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LC02484  
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# STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2005

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A N A C T

RELATING TO INSURANCE - AUTHORIZING HEALTH CARE PROVIDERS TO  
NEGOTIATE WITH HEALTH CARE INSURERS AND PROVIDING FOR THE POWERS  
AND DUTIES OF THE ATTORNEY GENERAL

Introduced By: Senators Gallo, P Fogarty, and Walaska

Date Introduced: February 17, 2005

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 27 of the General Laws entitled "Insurance" is hereby amended by  
2 adding thereto the following chapter:

3 CHAPTER 69

4 HEALTH CARE FAIRNESS ACT

5 **27-69-1. Short title.** -- This chapter shall be known and may be cited as the "Rhode  
6 Island Health Care Fairness Act of 2005."

7 **27-69-2. Legislative findings.** -- The general assembly hereby finds and declares as  
8 follows:

9 (1) A substantial amount of health care services in this state are purchased for the benefit  
10 of patients by health care insurers engaged in the provision of health care financing services or is  
11 otherwise delivered subject to the terms of agreements between health care insurers and providers  
12 of the services.

13 (2) Health care insurers are able to control the flow of patients to providers of health care  
14 services through compelling financial incentives for patients in their plans to utilize only the  
15 services of providers with whom the insurers have contracted.

16 (3) Health care insurers also control the health care services rendered to patients through  
17 utilization review programs and other managed care tools and associated coverage and payment  
18 policies.

1           (4) By incorporation or merger the power of health care insurers in markets of this state  
2 for health care services has become great enough to create a competitive imbalance, reducing  
3 levels of competition and threatening the availability of high quality, cost-effective health care.

4           (5) Health care insurers by incorporation or merger speak through one or two (2)  
5 dominant voices. Health care insurers often are able to dictate the terms of the provider contracts  
6 that they offer physicians and other health care providers and commonly offer provider contracts  
7 on a take-it or leave-it basis.

8           (6) The power of health care insurers to unilaterally impose provider contract terms  
9 jeopardizes the ability of physicians and other health care providers to deliver the superior quality  
10 health care services that have been traditionally available in this state.

11           (7) Current federal anti-trust enforcement policy restricts health care providers' ability to  
12 collectively negotiate fee-for-service arrangements with payers and thus places the health care  
13 providers in a dramatically weakened negotiating position. The large majority of physicians and  
14 other health care providers do not have sufficient market power to reject unfair provider contract  
15 terms that impede their ability to deliver medically appropriate care without undue delay or  
16 administrative complexity.

17           (8) Health care insurers have undue influence by virtue of their market power, economic  
18 resources and control over payments. To protect public health concerns, and restore balance to the  
19 market, health care providers require a method to assert their appropriate influence on health care  
20 issues.

21           (9) Inequitable reimbursement and other unfair payment terms adversely affect quality  
22 patient care and access by reducing the resources that health care providers can devote to patient  
23 care and decreasing the time that physicians are able to spend with their patients.

24           (10) Empowering health care providers to negotiate jointly with health care insurers as  
25 provided in this act will help restore the competitive balance and improve competition in the  
26 markets for health care services in this state, thereby providing benefits for consumers and less  
27 dominant health care insurers.

28           (11) Allowing health care providers to negotiate jointly with health care insurers through  
29 a common joint negotiation representative will improve the efficiency and effectiveness of  
30 communications between the parties and result in provider contracts that better reflect the mutual  
31 areas of agreement.

32           (12) This act is necessary, proper and constitutes an appropriate exercise of the authority  
33 of this state to regulate the business of insurance and the delivery of health care services in order  
34 to safeguard the public health and safety of Rhode Islanders.

1           (13) The procompetitive and other benefits of the joint negotiations and related joint  
2 activity authorized by this act, including, but not limited to, restoring the competitive balance in  
3 the market for health care services, protecting access to quality patient care and improving  
4 communications, outweigh any anticompetitive effects.

5           (14) It is the intention of the general assembly to authorize health care providers to jointly  
6 discuss with health care insurers topics of concern regarding the provision of quality health care  
7 or to jointly negotiate with health care insurers and to qualify such joint negotiations and related  
8 joint activities for the state-action exemption to the federal and state anti-trust laws through the  
9 articulated state policy and active supervision provided in this act.

