



**PROCUREMENT APPEAL**

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: May 23, 2019

TIME: 2:42  AM  PM BY: FDJ

FILE NO OPA-PA: 19-005

**PART I**

In the Appeal of )  
)  
TakeCare Insurance Company, Inc. )  
(Name of Company), APPELLANT )  
)  
\_\_\_\_\_ )

**NOTICE OF APPEAL**

Docket No. OPA-PA -19-005

**PART II- Appellant Information**

Name: TakeCare Insurance Company, Inc.  
Mailing Address: 418 Chalan San Antonio, Ste. 108  
Tamuning, Guam 96913  
Business Address: 418 Chalan San Antonio, Ste. 108  
Tamuning, Guam 96913  
Email Address: jeanette.perez@takecareasia.com  
Daytime Contact No: (671) 300-7148  
Fax No.: (671) 647-3551

**PART III- Appeal Information**

- A) Purchasing Agency: Department of Administration
- B) Identification/Number of Procurement, Solicitation, or Contract: DOA/HRD-RFP-GHI-20-001
- C) Decision being appealed was made on May 21, 2019 (date) by:  
 Chief Procurement Officer  Director of Public Works  Head of Purchasing Agency

*Note: You must serve the Agency checked here with a copy of this Appeal within 24 hours of filing.*

- D) Appeal is made from:  
(Please select one and attach a copy of the Decision to this form)
- Decision on Protest of Method, Solicitation or Award  
 Decision on Debarment or Suspension  
 Decision on Contract or Breach of Contract Controversy  
(Excluding claims of money owed to or by the government)  
 Determination on Award not Stayed Pending Protest or Appeal  
(Agency decision that award pending protest or appeal was necessary to protect the substantial interests of the government of Guam)

E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:

To TakeCare's knowledge, no bids were submitted prior to the protest being filed before DOA.

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**PART IV- Form and Filing**

In addition to this form, the Rules of Procedure for Procurement Appeals require the submission together with this form of additional information, including BUT NOT LIMITED TO:

1. A concise, logically arranged, and direct statement of the grounds for appeal;
2. A statement specifying the ruling requested;
3. Supporting exhibits, evidence, or documents to substantiate any claims and the grounds for appeal unless not available within the filing time in which case the expected availability date shall be indicated.

*Note: Please refer to 2 GAR § 12104 for the full text of filing requirements. Please see Attachment Part IV*

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**PART V- Declaration Re Court Action**

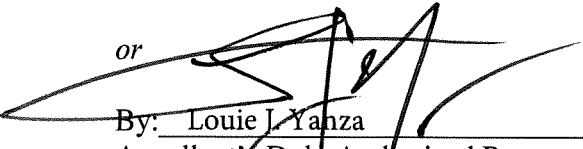
Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned party does hereby confirm that to the best of his or her knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 23 day of May, 2017.

By: \_\_\_\_\_  
APPELLANT

or

By:  \_\_\_\_\_  
Appellant's Duly Authorized Representative  
(Address) One Agana Bay, 446 East Marine Corps Dr., Ste. 201, Hagatna, Guam 96910  
(Phone No.) (671) 477-7059

## **PART IV: ADDITIONAL INFORMATION SUBMITTED BY APPELLANT**

### **A. A CONCISE, LOGICALLY ARRANGED, AND DIRECT STATEMENT OF THE GROUNDS FOR APPEAL:**

The grounds for the appeal are generally set forth in the Protest filed by TakeCare on May 3, 2019, as well as in the supporting documents attached hereto. Additionally, Guam law contemplates that the Purchasing Agency's attempt to settle and resolve a bid protest. 5 GCA § 5427(b) and (c). Prior to denying the protest of TakeCare, the Purchasing Agency made no effort whatsoever to meet with TakeCare to attempt to settle and resolve the protest.

### **B. STATEMENTS SPECIFYING THE RULING REQUESTED**

Appellant requests that the EFP procurement process remain stayed pending final resolution of the protest and that the RFP at issue be cancelled or amended to remove the minimum requirement that offerors include GRMC in their provider networks.

### **C. SUPPORTING EXHIBITS, EVIDENCE, OR DOCUMENTS**

The documents supporting the Appeal are the RFP itself, the protest filed by the Appellant, along with the legislative history of Public Law 34-83, Bill No. 21-34 and Public Law 35-2. Copies of the relevant pages of the RFP are attached to TakeCare's protest as well as copies of documents relating to the Legislative History of other Bills and Statutes. The entire RFP can be located in the Human Resources section of the Department of Administration website at <http://hr.doa.guam.gov/>.

Submitted with this appeal as attached Exhibits are the following:

(1) Attached as **Exhibit A** is the Decision of Department of Administration dated May 21, 2019

(2) Attached as **Exhibit B** is the protest letter with attachments.

The relevant material relating to TakeCare's Protest plainly indicates that:

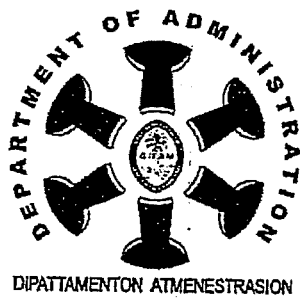
- (a) The Director of the Department of Administration agreed that requiring GRMC to be included in the network of potential offerors would be problematic;
- (b) Calvo's SelectCare also opposed requiring that GRMC be included in the network of potential providers because it "discriminates against other medical providers that have also made large investments on Guam but are not given the same type of advantages" and it would give GRMC "a significant advantage against insurers knowing that the insurers MUST have an agreement with them and possibly demand rates that may not be feasible in our market place";
- (c) Public Law 35-2 and the RFP are an improper delegation of authority;
- (d) Public Law 35-2 and the RFP are inconsistent with the Organic Act;
- (e) Public Law 35-2 and the RFP eliminate "competition" and deny equal protection;

- (f) Public Law 35-2 and the RFP do not create a “level playing field”;
- (g) Public Law 35-2 and the RFP will not result in the “lowest cost option”;
- (h) Public Law 35-2 and the RFP will not “maximize” GovGuam purchasing power;
- (i) Public Law 35-2 and the RFP discriminate against other private clinics in Guam;
- (j) GRMC is already in-network for emergencies and sole source situations;
- (k) Public Law 35-2 and the RFP are unconstitutional on their face and as applied;
- (l) TakeCare’s Protest was timely; and
- (m) TakeCare is required to exhaust its administrative remedies before challenging in Court the constitutionality of Public Law 35-2 and the RFP.

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**EXHIBIT "A"**

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LOURDES A. LEON GUERRERO, Governor (Maga'håga)  
JOSHUA F. TENORIO, Lt. Governor (Sigundo Maga'låhi)



EDWARD M. BIRN  
Director (Direktor)  
EDITH C. PANGELINAN  
Deputy Director (Sigundo Direktor)

DIRECTOR'S OFFICE (Ufisinan Direktor)

MAY 21 2019

Joseph Husslein  
President and CEO  
Arvin Lojo  
Health Plan Administrator  
TakeCare Insurance Company, Inc.  
Baltej Pavilion, Suite 308  
415 Chalan San Antonio  
Tamuning, Guam 96913

Re: Government of Guam Procurement No. DOA/HRD-RFP-GHI-20-001

Dear Mr. Husslein

We are in receipt of your letter dated May 3, 2019, in which you are protesting the Government of Guam Procurement No.: DOA/HRD-RFP-GHI-20-001. This letter serves as a denial of your protest.

**Untimely Filed**

In your letter you challenge the validity of Public Law 35-2. Public Law 35-2 was enacted on March 7, 2019. The RFP was published on April 1, 2019 with the requirement to consider only those offers with all hospitals on Guam with in-network coverage as mandated in Public Law 35-2. The publication date of April 1 is the date TakeCare was on notice that the RFP included this requirement. The date by which TakeCare was not able to secure a business opportunity is not relevant to this procurement.

As such, the protest is beyond the 14-day time period of when you knew or should have known of the facts giving rise to the protest to lodge a written protest. See 5 G.C.A. § 5425(a). Your letter of protest is denied as not being timely submitted.

**Beyond the Scope**

In addition to the letter being untimely, it is also beyond the scope of this procurement.

An actual or prospective offeror or contractor who may be aggrieved may protest *in connection with the method of source selection, solicitation or award of a contract*. See 5 G.C.A. § 5425(a) (emphasis added).

First, TakeCare is not an actual or prospective offeror or contractor. According to your letter, TakeCare has not been able to secure an agreement with GRMC that would qualify TakeCare as an eligible offeror according to the terms of the RFP. Second, your letter of protest does not raise complaints about the method of source selection, solicitation, or award of a contract as provided in the law. See 5 G.C.A. § 5425(a).

Your letter of protest makes allegations against GRMC for which we have no information or knowledge to confirm, refute, or deny as we are not a party to the negotiations between GRMC and TakeCare. The dispute is between two private entities to which the government of Guam is not a party. The assertions made in your letter pertain to conduct outside the scope of the procurement process. As such, we are not able to respond to your letter of protest.

As earlier mentioned above, your letter makes legal arguments as to the validity of Public Law 35-2. The assertions made are beyond the scope of the Negotiating Team's role in this procurement. The Negotiating Team is required to follow the laws pertaining to Group Health Insurance which includes the mandate in Public Law 35-2. Therefore, the decision to include it in the RFP is neither arbitrary nor capricious. See 5 G.C.A. § 5245. It is not the Negotiating Team's duty in this procurement process to defend the legality of the law and therefore, it takes no position as to the arguments made in your letter. Until such time the law is repealed or amended, we are mandated to implement Public Law 35-2. Therefore, your protest is also denied as to being beyond the scope of this procurement.

**Request for Procurement Documents**

Attached are portions of the procurement record that are available for public inspection at this time.

**Decision and Appeal Available**

For the reasons set forth above, TakeCare's letter of protest is untimely filed and does not meet the requirements of a valid procurement protest. This further serves to inform you of the right to administrative and judicial reviews of this decision.



EDWARD M. BIRN  
Director, Department of Administration  
Chairperson, Negotiating Team

cc: Louie Yanza, Esq.



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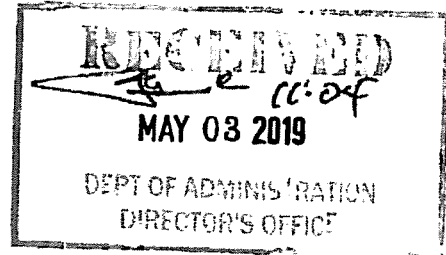
**EXHIBIT “B”**

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TakeCare Insurance Company, Inc.  
P.O. Box 6578 Tamuning, Guam 96931  
Telephone: (671) 646-6956 Fax (671) 647-3551

May 3, 2019



**VIA HAND DELIVERY**

Mr. Edward M. Birn  
Director, Department of Administration;  
Chairperson, Government of Guam Negotiating Team; and  
Procurement Officer  
GOVERNMENT OF GUAM  
Suite 224, ITC Building  
590 S. Marine Corps Drive  
Tamuning, Guam 96913

Re: **PROTEST BY TAKECARE INSURANCE COMPANY, INC. OF  
GOVERNMENT OF GUAM PROCUREMENT NO.: DOA/HRD-RFP-GHI-  
20-001**

Dear Mr. Birn:

TakeCare Insurance Company, Inc. ("TakeCare") is a prospective offeror intending to respond to Government of Guam Request for Proposal DOA/HRD-RFP-GHI-20-001 (the "RFP") for the Government of Guam Group Health Insurance Program ("Group Health Program"). (A copy of the RFP, including Exhibits, can be located online at the DOA website). This letter constitutes a formal protest of the RFP by TakeCare pursuant to 5 G.C.A. §5425 and 2 G.A.R. §9101 ("Protest").

TakeCare intended to submit a response to the RFP and to comply with Public Law 35-2 in reliance upon the inclusion of the private hospital in-network via a "rental, leased or wrapped network" previously contracted for through NetCare Life and Health Insurance Company's ("NetCare") network which includes the private hospital. This Protest is being filed within fourteen (14) days after TakeCare learned that the Guam Regional Medical City ("GRMC") took the position in an email to NetCare on May 1, 2019, that it would "not allow any other local health plan to access NetCare's in-network rates with GRMC" and that all "Guam-based health plans need to directly contract with GRMC for in-network rates." (Exhibit 1).

TakeCare's address is Baltej Pavilion, Suite 308, 415 Chalan San Antonio, Tamuning, Guam 96913. Arvin Lojo is TakeCare's Health Plan Administrator and the individual designated as the contact person to communicate with the Government of Guam on TakeCare's proposal in response to the RFP. Mr. Lojo's email address is [arvin.lojo@takecareasia.com](mailto:arvin.lojo@takecareasia.com) and his telephone number is 300-7147. TakeCare is being represented by Louie Yanza, Esq., whose email address is [lyanza@jurisguam.com](mailto:lyanza@jurisguam.com). Any communications to Mr. Lojo should also be sent to Mr. Yanza. Pursuant to 2 G.A.R. §9101(c)(1), this Protest is being filed in duplicate.

RECEIVED  
OFFICE OF THE ATTORNEY GENERAL  
ADMINISTRATION  
5/3/19  
@more

## FACTUAL BACKGROUND

On February 27, 2019, Guam's Legislature passed Bill No. 30-35, which bill was subsequently approved by the Governor on March 7, 2019, becoming Public Law 35-2 ("PL 35-2"). (Exhibit 2). PL 35-2 added a new Section 4302(c)(12) to Chapter 4, Title 4, Guam Code Annotated, to read: "Beginning with the negotiations for Fiscal Year 2020, the negotiating team *shall* consider only those companies or legal entities providing or applying to provide health insurance or the provision of health care to the Government of Guam whose in-network coverage includes all public and private hospitals operating in Guam." (Exhibit 2). The only private hospital in Guam is GRMC.

Both before and after the passage of PL 35-2, TakeCare and GRMC had engaged in negotiations for a Provider Services Agreement. On March 14, 2019, TakeCare sent a letter to GRMC confirming TakeCare's March 12, 2019, email request for a conference call "to receive from GRMC a Provider Service Agreement as well as GRMC's charge master rates for services equal (or better) as it relates to agreement language and terms as well as underlying rates for GRMC services as provided to SelectCare or any other Guam health insurance carrier." (Exhibit 3). The March 14, 2019, letter was TakeCare's formal request for such a Provider Service Agreement from GRMC "specifically as it relates to the upcoming issuance of the FY2020 Government of Guam Request for Proposal for the Government Group Health Insurance Program." (Exhibit 3).

On March 18, 2019, TakeCare's Chief Executive Officer ("CEO") had a conference call with representatives of GRMC. In this conference call, TakeCare's CEO requested that TakeCare be provided with a template for a contract between TakeCare and GRMC wherein TakeCare would be provided with the best service rates between GRMC and any other local insurer so that TakeCare could have this for consideration in response to the upcoming Government of Guam ("GovGuam") RFP. GRMC responded by stating that in addition to TakeCare negotiating a contract that applied to GovGuam members, GRMC also wanted to negotiate a contract with TakeCare that required its commercial and federal plans to include GRMC in-network. TakeCare requested that GRMC and TakeCare move forward with an agreement at this time for the GovGuam plan only, which is all that PL 35-2 required. GRMC did not agree during the conference call to provide TakeCare with a contract only for the GovGuam plan. Instead, the conference call ended with GRMC stating that it would memorialize the conversation in a letter.

GRMC confirmed the position it took during the conference call in a letter to TakeCare dated March 21, 2019. (Exhibit 4). The letter reiterated GRMC's conditions of "Full Network Access" and payment of TakeCare members' "Outstanding Claims" before an agreement with TakeCare for its GovGuam members could be reached with GRMC. (Exhibit 4).

On March 27, 2019, GovGuam issued the RFP. Exhibit D to the RFP lists the GovGuam Requested Benefits in detail. The Tab of Exhibit D to the RFP which is entitled, "Medical Network Analysis" states in pertinent part:

"With regard to PL 35-2, signed in March 2019, offerors must provide a network that includes all public (excluding Naval Hospital Guam) and private hospitals on Guam, considered the "broad" network for purposes of this RFP.

Additionally, offerors are allowed the opportunity to include, as an option, a 'high-performance/narrow' network, to stand along-side the 'broad' network as an option for enrollees to elect. If you choose to offer such a network, please complete the additional column provided." (Exhibit 5).

The instructions for Exhibit 5 further require the offeror to indicate for each provider identified by the RFP whether the offeror has a direct contract with the provider; a "rental, leased or wrapped network" with the provider; or if the provider is out-of-network. (Exhibit 5).

On March 29, 2019, GRMC provided TakeCare with the proposed terms of an agreement and rates attached to a cover letter. (Exhibit 6). The second and third paragraphs of the March 29, 2019, cover letter continue to condition any agreement with TakeCare as follows:

"Please note that we are offering for your consideration an approval our most economical and beneficial provider agreement. However, as stated in my earlier letter, this agreement must include all TakeCare accounts to include GovGuam, Federal, associations, and commercial/private companies.

Further to our discussion, we must address and resolve the 'outstanding Takecare [sic] patient bills' for services received by your members. As I stated in our discussion, resolution of the 'outstanding Takecare [sic] patient bills' is a necessary component of this agreement moving forward." (Exhibit 6).

