Dipåttamenton Kontribusion yan Adu'ånå
DEPARTMENT OF
REVENUE AND TAXATION
GOVERNMENT OF GUAM *Gubetnamenton Guåhan*

EDDIE BAZA CALVO, Governor / *Maga'låhi*
RAY TENORIO, Lt. Governor / *Tiñente Gubetnadot*

JOHN P. CAMACHO, Acting Director
Akto Direktot
MARIE M. BENITO, Deputy Director
Sigundo Direktot

APR 15 2011

Steve Larsen
Deputy Director for Oversight
Office of Consumer Information and Insurance Oversight
The U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: Adjustment of Medical Loss Ratio for Guam

Dear Mr. Larsen:

Governor Eddie Baza Calvo has appointed me to be the Director for the Department of Revenue and Taxation effective January 3, 2011. As the Director of this Department, by law, I am mandated to be the Acting Commissioner, until Governor Calvo appoints a Commissioner for Banking and Insurance. I write this letter in my capacity as Acting Commissioner for Banking and Insurance.

Our office is aware that Section 2718 of the Patient Protection and Affordable Care Act ("ACA") mandates that insurance carriers meet a federally imposed Medical Loss Ratio ("MLR") standard, presumably to ensure that a greater percentage of the premium dollars are spent for payment of medical claims. The minimum standard is 80% for individual and small employers, and 85% for large employers.

The purpose of this letter is to request from the Health and Human Services Secretary Kathleen Sebelius for adjustment of the application of the Medical Loss Ratio (MLR) for Guam. This request for adjustment of the application for MLR in Guam is not only for the individual market but also for the small market and large market.

The following are reasons for this request:

- Guam Memorial Hospital Authority is the only general hospital in Guam. However, it is not equipped to handle certain medical specialty procedures, such as heart operations, cancer treatment and neonatal care.

Post Office Box 23607, Guam Main Facility, Guam 96921 • Tel. / *Telifon*: (671) 635-7699 • Fax / *Faks*: (671) 633-2643

- Guam is geographically isolated from networks of medical specialists. Guam is more than 7 hours via airplane to Hawaii, 12 hours to California, and around 3 hours to Japan, Korea and Philippines.

- Lack of independent medical specialists for peer review process to monitor the quality of health care by primary and specialty physicians.

- Health plan issuers and administrators incur more costs contracting with and effectively doing business with off island medical provider networks in Hawaii, California and Asian countries.

- Health insurance plan issuers incur higher administrative costs due to:
  (i) Need to refer patient care for off island treatment;
  (ii) Medical providers in Asian jurisdictions generally do not use medical billing codes that are commonly used in the United States; and
  (iii) Coordination of benefits and verification of medical costs incurred in the hospitals of Asian countries require more due diligence, such as language translation, manual data entry of medical codes, foreign currency exchange to US Dollar and concurrent review to prevent fraudulent claims.

- Currently, only one health plan has written individual health plans in Guam but has verbally stated that it will serve notice to terminate and exit from the Guam market for fear of adverse selection by individual applicants.

- Guam has no current MLR Standard for the individual market, small group market and large group market.

- Guam has no individual market withdrawal requirements. Guam is aware that the Health Insurance Portability and Accountability Act (HIPAA) mandates that if an insurer exits from the market, there is a five year requirement before the insurer can reenter the market in a certain geographic location.

- There is no limitation imposed by Guam on health plan issuers (insurers) regarding rating based on health status.

- No mechanisms are available in Guam for consumers if a health plan issuer (insurer) withdraws from Guam. For example, Guam does not have a high risk pool plan.

- Guam is a small market. There is a strong competition between four domestic health insurance companies for this Guam market. These insurers are Takecare Health Insurance, Inc. (Takecare), Tokio Marine Pacific Insurance Ltd. (Tokio Marine), Zurich Insurance (Guam) Inc. now known as Island Home Insurance Company (Island Home), and Netcare Life and Health Insurance Company (Netcare).

- The direct premiums written and the market share of each of these four health insurance plan issuers from 2005 to 2009 are shown below:

Co Name	2005 DPW	%	2006 DPW	%	2007 DPW	%
Takecare	64,770,289	40	67,478,249	40	69.017,539	40
Tokio Marine	18,454,182	11	29,421,423	17	47,422,899	27
Island Home	58,850,165	36	51,545,738	30	37,862,137	22
Netcare	21,584,491	13	22,556,136	13	20,154,989	11
Total	163,659,047	100	171,001,546	100	174,457,564	100

Co Name	2008 DPW	%	2009 DPW	%	2010 DPW	%
Takecare	71,143,193	39	75,929,982	39	NO DATA	
Tokio Marine	70,762,634	38	75,887,145	39	NO DATA	
Island Home	19,841,619	11	19,293,591	10	NO DATA	
Netcare	21,600,901	12	23,781,163	12	NO DATA	
Total	184,148,347	100	194,891,791	100	NO DATA	

DPW = Direct Premiums Written
% = Percent of market share

- The loss ratio experience of each of the above companies was gathered from the Annual Statement filings. This data is an aggregate loss ratio of the individual market, small market and large market for each of these four insurers. The loss ratio is computed on the losses incurred divided by the earned premium. This data is shown in the table below:

Co Name Takecare	Incurred Losses	Underwriting Expenses	Earned Premium	Loss Ratio	Expense Ratio
2007	59,502,615	8,019,204	72,409,816	82%	11%
2008	61,510,505	8,295,844	75,206,812	82%	11%
2009	61,479,127	8,871,140	75,929,892	81%	12%
Tokio Marine					
2007	13,173,007	5,393,595	18,959,004	69%	28
2008	29,033,468	9,874,517	39,302,074	74%	25%
2009	60,737,906	14,609,697	75,887,145	80%	19%