10           **27-69-3. Definitions.** – The following words and phrases when used in this act shall have  
11 the meanings given to them in this section unless the context clearly indicates otherwise:

12           (1) "Attorney general." means the attorney general of the state.

13           (2) "Commercial health insurance market." means the total number of lives covered by  
14 health care insurers whose premiums are paid in whole or in part by employers.

15           (3) "Department of attorney general." means the department of attorney general of the  
16 state.

17           (4) "Health care insurer" means an insurer defined in general laws section 27-20.6-1(1)  
18 and a third-party administrator when interacting with health care providers and enrollees on  
19 behalf of such an insurer.

20           (5) "Health care insurer affiliate" means a health care insurer that is affiliated with  
21 another entity by either the insurer or entity having a five percent (5%) or greater, direct or  
22 indirect, ownership or investment interest in the other through equity, debt or other means.

23           (6) "Health care provider" means an individual, acting alone or acting with other  
24 individuals through any type or form of partnership, professional services corporation,  
25 independent practice association or organization (or group of partnerships, professional services  
26 corporations, independent practice associations or organizations) who is licensed, certified or  
27 otherwise regulated to provide health care services under the laws of this state, including, but not  
28 limited to: a physician, dentist, clinical social worker, podiatrist, optometrist, pharmacist,  
29 psychologist, chiropractor, and physical therapist. "Health care provider" shall not include any  
30 entity meeting the definition of "health care facility" as set forth in section 23-17-2 of the R.I.  
31 general laws.

32           (7) "Health care services" means services for the diagnosis, prevention, treatment, cure or  
33 relief of a health condition, injury, disease or illness, including, but not limited to, the  
34 professional and technical component of professional services, supplies, drugs and biologicals,

1 diagnostic x-ray, laboratory and other diagnostic tests, preventive screening services and tests,  
2 such as pap smears and mammograms, radium and radioactive isotope therapy, surgical  
3 dressings, devices for the reduction of fractures, durable medical equipment, eyeglasses and  
4 contact lenses, braces, trusses, artificial limbs and eyes, dialysis services, home health services  
5 and hospital and other facility services.

6 (8) "Impasse" means an impasse occurs when either party to a joint negotiation permitted  
7 by this act believes in good faith that the parties have reached a point in meetings and  
8 negotiations regarding the terms of a provider contract where their differences in position are so  
9 substantial or prolonged that future meetings and negotiations would be futile.

10 (9) "Health insurance commissioner" means the health insurance commissioner  
11 established by chapter 42-14.5 of the general laws.

12 (10) "Joint negotiation" means negotiation with a health care insurer by two (2) or more  
13 health care providers acting together as part of a formal entity or group or otherwise. The term  
14 "joint negotiation" shall not include negotiations by health care providers that are or would be  
15 lawful under state and federal law regardless of the effectiveness of this act.

16 (11) "Joint negotiation representative" means a natural person or legal entity selected by  
17 a group of health care providers to be the group's representative in joint negotiations with a health  
18 care insurer under this act.

19 (12) "Provider contract" means an agreement between a health care provider, or group of  
20 health care providers, and a health care insurer which sets forth the terms and conditions under  
21 which the provider is or providers are to deliver health care services to enrollees of the health care  
22 insurer. The term does not include employment contracts between a health care insurer and a  
23 health care professional.

24 (13) "Provider network" means a group of health care providers who have provider  
25 contracts with a health care insurer.

26 (14) "Self-funded health benefit plan" means a plan that provides for the assumption of  
27 the cost of or spreading the risk of loss resulting from health care services of covered lives by an  
28 employer, union or other sponsor, substantially out of the current revenues, assets or any other  
29 funds of the sponsor.

30 (15) "Third-party administrator" means an entity that provides utilization review,  
31 provider network credentialing or other administrative services for a health care insurer or a self-  
32 funded health benefit plan.

33 (16) "Application" means the initial document forwarded by health care providers to the  
34 attorney general seeking approval to enter into joint negotiations.

1 (17) "Petition" means the document submitted to the health insurance commissioner  
2 requesting binding arbitration of an impasse.

3 (18) "Parties" means those entities engaged in or subject to joint negotiations including  
4 health care providers, their joint negotiation representative and the relevant health care insurer.

