January 23, 2014 briefing before the Guam Legislature, that the resulting impact

1 of the PPACA market reforms will cause carriers to raise premium rates to offset
2 the costs of implementing the applicable market reforms; and

3 **WHEREAS,** the PPACA is intended to increase access to affordable
4 healthcare for millions of Americans in the 50 States and the District of Columbia,
5 it will have the unintended opposite impact for American's in the off-shore U.S.
6 Territory of Guam; and

7 **WHEREAS,** the National Association of Insurance Commissioners (NAIC)
8 has duly considered the impact to the Territory's, and stated, in a letter to the U.S.
9 Secretary of Health and Human Services dated October 16, 2013, "*We urge you. .*
10 *.to provide the Territories with the flexibility that they need to determine whether*
11 *and how the market reforms should be applied*"; and

12 **WHEREAS,** the NAIC paper further states, "*Though the statute itself is*
13 *unclear, (HHS) has determined that the ACA's market reforms will apply to health*
14 *insurance coverage sold in the territories, while the individual and employer*
15 *mandates will not. If a territory elects to implement health insurance exchanges,*
16 *they will receive a limited allotment of subsidy funding that only covers a fraction*
17 *of needed funds. As a result, the threat of adverse selection driving up premiums is*
18 *much higher than it is in the states*"; and

19 **WHEREAS,** the Guam Legislature takes due note of the NAIC paper
20 which highlights, "*the often-stated position taken by the ACA's congressional*
21 *sponsors and the administration that these reforms are not possible without the*
22 *individual mandate and the subsidies*"; and

23 **WHEREAS,** the Guam Legislature supports the veracity of the information
24 provided, and endorses the statement, findings and arguments put forward by the
25 NAIC to the Secretary; and

1 **WHEREAS**, Guam's inability to participate is not from an unwillingness
2 on our part, but, rather, from a failure to duly consider the situation of Guam, the
3 size of our population and insurance risk pool, our economy, and the conflicting
4 statutes and unfunded mandates the Congress has unilaterally established; and

5 **WHEREAS**, the American citizens of the off-shore U.S. Territory of Guam
6 must not be excluded from the opportunity to be legitimately included in the
7 PPACA; and

8 **WHEREAS**, it would only prove just and proper for the Secretary, U.S.
9 Department of the Health and Human Services, the Honorable Members of the
10 U.S. House of Representatives and the U.S. Senate, to duly consider the issues and
11 matters raised above; and

12 **WHEREAS**, at the urging and request of Americans in the respective 50
13 States and District of Columbia, numerous extensions and accommodations have
14 been granted by the administration and the secretary of the U.S. Department of
15 Health and Human Services, yet no extensions or accommodations have been
16 provided to the Americans in the off-shore U.S. Territories and now, therefore, be
17 it

18 **RESOLVED**, that the people of Guam request that the President of the
19 United States, the U.S. House of Representatives, the U.S. Senate and the
20 Secretary, U.S. Department of the Health and Human Services further consider and
21 amend, as necessary, the provisions of the PPACA so as to facilitate its equitable
22 implementation in the Territory's, which must be inclusive of a determination to:

- 23 1. Include Guam in the mandates and provide for the phased-in applicability
24 of the provisions of the PPACA, and fully provide the correlated
25 premium subsidies and additional Medicaid subsidies; and

1 2. Finally address the October 16, 2013 letter the National Association of
2 Insurance Commissioners (NAIC) sent to the Secretary Kathleen
3 Sebelius, U.S. Department of Health and Human Services regarding the
4 inequities and challenges that Guam and other U.S. Territories are facing
5 with the implementation of PPACA; and be it further

6 **RESOLVED**, that the Speaker certify and the Legislative Secretary attests
7 to, the adoption hereof, and that copies of the same be thereafter transmitted to the
8 Honorable Barack Obama, President, United States of America, the Speaker of the
9 U.S. House of Representatives, the President of the U.S. Senate, Secretary, U.S.
10 Department of the Health and Human Services, the Secretary of the U.S.
11 Department of the Interior, the Assistant Secretary of the Interior for Insular
12 Affairs, the Honorable Jack Kingston, Chairman, Subcommittee on Labor, Health
13 and Human Services, Education, and Related Agencies, 113th Congress, U.S.
14 House of Representatives, the Honorable Tom Harkin, Chairman, Committee on
15 Health, Education, Labor, and Pensions, U.S. Senate, the Honorable Madeleine Z.
16 Bordallo, Guam's Congressional Delegate, 113th Congress, U.S. House of
17 Representatives, and the Honorable Edward J.B. Calvo, *I Maga'låhen Guåhan*.