Co Name Island Home	Incurred Losses	Underwriting Expenses	Earned Premium	Loss Ratio	Expense Ratio
2007	35,530,386	9,578,902	37,862,137	94%	25%
2008	13,983,548	6,263,560	19,841,619	70%	32%
2009	13,271,433	5,070,142	19,293,591	69%	26%
Netcare					
2007	12,347,268	3,246,920	20,230,527	61%	16%
2008	17,947,198	3,188,228	21,567,837	83%	15%
2009	21,486,516	3,450,991	23,904,343	90%	14%

Based on the loss ratio experience as shown on the above table, the undersigned Acting Insurance Commissioner requests that the medical loss ratio be adjusted for Guam as follows:

Market	MLR Regulations	2011	2012	2013
Individual	80%	65%	65%	65%
Small Group	80%	70%	70%	70%
Large Group	85%	80%	80%	80%

Guam is unable to submit an estimate of rebate under the 80% MLR for the individual market and small group market, and the 85% MLR for the large group market.

In the event no adjustment is made to the MLR, one or two of the four health plan issuers will exit the Guam health insurance market. In the event one or two health plan issuers exit from the Guam there is no certainty that the remaining two insurers will be able to enroll more applicants without an increase in the capital and surplus of each of the remaining companies. There is no assurance that the remaining health plan issuers will not increase the premiums charged in the absence of competitive conditions. It is not certain that the Guam consumers will easily find affordable health plans within Guam without adjustment to the MLR.

The following letters are attached and are made integral part of this request:

Guam Health Insurance Association letters dated August 5, 2010 and August 27, 2010, both addressed to John P. Camacho.
IAG letter dated September 10, 2010 addressed to Governor Felix P. Camacho.
Letter dated 15 September 2010 from Governor Felix P. Camacho to Secretary Kathleen Sebelius.
Guam Association of Health Plans dated November 4, 2010 addressed to Deputy Director for Oversight, Steve Larsen.

Should the HHS shall require more information, please send an email to: John Carlos, Regulatory Administrator with email address at: jqcarlos@revtax.gov.gu with contact number at (671) 635 1846.

Sincerely,

JOHN P. CAMACHO
Acting Banking and Insurance Commissioner

GUAM ASSOCIATION OF HEALTH PLANS

430 W. Soledad Ave, Hagatna, Guam 96910

November 4, 2010

Mr. Steve Larsen
Deputy Director for Oversight,
Office of Consumer Information and Insurance Oversight
The U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

DELIVERED THROUGH THE OFFICE OF CONGRESSWOMAN MADELINE BORDALLO

Dear Mr. Larsen:

Thank you very much for making time to meet with our association through the video conference arranged by Congresswoman Bordallo's office. As stated in the letter written by the Insurance Association of Guam, there are significant similarities between our market and the health insurance policies issued to expatriates.

As you may know, PPACA excluded the territories from the employer and individual mandates, excluded Guam from the early retiree reinsurance and high risk pool programs, and placed significant new requirements on the insurance industry; it overlooked our reasonably small market size, our isolated geographical location, and more importantly availability of medical services.

Guam's health insurance market is relatively small and the new requirements will significantly impair the local health insurance industry, especially since administrative costs are typically higher on our Island due to our isolated geographical location and other requirements and services that are rarely provided by insurance companies in the United States and the District of Columbia.

As you may also know, Guam residents are not always able to receive the full benefits of some Federal Programs including Medicare, Social Security and others that do not cover Guam residents when seeking care at the closest and better equipped facilities in Manila, Philippines. Our Island is closer to the Philippines, Japan, and other Asian destinations than the nearest State, Hawaii, by more than 2,100 nautical miles, and, as you may be aware, a significant number of our island residents seek healthcare services in neighboring Asian countries due to their proximity and the availability of medical specialties not available on Guam. Programs such as Medicare do not extend or cover medical services rendered in the Philippines or Japan, and only covers emergencies under very strict and difficult to follow guidelines. Medicare beneficiaries often experience a process of lengthy challenges when trying to seek reimbursements.

In fact, Guam insurers take part in a number of cases being appealed to Medicare for Coordination of Benefits with little or no luck, and we also help Medicare qualifiers seek the reimbursements that they rightfully deserve.

GUAM ASSOCIATION OF HEALTH PLANS

430 W. Soledad Ave, Hagatna, Guam 96910

We would like to let you know that we embrace many of PPACA's requirements such as expanded benefits and the consumer protection requirements. However, we have concerns with some of the regulatory changes.

One particular concern of our local domestic insurance industry is the rigid interpretation of the PPACA language relative to the Medical Loss Ratio Rule (MLR), specifically what may be included in the numerator such as only medical expenses, reinsurance, and "quality improvement". This rigid interpretation could mean the end for some insurance programs on Guam. We respectfully request a full waiver from the "MLR" rule due to disruptive market forces it may cause and our request is based on the following factors:

- Administrative expense percentages for Guam health insurers are higher than those for companies in the United States and macro markets. We are enclosing the attached exhibit illustrating the average retention required for Guam companies

- Because of Guam Insurance laws, health insurers are required to conduct business through an agent as opposed to most States where insurers are able to write business direct, consequently this creates another cost not usually incurred in other locations

- Health insurers often act as travel agents, medical appointment coordinators, medical referral coordinators, medical record trackers, coordinators of medical information between local physicians and physicians or specialists outside of Guam such as in the Philippines and Japan

- In many instances, Insurers serve as the humanitarian contact between the patients obtaining care in the mainland USA, Japan, the Philippines, and their families

- The cost of coordinating claims payments in the Philippines or Japan to mitigate fraud is significant; translate their billing systems into our U.S. Healthcare system

- The lack of local resources for effective peer review and evidence based medicine guidelines require domestic companies to expend significant amount of time with medical providers educating them and their staff on correct coding and billing guidelines

- The above points illustrate our challenges when dealing with these neighboring countries, which follow standards that may be different than those of the American Medical Association.

