



Office of the Governor of Guam

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Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

15 DEC 2008

2008 DEC 19 PM 3:47

The Honorable Judith T. Won Pat, Ed.D.
Speaker
Mina' Bente Nuebi Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

Dear Speaker Won Pat:

Transmitted herewith is Bill No.340(EC), "AN ACT TO REPEAL AND REENACT §15707 AND TO AMEND §§18308 AND 18501(a) OF TITLE 22, GUAM CODE ANNOTATED; AND TO ADD NEW §§15707.1, 18308.1 AND 18501.1 TO TITLE 22, GUAM CODE ANNOTATED, TO CLARIFY THE LAW ON HEALTH INSURANCE REFUNDS OR REBATES CONSISTENT WITH THE FINAL RULES FOR NONDISCRIMINATION AND WELLNESS PROGRAMS ISSUED DECEMBER 13, 2006 UNDER THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA"), AS AMENDED, AND TO PROVIDE FOR A TIME FRAME FOR INSURANCE RATE AND FORM REVIEW" which was signed into law on December 2, 2008 as **Public Law 29-121**.

Sinseru yan Magåhet,

FELIX P. CAMACHO
I Maga'låhen Guåhan
Governor of Guam

Attachment: copy of Bill

cc: The Honorable Tina Rose Muña Barnes,
Senator and Legislative Secretary

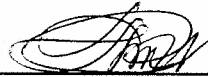
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I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
2008 (SECOND) Regular Session

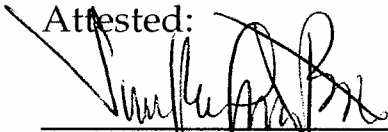
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Bill No. 340 (EC), "AN ACT TO REPEAL AND REENACT §15707 AND TO AMEND §§18308 AND 18501(a) OF TITLE 22, GUAM CODE ANNOTATED; AND TO ADD NEW §§15707.1, 18308.1 AND 18501.1 TO TITLE 22, GUAM CODE ANNOTATED, TO CLARIFY THE LAW ON HEALTH INSURANCE REFUNDS OR REBATES CONSISTENT WITH THE FINAL RULES FOR NONDISCRIMINATION AND WELLNESS PROGRAMS ISSUED DECEMBER 13, 2006 UNDER THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA"), AS AMENDED, AND TO PROVIDE FOR A TIME FRAME FOR INSURANCE RATE AND FORM REVIEW," was on the 21st day of November, 2008, duly and regularly passed.



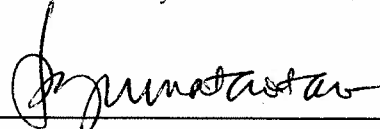
Judith T. Won Pat, Ed. D.
Speaker

Attested:



Tina Rose Muña Barnes
Senator and Secretary of the Legislature

This Act was received by I Maga'lahaen Guåhan this 25 day of Nov, 2008, at
9:41 o'clock A.M.



Assistant Staff Officer
Maga'laha's Office

APPROVED:



MIKE W. CRUZ, MD
GOVERNOR OF GUAM ACTING

Date:

12/2/08

Public Law No. 29-121

I MINA'BENTE NUEBI NA LIHESLATURAN GUÁHAN
2008 (SECOND) Regular Session

Bill No. 340 (EC)

As amended by the Author and
further amended.

