



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

September 20, 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

RECEIVED

SEP 20 2019

10:32am

TakeCare
Administration

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

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 Department of Administration ("DOA") website). This letter constitutes a formal protest of the RFP by TakeCare pursuant to 5 G.C.A. §5452 and 2 G.A.R. §9106 ("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. When TakeCare was debarred from issuing in response to the RFP, RFP timely protested. Ex. 1. The protest was denied by DOA and appealed to the Office of Public Accountability ("OPA"). The OPA rejected the appeal and TakeCare timely filed for judicial review. Ex. 6.

This Protest is being filed within fourteen (14) days after TakeCare learned that DOA has now awarded the RFP to Aetna International when the Government of Guam announced that the RFP was awarded to Aetna on September 9, 2019 (Ex. 8), despite the automatic stay in effect. This protest is in addition to the other issues TakeCare has previously protested as set forth in the pleading before the OPA, Superior Court of Guam, and the District Court of Guam regarding the RFP and the procurement process.

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 and his telephone number is 300-7147. TakeCare is being represented by Louie Yanza, whose email address is 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
JUN 9 2019
OFFICE OF THE ATTORNEY GENERAL
ADMINISTRATION

FACTUAL BACKGROUND

On April 1, 2019 the Department of Administration ("DOA"), Government of Guam ("GovGuam") issued DOA/HRD-FRP-No. GHI-20-001 ("DOA RFP") seeking proposals for Group Health and Dental Insurance for Employees of the Government of Guam. TakeCare is a prospective offeror for the DOA RFP and therefore had standing to submit a Protest. Ex. 6 OPA Decision and Order, at p. 3 ll. 7-12.

When DOA's RFP was issued on April 1, DOA it required all bidders submitting a proposal on May 3, 2019 to include all the public and private hospitals in its in-network. Tab D of Ex. B of RFP. The only private hospital in Guam is the Guam Regional Medical Center ("GRMC"). Id. This requirement in the RFP came as a result of the passage of Public Law 35-02, which added § 4302 (c) (12) to Title 4 of the Guam Code Annotated. Id.

However, neither DOA's RFP nor PL35-2 required that TakeCare have a "direct contract" with GRMC on April 1, 2019 when the RFP was issued. In fact, the DOA RFP and PL 35-2 did not require that TakeCare or any other bidder ever have a "direct contract" with GRMC. Id. Thus, TakeCare had no reason to be alarmed or concerned on April 1, 2019 that it did not have a "direct contract" with GRMC.

Instead of requiring that TakeCare have a "direct contract" with GRMC, DOA's RFP and PL 35-2 merely required that GRMC be in TakeCare's "network" when an offer was to be submitted on May 3, 2019. The RFP specifically stated that TakeCare was allowed to include GRMC in its "network" via an indirect relationship such as a "rental" or "lease" agreement through a third party. Tab D of Exhibit D to RFP.

Up until May 1, 2019, TakeCare had every reason to believe that GRMC was in its "network" because of a previously arranged Network Access Services Agreement with NetCare, which arrangement allowed NetCare to "lease" to TakeCare in-network access to GRMC. However, on May 1, 2019, for the first time, GRMC took the position 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." (Ex. 1 to Protest Letter).

Hence, it is factually undisputed that TakeCare first learned on May 1, 2019 that it would not have GRMC in its network by May 3, 2019 when bids were due to be submitted. TakeCare also learned for the first time on May 1, 2019 that it was being disqualified as a bidder. Id. Thereafter, only two days later, TakeCare filed a timely Protest with GRMC on May 3, 2019 claiming that GovGuam's proxy GRMC had wrongfully used the power bestowed upon it by PL35-2 to disqualify TakeCare as a bidder. Ex. 1.

On May 21, 2019, the Defendant Edward Birn denied Plaintiff's protest. Ex. 2. After the Agency's decision, TakeCare timely appealed the Agency's decision to the Office of Public Accountability ("OPA") on May 23, 2019. Ex. 3. DOA filed a motion to dismiss which was heard on July 18, 2019. Ex. 4.

On July 30, 2019, the OPA issued its Decision and Order granting the Purchasing Agency's Motion to Dismiss, on the grounds that TakeCare filed its protest outside the fourteen (14) day period when it knows or should have known of the facts giving rise to the protest. Ex. 5 at p. 5 ll. 4-16. According to the OPA, TakeCare's Protest should have been filed within 14 days after April 1, 2019 when the RFP was issued. Id.

TakeCare then timely filed for Judicial review in the Superior Court Guam on August 12, 2019 titled TakeCare Insurance Company, Inc. v. Territory of Guam, Department of Administration, Government of Guam, and the Office of Public Accountability, Superior Court of Guam Civil Case No.CV0972-19. Ex. 6. On August 26, 2019, TakeCare filed a Motion seeking a restraining order and to enforce the automatic stay

that has been in effect since TakeCare filed its protest on May 3, 2019. Ex. 7. That action remains pending before the Superior Court of Guam.

On September 9, 2019, in a numerous press releases, the Governor of Guam announced that GovGuam awarded the RFP to Aetna International. Ex. 8. TakeCare now files this timely protest to the award of the RFP as it is in direction violation of the automatic stay.

DISCUSSION

Under Guam law, a stay remains in effect until final resolution of a Protest:

In the event of a timely protest under Subsection (a) of this Section or under Subsection (a) of § 5480 of this Chapter, the Territory shall not proceed further with the solicitation or with the award of the contract prior to final resolution of such protest, and any such further action is void

5 GCA § 5425(g).

Procurement regulation 2 GAR § 9101(e) closely mirrors the statutory automatic stay requirement:

Stay of Procurement During Protest. When a protest has been filed within [fourteen (14)] days and before an award has been made, the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency shall make no award of the contract prior to final resolution of such protest, and any such further action is void

2 GAR § 9101(e).

Moreover, once a timely action is filed in the Superior Court, the automatic stay remains in effect during the pendency of the judicial proceeding. Teleguam Holdings, LLC v. Terr. of Guam, 2015 Guam 13, ¶31. The stay in the judicial proceeding is only lifted once the "Court has confirmed such determination." 5 GCA 5425(g)(3). The court has never lifted the stay and the DOA are, therefore, clearly in violation of the automatic stay. The trial court has the jurisdiction to enforce the automatic stay and the failure to do so is an immediately appealable order to the Guam Supreme Court. Guam Imaging Consultants v. Guam Memorial Hospital Authority, 2004 Guam 15 at ¶14.

Here, both DOA and Aetna International have violated the automatic stay and acted in bad faith by defying the stay, continuing to negotiate the terms of the group health insurance contract, and finally awarding the contract to Aetna.

DOA, Aetna, and Aetna's agents were aware when they were negotiating the health care contract that TakeCare had protested the procurement process, and that the protest had not yet been resolved. They were also aware that neither the Court nor the OPA have ever issued an order lifting the automatic stay. Hence, they have all acted in bad faith by openly violating the procurement laws and this violation is not waivable.

CONCLUSION

"If after an award it is determined that a solicitation or award of a contract is in violation of law, then if the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void. 5 GCA Section 5452. See also 2 GAR Section 9106. For the reasons discussed herein, TakeCare respectfully submits that the award of the RFP is in violation of the law. Consequently, the RFP must be

TAKECARE POST AWARD PROTEST
Mr. Edward M. Bim
Department of Administration
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cancelled and resolicited to comply with 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) all Superior Court and District Court filings relating to the RFP; (b) the complete procurement file and all supporting documents; (c) any contracts or agreements awarding the RFP to Aetna International; and (d) 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. §9106, TakeCare requests that the procurement represented by the RFP be declared null and void, 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. Finally, TakeCare is not in possession of DOA's contract with Aetna International, but reserves its right to file further protests upon TakeCare coming into possession of the Aetna contract

Sincerely,



JOSEPH HUSSLEIN
President and CEO
TAKECARE INSURANCE COMPANY

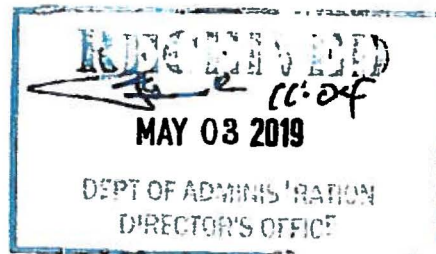
cc: Office of the Attorney General

Exhibit “1”



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. Bim
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**

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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 and his telephone number is 300-7147. TakeCare is being represented by Louie Yanza, Esq., whose email address is 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
5/11/19
@NORC

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 legislature 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 "unequal 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

Jerry Crisostomo <jcrisostomo@netcarelifeandhealth.com>

Tue, Apr 30, 2019 at 7:52 PM

To: Joseph Husslein <husslein@gmail.com>, "Lojo, Arvin" <Arvin.Lojo@takecareasia.com>

Cc: tmoylan@moylans.net

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

Website: www.grmc.gu



EXHIBIT 2

I Mina' Orendi, Singlo No Lihalestares Gallema
BILL STATUS

I Mina' Orendi, Singlo No Lihalestares Gallema
 As amended by the Committee on Public
 Accountability
 07/20/2019 04:08 AM

SPILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	DATE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FINAL NOTES	NOTES
30-35 (CON) As amended by the Committee on Public Accountability. Hearings: 2/25/19 at the Honorable Guam Building and further amended on the floor	Thia Rose Maile Barnes	AN ACT TO ADD § 4802(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.	2/25/19 4:42 p.m.	2/1/19	Committee on Public Accountability, Human Resources, and the Guam Building	2/11/19 2:30 p.m.	2/15/19 3:19 p.m. As amended by the Committee on Public Accountability, Human Resources, and the Guam Building	Request: 2/4/19 Fiscal Note: 2/6/19 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.
	SESSION DATE	TITLE	DATE PASSED	TRANSMITTED	DATE DATE	PUBLIC LAW NO.	DATE SIGNED	NOTES	
	2/25/19	AN ACT TO ADD A NEW § 4802(1) 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	35-2	3/7/19	Received: 3/7/19 Mess and Comm. Dec. No. 35GL-19-0211.	

UFISINAN I MAGA'HÅGA
OFFICE OF THE GOVERNOR

LOURDES A. LEON GUERRERO
MAGA'HÅGA • GOVERNOR



JOSHUA F. TENORIO
SIGUNDO MAGA'LÅHI • LIEUTENANT GOVERNOR

March 7, 2019

Honorable Telena 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: oe

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,

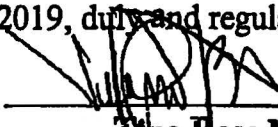
LOURDES A. LEON GUERRERO
Maga'hågan Guåhan
Governor of Guam

2019 MAR 7 PM 3:25

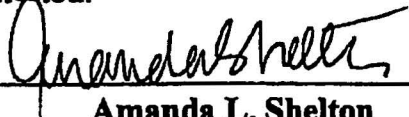
I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *IMAGA'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 27th 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 27th 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 GUAHAN
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 "Pedro" 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"*.

