



Territory of Guam  
Territorio de Guam

OFFICE OF THE GOVERNOR  
100 PENN. MAL. BLDG.  
AGANA, GUAM 96910

MAY 07 1993

RECEIVED  
OFFICE OF THE SPEAKER  
DATE: 5/07/93  
TIME: 4:20  
RECD BY: *[Signature]*

The Honorable Joe T. San Agustin  
Speaker, Twenty-Second Guam Legislature  
155 Hesler Street  
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 327 which I have signed into law this date as  
Public Law 22-14.

Sincerely yours,

*[Signature of Joseph F. Ada]*  
JOSEPH F. ADA  
Governor of Guam  
220208

Attachment



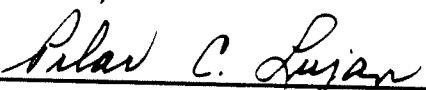
TWENTY-SECOND GUAM LEGISLATURE  
1993 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR


This is to certify that Substitute Bill No. 327 (COR), "AN ACT TO AMEND §43255 OF THE GOVERNMENT CODE AND TO ADD A NEW SUBPARAGRAPH (f) TO §4301, TITLE 4, GUAM CODE ANNOTATED, TO AUTHORIZE REBATES OR REFUNDS UNDER PUBLIC AND PRIVATE HEALTH INSURANCE PLANS WHERE SUCH REBATES OR REFUNDS ARE CLEARLY PROVIDED FOR IN THE POLICIES ISSUED UNDER SUCH PLANS," was on the 25th day of April, 1993, duly and regularly passed.

  
\_\_\_\_\_  
JOE T. SAN AGUSTIN  
Speaker

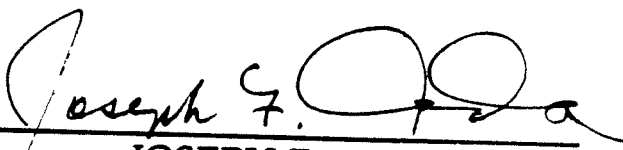
Attested:

  
\_\_\_\_\_  
PILAR C. LUJAN  
Senator and Legislative Secretary

-----  
This Act was received by the Governor this 26<sup>th</sup> day of April  
1993, at 3:35 o'clock P.M.

  
\_\_\_\_\_  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
\_\_\_\_\_  
JOSEPH F. ADA  
Governor of Guam

Date: MAY 07 1993

Public Law No. 22-14

TWENTY-SECOND GUAM LEGISLATURE  
1993 (FIRST) Regular Session

Bill No. 327 (COR)

As amended by the Committee on  
Economic-Agricultural Development  
& Insurance, and as substituted by  
the Committee on Rules

Introduced by:

V. C. Pangelinan

T. S. Nelson

C. T. C. Gutierrez

J. T. San Agustin

AN ACT TO AMEND §43255 OF THE GOVERNMENT  
CODE AND TO ADD A NEW SUBPARAGRAPH (f) TO  
§4301, TITLE 4, GUAM CODE ANNOTATED, TO  
AUTHORIZE REBATES OR REFUNDS UNDER PUBLIC  
AND PRIVATE HEALTH INSURANCE PLANS WHERE  
SUCH REBATES OR REFUNDS ARE CLEARLY  
PROVIDED FOR IN THE POLICIES ISSUED UNDER  
SUCH PLANS.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. §43255 of the Government Code of Guam is hereby amended  
3 to read:

4 "§43255. Rebates or Refunds. (a) It is unlawful for an insurer,  
5 broker, agent, or solicitor to pay or offer to pay, directly or indirectly,  
6 to any person as an inducement for such person to enter into an  
7 insurance contract on any risk in Guam, any rebate or refund of the  
8 whole or part of the premium or commission payable thereon, or any  
9 valuable consideration which is not clearly specified, promised or  
10 provided for in the policy. Any health insurer may refund to the

1 insured a part of any premium paid for such insurance based on the  
2 insured's utilization of health care benefits if such refund is clearly  
3 specified, promised or provided for in the health insurance policy.

4 (b) It is unlawful for any person to accept, directly or indirectly,  
5 an inducement to such person to enter into an insurance contract on  
6 any risk in Guam, any rebate or refund of the whole or part of the  
7 premium or commission payable thereon, or any valuable  
8 consideration which is not clearly specified, promised or provided for  
9 in the policy. Any health insurer may refund to the insured a part of  
10 any premium paid for such insurance based on the insured's  
11 utilization of health care benefits if such refund is clearly specified,  
12 promised or provided for in the health insurance policy.

13 (c) It is unlawful for any insurer or general agent to appoint an  
14 agent for the purposes of enabling such agent, or other person to  
15 obtain at a cost less than that specified in the policy any insurance  
16 from such insurer.

17 (d) The refunds or rebates authorized in subsections (a) and (b)  
18 of this §43255 if clearly specified, provided, or promised for in the  
19 insurance policy may not be issued in an unfairly discriminatory  
20 manner. Refunds or rebates which are calculated and paid based  
21 upon a health insurance plan members' utilization of health care  
22 benefits shall not be considered unfairly discriminatory.

23 (e) It is the sense of the Legislature that any question as to the  
24 amount (if any) of the refund payable to the employer of the  
25 employee based upon the contribution of the employees is a subject of  
26 negotiations."

1           Section 2. A new subparagraph (f) is hereby added to §4301, Title 4,  
2 Guam Code Annotated, to read:

3           "(f) Any insurance company or health maintenance  
4 organization offering group health coverage under this section may  
5 at its sole option, offer two (2) plans with different premiums and/or  
6 benefits, only one of which plans may offer a rebate, with all  
7 members of both plans being in the same risk pool. The plan offering  
8 the rebate or refund shall base the same on the claims made by the  
9 plan members under the plan."

10          Section 3. In order to permit those companies making proposals for  
11 such group health plans to make a proposal incorporating two (2) plans  
12 authorized by Section 2 of this Act, the Director of Administration shall hold  
13 open the time for submitting such proposals for Fiscal Year 93-94 for fifteen  
14 (15) days after the effective date of this Act or until the last date for  
15 submission of such proposals has expired, whichever comes later.