GUAM ASSOCIATION OF HEALTH PLANS

430 W. Soledad Ave, Hagatna, Guam 96910

- The cost of developing and managing effective medical networks is also higher as we must fly outside of Guam to seek contracts with providers in Hawaii, California, Washington State, Japan and the Philippines

- Because of the lack of any relevant medical and industry training programs on Guam, our employees must go through training programs outside of Guam, and, as you may know, air transportation to travel to the nearest U.S. State, Hawaii, is quite expensive

The above are just a few items that differentiate the administrative cost of the domestic Guam companies in comparison to the expenses of a typical Continental USA company. Furthermore, several of our cost factors are susceptible to high volatility such as currency exchange factors, cost of air transportation, and the potential of political risk. A second set of issues revolves around the definition of a health plan, which appears to indicate that an insurer may not be able to segregate high administrative expense groups into separate "plans," in order to insulate other business from the possibility of rebates.

Since Guam was excluded from the employer and individual mandates, and based on the above issues and to prevent critical disruptions in the local healthcare market, we respectfully ask that you include Guam as part of the expatriate market and allow a waiver to Guam domestic insurers from any of the MLRs requirements. Your immediate attention to this matter is greatly appreciated.

Please let us know of any questions that you may have.

Respectfully yours,

Frank J. Campillo
Health Plan Administrator
Calvo's SelectCare
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Don Davis
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Chief of Staff
TakeCare Insurance
Gina.Ramos@takecareasia.com

Cc: Mr. Art Ilagan
Mr. John Carlos

EXPENSES

%		
3.5%	**Broker/Agent**	
12%	**Third Party Administration/Operational Costs**	Billing & Collections
		Claims
		Enrollment
		Overseas Operations (Manila Office)
		Overseas Training
		Customer Care
		Wellness
		Provider Relations
		Utilization Management
		Software Management & Maintenance
		Currency Fluctuations
		Document Translations
5%	**Profit**	
4%	**Gross Receipts Tax (GRT) CNMI Business Only**	

Office of the Governor of Guahan

P.O. Box 2950 Hagåtña, Guahan 96932
Tel: (671) 472-8931 • Fax: (671) 477-4826 • Email: governor@guam.gov

Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

15 SEP 2010

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretary Sebelius:

Håfa adai! I am forwarding a letter from the Insurance Association of Guam (IAG), which outlines their collective concern with the Public Health Service Act, specifically Section 2718.

Thank you for your time and attention to this matter.

Sinseru Yan Magåhet,

FELIX P. CAMACHO
I Maga' Låhen Guåhan
Governor of Guahan

September 10, 2010

VIA U.S. HAND DELIVERED

The Honorable Felix P. Camacho
GOVERNOR OF GUAM
HEALTH AND HUMAN SERVICES
United States of America
Washington, D.C. 20201

Re: Exclusion of Guam Plans from Calculation of Medical Loss Ratio

Dear Governor Camacho:

After much speculation about whether the PPACA applies to Guam, Secretary Sebelious concluded that while there may be sections of the ACA that do not apply to the territories, the sections of the Public Health Service Act ("PHSA") which were modified or added by the PPACA are indeed applicable to the territories. The applicable provisions include the territories' eligibility for the grant programs codified in the PHSA, such as the Exchanges starting in 2014. However, the purpose of this letter is to bring to your attention how one of the additions to the PHSA, Section 2718, will have a devastating effect on the Guam health insurance market long before such Exchanges are in place, and to request appropriate relief.

As detailed herein, Guam should not be included in Section 2718's medical loss ratio requirements because Guam's special circumstances cause it to have a unique cost structure for health care and extraordinary administrative costs. Our specific request is that you take into account the special circumstances of the Guam market, and to exclude Guam from the methodology for calculating the medical loss ratio. A summary of these special circumstances is explained herein.

I. MLR Calculation Under Section 2718 is not Appropriate for Guam Plans

There are only a handful of health insurance carriers licensed to do business in Guam. They are all small insurance companies doing business in the individual and small-group markets. Each of them may withdraw from the individual market unless they get some relief from the calculations under Section 2718. Such withdrawal will do more than destabilize the individual market; it will be fatal to it. Moreover, medical loss ratio calculations under Section 2718 will be impossible to meet even in the small group market, thereby extremely damaging to the Guam market in its entirety.

Section 2718 establishes medical loss ratios for health insurers at the rate of 85% or higher for large-group markets and 80% or higher for the small-group market or individual markets. Insurers will be required to refund the amount by which premium revenue exceeds the amount expended for clinical services through December 21, 2013. However, we ask that you consider that in the case of Guam, medical loss ratio calculations under Section 2718, which were clearly designed for the domestic market, will fail to measure the true value provided by a Guam health plan because of its unique status in what is an international market.

The cost structure for Guam health plans has always been different from the cost structure utilized in the United States mainland ("the mainland"). As you know many Guam residents are ineligible for Medicare and Social Security benefits. The lack of Medicare coverage is just one of the many ways in which Guam plans are unique when compared with plans sold in the fifty States. Under the PPACA Guam has been exempted from the individual and employer mandates which further distinguish the cost structure for Guam health plans. More to the point, the health insurance carriers doing business in Guam are actually engaged in an international market because of the need for off-island travel for medical care and higher administrative costs. The underlying concept and the percentages set forth in Section 2718 were established for plans in a domestic insurance market and do not take into account the special circumstances inherent in Guam or the international market. Therefore, they should not apply to Guam plans.