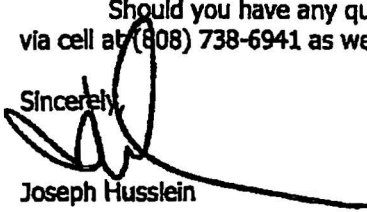
As importantly, with GRMC providing such, it streamlines the process for the parties to reach a workable arrangement for such GRMC services – specifically as it relates to the upcoming issuance of the FY2020 Government of Guam Request for Proposal for the Government of Guam Group Health Insurance Program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

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	Saipan		
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**

Facility Service Type	Per Diem Rate
Medical Surgical Days	\$2,652.25
Surgical 1 st 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
Outlier Provisions	Rate
Level 1 – Threshold	➤ \$75K in billed charges
Level 1 – Reimbursement	45% of billed charges
Level 1 – Base	First Dollar
Outpatient Services	Rate
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
Inpatient & Outpatient Exclusions	Rate
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
Professional Fees	Rate
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
Cardiac Case Rates	Rate
Cardiac Surgery	\$44,557.80
- Includes 7-day hospital stay and anything in excess of 7 days will be paid at level of care per diem rate.	

- Includes all professional fees and anesthesia - Drug charges greater than or equal to \$1,000 per day for the same drug are excluded and paid at 45% of billed charges. - 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. - Includes one follow-up visit by post-operative physician services within 90 days from surgery. - Valves, pacemakers and AICDs are excluded and paid at 45% of billed charges. - Blood and blood products are excluded and paid at 45% of billed charges. - Non-routine supplies are excluded and paid at 45% of billed charges.	
Diagnostic Cardiac Catheterization	\$8,404.80
- Includes no more than 4 diagnostic cardiac catheters. Any more than 4 catheters shall be paid at 45% of billed charges. - Includes one (1) observation day in Telemetry. Any additional medically necessary days shall be paid at the level of care per diem rate. - Includes all professional fees and anesthesia - Includes one follow-up visit by post-operative physician services within 90 days from surgery.	
Angioplasty/Stent (no cardiac catheterization)	\$13,657.80
- Includes one (1) stent. Additional stents beyond 1 shall be paid at 45% of billed charges. - Includes all professional fees and anesthesia - 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. - Includes one follow-up visit by post-operative physician services within 90 days from surgery.	
Angioplasty/Stent (with cardiac catheterization)	\$18,910.80
- Includes one (1) stent. Additional stents beyond 1 shall be paid at 45% of billed charges. - Includes all professional fees and anesthesia - Includes no more than 4 diagnostic cardiac catheters. Any more than 4 catheters shall be paid at 45% of billed charges. - 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. - Includes one follow-up visit by post-operative physician services within 90 days from surgery.	

Pacemaker / AICD	\$5,778.30
- 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.	
Bariatric Case Rate	Rate
Bariatric Surgery (Sleeve or Gastric Bypass)	\$16,500.00
- 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 commingle 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 HUSSEIN,
Chief Executive Officer/President
TakeCare Insurance Company, Inc.

EXHIBIT 10



Joseph Husslein <husslein@gmail.com>

Provider Services Agreement

Francis Santos <fesantos57@gmail.com>

Tue, Apr 9, 2019 at 1:08 PM

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

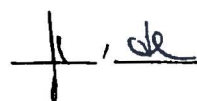
NOW THEREFORE, in consideration of the promises, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

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

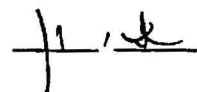


Providers to TakeCare on the same terms and conditions set forth in this Agreement, subject to the terms of any applicable underlying Participating Provider Agreement between NetCare and the Network Providers.

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 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.

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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

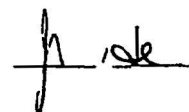
TakeCare shall pay NetCare, on a monthly basis, the agreed-upon percentage of claims paid to Guam HealthCare Development Inc., DBA Guam Regional Medical City and any future agreed-upon Network Providers. The applicable percentage is identified as a Network Access Fee set forth on Attachment A to this 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:

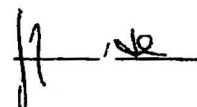
- a. **Voluntary Termination with or without Cause.** By either party upon ninety (90) days prior written notice may terminate this Agreement without cause. In the event of termination with cause, either party may terminate this Agreement upon thirty (30) business days prior written notice that the other 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 properly 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.

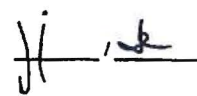
f. **Enforcement of Arbitral Awards.** Any award resulting from arbitration authorized by this Section shall be binding and conclusive upon both parties and enforceable by either of them in any court of competent jurisdiction. Furthermore, any such award shall be final upon the parties regarding both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

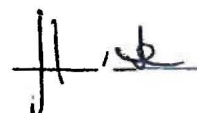
NetCare Life and Health Insurance Company
Julale Center, Suite 200
424 West O'Brien Drive
Hagatna, Guam 96910
Attention: Plan Administrator

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.

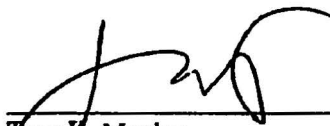
XVI. Attorney Fees

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 E. Moylan
Vice President & Director

Signed on: 6/19/18



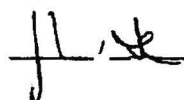
Arvin Lojo
Health Plan Administrator

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).

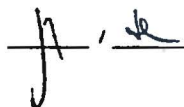


EXHIBIT 12

**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

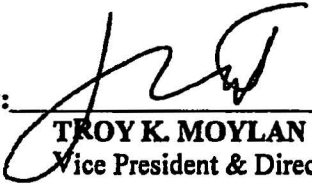
This Agreement shall be effective July 1, 2018 thru December 31, 2020. Unless terminated earlier, and subject to the term of any applicable underlying agreement between NetCare and any of its Network Providers, and each party's right to terminate, this Agreement shall automatically renew on an annual 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.**

By: 
TROY K. MOYLAN
Vice President & Director

Signed on: 3-04-2019

**TAKECARE HEALTH
INSURANCE COMPANY, INC.**

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.

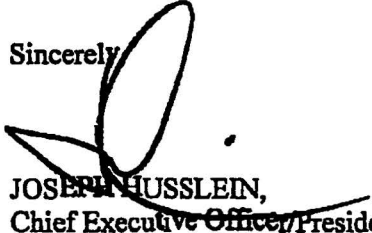
As you are undoubtedly aware from NetCare's prior participation in the GovGuam RFP process, the GovGuam Group Health Insurance Program negotiation with prospective carriers commences on the months of June and July with award in August followed by open enrollment during the month of September for an October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

2017 (FIRST) Regular Session

Bill No. 2434 (CR)

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, GTC Building, Tamuning, Guam 96913
Post Office Box 884 * Hagåtña, Guam 96932
TEL: (671) 475-1101/1221/1250 * FAX: (671) 477-8788



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

March 15, 2017

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

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

Buenas yan Háfa 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.

Sincerely,



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	\$ 1,833.88
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	\$ 1,473.47
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
Albuterol 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
Spirometry/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
Total		\$175,896.86	\$ 25,049.07

None for Placenta
only - GMHA
Delivery Room



115 Chalan 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
34th 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

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.

10

Speaker Benjamin J. F. Cruz
March 15, 2017
Page 2

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

I Hiloa Treated Patients No. 11
 BILL STATUS

24-84 (CON)	R.J.F. Cruz	AN ACT TO ADD § 4804(1) OF CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO INSURING THAT ALL PRIVATE HOSPITALS BE COVERED UNDER THE GOVERNMENT OF GUAM HEALTH INSURANCE CONTRACT.	2/14/17 5:01 p.m.	02/13/17	Committee on Appropriations and Adjuncts	3/14/17 2:00 p.m.	Final Note Request 2/13/17 Final Note 3/14/17	WITHDRAWN 3/13/17
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EXHIBIT 15

**LEGISLATIVE HISTORY
PUBLIC LAW 34-83**

(b)(7) - D

2

I MINA'TRENTAI KUÁTRO NA LIHESLATURAN GUÁHAN
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'LÁHEN GUÁHAN* FOR CONSIDERATION; AND TO DIVESTING THE LEGISLATURE OF FINAL APPROVAL AUTHORITY OVER ANY CONTRACT ENTERED INTO BY *I MAGA'LÁHEN GUÁHAN* 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 Guáhan* (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

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

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

“(2) The negotiating team upon selection and review of the single best available proposals by participating healthcare respondent(s)/provider(s), which reflect shall be the most economical and beneficial healthcare insurance proposal plan for government of Guam employees and retirees, and foster children, *shall* forward said the accepted proposals to *I Maga'låhen Guåhan* for consideration, and to *I Liheslaturan Guåhan* for its review ~~final approval~~ no later than July 31, and prior to the annual legislative sessions wherein the upcoming fiscal year budget for the government of Guam is before *I Liheslaturan Guåhan* for consideration. Notwithstanding any other provision of law, rule, or regulation, the most economical and beneficial healthcare insurance proposal plan for government of Guam employees and retirees, and foster children, shall be defined as the lowest cost option 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
ator@senatorbjcruz.com | www.senatorbjcruz.com



I Mina'trentai Kuatro na Liheslatura Guahan

THE 34TH GUAM LEGISLATURE

163 Chalan Santo Papa, Hagåtña, Guam 96910

T: (671) 477-2520/1 | F: (671) 477-2522

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'láhen Guahan for consideration; and to divesting the Legislature of final approval authority over any contract entered into by I Maga'láhen Guahan for the same."

I. 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. Baleto, 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 Baleto:

"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 Baleto:

"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."

EXHIBIT “2”



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



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

DIRECTOR'S OFFICE (Ufislanan Direktot)

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.

Exhibit “3”



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

NOTICE OF APPEAL

TakeCare Insurance Company, Inc.
(Name of Company), APPELLANT

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.

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

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, 20 19.

By: _____
APPELLANT

or

By: Louie J. Yanza
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.

EXHIBIT "A"



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



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

DIRECTOR'S OFFICE (*Ofisinan Direktor*)

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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

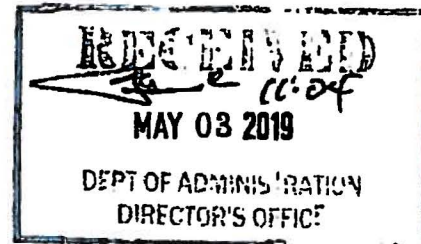
cc: Louie Yanza, Esq.

EXHIBIT "B"



TakeCare Insurance Company, Inc.
P.O. Box 6578 Tamuning, Guam 96931
Telephone: (671) 644-6956 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 and his telephone number is 300-7147. TakeCare is being represented by Louie Yanza, Esq., whose email address is 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
@moe

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 it's 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 legislature 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 "uneven 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.

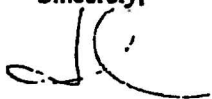
"If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be: (a) cancelled; or (b) revised to comply with the law." 5 GCA Section 5451. For the reasons discussed herein, TakeCare respectfully submits 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

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

Website: www.grmc.gu



EXHIBIT 2

1990-1991

CLEANING OFFICE

UFISINAN I MAGA'HAGA
OFFICE OF THE GOVERNOR

LOURDES A. LEON GUERRERO
MAGA'HAGA • GOVERNOR



JOSHUA F. TENORIO
SIGUNDO MAGA'LÄHI • 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 (1) AM 11 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.

Senseramenta,

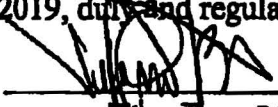

LOURDES A. LEON GUERRERO
Maga'hagan Guåhan
Governor of Guam

2019 MAR 7 PM 3:25

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

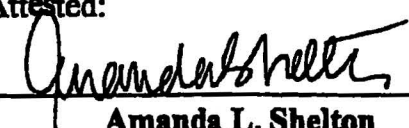
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'HÁGAN GUÁHAN

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 27th day of February 2019, duly and regularly passed.