# TWENTY-SECOND GUAM LEGISLATURE

1993 (FIRST) Regular Session

Date: 4/25/93

Time: 12:13 ~~0~~

## VOTING SHEET

Bill No. 327

Resolution No. \_\_\_\_\_

Question: Passage of Bill

NAME	AYE	NO	NOT VOTING/ ABSTAN	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P.	✓			
ARRIOLA, Elizabeth P.			✓	
BAMBA, J. George			✓	
BLAZ, Anthony C.		✓		
BORDALLO, Madeleine Z.	✓			
BROOKS, Doris F.			✓	
CAMACHO, Felix P.		✓		
DIERKING, Herminia D.	✓			
GUTIERREZ, Carl T. C.	✓			
LUJAN, Pilar C.	✓			
MANIBUSAN, Marilyn D. A.		✓		
NELSON, Ted S.	✓			
PANGELINAN, Vicente C.	✓			
PARKINSON, Don	✓			
REYES, Edward D.	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Francisco R.	✓			
SHIMIZU, David L. G.	✓			
TANAKA, Thomas V. C.		✓		
UNPINGCO, Antonio R.	✓			

TOTAL

14    4    3    0

Office of



The People

Senator Vicente C. Pangelinan  
Twenty-Second Guam Legislature

Chairman, Committee on Economic-Agricultural Development and Insurance  
130 Aspinall Avenue • Suite 101 • Agana Guam • 96910 Phone (671) 472-3552-4 Fax (671) 472-3556

April 14, 1993

Speaker Joe T. San Agustin  
Twenty-Second Guam Legislature  
155 Hesler St.  
Agana, Guam 96910

Dear Mr. Speaker,

The Committee on Economic-Agricultural Development and Insurance, to which was referred Bill 327 wishes to report back to the Legislature with its recommendation **TO DO PASS**. The voting record is as follows:

TO PASS	<u>6</u>
NOT TO PASS	<u>0</u>
ABSTAIN	<u>0</u>
TO PLACE IN INACTIVE FILE	<u>0</u>

Copies of the Committee Report and other pertinent documents are attached. Your attention to this matter is appreciated.

Sincerely,

  
VICENTE C. PANGELINAN

Attachments.

Office of



*The People*

**Senator Vicente C. Pangelinan**  
Twenty-Second Guam Legislature

Chairman, Committee on Economic-Agricultural Development and Insurance  
130 Aspinall Avenue • Suite 101 • Agana Guam • 96910 Phone (671) 472-3552-4 Fax (671) 472-3556

April 5, 1993

MEMORANDUM

TO: Members, Committee on  
Economic-Agricultural Dev. & Insurance

FROM: Sen. Ben. C. Pangelinan

Transmitted herewith for your information and action is the Committee Report concerning Bill 327. the narrative report is accompanied by the following:

1. Committee Voting Sheet
2. Written Testimony
3. Evidentiary Materials

Should you have any questions on the narrative report or the accompanying documents, I would be most happy to answer any of them. Please take the appropriate action on the attached voting sheet and return the documents to my office for transmittal to the other members. Your prompt attention and cooperation in this matter is greatly appreciated.

Sincerely,

  
VICENTE C. PANGELINAN





# Senator Vicente C. Pangelinan

## Twenty-Second Guam Legislature

Chairman, Committee on Economic-Agricultural Development and Insurance  
130 Aspinall Avenue • Suite 101 • Agana Guam • 96910 Phone (671) 472-3552-4 Fax (671) 472-3556

### COMMITTEE VOTING SHEET

**SUBJECT:** Committee Report on Bill 327 as amended by the Committee on Economic-Agricultural Development and Insurance

Committee Members	Initial	To Pass	Not to Pass	Abstain	To Place In Inactive File
V.C. Pangelinan		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
T.C. Ada		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A.C. Blaz	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F.P. Camacho	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H.D. Dierking		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
P.C. Lujan		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M.D.A. Manibusan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
T. Nelson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E.D. Reyes		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F.R. Santos		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
T.V.C. Tanaka	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

# COMMITTEE ON ECONOMIC-AGRICULTURAL DEVELOPMENT & INSURANCE

## Committee Report on Bill 327

- An act to repeal and re-enact section 43255 of the Government Code relative to clarifying that rebates may be paid where they are clearly specified, promised or provided for in an insurance policy.

### OVERVIEW

On February 24, 1993, the Insurance Commissioner issued a ruling ordering Zurich Insurance (Guam) Inc. to cease and desist offering health insurance policies with a rebate/refund feature. According to testimony submitted by the Commissioner, this ruling was a result of nearly 13 months of evaluation conducted by his office.

On Thursday, March 11, 1993, the Committee on Economic-Agricultural Development and Insurance, having jurisdiction over insurance matters, conducted a hearing at 1 PM and 6 PM on Bill 327 in the Public Hearing Room, Guam Legislature Temporary Building in Agana.

Committee Chairman Vicente C. Pangelinan presided and the following members were present: Vice Chairman Thomas C. Ada, Committee members, Anthony C. Blaz, Pilar C. Lujan, Ted Nelson, and Thomas Tanaka. Also present were Sens. Elizabeth P. Arriola, and Doris F. Brooks.

### SUMMARY OF TESTIMONY

Over four hundred individuals attended the public hearing. Of that number one hundred twenty-one formally expressed their opinions on the bill (see attached witness sign-up sheet).

in favor	against	blank	total
102	13	6	121

Additionally, the Committee received nearly five thousand (5,000) petitions expressing support of the passage of Bill 327. Sixty-five percent of the petitioners

identified themselves as Staywell subscribers while thirty-four percent were non Staywell subscribers.

Joaquin G. Blaz, Ex-Officio Insurance Commissioner of Guam, stated Gov. Ada supports any legislation that would allow rebating provided that the legislation is not discriminatory. He stated that Bill 327 is discriminatory because it allows rebates only in health insurance.

Senator Tanaka asked for a clarification of the definition of a rebate. Mr. Blaz responded that a rebate is a refund of the premiums paid in by the subscriber whether it is earned or unearned.

Chairman Pangelinan asked why 48 states do not allow rebates. Mr. Blaz suggested that this practice was based on the finding rebates in the sale of life insurance policies discriminated against the poor, primarily black minority. Mr. Blaz further stated his position against rebates is to prevent any particular insurer from trying to lure everybody to his plan at the expense of another wherein it discriminates and it also stifles the competition. Chairman Pangelinan then asked whether he thought the Rebate Policy as practiced is unfairly discriminatory. Mr. Blaz responded yes, because the whole premium process involved two entities the individual as well as the government.

Senator Ada asked whether problems resulting from the Gov Guam Group Health Plan are a failure of the negotiations. Mr. Blaz agreed. Senator Ada then asked, if the rebate feature caused subscribers to be judicious about the use of medical resources and if it would consequently free up Guam's existing inadequate capacity of medical facilities and resources to others who really need it?

Mr. Blaz responded it is a normal practice in the industry to give discounts as in property and casualty for good drivers which are factored into the rate process to encourage people to be good drivers, save lives and at the same time control costs. Mr. Blaz further stated he believed it was foolhardy to encourage a person to avoid going to the doctor unlike where you have earned a discount by being a good driver. He added this comparison is not a rebate in so much as it is a reduction in your rate.

Don Davis, administrator of the Rebate Policy testified in favor of Bill 327. Mr. Davis stated under the Rebate Policy, refunds are not given to everyone. It is an incentive and a valid cost containment philosophy which places responsibility of a person's lifestyle and their health habits with the patient. The refund is a motivation that must be earned which is clearly specified, promised and provided for in the policies issued since 1982. He stated that individual responsibility of

medical care is a valid cost containment philosophy that benefits subscribers, employers, and the government of Guam.