Attached is the Rate Sheet which accompanied the Provider Services Agreement GRMC sent to TakeCare. (Exhibit 7). Also attached is a comparison of the rates that GRMC currently charges NetCare and the rates proposed to TakeCare. (Exhibit 8). GRMC offered substantially higher rates to TakeCare. And, TakeCare suspects that the rates GRMC has offered to SelectCare are not the same as those offered to either TakeCare or NetCare.

On April 3, 2019 TakeCare sent a letter explaining to GRMC that it did not want to "commingle" GovGuam matters with those relating to federal and commercial provider groups. (Exhibit 9). In this letter, TakeCare noted that GRMC's "demands related to all other lines of TakeCare's business and other issues is an unfair overreach on GRMC's part." (Exhibit 9). TakeCare requested that GRMC focus on PL 35-2, which required that offerors for the GovGuam health insurance contract "include GRMC in-network . . . and not any other of TakeCare's lines of business." (Exhibit 9). GRMC responded with an email message to TakeCare on April 9, 2019, stating that it was "open to negotiating with you with the goal of reaching a mutually beneficial providers services agreement." (Exhibit 10). The pertinent part of the April 9, 2019, message stated:

We hope that you reconsider your position and I will again re-state our position that the following points are conditions of our proposed Provider Services agreement:

- 1) TakeCare will include GRMC in all its lines of business to include Government of Guam, Federal employees' program and private/commercial
- 2) TakeCare will not sell GRMC in-network as a buy up option
- 3) TakeCare will settle the outstanding billed charges for services rendered to TakeCare members

As we count down the days to the submission of TakeCare's response to the Government of Guam RFP, we remain open to negotiating with you with the goal of reaching a mutually beneficial provider services agreement." (Exhibit 10) (Emphasis original).

Thereafter, on April 16, 2019, representatives of GRMC and TakeCare had a meeting to continue negotiations. During the meeting, GRMC reiterated that it would enter into a provider agreement with TakeCare relating to GovGuam only if GRMC was also in-network for TakeCare's commercial and federal members. In addition, GRMC again requested that TakeCare pay for services for TakeCare members that TakeCare had previously disputed and which TakeCare had no legal obligation to pay for various reasons.

TakeCare has been unable to negotiate reasonable terms of a direct contract with GRMC for GovGuam members due to GRMC's extortionate demands which are completely unrelated to the Group Health Program. Nonetheless, TakeCare intended to utilize a previously arranged Network Access Services Agreement with NetCare; which arrangement allowed NetCare to lease to TakeCare in-network access to GRMC. (Exhibits 11 and 12). On April 30, 2019, TakeCare orally informed NetCare of its activation of the previously executed Network Access Services Agreement, and gave formal notice of the same on May 1, 2019. (Exhibit 13). On that same day, May 1, 2019, GRMC informed NetCare via an email that it would "not allow any other local health plan to access NetCare's in-network rates with GRMC" and that all "Guam-based health plans need to directly contract with GRMC for in-network rates." (Exhibit 1). Thus, TakeCare learned that GRMC was not going to honor the lease of NetCare's network to TakeCare and would insist that it have a "direct contract" with GRMC for in-network rates.

## DISCUSSION

### A. PL 35-2 and the RFP Are An Improper Delegation of Authority.

TakeCare sought to comply with PL 35-2. The proposal by GRMC to TakeCare for GovGuam in-network was expressly conditioned upon TakeCare's inclusion of TakeCare's commercial and federal members also being in-network for health care services at GRMC. GRMC also insisted that none of TakeCare's plans include a buy up option. In addition, as a condition for entering into an agreement with TakeCare, GRMC wrongfully demanded that TakeCare pay for past services to its members, which TakeCare has no legal obligation to pay on the grounds that: (a) TakeCare had no Direct Payer Agreement with GRMC at the time of such alleged services; (b) Many of the alleged services were not covered by the terms of any of TakeCare's plans; and, (c) Even if TakeCare had a Direct Payer Agreement with GRMC, and even if the alleged services had been covered, the GRMC claims submitted to TakeCare patients/TakeCare were time-barred under the provisions of Guam's Prompt Payment Act and/or the statute of limitations. In simple terms, GRMC is holding up TakeCare and preventing it from qualifying to respond to the RFP by demanding that TakeCare agree to include GRMC in-network for all of its members, including its commercial and federal members. GRMC is further insisting that TakeCare pay for claims that it does not owe. All of these extortionate demands must be met before GRMC will enter into a contract with TakeCare relating to GovGuam members.

If offerors are required by PL 35-2 to contract with GRMC in order to submit a proposal in response to the RFP, GRMC can completely control the outcome of the RFP process by eliminating any prospective offeror by simply refusing to have a network relationship with that insurer. That is exactly what has happened. GRMC has refused to enter into a contract with TakeCare relating only to GovGuam members. Instead, GRMC has wrongfully used the leverage given to it by PL 35-2 to insist that TakeCare also enter into a contract with GRMC in-network for all of TakeCare's lines of business, including commercial and federal members. GRMC has also wrongfully used its perceived leverage from PL 35-2 to demand that TakeCare pay amounts to GRMC that TakeCare does not legally owe. Lastly, GRMC proposes to charge TakeCare rates that are higher than the ones it charges other carriers.

GRMC is maliciously using PL 35-2 and the RFP to eliminate or disadvantage TakeCare as an offeror by demanding unreasonable conditions, and contract terms including higher rates. This scenario was predicted by DOA itself when it previously opposed Bill No. 21-34 that required offerors to include GRMC in their networks. In Legislative testimony on Bill No. 21-34, DOA noted that requiring offerors to include GRMC in their networks would "force carriers to accept whatever fees are established" by GRMC and those that refused to do so "would be disqualified from bidding on the Government's health insurance contract since they would not have the private hospital as one of their providers." (Exhibit 14 at 3). DOA's fears about GRMC making unreasonable demands on offerors were well founded. SelectCare and TakeCare also predicted that requiring offerors to include GRMC in their networks would allow GRMC to make unreasonable demands on prospective offerors. (Exhibit 14).

The actions of GRMC clearly prove that the practical effect of PL 35-2 and the RFP has been to delegate the authority to GRMC to determine who can participate in the GovGuam RFP process. GRMC can make demands upon prospective offerors like it has done to TakeCare that are not required by PL 35-2, but which are designed to disqualify TakeCare. Consequently, PL 35-2 is an improper delegation of executive authority to allow a private entity, such as GRMC, to determine what entities may participate in and ultimately win a contract with the government. *See e.g. G. Curtis Martin Investment Trust v. Clay*, 266 S.E.2d 82 (S.C. 1980)(It is an improper delegation of power to allow a private entity to control who participates in government owned sewer system); *Texas Boll Weevil Eradication Foundation v. Lewellen*, 952 S.W.2d 454 (Tex. 1997)(It is an unconstitutional delegation of authority to allow a private foundation whose members have a pecuniary interest to assess costs against other private companies); and, *People v. Pollution Control Board*, 404 N.E. 2d 351 (Ill. App. 3d 1980)(Allowing private automobile association to determine which events are subject to regulations is an improper delegation of legislative authority).

#### **B. PL 35-2 and the RFP Are Inconsistent With The Organic Act.**

The Organic Act requires that GovGuam "establish, maintain and operate" a public "hospital." U.S. Code 48 § 1421g(a). The revenues received from health insurers are essential in order to "maintain" Guam Memorial Hospital ("GMH"), which, even with those revenues, is in a financial crisis. Every dollar paid by GovGuam to GRMC is a dollar that is not paid to GMH. The government's ability to "maintain and operate" GMH will be significantly impaired if insurance carriers under the Group Health Program are required to include GRMC in-network, not as an option, but as an absolute requirement.

#### **C. PL 35-2 and the RFP Eliminate "Competition" and Deny Equal Protection.**

Guam law mandates that RFPs shall “foster effective broad-based competition” and “encourage competition.” 5 G.C.A §§ 5001(6) and 5265: *See also* 2 GAR Div. 4 § 1102(5). According to the Merriam-Webster dictionary, “competition” is defined as “the act or process of trying to get or win something that someone else is also trying to get or win.” Thus, by definition, “competition” requires that there be more than one competitor. Otherwise, you do not have any “competition.”

There are only two current health insurers for the Government of Guam: TakeCare and SelectCare. If TakeCare is disqualified from submitting a proposal because GRMC refuses to negotiate in good faith with TakeCare, or otherwise prevents TakeCare from including GRMC in its network, then SelectCare will be the only health insurer that can be awarded the government health insurance contract. Any statute or RFP that in effect results in only one qualified offeror being able to submit a proposal does not “encourage competition.” To the contrary, it eliminates competition altogether, which is a clear violation of Guam law. Under the current facts, TakeCare (and any other carrier that may be treated the same way) is effectively discriminated against by GRMC and is denied equal protection under the law.

#### **D. PL 35-2 and the RFP Do Not Create A “Level Playing Field.”**

Guam Procurement Law expressly requires that an “RFP shall call for a plan that provides a **level playing field** with current and future private insurers . . .” 4 G.C.A. § 4302(c)(2). It is undisputed that a private hospital like GRMC charges different rates to different health care providers. As noted above, the Comparative Analysis of proposed TakeCare rates and the current NetCare rates (Exhibit 8) show that GRMC wrongfully insisted that TakeCare agree to pay rates substantially higher than GRMC is requiring for other health insurers. A law such as PL 35-2, as reflected in the RFP, which requires offerors to include a private entity in their network that is charging different rates to different health insurers violates Guam law because it creates an “unlevel playing field,” not a level playing field.

#### **E. PL 35-2 and the RFP Will Not Result In The “Lowest Cost Option.”**

The Provider Services Agreement proposed by GRMC on March 29 2019, included rates which GRMC claimed were their “most economical and beneficial.” (Exhibit 6). However, the rates proposed were exorbitant and were designed to place TakeCare at a disadvantage in its response to the RFP.

Guam law requires that an “RFP shall call for a plan that provides a **level playing field** with current and future private insurers . . .” 4 G.C.A. § 4302(c)(2). However, GRMC’s proposed Provider Services Agreement requested that TakeCare agree to pay rates that were substantially higher than it is requiring other insurers to pay. A level playing field does not by definition exist if GRMC charges different contracted health insurers different rates.

Guam law requires that an RFP result in the selection of the “most economical and beneficial” proposal, which “shall be defined as the lowest cost option of either the exclusive or non-exclusive proposal.” Public Law 34-83 Section 2, and codified as 4 G.C.A. § 4302(c)(2). GRMC’s fees are substantially higher than those of GMH. Moreover, unlike GMH, GRMC is a private entity that can raise its rates even higher at any time without the benefit of a public hearing or Legislative approval.

The higher fees for GRMC will be passed on to government employees in the form of higher premiums, even to those who will never use the services of GRMC. This is directly contrary to the intent of Section 4301(c)(2), which requires the "lowest cost option" for government health insurance. Instead of resulting in a health insurance contract with the "lowest cost option," requiring all offerors to include GRMC in their networks will cause health insurance premiums to sky rocket.

**F. PL 35-2 and the RFP Will Not "Maximize" GovGuam Purchasing Power.**

Guam law requires that a purchasing agency "maximize to the fullest extent practicable the purchasing value of public funds of the Territory." 5 G.C.A. § 5001(5) and 2 GAR Div. 4 § 1102(4). Therefore, when purchasing any service, a government purchasing agency must select the source for that service that is the most economical. The health care services at GMH are substantially more economical than those same services at GRMC. A statute or RFP that allows for the use of higher cost services at GRMC, instead of the lower cost services at GMH, is inconsistent with Guam law because it fails to "maximize to the fullest extent practicable the purchasing value of public funds of the Territory."

**G. PL 35-2 and the RFP Discriminate Against Other Private Clinics In Guam.**

Requiring that GRMC be in the network of offerors discriminates against other private health care providers and clinics in Guam. DOA itself admitted in Legislative Testimony regarding Bill No. 21-34 that any such requirement "violates the spirit and intent of the law as it would provide special recognition and treatment to the private hospital on Guam." (Exhibit 14 at 3). Moreover, DOA has stated on the record before the Guam Legislature that the government could not require that a health insurer have a specific private hospital or private clinic in network: "I don't believe you can name all the clinics and say, you must provide access to all of these hospitals." (Exhibit 15 at 7).

SelectCare agreed with DOA and said that requiring GRMC to be in the networks of offerors "discriminates against other medical providers that have also made investments on Guam but are not given the same type of advantages. (Exhibit 14).

**H. GRMC Is Already In-Network For Emergencies and Sole Source Situations.**

GRMC is already considered in-network of a government health insurer in order for government employees, retirees and dependents to have access to GRMC in emergency situations. The Emergency Medical Treatment and Labor Act (known as "EMTALA") explicitly forbids the denial of care to any patients in emergency situations. 42 U.S.C. § 1399dd. Thus, GRMC must provide care to patients in emergency situations regardless of whether the patient's health insurer has a direct contract with GRMC for its provider network.

Likewise, it is not necessary for GRMC to be in the network of a government health insurer in order for government employees, retirees and dependents to be treated at GRMC when the service available at GRMC is not otherwise available on Guam. The current GovGuam health care contracts (and all previous contracts) plainly state: "If a carrier does not contract with the provider of any sole source service in Guam, it must reimburse for the sole source provided by such Guam provider as if sole source provider were a participating provider."



## CONCLUSION

Based on the above, GRMC is using PL 35-2 and its application to the RFP as the basis for bad faith negotiations with TakeCare. Indeed, GRMC's demands to TakeCare are a clear illustration of the way PL 35-2 has imbued GRMC with an improper delegation of authority; the absolute ability to determine what insurance carriers will qualify to submit proposals in response to the RFP, and whether any such proposals will be made on a level playing field.

The RFP does not require an offeror to have a direct contract with the private hospital (GRMC) in order to include it in-network. The Tab of Exhibit D to the RFP which is entitled, "Medical Network Analysis" (Exhibit 5) expressly refers to a "rental, leased or wrapped network" as fulfilling this requirement. TakeCare procured such an agreement for a "rental, leased or wrapped network" to include GRMC in-network. Consequently, on April 30, 2019, TakeCare orally informed NetCare of its activation of the previously executed Network Access Services Agreement, and gave formal notice of the same on May 1, 2019. (Exhibit 14). However, GRMC was not satisfied with refusing to negotiate reasonably with TakeCare. It also saw fit to interfere with TakeCare's lease of NetCare's network. On May 1, 2019, GRMC informed NetCare via an email that it would "not allow any other local health plan to access NetCare's in-network rates with GRMC" and that all "Guam-based health plans need to directly contract with GRMC for in-network rates." (Exhibit 1). Thus, on May 1, 2019 TakeCare learned that GRMC was not going to honor the sublease of NetCare's contract and that TakeCare would have to have a "direct contact" with GRMC.

GRMC is subverting the intent of the RFP, and seeks to either disqualify or disadvantage TakeCare with higher rates, by informing NetCare that it would "not allow any other local health plan to access NetCare's in-network rates with GRMC" and that all "Guam-based health plans need to directly contract with GRMC for in-network rates." (Exhibit 1).

As can be seen from the April 9, 2019, email (Exhibit 10), not only did GRMC request that TakeCare include GRMC in-network for every line of business it sells as an express condition to a contract for the GovGuam plan, but GRMC requested that, "**TakeCare will not sell GRMC in-network as a buy up option**" for any of its lines of business. (Exhibit 11). (Emphasis original). PL 35-2 has incentivized a private company like GRMC to make such unreasonable and overreaching demands on another private entity (TakeCare) in violation of the Organic Act and the Procurement Law in order for the private entity (TakeCare) to do business with GovGuam.

Clearly TakeCare is unable to negotiate sensible terms of a direct contract with GRMC for GovGuam members due to GRMC's extortionate demands. The facts and discussion above leave TakeCare with no choice at this time other than to protest the RFP because of the practical application of PL 35-2 to it, and the delegation of authority PL 35-2 ceded to GRMC.

"If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be: (a) cancelled; or (b) revised to comply with the law." 5 GCA Section 5451. For the reasons discussed herein, TakeCare respectfully submits that both PL 35-2 and its application to the RFP are in violation of the law. Consequently, the RFP must be cancelled and revised to comply with the Organic Act, the

Procurement law and other provisions of law which ensure competition, a level playing field, equal protection and other provisions of Guam law.

Pursuant to 2 G.A.R. §9101(f), TakeCare requests all documents related to the RFP, including, but not limited to the following: (a) the complete procurement file and all supporting documents; and (b) any audio records, minutes or notes of meetings of government officials or any member of the Negotiating Team.

Further, as provided by 2 G.A.R. §9101(c), TakeCare requests that the procurement represented by the RFP be stayed and that no award of a Group Health Program contract(s) be made until the resolution of this Protest. Finally, TakeCare reserves its right to supplement and modify the grounds for this Protest, as its investigation is ongoing.