5 **27-69-4. Negotiations regarding provider contracts. --** Health care providers may  
6 jointly negotiate with a health care insurer with substantial market power, and engage in related  
7 joint activity, as provided in sections 27-69-6 and 27-69-7. Such negotiations shall be limited to  
8 any matters that may affect patient care in all or any part of the commercial health insurance  
9 market, including, but not limited to, components contained in the provider contract. Nothing in  
10 this act shall be construed to permit joint negotiation of matters outside the commercial health  
11 insurance market, or with health care insurers who lack substantial market power, unless such  
12 negotiation is permitted by other applicable law.

13 **27-69-5. Substantial market power. --** (a) Standard. A health care insurer has  
14 substantial market power over health care providers when:

15 (1) The insurer's market share in the commercial health insurance market or a relevant  
16 segment of that market, alone or in combination with the market shares of affiliates, exceeds  
17 twenty percent (20%); or

18 (2) The attorney general determines that the market power of the insurer in the relevant  
19 service and geographic markets for the services of the providers seeking to jointly negotiate  
20 significantly exceeds the countervailing market power of the providers acting individually.

21 **27-69-6. Conduct of negotiations. --** The following requirements shall apply to the  
22 exercise of joint negotiation rights and related activity under this act, which are limited by this act  
23 to all or any part of the commercial health insurance market:

24 (1) Health care providers shall select the members of their joint negotiation group by  
25 mutual agreement;

26 (2) Health care providers shall designate a joint negotiation representative as the sole  
27 party authorized to negotiate, to the extent permitted by this act, with one or more health care  
28 insurers that have substantial market power;

29 (3) The health care providers may discuss with each other in anticipation of a formation  
30 of a joint negotiation group such subjects as are necessary to the formation of that group, but no  
31 others. And upon the selection of the health care providers' joint negotiation representative he or  
32 she shall advise the health care providers of the provisions of this act and shall inform the health  
33 care providers of the potential for legal action against health care providers who violate the  
34 federal and state anti-trust laws;

1           (4) For the duration of the application and petition process, health care providers may  
2 communicate with each other and their joint negotiation representative with respect to the matters  
3 to be negotiated with the health care insurer;

4           (5) Health care providers may agree upon a proposal to be presented by their joint  
5 negotiation representative to the health care insurer;

6           (6) Health care providers may agree to be bound by the terms and conditions negotiated  
7 by their joint negotiation representative and may only jointly negotiate with a health care insurer  
8 pursuant to this act if the health care providers in the group have agreed to be so bound;

9           (7) The health care providers' joint negotiation representative may provide the health care  
10 providers with the results of negotiations with the health care insurer and an evaluation of any  
11 offer made by the health care insurer;

12           (8) The health care providers' joint negotiation representative may reject a contract  
13 proposal by a health care insurer on behalf of the health care providers. In the event of such  
14 rejection, the health care providers subject to the contract proposal shall be free to contract  
15 individually with the health care insurer or to obtain binding arbitration by the health insurance  
16 commissioner in accordance with subsection 27-69-7(c), but may not use failure to reach  
17 agreement with the health care insurer to coordinate or encourage the represented health care  
18 providers to terminate any and all existing contracts the health care providers maintain  
19 individually or otherwise with said health insurer, which behavior shall remain subject to  
20 applicable federal and state anti-trust laws;

21           (9) Health care providers may not negotiate the inclusion or alteration of terms and  
22 conditions to the extent the terms or conditions are required or prohibited by government  
23 regulation. This paragraph shall not be construed to limit the right of health care providers to  
24 jointly petition government for a change in such regulation; and

25           (10) Upon request by the health care providers' joint negotiation representative and after  
26 approval of the negotiations by the attorney general pursuant to subsection 27-69-7(a), health care  
27 insurers shall be required to participate in negotiations under this section. Failure of a health care  
28 insurer to participate in negotiations shall constitute an impasse, upon the occurrence of which,  
29 the health care provider may submit the matter to binding arbitration by the health insurance  
30 commissioner in accordance with subsection 27-69-7(c).

