

**MINA' TRENTAI TRES NA LIHESLATURAN GUAHAN
2015 (FIRST) Regular Session**

Bill No. 147 -33 (LS)

Introduced by:

D.G. RODRIGUEZ, JR. *DR*

AN ACT ADD NEW §§ 103121 AND 103122 TO CHAPTER 103 OF TITLE 11, GUAM CODE ANNOTATED, TO PROVIDE UNDER GUAM LAW, THE EQUIVALENT STATUTORY APPLICATION OF SECTION 2794 [RATE REVIEW] AND SECTION 2718 [MEDICAL LOSS RATIO] OF THE UNITED STATES PUBLIC HEALTH SERVICE ACT, AS PROVIDED PURSUANT TO THE PATIENT PROTECTION & AFFORDABLE CARE ACT.

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

2 **Section 1. Legislative Findings and Intent.**

3 *I Liheslaturan Guåhan* finds that the *interim* decision by the Administrator,
4 Centers for Medicare and Medicaid Services, issued on July 16, 2014, excludes
5 Guam and the other United States Territories from the Patient Protection and
6 Affordable Care Act. Among the important provisions providing significant
7 consumer protections are, Rate Review (Public Health Service Act - section 2794)
8 and the Medical Loss Ratio (Public Health Service Act - section 2718). These
9 provisions respectively ensured: 1) consumer protection from unreasonable rate
10 increases; and 2) bringing down the cost of health care coverage, through the
11 provision of rebates preventing excessive profiteering by insurance issuers.

12 *I Liheslaturan Guåhan* further finds that just as these Federal statutory
13 provisions are important to protecting consumers of health insurance in the fifty

1 States, they are likewise equally important to insurance consumers on Guam.
2 Further, that it is appropriate that these provisions be provided.

3 It is, therefore, the intent of *I Liheslaturan Guåhan* to establish the
4 equivalent statutory provisions under Guam law, rules and regulations.

5 **Section 2.** A new §103121 is *ADDED* to Chapter 103 of Title 11, Guam
6 Code Annotated, to read:

7 **“§103121. Health Insurance Coverage Rate Review.** There is hereby
8 established a mandate to provide for health insurance rate review for the public
9 benefit purpose of consumer protection from unreasonable rate increases. The
10 Commissioner, in conjunction with the Banking and Insurance Board, *shall* initiate
11 and complete the promulgation of regulations for the purpose of initial health
12 insurance premium review, and shall establish a process for the annual review of
13 unreasonable increases in premiums for health insurance coverage on Guam.

14 In the development of the regulations, the Commissioner and Board *shall*
15 give due consideration to the model established pursuant to Section 2794 of the
16 United States Public Health Service Act, as added by Section 1003 of the Patient
17 Protection and Affordable Care Act. Consideration of various State models may
18 also be pursued. The process established pursuant to this Section shall require
19 health insurance issuers to submit to the Banking and Insurance Commission
20 relevant justification for an unreasonable premium increase prior to the
21 implementation of the increase, as determined by the applicable regulations.

22 The Commissioner and Board, in the consideration of the health insurance
23 market rates, *shall*, at a minimum, also seek to acquire or: (i) develop fee
24 schedules and other database tools that fairly and accurately reflect market rates for

1 medical services and the differences in those rates; (ii) use the best available
2 statistical methods and data processing technology to develop such fee schedules
3 and other database tools; (iii) regularly update such fee schedules and other
4 database tools to reflect changes in charges for medical services; (iv) make health
5 care cost information readily available to the public through an Internet website
6 that allows consumers to understand the amounts that health care providers in their
7 area charge for particular medical services; (v) professional actuarial services; and
8 (vi) regularly publish information concerning the statistical methodologies used to
9 analyze health charge data and make such data available to researchers and policy
10 makers.

11 (a) The proposed regulations, and recommendations for any additional
12 legislation required for the implementation and enforcement of the rate review
13 process *shall* be submitted to *I Liheslaturan Guåhan* by no later than sixty (60)
14 days from the enactment of this Section, and as provided pursuant to Article 3,
15 Chapter 9 [Administrative Adjudication Law], Division 1, Title 5, Guam Code
16 Annotated.

17 (b) The Rules and Regulations established pursuant to this Section *shall* be
18 codified under Chapter 3 of Title 12, Guam Administrative Rules and Regulations.

19 (c) Available funds from the Banking and Insurance Enforcement Fund may
20 be expended for the purposes of this section.”