Introduced by:

v. c. pangelinan
Judith T. Won Pat, Ed. D.
Frank F. Blas, Jr.
Edward J.B. Calvo
B. J.F. Cruz
James V. Espaldon
Mark Forbes
Judith P. Guthertz, DPA
Frank T. Ishizaki
J. A. Lujan
Tina Rose Muña Barnes
A. B. Palacios, Sr.
R. J. Respicio
Dr. David L.G. Shimizu
Ray Tenorio

AN ACT TO REPEAL AND REENACT §15707 AND TO AMEND §§18308 AND 18501(a) OF TITLE 22, GUAM CODE ANNOTATED; AND TO ADD NEW §§15707.1, 18308.1 AND 18501.1 TO TITLE 22, GUAM CODE ANNOTATED, TO CLARIFY THE LAW ON HEALTH INSURANCE REFUNDS OR REBATES CONSISTENT WITH THE FINAL RULES FOR NONDISCRIMINATION AND WELLNESS PROGRAMS ISSUED DECEMBER 13, 2006 UNDER THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (“HIPAA”), AS AMENDED, AND TO PROVIDE FOR A TIME FRAME FOR INSURANCE RATE AND FORM REVIEW.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds

3 that prior to the enactment of the federal Health Insurance Portability and
4 Accountability Act of 1996 (“HIPAA”) in August 1996, Guam law as set forth in
5 22 G.C.A. §15707 clearly provided it was lawful for any health insurer to refund *or*
6 rebate a part of any premium paid for such insurance based on the insured’s
7 utilization of health benefits, provided that the refund *or* rebate was clearly
8 specified in the insurance policy, and further provided that the refund *or* rebate was
9 *not* issued in an unfairly discriminatory manner. §15707 expressly provides that
10 health insurance refunds *or* rebates which were based on an insured’s utilization of
11 health care benefits were *not* unfairly discriminatory. Since the enactment of
12 HIPAA and its nondiscrimination provisions, the health insurance community has
13 raised the question as to whether *or* not insurance plans with refund *or* rebate
14 features were in violation of HIPAA. This is addressed in HIPAA’s Final Rules
15 for Nondiscrimination and Wellness Programs in Health Coverage in the Group
16 Market (“Final Rules”) which are located in the Federal Register, Vol. 71, No. 239,
17 issued on December 13, 2006, effective on February 12, 2007, and applicable to
18 plan years beginning on *or* after July 1, 2007. The Final Rules clarify the
19 application of HIPAA’s general prohibition against discrimination in enrollment,
20 eligibility, and premiums *or* contributions in group health plans and group

1 insurance policies based on any health factor. However, the Final Rules make it
2 clear that the nondiscrimination provisions of HIPAA do *not* prevent group health
3 plans *or* group insurance policies from establishing discounts, refunds, *or* rebates,
4 *or* modifying otherwise applicable co-payments *or* deductibles in return for an
5 individual's adherence to programs of health promotion and disease prevention,
6 otherwise known as Wellness *or* pre-funding of deductibles Programs.
7 Furthermore, the final rules do *not* prohibit the pre-funding of deductibles
8 established as part of plans established in compliance with the final rules and *I*
9 *Liheslatura's* intent to allow this option.

10 *I Liheslaturan Guâhan* further finds the cost of health care continues to
11 dramatically rise for the average citizen, and health plans and health insurance
12 policies with discounts, refunds *or* rebates, and an emphasis on wellness, will *not*
13 only help citizens better afford the high cost of medical care, but will also promote
14 fitness and disease prevention. Therefore, the purpose of this Act is to clarify the
15 law on health insurance refunds or rebates of premiums *or* deductibles and the
16 return of prefunded deductibles in light of the Final Rules for Nondiscrimination
17 and Wellness Programs under HIPAA.

18 *I Liheslaturan Guâhan* further finds that inordinate time delays in the
19 approval of health insurance rates and forms are a significant deterrent to insurers
20 to create and promote innovative, creative and more affordable products for

1 consumers. Therefore, there is a real need to facilitate timely approval of new
2 products. Delays in rate and form approvals inhibit competition in the health
3 insurance market. Furthermore, consumers benefit when insurers are allowed to
4 compete aggressively in the insurance market. Speed to market reform particularly
5 in the area of health insurance will provide the consumer with more product
6 options from which to choose with respect to innovative health insurance policies
7 and products. Therefore, the purpose of this Act is to require that insurance rates
8 and forms be reviewed within a reasonable period of time for all insurers, to allow
9 for the prompt introduction of creative and innovative products and to promote a
10 level playing field and competitive market for similarly situated health insurers.

