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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

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A N A C T

RELATING TO INSURANCE -- SMALL EMPLOYER HEALTH INSURANCE
AVAILABILITY ACT

Introduced By: Representatives Nardone, Place, Shallcross Smith, Quattrocchi, Rea,
Roberts, and Cortvriend

Date Introduced: February 15, 2024

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 27-50-3 of the General Laws in Chapter 27-50 entitled "Small
2 Employer Health Insurance Availability Act" is hereby amended to read as follows:

3 **27-50-3. Definitions.**

4 (a) "Actuarial certification" means a written statement signed by a member of the American
5 Academy of Actuaries or other individual acceptable to the director that a small employer carrier
6 is in compliance with the provisions of § 27-50-5, based upon the person's examination and
7 including a review of the appropriate records and the actuarial assumptions and methods used by
8 the small employer carrier in establishing premium rates for applicable health benefit plans.

9 (b) "Adjusted community rating" means a method used to develop a carrier's premium that
10 spreads financial risk across the carrier's entire small group population in accordance with the
11 requirements in § 27-50-5.

12 (c) "Affiliate" or "affiliated" means any entity or person who directly or indirectly through
13 one or more intermediaries controls or is controlled by, or is under common control with, a specified
14 entity or person.

15 (d) "Affiliation period" means a period of time that must expire before health insurance
16 coverage provided by a carrier becomes effective, and during which the carrier is not required to
17 provide benefits.

18 (e) "Bona fide association" means, with respect to health benefit plans offered in this state,

1 an association that:

2 (1) Has been actively in existence for at least five (5) years;

3 (2) Has been formed and maintained in good faith for purposes other than obtaining
4 insurance;

5 (3) Does not condition membership in the association on any health status-related factor
6 relating to an individual (including an employee of an employer or a dependent of an employee);

7 (4) Makes health insurance coverage offered through the association available to all
8 members regardless of any health status-related factor relating to those members (or individuals
9 eligible for coverage through a member);

10 (5) Does not make health insurance coverage offered through the association available
11 other than in connection with a member of the association;

12 (6) Is composed of persons having a common interest or calling;

13 (7) Has a constitution and bylaws; and

14 (8) Meets any additional requirements that the director may prescribe by regulation.

15 (f) "Carrier" or "small employer carrier" means all entities licensed, or required to be
16 licensed, in this state that offer health benefit plans covering eligible employees of one or more
17 small employers pursuant to this chapter. For the purposes of this chapter, carrier includes an
18 insurance company, a nonprofit hospital or medical service corporation, a fraternal benefit society,
19 a health maintenance organization as defined in chapter 41 of this title or as defined in chapter 62
20 of title 42, or any other entity subject to state insurance regulation that provides medical care as
21 defined in subsection (y) that is paid or financed for a small employer by such entity on the basis
22 of a periodic premium, paid directly or through an association, trust, or other intermediary, and
23 issued, renewed, or delivered within or without Rhode Island to a small employer pursuant to the
24 laws of this or any other jurisdiction, including a certificate issued to an eligible employee that
25 evidences coverage under a policy or contract issued to a trust or association.

26 (g) "Church plan" has the meaning given this term under section 3(33) of the Employee
27 Retirement Income Security Act of 1974, 29 U.S.C. § 1002(33).

28 (h) "Control" is defined in the same manner as in chapter 35 of this title.

29 (i)(1) "Creditable coverage" means, with respect to an individual, health benefits or
30 coverage provided under any of the following:

31 (i) A group health plan;

32 (ii) A health benefit plan;

33 (iii) Part A or part B of Title XVIII of the Social Security Act, 42 U.S.C. § 1395c et seq.,
34 or 42 U.S.C. § 1395j et seq. (Medicare);

1 (iv) Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (Medicaid), other than
2 coverage consisting solely of benefits under 42 U.S.C. § 1396s (the program for distribution of
3 pediatric vaccines);

4 (v) 10 U.S.C. § 1071 et seq. (medical and dental care for members and certain former
5 members of the uniformed services, and for their dependents) (Civilian Health and Medical
6 Program of the Uniformed Services) (CHAMPUS). For purposes of 10 U.S.C. § 1071 et seq.,
7 “uniformed services” means the armed forces and the commissioned corps of the National Oceanic
8 and Atmospheric Administration and of the Public Health Service;

9 (vi) A medical care program of the Indian Health Service or of a tribal organization;

10 (vii) A state health benefits risk pool;

11 (viii) A health plan offered under 5 U.S.C. § 8901 et seq. (Federal Employees Health
12 Benefits Program (FEHBP));

13 (ix) A public health plan which for purposes of this chapter, means a plan established or
14 maintained by a state, county, or other political subdivision of a state that provides health insurance
15 coverage to individuals enrolled in the plan; or

16 (x) A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e)).