Mr. Davis stated that a Blue Cross/Blue Shield study found that nearly 50% of outpatient physician/patient contacts are for very minor concerns which do not require the services of the physician. These visits result in wasted utilization of health care coverage. He added that the Rebate Policy philosophy addresses these types of abuses by giving members an incentive to review their own use of medical care and to review and verify that they are being billed only for services that they have received.

Mr. Davis further stated that allegations that the Rebate Policy attracts only the healthy are mistaken. Open heart surgeries accounted for more than \$1 million in claims paid; off island claims for 1992 were in excess of \$3.5 million; and more than 50 members had claims in excess of \$20,000.

Margaret Van Meter, Regional Vice-President and General Manager for the Asia-Pacific region of FHP, Inc., a federally qualified health maintenance organization that is publicly owned and publicly traded also testified before the Committee. Van Meter stated that FHP has been in Guam for over 20 years (current membership of 32,000) and has provided health insurance as well as medical care through its health care facilities. Under its federal qualification, FHP is prohibited from engaging in rebates, enticements, inducements and the like. She added that Bill 327 would severely handicap their ability to sell health insurance and provide medical services.

Van Meter stated FHP is not in favor of Bill 327. She further stated health programs which specifically are designed to attract the healthy, low-risk population into one pool, causes segmentation of the population and ultimately increases in costs of care for the high risk users while decreasing costs for low risk users of health care services. Van Meter stated the Clinton Administration is moving to eliminate this kind of market segmentation by imposing community rating methodologies which spread risk over all segments of the population. where low and high risk users pay an equal amount which covers all of their combined costs.

She stated that fair competition should be on service and price and that rebates should take the form of a reduction in premiums up front. Risk should be spread over the entire community population to avoid discrimination against those disabled or handicapped by health needs.

Following M. Van Meter's testimony, Senator Tanaka asked if premiums were based on actual cost for service plus administrative costs and a percentage of profit costs were actually reflected in the different health plans negotiated each year.

Van Meter responded each health plan negotiates based on their own cost experience. Senator Tanaka then asked if older persons might be dropped from a health plan because their inherent high costs of healthcare incurred by providers. Van Meter said FHP's federal qualification prohibits exclusion of any individual from a group plan.

Joe Topasna stated he is a banker for a major corporation with interests worldwide who switched to the Rebate Policy because of cost and coverage. He stated that the rebate feature did not induce him to purchase the Rebate Policy and that he has friends and family in their 40's and '50s who also elected to become subscribers because the Rebate Policy is affordable and provides needed coverage.

In written testimony submitted to the Committee, Ian Balfour, Chairman of the Guam Fire, Casualty and Marine Insurance Association stated the association is not in favor of any legislation that would legalize rebating on Guam.

Frank B. Rosario, president of GMHP Associates and GMHP Health Ins. Ltd. also submitted written testimony on Bill 327. He stated his concern that the legislation provides an exemption only for health insurance. He also expressed concern that in its present language the bill removes legitimate consumer protection against kick backs in the purchase of policies. He further stated that GMHP initially did not offer a refund insurance program because they believed it did not promote the cost conscious use of health care services. He stated in order for GMHP to compete, however, they developed a refund program, "Save Care" but were ordered to stop marketing the plan by the Insurance Commissioner in July 1992.

Wayne Antkowiak, a 20 year veteran of health care administration and employee at the Dept. of Public Health and Social Services, appeared before the Committee as a private citizen in support of Bill 327. He said most health care economists have stressed the need for the development of financial incentives into our health care plans as a method of containing costs. He testified that the Rebate Policy has reduced health care expenditures.

Kaleo Moylan, director of Moylan's Insurance Underwriters expressed his opposition to Bill 327. He stated that rebating divides the risk by class segregation: those on the low risk group enjoy lower premiums, while those in high and medium risk groups are overwhelmed with high premiums. This type of class segregation has been found to promote increases in the cost of health care.

H. Mark Ruth, on behalf of Taniguichi-Ruth-Smith Associates stated that his privately-owned firm has been insured by the Rebate Policy for the past eight years. His employees range from persons nearing retirement to employees with large families to young persons just out of school. He said some employees have received refunds while others have received maximum care for major health problems. The firm selected the Rebate Policy because it makes employees think

about their health and provides them an incentive to strive to stay healthy. He further stated that the insurer of the Rebate Policy has never shirked their responsibility to provide the highest level of care to all employees and their families when it is needed.

Robert A. Williams stated his concern that the general public is being penalized for problems that may exist in the Gov Guam Group Health Program. He further stated that these problems should be resolved by the Gov Guam Negotiating Team rather than entirely removing the Rebate Policy from the insurance market.

Stanley Y. Yasuhiro, D.D.S. is a private dentist who stated that he regularly submits dental claims under the Rebate Policy and has "never encountered any situation where the health of the patient was compromised due to any insurance refund to the patients." Mr. Yasuhiro further stated that the Rebate Policy helps reduce health care increases by minimizing involvement in doctor-patient relationships and paying for claims to the doctors without the use of restricted self imposed fees by some health insurance companies.

Bill Phillips, a Gov Guam employee, stated standard health care programs tend to encourage frivolous and unnecessary visits to clinics. The net effect is an increase in health care costs for everyone. He said the Rebate Policy gives subscribers a refund for unused services, effectively discouraging subscribers from making frivolous and unnecessary visits to a clinic. He further stated that for many years prior to the Rebate Policy, he and his healthy family of three had been unfairly discriminated against because his family paid the same rate as an unhealthy family of ten. Mr. Phillips encouraged the Committee to pass Bill 327 saying it would encourage market competition.

Robert Wade stated his support for the initiative because it allows subscribers to take an active role in decisions affecting their health. He stated that he originally chose the Rebate Policy because he was young and healthy. As a retired teacher still under the plan, he stated the rebate feature serves as an incentive for him in his retirement to maintain a healthy lifestyle because it saves him money.

Sylvia E.P. Guzman, a Gov Guam retiree and Rebate Policy subscriber, stated the terms of the Rebate Policy are clearly stated and applied fairly to every subscriber without discrimination. She stated although she does not receive refunds, she knows of two other subscribers aged 77 and 73 who regularly receive refunds under the policy because they are healthy senior citizens.

Nadine M. Torres, a Gov Guam employee and Rebate Policy subscriber, stated because of medical problems she does not receive refunds under the policy. She expressed support for the Rebate Policy because she believes insurance rates should be based on utilization. She further stated that she does not expect the general public to subsidize the special services she requires because of her medical problems.

Francisco J. Romero, D.D.S., M.S.D. stated that the Rebate Policy allows the end user to participate in the cost, quality and quantity of care required. He further stated it saves money and that its competitors should be allowed to provide similar plans.

Lucy Brehm stated that her family are Rebate Policy subscribers with a high claims history. She said she and her family have never received a refund and she does not feel the Rebate Policy discriminates against persons with high claims history. Instead, she said the Rebate Policy encourages she and her family to stay healthy.

