FILE COPY

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'lahen Guåhan* this 25 day of Nov., 2008, at 9:41 o'clock A.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

FELIX P. CAMACHO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
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.

BE IT ENACTED BY THE PEOPLE OF GUAM:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The Commissioner *shall* study each form for the purpose of guarding against any fraud, misrepresentations *or* other forms of unfairness to the writings of the insured; *if* he *shall* approve a form, he *shall* endorse his approval on the face of both duplicates and transmit one to the insured and keep one in his permanent files; *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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) whether it is in violation of this Chapter;

(2) whether it is unreasonable in relation to the benefits provided; or

(3) whether it *exceeds* those amounts established by rule *or* regulation.

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

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

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

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

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

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

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

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

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