11 **Section 2.** §15707 of Title 22 of the Guam Code Annotated, is hereby
12 *repealed* and *reenacted* to read:

13 **"§15707. Definitions.** As used in this Section, the following terms
14 have the following meanings:

15 (a) *Co-payment* is the partial payment of medical expenses,
16 emergency room services, *or* prescription drugs required by an individual who is
17 enrolled in a group health insurance plan. For example, a co-payment for a visit to
18 a doctor's office might be Ten Dollars (\$10). Co-payments are in addition to the
19 payment of premiums and deductible amounts.

1 (b) *Deductible* is the amount that must be paid by the insured out of
2 pocket before benefits will be paid by the insurer.

3 (c) *Pre-funded deductible* is a deductible paid in increments during
4 the plan year to the insurer by the insured from his *or* her post-tax dollars and held
5 by the insurer to pay provided claims on behalf of the insured under the
6 deductibles.

7 (d) *Rebate or Refund* is the amount of a payment that has been
8 made *or* funded that is paid back, credited *or* otherwise returnable to a health
9 insured that has completed a Wellness Program qualified under HIPAA.

10 (e) *Premium* is the payment, *or* one of the regular periodic
11 payments, that a group employer and/or individual make to a health insurer to
12 enroll in a health plan *or* to own an insurance policy.”

13 **Section 3.** A new §15707.1 is hereby *added* to Title 22 of the Guam Code
14 Annotated, to read:

15 **"§15707.1 Refunds, Rebates, Deductibles and Other Wellness**
16 **Incentives in Health Plans *or* Health Insurance Policies.** (a) It *shall not* be
17 unlawful for an insurer to offer *or* sell, *or* for a broker, agent or solicitor on behalf
18 of an insurer to offer *or* sell, a health plan *or* health insurance policy which
19 provides for a refund *or* rebate of premium or deductible, a discounted co-payment
20 *or* other wellness incentive in a health plan *or* health insurance policy, provided,

1 that any such valuable consideration *or* reward is specified in the plan *or* policy,
2 and further provided, that the plan *or* policy complies with the Final Rules for
3 Nondiscrimination and Wellness Programs promulgated under the Health
4 Insurance Portability and Accountability Act of 1996 (“HIPAA”), which provide
5 an express *exception* to the general rule prohibiting discrimination on a health
6 factor *if* the reward is based on participation in a wellness program of health
7 promotion *or* disease prevention.

8 (b) It *shall not* be unlawful for an insurer to pay a refund *or* rebate of
9 premium *or* refund a deductible to an insured *or* discount a co-payment under a
10 health plan *or* health insurance policy, provided, that the amount of such payment
11 complies with limitations and restrictions set forth in HIPAA and the Final Rules
12 for Nondiscrimination and Wellness Programs promulgated under HIPAA.

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

16 (d) The provisions of this Section and the requirement of a wellness
17 program under the *exception* to the HIPAA’s general rule against discrimination
18 *shall not* be applicable to any health plan *or* health insurance policy which does *not*
19 discriminate against any individual on any health factor *or* otherwise violate the
20 general rule. Refunds of premiums, deductibles (including pre-funded deductibles)

1 *or* co-payments which are uniformly applied to all similarly situated insureds are
2 *not* rewards based on a health factor, and are therefore *not* in violation of the
3 general rule.”