Sandy Gould-Yow stated that the Rebate Policy does not compromise the health of its subscribers. She stated that her family and her retired mother are subscribers of the Rebate Policy because the rates are reasonable and that only pay for services that they use. She pointed out that the Rebate Policy is similar to car insurance programs which hold rates down for clients who do not make claims.

## **ISSUES, FINDINGS AND RECOMMENDATIONS**

### **A. ISSUES ON BILL 327**

The Staywell Rebate Policy has been in place since 1982, available to both the private and public sector markets. The policy has been subjected to yearly bid submissions, negotiations and approvals where the policy and contract provisions were evaluated and reviewed by the Gov Guam negotiating team consisting of representatives from each branch of the government of Guam, a representative of the Department of Revenue and Taxation appointed by the Insurance Commissioner, an Assistant Attorney General, representing the Office of the Attorney General, and an insurance actuary, contracted by the government.

That the bill is discriminatory since it only allow rebate for health insurance companies and not to companies writing other line of insurance. The committee spoke with the Guam Fire and Casualty Insurance Association and they indicated that they do not want this legislation to apply to their lines of business. Under the present insurance regulations, they are able to give "rebates" to their clients in the form of retroactive rate adjustments and discounts.

That the Rebate Policy discriminates against retirees, elderly, perennially ill and other high risk groups who enroll in the plan, as compared to healthy enrollees, tend not to receive a refund because of their high risk nature. The position was also stated that Staywell only insures healthy people.

This argument is not valid since all enrollees have the opportunity to receive a rebate or refund. There is no specific rule or regulation that will preclude anyone from receiving a refund. One's refund is dependent upon the utilization of the plan services. Unless a member of the same class is treated differently from other members from within the same class, the Committee finds that discrimination has not occurred.

This same high risk user group which enrolls with other health insurance plans that offer 100 percent coverage does not experience discrimination because they in fact pay the same premium rates as single, active members who have elected to choose this same plan offering 100 percent coverage. In fact, the reverse can be argued: that the younger more healthier members of a health insurance plan provides 100 percent insurance coverage is in fact subsidizing the claims filed by high risk users of the plan because they tend not to file as many claims.

That further, this same high risk group who enrolls with other health insurance plans tend to pay higher insurance premiums due to the high concentration of high risk groups in those plans.

Under the Government of Guam group health program an insurer cannot deny coverage to anyone based on his health status and no exclusions for pre-existing are allowed. Thus, anyone who wishes to take advantage of the lower rate offered by Staywell can do so without any negative consequences. The choice of the type of program an employee wishes to enroll is dependent on the coverage and the service that the member desires.

Additionally, the committee found that before the introduction of an insurer with a rebate feature, the rates for subscribers increased by an average of 22 % for one carrier and 12% for the other. With the introduction of a rebate feature program, these same carrier reduced the rate at which their premiums increased to an average of 12% and 11 %. Given these facts, we can say that had there not been



a program with a rebate feature, GOVGUAM employees and the Government would be paying much higher rates for insurance. When asked by Senator Pangelinan if the rates will decrease if the rebate policy were eliminated from the GOVGUAM market and these supposedly healthy employees were included in their health plans, FHP responded that they would not and that rates will probably increase.

That the Government of Guam is paying more of the premium for a Staywell member than it does for the GMHP or FHP member because the Staywell member gets a rebate. Thus, as a percent of the member's total cost for health insurance, the Staywell member pays less and the government pay more of the cost of insurance for the Staywell member. As a result, the Government of Guam is violating the law which requires it to pay the same amount for each health plan.

Premium rate contributions by the government are in fact equal for each of the health plans. The government is obligated to pay 50% of the lowest single rate for each employee subscriber, which is a fixed dollar contribution. At the present time the government pays a flat dollar amount to each of the participating plans, regardless of the total cost of the premium. Therefore even with a rebate going to Staywell members, the government pays the same amount towards the total cost of a member's premium for GMHP, FHP and Staywell.

That the wording of the original version of Bill 327 would have exempted health insurance plans from all existing prohibitions in the law for the use of rebates as an inducement to purchase insurance coverage unless it is specified, promised or clearly stated in the plan was not as the bill author intended.

The committee is amending the original bill that will clarify its intention to allow for rebates and refunds of the premium as the only allowable form of rebate or refund. A copy is attached. The Committee recommends the following substitute language :

Section 1. Section 43255 of the Government Code of Guam is hereby amended to read:

"Section 43255. Rebates or Refunds (a) It is unlawful for an insurer, broker, agent, or solicitor to pay or offer to pay, directly or indirectly, to any person as an inducement for such person to enter into an insurance contract on any risk in Guam, any rebate or refund of the whole or part of the premium or commission payable, thereon, or any valuable consideration [~~which is not clearly specified, promised or provided for in the policy~~]. This provision shall not apply to any

rebate or refund of the whole or part of the premium or commission payable for health insurance where the rebate or refund is clearly specified, provided or promised for in the policy.

(b) It is unlawful for any person to accept, directly or indirectly, an inducement to such person to enter into an insurance contract on any risk in Guam, any rebate or refund of the whole or part of the premium or commission payable thereon, or any valuable consideration [~~which is not clearly specified, promised or provided for in the policy~~]. This provision shall not apply to any rebate or refund of the whole or part of the premium or commission payable for health insurance where the rebate or refund is clearly specified, provided or promised for in the policy.

(c) It is unlawful for any insurer or general agent to appoint an agent for the purposes of enable such agent, or other person to obtain at a cost less than that specified in the policy any insurance from such insurer.

(d) The refunds or rebates authorized in subsections (a) and (b) of this section 43255 if clearly provided for in the insurance policy may not be issued in an unfairly discriminatory manner."

## B. INDUSTRY IMPACT

That FHP and GMHP (competitors in the market) have stated that their ability to survive in the market is greatly threatened by the bill which will clearly allow for the continuance of a rebate type program.

The committee finds that the competition for members in the health insurance industry is more influenced by the differences in the type of programs that are offered by companies, price and service. Specific features unique to each of the companies are what is marketed by GMHP, FHP and Staywell. The ability to survive in the marketplace is determined by its ability to develop programs that meet the needs of the subscriber. The bill would also clearly allow FHP and GMHP to develop similar type programs to market along with their current program. FHP, although may not be able to market a rebate program because of its federal qualification status, it can develop a program under it sister company HML.

(That competitors in the market have) They stated that the rebate type program causes adverse selection (all healthy people will join the plan with a

rebate) and this will leave them with the enrollees who will be heavy utilizers, thus, pricing their program out of the market.

The presence of a Rebate Policy in the market in the last ten years has resulted in an economic benefit to the consumers of insurance. Prior to 1982, premium rate increases for one competitor averaged 24 percent annually between 1978 through 1982, while another competitor's premium rate increase averaged 12 percent for the same period.

With the introduction of the Rebate Policy in 1982, premium rate increases for GMHP averaged 11 percent; FHP at 11 percent and Staywell at 9 percent each year through 1992.