Guam is the westernmost territory of the United States and is approximately 6,000 miles west of San Francisco. It is a small island with a population of approximately 170,000 including military personnel.[1] The majority of the health plans sold are to small groups or individuals in the civilian population. Consequently, the plans have claims experience which are volatile, erratic and, from an underwriting perspective, not even reliable. All administrative costs, including marketing, customer service, claims administration and billing expenses are generally higher in the individual and small markets and Guam is no exception. Because of a lack of economies of scale, there are relatively high administrative costs related to providing healthcare to the civilian community, which will make it impossible for carriers to meet Section 2718's minimum medical loss ratio percentages without sacrificing the quality of overall care in Guam.

Guam lacks many medical resources, including pediatric specialists, a medical school, and an academic medical center. These limitations create obstacles to the administration of successful clinical and public health programs, especially when compared to the rest of the United States. Because of Guam's small population and its remote location, patients do not have access on-island to specialized care and, in many cases, to health services, that may be considered basic and taken for granted in the mainland. Consequently, often times patients are not only inconvenienced by having to travel off-island to Hawaii or the mainland to receive health care, but they often have to travel to foreign countries, as well, to receive health care. These are every day considerations for insurers offering plans in Guam.

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[1] The military personnel receive health care at military installations and do not actually factor in the relevant community for purposes of this discussion.

Because off-island travel is such a large component of the healthcare delivery system in Guam, some level of airfare expense and the costs of care off-island are factored into the Guam cost structure/rates in such a way that is not factored into the cost structure utilized in the mainland. Keep in mind that Hawaii is the closest State to Guam, and it is seven (7) hours away by air. Japan and the Republic of the Philippines (the "Philippines") are each only three (3) hours away by air. A patient in a life threatening situation faced with a three (3) or seven (7) hour trip by air ambulance, does not really have a meaningful choice. And in such situations, even those which are not life threatening, the cost of travel, particularly if an air ambulance is used, may sometimes make care an impossibility. As you can deduce, there are accompanying administrative costs required to coordinate off-island travel and off-island health care which are not part of the mainland cost structure, particularly if the travel is to a foreign country.

The Philippines is the most common foreign off-island destination for health care from Guam. Like many foreign jurisdictions in the region, it relies a great deal on out-of-date systems for billing and reporting. In some cases the systems are manual. Guam's local carriers have to create plans which accommodate or adapt to the level of technology in the Philippines and other foreign jurisdictions. Consequently, claims adjudication and all types of administrative costs are a greater percentage of the premium dollar in Guam than in the mainland. If the Guam insurers are also required to comply with technical requirements under PPACA, including how to administer refunds, there will be even more administrative expenses incurred which will further hamper the ability to consistently reach the minimum medical loss ratios under Section 2718.

The basic principle of insurance is to spread the risk among individuals by a continuous cycle of using the savings you make from one individual to pay for services rendered to another. Therefore, it is natural for loss ratios to vary from year to year because of the naturally random fluctuation in health conditions and claims costs. This is particularly so in small-group and individual plans such as those sold in Guam. Because of Guam's unique cost structure in an international market, the imposition of Section 2718 to Guam carriers may not only threaten their solvency by constantly depleting the reserves set up from savings, but essentially making it impossible to replenish the reserves. If adequate reserves cannot be maintained, an insurer may not have any choice other than to cease doing business.

As you can see from this discussion, Guam insurers routinely incur extraordinary administrative costs in a small, isolated market. They not only have to perform the same administrative duties that mainland carriers do without economies of scale, but they also have additional administrative requirements. They have to coordinate off-island care for their insureds, develop and maintain international provider networks, as well as fraud detection and prevention programs to ensure quality service and credentialing in foreign jurisdictions. They serve as translators; serve as advisors on currency exchange; and perform numerous other ancillary functions related to providing quality care to patients in a way that is not required of insurers in the mainland. They are required, in some cases, to provide customer service 24 hours a day, and to employ personnel that can speak multiple languages, sometimes in foreign jurisdictions. If the cost of these and other similar administrative expenses are not part of the calculation of medical loss ratio, and thereby causing rebates of premium revenue that has already been expended, then Guam's small-group and individual markets will not only be destabilized, they will enter a death

spiral. This can be prevented with appropriate regulatory consideration of Guam's special circumstances and exempting Guam plans from the MLR calculation of Section 2718.

II. Guam's "Special Circumstances" Can be Addressed in the Regulations

The term "State" as used in the PPACA is limited to the 50 States and the District of Columbia. Evidently, Congress did not intend for the PPACA to include Guam. It appears that the inclusion of the territories in scope of the PPACA seems to have occurred only by chance because the PHSA just happens to define "State" to include the territories. There is other statutory evidence in the PPACA that Congress did not intend for the PPACA to apply to residents of U.S. territories. For instance, Congress exempted Guam from both the employer and the individual mandates. A good example is in the tax provisions of the PPACA.

The residents of the territories (and expatriates) are exempt from the individual coverage mandate found in Internal Revenue Code Section ("IRC") 5000A which requires all individuals to obtain health insurance coverage or pay a penalty for failing to do so. By enacting IRC Section 5000A(f)(4) which provides that residents of U.S. territories "shall be treated" as having minimum essential coverage that satisfies the PPACA's individual mandate, this provision recognizes the unique characteristics of the delivery of health care in the territories and what effect the PPACA's provision would have on a jurisdiction such as Guam. Unfortunately, unlike the tax exemptions, the provision on the medical loss ratio in Section 2718 does not directly consider the special circumstances, but does provide that such circumstances be considered in the promulgation of the regulations.

