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Assistant Majority Whip

July 13, 2012

**Honorable Leonardo M. Rapadas**  
**Attorney General of Guam**  
Office of the Attorney General  
287 W. O'Brien Drive  
Hagåtña, Guam 96910

**RECEIVED**  
JUL 13 2012  
11:24 AM  
Office of the Attorney General of Guam  
Civil/Solicitor Division

**Re: Inquiry regarding the Applicability and Impact to Health Care on Guam by the Patient Protection and Affordable Care Act**

**Dear General Rapadas;**

*Buenas yan Hafa Adai!*

Thank you once again for participating in the public forum and discussion regarding the Patient Protection and Affordable Care Act on Tuesday, July 3, 2012 at the Guam Legislature. I think we all came away with a better understanding of the complexities of the law, as well the work and research ahead which is required to provide more information to the people of Guam.

There are many questions that remain unanswered for stakeholders impacted by PPACA, and I am respectfully requesting your help in moving forward on this important issue. It is my hope that our island can quickly come to a determination as to how we are going to address these matters and achieve compliance to the extent realistically possible. In this light, I wish to inquire as to the following:

- Does the individual mandate apply to the territory of Guam?
- Does the employer mandate apply to private insurance companies based in the territory of Guam?
- According to the Affordable Care Act, States must ensure their Exchanges are self-sustaining by January 1, 2015. By self-sustaining, if we do not set up a State-based Exchange, HHS can set up a Federally-facilitated Exchange. Regardless of whether we or HHS sets up our Exchange, can the government of Guam be held liable for any difference or shortcoming in funds (premiums) required for a self-sustaining Exchange?
- If Guam cannot or does not for fiscal or other reasons establish an Exchange, and should we deem that a Federally-facilitated Exchange is not in our best interests, what are the other options available to us, if any?

*Ufisinan Todu Guam • 31<sup>st</sup> Guam Legislature*

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- If Guam opts out of establishing an Exchange, what are the ramifications to our Medicaid program? Additionally, would the annual increase in the federal matching share be affected?

Please find attached for your review, some information provided to me by the office of our Congressional Delegate, Hon. Madeleine Z. Bordallo, which I hope will be helpful. Also attached are three guidance publications by the Centers for Medicare & Medicaid Services.

On another matter relative to PPACA, I would like to request your opinion or thoughts as to whether there is a 'loophole' in PPACA or our tax codes pursuant to which a Guam based health insurance company can avoid or minimize the *Medical Loss Ratio* rebate obligation by setting up a separate company and transferring a significant sum of funds to it to ensure they make the MLR threshold and avoid rebating premiums. This is a matter that has been brought to my attention, and allegedly, is being done by some other insurance companies nationally. It was alleged to me that Guam company "1" created another company "2" at the end of last year and transferred millions of dollars to company "2" that should otherwise be paid out in refunds.

General Rapadas, is this supposed "loophole" a matter or issue with which you are familiar or aware? Although it was brought to my attention and I am bringing it to yours, I admittedly do not fully understand it nor do I have all the facts; but I am attempting to obtain additional information. So as not to unduly raise allegations of impropriety on the part of a local health insurance company, I am raising this matter as a theoretical issue of possible concern. If such a *loophole* in PPACA or applicable tax codes does in fact exist, within what circumstances or parameters could it be legally utilized? I would hate to see Guam's health insurance subscribers lose millions in rebates through corporate shenanigans. Any information you could provide on this would be greatly appreciated.

Once again, I thank you for all your assistance and look forward to receiving your response so that I may share it with Committee members, health industry stakeholders, and consumers. If you have any questions or concerns please contact my office at 649-TODU (8638) or [senatordrodriguez@gmail.com](mailto:senatordrodriguez@gmail.com).

*Si Yu'os Ma'ase!*

Senseramente,

  
Dennis G. Rodriguez, Jr.

Attachments:

- Congresswoman Madeleine Z. Bordallo provided information
- Centers for Medicare & Medicaid Services (CMS) Guidance Publications