Pre Rebate Policy (between 1978 through 1982)

GMHP	24 percent
FHP	12 percent

Post Rebate Policy (between 1982 through 1992)

GMHP	11 percent
FHP	11 percent
Staywell	09 percent

This clearly indicates that the effects of "adverse selection " has not priced their products out of the market, but have forced other insurers to become competitive, thus benefiting the consumer.

That people who are sick will not visit the doctor because they do not want to lose the rebate, thus making for a more unhealthy population and thus increasing medical care in the long term.

According to statistics submitted to the committee by Staywell, 90% of their members filed claims, meaning that they made a visit to the doctor. Another 10 percent used the annual physical benefit of the health plan. This clearly negates the argument that people will stay away from the doctor in order to protect their rebate.

**C. Fair Competition. Free and Open Markets.**

The committee finds that it is desirable to have a free and open market in the health insurance industry on Guam. We have seen the experience in the GovGuam health insurance market that competition will in fact hold down the rate at which health insurance premiums increase. Additionally a program that offers a rebate feature does not harm the ability of other types of programs to compete and is

beneficial to the consumers as well the employer. The law should be clarified to allow other companies that wish to offer a rebate type of program in addition to their more traditional programs should be allowed to do so.

#### **D. Committee Recommendation**

After examining all arguments presented before the committee and amending the original bill to reflect the concerns of the public as well those of committee members, the Committee reports Bill 327 as amended out of committee with a recommendation to pass.

TWENTY-SECOND GUAM LEGISLATURE  
1993 (FIRST) Regular Session

Bill No. 327 (COR)  
As amended by the  
Committee on Economic-Agricultural Development  
& Insurance

Introduced by:

V.C.PANGELINAN  
C. T. C. GUTIERREZ  
J.T. SAN AGUSTIN  
P.C. LUJAN

AN ACT TO AMEND SECTION 43255 OF THE  
GOVERNMENT CODE TO AUTHORIZE REBATES OR  
REFUNDS UNDER INSURANCE POLICIES WHERE SUCH  
REBATES OR REFUNDS ARE CLEARLY PROVIDED FOR  
IN SUCH POLICIES.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

1 Section 1. Section 43255 of the Government Code of Guam is hereby  
2 amended to read:

3  
4 "Section 43255. Rebates or Refunds (a) It is unlawful for an insurer,  
5 broker, agent, or soliciter to pay or offer to pay, directly or indirectly, to any person  
6 as an inducement for such person to enter into an insurance contract on any risk in  
7 Guam, any rebate or refund of the whole or part of the premium or commission  
8 payable, thereon, or any valuable consideration [~~which is not clearly specified,~~  
9 ~~promised or provided for in the policy~~]. This provision shall not apply to any  
10 rebate or refund of the whole or part of the premium or commission payable for  
11 health insurance where the rebate or refund is clearly specified, provided or  
12 promised for in the policy.

13  
14 (b) It is unlawful for any person to accept, directly or indirectly, an an  
15 inducement to such person to enter into an insurance contract on any risk in Guam,  
16 any rebate or refund of the whole or part of the premium or commission payable  
17 thereon, or any valuable consideration [~~which is not clearly specified, promised or~~

1 ~~provided for in the policy].~~ This provision shall not apply to any rebate or refund  
2 of the whole or part of the premium or commission payable for health insurance  
3 where the rebate or refund is clearly specified, provided or promised for in the  
4 policy.

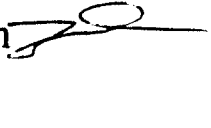
5  
6 (c) It is unlawful for any insurer or general agent to appoint an agent for  
7 the purposes of enable such agent, or other person to obtain at a cost less than that  
8 specified in the policy any insurance from such insurer.

9  
10 (d) The refunds or rebates authorized in subsections (a) and (b) of this  
11 section 43255 if clearly provided for in the insurance policy may not be issued in  
12 an unfairly discriminatory manner."

TWENTY SECOND GUAM LEGISLATURE  
FIRST(1993) REGULAR SESSION

Bill No. 327

Introduced by:

V.C. Pangelinan 

AN ACT TO REPEAL AND RE-ENACT SECTION  
43255 OF THE GOVERNMENT CODE RELATIVE  
TO CLARIFYING THAT REBATES MAY BE PAID  
TO INSUREDS OF HEALTH INSURANCE PLANS.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:  
2

3 SECTION 1. Section 43255 of the Government Code of Guam is  
4 repealed and re-enacted to read:  
5

6 "§43255. **Rebates.** (a) Except for health insurance, it is  
7 unlawful for an insurer, broker, agent, or solicitor to pay or  
8 offer to pay, directly or indirectly, to any person as an  
9 inducement for such person to enter into an insurance contract  
10 on any risk in Guam, any rebate of the whole or part of the  
11 premium or commission payable thereon, or any valuable  
12 consideration which is not clearly specified, promised or  
13 provided for in the policy.





NUMBER OF WRITTEN TESTIMONY  
SUBMITTED IN CONNECTION WITH BILL NO. 327

STAYWELL MEMBER?	YES	NO	TOTALS
COMPLETE	3271	1689	4960
WITHOUT SIGNATURE	63	44	107
TOTALS	3334	1733	5067
PERCENTAGES	65.80%	34.20%	100.00%

1

COMMITTEE ON ECONOMIC-AGRICULTURAL DEVELOPMENT & INSURANCE  
Public Hearing: Thursday, March 11, 1993 1 pm

Bill 327 An Act to repeal and re-enact section 43255 of the Government Code relative to clarifying that rebates may be paid to insureds of health insurance plans.

NAME	signature	TESTIMONY		AGENCY/INTEREST GROUP	COMMENT	
		written:	oral:		in favor:	against:
Sylvia E.P. Guzman	<i>[Signature]</i>					
STANLEY YASUHARU	<i>[Signature]</i>	✓	✓	Retiree - Individual	✓	
Frank Campbell	<i>[Signature]</i>	✓	✓	Self - Dentist	✓	
Kimo Moylan	<i>[Signature]</i>	✓	✓	MOYLAN'S INSURANCE		X
BILL PHILLIPS	<i>[Signature]</i>	✓	✓	MOYLAN'S INSURANCE		X
Manuel G. Camacho	<i>[Signature]</i>	X		STAYWELL SUBSCRIBER	X	X
VINCENT JR. BARRINA	<i>[Signature]</i>		✓	" "	✓	X
FELICANTERIA	<i>[Signature]</i>			STAYWELL INS	✓	
ELY E. MARAVILLA	<i>[Signature]</i>			UOG		
E.O. IRWIN	<i>[Signature]</i>		✓	Retiree	✓	
GERARDO R. MARCOS	<i>[Signature]</i>			FHP		✓
TESSIE B. MARCOS	<i>[Signature]</i>			FHP MEMBER		✓
LYNN E. IBA	<i>[Signature]</i>					/
JEREM G. JOHNSON	<i>[Signature]</i>			FHP		/
				FHP member		/

X  
X  
X  
X  
X  
X

6 + 7 + 10

**COMMITTEE ON ECONOMIC-AGRICULTURAL DEVELOPMENT & INSURANCE**  
 Public Hearing: Thursday, March 11, 1993 1 pm

(27)

Bill 327 An Act to repeal and re-enact section 43255 of the Government Code relative to clarifying that rebates may be paid to insureds of health insurance plans.