Tina Rose Mufia Barnes
Speaker

Attested:



Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Gudhan* this 27th 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 Gudhan

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
Telen Cruz Nelson
Sabina Flores Perez
Clynton E. Ridgell
Joe S. San Agustin
Amanda L. Shelton
Telo T. Taitague
Jose "Pedro" 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.

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
SN	Provider Name	Location	Is this hospital in Network for your "Broad" network?	Is this hospital in Network for your "High-Performance" network?
680768469	GHD dba Guam Regional Medical City (GRMC)	Guam		
960001695	GUAM MEMORIAL HOSPITAL	Guam		
7074382	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		
	MAFA ADAI SPECIALIST GROUP	Guam		
911932172	TACOMA GENERAL ALLENMORE	California		
660553454	ISLAND EYE CENTER	Guam		
954006143	UCLA MEDICAL CENTER	California		
951896566	GOOD SAMARITAN HOSPITAL	California		
110101002	TAIWAN ADVENTIST HOSPITAL	Taiwan		
660774384	COMMONWEALTH HEALTHCARE CORPORATION	Seipan		
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:

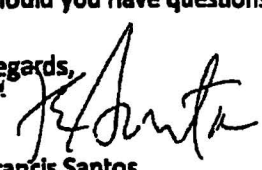
This letter will serve as our proposal for a provider agreement between Takecare Insurance and Guam Regional Medical City (GRMC). Our proposed agreement is attached for your review.

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**

Facility Service Type	Per Diem Rate
Medical Surgical Days	\$2,652.25
Surgical 1 st 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
Outlier Provisions	Rate
Level 1 – Threshold	➤ \$75K in billed charges
Level 1 – Reimbursement	45% of billed charges
Level 1 – Base	First Dollar
Outpatient Services	Rate
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
Inpatient & Outpatient Exclusions	Rate
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
Professional Fees	Rate
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
Cardiac Case Rates	Rate
Cardiac Surgery	\$44,557.80
- Includes 7-day hospital stay and anything in excess of 7 days will be paid at level of care per diem rate.	

- Includes all professional fees and anesthesia - Drug charges greater than or equal to \$1,000 per day for the same drug are excluded and paid at 45% of billed charges. - 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. - Includes one follow-up visit by post-operative physician services within 90 days from surgery. - Valves, pacemakers and AICDs are excluded and paid at 45% of billed charges. - Blood and blood products are excluded and paid at 45% of billed charges. - Non-routine supplies are excluded and paid at 45% of billed charges.	
Diagnostic Cardiac Catheterization	\$8,404.80
- Includes no more than 4 diagnostic cardiac catheters. Any more than 4 catheters shall be paid at 45% of billed charges. - Includes one (1) observation day in Telemetry. Any additional medically necessary days shall be paid at the level of care per diem rate. - Includes all professional fees and anesthesia - Includes one follow-up visit by post-operative physician services within 90 days from surgery.	
Angioplasty/Stent (no cardiac catheterization)	\$13,657.80
- Includes one (1) stent. Additional stents beyond 1 shall be paid at 45% of billed charges. - Includes all professional fees and anesthesia - 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. - Includes one follow-up visit by post-operative physician services within 90 days from surgery.	
Angioplasty/Stent (with cardiac catheterization)	\$18,910.80
- Includes one (1) stent. Additional stents beyond 1 shall be paid at 45% of billed charges. - Includes all professional fees and anesthesia - Includes no more than 4 diagnostic cardiac catheters. Any more than 4 catheters shall be paid at 45% of billed charges. - 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. - Includes one follow-up visit by post-operative physician services within 90 days from surgery.	

Pacemaker / AICD	\$5,778.30
- 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.	
Bariatric Case Rate	Rate
Bariatric Surgery (Sleeve or Gastric Bypass)	\$16,500.00
- 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 4578 Tamuning, Guam 96931
Telephone: (671) 644-6956 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 commingle 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>

Provider Services Agreement

Francis Santos <fesantos57@gmail.com>

Tue, Apr 9, 2019 at 1:08 PM

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

[Handwritten signature]

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.

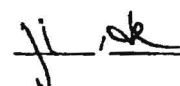
II. Duties and Responsibilities

- 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 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.



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

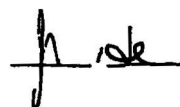
TakeCare shall pay NetCare, on a monthly basis, the agreed-upon percentage of claims paid to Guam HealthCare Development Inc., DBA Guam Regional Medical City and any future agreed-upon Network Providers. The applicable percentage is identified as a Network Access Fee set forth on Attachment A to this 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:

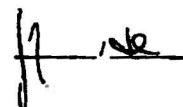
- a. **Voluntary Termination with or without Cause.** By either party upon ninety (90) days prior written notice may terminate this Agreement without cause. In the event of termination with cause, either party may terminate this Agreement upon thirty (30) business days prior written notice that the other 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 properly 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.

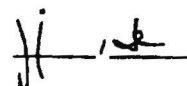
f. Enforcement of Arbitral Awards. Any award resulting from arbitration authorized by this Section shall be binding and conclusive upon both parties and enforceable by either of them in any court of competent jurisdiction. Furthermore, any such award shall be final upon the parties regarding both matters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

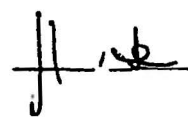
If to NetCare:
NetCare Life and Health Insurance Company
Julale Center, Suite 200
424 West O'Brien Drive
Hagatna, Guam 96910
Attention: Plan Administrator

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.

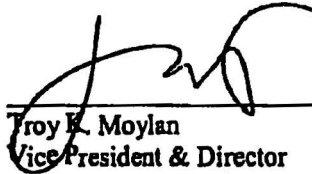
XVI. Attorney Fees

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 E. Moylan
Vice President & Director

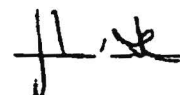
Signed on: 6/19/18


Arvin Lojo
Health Plan Administrator

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).

Handwritten signature/initials

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

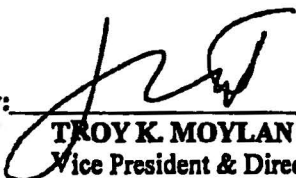
This Agreement shall be effective July 1, 2018 thru December 31, 2020. Unless terminated earlier, and subject to the term of any applicable underlying agreement between NetCare and any of its Network Providers, and each party's right to terminate, this Agreement shall automatically renew on an annual 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.**

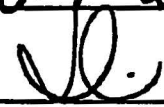
By: 
TROY K. MOYLAN
Vice President & Director

Signed on: 3-04-2019

**TAKECARE HEALTH
INSURANCE COMPANY, INC.**

By: 
ARVIN LOIO
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.

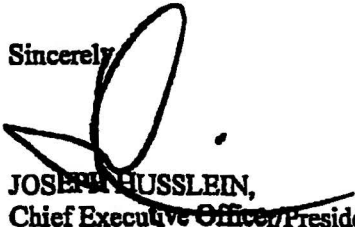
As you are undoubtedly aware from NetCare's prior participation in the GovGuam RFP process, the GovGuam Group Health Insurance Program negotiation with prospective carriers commences on the months of June and July with award in August followed by open enrollment during the month of September for an October 1st 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. 244 (CR)

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

(Uffisiran Direktor)

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) 477-8788



Christine W. P. Balato
Director
Vincent P. Angila
Deputy Director

March 15, 2017

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

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

Buenas yan Hafa Adel 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.

Sincerely,



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	\$ 1,839.68
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	\$ 484.05	\$ 31.91
Gauze dressing 4 x 4		\$ 5.00	\$ 1.12
Hemodialysis		\$ 1,985.28	\$ 418.83
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	\$ 1,473.47
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.		\$ 4,098.80	\$ 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		\$ 20,383.52	\$ 1,418.74
OR level VI additional 15 min		\$ 9,172.49	\$ 236.45
Outpatient Surgery 30 mins		\$ 1,884.53	\$ 634.51
Outpatient Surgery additional 15 mins		\$ 471.18	\$ 108.10
Vancomycin		\$ 116.00	\$ 19.41
Amikacin 250 mg		\$ 94.00	\$ 34.23

Fee is for Major surgery 1st hr. for C-TRA

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

Dextrose 5% 500 ml		\$ 67.00	\$ 13.91
Lorol 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	\$ 3,214.52	\$ 1,157.94
Multiple Sleep Latency Test	95809	\$ 2,141.26	\$ 749.26
Spirometry/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	\$ 54.08	\$ 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
Intubator 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
Total		\$175,896.86	\$ 25,049.07

None for Placenta
only - GMAA
Delivery Room



March 16, 2017

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

The Honorable Speaker Benjamin J.F. Cruz
34th 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: 1:37 PM
Received By: [Signature]

VIA Email: 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.

Speaker Benjamin J. F. Cruz

March 15, 2017

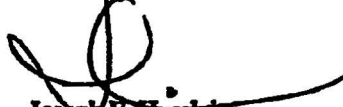
Page 2

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 B. Husslein,
CEO and Health Plan Administrator

cc: TakeCare Representatives

1 Minor Threat/Endorse No Discharge
BILL STATUS

DATE OF BILLING SERVICE
 04/10/2017
 04/10/2017 10:00 PM

21-04 (COA)	BLA C-12	AN ACT TO ADD § 400(2) OF CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO INSURANCE THAT ALL PRIVATE INSURERS BE COVERED UNDER THE GOVERNMENT OF GUAM HEALTH INSURANCE CONTRACT.	2/4/17 2:01 p.m.	02/17/17	Committee on Appropriations and Administration	3/18/17 2:00 p.m.	Final Name Request 2/2/17 Final Name 3/2/17	WITHDRAWN 3/23/17
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EXHIBIT 15

**LEGISLATIVE HISTORY
PUBLIC LAW 34-83**

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I MINA'TRENTAI KUÁTRO NA LIHESLATURAN GUÁHAN
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'LÁHEN GUÁHAN FOR CONSIDERATION; AND TO DIVESTING THE LEGISLATURE OF FINAL APPROVAL AUTHORITY OVER ANY CONTRACT ENTERED INTO BY I MAGA'LÁHEN GUÁHAN 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 Guáhan (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

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

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

"(2) The negotiating team upon selection and review of the single best available proposals by participating healthcare respondent(s)/provider(s), which reflect shall be the most economical and beneficial healthcare insurance proposal plan for government of Guam employees and retirees, and foster children, *shall* forward said the accepted proposals to *I Maga'låhen Guåhan* for consideration, and to *I Liheslaturan Guåhan* for its review final approval no later than July 31, and prior to the annual legislative sessions wherein the upcoming fiscal year budget for the government of Guam is before *I Liheslaturan Guåhan* for consideration. Notwithstanding any other provision of law, rule, or regulation, the most economical and beneficial healthcare insurance proposal plan for government of Guam employees and retirees, and foster children, shall be defined as the lowest cost option 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
Senator@senatorbjcruz.com | www.senatorbjcruz.com



I Mina'trentai Kudro na Liheslaturan Guåhan

THE 34TH GUAM LEGISLATURE

163 Chalan Santo Papa, Hagatña, Guam 96910

T: (671) 477-2521/1 | F: (671) 477-2522

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 Magn'lahen Guåhan for consideration; and to divesting the Legislature of final approval authority over any contract entered into by I Magn'lahen Guåhan 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. Baleto, 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 Baleto:

"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 Baleto:

"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 Flinske 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. Flinake 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."