Duly and Regularly Adopted on the _____ Day of February, 2014.

Judith T. Won Pat
Speaker

Tina Rose Muna-Barnes
Senator and Legislative Secretary



SENATOR DENNIS G. RODRIGUEZ, Jr., Chairman

COMMITTEE ON HEALTH & HUMAN SERVICES, HEALTH INSURANCE REFORM,
ECONOMIC DEVELOPMENT AND SENIOR CITIZENS

Mina'trentai Dos Na Liheslaturan Guahan • 32nd Guam Legislature

PUBLIC HEARING DATE / TIME: Wednesday, February 12, 2014 2:30pm

- Resolution 316-32 (COR)- Relative to expressing the concerns of I Liheslaturan Guahan relative to the applicability of the Patient Protection and Affordable Care Act to Guam and requesting equitable reconsideration of its applicability to Guam by the President of the United States of America, Members of the U.S. House of Representatives, the U.S. Senate, Secretary, U.S. Department of Health and Human Services.

PRINT NAME	SIGNATURE	AGENCY	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	OPPOSE	CONTACT NUMBERS	EMAIL ADDRESS
JOHN CARLOS	<i>J Carlos</i>	<i>Revenue & Tax</i>		✓	✓		635 1846	<i>jgcarlos@revtax.gm</i>



SENATOR DENNIS G. RODRIGUEZ, Jr., Chairman
 COMMITTEE ON HEALTH & HUMAN SERVICES, HEALTH INSURANCE REFORM,
 ECONOMIC DEVELOPMENT AND SENIOR CITIZENS
Mina'trentai Dos Na Liheslaturan Guahan • 32nd Guam Legislature

#2

PUBLIC HEARING DATE / TIME: Wednesday, February 12, 2014 2:30pm

- Resolution 316-32 (COR)- Relative to expressing the concerns of I Liheslaturan Guahan relative to the applicability of the Patient Protection and Affordable Care Act to Guam and requesting equitable reconsideration of its applicability to Guam by the President of the United States of America, Members of the U.S. House of Representatives, the U.S. Senate, Secretary, U.S. Department of Health and Human Services.

PRINT NAME	SIGNATURE	AGENCY	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	OPPOSE	CONTACT NUMBERS	EMAIL ADDRESS
Frank Campbell	[Signature]	Attorneys	✓		✓			
Melissa Waibel	[Signature]	Guam Surgeon General			✓			mwibel@guamsurgcenter.com
Colin O'Connell	[Signature]	"			✓		646-3853	
Chuck Tanner	[Signature]	NCD			✓		7340123	chucktanner88@gmail.com
Mariann Cabrera	[Signature]	The Doctor's Clinic			✓		688-136	marhann.cabrera@thedoctorsclinic.com



424 West O'Brien Drive
Julale Center, Suite 200
Hagatna, Guam 96910

February 12, 2014

The Honorable Dennis Rodriguez
Chairman, Committee on Health & Human Services
I Mina'trentai Dos Na Liheslaturan Guahan
176 Serenu Avenue, Suite 107
Tamuning, Guam 96910

Re: Resolution 316-32

Hafa Adai Mr. Chairman and Committee Members:

Thank you for the opportunity to submit written testimony in support of Resolution 316 relative to expressing the concerns of the Guam Legislature as it pertains to the applicability of the Affordable Care Act. While the Resolution seeks to request the Obama Administration and the U.S. Congress to take a second look at the negative impact and applicability of key provisions of the Patient Protection and Affordable Care Act specifically to Guam, the insurance industry on Guam has always embraced and supported the consumer reform provisions required under the Affordable Care Act.

However, the market reform provisions have been a significant concern for our industry given the uniqueness of our market and the requirements imposed on us under the law. It is these market reform provisions that we are asking for relief or exemptions. In addition, we should all be prepared for a 'Plan B' should both the congress and the Obama Administration fail to act on our request.

We appreciate the Guam Legislature's support of this Resolution as it will forge a more collective and united voice from both the local government and the private sector industry on this single and important law.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jerry Crisostomo'.