NAME	TESTIMONY	AGENCY/INTEREST GROUP	COMMENT
print	signature	written: oral:	in favor: against:
Ann Marie Brucia	<i>Ann Marie Brucia</i>	FHP	X
Kim Wang	<i>Kim Wang</i>	FHP	X
Alicia Iske	<i>Alicia Iske</i>	FHP	X
Liz Mullenberry	<i>Liz Mullenberry</i>	FHP	X
Thomas Greeno	<i>Thomas Greeno</i>	FHP	X
Teresa M. Moffett	<i>Teresa M. Moffett</i>	FHP	X
ANGELINA S. ROMAN	<i>Angelina S. Roman</i>	FHP	X
Donald A. Miller	<i>Donald A. Miller</i>	FHP	X
MARIA DE TARRAO	<i>Maria De Tarrao</i>	FHP	X
Francis Spadros	<i>Francis Spadros</i>	FHP	X
David Suckala	<i>David Suckala</i>	FHP	X
Zander	<i>Zander</i>	FHP	X
Frances Baumann	<i>Frances Baumann</i>	FHP	X
Das. J. Tark	<i>Das. J. Tark</i>	FHP	X

9 + 5 = 14

**COMMITTEE ON ECONOMIC-AGRICULTURAL DEVELOPMENT & INSURANCE**  
 Public Hearing: Thursday, March 11, 1993 1 pm

Bill 327 An Act to repeal and re-enact section 43255 of the Government Code relative to clarifying that rebates may be paid to insureds of health insurance plans.

NAME	signature	TESTIMONY	AGENCY/INTEREST GROUP	COMMENT
print		written:	oral:	In favor: against:
TOPHO ABLIOS	<i>[Signature]</i>			
Gene GRASS	<i>[Signature]</i>			
DAVE RUSSELL	<i>[Signature]</i>		Revenue & Taxation	✓
2 <sup>nd</sup> Floor			Western Systems IN	
Walter ANKURWIS	<i>[Signature]</i>		Utah Health TV	
2 <sup>nd</sup> Floor			TV Gun	
RODRI JONES	<i>[Signature]</i>	✓	SECT	✓
JOHN L. MILES	<i>[Signature]</i>		Mountain Sales Co	✓
Benjamin KEM	<i>[Signature]</i>			✓
2 <sup>nd</sup> Floor				✓
Bob Wicko	<i>[Signature]</i>			✓
California T. Jones	<i>[Signature]</i>		SEN	✓
2 <sup>nd</sup> Floor				✓
Executive Concepts	<i>[Signature]</i>			✓
Erin P. P. P. P.	<i>[Signature]</i>		Billings	✓
Erin P. P. P. P.	<i>[Signature]</i>		P. P. P.	✓

11 + 1 + 6

**COMMITTEE ON ECONOMIC-AGRICULTURAL DEVELOPMENT & INSURANCE**  
**Public Hearing: Thursday, March 11, 1993 1 pm**

Bill 327 An Act to repeal and re-enact section 43255 of the Government Code relative to clarifying that rebates may be paid to insureds of health insurance plans.

NAME

TESTIMONY

AGENCY/INTEREST GROUP

COMMENT

print	signature	written:	oral:		in favor:	against:
Resemina Duran	<i>[Signature]</i>			Brewer Corp	X	
Frank Smith	<i>[Signature]</i>			Star Retail	X	
Larry A. Dine	<i>[Signature]</i>			Star Marina	X	
Richard Stone	<i>[Signature]</i>			Star Marina	X	
George R. P. P. 1112	<i>[Signature]</i>			Star Retail	X	
For Ann Munn	<i>[Signature]</i>			Star Retail	X	
Richard Stone	<i>[Signature]</i>			NOG - Gov. Council		
Richard Stone	<i>[Signature]</i>			Star Retail		

17 + 1 + 2



①

COMMITTEE ON ECONOMIC-AGRICULTURAL DEVELOPMENT & INSURANCE  
Public Hearing: Thursday, March 11, 1993 1 pm

Bill 327 An Act to repeal and re-enact section 43255 of the Government Code relative to clarifying that rebates may be paid to insureds of health insurance plans.

NAME	TESTIMONY	AGENCY/INTEREST GROUP		COMMENT	
		written:	oral:	in favor:	against:
print Joseph Cameron	signature				
ROBERT A. WILLIAMS	Robert O. Will	✓	✓	SELF	✓
Melissa James	James			Stagwell	✓
William	William			STAGWELL	✓✓
Bonja, Lori	Bonja			Stagwell	✓
Barbara Cruz	Barbara H. Cruz			Stagwell	✓
Maria Bonja	Bonja	✓		Stagwell	✓
ELAINE TAMARA	Elaine Tamara			Stagwell inc	✓
Mary Ann Perkowski	Mary Ann Perkowski		✓	Stagwell	✓
Mary Ann Perkowski	Mary Ann Perkowski			"	✓
JOSEPH WILLIAMS	Joseph Williams			"	✓
Joe	Joe			"	✓
Joe	Joe			SPRING	✓

15 + 0 + 0

COMMITTEE ON ECONOMIC-AGRICULTURAL DEVELOPMENT & INSURANCE

Public Hearing: Thursday, March 11, 1993 1 pm

Bill 327 An Act to repeal and re-enact section 43255 of the Government Code relative to clarifying that rebates may be paid to insureds of health insurance plans.

NAME

TESTIMONY

AGENCY/INTEREST GROUP

COMMENT

print	signature	TESTIMONY		AGENCY/INTEREST GROUP	COMMENT	
		written:	oral:		in favor:	against:
MARIPAN TAVANI	<i>[Signature]</i>			STANWELL	✓	
Paul D. Davis	<i>[Signature]</i>			STANWELL	✓	
Robert C. Davis	<i>[Signature]</i>			STANWELL	✓	
Edward B. Farnas	<i>[Signature]</i>			GCC	✓	
Joseph A. Cruz	<i>[Signature]</i>			G.C.C.	✓	
PAUL A. WADE	<i>[Signature]</i>			DOE	✓	
POLLARD DA RIVIS	<i>[Signature]</i>			DOE Retirement Gov. G.	✓	
Craig Allino	<i>[Signature]</i>			IRA ESA RA	✓	
Dave Verrista	<i>[Signature]</i>			Stanwell DPIC	✓	
Vivian B. Bertuso	<i>[Signature]</i>				✓	
Diane B. Bertuso	<i>[Signature]</i>				✓	
MANUEL G. ESTEVEZ	<i>[Signature]</i>				✓	
Lydie C. Esteva	<i>[Signature]</i>			Stanwell (RAG)	✓	
				Stanwell (DOE)	✓	





4

COMMITTEE ON ECONOMIC-AGRICULTURAL DEVELOPMENT & INSURANCE  
Public Hearing: Thursday, March 11, 1993 1 pm

Bill 327 An Act to repeal and re-enact section 43255 of the Government Code relative to clarifying that rebates may be paid to insureds of health insurance plans.