Exhibit “4”



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Attorneys for the Government of Guam

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Law Office of Louie J. Yama
A Professional Corporation

Date: 6-14-19

Time: 3:24p By: [Signature]

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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 6/14/19

TIME: 2:23 ☐ AM ☒ PM BY: BMD

FILE NO OPA-PA: 19-085

IN THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL

IN THE APPEAL OF:

TAKECARE INSURANCE COMPANY,
INC.,

Appellant,

and

DEPARTMENT OF ADMINISTRATION,

Purchasing Agency.

) **DOCKET NO. OPA-PA-19-005**

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MOTION TO DISMISS

I. INTRODUCTION

COMES NOW, Purchasing Agency, the Department of Administration ("DOA"), a line agency of the Government of Guam, through its counsel, and moves for an order dismissing Appellant TakeCare Insurance Company's ("TakeCare") appeal in its entirety and entering judgment in favor of DOA.

COPY

II. FACTUAL BACKGROUND

The Request for Proposal ("RFP") was published on April 1, 2019, with the requirement that offers to provide group health insurance to the Government of Guam include all private and public hospitals operating on Guam in-network coverage, as mandated by Public Law 35-2. TakeCare filed its Protest of Guam Procurement No. DOA/HRD-RFP-GHI-20-001 with DOA on May 3, 2019. DOA denied TakeCare's protest on May 21, 2019. TakeCare then filed an appeal with the Office of Public Accountability ("OPA") on May 23, 2019.

The foregoing facts are not in dispute by either party.

III. DISCUSSION

A. Appeal should be dismissed because TakeCare is not an actual or prospective bidder, offeror, or contractor

The present appeal should be dismissed, because TakeCare is not an actual or prospective bidder, offeror, or contractor. Title 5 G.C.A. § 5425(a) provides:

Any actual or prospective bidder, offeror, or contractor who may be aggrieved in connection with the method of source selection, solicitation or award of a contract, may protest to the Chief Procurement Officer, the Director of Public Works or the head of a purchasing agency. The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should know of the facts giving rise thereto.

5 G.C.A. § 5425(a) (emphasis added).

Section 5425(a) limits protests to a "prospective bidder, offeror, or contractor." *Id.* TakeCare, however, does not appear to qualify or fall within the categories found in Section 5425(a) and as defined by Section 5480(e). *See* 5 G.C.A. § 5480(e) ("[A] 'prospective' bidder, contractor or offeror is one who will actually submit a bid, contract or otherwise offer his services if . . . such person would prevail."); *Cf. In the Appeal of Latte Treatment Center, Inc.*, OPA-PA-

08-008, p. 7, Decision dated Feb. 26, 2009 (Office of Public Accountability) (finding Appellant had standing to appeal, since there was no question that Appellant submitted a bid and was aggrieved by not being selected). By its own admission, TakeCare has not been able to secure an agreement with Guam Regional Medical Center ("GRMC") that would qualify TakeCare as a prospective bidder, offeror, or contractor according to the terms of the RFP. *See* OPA Appeal, Protest by TakeCare Ins. Company, Inc., Exhibit B (May 25, 2019). Based on the facts, TakeCare should not be considered a prospective bidder, offeror, or contractor, and thus, lacks standing to protest.

B. Appeal should be dismissed because TakeCare is not aggrieved

Furthermore – while TakeCare claims this appeal stems from a Decision on Protest of Method, Solicitation, or Award – TakeCare never met the statutory requirements required to protest the underlying RFP. The reality is this appeal is improperly filed and is the result of failed negotiations between TakeCare and GRMC, as TakeCare was not able to successfully contract with GRMC. Review by the OPA is strictly triggered when an aggrieved party as articulated in 5 G.C.A. § 5425(a) protests the method of source selection, solicitation, or award of a contract. TakeCare's appeal does not involve either of the foregoing; therefore, is not properly before the OPA or within the OPA's jurisdiction.

C. Appeal should be dismissed because TakeCare brought its Protest beyond the proscribed statute of limitations

Finally, even if TakeCare qualified as a prospective bidder, offeror, or contractor, it remains undisputed that TakeCare filed its Protest on May 3, 2019, well beyond the 14-day statute of limitations. For purposes of calculating the 14-day requirement, DOA asserts that TakeCare knew or should have known of the facts giving rise to the Protest on April 1, 2019, the publication

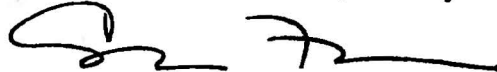
date of the RFP. The RFP issued on April 1, 2019, was made available as published in a newspaper of general circulation, open and not of a confidential nature. *See In the Appeal of Morrico Equipment, LLC*, OPA-PA-13-015, Decision dated Jan. 24, 2014, (Office of Public Accountability) (finding protestor knew or should have known about the award based on purchasing agency issuing a press release.); *Cf. Guam Imaging, Consultants, Inc. v. Guam Mem. Hosp. Auth.*, 2004 Guam 15 ¶ 23 (“[A]ny protests filed after the fourteen-day period will not be considered.”).

IV. CONCLUSION

Based on the foregoing, the OPA does not have jurisdiction as TakeCare is not an aggrieved prospective offeror and the protest is untimely; thereby the OPA does not have jurisdiction over this matter. Therefore, DOA respectfully requests that the OPA grant its Motion to Dismiss by dismissing TakeCare’s appeal in its entirety, entering a decision in DOA’s favor, and vacating any other scheduled hearing dates.

Submitted this 14th day of June, 2019.

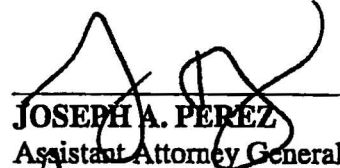
OFFICE OF THE ATTORNEY GENERAL
Leevin Taitano Camacho, Attorney General



By:

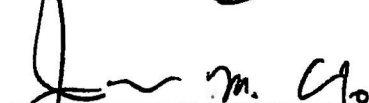
SHANNON J. TAITANO
Assistant Deputy Attorney General

By:



JOSEPH A. PEREZ
Assistant Attorney General

By:



JANICE M. CAMACHO
Assistant Attorney General

Exhibit “5”



**OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS**

IN THE APPEAL OF,

TAKECARE INSURANCE COMPANY,
INC.,

Appellant

APPEAL NO: OPA-PA-19-005

**DECISION AND ORDER RE
PURCHASING AGENCY'S MOTION TO
DISMISS**

To: **Purchasing Agency:**
Department of Administration, Government of Guam
C/O Shannon J. Taitano, Esq., Joseph Perez, Esq., and Janice Camacho, Esq.
Office of the Attorney General of Guam, Solicitor's Division
590 South Marine Corps Drive, Suite 802
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Facsimile: (671) 472-2493

Appellant:
TakeCare Insurance Company, Inc.
C/O Louie J. Yanza, Esq.
446 South Marine Corps Drive, Suite 201
Hagåtña, Guam, 96910
Facsimile: (671) 647-3551

THIS MATTER, came before the Hearing Officer for Procurement Appeals on July 18, 2019 for a hearing regarding the Purchasing Agency's June 14, 2019 Motion to Dismiss an Appeal. The Appellant's Health Plan Administrator, ARVIN LOJO appeared on behalf of the Appellant and he was represented by the Appellant's counsel of record, LOUIE J. YANZA, ESQ. The Purchasing Agency was represented by its counsels of record, Assistant Attorney Generals SHANNON J. TAITANO, ESQ., JOSEPH A. PEREZ, ESQ., and JANICE M. CAMACHO, ESQ. After hearing the arguments of the parties and for good cause shown, the Hearing Officer hereby FINDS and ORDERS the following:

Decision and Order - 1

1 1. The Appellant is an Interested Party. The Purchasing Agency argues that this matter
2 should be dismissed because the Appellant is not an actual or prospective bidder, offeror or
3 contractor because it is not qualified to submit an offer in response to DOA/HRD-RFP-GH-20-
4 001 (FY2020 Group Health Plan Insurance Program) (Hereafter Referred to as "RFP") because
5 the Appellant has not been able to secure an agreement with the Guam Regional Medical Clinic
6 (Hereafter Referred to as "GRMC").¹ An interested party means an actual or prospective bidder
7 offeror, or contractor, that may be aggrieved by the solicitation or award of a contract and who
8 files a protest. 2 G.A.R., Div. 4, Chap. 9, §9101(a)(1)(a). Generally, only actual or prospective
9 bidder, offeror, or contractor who may be aggrieved in connection with the method of source
10 selection, solicitation, or award of the contract, may protest to the head of a purchasing agency.
11 5 G.C.A. §5425. Hence, if a party is not an interested party as defined by Guam Procurement
12 Regulations, Guam Procurement Law bars them from filing a protest and the Hearing Officer
13 must determine whether the Appellant is an Interested Party. Here, the Appellant is not an actual
14 offeror because there is no evidence in the record in this matter that the Appellant submitted an
15 offer in response to the RFP. The Appellant is a contractor because it is one of the current
16 providers of health insurance to the Government of Guam.² The Appellant is also a prospective
17 offeror. To continue being a contractor, the Appellant would have to submit a proposal and be
18 awarded the contract for this RFP. Here, the RFP states that Phase I of the Purchasing Agency's
19 Evaluation Process would be an initial screening of the proposals submitted in response to the
20 RFP to determine, in relevant part, whether they were qualified proposals as required by 4
21 G.C.A. §4302(c).³ That statute requires, in relevant part, that beginning with the negotiations for
22 Fiscal Year 2020, the Negotiating Team shall consider only those companies or other legal
23 entities providing or applying to provide health insurance or the provision of health care to the
24 Government of Guam whose in-network coverage includes all public and private hospitals
25 operating in Guam. 4 G.C.A. §4302(c). The Appellant states that it is an intended to submit a

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28 ¹ Purchasing Agency's Motion to Dismiss filed on June 14, 2019 at 2.

² Agency Report filed on June 10, 2019 at 99.

³ Id., at 108.

1 response to the RFP but GRMC rejected its arrangement with another health insurance provider
2 to provide the Appellant's insureds with access to GRMC, and because the Appellant could not
3 negotiate a provider service agreement directly with GRMC.⁴

4 Based on this record, the Hearing Officer finds that the RFP's initial screening
5 provisions, cited above, would likely disqualify a proposal submitted by the Appellant because it
6 does not have in-network coverage that includes all public and private hospitals operating in
7 Guam are required by 4 G.C.A. §4302(c). This makes the Appellant an interested party as
8 defined by 2 G.A.R., Div. 4, Chap. 9, §9101(a)(1)(a) because the Appellant is an existing
9 contractor and a prospective offeror who is aggrieved by the solicitation of the contract.
10 Accordingly, the Hearing Officer finds no merit in the Purchasing Agency's argument that the
11 Appellant is not an actual or prospective bidder, offeror or contractor because it is not qualified
12 to submit an offer in response to the RFP.