Jerry Crisostomo
Plan Administrator



Dennis G. Rodriguez, Jr. <senatordrodriguez@gmail.com>

Resolution No. 316

Forwarded

John Q. Carlos <jqcarlos@revtax.gov.gu>
To: Senator Dennis Rodriguez <senatordrodriguez@gmail.com>
Cc: art.ilagan@revtax.gov.gu

Wed, Feb 12, 2014 at 10:28 AM

The Honorable Senator Dennis Rodriguez:

Sir:

After discussion with Commissioner Art Ilagan, our office is submits comments on Resolution No. 316 for the consideration of the Thirty Second Guam Legislature as per attached. Commissioner Art Ilagan has a schedule public hearing today at 2:00 PM at the Department of Revenue and Taxation for the admission of an insurance company. Commissioner Art Ilagan has instructed me to attend the hearing before the Legislature, this afternoon.

John Carlos
Regulatory Administrator
Department of Revenue and Taxation
P O Box 23607 GMF Guam 96921
1240 Army Drive
Barrigada, Guam 96913
Email: jqcarlos@revtax.gov.gu
P 671 635 1846
F 671 633 2643

 **Resolution No 316.docx**
18K

Dennis G. Rodriguez, Jr. <senatordrodriguez@gmail.com>
To: Ron Teehan <rteeahan@yahoo.com>

Wed, Feb 12, 2014 at 11:28 AM

Dennis G. Rodriguez, Jr.
todugam.com

Begin forwarded message:

From: "John Q. Carlos" <jqcarlos@revtax.gov.gu>
Date: February 12, 2014, 10:28:29 AM GMT+10:00
To: "Senator Dennis Rodriguez" <senatordrodriguez@gmail.com>
Cc: <art.ilagan@revtax.gov.gu>
Subject: Resolution No. 316

[Quoted text hidden]



Resolution No 316.docx

18K

1 Resolution No. 316, Suggested Language for Consideration

Page 1. No. 2 WHEREAS, existing health insurance providers in the U.S. offshore territories shall have to meet higher standards of minimum coverage pursuant to market reforms, which include: essential health benefits, guaranteed issue, guaranteed renewability, prohibitions on excluding preexisting conditions, adjusted community rating, and other consumer protections; and

Comment. Guaranteed renewability is included in the market reforms. (ACA §2703).

Page 2. No. 1. WHEREAS, the ACA also seeks to set up a healthcare exchange system, nation-wide through which Americans' could ~~obtain~~ buy or purchase not only affordable coverage, but coverage with better essential health benefits; and

Comment: An exchange is the facility to enable individuals and small employers to buy or purchase health insurance plans.

Page 2. No. 5. WHEREAS, the U.S. Department of Health and Human Services has determined that PPACA's Public Health Service Act provisions to include market reforms (e.g., guaranteed issue, guaranteed renewability, prohibitions on preexisting condition exclusions, essential health benefits, adjusted community rating and other consumer protections) will apply to health insurance coverage sold in the Territories; and

Comment: The Public Health Service Act provisions definition of a state specifically included Guam and the other Territories.

Does this paragraph refer Guam as a Territory or to all Territories?

Page 3. No. 1 WHEREAS, the individual and business mandates are necessary to help offset the costs of ~~an exchange~~ - anticipated increases in health insurance premiums, the implementation of which is directly impeded by the exclusion; and [is further exacerbated by the situation that, "if a territory elects to implement health insurance exchanges, they will receive a limited allotment of subsidy funding that only covers a fraction of the needed funds" (see NAIC-October 16, 2013, letter to Secretary; and]

2 Resolution No. 316, Suggested Language for Consideration

Comment: The PHS Act market reforms particularly guaranteed, issue, guaranteed renewability, prohibition on preexisting condition exclusions, essential health benefits will result to higher claims which will most likely result to higher health insurance premiums within and outside of the exchange. The individual and business mandates are designed to encourage more individuals and small employers to enroll and buy health insurance plans. The premiums to be generated from individuals and small employers that purchases health insurance plans will help offset the anticipated increases in health insurance premiums.

In addition, it is suggested that this bracketed portion of this paragraph. Which refers to insufficient subsidy, be moved to Page 3. No. 5 WHEREAS clause.

Page 3. No. 5. WHEREAS, Guam's Insurance Commission has estimated that it would cost the government of Guam a minimum of \$74 million dollars annually to cover the eligible members in an exchange, yet Guam's share of the startup appropriation under the PPACA is only \$24 million, which is a one-time subsidy, and is not an annually recurring appropriation, a situation that "if a territory elects to implement health insurance exchanges, they will receive a limited allotment of subsidy funding that only covers a fraction of the needed funds" (see NAIC-October 16, 2013, letter to Secretary); and

Comment: This proposed addition is taken and moved from Page 3, No. 1 WHEREAS clause to buttress the statement that the subsidy given to Guam to implement an insurance exchange prompted the NAIC to issue this statement.