Sincerely,



JOSEPH HUSSLEIN  
President and CEO  
TAKECARE INSURANCE COMPANY

cc: Office of the Attorney General

# EXHIBIT 1



Joseph Husslein <husslein@gmail.com>

---

**FW: GRMC Agreement**

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Jerry Crisostomo <jcrisostomo@netcarelifeandhealth.com>  
To: Joseph Husslein <husslein@gmail.com>, "Lojo, Arvin" <Arvin.Lojo@takecareasia.com>  
Cc: tmoylan@moylans.net

Tue, Apr 30, 2019 at 7:52 PM

Hi Joseph/Arvin,

We received the email message below this morning from GRMC...I responded requesting for a letter with their signature stating the below issue including the name of the 'local health plan'...I have yet to receive a response back but wanted to give you heads up on this latest development.

Let me know if you wish to discuss further...

Regards,

Jerry Crisostomo

---

**From:** Plinske, Eric L. [mailto:Eric.Plinske@GRMC.gu]  
**Sent:** Wednesday, May 01, 2019 8:03 AM  
**To:** Jerry Crisostomo; 'Bri Habin'  
**Cc:** Santos, Francis E.  
**Subject:** GRMC Agreement

Jerry,

Please note that GRMC will not allow any other local health plan to access NetCare's in-network rates with GRMC for their members. Guam-based health plans need to directly contract with GRMC for in-network rates.

Sincerely,

**Eric L. Plinske**

Vice President

Corporate Affairs

Guam Regional Medical City

133 Route 3

Dededo, GU 96929

Direct: (671) 645-5579

Office: (671) 645-5500, ext. 5579

Mobile: (671) 688-3571

Email: [eric.plinske@grmc.gu](mailto:eric.plinske@grmc.gu)

Website: [www.grmc.gu](http://www.grmc.gu)



# EXHIBIT 2

**J. Minda 'Gresel' Santiago, Sr. Presidente del Gobierno  
 BILL STATUS**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	DATE REFERRED	DATE COMMITTEE REPORT FILED	FINAL DATE	NOTES
30-35 (CON)	Tina Rose Mulla Baines	AN ACT TO AMO § 4303(H)(1) OF CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING THAT ALL PRIVATE HOSPITALS BE COVERED UNDER THE GOVERNMENT OF GUAM HEALTH INSURANCE CONTRACT.	1/23/19 4:42 p.m.	2/1/19	Committee on Public Accountability, Human Resources, and the Guam Bulk-Up	2/15/19 3:19 p.m.	Request: 2/4/19 Fiscal Note: 2/9/19 Fiscal Note: 2/25/19 As Amended Fiscal Note: 2/26/19 Revised	Supplemental Document to the Committee Report 2/26/19 5:11 p.m.
		TITLE	DATE PASSED	TRANSMITTED	DUE DATE	DATE SIGNED		NOTES
	SESSION DATE	AN ACT TO ADD A NEW § 4303(H)(2) TO ARTICLE 3 OF CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING CONSIDERATION OF ONLY THOSE COMPANIES OR ENTITIES PROVIDING HEALTH INSURANCE TO THE GOVERNMENT OF GUAM WHOSE IN NETWORK COVERAGE INCLUDES ALL PUBLIC AND PRIVATE HOSPITALS OPERATING IN GUAM.	2/27/19	2/27/19 5:57 p.m.	3/11/19	3/7/19		Received: 3/7/19 Mess and Comm. Doc. No. 35GL-19-0211.

UFISINAN I MAGA'HAGA  
OFFICE OF THE GOVERNOR



LOURDES A. LEON GUERRERO  
MAGA'HAGA • GOVERNOR

JOSHUA F. TENORIO  
SIGUNDO MAGA'LÁHI • LIEUTENANT GOVERNOR

March 7, 2019

Honorable Telen Cruz Nelson  
Acting Speaker  
*I Mina'trentai Singko Na Liheslaturan Guåhan*  
Guam Congress Building  
163 Chalan Santo Papa  
Hagåtña, Guam 96910

356L-19-0211  
Speaker Tina Rose Muña Barnes

MAR 07 2019  
Time 3:01 (AM) (PM)  
Received By:                     

Dear Madame Speaker:

Today, I signed Bill No. 30-35 (COR), "An Act to *Add* a New § 4302(c)(12) to Article 3 of Chapter 4, Title 4, Guam Code Annotated, Relative to Requiring Consideration of Only Those Companies or Entities Providing Health Insurance to the Government of Guam Whose In-Network Coverage Includes All Public and Private Hospitals Operating in Guam," (the "Act") into law as **Public Law 35-2**.

An emergency is a serious, unexpected, and often dangerous situation requiring immediate action. In terms of health care, a successful response to a medical emergency is based not only on access, but also health provider network adequacy. To be adequate, the Government of Guam's health insurance network must provide Government of Guam employees with the right care, at the right time, without having to travel needlessly to seek an in-network hospital. We consistently ask and depend on our Government of Guam employees to serve during emergencies when our island calls. This Act reminds the Government to serve in return and to help its employees prepare for a medical emergency when they and their families are in need.

The Government of Guam employees should be allowed to expect that their health insurance cover quality health care at whichever hospital, public or private, they may unexpectedly find themselves on Guam. By signing this bill, I join the Legislature in making this expectation a reality.

*Senseramente,*

LOURDES A. LEON GUERRERO  
*Maga'hagan Guåhan*  
Governor of Guam

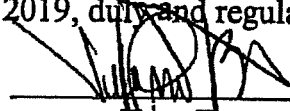
2019 MAR - 7 PM 3:25



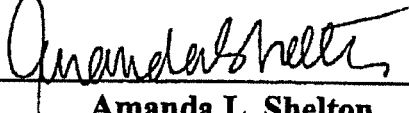
***I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN***  
**2019 (FIRST) Regular Session**

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

This is to certify that Bill No. 30-35 (COR), "AN ACT TO ADD A NEW § 4302(c)(12) TO ARTICLE 3 OF CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING CONSIDERATION OF ONLY THOSE COMPANIES OR ENTITIES PROVIDING HEALTH INSURANCE TO THE GOVERNMENT OF GUAM WHOSE IN-NETWORK COVERAGE INCLUDES ALL PUBLIC AND PRIVATE HOSPITALS OPERATING IN GUAM," was on the 27<sup>th</sup> day of February 2019, duly and regularly passed.


  
\_\_\_\_\_  
**Tina Rose Muña Barnes**  
Speaker

Attested:


  
\_\_\_\_\_  
**Amanda L. Shelton**  
Legislative Secretary

-----

This Act was received by *I Maga'hågan Guåhan* this 27<sup>th</sup> day of February  
2019, at 5:55 o'clock P.M.

  
\_\_\_\_\_  
Assistant Staff Officer  
*Maga'håga's Office*

APPROVED:

  
\_\_\_\_\_  
**Lourdes A. Leon Guerrero**  
*I Maga'hågan Guåhan*

Date: 3/7/2019

Public Law No. 35-2

***I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN***  
**2019 (FIRST) Regular Session**

**Bill No. 30-35 (COR)**

As amended by the Committee on Public Accountability,  
Human Resources and the Guam Buildup;  
and further amended on the Floor.

Introduced by:

Tina Rose Muña Barnes  
William Mendiola Castro  
Régine Biscoe Lee  
Kelly Marsh (Taitano), PhD  
James C. Moylan  
Louise B. Muña  
Telena Cruz Nelson  
Sabina Flores Perez  
Clynton E. Ridgell  
Joe S. San Agustin  
Amanda L. Shelton  
Telo T. Taitague  
Jose "Pedo" Terlaje  
Therese M. Terlaje  
Mary Camacho Torres

**AN ACT TO ADD A NEW § 4302(c)(12) TO ARTICLE 3 OF  
CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED,  
RELATIVE TO REQUIRING CONSIDERATION OF  
ONLY THOSE COMPANIES OR ENTITIES PROVIDING  
HEALTH INSURANCE TO THE GOVERNMENT OF  
GUAM WHOSE IN-NETWORK COVERAGE INCLUDES  
ALL PUBLIC AND PRIVATE HOSPITALS OPERATING  
IN GUAM.**

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

2 **Section 1.** A new § 4302(c)(12) is *added* to Chapter 4 of Title 4, Guam Code

3 Annotated, to read:

1           “(12) Beginning with the negotiations for Fiscal Year 2020, the  
2           Negotiating team *shall* consider only those companies or other legal entities  
3           providing or applying to provide health insurance or the provision of health  
4           care to the Government of Guam whose in-network coverage includes all  
5           public and private hospitals operating in Guam.”

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

# EXHIBIT 3



TakeCare Insurance Company, Inc.  
P.O. Box 6578 Tamuning, Guam 96931  
Telephone: (671) 646-6956 Fax (671)  
647-3551

March 14, 2019

**VIA HAND DELIVERY and VIA EMAIL**

Mr. Francis E. Santos  
Senior Vice-President/Strategic Planning & Business Development  
GUAM REGIONAL MEDICAL CITY  
133 Route 3, Dededo, Guam 96912

**Re: Offer to TakeCare for GRMC Services**

Dear Mr. Santos:

This letter is in response to your email dated March 13, 2019 in reply to my email dated March 12 related to your recent previous emails and calls. The purpose of my March 12 email requesting a teleconference with yourself or appropriate GRMC decision makers on March 14th, is to express TakeCare's desire to receive from GRMC a Provider Service Agreement as well as GRMC charge master rates for services that are equal (or better) as it relates to agreement language and terms as well as underlying rates for GRMC services as provided to SelectCare or any other Guam health insurance carrier.

GRMC providing such is to be in compliance with recent media statements it made after the passage of Bill 30-35 into PL 35-2. Specifically, *"...Francis Santos reached out to management at TakeCare...in hopes of reaching an agreement that is less or equal to what...currently paying for healthcare that includes GRMC"*.

As importantly, with GRMC providing such, it streamlines the process for the parties to reach a workable arrangement for such GRMC services – specifically as it relates to the upcoming issuance of the FY2020 Government of Guam Request for Proposal for the Government of Guam Group Health Insurance Program ("RFP").

With the above in mind, TakeCare formally requests to receive the above from GRMC no later than 3pm, Friday, March 29, 2019, CHst. This may be sent via hard copy to TakeCare's Baltej Administration office and soft copy via email to [joseph.husslein@takecareasia.com](mailto:joseph.husslein@takecareasia.com).

For TakeCare's part, we will promptly review the above information provided by GRMC and provide any initial clarification as may be necessary. Moreover, TakeCare will consider the information provided by GRMC consistent with PL 35-2 and other applicable statutes as well as the issuance and our review of the RFP. Upon doing so, depending on TakeCare's intention to bid on the RFP, we will affirm or clarify such in a timely matter with GRMC.

Should you have any questions, please do not hesitate to contact me at (671) 646-6956 x7148 or via cell at (808) 738-6941 as well as email.

Sincerely,

  
Joseph Husslein

cc – Dr. Mike Cruz, President/CEO, GRMC

# EXHIBIT 4



March 21, 2019

Mr. Joseph Husslein, President  
Takecare Insurance Company  
Tamuning, Guam

**Re: Response to Takecare Letter of March 14**

Dear Mr. Husslein:

This letter will confirm our telephone conversation on March 18, 2019.

To summarize our discussion, we addressed the following issues:

- **Proposed Agreement between GRMC and Takecare**
- **In-Network Access for all Takecare members including GovGuam, Federal & Commercial/Private**
- **Outstanding bills for services rendered to Takecare members**

**Proposed Agreement**

We will provide a template agreement with proposed negotiated rates for services provided at GRMC.

**Full Network Access**

We discussed that we should focus our efforts on reaching an agreement for the Government of Guam group health program. While we agree with this request, we stand firm in our desire that when an agreement is reached, our agreement will be offered to all your groups to include, the Government of Guam (GovGuam) group health insurance program, the Federal employee's program and the commercial/private sector plans. It is our intention that TakeCare's GovGuam in-network access will take effect on 10/1/2019, while in-network access for TakeCare's commercial/private and Federal market groups will take effect on 1/1/2020.

**Outstanding Claims**

Again, notwithstanding our mutual goal of reaching a provider service agreement, we remain firm that the "outstanding" bills for services rendered to Takecare members be paid through a reasonable settlement between GRMC and Takecare.

The purpose of this letter is to memorialize our telephone discussion. As I offered in our discussion, our proposed agreement will be sent to you by the close of business on March 22, 2019.

Should you have questions or concerns, please do not hesitate to contact me.

Regards,

Francis E. Santos

# EXHIBIT 5



# Medical Network Analysis

**Bidder Instructions** Complete the shaded cells for your proposed network. If you are bidding multiple networks add a column for each network  
 - Please input a "Y", "L", or "N" indicator in the match column requested for each provider line

- Indicate "Y" if you matched on that provider and the provider is directly contracted in the network you are proposing for

- Indicate "L" if the provider is in a rental, leased, or wrap network

- Indicate "N" if the provider is out-of-network and for providers who are not formally contracted into the network and/or who would not be listed in network directories but who offer some type of discounting from fees whether by a limited contract or by negotiation after incurred

With regard to PL 35-2, signed in March 2019, offerors must provide a network that includes all public (excluding Naval Hospital Guam) and private hospitals on Guam, considered the "broad" network for purposes of this RFP.

Additionally, offerors are allowed the opportunity to include, as an option, a "high-performance/narrow" network, to stand along-side the "broad" network as an option for enrollees to elect. If you choose to offer such a network, please complete the additional column provided.

OPTIONAL

Top Network Hospitals & Surgical Centers Across all current carriers			Proposed Network Enter Broad Network Name Here	Proposed Network Enter High-Performance Network Name Here
TIN	Provider Name	Location	Is this hospital in-Network for your "Broad" network?	Is this hospital in-Network for your "High-Performance" network?
660768469	GHD dba Guam Regional Medical City (GRMC)	Guam		
960001695	GUAM MEMORIAL HOSPITAL	Guam		
7074202	ST LUKES MEDICAL CENTER GLOBAL CITY	Philippines		
000000027	TAKECARE PHILIPPINES - HOSPITALS	Philippines		
660576790	GUAM SURGICENTER	Guam		
	GUAM SPECIALIST GROUP PLLC	Guam		
912151670	STRAUB CLINIC & HOSPITAL	Hawaii		
660551190	ISLAND SURGICAL CENTER, P.C.	Guam		
954457756	CEDARS-SINAI MEDICAL GROUP	California		
980001217	U.S. NAVAL HOSPITAL	Guam		
	HABA ADAI SPECIALIST GROUP	Guam		
911352172	TACOMA GENERAL ALLENMORE	California		
660553954	ISLAND EYE CENTER	Guam		
956006143	UCLA MEDICAL CENTER	California		
951656366	GOOD SAMARITAN HOSPITAL	California		
110101002	TAIWAN ADVENTIST HOSPITAL	Taiwan		
660774364	COMMONWEALTH HEALTHCARE CORPORATION	Salpan		
860800150	MAYO CLINIC ARIZONA	Arizona		
390907740	ST FRANCIS HOSPITAL, INC	Minnesota		
Please outline any other major facility differences of your networks not addressed by this list of top utilized facilities:				

# EXHIBIT 6



March 29, 2019

Mr. Joseph Husslein  
President  
Takecare Insurance  
Tamuning, Guam

**Re: Takecare Proposal**

Dear Mr. Husslein:

This letter will serve as our proposal for a provider agreement between Takecare Insurance and Guam Regional Medical City (GRMC). Our proposed agreement is attached for your review.

Please note that we are offering for your consideration and approval our most economical and beneficial provider agreement. However, as stated in my earlier letter, this agreement must include all Takecare accounts to include GovGuam, Federal, associations and commercial/private companies.

Further to our discussion, we must address and resolve the "outstanding Takecare patient bills" for services received by your members. As I stated in our discussion, resolution of the "outstanding Takecare patient bills" is a necessary component of this agreement moving forward.

Should you have questions or concerns, please feel free to call me.

Regards,

Francis Santos

attachment

# EXHIBIT 7

**EXHIBIT "B"**

**RATE REIMBURSEMENT**

<b>Facility Service Type</b>	<b>Per Diem Rate</b>
Medical Surgical Days	\$2,652.25
Surgical 1 <sup>st</sup> Day	\$3,819.24
Surgical Subsequent Days	Level of Care
Adult ICU Days	\$3,978.38
Telemetry Days	\$3,677.10
SNU Level of Care Days	\$700.00
Observation Services	\$74.26 per hour
All other Inpatient Days not Listed	45% of billed charges
<b>Outlier Provisions</b>	<b>Rate</b>
Level 1 – Threshold	➤ \$75K in billed charges
Level 1 – Reimbursement	45% of billed charges
Level 1 – Base	First Dollar
<b>Outpatient Services</b>	<b>Rate</b>
Surgeries	45% of billed charges
Unlisted Surgery Procedures	45% of billed charges
Multiple Procedures	45% of billed charges
Emergency Room Services	45% of billed charges
Laboratory Services	45% of billed charges
Radiology Services	45% of billed charges
IV Therapy Services	45% of billed charges
Non-Routine Supplies	45% of billed charges
All Other Outpatient Services	45% of billed charges
Pharmacy Drugs	45% of billed charges
HBOT CPT G0277 (each 30 minutes)	\$172.13
Urgent Care Services (excluding IV & IM infusions)	45% of billed charges
<b>Inpatient &amp; Outpatient Exclusions</b>	<b>Rate</b>
Implantable Devices; prosthetics & orthotics; blood administration, processing, and storage.	45% of billed charges
Pharmaceuticals (Administered drug charges greater than or equal to \$1,000 per day for the same drug)	45% of billed charges
Non-Routine Supplies	45% of billed charges
<b>Professional Fees</b>	<b>Rate</b>
Anesthesia Conversion Factor	\$55 per unit
Emergency	170% of prevailing MPFS Non-Facility rate
Urgent Care	150% of prevailing MPFS Non-Facility rate
Radiological	150% of prevailing MPFS Non-Facility rate
All Other Specialties	150% of prevailing MPFS Non-Facility rate
HBOT CPT 99183	\$290.70
Non-Listed Codes	45% of billed charges
<b>Cardiac Case Rates</b>	<b>Rate</b>
<b>Cardiac Surgery</b>	<b>\$44,557.80</b>
- Includes 7-day hospital stay and anything in excess of 7 days will be paid at level of care per diem rate.	