13 2. The Appellant's Protest is Untimely. Protests shall be filed with the purchasing
14 agency fourteen (14) days after the protestor knows or should have known of the facts giving rise
15 thereto. 5 G.C.A. §5425(a) and 2 G.A.R. Div. 4, Chap. 9, §9101(c)(1). Applying this standard
16 to this matter, the Office of Public Accountability (OPA) must first determine when the
17 Appellant knew or should have known of the facts giving rise to its protest. Here, the Appellant
18 is appealing the Purchasing Agency's May 21, 2019 denial of the Appellant's May 3, 2019
19 Protest.⁵ In that protest, the Appellant alleged eight arguments which were: (1) Public Law 35-2
20 "An act to add a new §4302(c)(12) to Article 3 of Chapter 4, Title 4, Guam Code Annotated,
21 relative to requiring Consideration of only those companies or entities providing health insurance
22 to the Government of Guam whose in-network coverage includes all public and private hospitals
23 operating in Guam (Hereafter Referred to as "P.L. 35-2") and the RFP are an improper
24 delegation of authority; (2) P.L. 35-2 and the RFP are inconsistent with the Organic Act of
25 Guam; (3) P.L. 35-2 and the RFP eliminate competition and deny equal protection; (3) P.L. 35-2
26 and the RFP do not create a level playing field; (4) P.L. 35-2 and the RFP will not result in the
27

28 ⁴ Notice of Appeal at 3, 12, and 11.

⁵ Notice of Appeal filed on May 23, 2019 at 1.

1 lowest cost option; (4) P.L. 35-2 and the RFP will not maximize the Government of Guam's
2 purchasing power; (5) P.L. 35-2 and the RFP discriminate against other private clinics on Guam;
3 (6) The Guam Regional Medical Center is already in-network for emergencies and sole source
4 situations.⁶ These arguments indicate that the Purchasing Agency's solicitation of services
5 through P.L. 35-2 and the RFP are what caused the Appellant to be aggrieved. The Hearing
6 Officer must determine, based on the record in this matter, when the Appellant knew or should
7 have known of P.L. 35-2 and the RFP.

8 The Appellant knew of P.L. 35-2 on or about April 3, 2019. P.L. 35-2 is the law that
9 enacted 4 G.C.A. §4302(c)(12) whether a proposal submitted a response which complies with
10 this law is made part of the RFP's initial screening process of the proposals submitted in
11 response to the RFP as set forth above. P.L. 35-2 was signed into law on March 7, 2019.⁷ On or
12 about March 14, 2019, the Appellant contacted GRMC and requested a provider services
13 agreement and a charge master rates from GRMC and the Appellant stated that it: "will consider
14 the information provided by GRMC consistent with P.L. 35-2 and other applicable statutes as
15 well as the issuance and our [Appellant's] review of the RFP."⁸ On March 29, 2019, GRMC sent
16 the Appellant the provider services agreement and rates the Appellant requested.⁹ On April 3,
17 2019, the Appellant acknowledged receipt of GRMC's provider service agreement and rates and
18 the Appellant stated that the Appellant: "will be a prospective offeror intending to respond to the
19 FY2020 Government of Guam Request for Proposal (RFP) for the GovGuam Group Health
20 Program," and "Recently enacted Public Law 35-2 requires that all public and private
21 hospitals operating in Guam be in the networks of those applying to provide health
22 insurance to the Government of Guam (Bold Emphasis Added)."¹⁰ Based on this record, the
23 Hearing Officer finds that the Appellant actually knew of P.L. 35-2 and its main requirement that
24 all public and private hospitals operating in Guam be in the networks of those applying to
25 provide health insurance to the Government of Guam on April 3, 2019. Therefore, the Hearing
26

27 ⁶ Id., at 13-16.

28 ⁷ Id., at 24.

⁸ Id., at 29.

⁹ Id., at 35.

¹⁰ Id., at 44.

1 Officer finds that pursuant to 5 G.C.A. §5425(a) and 2 G.A.R. Div. 4, Chap. 9, §9101(c)(1), the
2 Appellant had fourteen (14) days from April 3, 2019 to file its protest concerning P.L. 35-2 and
3 said fourteen (14) day period expired on April 17, 2019.

4 The Appellant knew or should have known of the RFP on or about April 1, 2019. The
5 Appellant actually received a copy of the RFP on April 1, 2019.¹¹ Therefore, the Hearing
6 Officer finds that pursuant to 5 G.C.A. §5425(a) and 2 G.A.R. Div. 4, Chap. 9, §9101(c)(1), the
7 Appellant had fourteen (14) days from April 1, 2019 to file its protest concerning the RFP and
8 said fourteen (14) day period expired on April 15, 2019.

9 As set forth above, the Appellant did not file its protest concerning P.L. 35-2 and the RFP
10 until May 3, 2019. Hence, the Appellant's protest issues concerning P.L. 35-2 and the RFP were
11 filed sixteen (16) days after the April 17, 2019 deadline to file protests concerning P.L. 35-2, and
12 eighteen (18) days after the April 15, 2019 deadline to file protests concerning the RFP.

13 Accordingly, the Hearing Officer finds that the Appellant's Protest was untimely because it was
14 not filed within fourteen (14) days after the Appellant knew or should have known of the facts
15 giving rise to its protest concerning P.L. 35-2 and the RFP as required by 5 G.C.A. §5425(a) and
16 2 G.A.R. Div. 4, Chap. 9, §9101(c)(1).

17 3. This matter is not properly before the OPA. The OPA has the power to review and
18 determine *de novo* any matter properly submitted to it. 5 G.C.A. §5703. The OPA has the
19 jurisdiction to review a purchasing agency's decision denying a protest concerning the method of
20 source selection, solicitation, or award of a contract. 5 G.C.A. §5425(e). However, such protests
21 must be filed with the purchasing agency fourteen (14) days after the protestor knows or should
22 have known of the facts giving rise thereto. 5 G.C.A. §5425(a) and 2 G.A.R. Div. 4, Chap. 9,
23 §9101(c)(1). Protests filed after the fourteen (14) day period shall not be considered. 2 G.A.R.
24 Div. 4, Chap. 9, §9101(c)(1). Here, as set forth above, the Appellant filed its protest after the
25 fourteen (14) day periods to do so had expired. Therefore, this matter is not properly before the
26 OPA because, in accordance with 2 G.A.R. Div. 4, Chap. 9, §9101(c)(1), the issues being raised
27

28 ¹¹ Appellant's Acknowledgement of Receipt of RFP dated April 1, 2019, Exhibit
2, Appellant's Response to OPA Order filed on July 29, 2019.

Decision and Order - 5

TAKECARE INSURANCE CO., INC.

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1 in this appeal shall not be considered because they arise from the issues the Appellant raised in
2 its untimely protest to the Purchasing Agency.

3 4. The Appellant's argument that the period to file its protest began on May 1, 2019 has
4 no merit. The Appellant argues that it did not know that it would not have GRMC in its in-
5 network coverage until May 1, 2019 because that is the date that GRMC rejected its arrangement
6 with another health insurance provider to provide the Appellant's insureds with access to
7 GRMC.¹² It is a maxim of jurisprudence that acquiescence in error takes away the right of
8 objecting to it. 20 G.C.A. §15108. This maxim is applicable to this matter because the record
9 shows that the Appellant did not file a protest within fourteen (14) days after receiving the RFP
10 on April 1, 2019 or within fourteen (14) days after knowing of P.L. 35-2 on April 3, 2019
11 because it assumed that GRMC would either accept its arrangement with another health care
12 provider to give the Appellant's insured's access to GRMC or that it would succeed in
13 negotiating an agreement with GRMC that would include GRMC in the Appellant's in-network
14 coverage.¹³ This erroneous assumption does not constitute an exception to the fourteen (14) day
15 period to file a protest set forth in 5 G.C.A. §5425(a) and 2 G.A.R. Div. 4, Chap. 9, §9101(c)(1).
16 As set forth above, the fourteen (14) day deadline to file a protest concerning the RFP expired on
17 April 15, 2019 and the fourteen (14) day deadline to file a protest concerning P.L. 35-2 expired
18 on April 17, 2019. Accordingly, the Hearing Officer finds that the Appellant's May 1, 2019
19 discovery that its assumptions concerning its inclusion of GRMC in the Appellant's in-network
20 coverage were erroneous did not extend the period to file a protest concerning the RFP beyond
21 April 15, 2019 and did not extend the period to file a protest concerning P.L. 35-2 beyond April
22 17, 2019.

23 Additionally, the Hearing Officer finds that the Appellant's remaining arguments made in
24 opposition to the Purchasing Agency's Motion to Dismiss, specifically the Appellant's
25 arguments that: (1) P.L. 35-2 is unconstitutional as applied; (2) P.L. 35-2 Subordinates the
26 Purchasing Agency's Authority to GRMC; (3) P.L. 35-2 and the RFP are Unconstitutional and
27

28 ¹² Appellant's Opposition to Purchasing Agency's Motion to Dismiss filed on
July 8, 2019 at 2.

¹³ Notice of Appeal at 11-13.

1 Inorganic; (4) P.L. 35-2 and the RFP are an Improper Delegation of Authority; (5) P.L. 35-2 and
2 the RFP deny the Appellant Due Process of Law; and (6) P.L. 35-2 and the RFP deny Equal
3 Protection, are merely extensions or repetitions of the arguments or issues the Appellant raised in
4 its untimely appeal. Pursuant to 2 G.A.R. Div. 4, Chap. 9, §9101(c)(1), the Hearing Officer will
5 not consider these arguments here because they were not raised in a timely protest.

6 5. This matter is not properly before the OPA due to the untimely filing of the
7 Appellant's May 3, 2019 protest which is the subject of this appeal as set forth above.
8 Accordingly, the OPA lacks the jurisdiction to hear it and this matter is hereby DISMISSED.

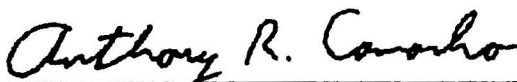
9 6. The August 12, 2019 Hearing re the Appellant's Appeal and all ancillary filing dates
10 for hearing materials are hereby VACATED.

11 7. The Purchasing Agency's Notice of Substantial Interests filed on July 11, 2019 shall
12 not be given any further consideration because the DISMISSAL of this matter makes said
13 determination MOOT.

14 This is a Final Administrative Decision. The Parties are hereby informed of their right to
15 appeal from a Decision by the OPA to the Superior Court of Guam, in accordance with Part D of
16 Article 9, of 5 G.C.A. within fourteen (14) days after receipt of a Final Administrative Decision.
17 5 G.C.A. §5481(a).

18 A copy of this Decision shall be provided to the parties and their respective attorneys, in
19 accordance with 5 G.C.A. §5702, and shall be made available for review on the OPA Website
20 www.guamopa.com.

21
22 DATED this 30th day of July, 2019.

23
24
25 

26 ANTHONY R. CAMACHO, ESQ.
27 HEARING OFFICER
28

Exhibit “6”

1 Law Office of Louie J. Yanza
2 A Professional Corporation
3 One Agana Bay
4 446 East Marine Corps Drive, Suite 202
5 Hagåtña, Guam 96910
6 Telephone: (671) 477-7059
7 Facsimile: (671) 472-5487

8 Attorney for Plaintiff
9 TakeCare Insurance Company, Inc.

110 AUG 12 PM 12:33

By: _____

TAKECARE INSURANCE CO., INC.

Received By/Department

Date/Time

10 IN THE SUPERIOR COURT OF GUAM

11 TAKECARE INSURANCE COMPANY,
12 INC., a Guam corporation,

CIVIL CASE NO. CV 0972-19

13 Plaintiff,

14 vs.