NAME

print	signature	TESTIMONY		AGENCY/INTEREST GROUP	COMMENT	
		written:	oral:		in favor:	against:
JOHN HAYDEN	<i>[Signature]</i>			individual	✓	
MARK ROTH	<i>[Signature]</i>			individual	✓	
ADRIANNE AGUIRRE	<i>[Signature]</i>			individual	✓	
Wagner de los Angeles	<i>[Signature]</i>			individual	✓	
ROBERT SANCHEZ	<i>[Signature]</i>			✓	✓	
Isabel T. Gavel	<i>[Signature]</i>			✓	✓	
Esue 591	<i>[Signature]</i>	✓		individual	✓	
Sam Cohen	<i>[Signature]</i>			S-U	✓	
Stanley (David) [unclear]	<i>[Signature]</i>	✓	✓	S-U	✓	
				individual	✓	

9 + 0 + 0

COMMITTEE ON ECONOMIC-AGRICULTURAL DEVELOPMENT & INSURANCE  
 Public Hearing: Thursday, March 11, 1993 1 pm

5

Bill 327 An Act to repeal and re-enact section 43255 of the Government Code relative to clarifying that rebates may be paid to insureds of health insurance plans.

NAME

TESTIMONY

AGENCY/INTEREST GROUP

COMMENT

print	signature	TESTIMONY		AGENCY/INTEREST GROUP	COMMENT	
		written:	oral:		in favor:	against:
WALFREDO SANDOS	<i>W Sandos</i>					
DENNIS PEREZ	<i>Dennis Perez</i>			<del>STAGWELL</del>	✓	
Theresa Anne Lindquist	<i>Theresa Lindquist</i>			Personal	✓	
Edward C. Millard	<i>Edward C. Millard</i>			Stagwell	✓	
Ramon J. Guea	<i>Ramon J. Guea</i>			Stagwell	✓	
Lorna Guzmán	<i>Lorna Guzmán</i>			Stagwell	✓	
Lydia Lopez	<i>Lydia Lopez</i>			Stagwell	✓	
Tom J. Johnston	<i>Tom Johnston</i>			Stagwell	✓	
Sharon J. K.	<i>Sharon J. K.</i>			- de -	✓	
Brian K. Van	<i>Brian K. Van</i>			Stagwell	✓	
Joe Tepisna	<i>Joe Tepisna</i>		✓	Stagwell	✓	
David Ballance	<i>David Ballance</i>			"	✓	
LUCY BRON	<i>Lucy Bron</i>			Baum + Hall	✓	
Don + Deborah	<i>Don + Deborah</i>		✓	Personal	✓	
				"	✓	

14 + 0 + 0

**COMMITTEE ON ECONOMIC-AGRICULTURAL DEVELOPMENT & INSURANCE**  
 Public Hearing: Thursday, March 11, 1993 1 pm

Bill 327 An Act to repeal and re-enact section 43255 of the Government Code relative to clarifying that rebates may be paid to insureds of health insurance plans.

NAME	TESTIMONY	AGENCY/INTEREST GROUP	COMMENT
print	signature	written: oral:	in favor: against:
HESEL MCF	<i>Heisel MCF</i>		✓
Edwards MacGowan	<i>Edwards</i>		✓
Robert A. Ginn	<i>Robert A. Ginn</i>		✓
FRANCES M. GILKINLEY	<i>Frances M. Ginn</i>		✓
FRANK D. FINES	<i>Frank D. Fines</i>		✓
JOHN P. TAITANO	<i>John P. Taitano</i>	✓	✓
SA CATH	<i>SA Cath</i>	✓	✓
HARVARD	<i>Harvard</i>		✓

*2*



DEPARTMENT OF

# REVENUE & TAXATION

GOVERNMENT OF GUAM

JOSEPH F. ADA  
Governor

FRANK F. BLAS  
Lieutenant Governor

JOAQUIN G. BLAZ, Director · V.M. CONCEPCION, Deputy Director

FEB 24 1993

VIA HAND DELIVERY

Zurich Insurance (Guam) Inc.  
Attn: Adrienne Aguirre  
Vice President & General Manager  
Bank of Hawaii Bldg. Suite 407  
P. O. Box 677, Agana, Guam 96910

Subject: Notice of Order under Section 43030, Government Code of Guam re StayWell Plan Refund Feature

Dear Mr. Aguirre:

We had informed Zurich Insurance (Guam) Inc. ("Insurer") several months ago that we will be reviewing the refund feature of the Staywell plan (the "Plan") for the purpose of determining whether it violates any provisions of the Insurance Law of Guam.

Upon review and investigation of the Staywell plan and its refund feature, it is our decision that the refund feature of the Staywell plan violates Sections 43255, 43357 and 43386, Government Code of Guam, and Section 4301(b) of Title 4, Guam Code Annotated.

I.

**DESCRIPTION OF REFUND FEATURE OF STAYWELL PLAN**

Under the Government of Guam/Staywell Plan Group Health Insurance Program Agreement ("Agreement") for the period ending September 30, 1993, a member pays a "plan deductible" amount. The "plan deductible" amount is paid to the Insurer through its General Agent over a 26 pay period, not directly to the service provider, and "the remaining twenty percent of the plan deductible is paid by the member as his or her co-payment when services are received."

The "plan deductible" is funded through "premium/membership fee" payments. "Premium/membership fee" is defined under the Agreement as the per capita amount paid by the Government of Guam to Staywell for each eligible recipient enrolled under a contract for the provision of health care.

Insurance Commissioner's Order  
Page 2

The Agreement provides for a maximum refund of 80% of the "plan deductible" to a member who has been in the Plan for a minimum of 180 days. The refund to the member is the sum of the contributions to the "plan deductible" fund, less all claims paid by the Insurer or its general agent to the service provider.

The "plan deductible" amounts are commingled with the Insurer's other monies in a bank account. Claims are paid from this bank account to the service provider even though a subscriber or member has not fully paid his "plan deductible". The subscriber or member pays the "plan deductible" in advance before the event of loss or damage occurs.

II.

DISCUSSION

A. REFUND FEATURE VIOLATES PROHIBITION AGAINST REBATING UNDER SECTION 43255, GOVERNMENT CODE OF GUAM.

Section 43255, Government Code of Guam, provides in relevant part:

(a). It is unlawful for an insurer, broker, agent, or solicitor to pay or offer to pay, directly or indirectly to any person as an inducement for such person to enter into an insurance contract on any risk in Guam, any rebate of the whole or part of the premium or commission payable thereon, or any valuable consideration which is not clearly specified, promised or provided in the policy.

