

# FERRAIUOLI LLC

Employee Benefits / Health Law Practice Areas

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## NOTICE TO CLIENTS AND FRIENDS

### **Recent Developments in the Applicability of the Patient Protection and Affordable Care Act in Puerto Rico**

On July 16, 2014, the Administrator of the Centers for Medicare and Medicaid Services (“CMS”), Marilyn Tavenner, issued a letter addressed to the Puerto Rico Commissioner of Insurance, Angela Weyne, discussing the applicability of certain provisions of the Patient Protection and Affordable Care Act of 2010 (“PPACA”) to health insurance issuers in the U.S. territories, including the Commonwealth of Puerto Rico, (hereinafter the “Territories”). This letter results from efforts by territorial officers to clarify the implementation of the PPACA provisions to the Territories.

In the letter, **CMS determined that the definition of “state” in title I of PPACA, used for the Public Health Service Act (“PHSA”) new requirements and funding opportunities, does not apply to the Territories.** The Administrator specifically states that the purpose of this administrative directive is to ensure the stability of the territories’ health insurance markets.

According to CMS, the following PPACA requirements will not apply to individual or group health insurance issuers in Puerto Rico with respect to health insurance governed by the PHSA: (i) guaranteed availability, (ii) community rating, (iii) single risk pool, (iv) rate review, (v) medical loss ratio and (vi) essential health benefits. Nonetheless, it should be noted that CMS’ interpretation does not alter the PHSA requirements that were enacted in PPACA and which were incorporated into the Employee Retirement Income Security Act (“ERISA”) and the U.S. Internal Revenue Code, where applicable, and thus continues to apply to group health plans. Likewise, the PHSA requirements that were enacted in PPACA and apply to non-federal governmental plans are not affected.

CMS expressly stated and clarified that this interpretation applies prospectively, thus, the Territories will not have to reimburse the federal government for any grants that may have been spent as of July 16, 2014 in relation to the implementation of PPACA. Furthermore, the CMS stated that it will issue regulations affirming its interpretation. In the meantime, CMS will not subject health insurance issuers in the Territories to the PPACA requirements at issue.

It should be noted that on July 2013, the Puerto Rico legislature adopted Act 55 of 2013 (“Act 55”), which amended the Puerto Rico Health Insurance Code, to update the regulatory framework of the health insurance and health plan industry in the Island, and incorporated certain PPACA provisions in Puerto Rico. However, Act 55, clearly states that any local regulatory or legal provision which is in conflict with any law, regulations, or administrative directive issued by a Federal agency, which is applicable to Puerto Rico in the fields of healthcare or health plans, shall be deemed to be amended to conform it to such Federal law or regulation. Hence, new developments can be expected as to the effect of the CMS administrative directive of July 16, 2014 with regards to the provisions of Act 55 in light of its “conciliatory language” regarding subjection to federal directives.

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