15 VERIFIED COMPLAINT FOR
16 DECLARATORY JUDGMENT

17 TERRITORY OF GUAM, THE
18 DEPARTMENT OF ADMINISTRATION,
19 Government of Guam, and THE
20 OFFICE OF PUBLIC
21 ACCOUNTABILITY,

22 Defendants.

23 INTRODUCTION

24 1. This is a civil action where the Plaintiff TakeCare Insurance
25 Company, Inc. ("TAKECARE") is seeking relief from the Office of Public
Accountability's ("OPA") decision denying TakeCare's appeal to the OPA from a
protest filed by TAKECARE with the Department of Administration of the
Government of Guam ("DOA").

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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: Aug 12, 2019

TIME: 12:47 PM BY: Chm

FILE NO OPA-PA: 19-005



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PARTIES

3. TAKECARE is a Guam corporation organized under the laws of Guam and is authorized and qualified to do business in Guam. TAKECARE does business on Guam providing health insurance and health-care related services and is licensed to do business under the laws of Guam.

3. TAKECARE is a Guam corporation organized under the laws of Guam and is authorized and qualified to do business in Guam. TAKECARE does business on Guam providing health insurance and health-care related services and is licensed to do business under the laws of Guam.

5. The Defendant Department of Administration is the procuring agency for the Government of Guam which issued the Request for Proposal DOA/HRD-FRP-No. GHI-20-001 ("RFP").

STATEMENT OF FACTS - GENERAL

1 8. On or about April 1, 2019, the Defendants issued the DOA RFP
2 DOA/HRD-FRP-NO. GH1-20-001 ("DOA RFP") and posted the same on the
3 DOA website, all responsive bids were due on May 3, 2019.

4 9. The DOA RFP sought proposals from prospective offerors for
5 group medical and dental Insurance for its employees, dependents, retirees,
6 and foster children and required to have Guam's only private hospital, Guam
7 Regional Medical City ("GRMC"), in the offeror's in-network.

8 10. TAKECARE is a prospective offeror to the RFP.

9 11. As a consequence of PL 35-3, the DOA RFP required that GRMC
10 be in TakeCare's network of providers.¹ In order to comply with the DOA RFP,
11 TAKECARE attempted to enter into a contract with GRMC.
12

13 12. GRMC, however, refused to enter into a contract with TAKECARE
14 relating only to GovGuam members. Instead, GRMC demanded that
15 TAKECARE also enter into a contract with GRMC in-network for all of
16 TAKECARE's lines of business, including commercial and federal members. In
17 addition, GRMC demanded that TAKECARE pay millions of dollars to GRMC
18 that TAKECARE does not legally owe. Lastly, GRMC insisted that TAKECARE
19 pay rates that are higher than the ones it charges other health insurance
20 carriers.
21

22
23 / /

24
25

¹ TakeCare has challenged the constitutionality of PL 35-2 in the District Court of Guam, but those constitutional issues are not at issue in this action. The only matter at issue in this action is whether TakeCare's protest was timely under Guam law.

1 13. TakeCare rejected GRMC's demand that it be included in the
2 network for all of TakeCare's federal and commercial members because PL 35-
3 2 only involved Government of Guam members and their dependents.

4 14. TakeCare rejected GRMC's demand that TakeCare not charge an
5 additional fee for including GRMC in its network because PL 35-2 had no
6 such requirement and it was necessary to charge more because GRMC's costs
7 are substantially higher than those at Guam Memorial Hospital.

8 15. TakeCare rejected GRMC's demand that TakeCare pay it millions
9 of dollars for alleged past services because: (a) TakeCare had no Direct Payer
10 Agreement with GRMC at the time of such alleged services, and, as a
11 consequence was not legally liable; (b) Many of the alleged services were not
12 covered by the terms of any of TakeCare's plans; and, (c) Even if TakeCare
13 had a Direct Payer Agreement with GRMC, and even if the alleged services
14 had been covered, GRMC claims were time-barred under the provisions of
15 Guam's Prompt Payment Act and/or the statute of limitations.

16 16. Even after GRMC's unreasonably refused to enter into a direct
17 contract with TakeCare pertaining only to GovGuam employees and
18 dependents, TakeCare continued in good faith to try and comply with the
19 requirements of PL 35-2 and the RFPs. In recognition that PL 35-2 only
20 required that GRMC be in the "network" of prospective offerors, instead of
21 requiring a direct contract with GRMC, the RFP allowed offerors to place
22 GRMC in their networks if they had a rental or lease agreement with a third
23 party who did have a direct contract with GRMC.
24
25

1 17. NetCare had a direct contract with GRMC, which allowed NetCare
2 to enter into sub-leases with other health insurers authorizing them to utilize
3 the health care services of GRMC through NetCare. TakeCare had entered
4 into a sub-lease with NetCare and intended to rely upon it in order to place
5 GRMC in its "network" and qualify as a prospective offeror. However, on May
6 1, 2019, only two days before responses to the RFPs were due, GRMC
7 informed NetCare that it would "not allow any other local health plan to
8 access NetCare's in-network rates with GRMC" and that all "Guam-based
9 health plans need to directly contract with GRMC for in-network rates."
10 Hence, GRMC not only refused to enter into a provider agreement with
11 TakeCare without onerous and unacceptable conditions, but GRMC also
12 barred NetCare from allowing TakeCare to utilize the contract between
13 NetCare and GRMC.
14

15 18. On or about May 3, 2019, TAKECARE timely submitted a
16 procurement protest to Defendant DOA. The protest listed numerous grounds
17 for protesting the RFP.
18

19 19. On May 21, 2019, DOA denied TakeCare's protest on the grounds
20 that TakeCare was not a qualified offeror, TakeCare's protest was untimely,
21 and TakeCare's protest was beyond the scope of the procurement.
22

23 20. On May 23, 2019, TakeCare timely appealed DOA's protest denial
24 to the OPA.
25

26 21. The appeal to the OPA listed numerous grounds for appealing
27 DOA's denial of the protest.

22. On July 30, 2019, the OPA granted DOA's motion to dismiss on the grounds that TakeCare's protest to DOA was untimely and as such, the matter is not properly before the OPA. The OPA's Decision was a final administrative decision, as such, TakeCare has exhausted its administrative remedies.

COUNT I

Declaratory Judgment that TakeCare's Protest to DOA was Timely

23. TAKECARE incorporates herein by reference each and every paragraph above as though fully set forth herein.

24. TAKECARE requests a judicial determination that TAKECARE's protest to the DOA was timely under 5 G.C.A. § 5425(a) and 2 G.A.R. Div. 4, Chap. 9, § 9101(c)(1).

25. DOA's RFP did not require offerors to have a direct contract with GRMC or any other private hospital on the date the RFP was published on April 1, 2019. DOA's RFP merely required that GRMC be in the network of offerors when an offer was submitted on May 3, 2019.

26. TakeCare was not aware on April 1, 2019 that it would be unable to negotiate a direct contract with GRMC. TakeCare was also not aware on April 1, 2019 that GRMC would not be in its network by May 3, 2019 when responses to the RFP were due.

27. TAKECARE first learned on May 1, 2019 that GRMC would not be in its network because GRMC waited until that date to insist that TAKECARE

1 have a "direct contract" with GRMC instead of utilizing GRMC's services via a
2 "rental" or "lease" agreement with NetCare. As a consequence of the wrongful
3 actions of GRMC on May 1, 2019, TakeCare was effectively disqualified as a
4 bidder for the DOA RFP.

5 28. Promptly upon learning that GRMC was wrongfully insisting on a
6 direct contract with TAKECARE and would not honor the "rental" or "lease"
7 agreement with NetCare, TakeCare timely filed a protest with Defendant DOA
8 on May 3, 2019.

9
10 29. The OPA, however, refused to address the merits of TakeCare's
11 timely protest, and instead on July 30, 2019 dismissed TakeCare's protest as
12 being untimely. The OPA's order of July 30, 2019 is legally and factually
13 erroneous because TAKECARE's protest to DOA was timely under the
14 provisions of 5 G.C.A. 5425(a).

15 30. TAKECARE hereby request relief as set forth in its Prayer below.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, TakeCare Insurance Company, Inc. demand relief
18 against Defendants as follows:
19

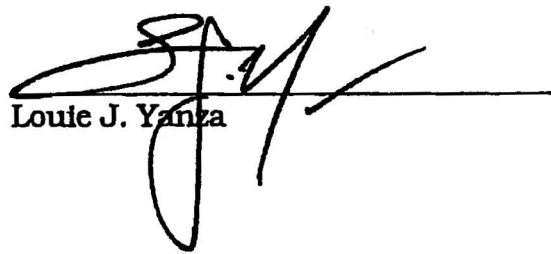
20 A. Declaring that TAKECARE's protest to the Purchasing Agency
21 DOA was timely under 5 G.C.A. § 5425(a) and 2 G.A.R. Div. 4.
22 Chap. 9, § 9109(c)(1) and that the OPA's decision be reversed,
23 declared null and void, and the matter remanded back to the OPA
24 for consideration of the merits of TakeCare's protest.
25

1 B. Entry of an award of such other and further relief as the Court
2 deems just and proper in the circumstances.

3 Dated this 12th day of August 2019.

4 Law Office of Louie J. Yanza, P.C.
5 Attorney for Plaintiff
6 TakeCare Insurance Company, Inc.

7 By:

8 
9 Louie J. Yanza
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VERIFICATION

I, Joseph Husslein, hereby declare that I am the President and Chief Executive Officer of TakeCare Insurance Company, Inc. in the above-entitled action; that I have read the foregoing Verified Complaint for Declaratory Judgment and know the contents thereof; and that the same are true and correct upon my knowledge, information and belief.

I declare under the penalty of perjury (6 G.C.A. §4308), under the laws of Guam, that foregoing is true and correct.

Executed at Hagatña, Guam, this 12th day of August 2019.



Joseph Husslein
President and CEO
TakeCare Insurance Company, Inc.

Exhibit “7”

FILED
SUPERIOR COURT
OF GUAM

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OFFICE OF PUBLIC ACCOUNTABILITY
CLERK OF COURT

BY: [Signature]

DATE: 8/24/19 By: _____

TIME: 4:35 ☐ AM ☒ PM

1 Law Office of Louie J. Yanza
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5 Hagåtña, Guam 96910
6 Telephone: (671) 477-7059
7 Facsimile: (671) 472-5487

8 Attorney for Plaintiff
9 TakeCare Insurance Company, Inc.

10 SUPERIOR COURT OF GUAM

11 TAKECARE INSURANCE COMPANY, CIVIL CASE NO. CV0972-19
12 INC., a Guam corporation,

13 Plaintiff,

14 vs.

15 TERRITORY OF GUAM, THE
16 DEPARTMENT OF ADMINISTRATION,
17 Government of Guam, and THE
18 OFFICE OF PUBLIC ACCOUNTABILITY,

19 Defendants. /

20 MOTION FOR TEMPORARY
21 RESTRAINING ORDER; ORDER
22 TO SHOW CAUSE WHY
23 PRELIMINARY INJUNCTION
24 SHOULD NOT ISSUE AND
25 ORDER TO ENFORCE THE
AUTOMATIC STAY;
MEMORANDUM OF POINTS
AND AUTHORITIES

MOTION

26 Plaintiff TakeCare Insurance Company, Inc. hereby moves the Court for
27 a Temporary Restraining and Order to Show Cause why a Preliminary
28 Injunction Should Not Issue, submitted contemporaneously herewith.
29 TakeCare also requests herein that the Court enforce the automatic stay
30 provisions of Guam's procurement law.

