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

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

This is to certify that **Bill No. 42-32 (COR), "AN ACT TO *ADD* A NEW ARTICLE 12 TO CHAPTER 2 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES DIRECTOR TO CHARGE THIRD PARTY PAYERS FIRST, FOR SERVICES PROVIDED TO INDIVIDUALS WHO QUALIFY UNDER ANY WELFARE PROGRAM (MEDICAID, MEDICALLY INDIGENT PROGRAM),"** was on the 3rd day of October, 2014, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 6 day of Oct, 2014, at 6:32 o'clock P.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____
Public Law No. _____

I MINA'TRENTAI DOS NA LIHESLATURAN GUAHAN
2013 (FIRST) Regular Session

Bill No. 42-32 (COR)

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

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

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that there is no Medicaid or Medically Indigent Program recovery and reimbursement policy from third party payers in Guam statute. In the enactment of the Deficit Reduction Act of 2005 (P.L. 109-761), every state and territory participating under Title XIX of the Social Security Act must comply with the

changes to the third party liability policies of the Medicaid program under Section 6035 of the DRA amended Section 1902 (a)(25). The amendment requires every state and territory to:

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

(2) Require that states pass laws requiring health insurers: provide the state with coverage, eligibility and claims data needed by the state to identify potentially liable third parties; honor assignments to the state of a Medicaid/Medically Indigent recipient's right to payment by such insurers for health care items or services; and not deny such assignment or refuse to pay claims submitted by Medicaid or the Medically Indigent Program based on procedural reasons.

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

"ARTICLE 12

RECOVERY OF MEDICAID/MIP PAYMENTS FROM THIRD PARTY PAYERS

§ 3000. Authority of the Department of Public Health and Social Services. The Department of Public Health and Social Services is hereby authorized to recover payments from third party payers for services provided to recipients of Medicaid/Medically Indigent Program.

§ 3001. Third Party Payer Basis and Purpose. This Article sets forth the Department of Public Health and Social Services' (DPHSS) Medicaid and Medically Indigent State Plan requirements concerning:

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

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

(c) cooperative agreements between the DPHSS Division of Public Welfare and other entities for obtaining third party payments.

§ 3002. Definitions.

(a) *DPHSS shall* mean the Department of Public Health and Social Services;

(b) *Director shall* mean the Director of the Department of Public Health and Social Services;

(c) *Health care insurer shall* mean a self-insured health benefit plan, a group health plan as defined in Section 607(1) of the Employment Retirement Income Security Act of 1974, a pharmacy benefit manager or any other party that by statute, contract or agreement is responsible for paying for items or services provided to an eligible person under this Act.

(d) *Health care services* includes products provided or purchased through an approved facility.

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

(f) *Private insurer* means:

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

(2) any profit or nonprofit prepaid plan offering either medical services or full or partial payment for services included in the state plan; and

(3) any organization administering health or casualty insurance plans for professional associations, unions, fraternal groups, employer-employee benefit plans, and any similar organization offering these payments or services, including self-insured and self-funded plans.

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

(h) *Title IV-D agency* means the organizational unit in the state that has the responsibility for administering or supervising the administration of a state plan for child support enforcement under Title IV-D of the Act.

§ 3003. State Plan Requirements.

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

(1) identifying third parties liable for payment of services under the plan and for payment of claims involving third parties;

(2) assignment of rights to benefits, cooperation with the agency in obtaining medical support or payments, and

cooperation in identifying and providing information to assist the state in pursuing any liable third parties; and

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

§ 3004. Health Care Services Incurred on Behalf of Covered Beneficiaries; Collection From Third Party Payer.

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

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

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

(1) through an approved facility;

(2) directly or indirectly by a governmental entity;

(3) to an individual who has no obligation to pay for that care or for whom no other person has a legal obligation to pay; or

(4) by a provider with which the third party payer has no participation agreement.

(d) Under the regulations prescribed under Subsection (e), records of the facility that provided health care services to a beneficiary of an insurance, medical service, or health plan of a third party payer *shall* be made available for inspection and review by representatives of the payer from which collection by the DPHSS is sought.

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

(f) Information obtained under this Subsection may *not* be disclosed for any purpose other than to carry out the purpose of this Section

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

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

§ 3005. Obtaining Health Insurance Information: Initial Application and Redetermination Processes for Medicaid and Medically Indigent Program Eligibility.

(a) If the Medically Indigent Program (MIP) or the Medicaid agency determines eligibility for MIP or Medicaid, it must, during the initial application and each redetermination process, obtain from the applicant or recipient such health insurance information as would be useful in identifying legally liable third party resources so that the agency may process claims under the third party liability payment procedures. Health insurance information may include, but is *not* limited to, the name of the policy holder, his or her relationship to the applicant or recipient, the social security number (SSN) of the policy holder, and the name and address of the insurance company and policy number.

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

§ 3006. Confidentiality of Information Obtained. Any information obtained by the Director or the administration under this Section *shall* be maintained as confidential as required by the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (P.L. 104-191; 110 stat. 1936), and any other applicable law, and *shall* be used solely for the purpose

of determining whether a health care insurer was also providing coverage to an individual during the period that the individual was an eligible member, for the purposes of avoiding payments by the system for services covered through other insurance and for enforcing the administration's right to assignment

§ 3007. Legal Proceedings, Compromise, Settlement or Waiver.

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

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

§ 3008. Severability. *If* any provision of this Law or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity *shall not* affect other provisions or applications of this Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable."

Section 3. Effective Date. This Act *shall* become effective upon enactment.