<ul style="list-style-type: none"> <li>- Includes all professional fees and anesthesia</li> <li>- Drug charges greater than or equal to \$1,000 per day for the same drug are excluded and paid at 45% of billed charges.</li> <li>- Includes take back to OR for any reasons related to primary surgery within 7-day hospital stay, but excludes surgeries not related to primary surgery that will be paid at 45% of billed charges for OR time plus surgical and anesthesia professional fees at 150% of MPFS Non-Facility rate.</li> <li>- Includes one follow-up visit by post-operative physician services within 90 days from surgery.</li> <li>- Valves, pacemakers and AICDs are excluded and paid at 45% of billed charges.</li> <li>- Blood and blood products are excluded and paid at 45% of billed charges.</li> <li>- Non-routine supplies are excluded and paid at 45% of billed charges.</li> </ul>	
<p><b>Diagnostic Cardiac Catheterization</b></p> <ul style="list-style-type: none"> <li>- Includes no more than 4 diagnostic cardiac catheters. Any more than 4 catheters shall be paid at 45% of billed charges.</li> <li>- Includes one (1) observation day in Telemetry. Any additional medically necessary days shall be paid at the level of care per diem rate.</li> <li>- Includes all professional fees and anesthesia</li> <li>- Includes one follow-up visit by post-operative physician services within 90 days from surgery.</li> </ul>	<b>\$8,404.80</b>
<p><b>Angioplasty/Stent (no cardiac catheterization)</b></p> <ul style="list-style-type: none"> <li>- Includes one (1) stent. Additional stents beyond 1 shall be paid at 45% of billed charges.</li> <li>- Includes all professional fees and anesthesia</li> <li>- Includes observation stay or up to 2 days in either ICU or Telemetry. Any additional medically necessary days shall be paid at the level of care per diem rate.</li> <li>- Includes one follow-up visit by post-operative physician services within 90 days from surgery.</li> </ul>	<b>\$13,657.80</b>
<p><b>Angioplasty/Stent (with cardiac catheterization)</b></p> <ul style="list-style-type: none"> <li>- Includes one (1) stent. Additional stents beyond 1 shall be paid at 45% of billed charges.</li> <li>- Includes all professional fees and anesthesia</li> <li>- Includes no more than 4 diagnostic cardiac catheters. Any more than 4 catheters shall be paid at 45% of billed charges.</li> <li>- Includes observation stay or up to 2 days in either ICU or Telemetry. Any additional medically necessary days shall be paid at the level of care per diem rate.</li> <li>- Includes one follow-up visit by post-operative physician services within 90 days from surgery.</li> </ul>	<b>\$18,910.80</b>

<b>Pacemaker / AICD</b>	<b>\$5,778.30</b>
- Includes all professional fees and anesthesia	
- Excludes pacemaker and AICD, which shall be paid at 45% of billed charges.	
- Includes observation stay or 1 day in either ICU or Telemetry. Any additional medically necessary days beyond 1 day shall be paid at the level of care per diem rate.	
- Includes one follow-up visit by post-operative physician services within 90 days from surgery.	
<b>Bariatric Case Rate</b>	<b>Rate</b>
<b>Bariatric Surgery (Sleeve or Gastric Bypass)</b>	<b>\$16,500.00</b>
- Includes all professional fees and anesthesia	
- Includes up to a 3 day stay. Any additional medically necessary days beyond 3 days shall be paid at the level of care per diem rate.	
- Includes one follow-up visit by post-operative physician services within 90 days from surgery.	

# EXHIBIT 8





TakeCare Insurance Company, Inc.  
P.O. Box 6578 Tamuning, Guam 96931  
Telephone: (671) 646-6956 Fax (671)  
647-3551

April 16, 2019

Joseph Husslein  
President and Chief Executive Officer  
TakeCare Insurance Company, Inc.

**RE: Guam Regional Medical City ("GRMC") Proposed Fee Analysis to TakeCare Insurance Company, Inc. ("TakeCare")**

Mr Husslein,

The purpose of this memorandum is to provide the cost impact summary of the proposed TakeCare GRMC fees as provided by GRMC on March 29, 2019 for the purposes of TakeCare's intended bid to the FY2019-20 Government of Guam health insurance RFP.

The following summary provides the cost difference between the proposed TakeCare GRMC fees, GRMC's charge master and NetCare's existing fees with GRMC:

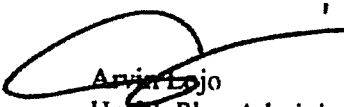
Service Category	Proposed TakeCare GRMC Fee Cost Difference to Current GRMC Charge Master	NetCare GRMC Fee Cost Difference to Current GRMC Charge Master	Difference of Proposed TakeCare GRMC Fees to Current NetCare GRMC Fees
In Patient Admission	(12.0%)	(48.5%)	70.6%
Out Patient Services	(45.3%)	(47.1%)	3.3%
Emergency Services	(58.5%)	(43.8%)	(26.1%)
Consolidated	(18.7%)	(47.9%)	56.0%

The following summarizes certain in patient charges under the proposed TakeCare GRMC fees, NetCare's GRMC fees and GRMC's charge master:

Service Category	GRMC Charge Master	NetCare GRMC Fees (A)	Proposed TakeCare GRMC Fees (B)	Dollar and Percent Difference Between TakeCare and NetCare GRMC Fees (A - B)
Delivery Room	\$4,540.73	\$1,669.80	\$2,043.33	\$373.53 / 22.4%
ICU	\$3,420.43	\$1,791.65	\$3,978.38	\$2,186.73 / 122.1%
Medical Room & Board	\$2,579.06	\$1,350.94	\$2,652.25	\$1,301.31 / 96.3%
NICU	\$3,937.50	\$2,062.50	\$3,978.38	\$1,915.88 / 92.9%
Nursery	\$1,680.00	\$880.00	\$756.00	(\$124.00) / (14.1%)
Telemetry	\$2,730.00	\$1,430.00	\$3,677.10	\$2,247.10 / 157.1%

Please do not hesitate to contact me for any other questions or clarification.

Sincerely,

  
 Arvin Lojo  
 Health Plan Administrator  
 TakeCare Insurance Company, Inc.

# EXHIBIT 9



TakeCare Insurance Company, Inc.  
P.O. Box 6578 Tamuning, Guam 96931  
Telephone: (671) 646-6956 Fax (671) 647-3551

April 3, 2019

Received

**VIA HAND DELIVERY and VIA EMAIL**

APR 03 2019

Mr. Francis E. Santos  
Senior Vice-President/Strategic Planning & Business Development  
GUAM REGIONAL MEDICAL CITY  
133 Route 3, Dededo, Guam 96929

Guam Regional  
Medical City

**Re: Provider Services Agreement**

Dear Mr. Santos:

Thank you for your letter of March 29, 2019, with a proposed Provider Services Agreement and rates between Guam Regional Medical City ("GRMC") and TakeCare Insurance Company, Inc. ("TakeCare") for the Government of Guam Group Health Insurance Program ("GovGuam Group Health Program"). It is important that GRMC understands that TakeCare will not comingle issues unrelated to the GovGuam Group Health Program. Consequently, our consideration of the proposed agreement and rates must be seen in the context as described in the remainder of this letter below.

First, as you know, TakeCare will be a prospective offeror intending to respond to the FY2020 Government of Guam Request for Proposal ("RFP") for the GovGuam Group Health Program. Recently enacted Public Law 35-2 requires that all public and private hospital operating in Guam be in the networks of those applying to provide health insurance to the Government of Guam. This law only applies to the GovGuam Group Health Program and TakeCare's primary intent in negotiating with GRMC is for the GovGuam Group Health Program. The insertion in these negotiations of demands related to all other lines of TakeCare's business and other issues is an unfair overreach on GRMC's part.

Because of the recently enacted law, any agreed-upon form of a Provider Services Agreement between GRMC and TakeCare, and its effective date, must necessarily be expressly conditioned upon TakeCare being chosen as the exclusive carrier for the GovGuam Group Health Program. Should TakeCare not be awarded the exclusive contract for the GovGuam Group Health Program, then any form of agreement between GRMC and TakeCare will not take effect. Additionally, should any award to TakeCare as the exclusive carrier for the GovGuam Group Health Program be protested by another offeror causing a stay/delay/postponement of TakeCare's exclusivity, any agreement between GRMC and TakeCare will not become effective unless and until TakeCare actually becomes the exclusive carrier.

Second, provided TakeCare is awarded the exclusive agreement under the GovGuam Group Health Program, TakeCare in its discretion will consider offering GRMC as an in-network provider for other lines of business but will not require that all groups include coverage for services by GRMC. TakeCare has always offered a range of plans to its groups and members. Indeed, TakeCare's non-GovGuam offerings are designed in part on requests and needs communicated to TakeCare by the groups and members, and are not a wholesale portfolio. Therefore, while TakeCare may include GRMC in its provider network by entering into a Provider Services Agreement for GRMC to provide services for covered benefits to TakeCare's members, TakeCare cannot guarantee that all of its groups or members will want to include GRMC coverage in-network. Aside from GovGuam, TakeCare will still offer its groups, and/or members within groups, for example high and standard option plans including the option to exclude GRMC from in-network coverage.

Third, as we have discussed previously, any dispute over GRMC's outstanding bills to TakeCare members during a time when there was no direct payer agreement between GRMC and TakeCare, is an

unrelated matter. As with the demands for insertion in TakeCare's other lines of business discussed above, the linking of amounts which may be due GRMC by TakeCare members for non-covered benefits is another overreach on GRMC's part. Any unrelated dispute must be dealt with separately from the parties entering into a Provider Services Agreement. However, depending upon the outcome of the parties' negotiation of a Provider Services Agreement and TakeCare's success in the RFP process for the GovGuam Group Health Program, TakeCare is willing to consider discussing various mechanisms for a binding resolution of the TakeCare patient bills GRMC claims it is owed.

A summary of the points set forth in this letter, includes the following:

1. The parties' initial focus because of Public Law 35-2 is a Provider Services Agreement which includes GRMC in-network for covered benefits for the GovGuam Group Health Program and not any other of TakeCare's lines of business.
2. The terms of the Provider Services Agreement reached between the parties will only become effective if TakeCare is the exclusive awardee of the FY2020 GovGuam Group Health Program. Should TakeCare not be awarded such exclusivity, the Provider Services Agreement for the GovGuam line of business shall not take effect.
3. The negotiation of a Provider Services Agreement for any other lines of business, including TakeCare's commercial and federal lines, is subject to TakeCare's discretion and will likewise be conditioned upon TakeCare's being awarded exclusivity in the FY2020 GovGuam Group Health Program.
4. In the event TakeCare enters into a Provider Services Agreement with GRMC, TakeCare retains the right to offer plans to its groups with or without GRMC as an in-network provider.
5. The negotiation of any Provider Services Agreement between the parties is not conditioned upon prior resolution of any of GRMC's outstanding bills to TakeCare members.

TakeCare's review of the proposed Provider Services Agreement and the accompanying rates is conditioned on the points made in this letter. In the meantime, should you have any questions about this letter, please do not hesitate to contact me.

Sincerely,



JOSEPH HUSSLEIN,  
Chief Executive Officer/President  
TakeCare Insurance Company, Inc.

# EXHIBIT 10



Joseph Husslein <husslein@gmail.com>

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## Provider Services Agreement

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Francis Santos <fesantos57@gmail.com>

Tue, Apr 9, 2019 at 1:08 PM

To: GAMAN LLLP <gaman.llp@gmail.com>, "Mike Cruz (mwacruz@hotmail.com)" <mwacruz@hotmail.com>

Dear Mr. Husslein,

This email is in response to your letter of April 3, 2019.

Thank you for clarifying your position on the specific points that I shared in my letter of March 29, 2019.

We hope that you reconsider your position and I will again re-state our position that the following points are conditions of our proposed Provider Services agreement:

- 1) TakeCare will include GRMC in all its lines of business to include Government of Guam, Federal employees' program and private/commercial
- 2) TakeCare will not sell GRMC in-network as a buy up option
- 3) TakeCare will settle the outstanding billed charges for services rendered to TakeCare members

As we count down the days to the submission of TakeCare's response to the Government of Guam RFP, we remain open to negotiating with you with the goal of reaching a mutually beneficial provider services agreement.

Regards,

Francis

# EXHIBIT 11



**NETCARE LIFE & HEALTH INSURANCE COMPANY  
NETWORK ACCESS SERVICES AGREEMENT**

This Network Access Services Agreement (the "Agreement") is made and entered into for an effective date of July 1, 2018, by and between NetCare Life and Health Insurance Company ("NetCare"), a Guam based domestic life and health carrier licensed to do business on Guam and TakeCare Insurance Company, Inc., ("TakeCare"), a Guam based domestic health carrier licensed to do business on Guam.

**RECITALS**

**WHEREAS**, NetCare contracts with health care providers ("Network Providers") to render services to individuals to receive health care services and/or benefits from or through a Plan, and desires to provide access to specific providers among its Network Providers, starting initially with access to Guam HealthCare Development Inc., DBA Guam Regional Medical City on behalf of select TakeCare clients, consistent with coverage under certain of its group health policies;

**WHEREAS**, TakeCare wishes to contract with NetCare to arrange for the access of health care services from specific providers among NetCare's Network Providers, starting initially upon the effective date of this Agreement, with access to Guam HealthCare Development Inc., DBA Guam Regional Medical City to select members on the following terms and conditions.

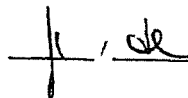
**NOW THEREFORE**, in consideration of the promises, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**I. Appointment**

NetCare hereby leases to TakeCare access for its members to Guam HealthCare Development Inc., DBA Guam Regional Medical City through its provider network as represented by the Participating Provider Service Agreement between NetCare and Guam HealthCare Development Inc., DBA Guam Regional Medical City effective September 1, 2015, and any applicable amendments. Such access is expressly limited to covered services under select TakeCare policies which include Guam HealthCare Development Inc., DBA Guam Regional Medical City in their provider networks.

TakeCare hereby appoints NetCare to act on TakeCare's behalf for the purpose of facilitating claims review and providing access to Guam HealthCare Development Inc., DBA Guam Regional Medical City for covered services under select TakeCare policies which include Guam HealthCare Development Inc., DBA Guam Regional Medical City in their provider networks.

The parties agree that upon additional appointment by TakeCare in the form of a future Addendum(s) executed by both parties, NetCare can lease access to other Network

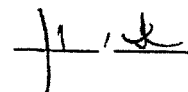


Providers to TakeCare on the same terms and conditions set forth in this Agreement, subject to the terms of any applicable underlying Participating Provider Agreement between NetCare and the Network Providers.

## II. Duties and Responsibilities

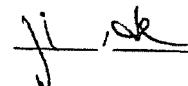
- a. For the duration of this Agreement, as may be amended by future Addendum(s), NetCare agrees to use its best efforts to remain in good standing as a party under the Participating Provider Service Agreement between NetCare and Guam HealthCare Development Inc., DBA Guam Regional Medical City effective September 1, 2015, and any other underlying Participating Provider Agreements under which access to TakeCare has been given.
- b. For the duration of this Agreement, as may be amended by future Addendum(s), NetCare agrees to perform the following functions in relation to TakeCare policies which include Guam HealthCare Development Inc., DBA Guam Regional Medical City, and other designated providers by future Addendum(s), in their provider network, or such functions as otherwise agreed to by the parties:
  - i. Facilitate review as requested by TakeCare of claims or medical reports from Guam HealthCare Development Inc., DBA Guam Regional Medical City and future providers which may be leased to TakeCare;
  - ii. Grant access to Guam HealthCare Development Inc., DBA Guam Regional Medical City and future providers which may be leased to TakeCare; and
  - iii. Provide complete data reporting capabilities on a monthly basis.
- c. Legal, Complaint, and Regulatory Notices. In the event of a notice of suit or any legal proceeding, consumer complaint or regulatory notice or complaint against TakeCare or otherwise related to the Policies, NetCare will promptly forward all such legal documents, correspondence, and other relevant material in NetCare's possession to TakeCare at the following address:

TakeCare Health Insurance Company, Inc.  
Baltej Pavilion, Suite 108  
415 Chalan San Antonio,  
Tamuning, GU 96913
- d. Regulatory Compliance. NetCare will maintain all licenses required by applicable insurance statues and regulation in Guam. NetCare shall



provide TakeCare with copies of all such licenses and renewals required thereby. NetCare shall promptly notify TakeCare of annual reviews that relate to these licenses. NetCare agrees that at all times it will abide by and conform to all applicable laws, statutes, rules, regulations, orders, etc., of whatever nature, of the state or jurisdictions in which NetCare does business and will conduct its business in a manner which will not put TakeCare in dispute or cause it embarrassment with the public or regulatory authorities or cause TakeCare to sustain any possible penalties of any nature whatsoever.