17 (2) A period of creditable coverage shall not be counted, with respect to enrollment of an
18 individual under a group health plan, if, after the period and before the enrollment date, the
19 individual experiences a significant break in coverage.

20 (j) “Dependent” means a spouse, child under the age twenty-six (26) years, and an
21 unmarried child of any age who is financially dependent upon the parent and is medically
22 determined to have a physical or mental impairment that can be expected to result in death or that
23 has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

24 (k) “Director” means the director of the department of business regulation.

25 (l) [Deleted by P.L. 2006, ch. 258, § 2, and P.L. 2006, ch. 296, § 2.]

26 (m) “Eligible employee” means an employee who works on a full-time basis with a normal
27 work week of thirty (30) or more hours, except that at the employer’s sole discretion, the term shall
28 also include an employee who works on a full-time basis with a normal work week of anywhere
29 between at least seventeen and one-half (17.5) and thirty (30) hours, so long as this eligibility
30 criterion is applied uniformly among all of the employer’s employees and without regard to any
31 health status-related factor. The term includes a self-employed individual, a sole proprietor, a
32 partner of a partnership, and may include an independent contractor, if the self-employed
33 individual, sole proprietor, partner, or independent contractor is included as an employee under a
34 health benefit plan of a small employer, but does not include an employee who works on a

1 temporary or substitute basis or who works less than seventeen and one-half (17.5) hours per week.
2 Any retiree under contract with any independently incorporated fire district is also included in the
3 definition of eligible employee, as well as any former employee of an employer who retired before
4 normal retirement age, as defined by 42 U.S.C. § 18002(a)(2)(C), while the employer participates
5 in the early retiree reinsurance program defined by that chapter. Persons covered under a health
6 benefit plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 shall not be
7 considered “eligible employees” for purposes of minimum participation requirements pursuant to
8 § 27-50-7(d)(9).

9 (n) “Enrollment date” means the first day of coverage or, if there is a waiting period, the
10 first day of the waiting period, whichever is earlier.

11 (o) “Established geographic service area” means a geographic area, as approved by the
12 director and based on the carrier’s certificate of authority to transact insurance in this state, within
13 which the carrier is authorized to provide coverage.

14 (p) “Family composition” means the:

- 15 (1) Enrollee;
- 16 (2) Enrollee, spouse, and children;
- 17 (3) Enrollee and spouse; or
- 18 (4) Enrollee and children.

19 (q) “Genetic information” means information about genes, gene products, and inherited
20 characteristics that may derive from the individual or a family member. This includes information
21 regarding carrier status and information derived from laboratory tests that identify mutations in
22 specific genes or chromosomes, physical medical examinations, family histories, and direct
23 analysis of genes or chromosomes.

24 (r) “Governmental plan” has the meaning given the term under section 3(32) of the
25 Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(32), and any federal
26 governmental plan.

27 (s)(1) “Group health plan” means an employee welfare benefit plan as defined in section
28 3(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(1), to the extent
29 that the plan provides medical care, as defined in subsection (y) of this section, and including items
30 and services paid for as medical care to employees or their dependents as defined under the terms
31 of the plan directly or through insurance, reimbursement, or otherwise.