We understand that Section 2718(b)(1)(ii) does provide authority for you to adjust the medical loss ratio of 80% for the small-group or individual market if you determine that a ratio of 80% may destabilize the market in a particular state, or in the case of Guam, a territory. In addition, Section 2718(c) and subject to your ultimate certification, the National Association of Insurance Commissioners ("NAIC"), no later than December 31, 2010, is to establish definitions for which activities constitute those that improve health care quality as that term is used to calculate medical loss ratios. We also understand that as of yet the NAIC has not developed definitions for your certification. Consequently, there are no regulations establishing the standards for you to make any final determination or an adjustment in the required ratio percentages.

We know that the NAIC Actuarial Subgroup of the Accident and Health Working Group has researched and drafted an Issue Resolution Document ("IRD"), IRD035, which addresses whether expatriate and international policies should be excluded from Section 2718. After a detailed explanation, IRD035 concluded the following:

> " Based on the information provided, it appears that expatriate and international policies are unique and could reasonably [be] considered 'different types of plans' and as such, the methodologies referenced in 2718(c) should take into account the 'special circumstances' of these plans"[2]

[2] NAIC Actuarial Subgroup Draft Issue Resolution Document ("IRD035"), at 16.

Therefore, we respectfully request that you consider the special circumstances presented by the unique delivery of health care in Guam and the devastating impact the application of these percentages will have, and we seek your support in obtaining a waiver to the MLRs for the Guam insurers or at the minimum reducing said MLRs to 80% and 75%for large and small groups correspondently. Such consideration can be manifested in an adjustment under Section 2718(b)(1)(ii), or in the establishment of the regulations themselves under Section 2718(c) without resorting to an adjustment under Section 2718(b)(1)(ii). This could be accomplished by acknowledging that the delivery of health care in Guam is part of an international market. Specifically, we ask that territories such as Guam be excluded from compliance with the minimum loss ratio percentages.

Conclusion

Employers in Guam already have few choices on an island where premium rates are likely to increase substantially due to the requirements of the PPACA. Because Congress excluded Guam from the individual and employer coverage mandates, we already have our work cut out for us to keep employers in the market for health insurance coverage for their employees. Without these mandates, what was already a lack of economies of scale for the carriers will be worsened after more employers terminate health insurance policies instead of paying higher premiums.

The bottom line is that Guam carriers function in a small, isolated, international market based on a different cost structure than the one utilized in the mainland. The Guam plans, because of their relative small size, have higher administrative costs generally, but also have administrative costs (and benefits) not found or needed in the domestic market. This "uniqueness" is the type of special circumstance contemplated by the authority given to Secretary Sebelious and the NAIC with respect to developing definitions for methodologies concerning the medical loss ratio. If the reality of Guam's unique circumstance is not addressed, and health insurers licensed in Guam are required to comply with medical loss ratio rules which are based upon the domestic market, many of them, if not all of them, will not survive, and will have withdrawn from the market long before 2014, when the Exchanges are established.

We thank you in advance for your consideration of this letter and for your support with a letter to Secretary Sebelious requesting an exception or reduction on the MLR requirement for Guam based insurers. Should you have any questions or concerns about it, please do not hesitate to contact me.

Sincerely,

Joseph C. Barcinas
Chairman
Insurance Association of Guam

GUAM HEALTH INSURANCE ASSOCIATION

August 27, 2010

VIA HAND DELIVERY:

Mr. John Camacho
Banking and Insurance Commissioner
INSURANCE SECURITIES BANKING & REAL ESTATE DIVISION
DEPARTMENT OF REVENUE AND TAXATION
GOVERNMENT OF GUAM
P.O. Box 23607
Guam Main Facility, Guam 96921

Attention: Mr. John "Juan" Carlos
Regulatory Programs Administrator

Re: Exclusion of Guam Plans from Calculation of Medical Loss Ratio

Dear Mr. Camacho:

Thank you very much for the two (2) meetings this week between your office and members of the Guam Health Insurance Association ("GHI"). As a result of our meetings with your office, you asked that we supplement our previous letter to you of August 5, 2010. You have agreed to consider our further input on the impact of the application of Section 2718 of the Public Health Service Act ("PHSA") on Guam health insurance plans and by extension, the delivery of health care on Guam.

As a member of National Association of Insurance Commissioners (the NAIC"), we have solicited your support for a request to the NAIC to exercise the authority given to it under Section 2718(c) of the PHSA. Our specific request is that the NAIC take into account the special circumstances of the Guam market, and to exclude Guam from the methodology it recommends to the Secretary for calculating the medical loss ratio. A summary of these special circumstances is explained herein and in our letter of August 5, 2010.

The meetings we had with your office were prompted by recent correspondence to the Governor of Guam from Kathleen Sebelius, Secretary of the U.S. Department of Health and Human Services (the "Secretary"), concerning the application of the Patient Protection and Affordable Care Act ("ACA") to the territories.[1] After much speculation about

[1] A copy of the July 29, 2010 letter from Secretary Kathleen Sebelius is attached for your reference.

whether the ACA applies to Guam, the Secretary has concluded that while there may be sections of the ACA that do not apply to the territories, the sections of the PHSA which were modified or added by the ACA are applicable to the territories. The applicable provisions include the territories' eligibility for the grant programs codified in the PHSA, such as the Exchanges starting in 2014. However, the GHI has concluded that one of the additions to the PHSA, Section 2718 of the PHSA ("Section 2718"), will have a devastating effect on the health insurance market and the delivery of health care on Guam long before such Exchanges are in place.