- d. **Practices and Procedures.** The services performed by NetCare hereunder shall be in accordance with all applicable laws and shall be in accordance with generally accepted insurance industry practices and procedures. As necessary, NetCare agrees to use commercially reasonable efforts to hire and retain employees having the experience and capabilities to perform the services required to be executed under this Agreement.
- e. **Emergency Care.** The provisions of this Agreement are only applicable to TakeCare policies that include Guam HealthCare Development Inc., DBA Guam Regional Medical City in their provider networks. This Agreement does not apply to TakeCare policies which do not have Guam HealthCare Development Inc., DBA Guam Regional Medical City in the provider networks even though there will be coverage for emergency services out of network at Guam HealthCare Development Inc., DBA Guam Regional Medical City. Claims for emergency services from Guam HealthCare Development Inc., DBA Guam Regional Medical City (or for any services for that matter) for members that do not have Guam HealthCare Development Inc., DBA Guam Regional Medical City in their provider network are not be within the scope of this Agreement. TakeCare will have no obligation to pay any fees to NetCare for those emergency claims paid to Guam HealthCare Development Inc., DBA Guam Regional Medical City. Should NetCare provide TakeCare access to other Network Providers by future Addendum(s), then the provisions of this Agreement regarding claims, including those for emergency services, will also apply to TakeCare policies which have those Network Providers in their provider networks.
- f. **Utilization Management and Quality Assurance.** For the duration of this Agreement, TakeCare agrees that NetCare has no responsibility for performing utilization Management and quality assurance for TakeCare. TakeCare shall perform all utilization management and quality assurance including review of medical records, pre-certification authorization, preadmission review, concurrent and retrospective reviews for determining medical necessity.



### III. Authority

**General Authority.** NetCare agrees that it shall have only that amount of general authority necessary for it to act on behalf of TakeCare in performing the duties specifically stated herein and agrees that it shall have no other authority.

### IV. Fee

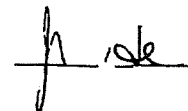
TakeCare shall pay NetCare, on a monthly basis, the agreed-upon percentage of claims paid to Guam HealthCare Development Inc., DBA Guam Regional Medical City and any future agreed-upon Network Providers. The applicable percentage is identified as a Network Access Fee set forth on Attachment A to this Agreement and incorporated herein by reference. Network Access Fees will be paid to NetCare for the applicable month by TakeCare on the fifteenth (15) day of the month following TakeCare's payment to the applicable Network Providers. There may be an adjustment to the amounts that should have been paid based upon the actual and true statistics for any particular month provided that NetCare requests and substantiates the need for an adjustment within thirty (30) days of TakeCare's payment to it. No further compensation shall be due to NetCare hereunder; provided, however, that TakeCare may modify a monthly settlement by mutual agreement to cover one-time or unexpected costs directly associated with TakeCare's business, including, but not limited to, modifications made to the policy administration systems used by the TakeCare due to the introduction or the planned introduction of new Policies to be sold by the TakeCare.

### V. Relationship

- a. **Independent Contractor.** TakeCare and NetCare are both independent contractors, and nothing contained in this Agreement shall create or shall be construed to create a relationship of employer/employee or any partnership, joint venture, or agency between TakeCare and NetCare.
- b. **Responsibility and Indemnification.** NetCare shall be held fully responsible and accountable for the acts of its employees and agents in performing its duties hereunder and agrees to indemnify and hold harmless TakeCare, its officers, directors, shareholders, employees and agents pursuant to section X of this Agreement.

### VI. Effective Date; Term

This Agreement shall be effective July 1, 2018, and if executed after July 1, 2018, the parties agree it shall be effective retroactive to July 1, 2018, for an initial term of eighteen (18) months through December 31, 2019. Unless terminated earlier, and subject to the term of any applicable underlying agreement between NetCare and any of its Network Providers, and each party's right to terminate, this Agreement shall automatically renew on an annual basis on January 1, beginning



on January 1, 2020, on the same terms and conditions unless otherwise mutually revised.

## VII. Termination

This Agreement can be terminated by the parties as follows:

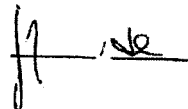
- a. **Voluntary Termination with or without Cause.** By either party upon ninety (90) days prior written notice may terminate this Agreement without cause. In the event of termination with cause, either party may terminate this Agreement upon thirty (30) business days prior written notice that the other party fails to cure a default of any material obligation or duty imposed on it within ten (10) days after written notice of such default
- b. **Involuntary Termination.** By TakeCare, immediately, without notice, by reason of fraud or misrepresentation by NetCare or if NetCare shall file a petition in bankruptcy (for any purpose whatsoever), make an assignment for the benefit of creditors, be adjudged a bankrupt, or upon the dissolution or disqualification of NetCare to do business under applicable Guam laws, or if NetCare's license is suspended or revoked by the appropriate government agency or authority.
- c. **Upon termination of this Agreement for any reason, NetCare, unless requested by TakeCare to do otherwise shall promptly provide TakeCare with all data and information necessary to allow TakeCare to timely and effectively perform all tasks and duties previously performed by NetCare for all claims administration and return all necessary medical records or claims data to TakeCare.**

## VIII. Records

NetCare agrees to establish and maintain true and correct records and keep books of accounting on all transactions arising out of this Agreement. NetCare shall preserve and hold all documents, correspondence and records which come into its possession or under its control relating to the claims.

## IX. Indemnification

Each party shall indemnify and hold harmless the other, including affiliates and each of their respective officers, directors, shareholders, employees, representatives, agents, successors and assigns from and against all claims of third parties, and associated losses, to the extent such claims arise out of (a) a party's gross negligence or willful misconduct in performing any of its obligations under this Agreement, or (b) a material breach by a party of any of its representations, warranties, covenants or agreements under this Agreement. Associated losses shall include, but are not limited to, reasonable attorneys fees, court costs, expenses,



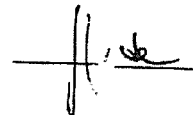
settlement costs, fines, judgments and all damage awards, whether actual or compensatory. However, neither party shall be responsible for indemnifying the other for reimbursement of claims-related issues or for punitive damages.

#### **X. Assignment**

No assignment of this Agreement by either party of any of the rights, duties or benefits accruing to the party hereunder shall be valid unless consented to in writing by both parties in advance.

#### **XI. Arbitration**

- a. **Arbitration At Request of Party.** Except for the availability of injunctive relief provided for TakeCare under Paragraph XVI, as a condition to any right of action hereunder, any unresolved dispute or difference between the parties arising out of or relating to this Agreement, or breach hereof, shall be submitted to arbitration upon the request of either party as hereinafter set forth.
- b. **Arbitration at Option of Party Bringing Action.** In the event of any controversy or claim arising out of or relating to this Agreement, or any breach thereof, including without limitation, any claim that this Agreement, or any part of it, is invalid, illegal or otherwise voidable or void, either party may submit the matter to final and binding arbitration as permitted under the Guam Rules of Civil Procedures governing Arbitrations, Title 7, Guam Code Annotated. Such arbitration shall be governed by the Commercial Rules of the American Arbitration Association. If a demand is made for arbitration, this arbitration provision shall be deemed self-executing, and if either party fails to appear at any property notice arbitration proceeding, an award may be entered against that party notwithstanding the failure to appear.
- c. **Place of Arbitration.** Arbitration proceedings shall be held on Guam unless all of the parties agree in writing to another location.
- d. **Number of Arbitrators Determined by Claim Size.** Any claim or dispute arising out of or pertaining to this Agreement, including without limitation any claim that all or any agreements (including this section) are void, voidable, or otherwise unenforceable, shall be submitted to arbitration in accordance with the provisions set forth herein and the applicable provisions of the Guam Arbitration Law and the Commercial Rules of the American Arbitration Association and heard before: (1) a panel of three arbitrators in the event the amount of the dispute or claim exceeds fifty thousand (\$50,000.00) in the aggregate, or (2) one arbitrator, if less than fifty thousand (\$50,000.00.)



e. **Dispute Over Invoices.** If, after audit or verification of any invoice, there shall be a dispute or a difference of opinion between the parties with respect to the amount of any payment to be made hereunder, the dissatisfied party shall give written notice to the other. The dispute shall be submitted to arbitration in accordance with the terms of this section in the following manner unless it is settled by mutual agreement of the parties within a period of thirty (30) days after that notice. The parties shall mutually agree upon a certified public accountant in Guam who shall decide the dispute or difference in accordance with consistently applied sound accounting principles and practice. In the event the parties do not agree on an accountant, the accountant shall be nominated by the President of the Guam Society of Certified Public Accountants. Any accountant so agreed or nominated shall have full access at all reasonable times to all books, records and documents of either party that may relate to the dispute or difference. Subject to the provisions of this Section, the laws of Guam then in force shall apply to the determination of the dispute or difference.

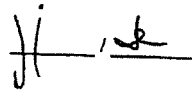
f. **Enforcement of Arbitral Awards.** Any award resulting from arbitration authorized by this Section shall be binding and conclusive upon both parties and enforceable by either of them in any court of competent jurisdiction. Furthermore, any such award shall be final upon the parties regarding both matters of law and fact and shall be non-appealable.

## **XII. Confidentiality**

Each party agrees that all information, whether printed, written, oral, in answer to special inquiry or voluntarily furnished by the other party, shall be held in confidence by the other and used only for the purpose of the business conducted hereunder. Both parties shall ensure that stringent security measures are employed in its records storage systems so that only personnel authorized by NetCare and/or TakeCare shall have access to information obtained as a result of supplying the services under this Agreement.

NetCare will use its best efforts to insure that any information gained as a result of providing the services under this contract shall only be used in the administration of the Policies and in accordance with the terms of this Agreement. NetCare shall not utilize any information gained as a result of providing the services under this contract for any other purposes whatsoever and will use its best efforts to prevent other persons associated with it from doing so.

All information obtained by NetCare is protected health information and shall be kept confidential except in those instances necessary for the proper administration of this Agreement, and shall not be disclosed without the written consent of the parties.



Each party shall obtain the specific, prior written consent of the other prior to using the other's name, product names, logos and service marks in any promotional, marketing or advertising materials or for any other reason. The parties agree that the existence of this Access Agreement should be kept confidential and not disclosed to the Government of Guam, the media or the public, until the parties mutually agree to disclose its existence and how such disclosure will take place.

### **XIII. Notice**

Any notices required hereunder to be sent to either of the parties by the other shall be deemed to have been sufficiently given, if mailed postage prepaid by certified or registered mail to the respective addresses as follows or otherwise to a party as it may specify by notice given:

**If to TakeCare:**

TakeCare Health Insurance Company, Inc.  
Baltej Pavilion, Suite 308  
415 Chalan San Antonio  
Tamuning, GU 96913  
Attention: President

**If to NetCare:**

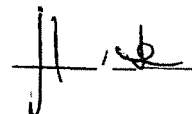
NetCare Life and Health Insurance Company  
Julale Center, Suite 200  
424 West O'Brien Drive  
Hagatna, Guam 96910  
Attention: Plan Administrator

### **XIV. Construction and Value**

This Agreement shall be governed by and interpreted in accordance with the laws of Guam without regard to its conflict of laws rules. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof or after termination, such provision shall be enforced to the maximum extent possible and the remaining provisions shall remain in full force and effect. Furthermore, in lieu of such unenforceable provision, a provision as similar in terms as may be possible and enforceable shall be added automatically as a part of the Agreement. The exclusive venue of any suits or causes of action arising directly or indirectly from this Agreement shall be in Guam, subject to the arbitration provisions contained in Section XI.

### **XV. Complete Agreement**

This Agreement constitutes the entire agreement of the parties relating to the subject matter hereof and any and all negotiations, discussion, understandings or agreements heretofore entered into between the parties are hereby declared to be





superseded by this Agreement. No waiver of alteration of printed terms hereof shall be valid unless in writing and executed by both Agreement or the obligations of NetCare hereunder shall not constitute a waiver of such conditions or obligations.

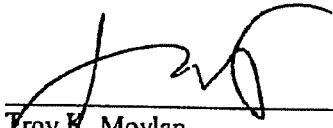
**XVI. Attorney Fees**

Should any party to this contract commence any action for the purpose of enforcing or preventing the breach of, any provision of this contract, whether by arbitration, judicial, or quasi-judicial action or otherwise, or for damages for any alleged breach of contract, or for a declaration of that party's rights or obligations under this Agreement, then the prevailing party will be reimbursed by the losing party for all costs and expenses incurred in connection with the action, including, but not limited to, reasonable attorney's fees for services rendered to the prevailing party.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the dates mentioned below.

NetCare Life & Health Insurance Company:


TakeCare Insurance Company, Inc.:

  
\_\_\_\_\_  
Troy K. Moylan  
Vice President & Director

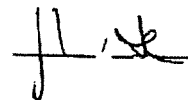
  
\_\_\_\_\_  
Arvin Lojo  
Health Plan Administrator

Signed on: 6/19/18

Signed on: 6/19/2018

  
\_\_\_\_\_  
Joseph E. Husslein  
President & CEO

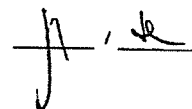
Signed on: 6/19/2018



**Attachment A**

**Network Access Fee**

TakeCare agrees to compensate NetCare at a rate of ten percent (10%) of the final claim amount(s) paid by TakeCare for claims incurred at Guam HealthCare Development Inc., DBA Guam Regional Medical City on Guam and other Network Providers added to this Agreement by future Addendum(s).

A handwritten signature in black ink, consisting of a stylized 'J' followed by a horizontal line and a small flourish.

# EXHIBIT 12

**FIRST AMENDMENT OF NETCARE LIFE & HEALTH INSURANCE  
COMPANY NETWORK ACCESS SERVICES AGREEMENT**

**THIS FIRST AMENDMENT OF NETCARE LIFE & HEALTH INSURANCE COMPANY NETWORK ACCESS SERVICES AGREEMENT** is entered into effective as of September 1, 2018, by and between **NETCARE LIFE & HEALTH INSURANCE COMPANY**, a Guam based domestic life and health insurance carrier licensed to do business on Guam ("NetCare") and **TAKECARE HEALTH INSURANCE COMPANY, INC.**, a Guam based domestic health carrier licensed to do business in Guam ("TakeCare").

**RECITALS**

**WHEREAS**, NetCare entered into a Participating Provider Service Agreement with Guam HealthCare Development Inc., DBA Guam Regional Medical City ("GRMC") effective September 1, 2015;

**WHEREAS**, Pursuant to the terms of the Participating Provider Service Agreement between NetCare and GRMC effective September 1, 2015, NetCare entered into a Network Access Services Agreement with TakeCare effective July 1, 2018, to lease and provide TakeCare access to GRMC on behalf of select TakeCare clients, consistent with coverage under certain of its group health policies;

**WHEREAS**, NetCare subsequently entered into a new Participating Provider Service Agreement with GRMC effective September 1, 2018, NetCare and TakeCare desire to amend the Network Access Services Agreement between them to incorporate the terms of the new Participating Provider Service Agreement with GRMC effective September 1, 2018;

**NOW THEREFORE**, in consideration of the promises, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the Network Access Services Agreement as follows:

(1) **Section II of the Network Access Services Agreement**. Section II of the Network Access Services Agreement is amended to read:

**I. Duties and Responsibilities**

- a. For the duration of this Agreement, as may be amended by future Addendum(s), NetCare agrees to use its best efforts to remain in good standing as a party under the Participating Provider Service Agreement

between NetCare and Guam HealthCare Development Inc., DBA Guam Regional Medical City effective September 1, 2015; the Participating Provider Service Agreement between NetCare and Guam HealthCare Development Inc., DBA Guam Regional Medical City effective September 1, 2018; and any other future underlying Participating Provider Agreements under which access to TakeCare has been or will be given by NetCare.