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature
155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com
E-mail: roryforguam@gmail.com • Tel: (671)472-7679 • Fax: (671)472-3547

Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

Senator
Vicente (Ben) C. Pangelinan
Member

Speaker
Judith T.P. Won Pat, Ed.D.
Member

Senator
Dennis G. Rodriguez, Jr.
Member

Vice-Speaker
Benjamin J.F. Cruz
Member

Legislative Secretary
Tina Rose Muña Barnes
Member

Senator
Frank Blas Aguon, Jr.
Member

Senator
Michael F.Q. San Nicolas
Member

Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

February 5, 2014

MEMORANDUM

To: Rennae Meno
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: Senator Rory J. Respicio
Majority Leader & Rules Chair

Subject: Referral of Resolution No. 316-32 (COR)

As Chairperson of the Committee on Rules, I am forwarding my referral of Resolution No. 316-32 (COR). Please ensure that the subject resolution is referred, in my name, to the respective sponsor, as shown on the attachment.

I also request that the same be forwarded to all Senators of *I Mina'trentai Dos na Liheslaturan Guåhan*.

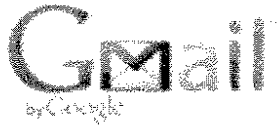
Should you have any questions, please feel free to contact our office at 472-7679.

Si Yu'os ma'åse!

(1) Attachment

I Mina Trinta Dos Na Liheshiluman Gauhnan
Resolutions Log Sheet

Resolution No.	Senator	Title	Date Intro	Date of Presentation	Date Referred	Committee / One Referred	Date Adopted
318-37 [COP]	Senators: Bernis G. Rodriguez, Jr. R.I. Cruz Chris M. Durbas	THE RELATIVE TO EXPRESSING THE CONCERNS OF I LIHESHILUMAN GUJAHAN (PNU GUAM LEGISLATURE) RELATIVE TO THE APPLICABILITY OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT TO GUAM, AND REQUESTING EQUITABLE RECONSIDERATION OF ITS APPLICABILITY TO GUAM BY THE PRESIDENT OF THE UNITED STATES OF AMERICA, MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES, THE U.S. SENATE, SECRETARY, U.S. DEPARTMENT OF THE HEALTH AND HUMAN SERVICES.	2/9/14 12: 57 p.m.		2/5/2014	Committee on Health & Human Services, Health Insurance Reform, Economic Development, and Senior Citizens	



Dennis Rodriguez, Jr. <senatordrodriguez@gmail.com>

AMENDED FIRST NOTICE of OVERSIGHT/PUBLIC HEARING on Wed., Feb. 12, 2014

1 message

Joseph Anthony Mesngon <jmesngon.senatorrodriguez@gmail.com>
To: phnotice@guamlegislature.org

Wed, Feb 5, 2014 at 2:26 PM

February 5, 2014

MEMORANDUM

To: All Senators, Stakeholders, Media

From: Senator Dennis G. Rodriguez, Jr.

Subject: AMENDED FIRST NOTICE of OVERSIGHT/PUBLIC HEARING

Hafa Adai!

In accordance with the Open Government Act, the Committee on Health and Human Services issues this AMENDED FIRST NOTICE of OVERSIGHT/PUBLIC HEARING.

An Oversight Hearing and Public Hearing will be conducted Wednesday, February 12, 2014 in the Legislature's Public Hearing Room on the following.

1. The Committee will conduct an Oversight hearing at 10am on the Guam Memorial Hospital Authority.

Mr. Joe Verga, Administrator; Mr. Alan Ulrich, CFO; appropriate personnel and Members of the Board of Trustees have been requested to participate in the hearing.

(First notice on Oversight hearing issued January 28, 2014.)

2. A Public Hearing will be conducted at 2:30pm on Resolution 316-32 (COR).

Resolution 316-32 (COR) is Relative to expressing the concerns of Liheslaturan Guahan relative to the applicability of the Patient Protection and Affordable Care Act to Guam, and requesting equitable reconsideration of its applicability to Guam by the President of the United States of America, Members of the U.S. House of Representatives, the U.S. Senate, Secretar, U.S. Department of Health and Human Services.