21 **Section 3.** A new § 103122 is *ADDED* to Chapter 103 of Title 11, Guam
22 Code Annotated, to read:

23 **“§ 103122. Medical Loss Ratio; Mandate established.**

1 There is hereby established a mandate to provide the applicability and
2 establishment of a Guam based Medical Loss Ratio policy for health insurance
3 issuers, in line with the Federal Medical Loss Ratio mandate pursuant to the
4 Affordable Care Act. The Commissioner, in conjunction with the Banking and
5 Insurance Board, *shall* initiate and complete the promulgation of regulations for
6 the purpose of the Insurance Commissioner and the Banking and Insurance Board
7 implementing and regulating Medical Loss Ratio provisions on premiums for
8 health insurance coverage on Guam.

9 In the development and promulgation of regulations determined
10 “appropriate” to “carry out” the mandates of this Section, the Commissioner and
11 Board shall give due consideration to the model statutory framework established
12 pursuant to Section 2718 of the United States Public Health Service Act, as
13 amended by the Patient Protection and Affordable Care Act. Further, the *spirit* and
14 *intent* of the Federal Medical Loss Ratio policy *shall* be duly reflected, and to the
15 extent practicable adhered to. The USPHSA provisions, as amended by the
16 PPACA, which are deemed appropriate and necessary to implement the mandate of
17 this Section, may be enacted by citation references to the relevant Federal statutes
18 and Code of Federal Regulations, and/or by the direct enactment under Guam law
19 in a manner so as to mirror the provisions.

20 The Patient Protection and Affordable Care Act (Pub. L. 111-148) was
21 enacted on March 23, 2010; the Health Care and Education Reconciliation Act
22 (Pub. L. 111-152) was enacted on March 30, 2010 [collectively as the Affordable
23 Care Act]. The Affordable Care Act reorganizes, amends, and adds to the
24 provisions of Part A of title XXVII of the Public Health Service Act (PHS Act)

1 relating to group health plans and health insurance issuers in the group and
2 individual markets.

3 Section 2718 of the PHS Act includes two provisions designed to achieve
4 the objective in the section title: “Bringing down the cost of health care
5 coverage.” The first is the establishment of greater transparency and
6 accountability around the expenditures made by health insurance issuers. The law
7 requires that issuers publicly report on major categories of spending of
8 policyholder premium dollars, such as clinical services provided to enrollees and
9 activities that will improve health care quality. The second is the establishment of
10 MLR standards for issuers, which are intended to help ensure policyholders receive
11 value for their premium dollars. Issuers will provide rebates to enrollees when
12 their spending for the benefit of policyholders on reimbursement for clinical
13 services and quality improving activities, in relation to the premiums charged, is
14 less than the MLR standards established pursuant to the statute. The rebate
15 provisions of section 2718 are designed not just to provide value to policyholders,
16 but also to create incentives for issuers to become more efficient in their
17 operations. Section 2718 also contains provisions which allow for modifications to
18 the standards under certain circumstances, which are described in the regulation.
19 To inform decisions about definitions and methodologies for calculating MLRs,
20 the Affordable Care Act directed the NAIC to make recommendations to the
21 Secretary, subject to certification by the Secretary. The Commissioner and the
22 Board *shall* duly consider these recommendations, as well as the consideration of
23 various State models which may also be pursued if deemed appropriate for Guam.

24 Accordingly, the Commissioner and the Board, in the promulgation of
25 regulations determined necessary to effect under Guam law the provisions of PHS

1 Act section 2718, *shall* also duly adhere to, to the extent practicable the provisions
2 of 45 CFR § 158.221, which provides the “*Formula for calculating an issuer's*
3 *medical loss ratio*”, so as to fully mirror the Federal *Medical Loss Ratio*
4 provisions under Guam law.

5 (a) The proposed regulations, and recommendations for any additional
6 legislation required for the implementation and enforcement of the Medical Loss
7 Ratio provisions *shall* be submitted to *I Liheslaturan Guåhan* by no later than sixty
8 (60) days from the enactment of this Section, and as provided pursuant to Article 3,
9 Chapter 9 [Administrative Adjudication Law], Division 1, Title 5, Guam Code
10 Annotated.

11 (b) The Rules and Regulations established pursuant to this Section shall be
12 codified under Chapter 2 of Title 12, Guam Administrative Rules and Regulations.

13 (c) Available funds from the Banking and Insurance Enforcement Fund may
14 be expended for the purposes of this Section.”

