

Honorable Senator Therese Terlaje
Speaker, 36th Guam Legislature
Guam Congress Building
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July 7, 2021

Hafa Adai Speaker Terlaje

Thank you for the opportunity to submit testimony on Bill No. 112-36 (COR) ("Bill 112-36"), "An Act to Add a New Chapter 10 to Division 1, Title 10, Guam Code Annotated: to Add a New § 42A101 (i)(20) to Chapter 42A of Division 3, Title 7, Guam Code Annotated; to Amend § 42A101(j) of Chapter 42A, Division 3, Title 7, Guam Code Annotated; and to Repel Chapter 10 of Division 1, Title 10, Guam Code Annotated

While we, the Guam health insurance carriers understands the need to revise and update the Guam's Medical Malpractice Mandatory Arbitration Act ("MMAA"), Bill No. 112-36 with its current proposed provisions is not the answer to this issue and will not accomplish its intended purpose. There are four (4) provisions included in Bill No. 112-36 and we believe they have to be addressed if this bill was to pass or become law. Below is a review of the provisions and our concerns:

Section 10102 (e) of Bill 112-36 expands the definition of health care provider, which will significantly affect health insurance coverage and premiums in Guam. The covered entities under Bill 112-36 include everybody who works in a private healthcare facility including office and non-clinical staff besides the medical providers. More healthcare workers, both professional and non-professional, will need to be covered by medical malpractice insurance to protect against the risk of lawsuits. Malpractice insurance cost will significantly increase as a greater number of individuals will need protection and the cost will be passed to the consumers through higher medical provider fees and ultimately higher health insurance premiums.

Likewise, Section 10110 of Bill 112-36 does not set any effective date to the bill. Therefore, it is possible and highly likely, that on-going health care services, regardless of the type of service, will be potentially brought before the Magistrate Judge for review. Healthcare providers including all office or non-clinical administrative staff will be subjected to the same review for every patient they are currently treating. If the case is not settled to the satisfaction of the parties, a lawsuit could be filed in Superior Court. Many frivolous lawsuits could potentially be filed based on on-going procedures or services that occurred and were rendered to existing patients of Guam providers.

Bill 112-36 lacks caps and limitations on economic and non-economic damages. Liability caps protect the Government of Guam and the same protections should be extended to the private medical community. In the absence of limits or caps,

the cost of malpractice insurance will be expensive and less available in Guam. We are suggesting to include similar caps on damages as currently included in the Government of Guam Claims Act to ensure parity and reasonability between private and public sector healthcare services.

Lastly, the screening process under Section 10105 of Bill 112-36 is impractical. The Magistrate Judge is tasked with reviewing medical documents and testimonies and administers a decision whether the provider or any healthcare personnel provided the proper standard of care. In most cases, the Magistrate Judge does not have the expertise, background, training and/or education in medical malpractice. In cases, where the Magistrate Judge decides in favor of the providers and/or health care personnel, the other party can still file a lawsuit in the Superior Court since parties are not bound under Bill 112-36 to the decision of the Magistrate Judge.

While the intentions of Bill 112-36 are well meaning, the proposed legislation is not a good healthcare policy. There are many other policy options available to the Guam Legislature to achieve a sensible solution to this issue, which we are prepared to discuss with your office to find a solution that realizes the intent of Bill 112-36, without causing generational damage to the healthcare industry in Guam.

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