I. MLR Calculation Under Section 2718 is not Appropriate for Guam Plans

Section 2718 establishes medical loss ratios for health insurers at the rate of 85% or higher for large-group markets and 80% or higher for the small-group market or individual markets. Insurers will be required to refund the amount by which premium revenue exceeds the amount expended for clinical services through December 21, 2013. However, we ask the NAIC to consider that in the case of Guam, medical loss ratio calculations under Section 2718 will fail to measure the true value provided by a health plan because of its unique cost structure in an international market. Moreover, medical loss ratio calculations under Section 2718 will be extremely damaging to the Guam market in its entirety.

As detailed herein, Guam should not be included in Section 2718's medical loss ratio requirements because Guam's special circumstances cause it to have a unique cost structure for health care and extraordinary administrative costs. This cost structure is very different from the cost structure utilized in the United States mainland ("the mainland"). As mentioned in our letter of August 5, 2010, many Guam residents are ineligible for Medicare and Social Security benefits. The lack of Medicare coverage is just one of the many ways in which Guam plans are unique when compared with plans sold in the fifty States. More to the point, the health insurance carriers doing business in Guam are actually engaged in an international market because of the need for off-island travel for medical care and higher administrative costs. The underlying concept and the percentages set forth in Section 2718 were established for plans in a domestic insurance market and do not take into account the special circumstances inherent in Guam or the international market. Therefore, they should not apply to Guam plans.

Guam is the westernmost territory of the United States and is approximately 6,000 miles west of San Francisco. It is a small island with a population of approximately 170,000 including military personnel.[2] The majority of the health plans sold are to small

[2] The military personnel receive health care at military installations and do not actually factor in the relevant community for purposes of this discussion.

groups or individuals in the civilian population. Consequently, the plans have claims experience which are volatile, erratic and, from an underwriting perspective, not even reliable. All administrative costs, including marketing, customer service, claims administration and billing expenses are generally higher in the individual and small markets and Guam is no exception. Because of a lack of economies of scale, there are relatively high administrative costs related to providing healthcare to the civilian community, which will make it impossible for carriers to meet Section 2718's minimum medical loss ratio percentages without sacrificing the quality of overall care in Guam.

Guam lacks many government and community resources, including pediatric specialists, a medical school, and an academic medical center. These limitations create obstacles to the administration of successful clinical and public health programs, especially when compared to the rest of the United States. Specialty services, such as cardiology, genetics, pediatric and hematology specialties, are not easily available to individuals in Guam creating an additional cost structure to administer and coordinate care.

Because of Guam's small population and its remote location, patients do not have access on-island to specialized care and, in many cases, to health services, that may be considered basic and taken for granted in the mainland. Consequently, often times patients are not only inconvenienced by having to travel off-island to Hawaii or the mainland to receive health care, but they often have to travel to foreign countries, as well, to receive health care. These are every day considerations for insurers offering plans in Guam.

Because off-island travel is such a large component of the healthcare delivery system in Guam, some level of airfare expense and the costs of care off-island are factored into the Guam cost structure/rates in such a way that is not factored into the cost structure utilized in the mainland. Keep in mind that Hawaii is the closest State to Guam, and it is seven (7) hours away by air. Japan and the Republic of the Philippines (the "Philippines") are each only three (3) hours away by air. As you can deduce, there are accompanying administrative costs required to coordinate off-island travel and off-island health care which are not part of the mainland cost structure, particularly if the travel is to a foreign country.

The Philippines is the most common foreign off-island destination for health care from Guam. Like many foreign jurisdictions in the region, it relies a great deal on out-of-date systems for billing and reporting. In some cases the systems are manual. Guam's local carriers have to create plans which accommodate or adapt to the level of technology in the Philippines and other foreign jurisdictions. Consequently, claims adjudication and all types of administrative costs are a greater percentage of the premium dollar in Guam than in the mainland. If the Guam insurers are also required to comply with technical requirements under ACA, including how to administer refunds, there will be even more

administrative expenses incurred which will further hamper the ability to consistently reach the minimum medical loss ratios under Section 2718.

The basic principle of insurance is to spread the risk among individuals by a continuous cycle of using the savings you make from one individual to pay for services rendered to another. Therefore, it is natural for loss ratios to vary from year to year because of the naturally random fluctuation in health conditions and claims costs. This is particularly so in small-group and individual plans such as those sold in Guam. Because of Guam's unique cost structure in an international market, the imposition of Section 2718 to Guam carriers may not only threaten their solvency by constantly depleting the reserves set up from savings, but essentially making it impossible to replenish the reserves. If adequate reserves cannot be maintained, an insurer may not have any choice other than to cease doing business.

As you can see from this discussion, Guam insurers routinely incur extraordinary administrative costs in a small, isolated market. They not only have to perform the same administrative duties that mainland carriers do without economies of scale, but they also have additional administrative requirements. They have to coordinate off-island care for their insureds, develop and maintain international provider networks, as well as fraud detection and prevention programs to ensure quality service and credentialing in foreign jurisdictions. They serve as translators; serve as advisors on currency exchange; and perform numerous other ancillary functions related to providing quality care to patients in a way that is not required of insurers in the mainland. They are required, in some cases, to provide customer service 24 hours a day, and to employ personnel that can speak multiple languages, sometimes in foreign jurisdictions. If the cost of these and other similar administrative expenses are not part of the calculation of medical loss ratio, and thereby causing rebates of premium revenue that has already been expended, then Guam's small-group and individual markets will not only be destabilized, they will enter a death spiral. This can be prevented with appropriate regulatory consideration of Guam's special circumstances and exempting Guam plans from the MLR calculation of Section 2718.