- b. For the duration of this Agreement, as may be amended by future Addendum(s), NetCare agrees to provide TakeCare with no less than sixty (60) days' notice of any material change in the Participating Provider Service Agreement between NetCare and GRMC, including any amendment in the terms and conditions of the underlying agreement; any amendment in the Reimbursement Schedule; any failure of automatic renewal of the underlying agreement; any voluntary or involuntary termination of the underlying agreement (with or without cause); or the execution of a new Participating Provider Agreement. NetCare acknowledges that such notice by NetCare to TakeCare regarding the underlying Participating Provider Agreement is needed to allow for any necessary amendment of the agreement between TakeCare and NetCare or the execution of a new agreement.
- c. For the duration of this Agreement, as may be amended by future Addendum(s), NetCare agrees to perform the following functions in relation to TakeCare policies which include Guam HealthCare Development Inc., DBA Guam Regional Medical City, and other designated providers by future Addendum(s), in their provider network, or such functions as otherwise agreed to by the parties:
  - i. Facilitate review as requested by TakeCare of claims or medical reports from Guam HealthCare Development Inc., DBA Guam Regional Medical City and future providers which may be leased to TakeCare;
  - ii. Grant access to Guam HealthCare Development Inc., DBA Guam Regional Medical City and future providers which may be leased to TakeCare; and
  - iii. Provide complete data reporting capabilities on a monthly basis.
- d. Legal, Complaint, and Regulatory Notices. In the event of a notice of suit or any legal proceeding, consumer complaint or regulatory notice or complaint against TakeCare or otherwise related to the Policies, NetCare will

promptly forward all such legal documents, correspondence, and other relevant material in NetCare's possession to TakeCare at the following address:

TakeCare Health Insurance Company, Inc.  
Baltej Pavilion, Suite 108  
415 Chalan San Antonio,  
Tamuning, GU 96913

- e. **Regulatory Compliance.** NetCare will maintain all licenses required by applicable insurance statutes and regulation in Guam. NetCare shall provide TakeCare with copies of all such licenses and renewals required thereby. NetCare shall promptly notify TakeCare of annual reviews that relate to these licenses. NetCare agrees that at all times it will abide by and conform to all applicable laws, statutes, rules, regulations, orders, etc., of whatever nature, of the state or jurisdictions in which NetCare does business and will conduct its business in a manner which will not put TakeCare in dispute or cause it embarrassment with the public or regulatory authorities or cause TakeCare to sustain any possible penalties of any nature whatsoever.
- d. **Practices and Procedures.** The services performed by NetCare hereunder shall be in accordance with all applicable laws and shall be in accordance with generally accepted insurance industry practices and procedures. As necessary, NetCare agrees to use commercially reasonable efforts to hire and retain employees having the experience and capabilities to perform the services required to be executed under this Agreement.
- e. **Emergency Care.** The provisions of this Agreement are only applicable to TakeCare policies that include Guam HealthCare Development Inc., DBA Guam Regional Medical City in their provider networks. This Agreement does not apply to TakeCare policies which do not have Guam HealthCare Development Inc., DBA Guam Regional Medical City in the provider networks even though there will be coverage for emergency services out of network at Guam HealthCare Development Inc., DBA Guam Regional Medical City. Claims for emergency services from Guam HealthCare Development Inc., DBA Guam Regional Medical City (or for any services for that matter) for members that do not have Guam HealthCare Development Inc., DBA Guam Regional Medical City in their provider network are not be within the scope of this Agreement. TakeCare will have no obligation to pay any fees to NetCare for those emergency claims paid to Guam HealthCare Development Inc., DBA Guam Regional Medical City. Should NetCare provide TakeCare access to other Network Providers by

future Addendum(s), then the provisions of this Agreement regarding claims, including those for emergency services, will also apply to TakeCare policies which have those Network Providers in their provider networks.

- f. Utilization Management and Quality Assurance. For the duration of this Agreement, TakeCare agrees that NetCare has no responsibility for performing utilization Management and quality assurance for TakeCare. TakeCare shall perform all utilization management and quality assurance including review of medical records, pre-certification authorization, preadmission review, concurrent and retrospective reviews for determining medical necessity.

(2) **Section VI of the Network Access Services Agreement.** Section VI of the Network Access Services Agreement is amended to read:

**VI. Effective Date; Term**

This Agreement shall be effective July 1, 2018 thru December 31, 2020. Unless terminated earlier, and subject to the term of any applicable underlying agreement between NetCare and any of its Network Providers, and each party's right to terminate, this Agreement shall automatically renew on an annual basis on January 1, beginning on January 1, 2021, on the same terms and conditions unless otherwise mutually revised.

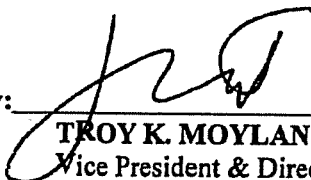
(3) **All Other Terms and Conditions to Remain the Same.** The parties agree that this FIRST AMENDMENT OF NETCARE LIFE & HEALTH INSURANCE COMPANY NETWORK ACCESS SERVICES AGREEMENT supplements, and does not supplant the terms of NETCARE LIFE & HEALTH INSURANCE COMPANY NETWORK ACCESS SERVICES AGREEMENT, entered into by the parties with and effective date of July 1, 2018, and the terms of said NETCARE LIFE & HEALTH INSURANCE COMPANY NETWORK ACCESS SERVICES AGREEMENT, entered into by the parties with and effective date of July 1, 2018, as amended herein, is by this reference incorporated and made a part hereof. It is expressly agreed that all other terms, conditions, provisions and stipulations contained in said NETCARE LIFE & HEALTH INSURANCE COMPANY NETWORK ACCESS SERVICES AGREEMENT, entered into by the parties with and effective date of July 1, 2018, as amended, shall continue to remain unchanged and in full force and effect.

*[Signatures follow on the next page.]*

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at Hagåtña, Guam on the dates indicated below.

**NETCARE LIFE & HEALTH INSURANCE  
COMPANY INC.**

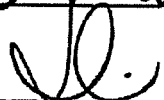
**TAKECARE HEALTH  
INSURANCE COMPANY, INC.**

By:   
TROY K. MOYLAN  
Vice President & Director

Signed on: 3-04-2019

By:   
ARVIN LOJO  
Health Plan Administrator

Signed on: 3-4-2019

By:   
JOSEPH E. HUSSLEIN  
President & CEO

Signed on: 3-04-2019



# EXHIBIT 13



TakeCare Insurance Company, Inc.  
P.O. Box 6578 Tamuning, Guam 96931  
Telephone: (671) 646-6956 Fax (671) 647-3551

RECEIVED  
MAY 02 2019

May 1, 2019

**VIA HAND DELIVERY and VIA EMAIL**

Mr. Troy Moylan and Mr. Jerry Crisostomo  
NetCare Life and Health Insurance Company  
Julale Center, Suite 200  
424 West O'Brien Drive  
Hagatna, GU 96910

**Re: Activation Notice**

Dear Misters Moylan and Crisostomo:

As discussed during our telephone conversation on April 30, 2019, TakeCare is a prospective offeror intending to respond to the FY2020 Government of Guam Request for Proposal ("RFP") for the GovGuam Group Health Insurance Program. Responses to the RFP are due May 3, 2019, and TakeCare plans to submit a responsive bid. A key difference of this year's RFP from prior years' is the requirement that offerors designate network providers as being either directly contracted or under a leased arrangement as part of either the GovGuam "broad" network and/or "high performance" (or narrow) network.

Recently enacted Public Law 35-2 requires that all public and private hospitals operating in Guam be in the networks of those applying to provide health insurance to the Government of Guam. The RFP mimics this statutory requirement. As a practical matter, the only private hospital the law on Guam is the Guam Regional Medical City ("GRMC"). Therefore, GRMC must necessarily be in-network for any prospective offeror.

Pursuant to the Network Access Services Agreement entered into between TakeCare and NetCare with an effective date of September 1, 2018 and subsequently amended on March 4, 2019, this letter serves as TakeCare's official notice to Netcare of its intent to activate access for its Government of Guam members to GRMC as a "leased provider" for services. This activation for services extends to NetCare's existing and future arrangements for services and applicable fees with GRMC (herein "Activation Notice").

TakeCare's activation notice is solely for the purposes of responding to the GovGuam Group Health Insurance Program RFP for GRMC's inclusion as a provider in the "broad network" for FY2020. Such access and the inclusion of GRMC as part of TakeCare's "broad network" are conditioned upon TakeCare being awarded either the exclusive or non-exclusive bid, without protest, for the FY2020 GovGuam Group Health Insurance Program. In the unfortunate event that the RFP results to a protest, and existing

NetCare Network Access Services Agreement Activation  
May 1, 2019  
Page 2

GovGuam Group Health Insurance Program benefits and rates be extended beyond the existing fiscal year (September 30, 2019), this activation notice is of no effect.

As you are undoubtedly aware from NetCare's prior participation in the GovGuam RFP process, the GovGuam Group Health Insurance Program negotiation with prospective carriers commences on the months of June and July with award in August followed by open enrollment during the month of September for an October 1<sup>st</sup> effective date for the FY2020 GovGuam Group Health Insurance Program.

With the above in mind, in addition to applicable confidentiality provisions, it is TakeCare's view that any formal notice by Netcare to GRMC of the Network Access Services Agreement between TakeCare and NetCare may be premature until TakeCare has at least submitted its response to the RFP and preferably not until GovGuam negotiations are completed and an award made. However, we acknowledge that NetCare may have certain obligations with its provider partners.

Likewise, TakeCare requests that NetCare obtains GRMC's formal acceptance or non-acceptance with stated reason(s) of TakeCare's leased access that TakeCare be provided such written correspondence accordingly.

Lastly, while this Activation Notice specifically is for TakeCare's intentions related to the FY2020 GovGuam Group Health Insurance Program RFP, TakeCare reserves the right to activate GRMC, as well as other NetCare network providers, for TakeCare's federal and/or commercial insurance offerings for January 2020. As these benefit programs and discussions progress with TakeCare's service partners, we will advise you accordingly under separate notice.

Sincerely,



JOSEPH HUSSLEIN,  
Chief Executive Officer/President  
TakeCare Insurance Company, Inc.

# EXHIBIT 14

**LEGISLATIVE HISTORY**  
**BILL NO. 21-34**

**I MINA'TRENTAI KUÁTRO NA LIHESLATURAN GUÁHAN**

**2017 (FIRST) Regular Session**

Bill No. 2434 (COR )

Introduced by:

B. J. F. Cruz

**AN ACT TO ADD § 4302(f)(1) OF CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING THAT ALL PRIVATE HOSPITALS BE COVERED UNDER THE GOVERNMENT OF GUAM HEALTH INSURANCE CONTRACT.**

2017 FEB 14 PM 5:01

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

**Section 1. §§ 4302(f)(1) of Chapter 4, Title 4, Guam Code Annotated, is hereby *added* to read:**

**“(1) All companies, or other legal entities providing or applying to provide health insurance or the provision of health care, shall have contracts for services with all private hospitals operating on Guam that are providing health care services to any and all of their subscribers.”**

**Section 2. Effective Date. This Act shall become effective upon enactment.**

**Section 3. Severability. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application and to this end the provisions of this Act is severable.**



Eddie Baza Calvo  
Governor  
Ray Tenorio  
Lieutenant Governor

DEPARTMENT OF ADMINISTRATION  
(DIPATTAMENTON ATMENESTRASION)  
DIRECTOR'S OFFICE  
(Ufisinan Direktot)

590 South Marine Corps Drive  
Suite 224, GITC Building, Tamuning, Guam 96913  
Post Office Box 884 \* Hagåtña, Guam 96932  
TEL: (671) 475-1101/1221/1250 \* FAX: (671) 477-6788



Christine W. P. Baleto  
Director  
Vincent P. Arriola  
Deputy Director

March 15, 2017

The Honorable Benjamin J.F. Cruz, Speaker  
Chairman, Committee on Appropriations and Adjudication  
*I Mina' Trental Kuattro Na Lhesiaturan Guahan*  
Suite 107, 155 Hesler Place.  
Hagåtña, Guam 96910

RE: Written Testimony on Bill 21-34 (COR)

*Buenas yan Hafa Adai* Mr. Chairman and members of the Committee,

Thank you for the opportunity to provide comments on Bill 21-34 (COR):

**AN ACT TO ADD §4302(f)(1) OF CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING THAT ALL PRIVATE HOSPITALS BE COVERED UNDER THE GOVERNMENT OF GUAM HEALTH INSURANCE CONTRACT.**

The Department of Administration recognizes the need for the government of Guam to provide equal access to all duly qualified providers as well as an employee's right to choose services among them. However, we are concerned with any measure that mandates inclusion of any particular provider.

5 GCA, Chapter 5, §5001(b) relative to the underlying purposes and policies of the Guam Procurement Law identifies the following purposes and policies of procurement: "(4) to ensure the fair and equitable treatment of all persons who deal with the procurement system of this Territory; (5) to provide increased economy in territorial activities and to maximize the fullest extent practicable the purchasing value of public funds of the Territory; (6) to foster effective broad-based competition within the free enterprise system."

The proposed bill violates the spirit and intent of the law as it would provide special recognition and treatment to the private hospital on Guam. Although not specifically named, there is only 1 private hospital on Guam. Therefore, it's statutorily mandated inclusion violates the intent of fair and equitable treatment. It is also noted, that this requirement would only extend to privately owned entities and not to public hospitals. Further to this, other providers on island could petition the Government to also ensure special inclusion in future health insurance benefits.

Another concern is the disparity in prices as demonstrated in the attached fee schedule. As you will note, the difference in cost for services does not allow the Government to maximize to the fullest extent practicable the purchasing value of public funds of the Territory. Instead, it forces carriers to accept whatever fees are established by the private entity. Carriers who refuse to accept any proposed fees would be disqualified from bidding on the Government's health insurance contract since they would not have the private hospital as one of their providers. This in essence violates the spirit of Procurement Law which is to foster competition within a free enterprise system. Carriers would have no leverage to negotiate their terms, prices, or any other matter relative to their business relationship as they would have to accept them or otherwise be disqualified from bidding.

If Carriers were forced to accept the higher fee structure, costs would surely rise. This will equate to higher premiums and would not maximize the value of purchases with public funds.

The current law requires the Health Insurance negotiating committee to look at all aspects of the Carriers proposals such as capability to deliver services, network options, personnel qualifications, system/organizational capability to support the large numbers of enrollees, etc. The committee is in discussions on how to improve our rating of proposals to ensure equal access; and the employee's right to choose from all duly qualified providers is factored into scoring. It is the Department of Administration's position that this is the best way to deal with disparities in a carrier's provider network rather than making inclusion of a select group a matter of law. It is also of great concern that the current bill may set precedent for all providers to demand equal treatment relative to inclusion.

It is for these reasons that the Department of Administration does not support Bill 21-34 as written.

**Senseramente,**



**Christine W. Baleto**  
Director, DOA



COMPARISON OF FEE SCHEDULE

Service	CPT code	PRIVATE	PUBLIC
EKG Tracing		\$ 106.68	\$ 82.39
Urinalysis auto w/ scope	81001	\$ 14.37	\$ 8.20
MRI Chest w/wo contrast	71552	\$ 5,598.30	\$ 979.48
MRA Head w/wo contrast	70549	\$ 4,630.49	\$ 1,833.68
X-Ray Chest	71010	\$ 178.13	\$ 77.16
CBC	85027	\$ 26.43	\$ 16.44
Magnesium	83735	\$ 59.15	\$ 25.70
US Ext carotids Bilateral	93880	\$ 618.96	\$ 199.10
Infusion IV hydration each add hr.	96361	\$ 464.05	\$ 31.91
Gauze dressing 4 x 4		\$ 5.00	\$ 1.12
Hemodialysis		\$ 1,985.28	\$ 418.85
EEG	95819	\$ 1,752.99	\$ 317.19
ICU		\$ 3,257.55	\$ 1,473.47
Telemetry		\$ 2,600.00	\$ 827.63
Nursery Room and Board		\$ 1,600.00	\$ 420.13
Surgical Room and Board		\$ 2,456.25	\$ 605.68
Pediatric Room and Board		\$ 2,456.25	\$ 789.73
OB/GYN Room and Board		\$ 2,456.25	\$ 637.41
ICU Regular Room		\$ 3,257.55	1473.47
Pediatric ICU		\$ 3,257.55	\$ 1,271.89
ICU Room and Board		\$ 3,750.00	\$ 955.37
ICU Isolation Room		\$ 6,075.00	\$ 1,271.89
Medical Room and Board Isolation Room		\$ 4,324.50	\$ 630.69
Delivery Vaginal Routine		\$ 9,822.00	\$ 820.53
Delivery Vaginal High Risk		\$ 12,275.00	\$ 820.53
Surgery first 30 mins.		\$ 4,096.80	\$ 1,418.74
Surgery each additional 15 mins.		\$ 1,024.20	\$ 236.45
OR level II 30 min		\$ 6,145.20	\$ 1,418.74
OR level II additional 15 min		\$ 2,765.34	\$ 236.45
OR level III 30 min		\$ 8,603.28	\$ 1,418.74
OR level III additional 15 min		\$ 3,871.47	\$ 236.45
OR level IV 30 min		\$ 11,614.42	\$ 1,418.74
OR level IV additional 15 min		\$ 5,226.49	\$ 236.45
OR level V 30 min		\$ 15,679.47	\$ 1,418.74
OR level V additional 15 min		\$ 7,055.76	\$ 236.45
OR level VI 30 min		\$ 20,383.32	\$ 1,418.74
OR level VI additional 15 min		\$ 9,172.49	\$ 236.45
Outpatient Surgery 30 mins		\$ 1,884.53	\$ 654.51
Outpatient Surgery additional 15 mins		\$ 471.18	\$ 109.10
Vancomycin		\$ 116.00	\$ 19.41
Amikacin 250 mg		\$ 94.00	\$ 34.23

Fee is for Major surgery 1st hr. for GMHA

Fee is for Major surgery each additional 15 mins. after 1 hr.