You may contact our office for more information.

Si Yu'os Ma'ase!

Testimonies may be addressed to Senator Dennis G. Rodriguez, Jr., Chairman of the Committee on Health and Human Services and sent via email to senatordrodriguez@gmail.com, 176 Serenu Ave. Suite 107 Tamuning, Guam or the Legislature Mailroom at 155 Hesler Pl. Hagatna, Guam.

Individuals who may require special accommodations or assistance are asked to contact the Office of Sen. Rodriguez at 649-8638/0511 at least 48 hours prior to the hearing.



Dennis Rodriguez, Jr. <senatordrodriguez@gmail.com>

SECOND NOTICE of OVERSIGHT/PUBLIC HEARING on Wed., Feb. 12, 2014

Message

Joseph Anthony Mesngon <jmesngon.senatordrodriguez@gmail.com>
To: phnotice@guamlegislature.org

Fri, Feb 7, 2014 at 10:02 AM

February 7, 2014

MEMORANDUM**To:** All Senators, Stakeholders, Media**From:** Senator Dennis G. Rodriguez, Jr.**Subject:** SECOND NOTICE of OVERSIGHT/PUBLIC HEARING

Hafa Adai!

In accordance with the Open Government Act, the Committee on Health and Human Services issues this SECOND NOTICE of OVERSIGHT/PUBLIC HEARING.

An Oversight Hearing and Public Hearing will be conducted Wednesday, February 12, 2014 in the Legislature's Public Hearing Room on the following.

1. The Committee will conduct an Oversight hearing at 10am on the Guam Memorial Hospital Authority.

Mr. Joe Verga, Administrator; Mr. Alan Ulrich, CFO; appropriate personnel and Members of the Board of Trustees have been requested to participate in the hearing.

2. A Public Hearing on Resolution 316-32(COR) will be conducted at 2:30pm.

Resolution 316-32 (COR) is Relative to expressing the concerns of I Liheslaturan Guahan relative to the applicability of the Patient Protection and Affordable Care Act to Guam, and requesting equitable reconsideration of its applicability to Guam by the President of the United States of America, Members of the U.S. House of Representatives, the U.S. Senate, Secretary, U.S. Department of Health and Human Services.

You may contact our office for more information.

Si Yu'os Ma'ase'!

Testimonies may be addressed to Senator Dennis G. Rodriguez, Jr., Chairman of the Committee on Health and Human Services and sent via email to senatordrodriguez@gmail.com, 176 Serenu Ave. Suite 107 Tamuning, Guam or the Legislature Mailroom at 155 Hesler Pl. Hagatna, Guam.

Individuals who may require special accommodations or assistance are asked to contact the Office of Sen. Rodriguez at 649-8638/0511 at least 48 hours prior to the hearing.

Joseph A. Q. Mesngon



Dennis Rodriguez, Jr. <senator@drodriguez@gmail.com>

SECOND NOTICE of OVERSIGHT/PUBLIC HEARING on Wed., Feb. 12, 20141 message page

Joseph Anthony Mesngon <jmesngon.senator@drodriguez@gmail.com>

Mon, Feb 10, 2014 at 11:11 AM

To: phnotice@guamlegislature.org

February 10, 2014

MEMORANDUM

To: All Senators, Stakeholders, Media

From: Senator Dennis G. Rodriguez, Jr.

Subject: SECOND NOTICE of OVERSIGHT/PUBLIC HEARING

Hafa Adai!

In accordance with the Open Government Act, the Committee on Health and Human Services issues this SECOND NOTICE of OVERSIGHT/PUBLIC HEARING.

An Oversight Hearing and Public Hearing will be conducted Wednesday, February 12, 2014 in the Legislature's Public Hearing Room on the following.

1. The Committee will conduct an Oversight hearing at 9am on the Guam Memorial Hospital Authority.

Mr. Joe Verga, Administrator; Mr. Alan Ulrich, CFO; appropriate personnel and Members of the Board of Trustees have been requested to participate in the hearing.

2. A Public Hearing on Resolution 316-32(COR) will be conducted at 2:30pm.

Resolution 316-32 (COR) is Relative to expressing the concerns of I Liheslaturan Guahan relative to the applicability of the Patient Protection and Affordable Care Act to Guam, and requesting equitable reconsideration of its applicability to Guam by the President of the United States of America, Members of the U.S. House of Representatives, the U.S. Senate, Secretary, U.S. Department of Health and Human Services.

You may contact our office for more information.