II. Guam's "Special Circumstances" Can be Addressed in the NAIC Recommended Regulations

As the Secretary stated in her letter to the Governor, the term "State" as used in the ACA is limited to the 50 States and the District of Columbia. Evidently, Congress did not intend for the PPACA to include Guam. It appears that the inclusion of the territories in scope of the ACA seems to have occurred only by chance because the PHSA just happens to define "State" to include the territories. There is other statutory evidence in the ACA that Congress did not intend for the ACA to apply to residents of U.S. territories. For

instance, Congress exempted Guam from both the employer and the individual mandates. A good example is in the tax provisions of the ACA.

The residents of the territories (and expatriates) are exempt from the individual coverage mandate found in Internal Revenue Code Section ("IRC") 5000A which requires all individuals to obtain health insurance coverage or pay a penalty for failing to do so. By enacting IRC Section 5000A(f)(4) which provides that residents of U.S. territories "shall be treated" as having minimum essential coverage that satisfies the ACA's individual mandate, this provision recognizes the unique characteristics of the delivery of health care in the territories and what effect the ACA's provision would have on a jurisdiction such as Guam. Unfortunately, unlike the tax exemptions, the provision on the medical loss ratio in Section 2718 does not directly consider the special circumstances, but does provide that such circumstances be considered in the promulgation of the regulations. The NAIC and the Secretary have the authority to correct this oversight by promulgating the appropriate regulations.

Based on the authority granted under Section 2718(c), and subject to the ultimate certification of the NAIC Secretary, no later than December 31, 2010, the NAIC is to establish definitions for which activities constitute those that improve health care quality as that term is used to calculate medical loss ratios. Section 2718(c) requires the NAIC to establish definitions for calculating medical loss ratios, and reads as follows:

> "(c) DEFINITIONS.—Not later than December 31, 2010, and subject to the certification of the Secretary, the National Association of Insurance Commissioners shall establish uniform definitions of the activities reported under subsection (a) and standardized methodologies for calculating measures of such activities, including definitions of which activities, and in what regard such activities, constitute activities described in subsection (a)(2). ***Such methodologies shall be designed to take into account the special circumstances of smaller plans, different types of plans, and newer plans."*** (Emphasis added)

We know that the NAIC Actuarial Subgroup of the Accident and Health Working Group has researched and drafted an Issue Resolution Document ("IRD"), IRD035, which addresses whether expatriate and international policies should be excluded from Section 2718. After a detailed explanation, IRD035 concluded the following:

> "Based on the information provided, it appears that expatriate and international policies are unique and could reasonably [be] considered 'different types of plans' and as such, the

> methodologies referenced in 2718(c) should take into account the 'special circumstances' of these plans"[3]

We believe that you understand why Guam should similarly be considered along the same lines as the expatriate and international policies for the reasons discussed herein. Therefore, we would like to take this opportunity to respectfully request that you request of the NAIC to consider the special circumstances presented by the unique delivery of health care in Guam and the impact the application of these percentages will have not only on the Guam plans, but on the very quality of the healthcare system on Guam. Ideally, such consideration can be manifested in the establishment of the regulations themselves under Section 2718(c) without having to resort to an adjustment under Section 2718(b)(1)(ii). This could be accomplished by acknowledging that the delivery of health care in Guam is part of an international market, which is a special circumstance as contemplated by the statute. Specifically, we ask that the Guam plans be excluded from compliance with the minimum loss ratio percentages of Section 2718 in the definitions that NAIC will recommend to the Secretary.

III. Conclusion

There are only a handful of health insurance carriers licensed to do business in Guam. They are all small insurance companies and may all withdraw from the individual market unless they get some relief from the calculations under Section 2718. Such withdrawal will do more than destabilize the individual market; it will be fatal to it.

Guam needs an individual market. Employers in Guam already have few choices on an island where premium rates are likely to increase substantially due to the requirements of the ACA. Because Congress excluded Guam from the individual and employer coverage mandates, we already have our work cut out for us to keep employers in the market for health insurance coverage for their employees. Without these mandates, what was already a lack of economies of scale for the carriers will be worsened after more employers terminate health insurance policies instead of paying higher premiums. Several carriers have already indicated that in addition to withdrawing from the individual market, they are concerned about their ability to continue to do business at all without being able to recoup losses under the standards of Section 2718. If only one of these carriers is forced to withdraw entirely from the market because of the impact of the medical loss ratio rules, there will be even fewer choices and additional stress on the need for a robust individual market.

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[3] NAI Actuarial Subgroup Draft Issue Resolution Document ("IRD035"), at 16.

The bottom line is that Guam carriers function in a small, isolated, international market based on a different cost structure than the one utilized in the mainland. The Guam plans, because of their relative small size, have higher administrative costs generally, but also have administrative costs (and benefits) not found or needed in the domestic market. This "uniqueness" is the type of special circumstance contemplated by the authority given to the NAIC with respect to developing definitions for methodologies concerning the medical loss ratio. If this reality is not addressed, and health insurers licensed in Guam are required to comply with medical loss ratio rules which are based upon the domestic market, many of them, if not all of them, will not survive, and will have withdrawn from the market long before 2014, when the Exchanges are established.

Based on the above, we respectfully request that you ask the NAIC to consider the special circumstances of Guam as it develops the definitions and regulations concerning the calculation of medical loss ratio in such a way as to exclude Guam. We believe you will find that doing so is entirely consistent with the authority given to the NAIC in Section 2718(c).

We thank you in advance for your consideration of this letter. Should you have any questions or concerns about it, please do not hesitate to contact us.

Sincerely,

FRANKLIN J. CAMPILLO
Health Plan Administrator
CALVO'S SELECT CARE

DON DAVIS
Health Plan Administrator
STAYWELL INSURANCE

JERRY CRISOSTOMO
Health Plan Administrator
NETCARE LIFE & HEALTH INSURANCE, INC.