Dextrose 5% 500 ml		\$ 67.00	\$ 13.91
Terol 1.25 mg/3ml inh soln		\$ 5.00	\$ 1.31
Emergency Dept Level I		\$ 431.25	\$ 78.11
Emergency Dept Level II		\$ 697.88	\$ 78.11
Emergency Dept Level III		\$ 1,285.01	\$ 78.11
Emergency Dept Level IV		\$ 1,889.85	\$ 78.11
Emergency Dept Level V		\$ 2,302.87	\$ 78.11
Observation Room per hr Pediatrics		\$ 143.75	\$ 32.90
Observation Room per hr surgical		\$ 143.75	\$ 25.23
Observation Room per hr Medical		\$ 143.50	\$ 25.95
Blood Transfusion Inpatient	36430	\$ 1,041.76	\$ 312.17
ER transfusion Blood/Blood components 1 hr	36430	\$ 1,457.57	\$ 312.17
Pregnancy Test Urine	81025	\$ 77.43	\$ 34.93
Sleep study	95807	\$ 3,224.52	\$ 1,157.94
Multiple Sleep Latency Test	95805	\$ 2,141.26	\$ 749.26
Splrometry/PFT	94060	\$ 436.17	\$ 248.70
Pulmonary Stress Test	94620	\$ 555.32	\$ 138.27
Routine venipuncture	36415	\$ 80.63	\$ 10.64
Ammonia Assay	82140	\$ 179.51	\$ 102.44
Amylase	82150	\$ 54.06	\$ 30.85
Chromosomal analysis	88267	\$ 1,252.64	\$ 714.82
NM-Myocardial Perfusion Spect.	78452	\$ 1,179.18	\$ 650.02
NM-Myocardial Imaging, Infarct	78468	\$ 704.20	\$ 256.45
Chest Tube placement	32551	\$ 1,649.56	\$ 513.82
Respirator Management initial day	94002	\$ 4,562.49	\$ 555.82
Delivery of Placenta only	59414	\$ 5,536.41	\$ 820.53
Fetal Biophysical profile with nonstress test	76818	\$ 519.44	\$ 286.35
Fetal Non-stress test	59025	\$ 304.02	\$ 149.29
Echo Fetal Cardiovascular	76826	\$ 686.08	\$ 443.89
<b>Total</b>		<b>\$175,896.86</b>	<b>\$ 25,049.07</b>

None for Placenta  
only - GMHA  
Delivery Room



115 Chaian Santo Papa Hagåtña • P.O. Box FJ Hagåtña, Guam 96932 • Phone: (671) 477-9808 • Fax: (671) 477-4141

March 16, 2017

The Honorable Speaker Benjamin J.F. Cruz  
34<sup>th</sup> Guam Legislature  
155 Hesler Place, Suite 107  
Hagatna, Guam 96910

**Hand Delivered**

**RE: Bill No. 21-34 (COR) - B.J.F. Cruz - An act to ADD § 4302(f)(1) of Chapter 4, Title 4, Guam Code Annotated, relative to requiring that all private hospitals be covered under the Government of Guam health insurance contract.**

Dear Speaker Cruz:

Thank you for inviting us to testify on the aforementioned bill. At the onset, we would like to share with you and the committee members that our company currently contracts with Guam's only privately owned and operated hospital, and that we support all efforts to ensure that the new hospital remains a viable and successful entity in our community.

Nonetheless, we must oppose bill 21-34 on the basis that private enterprises such as hospitals, clinics, and insurance companies should be allowed to negotiate agreements without government interventions or mandates. This bill infringes on free commerce and takes away the ability for insurance companies to negotiate with a provider. Also, it discriminates against other medical providers that have also made large investments on Guam but are not given the same type of advantages.

There are existing federal laws requiring insurance companies to pay for emergencies at non-participating hospital providers with certain allowances, and we believe this is a sufficient protection for hospitals. The possible consequences of this bill are that the private hospital provider will have a significant advantage against insurers knowing that insurers MUST have an agreement with them, and possibly demand rates that may not be feasible in our market place. Again, we oppose the bill on the basis that private agreements, free enterprise, and commerce should not be legislated.

Respectfully yours,

Frank Campillo  
Health Plan Administrator

Cc: All Senators

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TakeCare Insurance Company, Inc.  
P.O. Box 6678 Tamuning, Guam 96931  
Telephone: (671) 646-6956 Fax (671) 647-3551

Speaker Benjamin J.F. Cruz

March 15, 2017

MAR 15 2017  
Time: 10:37 AM  
Received By: [Signature]

**VIA Email: [senator@senatorbjcruz.com](mailto:senator@senatorbjcruz.com)**  
**VIA HAND DELIVERY**

Office of the Speaker Benjamin J. F. Cruz  
34th Guam Legislature  
Guam Congress Building  
163 Chalan Santo Papa  
Hagåtña, Guam 96910

**Re: Written Testimony for in Opposition to Bill No. 21-34**

Dear Speaker Cruz and Members of the Committee on Appropriations and Adjudication:

Thank you for the opportunity to submit written testimony for Bill No. 21-34, "An Act To ADD § 4302(F)(1) Of Chapter 4, Title 4 Guam Code Annotated, Relative To Requiring That All Private Hospitals Be Covered Under The Government Of Guam Health Insurance Contract. " I am the CEO and current Health Plan Administrator of TakeCare Insurance Company, Inc. ("TakeCare") and provide these comments in that capacity.

1. **Bill No. 21-34 Impedes the Governor's Ability to Maintain GMH as required by the Organic Act.**

The Organic Act of Guam makes the Governor responsible to maintain and operate public health services in Guam. 48 U.S.C. Section 1421g. Bill. No. 21-34 will result in numerous Government of Guam employees and dependents using GRMC instead of GMH, and thereby substantially reducing the revenues of GMH. A reduction of revenue to GMH will substantially impair the Governor's ability to "establish, maintain and operate public health services in Guam, including hospitals . . .". 48 U.S.C. Section 1421g. It is self-evident that the Governor cannot perform his Organic duties if there are inadequate revenues to "maintain and operate" GMH.

2. **Bill No. 21-34 Violates The Equal Protection Rights of Guam Taxpayers.**

Bill No. 21-34 also violates the Equal Protection Clause because the loss of GMH revenues will result in additional Legislative appropriations, and thereby place a substantial tax burden on Guam citizens. In *Guam Power Authority v. Bishop of Guam*, 383 F. Supp. 476 (D.C. Guam 1974), the Guam Legislature had passed a law requiring that the Guam Power Authority ("GPA") charge less for services to non-profit entities. The District Court of Guam ruled that the law violated equal protection because a lower rate to non-profit entities resulted in additional costs to ordinary consumers. 383 F. Supp. at 481-482. In other words, the taxpayers had to make up the difference.

Bill No. 21-34 is likewise inorganic because it will place an additional tax burden on Guam citizens to make up for the loss of GMH revenues. For every dollar that is paid to GRMC under the Government of Guam Health Plan, that is a dollar that does not go to GMH from the Government Health Plan. Furthermore, it is the taxpayers of Guam that will have to make up the lost revenues to GMH in order to keep it operational.

3. Bill No. 21-34 Violates the Due Process Rights of Health Insurers.

Under Bill No. 21-34, health insurers will be compelled to enter into a contract with GRMC and pay rates that they would otherwise reject, or not participate in the Government of Guam Health Plan. Compelling health insurers to pay increased rates with GRMC violates the Organic Act provision providing that "[n]o person shall be deprived of . . . property without due process of law." 48 U.S.C 1421b(e).

4. Bill No. 21-34 Is An Improper Delegation of Power.

Bill No. 21-34 requires that health insurers have a contract with GRMC in order to bid on the Government of Guam Health Plan. However, the Legislature cannot compel GRMC to have a contract with any particular health insurer. Similarly, the Legislature cannot control the rates that GRMC charges to any particular health insurer. GRMC, therefore, could decide to have a contract with only one health insurer, and thereby effectively decide who would be the exclusive provider of Government of Guam health care. In simple terms, GRMC (not the Executive or Legislative Branches) would be deciding the health insurer to be awarded the Government of Guam Health Contract. This is a textbook example of an improper delegation of both Legislative and Executive Authority to a private entity.

5. Bill No. 21-34 Impairs Health Insurers' Right to Contract.

The Organic Act provides that there can be no "law impairing the obligation of contracts." 48 U.S.C. 1421b(j). By requiring that health insurers have a contract with GRMC, the Legislature is prohibiting health insurers from having exclusive contracts with other hospitals, such as GMH. This is a clear impairment of a health insurer's right to contract. Furthermore, an exclusive contract with GMH would very likely result in a lower cost than a non-exclusive contract, and thereby reduce the cost of health care to Government of Guam employees.

6. Bill No. 21-34 Is An Ex Post Facto Violation.

Prior to Bill No. 21-34, health insurers had the contractual right to have a contract with a single hospital. The Organic Act provides that Guam's Legislature cannot pass legislation that makes improper an act that was proper when committed. 48 U.S.C. 1421b(j). However, Bill No. 21-34 becomes "effective upon enactment," and will thereby make improper that which was perfectly legal before its enactment.

7. Bill No. 21-34 is Special Legislation for GRMC.

While Bill No. 21-34 does not mention GRMC, but instead refers to "private hospitals operating on Guam," GRMC is the only private hospital on Guam. Therefore, Bill No. 21-34 is special legislation for GRMC. What about other private health care facilities, such as Clinics? Why have they been excluded from the contractual mandate? Are they not worthy of consideration or is the discrimination against them legal?

8. Bill No. 21-34 Will Cause the Government of Guam Health Care Costs to Skyrocket!

According to Eric Plinske, GRMC's Director of Corporate Affairs, in a news release dated February 13, 2017, "the going rate for a private room at GRMC is \$2,400.00 compared to \$600 for a semi private room at Guam Memorial Hospital ("GMH)." *Pacific News Center*, February 17, 2017. See also, *Guam Daily Post*, February 14, 2017. Incidentally, all of GRMC's rooms are private rooms. There are no semi-private room rates at GRMC. Mathematically it is simple to determine that health insurance premiums will rise just from the difference in cost of hospital room rates. And, unlike the rates at GMH, GRMC may raise its rates at any time without the benefit of a public hearing or legislative approval as would be required for an increase in rate at GMH.

Public Health conducted a cost analysis for fiscal year 2017 that shows GRMC's new per diem rate of \$5,075 will cost the government agency an additional \$23 million. If the rate were to be based on GMH's \$1,123 per diem rate, it would only cost about \$10 million. Multiply those costs over the entire population of covered lives for the Hof Guam health Plan and its yet another example of rising healthcare costs that cannot be ignored if GRMC is to be a required provider under the Government's Health Contract.

Because GRMC is a private for profit hospital it is not bound to any fee schedule or public oversight as it relates to pricing their services. With a guarantee of inclusion into the Government of Guam Health Plan, this Bill provides GRMC an unfair advantage in what should be a competitive healthcare marketplace. In an anti-competitive environment prices will skyrocket, patient care and quality will be compromised and the Government of Guam its employees, and retirees will be left holding the bag. Simply said, if this Bill passes into law GRMC will have no reason to negotiate or address what is significantly higher costs compared to GMH or other on-island providers.

In addition to practically killing GMH, the Government's attempt to force a private company to contract with another private entity as part of competitive RFP process such as the Government of Guam Health Plan creates an anti-competitive environment and is not sound public policy. What will undoubtedly result is an absolute unwillingness on GRMC's part to negotiate rates or fees with health plan providers in a captured healthcare market.

9. TakeCare's Perspective.

TakeCare has been a health plan provider for the Government of Guam Health Plan since FY2013. As a health plan provider for the Government of Guam, TakeCare has partnered with the Government during times of financial hardship and has continued to provide health insurance coverage to retirees even though premiums were not paid under the terms of TakeCare's contract with the Government. Those financial hardship conditions still exist and to this day TakeCare is still not receiving the full contribution of the Government of Guam share of premiums for retirees.


As we already know from past experience, the Government of Guam has been unable to meet its existing obligations for retiree health insurance premium payment and if this bill passes it will create even more dire financial conditions for the Government.

For the past three fiscal years TakeCare has provided the Government of Guam with numerous exclusive and non-exclusive proposals that would have saved the Government of Guam, its employees and retirees tens of millions of dollars in healthcare costs. To be clear, those savings were realized largely due to the fact that Guam Regional Medical City ("GRMC") was not part of TakeCare's health insurance offerings. If this Bill passes, TakeCare would be forced to include GRMC into its health insurance proposal causing any real or potential savings over existing rates to completely evaporate. Requiring that GRMC be a participating network provider for the Government of Guam Health Plan will cause rates to rise exponentially.

Bill No. 21-34 is a significant step in the wrong direction and will only serve to drive health insurance premiums upward for the Government of Guam, its employees, and retirees. It will certainly jeopardize the viability of GMH. This bill is not in the Government's best interests and is contrary to the aim and objective of the recently passed legislation in Bill No. 3-34. If the Government seeks to control the inflationary rates of healthcare spending under its health plan benefits, this Bill should not be passed.

For all the reasons outlined above TakeCare asks you to consider the impact this legislation will have on Government of Guam taxpayers, employees and retirees who rely on the Government of Guam for health insurance, and prevent this Bill from being enacted into law.

Sincerely,



Joseph E. Husslein,  
CEO and Health Plan Administrator

cc: TakeCare Representatives

*1 Mihael Troskel Ewetro Na Lihaclaturon*  
**BILL STATUS**

<p>21-34 (COR)</p>	<p>R.I.F. Cruz</p>	<p>AN ACT TO ADD § 4001(1) OF CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING THAT ALL PRIVATE HOSPITALS BE COVERED UNDER THE GOVERNMENT OF GUAM HEALTH INSURANCE CONTRACT.</p>	<p>2/14/17 5:00 P.M.</p>	<p>02/17/17</p>	<p>Committee on Appropriations and Acquisition</p>	<p>3/14/17 2:00 P.M.</p>	<p>Fiscal Note Request 2/27/17</p>	<p>Fiscal Note 3/16/17</p>	<p>WITHDRAWN 9/28/17</p>
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# EXHIBIT 15

**LEGISLATIVE HISTORY  
PUBLIC LAW 34-83**

1 Minor Treaty Balance No. 123456789  
STATUS

Bill No.	Description	Amount	Date	Status	Remarks	Fiscal Year	Fiscal Year
S.A.S. 010	AN ACT TO AMEND § 403(a) AND ARTICLE 3, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO HEALTHCARE INSURANCE PROGRAM FOR GOVERNMENT OF GUAM EMPLOYEES AND RETIREES AND FOSTER CHILDREN'S HEALTHCARE PROGRAM TO 1. AMEND § 403(a) FOR CONFORMANCE AND TO DIVESTING THE LEGISLATURE OF FINAL AUTHORITY OVER ANY CONTRACT ENTERED INTO BY / AMBAG/ LANCY GUAM FOR THE SAME.	1200 P.A.A.	2/24/77	PUBLISHED	2/24/77	2/28/77	2/28/77
S.A.S. 011	AN ACT TO AMEND § 403(a) AND ARTICLE 3, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO HEALTHCARE INSURANCE PROGRAM FOR GOVERNMENT OF GUAM EMPLOYEES AND RETIREES AND FOSTER CHILDREN'S HEALTHCARE PROGRAM TO 1. AMEND § 403(a) FOR CONFORMANCE AND TO DIVESTING THE LEGISLATURE OF FINAL AUTHORITY OVER ANY CONTRACT ENTERED INTO BY / AMBAG/ LANCY GUAM FOR THE SAME.	1200 P.A.A.	2/24/77	PUBLISHED	2/24/77	2/28/77	2/28/77
S.A.S. 012	AN ACT TO AMEND § 403(a) AND ARTICLE 3, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO HEALTHCARE INSURANCE PROGRAM FOR GOVERNMENT OF GUAM EMPLOYEES AND RETIREES AND FOSTER CHILDREN'S HEALTHCARE PROGRAM TO 1. AMEND § 403(a) FOR CONFORMANCE AND TO DIVESTING THE LEGISLATURE OF FINAL AUTHORITY OVER ANY CONTRACT ENTERED INTO BY / AMBAG/ LANCY GUAM FOR THE SAME.	1200 P.A.A.	2/24/77	PUBLISHED	2/24/77	2/28/77	2/28/77

2

**I MINA' TRENTAI KUÁTRO NA LIHESLATURAN GUÅHAN**  
**2017 (FIRST) Regular Session**

Bill No. 3-34 (COR)

Introduced by:

B. J. F. Cruz

**AN ACT TO AMEND §§ 4301(a) AND 4302(c)(2), BOTH OF ARTICLE 3, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO ENSURING THAT ONLY THE MOST ECONOMICAL AND BENEFICIAL HEALTHCARE INSURANCE PROPOSAL PLAN FOR GOVERNMENT OF GUAM EMPLOYEES AND RETIREES AND FOSTER CHILDREN IS FORWARDED BY THE GOVERNMENT OF GUAM HEALTH INSURANCE NEGOTIATING TEAM TO I MAGA'LÅHEN GUÅHAN FOR CONSIDERATION; AND TO DIVESTING THE LEGISLATURE OF FINAL APPROVAL AUTHORITY OVER ANY CONTRACT ENTERED INTO BY I MAGA'LÅHEN GUÅHAN FOR THE SAME.**

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

**Section 1. Subsection 4301(a) of Article 3, Chapter 4, Title 4, Guam Code Annotated, is hereby amended to read:**

**“(a) I Maga’lahi (the Governor) is authorized to enter contracts and reject proposals, with the written concurrence of the Speaker of I Liheslaturan Guåhan (the Guam Legislature) or the Chief Justice of the Supreme Court of Guam whose consents may be withheld in their sole discretion, with one (1) or more insurance companies, authorized to do business in Guam, for group insurance, including, but not limited to, hospitalization, medical care, life, and accident, for all employees or separate groups of employees, and foster children, of the government of Guam. If the Legislative or Judicial Branches of government elect to enter into separate contracts for their employees as authorized in § 4301(c), I Maga’lahi shall obtain**

1 the written concurrence of the Branch electing to remain with the Executive Branch  
 2 before the group insurance contract is entered into or a proposal rejected. The  
 3 government *shall not* be construed as an agent of any insurance company in  
 4 negotiating or administering this group insurance program. Health benefits provided  
 5 under this authority may be self-funded and administered by a third party if it is  
 6 determined to be cost-effective. No government funds shall be authorized or  
 7 expended and no contract shall be executed with any healthcare respondent/provider  
 8 for group insurance for all employees or separate groups of employees, and foster  
 9 children, of the government of Guam, whose proposal does not represent the most  
 10 economical and beneficial healthcare insurance proposal plan, as defined in §  
 11 4302(c)(2) of this Article, as determined by the negotiating team, as defined in §  
 12 4302(c) of this Article.”