4 **Section 4.** §18308 of Title 22 of the Guam Code Annotated, is hereby
5 *amended* to read:

6 “**§18308. Form Approval.** It *shall* be unlawful for an insurer to use a
7 policy form in affecting insurance *except* health insurance as approved pursuant to
8 §18308.1 without first obtaining the Commissioner's approval thereof as provided
9 herein:

10 (a) The Commissioner *shall* study each form for the purpose of guarding
11 against any fraud, misrepresentations *or* other forms of unfairness to the writings
12 of the insured; *if* he *shall* approve a form, he *shall* endorse his approval on the face
13 of both duplicates and transmit one to the insured and keep one in his permanent
14 files; *if* he *shall* disapprove a form, he *shall* issue an order of disapproval stating
15 therein his reasons and transmit a copy of the same to the insurer.

16 (b) All policies and provisions therein *shall* be printed in a type of which the
17 face is *not* smaller than ten-point.

18 (c) Every policy form filed with the Commissioner for approval *shall* be
19 accompanied by a filing fee of Twenty Dollars (\$20.00).”

1 **Section 5.** A new §18308.1 is hereby *added* to Title 22 of the Guam Code
2 Annotated, to read:

3 **“§18308.1 Form Approval: Health Insurance.** (a) *No* health insurance
4 policy *or* endorsement *shall* be delivered *or* issued for delivery in Guam unless the
5 policy *or* endorsement form is filed for approval with the Commissioner at least
6 forty-five (45) days prior to its effective date.

7 (b) The Commissioner *shall* review each health insurance policy *or*
8 endorsement filed for the purpose of determining the following about the policy *or*
9 endorsement:

10 (1) Whether it is in violation of this Chapter;

11 (2) Whether it contains any title, heading, *or* provision that is
12 misleading;

13 (3) Whether it contains provisions that are so unclear *or*
14 deceptively worded that they encourage misrepresentation; or

15 (4) Whether it provides coverage of such a limited nature that it is
16 contrary to the public interest of Guam.

17 (c) Within forty-five (45) days after the filing of any health insurance
18 policy form *or* endorsement requiring approval pursuant to this Section, the
19 Commissioner will indicate approval by signing *or* giving explanation for
20 disapproval in writing. The Commissioner, for good cause, may extend, for up to

1 an additional forty-five (45) days, the period within which he *shall* approve *or*
2 disapprove the policy form or endorsement. Good cause may include written
3 notification to the insurer within the first forty-five (45) days that its submission is
4 incomplete, and the items necessary to complete the submission. Any policy form
5 *or* endorsement received but *neither* approved *nor* disapproved by the
6 Commissioner *shall* be deemed approved at the end of the forty-five (45) days *if*
7 the period is *not* extended, or at the end of the extended period, *if any*; however, *no*
8 policy form *or* endorsement *shall* be deemed approved under the provisions of this
9 Section *unless* written notice of the intent to use the policy form *or* endorsement
10 has been filed with the Commissioner.

11 (d) *If* the Commissioner proposes to withdraw approval previously given
12 *or* deemed given to the policy form *or* endorsement to which this Section applies,
13 he *shall* notify the insurer in writing at least ninety (90) days prior to the proposed
14 effective date of withdrawal giving his reasons for withdrawal.

15 (e) The policy and endorsement forms approved under this Section *shall*
16 be open to public inspection. Copies may be obtained by any person on request
17 and upon payment of a reasonable charge for the copies.

18 (f) Every health insurance policy form filed with the Commissioner for
19 approval *shall* be accompanied by a filing fee of Twenty Dollars (\$20.00). An
20 application for insurance and other collateral documents which are *not*

1 incorporated by reference into a policy of insurance are *not* insurance policy forms
2 for the purpose of determining the filing fee.”

3 **Section 6.** §18501(a) of Title 22 of the Guam Code Annotated is hereby
4 *amended* to read:

5 “**§18501. Rate Approval.** (a) All rates, rate schedules, rate plans and
6 methods of computing rates to be applied to any insurance transacted in Guam
7 *shall* be filed with the office of the Commissioner, and before any rates may be
8 charged, advertised, publicized, *or* otherwise represented, they *shall* have the
9 approval of the Commissioner.”