Si Yu'os Ma'ase'!

Testimonies may be addressed to Senator Dennis G. Rodriguez, Jr., Chairman of the Committee on Health and Human Services and sent via email to senator@drodriguez@gmail.com, 176 Serenu Ave. Suite 107 Tamuning, Guam or the Legislature Mailroom at 155 Hesler Pl. Hagatna, Guam.

Individuals who may require special accommodations or assistance are asked to contact the Office of Sen. Rodriguez at 649-8638/0511 at least 48 hours prior to the hearing.

Joseph A. Q. Mesngon

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SENATOR DENNIS G. RODRIGUEZ, JR.

AGENDA

Wednesday, February 12, 2014

Public Hearing Room, *I Liheslatura*

- I. **Call to Order**
- II. **9am Oversight Hearing on the Guam Memorial Hospital Authority**
- III. **2:30pm Public Hearing on Res. 316-32 (COR)**
 - **Resolution 316-32 (COR)- Relative to expressing the concerns of I Liheslaturan Guahan relative to the applicability of the Patient Protection and Affordable Care Act to Guam and requesting equitable reconsideration of its applicability to Guam by the President of the United States of America, Members of the U.S. House of Representatives, the U.S. Senate, Secretary, U.S. Department of Health and Human Services.**
- IV. **Adjournment**

Testimonies may be addressed to Sen. Dennis G. Rodriguez, Jr. and sent or to 155 Hesler St. Hagatna, Guam, the Guam Legislature's Mailroom, or via email at senatordrodriguez@gmail.com.

Si Yu'os Ma'āse' for your participation in today's hearings and discussions!



COMMITTEE ON RULES

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Vicente (Ben) C. Pangelinan
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Member

Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

February 5, 2014

MEMORANDUM

To: Rennae Meno
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: Senator Rory J. Respicio
Majority Leader & Rules Chair

Subject: Referral of Resolution No. 316-32 (COR)

As Chairperson of the Committee on Rules, I am forwarding my referral of Resolution No. 316-32 (COR). Please ensure that the subject resolution is referred, in my name, to the respective sponsor, as shown on the attachment.

I also request that the same be forwarded to all Senators of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

Si Yu'os ma'åse!

(1) Attachment

**MINA' TRENTAI DOS NA LIHESLATURAN GUAHAN
2014 (SECOND) Regular Session**

Resolution No. 316 -32 (COR)

Introduced by:

D.G. RODRIGUEZ, JR. ✓
B.J.F. CRUZ
C.M. DUENAS

**RELATIVE TO EXPRESSING THE CONCERNS OF I
LIHESLATURAN GUÅHAN [32ND GUAM LEGISLATURE]
RELATIVE TO THE APPLICABILITY OF THE PATIENT
PROTECTION AND AFFORDABLE CARE ACT TO GUAM,
AND REQUESTING EQUITABLE RECONSIDERATION OF
ITS APPLICABILITY TO GUAM BY THE PRESIDENT OF
THE UNITED STATES OF AMERICA, MEMBERS OF THE
U.S. HOUSE OF REPRESENTATIVES, THE U.S. SENATE,
SECRETARY, U.S. DEPARTMENT OF THE HEALTH AND
HUMAN SERVICES.**

2014 FEB -5 PM 12:57

1 **BE IT RESOLVED BY MINA' TRENTAI DOS NA LIHESLATURAN**
2 **GUÅHAN:**

3 **WHEREAS,** the Patient Protection and Affordable Care Act is intended to
4 promote healthcare for millions of Americans in the 50 States and the District of
5 Columbia, by providing access to affordable healthcare, ensuring quality through
6 market reforms, and advancing prevention and public health; and

7 **WHEREAS,** existing health insurance providers in the U.S. offshore
8 territories shall have to meet higher standards of minimum coverage pursuant to
9 the market reforms, which include: essential health benefits, guaranteed issue,
10 prohibitions on excluding preexisting conditions, adjusted community rating, and
11 other consumer protections; and

1 **WHEREAS**, the ACA also seeks to set up a healthcare exchange system,
2 nation-wide, through which Americans’ could obtain not only affordable coverage,
3 but coverage with better essential health benefits; and

4 **WHEREAS**, to help accomplish this in the 50 States and Washington, D.C.,
5 the PPACA additionally provides the means to partially offset the states costs of
6 operating the exchanges, or the optional implementation of an equivalent
7 qualifying program, through what are known as the individual and business
8 mandates, as provided pursuant to specific applicable excise tax provisions of the
9 Internal Revenue Code; and