32 (2) For purposes of this chapter:

33 (i) Any plan, fund, or program that would not be, but for Public Health Service Act Section
34 2721(e), 42 U.S.C. § 300gg(e), as added by Pub. L. No. 104-191, an employee welfare benefit plan

1 and that is established or maintained by a partnership, to the extent that the plan, fund, or program
2 provides medical care, including items and services paid for as medical care, to present or former
3 partners in the partnership, or to their dependents, as defined under the terms of the plan, fund, or
4 program, directly or through insurance, reimbursement or otherwise, shall be treated, subject to
5 subsection (s)(2)(ii) of this section, as an employee welfare benefit plan that is a group health plan;

6 (ii) In the case of a group health plan, the term “employer” also includes the partnership in
7 relation to any partner; and

8 (iii) In the case of a group health plan, the term “participant” also includes an individual
9 who is, or may become, eligible to receive a benefit under the plan, or the individual’s beneficiary
10 who is, or may become, eligible to receive a benefit under the plan, if:

11 (A) In connection with a group health plan maintained by a partnership, the individual is a
12 partner in relation to the partnership; or

13 (B) In connection with a group health plan maintained by a self-employed individual, under
14 which one or more employees are participants, the individual is the self-employed individual.

15 (t)(1) “Health benefit plan” means any hospital or medical policy or certificate, major
16 medical expense insurance, hospital or medical service corporation subscriber contract, or health
17 maintenance organization subscriber contract. Health benefit plan includes short-term and
18 catastrophic health insurance policies, and a policy that pays on a cost-incurred basis, except as
19 otherwise specifically exempted in this definition.

20 (2) “Health benefit plan” does not include one or more, or any combination of, the
21 following:

22 (i) Coverage only for accident or disability income insurance, or any combination of those;

23 (ii) Coverage issued as a supplement to liability insurance;

24 (iii) Liability insurance, including general liability insurance and automobile liability
25 insurance;

26 (iv) Workers’ compensation or similar insurance;

27 (v) Automobile medical payment insurance;

28 (vi) Credit-only insurance;

29 (vii) Coverage for on-site medical clinics; and

30 (viii) Other similar insurance coverage, specified in federal regulations issued pursuant to
31 Pub. L. No. 104-191, under which benefits for medical care are secondary or incidental to other
32 insurance benefits.

33 (3) “Health benefit plan” does not include the following benefits if they are provided under
34 a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the

1 plan:

2 (i) Limited scope dental or vision benefits;

3 (ii) Benefits for long-term care, nursing home care, home health care, community-based
4 care, or any combination of those; or

5 (iii) Other similar, limited benefits specified in federal regulations issued pursuant to Pub.
6 L. No. 104-191.

7 (4) "Health benefit plan" does not include the following benefits if the benefits are provided
8 under a separate policy, certificate, or contract of insurance, there is no coordination between the
9 provision of the benefits and any exclusion of benefits under any group health plan maintained by
10 the same plan sponsor, and the benefits are paid with respect to an event without regard to whether
11 benefits are provided with respect to such an event under any group health plan maintained by the
12 same plan sponsor:

13 (i) Coverage only for a specified disease or illness; or

14 (ii) Hospital indemnity or other fixed indemnity insurance.

15 (5) "Health benefit plan" does not include the following if offered as a separate policy,
16 certificate, or contract of insurance:

17 (i) Medicare supplemental health insurance as defined under section 1882(g)(1) of the
18 Social Security Act, 42 U.S.C. § 1395ss(g)(1);

19 (ii) Coverage supplemental to the coverage provided under 10 U.S.C. § 1071 et seq.; or

20 (iii) Similar supplemental coverage provided to coverage under a group health plan.

21 (6) A carrier offering policies or certificates of specified disease, hospital confinement
22 indemnity, or limited benefit health insurance shall comply with the following:

23 (i) The carrier files on or before March 1 of each year a certification with the director that
24 contains the statement and information described in subsection (t)(6)(ii) of this section;

25 (ii) The certification required in subsection (t)(6)(i) of this section shall contain the
26 following:

27 (A) A statement from the carrier certifying that policies or certificates described in this
28 subsection (t)(6) are being offered and marketed as supplemental health insurance and not as a
29 substitute for hospital or medical expense insurance or major medical expense insurance; and

30 (B) A summary description of each policy or certificate described in this subsection (t)(6),
31 including the average annual premium rates (or range of premium rates in cases where premiums
32 vary by age or other factors) charged for those policies and certificates in this state; and

33 (iii) In the case of a policy or certificate that is described in this subsection (t)(6) and that
34 is offered for the first time in this state on or after July 13, 2000, the carrier shall file with the

1 director the information and statement required in subsection (t)(6)(ii) of this section at least thirty
2 (30) days prior to the date the policy or certificate is issued or delivered in this state.