10 **Section 7.** A new §18501.1 is hereby *added* to Title 22 of the Guam Code
11 Annotated, to read:

12 “**§18501.1 Rate Approval: Health Insurance.** (a) *No* insurance rate, rate
13 schedule, rate plans *or* methods of computing rates to be applied to any insurance
14 transacted in Guam *shall* be advertised, publicized, charged *or* otherwise
15 represented in Guam *unless* the rate, rate schedule, rate plan *or* method of
16 computing rates is filed for approval with the Commissioner at least forty-five (45)
17 days prior to its effective date, whichever occurs first.

18 (b) The Commissioner *shall* review each rate, rate schedule, rate plan *or*
19 method of computing rates for the purpose of determining the following about the
20 rate, rate schedule, rate plan *or* method of computing rates:

- 1 (1) whether it is in violation of this Chapter;
- 2 (2) whether it is unreasonable in relation to the benefits provided;
- 3 or
- 4 (3) whether it *exceeds* those amounts established by rule *or*
- 5 regulation.

6 (c) Within forty-five (45) days after the filing of any insurance rate, rate
7 schedule, rate plan *or* method of computing rates requiring approval pursuant to
8 this Section, the Commissioner will indicate approval by signing *or* giving
9 explanation for disapproval in writing. The Commissioner, for good cause, *may*
10 extend, for up to an additional forty-five (45) days, the period within which he
11 *shall* approve *or* disapprove the rate, rate schedule, rate plan *or* method of
12 computing rates. Good cause may include written notification to the insurer within
13 the first forty-five (45) days that its rate submission is incomplete, and the items
14 necessary to complete the submission. Any rate, rate schedule, rate plan *or* method
15 of computing rates received but *neither* approved *nor* disapproved by the
16 Commissioner *shall* be deemed approved at the end of the forty-five (45) days *if*
17 the period is *not* extended, *or* at the end of the extended period, *if* any; however, *no*
18 rate, rate schedule, rate plan *or* method of computing rates policy form *or*
19 endorsement *shall* be deemed approved under the provisions of this Section unless
20 written notice of the intent to use the rate, rate schedule, rate plan *or* method of
21 computing rates has been filed with the Commissioner.

1 (d) It *shall* be unlawful for any insurer to use any rate in violation of the
2 provisions of this Section, *or* to alter, amend *or* otherwise change any rate without
3 the approval of the Commissioner.

4 (e) It *shall* be unlawful for any insurer to charge any rate for insurance
5 transacted in Guam other than the rate approved by the Commissioner for such
6 insurer for such risk and class of insurance.

7 (f) *If* the Commissioner proposes to withdraw approval of a rate, rate
8 schedule, rate plan *or* method of computing rates previously given or deemed
9 given to which this Section applies, he *shall* notify the insurer in writing at least
10 ninety (90) days prior to the proposed effective date of withdrawal giving his
11 reasons for withdrawal.

12 (g) The rate, rate schedule, rate plan *or* method of computing rates
13 approved under this Section *shall* be open to public inspection. Copies may be
14 obtained by any person on request and upon payment of a reasonable charge for
15 the copies.

16 (h) A filing fee of Two Hundred Dollars (\$200.00) *shall* be paid for every
17 rate plan *or* request filed for the Commissioner's approval."

18 **Section 8. Effective Date.** This Act *shall* become effective upon its passage into
19 law, *except* that the provisions of Section 2 of this Act *shall* be retroactive to July
20 1, 2007, which is the date that the Final Rules for Nondiscrimination and Wellness

1 Programs promulgated under HIPAA first became applicable to group health plans
2 *or* group insurance policies.

3 **Section 9. Severability.** *If* any of the provisions of this Act or the application
4 thereof to any person or circumstance is held invalid, such invalidity shall *not*
5 affect any other provision or application of this Act which can be given effect
6 without the invalid provision or application, and to this end the provisions of this
7 Act are severable.