31 This Motion is made pursuant to Rule 65 of the Guam Rules of Civil
32 Procedure, the accompanying Memorandum of Points and Authorities filed
33 contemporaneously herewith, the record of the proceedings, the papers on file

TAKECARE INSURANCE CO., INC.

[Signature]
Received By/Department
8/24/2019 5:15pm
Date/Time

1 herein, the Declaration filed concurrently herewith, together with any and all
2 arguments to be adduced at the hearing of the within entitled motion.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 A temporary restraining order may be granted without written or oral
5 notice to the adverse party or that party's attorney, pursuant to Rule 65(b) of
6 the Guam Rules of Civil Procedure, when:
7

8 (1) it clearly appears from specific facts shown by
9 affidavit or by the verified complaint that immediate and
10 irreparable injury, loss, or damage will result to the
11 applicant before the adverse party or that party's
12 attorney can be heard in opposition, and (2) the
applicant's attorney certifies to the court in writing the
efforts, if any, which have been made to give the notice
and the reasons supporting the claim that notice should
not be required.

13 GRCP 65(b). "Generally, the standards for granting a preliminary injunction
14 and issuing a temporary restraining order are the same, the difference being
15 solely one of duration of the order." Johnson & Johnson v. Minnesota Mining
16 and Manufacturing Co., 715 F.Supp. 110, 111-12 (D. Del. 1989) (citing
17 Tootsie Roll Industries, Inc. v. Sathers, Inc., 666 F.Supp. 655, 658 (D. Del.
18 1987)). "In order to grant a preliminary injunction, it is necessary that the
19 movant show: (1) irreparable injury and (2) likelihood of success on the
20 merits." Carlson v. Guam Telephone Authority, 2002 Guam 15 at ¶ 8 (2002).

22 **FACTUAL BACKGROUND**

23 The facts of this case are evidenced in documents and cannot be in
24 dispute. On April 1, 2019 Defendants issued DOA/HRD-FRP-No. GHI-20-001
25 ("DOA RFP") seeking proposals for Group Health and Dental Insurance for

1 Employees of the Government of Guam. Husslein Dec. ¶¶4-5, Ex. A to
2 Husslein Dec. TakeCare is a prospective offeror for the DOA RFP and
3 therefore had standing to submit a Protest. Yanza Dec. ¶9, Ex. 7 at p. 3 ll. 7-
4 12.

5 When DOA's RFP was issued on April 1, DOA it required all bidders
6 submitting a proposal on May 3, 2019 to include all the public and private
7 hospitals in its in-network. Husslein Dec. ¶¶4-6 Ex. A. The only private
8 hospital in Guam is the Guam Regional Medical Center ("GRMC"). Id. This
9 requirement in the RFP came as a result of the passage of Public Law 35-02,
10 which added § 4302 (c) (12) to Title 4 of the Guam Code Annotated. Id.
11

12 However, neither DOA's RFP nor PL35-2 required that TakeCare have a
13 "direct contract" with GRMC on April 1, 2019 when the RFP was issued.
14 Husslein Dec. ¶7. In fact, the DOA RFP and PL 35-2 did not require that
15 TakeCare or any other bidder ever have a "direct contract" with GRMC. Id.
16 Thus, TakeCare had no reason to be alarmed or concerned on April 1, 2019
17 that it did not have a "direct contract" with GRMC. Husslein Dec. ¶8.
18

19 Instead of requiring that TakeCare have a "direct contract" with GRMC,
20 DOA's RFP and PL 35-2 merely required that GRMC be in TakeCare's
21 "network" when an offer was to be submitted on May 3, 2019. Husslein Dec.
22 ¶¶4-6 Ex. A. The RFP specifically stated that TakeCare was allowed to
23 include GRMC in its "network" via an indirect relationship such as a "rental"
24 or "lease" agreement through a third party. Husslein Dec. ¶¶ 11 and 18, Ex.
25 B, Ex. 5 (Tab of Exhibit D to RFP).

1 Up until May 1, 2019, TakeCare had every reason to believe that GRMC
2 was in its "network" because of a previously arranged Network Access
3 Services Agreement with NetCare, which arrangement allowed NetCare to
4 "lease" to TakeCare in-network access to GRMC. Husslein Dec. ¶15. However,
5 on May 1, 2019, for the first time, GRMC took the position that it would "not
6 allow any other local health plan to access NetCare's in-network rates with
7 GRMC" and that all "Guam-based health plans need to directly contract with
8 GRMC for in-network rates." Husslein Dec. ¶¶11-15.

9 Hence, it is factually undisputed that TakeCare first learned on May 1,
10 2019 that it would not have GRMC in its network by May 3, 2019 when bids
11 were due to be submitted. Husslein Dec. ¶¶ 14 – 16. TakeCare also learned
12 for the first time on May 1, 2019 that it was being disqualified as a bidder. Id.
13 Thereafter, only two days later, TakeCare filed a timely Protest with GRMC on
14 May 3, 2019 claiming that GovGuam's proxy GRMC had wrongfully used the
15 power bestowed upon it by Pl35-2 to disqualify TakeCare as a bidder.
16 Husslein Dec. ¶17.

18 On May 21, 2019, the Defendant Edward Birn denied Plaintiff's protest.
19 Husslein Dec. ¶¶19-20. After the Agency's decision, TakeCare timely
20 appealed the Agency's decision to the Office of Public Accountability ("OPA")
21 on May 23, 2019. Yanza Dec. ¶3 Ex. 1. DOA filed a motion to dismiss which
22 was heard on July 18, 2019. Yanza Dec. ¶¶4, 10 Ex. 2.

23 On July 30, 2019, the OPA issued its Decision and Order granting the
24 Purchasing Agency's Motion to Dismiss, on the grounds that TakeCare filed
25 its protest outside the fourteen (14) day period when it knows or should have

1 known of the facts giving rise to the protest. Yanza Dec. ¶9 Ex. 7 at p. 5 ll. 4-
2 16. According to the OPA, TakeCare's Protest should have been filed within 14
3 days after April 1, 2019 when the RFP was issued. Id.

4 TakeCare then timely filed the instant case on August 12, 2019. On
5 August 16, 2019, Defendants' counsel advised TakeCare that DOA was
6 proceeding with the RFP based on the Agency's Notice of Substantial Interest,
7 which was filed on July 11, 2019 before the OPA. Yanza Dec. ¶12.
8

9 **LEGAL DISCUSSION**

10 **I. TIMELINESS IS THE SOLE ISSUE BEFORE THE COURT**

11 The OPA never addressed the merits of TakeCare's Protest submitted to
12 DOA on May 3, 2019. Instead, the OPA merely concluded that TakeCare's
13 Protest to DOA filed on May 3, 2019 was untimely, because it should have
14 been filed within 14 days after April 1, 2019, which is the day the RFP was
15 issued. As a consequence, the actual merits of TakeCare's Protest to DOA are
16 not before this Court. The only issue before this Court is whether TakeCare's
17 Protest filed with DOA on May 3, 2019 was timely. If TakeCare's Protest to
18 DOA was timely, then the OPA's Decision and Order dismissing TakeCare's
19 appeal to the OPA should be reversed and the matter remanded to the OPA for
20 further proceedings.
21

22 Also not at issue in this case is whether TakeCare is an interested party
23 with standing as a prospective offeror. The OPA expressly concluded that
24 TakeCare was an "interested party" because it was a "prospective offeror who
25 is aggrieved by the solicitation of the contract." The Defendants did not

1 appeal from the OPA's ruling on this point, and, as a consequence, the finding
2 on this issue is final. "A decision by the Public Auditor is final unless a
3 personal adversely affected by the decision commences an action in the
4 Superior Court." 5 GCA 5425(f).

5 Likewise, while TakeCare's appeal to the OPA was pending, the
6 Defendants requested on July 11, 2019 that the OPA approve a Declaration of
7 Substantial Interest and allow the procurement process to proceed. Yanza
8 Dec. ¶6, Ex.4. TakeCare then filed a timely appeal to the OPA objecting to the
9 Defendants' Declaration of Substantial Interest. Yanza Dec. ¶7 Ex. 5.

11 The OPA did not confirm the Defendants' Declaration of Substantial
12 Interest and instead refused to address it. Yanza Dec. ¶7 Ex. 7 at p. 7 ll. 11-
13 13. Thereafter, the Defendants failed to file an action, much less a timely
14 action, challenging the OPA's refusal to address the Declaration of Substantial
15 Interest. As a consequence of the Defendants failure to file a timely action
16 relating to the OPAs refusal to address the Declaration of Substantial Interest,
17 the OPAs ruling is "final" and this Court does not have jurisdiction to rule on
18 whether the Declaration of Substantial Interest should have been approved. 5
19 GCA 5425(f).

21 II. TAKECARE'S PROTEST WAS TIMELY

22 Guam's procurement statute requires the aggrieved bidder to file its
23 written protest within fourteen (14) days after the protestor knows or should
24 have known of the facts giving rise thereto. 5 GCA §5425(a) and 2 GAR Div.4,
25 Chapt. 9, §9101(c)(1). The undisputed facts plainly evidence that TakeCare

1 first learned on May 1, 2019 that it was being wrongfully disqualified as a
2 bidder, and, as a consequence, its Protest filed on May 3, 2019 was certainly
3 timely.

4 The OPA's Decision and Order ruling that TakeCare should have filed its
5 Protest within 14 days after the RFP was issued on April 1, 2019 is erroneous
6 because: (a) Neither the RFP nor PL35-2 required that GRMC be in TakeCare's
7 network on April 1, 2019; (b) Neither the RFP nor PL35-2 required that GRMC
8 ever have a "direct contract" with GRMC; (c) The RFP expressly allowed
9 TakeCare to indirectly include GRMC in its network via a lease or rental
10 through a third party; (d) On April 1, 2019 TakeCare had an agreement with
11 NetCare that allowed TakeCare to access GRMC's network via a lease
12 arrangement; and, (e) TakeCare first learned on May 1, 2019 that GRMC
13 would not allow TakeCare to utilize the agreement with NetCare to put GRMC
14 in its network.
15

16 This case is similar to the situation addressed by the Guam Supreme
17 Court in Guam Imaging Consultants v. Guam Memorial Hospital Authority,
18 2004 Guam 15. In that case, the trial court erroneously concluded, like the
19 OPA in this situation, that the "one event" of issuing the RFP "triggers the
20 right to protest." Id. ¶27. Guam's Supreme Court reversed the trial court's
21 decision and held that there are "multiple events in any given solicitation that
22 could legitimately trigger timely protests." Id. ¶28. The "event" in this case
23 that disqualified TakeCare as a bidder occurred on May 1, 2019, not when the
24
25

1 RFP was issued on April 1, 2019. As a consequence, TakeCare's protest filed
2 on May 3, 2019 was definitely timely.

3 Moreover, TakeCare's injury was being disqualified as a bidder, which
4 did not happen until May 1, 2019, when TakeCare was disqualified as a
5 bidder. Courts have interpreted procurement statutes similar to Guam's and
6 held that the statute of limitations does not start to run until either the time
7 of injury or the date the injury was reasonably discovered. Gonzales v. U.S.,
8 384 F.3d 281, 288 (1st Cir. 2002); *See also*, Morales-Melecio v. United States,
9 190 F.Supp.3d 249 (D. Puerto Rico 2016). TakeCare filed a Protest with DOA
10 only two days after it was "injured" on May 1, 2019 by being disqualified as a
11 bidder.
12

13 **III. DOA IS IN VIOLATION OF THE AUTOMATIC STAY**

14 Under Guam law, a stay remains in effect until final resolution of a
15 Protest:

16 In the event of a timely protest under Subsection (a) of
17 this Section or under Subsection (a) of § 5480 of this
18 Chapter, the Territory shall not proceed further with the
19 solicitation or with the award of the contract prior to final
20 resolution of such protest, and any such further action is
21 void

22 5 GCA § 5425(g).