3 (u) “Health maintenance organization” or “HMO” means a health maintenance
4 organization licensed under chapter 41 of this title.

5 (v) “Health status-related factor” means any of the following factors:

6 (1) Health status;

7 (2) Medical condition, including both physical and mental illnesses;

8 (3) Claims experience;

9 (4) Receipt of health care;

10 (5) Medical history;

11 (6) Genetic information;

12 (7) Evidence of insurability, including conditions arising out of acts of domestic violence;

13 or

14 (8) Disability.

15 (w)(1) “Late enrollee” means an eligible employee or dependent who requests enrollment
16 in a health benefit plan of a small employer following the initial enrollment period during which
17 the individual is entitled to enroll under the terms of the health benefit plan, provided that the initial
18 enrollment period is a period of at least thirty (30) days.

19 (2) “Late enrollee” does not mean an eligible employee or dependent:

20 (i) Who meets each of the following provisions:

21 (A) The individual was covered under creditable coverage at the time of the initial
22 enrollment;

23 (B) The individual lost creditable coverage as a result of cessation of employer
24 contribution, termination of employment or eligibility, reduction in the number of hours of
25 employment, involuntary termination of creditable coverage, or death of a spouse, divorce, or legal
26 separation, or the individual and/or dependents are determined to be eligible for RItCare under
27 chapter 5.1 of title 40 [repealed] or chapter 12.3 of title 42 or for RItShare under chapter 8.4 of
28 title 40; and

29 (C) The individual requests enrollment within thirty (30) days after termination of the
30 creditable coverage or the change in conditions that gave rise to the termination of coverage;

31 (ii) If, where provided for in contract or where otherwise provided in state law, the
32 individual enrolls during the specified bona fide open enrollment period;

33 (iii) If the individual is employed by an employer which offers multiple health benefit plans
34 and the individual elects a different plan during an open enrollment period;

1 (iv) If a court has ordered coverage be provided for a spouse or minor or dependent child
2 under a covered employee's health benefit plan and a request for enrollment is made within thirty
3 (30) days after issuance of the court order;

4 (v) If the individual changes status from not being an eligible employee to becoming an
5 eligible employee and requests enrollment within thirty (30) days after the change in status;

6 (vi) If the individual had coverage under a COBRA continuation provision and the
7 coverage under that provision has been exhausted; or

8 (vii) Who meets the requirements for special enrollment pursuant to § 27-50-7 or § 27-50-
9 8.

10 (x) "Limited benefit health insurance" means that form of coverage that pays stated
11 predetermined amounts for specific services or treatments or pays a stated predetermined amount
12 per day or confinement for one or more named conditions, named diseases, or accidental injury.

13 (y) "Medical care" means amounts paid for:

14 (1) The diagnosis, care, mitigation, treatment, or prevention of disease, or amounts paid for
15 the purpose of affecting any structure or function of the body;

16 (2) Transportation primarily for and essential to medical care referred to in subsection
17 (y)(1) of this section; and

18 (3) Insurance covering medical care referred to in subsections (y)(1) and (y)(2) of this
19 section.

20 (z) "Network plan" means a health benefit plan issued by a carrier under which the
21 financing and delivery of medical care, including items and services paid for as medical care, are
22 provided, in whole or in part, through a defined set of providers under contract with the carrier.

23 (aa) "Person" means an individual, a corporation, a partnership, an association, a joint
24 venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any
25 combination of the foregoing.

26 (bb) "Plan sponsor" has the meaning given this term under section 3(16)(B) of the
27 Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(16)(B).

28 (cc)(1) "Preexisting condition" means a condition, regardless of the cause of the condition,
29 for which medical advice, diagnosis, care, or treatment was recommended or received during the
30 six (6) months immediately preceding the enrollment date of the coverage.

31 (2) "Preexisting condition" does not mean a condition for which medical advice, diagnosis,
32 care, or treatment was recommended or received for the first time while the covered person held
33 creditable coverage and that was a covered benefit under the health benefit plan, provided that the
34 prior creditable coverage was continuous to a date not more than ninety (90) days prior to the

1 enrollment date of the new coverage.