15 **Section 4. Adoption of Rules; Medical Loss Ratio.** Notwithstanding any
16 other provision of law, rule, regulation and Executive Order, the *interim* Medical
17 Loss Ratio regulation formula, and attached hereto as Exhibit “A”, is hereby
18 *ADOPTED* by I Mina’Trentai Dos Na Liheslaturan Guåhan, and shall be codified
19 under a new Chapter 2 of Title 12, Guam Administrative Rules and Regulations.

20 **Section 5.** A NEW Chapter 3, is hereby *ADDED* to Title 12, Guam
21 Administrative Rules and Regulations, and is *RESERVED* pending the
22 promulgation of Rules and Regulations pursuant to §103121 of Chapter 103, Title
23 11, Guam Code Annotated.

1 **Section 6. Severability.** If any provision of this Act or its application to
2 any person or circumstance is found to be invalid or contrary to law, such
3 invalidity shall not affect other provisions or applications of this Act which can be
4 given effect without the invalid provisions or application, and to this end the
5 provisions of this Act are severable.

6 **Section 7. Effective Date.** This Act shall become immediately effective
7 upon enactment.

Exhibit "A"

TITLE 12

Guam Administrative Rules and Regulations

Chapter 2

Medical Loss Ratio

1 **§2101.**

2 (a) Medical loss ratio.

3 (1) An issuer's MLR is the ratio of the numerator, as defined in paragraph
4 (b) of this section, to the denominator, as defined in paragraph (c) of this
5 section, subject to the applicable credibility adjustment, if any, as provided
6 in § 158.232 of this subpart.

7 (2) An issuer's MLR shall be rounded to three decimal places. For example,
8 if an MLR is 0.7988, it shall be rounded to 0.799 or 79.9 percent. If an MLR
9 is 0.8253 or 82.53 percent, it shall be rounded to 0.825 or 82.5 percent.

10 (b) Numerator. The numerator of an issuer's MLR for an MLR reporting
11 year must be the issuer's incurred claims, as defined in § 158.140 of this part, plus
12 the issuer's expenditures for activities that improve health care quality, as defined
13 in § 158.150 and § 158.151 of this part, that are reported for the years specified in
14 § 158.220 of this subpart.

1 (1) The numerator of the MLR for the 2012 MLR reporting year may
2 include any rebate paid under § 158.240 of this subpart for the 2011 MLR
3 reporting year if the 2012 MLR reporting year experience is not fully
4 credible as defined in § 158.230 of this subpart.

5 (2) The numerator of the MLR for the 2013 MLR reporting year may
6 include any rebate paid under § 158.240 for the 2011 MLR reporting year or
7 the 2012 MLR reporting year.

8 (3) The numerator of the MLR for policies that are reported separately
9 under § 158.120(d)(3) of this part must be the amount specified in paragraph
10 (b) of this section, except that for the 2012 MLR reporting year, the total of
11 the incurred claims and expenditures for activities that improve health care
12 quality are then multiplied by a factor of 1.75, for the 2013 MLR reporting
13 year, the total of the incurred claims and expenditures for activities that
14 improve health care quality are then multiplied by a factor of 1.50, and for
15 the 2014 MLR reporting year, the total of the incurred claims and
16 expenditures for activities that improve health care quality are then
17 multiplied by a factor of 1.25.

18 (4) The numerator of the MLR for policies that are reported separately
19 under § 158.120(d)(4) of this part must be the amount specified in paragraph
20 (b) of this section, except that the total of the incurred claims and
21 expenditures for activities that improve health care quality are then
22 multiplied by a factor of 2.00.

23 (5) The numerator of the MLR for policies that are reported separately
24 under § 158.120(d)(5) of this part must be the amount specified in paragraph

1 (b) of this section, except that for the 2013 MLR reporting year the total of
2 the incurred claims and expenditures for activities that improve health care
3 quality is then multiplied by a factor of 1.15.

4 [75 FR 74921, Dec. 1, 2010, as amended at 77 FR 16469, Mar. 21, 2012]

5 (c) Denominator. The denominator of an issuer's MLR must equal the
6 issuer's premium revenue, as defined in § 158.130, minus the issuer's Federal and
7 State taxes and licensing and regulatory fees, described in §§ 158.161(a) and
8 158.162(a)(1) and (b)(1) of this part.

9 [75 FR 74921, Dec. 1, 2010, as amended at 76 FR 76593, Dec. 7, 2011].'

Exhibit “B”

TITLE 12

Guam Administrative Rules and Regulations

Chapter 3

Health Insurance Coverage Rate Review

§3101. [RESERVED: Pending promulgation]