23 Moreover, once a timely action is filed in the Superior Court, the
24 automatic stay remains in effect during the pendency of the judicial
25 proceeding. Teleguam Holdings, LLC v. Terr. of Guam, 2015 Guam 13, ¶31.
The stay in the judicial proceeding is only lifted once the "Court has confirmed
such determination." 5 GCA 5425(g)(3). The court has never lifted the stay

1 and the Defendants are, therefore, clearly in violation of the automatic stay.
2 The trial court has the jurisdiction to enforce the automatic stay and the
3 failure to do so is an immediately appealable order to the Guam Supreme
4 Court. Guam Imaging Consultants v. Guam Memorial Hospital Authority,
5 2004 Guam 15 at ¶14.

6 **IV. TAKECARE WILL SUFFER IRREPARABLE HARM**

7
8 If a temporary restraining order is not issued by the Court, TakeCare
9 will forever be prevented from participating in the procurement for DOA/HRD-
10 FRP-No. GHI-20-001. As a result, TakeCare will suffer irreparable harm that
11 cannot be adequately remedied. Husslein Dec. ¶¶22-26. This irreparable
12 injury includes, but is not limited to, TakeCare losing market share, as well as
13 good will with GovGuam employees and their dependents. Id. TakeCare will
14 also be irreparably harmed by DOA's deprivation of the opportunity to
15 compete fairly for the RFP, the opportunity to gain experience by performing
16 the contract, and by the anticipated lost profits. Id.

17
18 More importantly, unless a temporary restraining order is issued,
19 GovGuam employees and their dependents, retirees, and foster children will
20 be limited in their options when selecting a health insurer. This lack of
21 competition will also harm GovGuam employees and their dependents
22 because it will result in an increase of rates that they will be required to pay
23 for health insurance. Husslein Dec. ¶¶23-24.

24 Plaintiff seeks only to restrain Defendants from considering any
25 proposals or to award the contract for DOA/HRD-FRP-No. GHI-20-001 to any

1 offeror until TakeCare's Protest is ultimately resolved. GovGuam employees
2 and dependents will not be harmed because there is roll-over coverage
3 pending the resolution of TakeCare's protest given the critical issues raised in
4 this matter. Husslein Dec. ¶26.

5
6 **V. CONCLUSION**

7 Based upon the foregoing, TakeCare respectfully requests that it's
8 Motion for Temporary Restraining Order and Order to Show Cause Why
9 Preliminary Injunction Should Not Issue be GRANTED. TakeCare also
10 requests that the Court enforce the automatic stay of the procurement as
11 issue as required by law.

12 Dated this 26th day of August 2019.

13
14 Law Office of Louie J. Yanza, P.C.
15 Attorney for Plaintiff
16 TakeCare Insurance Company, Inc.

17 By: _____

18 Louie J. Yanza
19
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21
22
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Exhibit “8”

SATURDAY, SEPTEMBER 21, 2019 | 2PM

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Governor Leon Guerrero approves health insurance plan

Staff Reports, Pacific Daily News USA TODAY Network Published 5:26 p.m. ChT Sept. 9, 2019

Aetna International will be the government of Guam's exclusive insurance provider for fiscal 2020, according to an announcement made by the governor's office.

The plan will benefit participating employees, retirees, and the island's foster children.

"I thank the Health Negotiating Team for its work in selecting, amongst all the bidders, the most economical and beneficial healthcare insurance proposal plan," Gov. Lou Leon Guerrero said. "For several reasons, the team was limited in time to conduct its negotiations. Even so, it was able to perform all of its duties and provide me with a quality insurance plan to consider."

As mandated by Public Law 34-83, the negotiating team is limited to forwarding only the lowest cost option healthcare insurance proposal plan to the governor. Of all the proposals, Aetna International represented the smallest increase when compared to the fiscal year 2019 plans.

"Now that the work of the health negotiation team is done, my administration will spend the next few days working to ensure that any increase to the finalized rate structures will minimally affect, if at all, our employees, retirees, and foster children," Leon Guerrero stated.

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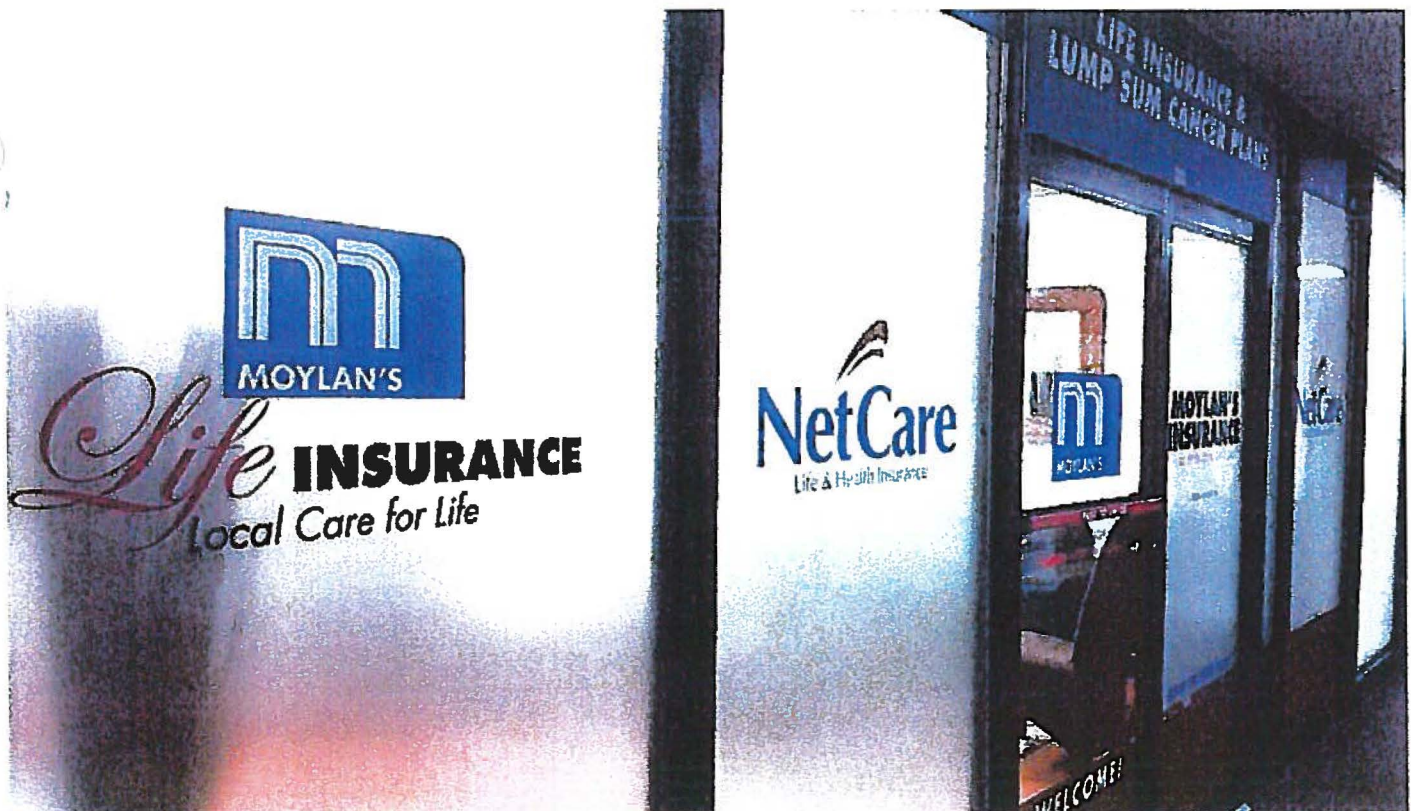
https://www.postguam.com/news/local/aetna-international-chosen-to-provide-govguam-health-insurance/article_954700d8-d2d2-11e9-846c-dfo0e6151519.html

WEB ONLY

Aetna International chosen to provide GovGuam health insurance

DAILY POST STAFF

SEP 9, 2019



NETCARE: The NetCare Life & Health Insurance offices at the Julale Shopping Center in Hagåtña are shown in this photograph. Gov. Lou Leon Guerrero announced that Aetna International will be the exclusive health insurance provider for government of Guam employees and retirees, and their families. Aetna will use Moylan's NetCare network of providers locally. Post file photo

Gov. Lou Leon Guerrero has approved international health insurance company, Aetna International, as the government of Guam's exclusive insurance health insurance provider beginning October.

Thousands of government employees and retirees, and family members are covered by the government's health insurance, which cost the government \$76.3 million in fiscal year 2017, according to an audit released last year.

Adelup's press release didn't state the estimated cost of this year's health insurance plan.

According to Adelup spokeswoman, Janela Carrera, Aetna, which is an international company, will utilize NetCare's health insurance network locally.

"I thank the Health Negotiating Team for its work in selecting, amongst all the bidders, the most economical and beneficial healthcare insurance proposal plan," the governor stated in a press release. "For several reasons, the Team was limited in time to conduct its negotiations. Even so, it was able to perform all of its duties and provide me with a quality insurance plan to consider."

Calvo's SelectCare, the health insurance company that currently provides insurance coverage for GovGuam employees and retirees, was informed this afternoon that Calvo's SelectCare was not awarded a contract for the fiscal 2020 GovGuam Health Insurance Program.

"We are reviewing all options available to us on behalf of our GovGuam members," stated plan administrator Frank Campillo.

This would be the first year in nearly 18 years that Calvo's SelectCare hasn't been a health insurance provider for the government of Guam.

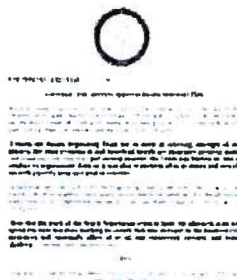
Campillo notes that it has been an honor and privilege to have insured GovGuam continuously since October 2001.

"However, a recent law has since limited the health insurance options available to GovGuam employees and retirees," Campillo stated. "During the past 18 years, while other companies opted out of the GovGuam market, we worked continuously to provide access to healthcare that meets the needs of our members. We developed many new benefits and implemented programs to improve and save the lives of our GovGuam members."

As mandated by Public Law 34-83, the Negotiating Team is limited to forwarding only the lowest cost option healthcare insurance proposal plan to the governor, the Adelup press release states. Aetna International represented the smallest increase when compared to the fiscal year 2019 plans.

"Now that the work of the Health Negotiation Team is done, my administration will spend the next few days working to ensure that any increase to the finalized rate structures will minimally affect, if at all, our employees, retirees, and foster children," the governor stated.

(Daily Post Staff)



ADELUP PRESS RELEASE ON AETNA INTERNATIONAL
SEP 9, 2019