10 **WHEREAS**, the Public Health Services Act (PHSA), that includes benefits
11 for the territory’s, provides, *“The term “State” means each of the several States,*
12 *the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa,*
13 *and the Northern Mariana Islands”*(PHSA 2791(d)(14)); and

14 **WHEREAS**, in Title I of the PPACA, it amends the PHSA, and provides,
15 *“In this Title, the term “State” means each of the 50 States and the District of*
16 *Columbia”* (ACA 1304(d)); and

17 **WHEREAS**, the U.S. Department of the Health and Human Services has
18 determined that PPACA’s market reforms (e.g., guaranteed issue, prohibitions on
19 preexisting condition exclusions, essential health benefits, adjusted community
20 rating and other consumer protections) will apply to health insurance coverage sold
21 in the Territory’s; and

22 **WHEREAS**, U.S. Department of the Health and Human Services has
23 determined that PPACA’s individual and business mandates are not applicable to
24 Guam; and

1 **WHEREAS**, the individual and business mandates are necessary to help off-
2 set the costs of an exchange, the implementation of which is directly impeded by
3 the exclusion, and is further exacerbated by the situation that, *“if a territory elects*
4 *to implement health insurance exchanges, they will receive a limited allotment of*
5 *subsidy funding that only covers a fraction of needed funds” (see NAIC-October 16,*
6 *2013, letter to Secretary); and*

7 **WHEREAS**, the selective inclusion or denial of applicability to Guam places
8 Guam in an untenable position, in so far that the market reforms are applicable, but
9 the means to partially fund it through the individual and business mandates are
10 specifically excluded; and

11 **WHEREAS**, the PPACA’s inequitable, unequal applicability to America’s off-
12 shore territory’s will likely have the unintended opposite impact of driving up the cost
13 of healthcare coverage if certain provisions are not amended so as to properly include
14 or exempt the territories to the extent necessary and realistically practicable; and

15 **WHEREAS**, the Attorney General of Guam has raised in his response to a
16 Legislative inquiry (LEG 12-0708), that the government could find itself liable, and
17 stated, in part, *“If we establish an Exchange, Guam will have to pay the Advance*
18 *Premium Tax Credit under U.S.C.A. §36B . . . This is an unfunded mandate that*
19 *Guam has to pay and it has been estimated that this will cost Guam \$74 million*
20 *dollars per year. If Guam does not establish an Exchange, there is the possibility that*
21 *a class action lawsuit could be brought for payment of this credit much like the*
22 *Earned Income Tax Credit lawsuit in the past”*; and

23 **WHEREAS**, Guam’s Insurance Commission has estimated that it would cost
24 the government of Guam a minimum of \$74 million dollars annually to cover the
25 eligible members in an exchange, yet Guam’s share of the startup appropriation under

1 the PPACA is only \$24 million, which is a one-time subsidy, and is not an annually
2 recurring appropriation; and

3 **WHEREAS**, the individual and business mandates are tied into specific excise
4 tax provisions of the Internal Revenue Code which are not applicable to Guam, it must
5 be duly noted that, Section 31 of the Organic Act (48 U.S.C.) was enacted by the
6 Congress primarily to relieve the US Treasury of making direct appropriations to the
7 Government of Guam. Although Congress delegated collection and enforcement
8 function of the income tax to the Government of Guam, the Government of Guam is
9 powerless to vary the terms of the Internal Revenue Code as applied to Guam, except
10 as permitted by Congress. [*Bank of America v. Chaco*, C.A.Guam 1976, 539 F.2d
11 1226]; and

12 **WHEREAS**, pursuant to the taxation limitations established in the Organic
13 Act for Guam, as previously provided by Congress in 1950, Guam is now
14 prevented from unilaterally implementing under local law the individual and
15 business mandates, by way of Guam's implementation of mirrored excise tax
16 provisions taken from the Internal Revenue Code and established under local law;
17 and

18 **WHEREAS**, Guam's four domestic health insurance carriers have stated, in
19 a January 23, 2014 briefing before the Guam Legislature, that the resulting impact
20 of the PPACA market reforms will cause carriers to raise premium rates to offset
21 the costs of implementing the applicable market reforms; and

22 **WHEREAS**, the PPACA is intended to increase access to affordable
23 healthcare for millions of Americans in the 50 States and the District of Columbia,
24 it will have the unintended opposite impact for American's in the off-shore U.S.
25 Territory of Guam; and

