

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

Bill No. 42-32 (COR)

Introduced by:

D. G. RODRIGUEZ, JR. 

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

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that there is no Medicaid or Medically Indigent Program recovery and
4 reimbursement policy from third-party payers in the Guam statute. In the
5 enactment of the Deficit Reduction Act of 2005 (PL. 109-761) every State and
6 Territory participating under Title XIX of the Social Security Act must comply
7 with the changes to the third-party liability policies of the Medicaid program under
8 Section 6035 of the DRA amended section 1902 (a)(25). The amendment requires
9 every State and Territory to:

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

13 (2) Require that states pass laws requiring health insurers: provide the
14 state with coverage, eligibility and claims data needed by the state to identify
15 potentially liable third parties; honor assignments to the state of a

1 Medicaid/Medically Indigent recipient’s right to payment by such insurers for
2 health care items or services; and not deny such assignment or refuse to pay
3 claims submitted by Medicaid or the Medically Indigent Program based on
4 procedural reasons

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

7 **“ARTICLE 12**

8 **§3000. Authority of the Department of Public Health and Social**
9 **Services.** The Department of Public Health and Social Services is hereby
10 authorized to recover from third-party payers for services provided to recipients of
11 Medicaid/Medically Indigent Program, etcetera.

12 **§3001. Third-Party Payer Basis and Purpose.** This Article sets forth the
13 Department of Public Health & Social Services’ (DPHSS) Medicaid and Medically
14 Indigent State Plan requirements concerning:

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

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

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

21 **§3002. Definitions.**

1 (a) “DPHSS” shall mean the Department of Public Health & Social
2 Services;

3 (b) “Director” shall mean the Director of the Department of Public Health
4 & Social Services;

5 (c) “Health care insurer” shall mean a self-insured health benefit plan, a
6 group health plan as defined in section 607(1) of the employment retirement
7 income security act of 1974, a pharmacy benefit manager or any other party that by
8 statute, contract or agreement is responsible for paying for items or services
9 provided to an eligible person under this act,

10 (d) “Health care services” includes products provided or purchased through
11 an approved facility

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

16 (f) “Private insurer” means:

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

20 (2) Any profit or nonprofit prepaid plan offering either medical services
21 or full or partial payment for services included in the State plan; and

22 (3) Any organization administering health or casualty insurance plans for
23 professional associations, unions, fraternal groups, employer-
24 employee benefit plans, and any similar organization offering these
25 payments or services, including self-insured and self-funded plans
26

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

6 (h) “*Title IV-D agency*” means the organizational unit in the State that has
7 the responsibility for administering or supervising the administration of a State
8 plan for child support enforcement under title IV-D of the Act.

9 **§3003. State Plan Requirements**

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

11 (1) Identifying third parties liable for payment of services under the plan
12 and for payment of claims involving third parties.

13 (2) Assignment of rights to benefits, cooperation with the agency in
14 obtaining medical support or payments, and cooperation in identifying
15 and providing information to assist the State in pursuing any liable
16 third parties; and

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

19 **§3004. Health care services incurred on behalf of covered beneficiaries;
20 collection from third-party payer.**

21 (a) In the case of a person who is a covered beneficiary, the DPHSS shall
22 have the right to collect from a third-party payer reasonable charges for health care
23 services incurred by the DPHSS on behalf of such person through a health facility
24 to the extent that the person would be eligible to receive reimbursement or
25 indemnification from the third-party payer if the person were to incur such charges
26 on the person’s own behalf. If the insurance, medical service or health plan of that

1 payer includes a requirement for a deductible or copayment by the beneficiary of
2 the plan, then the amount that the DPHSS may collect from the third-party payer is
3 a reasonable charge for the care provided less the appropriate deductible or
4 copayment amount.

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

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

- 11 (1) Through an approved facility;
- 12 (2) Directly or indirectly by a governmental entity;
- 13 (3) To an individual who has no obligation to pay for that care or for
14 whom no other person has a legal obligation to pay; or
- 15 (4) By a provider with which the third party payer has no participation
16 agreement.

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

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

1 (f) Information obtained under this subsection may not be disclosed for any
2 purpose other than to carry out the purpose of this section

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

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

12 **§3005. Obtaining health insurance information: Initial application and**
13 **redetermination processes for Medicaid and Medically Indigent Program**
14 **eligibility.**

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

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

4 **§3006. Confidentiality of information obtained.** Any information
5 obtained by the director or the administration under this section shall be
6 maintained as confidential as required by the Health Insurance Portability and
7 Accountability Act (HIPAA) of 1996 (P. L. 104-191; 110 stat. 1936) and other
8 applicable law and shall be used solely for the purpose of determining whether a
9 health care insurer was also providing coverage to an individual during the period
10 that the individual was an eligible member, for the purposes of avoiding payments
11 by the system for services covered through other insurance and for enforcing the
12 administration's right to assignment

13 **§3007. Legal proceedings, compromise, settlement or waiver.**

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

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

18 **§3008. Severability.** *If any provision of this Law or its application to any*
19 *person or circumstance is found to be invalid or contrary to law, such invalidity*
20 *shall not affect other provisions or applications of this Law which can be given*
21 *effect without the invalid provisions or application, and to this end the provisions*
22 *of this Law are severable.”*

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