....

This section requires a threshold determination as to whether the "plan deductible" amounts paid to the Insurer by the subscriber/member are in fact insurance premiums.

The term "premium" in the law of insurance means the amount paid to the insurer for insurance. Allstate Insurance Company vs. State Board of Equalization, 336 P.2d 961 (Cal. Dist. Ct. App. 1959). Insurance is a contract whereby one undertakes to indemnify another against loss, damage or liability arising from contingent or unknown events. Section 43003(q), Government Code of Guam.

In the case at bar, expenses incurred by a member accrue to him to the extent of the "plan deductible" amount before certain benefits are payable by the Insurer. The member does not obtain the benefits under the Agreement unless he first pays the expenses to the extent of the "plan deductible" as a performance required of

him as an insured under the Agreement. In other words, the member pays the "plan deductible" in return for the Insurer providing the insurance protection.

Because of the commingling of the funds of all members, the "plan deductible" amounts of other members are being used to pay claims of members who have not fully paid their "plan deductible" amounts. When the funds of members are being used to pay the claims of other members, the "plan contribution" amounts must inevitably be treated as premiums to cover the expenses of the Insurer in providing insurance protection.

Further, a member who has made contributions to the "plan deductible" account and terminates from the Plan before the first 180 days of the term of coverage without incurring a claim does not receive a refund of his or her "plan deductible" contribution. In addition, the Plan only refunds a maximum of 80%, rather than 100%, of the "plan deductible" contributed by the member. When a "plan deductible" is either not fully refunded or not refunded at all when no claim has been incurred, it can not be a plan deductible.

The "plan deductible" under the Plan also is contrary to the form of a typical deductible. Unlike a typical deductible which is payable only upon the occurrence of the loss or damage, the Plan requires members to pay in advance a "plan deductible" before the event of loss or injury. We conclude that the "plan deductible" is an insurance premium.

When seeking enrollees under the Plan, the Insurer has advertised the refund as one of, if not, the primary feature under the Plan and in fact, distinguishes its Plan from other health plans based on the refund. In fact, all Government of Guam refunds at the end of the term of coverage coincide with the open enrollment period even though at that time there are incomplete records to determine the correct amount of refund.

In other words, a member may incur a claim on September 30, 1993, which is the expiration date of the current Plan, but the Insurer will make the refund shortly prior to the end of September 30 knowing that a claim could have been incurred on September 30. The refund of the "plan deductible", which we have concluded to be premiums, has the effect of improperly inducing potential enrollees to enroll or renew enrollment under the Plan. See, California Automobile Association & Insurance v. State Board of Equalization, 118 Cal. Rptr. 334 (Cal. Dist. Ct. App. 1974).

**B. REFUND FEATURE VIOLATES SECTIONS 43357 AND 43386,  
GOVERNMENT CODE OF GUAM**

Section 43357. Government Code of Guam, provides in relevant

Insurance Commissioner's Order  
Page 4

part:

It shall be unlawful for an insurer to use a policy form in affecting insurance without first obtaining the Commissioner's approval thereof as provided herein:

....  
(b) The Commissioner shall study each form for the purpose of guarding against any fraud, misrepresentation, or other forms of unfairness to the writings of the insured; ... if he shall disapprove a form, he shall issue an order of disapproval stating therein his reasons and transmit a copy of the same to the insurer.

Section 43386, Government Code of Guam, provides in relevant part:

(a) Rates shall not be excessive or inadequate, as herein provided, nor shall they be unfairly discriminatory.

Retirees, elderly, perennially ill, and other high risk groups who enroll in the Plan, as compared to healthy enrollees in the Plan, tend not to receive a refund because of their high risk nature. Further, this same high risk groups who enroll with other health insurance plans that offer 100% insurance coverage tend to pay higher insurance premiums due to the high concentration of high risk groups in those plans. We conclude that the refund feature creates an unfair discrimination within a class of insurance purchasers, namely, retirees, elderly, perennially ill and other high risk groups.

**C. IF MEMBER'S ENTIRE CONTRIBUTION IS A DEDUCTIBLE, THEN 4 G.C.A. §4301(b) WOULD BE VIOLATED.**

Section 4301, as amended, provides in relevant part:

....  
(b) All participation by employees in such contracts of insurance shall be on a voluntary basis. Effective in the next contract following the enactment of this subparagraph, the government's contribution for health and dental insurance shall be uniform within each class (including separate classes and rates for retired employees and their survivors) for all competing plans and shall not be less than fifty percent (50%) of the lowest premium for a single employee, except that the government



shall increase the contributions it makes on behalf of a retired employee or survivor of a retired employee so that the retired employee or the survivor of a retired employee contributes no more than an active employee who is otherwise in the same class.

Without conceding, but assuming that the entire contribution of a member who is a Government of Guam employee is a deductible, the Government of Guam's contribution would then consist of the entire premiums contributed to the Plan and thus, would be greater than the premiums contributed to plans offered by other health insurance companies. This violates Section 4301(b)'s requirement that the government's contribution shall be uniform within each class because when comparing between members who receive refunds and members who utilize medical services and do not receive refunds under the Plan, and between the Plan and other competing plans, the Government's contributions to the plan(s) are non-uniform.

### III.

#### CONCLUSION AND ORDER

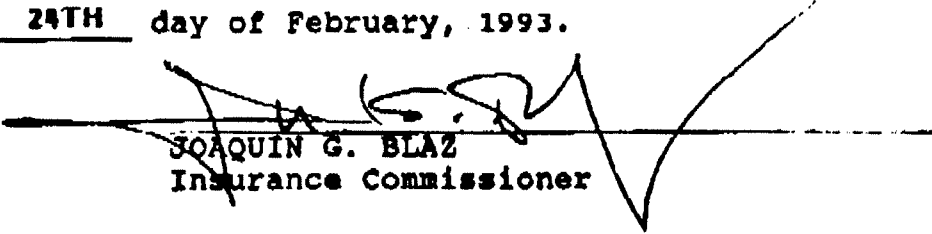
In view of the foregoing, Zurich Insurance (Guam) Inc. and D.B. Davis and Associates, as General Agent for the Insurer, are hereby ordered to cease and desist forthwith from offering or issuing or renewing the Plan which contains the refund feature.

It is further ordered that each of the Plan policies currently in effect will be allowed to stay in effect until the expiration date contained in the original policy issued for the current term of coverage.

It is further ordered that pursuant to Section 43028, 43029 and 43030, Government Code of Guam, the Insurer and its agents shall submit to the office of the Insurance Commissioner any and all future health plans and the rates thereunder which conform to sections of the Insurance Law, including the sections discussed above, prior to their publication, advertisement and issuance.

Review of this Order is provided for under the Insurance Law of Guam.

Dated this 24TH day of February, 1993.

  
JOAQUIN G. BLAZ  
Insurance Commissioner