GINA Y. RAMOS
Chief of Staff
TAKECARE INSURANCE COMPANY, INC.

Enclosure

cc: Honorable Felix P. Camacho, Governor of Guam
Mr. Artemio B. Ilagan, Director of Revenue and Taxation

GUAM HEALTH INSURANCE ASSOCIATION

August 5, 2010

Mr. John Camacho
Acting Insurance Commissioner
Director of Revenue and Taxation
Government of Guam

Dear Mr. Camacho:

This letter is written on behalf of the Guam Health Insurance Association (GHI) (currently under formation). As you know, the Patient Protection and affordable Healthcare Act (PPACA) was signed by President Obama on March 23, 2010, and numerous rules and guidelines have been issued by the Departments of Health and Human Services (HHS), Treasury, and Labor, since the law passed.

While we believe that healthcare needs reforms that address the swelling cost, PPACA, as currently implemented, will in fact increase cost to consumers on Guam and will significantly harm the health insurance industry on the Island. The law excluded the territories from the employer and individual mandates, excluded Guam from the early retiree reinsurance and high risk pool programs, it placed significant new requirements on the insurance industry, it overlooked our relatively small market size and our isolated geographical location, ethnic issues, and more importantly availability of medical services. In other words, this cookie cutter or one size fits all type of approach has significantly overlooked numerous challenges that territories such as Guam have.

Guam as you know is a relatively small market and the new requirements will significantly impair the local health insurance industry, especially since administrative costs are typically higher on our Island due to our isolated geographical location and other requirements and services that are rarely provided by companies in the States and the District of Columbia.

As you may also know, Guam has been somewhat discriminated against by some of the Federal Programs including Medicare, Social Security and others that are not applicable to residents of Guam. For ~~instance, our I~~sland is closer to the Philippines and Japan than to the nearest State, Hawaii, by more than 2,100 nautical miles, and, as you are well aware, a significant number of our Island residents seek healthcare services in that country due to its proximity and the availability of medical specialty not available on Guam. However, programs such as Medicare do not extend medical coverage to services rendered in the Philippines or Japan, and only covers emergencies under strict and difficult to follow guidelines, and Medicare beneficiaries often experience a process of lengthy nightmares when trying to seek reimbursements.

In fact, Guam insurers take part in a number of cases being appealed to Medicare for Coordination of Benefits with little or no luck, and we also help Medicare qualifiers seek the reimbursements that they rightfully deserve.

Despite our significant concerns with many of the impacts that PPACA will have in our market place and the implied unintended cost consequences, we would like to let you know that we embrace many of PPACA's requirements such as expanded benefits and the consumer protection requirements. However we have some concerns with some of the regulatory changes.

One particular concern to our local domestic insurance industry is the rigid interpretation of the PPACA language relative to the Medical Loss Ratio Rule (MLR) that may be included in the numerator such as only medical expenses, reinsurance, and "quality improvement", which could mean the end for some insurance programs on Guam. The State of Maine has already requested HHS for a waiver from the "MLR" rule due to disruptive market forces. We seek your support to follow Maine's request for a waiver and ask that your office also requests a waiver from the MLRs requirement from HHS for the local domestic health insurers. Our request is based on the following factors:

- Administrative expense percentages for local domestic insurers are higher than those for companies in the States and macro markets

- Domestic insurers often act as travel agents, medical appointment coordinators, medical referral coordinators, medical record trackers, coordinators of medical information between local physicians and physicians or specialists outside of Guam such as in the Philippines and Japan

- In many instances, we serve as the humanitarian contact between the patients obtaining care in the mainland USA, Japan, the Philippines, and their families

- The cost of coordinating claims payments in the Philippines or Japan to mitigate fraud is significant, translate their systems into the U.S. Healthcare system, and translate documentation.

- The lack of local resources for effective peer review and evidence based medicine guidelines require domestic companies to expend significant amount of time with medical providers educating them and their staffs on correct coding and billing guidelines

- The above points are more evident when dealing with our neighboring countries, which do not follow any of the American Medical Association guidelines or any other evidence based medical procedures.

- The cost of developing and managing effective medical networks is also higher as we must fly outside of Guam to seek contracts with providers in Hawaii, California, Washington State, Japan and the Philippines

GUAM HEALTH INSURANCE ASSOCIATION

- Because of the lack of any relevant medical and industry training programs on Guam, our employees must go through training programs outside of Guam, and, as you know, air transportation to travel to the nearest U.S. State is quite expensive

The above are just a few items that differentiate the administrative cost of the domestic Guam companies in comparison to the expenses of a typical States sided company,

A second set of issues revolves around the definition of a health plan, which appears to indicate that an insurer may not be able to segregate high administrative expense groups into separate "plans," in order to insulate other business from the possibility of rebates. Complicating the entire process is the PPACA requirement that NAIC consider the "special circumstances of smaller plans, different types of plans, and newer plans".

Since Guam was excluded from the employer and individual mandates, and based on the above issues and to prevent critical disruptions in the local healthcare market, we respectfully ask that you follow Maine's steps and request HHS for a waiver to Guam domestic insurers from any of the MLRs requirements. Your immediate attention to this matter is greatly appreciated.

Please let us know of any questions that you may have.

Respectfully yours,

Frank J. Campillo
Health Plan Administrator
Calvo's SelectCare

Don Davis
Health Plan Administrator
StayWell Insurance

Jerry Crisostomo
Health Plan Administrator
Netcare Life & Health

For Gina Ramos
Chief of Staff
TakeCare Insurance

Cc: Mr. Art Ilagan
Mr. John Carlos