2 (3) Genetic information shall not be treated as a condition under subsection (cc)(1) of this
3 section for which a preexisting condition exclusion may be imposed in the absence of a diagnosis
4 of the condition related to the information.

5 (dd) “Premium” means all moneys paid by a small employer and eligible employees as a
6 condition of receiving coverage from a small employer carrier, including any fees or other
7 contributions associated with the health benefit plan.

8 (ee) “Producer” means any insurance producer licensed under chapter 2.4 of this title.

9 (ff) “Rating period” means the calendar period for which premium rates established by a
10 small employer carrier are assumed to be in effect.

11 (gg) “Restricted network provision” means any provision of a health benefit plan that
12 conditions the payment of benefits, in whole or in part, on the use of healthcare providers that have
13 entered into a contractual arrangement with the carrier pursuant to provide healthcare services to
14 covered individuals.

15 (hh) “Risk adjustment mechanism” means the mechanism established pursuant to § 27-
16 50-16.

17 (ii) “Self-employed individual” means an individual or sole proprietor who derives a
18 substantial portion of his or her income from a trade or business through which the individual or
19 sole proprietor has attempted to earn taxable income and for which he or she has filed the
20 appropriate Internal Revenue Service Form 1040, Schedule C or F, for the previous taxable year.

21 (jj) “Significant break in coverage” means a period of ninety (90) consecutive days during
22 all of which the individual does not have any creditable coverage, except that neither a waiting
23 period nor an affiliation period is taken into account in determining a significant break in coverage.

24 (kk) “Small employer” means, except for its use in § 27-50-7, any person, firm,
25 corporation, partnership, association, political subdivision, or self-employed individual who or that
26 is actively engaged in business including, but not limited to, a business or a corporation organized
27 under the Rhode Island Nonprofit Corporation Act, chapter 6 of title 7, or a similar act of another
28 state that, on at least fifty percent (50%) of its working days during the preceding calendar quarter,
29 employed no more than ~~fifty (50)~~ one hundred (100) eligible employees, with a normal work week
30 of thirty (30) or more hours, the majority of whom were employed within this state, and is not
31 formed primarily for purposes of buying health insurance and in which a bona fide employer-
32 employee relationship exists. In determining the number of eligible employees, companies that are
33 affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by
34 this state, shall be considered one employer. Subsequent to the issuance of a health benefit plan to

1 a small employer and for the purpose of determining continued eligibility, the size of a small
2 employer shall be determined annually. Except as otherwise specifically provided, provisions of
3 this chapter that apply to a small employer shall continue to apply at least until the plan anniversary
4 following the date the small employer no longer meets the requirements of this definition. The term
5 small employer includes a self-employed individual.

6 (ll) "Waiting period" means, with respect to a group health plan and an individual who is
7 a potential enrollee in the plan, the period that must pass with respect to the individual before the
8 individual is eligible to be covered for benefits under the terms of the plan. For purposes of
9 calculating periods of creditable coverage pursuant to subsection (i)(2) of this section, a waiting
10 period shall not be considered a gap in coverage.

11 (mm) "Wellness health benefit plan" means a plan developed pursuant to § 27-50-10.

12 (nn) "Health insurance commissioner" or "commissioner" means that individual appointed
13 pursuant to § 42-14.5-1 and afforded those powers and duties as set forth in §§ 42-14.5-2 and 42-
14 14.5-3.

15 (oo) "Low-wage firm" means those with average wages that fall within the bottom quartile
16 of all Rhode Island employers.

17 (pp) "Wellness health benefit plan" means the health benefit plan offered by each small
18 employer carrier pursuant to § 27-50-7.

19 (qq) "Commissioner" means the health insurance commissioner.

20 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO INSURANCE -- SMALL EMPLOYER HEALTH INSURANCE
AVAILABILITY ACT

1 This act would amend the definition of "small employer" for purposes of the small
2 employer health insurance availability act to mean a business employing less than one hundred
3 (100) employees rather than fifty (50) employees.

4 This act would take effect upon passage.

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