13 **Section 2.** Subsection 4302(c)(2) of Article 3, Chapter 4, Title 4, Guam Code  
 14 Annotated, is hereby *amended* to read:

15 “(2) The negotiating team upon selection and review of the single best  
 16 available proposals by participating healthcare respondent(s)/provider(s), which  
 17 reflect shall be the most economical and beneficial healthcare insurance proposal  
 18 plan for government of Guam employees and retirees, and foster children, shall  
 19 forward said the-accepted proposals to I Maga’låhen Guåhan for consideration, and  
 20 to I Liheslaturan Guåhan for its review final approval no later than July 31, and prior  
 21 to the annual legislative sessions wherein the upcoming fiscal year budget for the  
 22 government of Guam is before I Liheslaturan Guåhan for consideration.  
 23 Notwithstanding any other provision of law, rule, or regulation, the most economical  
 24 and beneficial healthcare insurance proposal plan for government of Guam  
 25 employees and retirees, and foster children, shall be defined as the lowest cost option  
 26 of either the exclusive or non-exclusive proposal.

1 The negotiating team shall forward only the single most economical and  
2 beneficial healthcare insurance proposal plan for government of Guam employees  
3 and retirees, and foster children, to I Maga'låhen Guåhan, and shall not forward  
4 both an exclusive and a non-exclusive proposal to I Maga'låhen Guåhan."

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

6 **Section 4. Severability.** If any provision of this Act or its application to any  
7 person or circumstance is held invalid, the invalidity shall not affect other provisions  
8 or applications of this Act that can be given effect without the invalid provision or  
9 application and to this end the provisions of this Act is severable.

**SPEAKER BENJAMIN J.F. CRUZ**

Committee on Appropriations and Adjudication  
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*I Mina'trentai Kudtro na Liheslaturan Guahan*

**THE 34TH GUAM LEGISLATURE**

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### COMMITTEE REPORT DIGEST

Bill No. 3-34 (COR), As Introduced - B. J.F. Cruz - "An act to *amend* §§ 4301(a) and 4302(c)(2), both of Article 3, Chapter 4, Title 4, Guam Code Annotated, relative to ensuring that only the most economical and beneficial healthcare insurance proposal plan for government of Guam employees and retirees and foster children is forwarded by the government of Guam Health Insurance Negotiating Team to *I Maga'lahaen Guahan* for consideration; and to divesting the Legislature of final approval authority over any contract entered into by *I Maga'lahaen Guahan* for the same."

#### **L OVERVIEW**

Bill No. 3-34 (COR) was introduced by Speaker Benjamin J.F. Cruz on January 4, 2017, and referred to the Committee on Appropriations and Adjudication on January 24, 2017.

The Committee on Appropriations and Adjudication convened a public hearing on Friday, February 10, 2017, beginning at 2:00PM in the Guam Legislature Public Hearing Room. The hearing for Bill No. 3-34 (COR) began at 2:04PM and ended at 3:42PM. ✓

#### Public Notice Requirements

All legal requirements for public notices were met, with requests for publication sent to all media and all Senators on February 2, 2017, and February 8, 2017, via email. Copies of the hearing notices are appended to the report.

#### Senators Present

Speaker Benjamin J.F. Cruz, *Chairperson*  
Vice Speaker Therese M. Terlaje, *Member*  
Senator Régine Biscoe Lee, *Member*  
Senator Telena C. Nelson, *Member*  
Senator Joseph S. San Agustin, *Member*  
Senator James V. Espaldon, *Member*  
Senator Thomas A. Morrison, *Member*  
Senator Louise Borja Muna

#### Appeared Before the Committee

Ms. Christine W. Baletto, *Director, Department of Administration*  
Attorney Shannon J. Taitano, *Legal Counsel, GovGuam Health Insurance Negotiating Team*  
Mr. Frank Campillo, *Health Plan Administrator, Calvo's SelectCare Insurance*  
Mr. Eric L. Plinske, *Director of Corporate Affairs, Guam Regional Medical City*

**Vice Speaker Terlaje:**

"Does our RFP require coverage at both hospitals or is it certain hospitals?"

**Ms. Taitano:**

"I believe it is just for hospitalization. I don't recall..."

**Director Baletto:**

"And that's why I think we would need to research because I don't believe you can name all the clinics and say, you must provide access to all of these hospitals, to all of the clinics, to all of these pharmacies. I don't know if we are able to do that."

**Vice Speaker Terlaje:**

"Do you - I was going to ask the carriers this question, but I'll ask. Can you list the difference in services in the different hospitals that we have? Or difference in services that employees are getting at off-island hospitals. What makes them different? When they say they want choice, is it that they want a certain service that another hospital does not provide. Or is it really just choice that is not a critical item?"

**Ms. Taitano:**

"I've been told by some employees when they like the option to choose the different carriers, it's the rates they compare because the plans are the same. I've been told, too that it's the service they receive from the different carriers. Some prefer one carrier over the other. That's what has been conveyed to me."

**Vice Speaker Terlaje:**

"Customer service?"

**Ms. Taitano:**

"Yes."

**Director Baletto:**

"Responsiveness, especially when it comes to claims, any paper work, or coordination of services, if you need to fly off-island—we hear some of those comments as well. There are some carriers who are more responsive or quicker to set those things up as opposed to maybe someone else that they might have had experience with."

**Vice Speaker Terlaje:**

"I would be interested if the government of Guam is going to require an exclusive contract because of cost or find ways to save on cost. Would you be



Unfortunately we are not the ones to determine the splits, unless we grab it back."

**Mr. Campillo:**

"But you could legislate that."

**Chairman Cruz:**

"We may have to take that back. Thank you for being the one suggesting it."

**Vice Speaker Therese Terlaje:**

"I'm sorry I am not familiar with this but, [quoting from Mr. Campillo's testimony] "... whereby [the Guam Memorial Hospital Authority] limits its charges to the Medicare rates for the GovGuam population". Do they have one set of rates for Medicare and then another set of rates for insurance companies? Is that how it works?"

**Mr. Campillo:**

"So, GMH is paid by Medicaid, Medicare and [Medicaid Integrity Program], a set of rates that are basically based on the Medicare reimbursement factor. The rest of us have to pay a different rate. It is based on their published rate schedule. We used to get a prompt payment discount if we paid in thirty (30) days. That was eliminated. So, that's the schedule that applies to third-party payers. I'm suggesting, why charge your population more? After all, it is GovGuam taking care of GovGuam employees so allow us to pay GovGuam based on the Medicare fee schedule."

**Vice Speaker Terlaje:**

"Do you think the government could make an agreement for GovGuam subscribers? We set a rate like that?"

**Mr. Campillo:**

"It's your hospital. You can do whatever you want."

**Vice Speaker Terlaje:**

I'll ask the Attorney General.

**Mr. Campillo:**

"You are already paying Medicaid based on Medicare. Thank you very much."

**Mr. Eric Plinske** greeted members of the Committee and introduced himself as Director of Corporate Affairs for the Guam Regional Medical City. He then proceeded to read his written testimony (*appended to this report*). The written testimony—while expressing

*support* for the measure's intent—sought amendments that would require all qualified insurers participating in the GovGuam Health Insurance Program to include both private and public hospitals as in-network providers.

Mr. Plinske further noted:

"Mr. Speaker, I appreciate the time. One of the things we mentioned [was] choice and I know [we've] talked about economies of scale and bargaining power and that's what insurance companies have when they deal with providers and they will negotiate rate discounts because of their bargaining power and their economies of scale. But when they don't sign a contract with a provider those rates remain at the list rate and they go on to the customer. As a non-participating provider, the biggest thing that people don't understand and I would assume you may have a difficult time understanding what non-participating provider means and the famous quote, eligible charges. What that means and I can explain in detail right now, for instance the one plan who has not put us in their network, it doesn't mean that there's necessarily savings anywhere it just means those costs are going to have to go to someone else. We are holding over five million dollars (\$5 million) of claims for that provider. We have not sent those to the customer—your GovGuam employees, retirees, federal workers—because we are in negotiations to try and work out an agreement. We're not really that close right now, unfortunately.

"The three (3) other plans on-island have all signed with us a long time ago. So, if we were to release those bills to those patients, we are going to have to eventually, if those good faith efforts don't work. Imagine the bankruptcies that people will face if they have to pay these full bills under eligible charges. And it's not just the one plan, all health plans have this clause. If you are non-participating provider they only pay directly for emergency services under the... it's called [the Emergency Medical Treatment and Labor Act (EMTALA)]. No hospital can turn away a patient due to money issues. You accept them and you must stabilize them. Many times that emergency visit results in an admission. As a non-participating provider there are many hoops that are followed. First, they come into the emergency room, you have no agreement with this health plan but you are supposed to within twenty four (24) hours or twelve (12) hours notify the non-participating, the plan that you are not a network provider in of the emergency room visit in order for any payment whatsoever to be paid.

"Then, if there is an admission, require another notice with pre-authorization approval to be provided to the hospital for what would be called, pre-authorization to admit to a non-participating provider. Now, even if you got

that, it doesn't mean the plan is going to pay anything to the hospital. The whole bill is going to the patient, that full price and the only way that patient is going to get any money back is if they first, pay the full bill with no discounts because they don't get the benefit of a negotiated agreement and those negotiated rates.

"Now, if a miracle happens and they end up finding the money to pay that bill then they get to go to the health plan and seek reimbursement generally at seventy percent (70%) of eligible charges. What does that mean? That means usually the lowest of the low of any rate they can look at: Medicare rate, the lowest network rate—GMH likely and a range of other ones, some physician fees. There's about three to four (3-4) different ones they could refer to; usually it'll be the lowest of the low.

"As an example of that is a private room at GRMC at list price, the lowest and we're a private room hospital where GMH is a semi-private room hospital with some private rooms. A surgical room for instance is twenty four hundred dollars (\$2400). It's about six hundred dollars (\$600) semi-private at GMH. Now, just that one service you went to the hospital at GRMC, and many times you have no choice. If you are in an ambulance, you are going to be taken to the nearest hospital whether that hospital is in your network or not and if you are not stable and you need to be admitted, it's going to be done. You really don't have a choice there. We are going to treat you no matter what. And we are not going to ask you during that process what plan you've got or if you have any money.

"So, now you go twenty four hundred dollars (\$2400) just for the room. Somehow you find the money to pay for that. And believe me there are surgeries and many other expenses going to be—we are just looking at the room. If you heard seventy percent (70%) of eligible charges you might think, well that's not bad. Some plans have eighty percent (80%) of charges if you are in network, seventy percent (70%) of eligible charges—that doesn't sound too bad. The bill goes through and you pay for the whole twenty four hundred (\$2400). Now, you go to the plan to seek reimbursement. Now, you'll find out likely the reference rate is the six hundred dollar (\$600) room rate at GMH. That's a semi-private room, seventy percent (70%) of that room rate. That's about four hundred and twenty dollars (\$420). The rest you eat—over two thousand dollars (\$2000). What was the real result? About seventeen percent (17%) of the bill was reimbursed but that's only if the person had the money to pay the hospital up front. Rarely do they have that. Who would? If you have a major set of surgeries: tens of thousands of dollars for sure, and who's got that money laying around? Seventeen percent (17%) if you can even find the money to pay up front that you might be eligible to get paid and reimbursed back to you while you eat the eighty

**Mr. Campillo:**

"Let me tell you the other side of that coin. If the government of Guam obligates the health insurance plans to include everybody, then you take the ability for the health insurance plans to negotiate. You have to balance it. I can see the perspective of a company and a hospital that has invested a significant amount of dollars to be included in our plans. I can see their perspective. But on the other hand, I think that we live in a free enterprise world, you need to allow health insurance plans to be able to negotiate accordingly."

**Mr. Francis Santos** approached the Committee and proceeded to testify.

"Thank you Mr. Speaker and colleagues. Then, I would argue that you have an issue with the [Qualifying Certificates (QCs)] that we all benefit as insurance carriers and as a hospital. Because my understanding with the QC benefit is that we as the residents of Guam will get a benefit from the hospital and the insurance carriers. So, if you are going to allow this system to not choose this hospital verses this hospital then we should really look at why we are giving QCs. Because the promise was no, I'm going to allow this hospital to come to our island, offer this benefit and offer more importantly to the residents that cannot afford to come to the hospital. Again, I caution you to examine that closely. I'll speak on behalf of GRMC, you [wanted] us to be on this island and provide this service. So, we are here today. All we are asking is that give the residents of Guam the chance to choose the hospital and just put us in the network, is all we are saying. We'll negotiate. That's our challenge to negotiate with the carriers. I will say I don't want to comment at this point because we recently transmitted the bill on behalf of the GPA and GWA employees to ask the Legislature to consider separating us out of the group health insurance and at that time I'll submit my testimony recognizing both bills and how they address group health insurance in total. Thank you very much."

**Chairman Cruz:**

"When you were just speaking, were you speaking as a taxpayer or an official from GRMC?"

**Mr. Santos:**

"I have this crazy hat; sometimes three (3) hats actually. I can speak on behalf of the industry if they allow me at times and sometimes they do. I have to speak on behalf of GRMC because of the value it brings to this community and just as a resident taxpayer who at times questions why we do QCs. This issue at this point is that it is a done deal. We've given QCs to insurance carriers because that's the benefit for the risk they take and then you asked GRMC to invest two hundred and fifty million dollars (\$250 million). So, we are here today asking that all the residents of Guam be afforded to come to this hospital."

**Mr. Campillo:**

"I gave you my perspective that I don't feel the need to mandate that."

**Senator James V. Espaldon:**

"Mr. Speaker, if I may? What [Mr. Plinske] had testified to....I guess the implication as it is relative to this particular bill is that if we were to go down this road and entertain this in session that only the lowest price carrier then it kicks in and the testimony that if we're going to go down that road then at least include the other hospital. Otherwise, any carrier who does not include would probably be able to bid the lowest price. I just want to make sure. Is that what really is being said the past ten (10) minutes just to make it clear in my mind?"

**Mr. Campillo:**

"I think [Mr. Plinske] said it clear and that is that it is a fact that the new hospital has a higher price cost than GMH. And you are right. If you are going to look at the least expensive hospital, it's the same way when we go to the Philippines and go to Green Hills to buy stuff. Cheap does not clearly bring quality and I think that if you are going to mandate and you go with the lowest cost possible, health plans as very well explained by [Director Baletto], you are going to find ways to carve out the least expensive items of the health plan. That's going to create that. But if you mandate that a health plan needs to contract with someone then you also take away the ability for health plans to really work on behalf...at the end of the day, you are going to sign up and you are going to be able...the health plan will be able to sign up the networks that they feel are going to be best for the individual members that are going to sign up with them and the health plans either work with the provider and provides what is good quality or not. That's why it allows choice for members to differentiate between a quality health plan and one that may not be quality."

**Senator Espaldon:**

"I just wanted to clarify and make sure that I understood exactly what's being said. [Mr. Plinske], if you would like to join us again, I'd love to have him come back up."

**Mr. Plinske:**

"We actually work very well with all the health plans. Take Care is a strong provider of health plans and we look forward with working with them and come to an agreement. Jeff and the team at Take Care, we have no animosity. What happens if you don't...and I think we're talking about a hospital and we're talking about clinics. There's a little bit of a difference I think to say a specialty hospital where there is no...[Mr. Campillo] mentioned that there was one entity no one else paid those rates."