1 **WHEREAS**, the National Association of Insurance Commissioners (NAIC)
2 has duly considered the impact to the Territory's, and stated, in a letter to the U.S.
3 Secretary of Health and Human Services dated October 16, 2013, "*We urge you. .*
4 *.to provide the Territories with the flexibility that they need to determine whether*
5 *and how the market reforms should be applied*"; and

6 **WHEREAS**, the NAIC paper further states, "*Though the statute itself is*
7 *unclear, (HHS) has determined that the ACA's market reforms will apply to health*
8 *insurance coverage sold in the territories, while the individual and employer*
9 *mandates will not. If a territory elects to implement health insurance exchanges, they*
10 *will receive a limited allotment of subsidy funding that only covers a fraction of*
11 *needed funds. As a result, the threat of adverse selection driving up premiums is*
12 *much higher than it is in the states*"; and

13 **WHEREAS**, the Guam Legislature takes due note of the NAIC paper which
14 highlights, "*the often-stated position taken by the ACA's congressional sponsors and*
15 *the administration that these reforms are not possible without the individual*
16 *mandate and the subsidies*"; and

17 **WHEREAS**, the Guam Legislature supports the veracity of the information
18 provided, and endorses the statement, findings and arguments put forward by the
19 NAIC to the Secretary; and

20 **WHEREAS**, Guam's inability to participate is not from an unwillingness on
21 our part, but, rather, from a failure to duly consider the situation of Guam, the size of
22 our population and insurance risk pool, our economy, and the conflicting statutes and
23 unfunded mandates the Congress has unilaterally established; and

1 **WHEREAS**, the American citizens of the off-shore U.S. Territory of Guam
2 must not be excluded from the opportunity to be legitimately included in the PPACA;
3 and

4 **WHEREAS**, it would only prove just and proper for the Secretary, U.S.
5 Department of the Health and Human Services, the Honorable Members of the
6 U.S. House of Representatives and the U.S. Senate, to duly consider the issues and
7 matters raised above; and

8 **WHEREAS**, at the urging and request of Americans in the respective 50
9 States and District of Columbia, numerous extensions and accommodations have
10 been granted by the administration and the secretary of the U.S. Department of
11 Health and Human Services, yet no extensions or accommodations have been
12 provided to the Americans in the off-shore U.S. Territories and now, therefore, be
13 it

14 **RESOLVED**, that the people of Guam request that the President of the
15 United States, the U.S. House of Representatives, the U.S. Senate and the
16 Secretary, U.S. Department of the Health and Human Services further consider and
17 amend, as necessary, the provisions of the PPACA so as to facilitate its equitable
18 implementation in the Territory's, which must be inclusive of a determination to:

- 19 1. Include Guam in the mandates and provide for the phased-in applicability
20 of the provisions of the PPACA, and fully provide the correlated
21 premium subsidies and additional Medicaid subsidies; and
- 22 2. Finally address the October 16, 2013 letter the National Association of
23 Insurance Commissioners (NAIC) sent to the Secretary Kathleen
24 Sebelius, U.S. Department of Health and Human Services regarding the

1 inequities and challenges that Guam and other U.S. Territories are facing
2 with the implementation of PPACA; and be it further

3 **RESOLVED**, that the Speaker certify and the Legislative Secretary attests
4 to, the adoption hereof, and that copies of the same be thereafter transmitted to the
5 Honorable Barack Obama, President, United States of America, the Speaker of the
6 U.S. House of Representatives, the President of the U.S. Senate, Secretary, U.S.
7 Department of the Health and Human Services, the Secretary of the U.S.
8 Department of the Interior, the Assistant Secretary of the Interior for Insular
9 Affairs, the Honorable Jack Kingston, Chairman, Subcommittee on Labor, Health
10 and Human Services, Education, and Related Agencies, 113th Congress, U.S.
11 House of Representatives, the Honorable Tom Harkin, Chairman, Committee on
12 Health, Education, Labor, and Pensions, U.S. Senate, the Honorable Madeleine Z.
13 Bordallo, Guam’s Congressional Delegate, 113th Congress, U.S. House of
14 Representatives, and the Honorable Edward J.B. Calvo, *I Maga’låhen Guåhan*.

Duly and Regularly Adopted on the _____ Day of February, 2014.

Judith T. Won Pat
Speaker

Tina Rose Muna-Barnes
Senator and Legislative Secretary