31           **27-69-7. Oversight.** -- (a) Application for approval of joint negotiations. Before engaging  
32 in any joint negotiation with a health care insurer, health care providers shall obtain the attorney  
33 general's approval to proceed with the negotiations. The application seeking approval shall  
34 include:

1           (1) the names and business addresses of the health care providers' joint negotiation  
2 representative;

3           (2) the names and business addresses of the health care providers applying to jointly  
4 negotiate;

5           (3) the names and business addresses of the health care insurer or insurers with which the  
6 applying providers seek to jointly negotiate;

7           (4) the proposed subject matter of the negotiations or discussions with the health care  
8 insurer or insurers;

9           (5) the proportionate relationship of the health care providers to the total population of  
10 health care providers in the relevant geographic service area of the providers by providers type  
11 and specialty;

12           (6) the health care providers' joint negotiation representative's plan of operation and  
13 procedures to ensure compliance with this act;

14           (7) certification that the health care providers have agreed to be bound by the outcome of  
15 the joint negotiation process, including any determination by the health insurance commissioner  
16 pursuant to subsection 27-69-7(c); and

17           (8) such other data, information and documents that the applicants desire to submit in  
18 support of their application, and/or other information or documents requested by the attorney  
19 general.

20           (b) Application for approval of modification of the subject of joint negotiations. – Health  
21 care providers shall supplement an application under the provisions of this section as new  
22 information becomes available that indicates that the subject matter of the proposed negotiations  
23 with the health care insurer has or will materially change and must obtain the attorney general's  
24 approval of material changes. The petition seeking approval shall include:

25           (1) the attorney general's file reference for the original application for approval of joint  
26 negotiations;

27           (2) the proposed new subject matter;

28           (3) the information required by subsection (a)(4) herein with respect to the proposed new  
29 subject matter; and

30           (4) such other data, information and documents that the health care providers or health  
31 care insurers desire to submit in support of their application, or other information and documents  
32 requested by the attorney general.

33           (c) Petition to health insurance commissioner for arbitration of contract terms. – Any  
34 party to a joint negotiation approved by the attorney general who believes an impasse has been

1 reached, may submit the matter to binding arbitration by the health insurance commissioner. A  
2 petition for binding arbitration shall include:

3 (1) the attorney general's file reference for the original application for approval of joint  
4 negotiations;

5 (2) a statement of the positions of each party and the issues that the parties have not been  
6 able to resolve through negotiation; and

7 (3) such other data, information and documents as the parties desire to submit in support  
8 of their position.

9 **27-69-8. Advice and counsel. --** The attorney general and health insurance  
10 commissioner, in their sole discretion, may seek the advice and counsel of any department or  
11 agency of the state for purposes of their review of the application or petition. The attorney general  
12 or health insurance commissioner shall make any such request in writing to the director of each  
13 state department or agency from which counsel is sought. The director of each said department or  
14 agency shall provide a substantive response in writing to the request within thirty (30) days of  
15 receiving such request.

16 **27-69-9. Procedures and standards for determination. --** (a) Time period for review. –  
17 The attorney general shall have sole discretion to approve or disapprove an application under  
18 subsection(s) 27-69-7(a) or (b) within sixty (60) days after such application is filed. The health  
19 insurance commissioner shall have sole discretion to accept or reject a petition under subsection  
20 27-69-7(c) within a reasonable time not to exceed thirty (30) days after the petition is filed or  
21 after the health insurance commissioner receives the response(s) requested, if any, of the state  
22 departments or agencies pursuant to section 27-69-8, whichever is later. If any application or  
23 petition is disapproved or rejected as a result of technical deficiencies, the attorney general or  
24 health insurance commissioner, as appropriate, shall furnish a written explanation of any  
25 deficiencies with such application or petition along with a statement of specific remedial  
26 measures as to how such deficiencies may be corrected.

27 (b) Standards for reviewing applications. – The department of attorney general shall  
28 approve an application under subsections 27-69-7(a) and (b) if the application includes all  
29 information required under such subsections and is in compliance with other applicable laws and  
30 regulations.

31 (c) Standards for approving petitions to health insurance commissioner. – The health  
32 insurance commissioner's determination under subsection 27-69-7(c) must, in the health  
33 insurance commissioner's judgment, further the purposes set forth in general laws section 42-  
34 14.5-2. Such determination and the health insurance commissioner's rationale therefor, must be



1 set forth in writing, shall be binding on the parties and shall be a public document.

2 (d) Standards for arbitration of contract terms by health insurance commissioner. – The  
3 health insurance commissioner shall promulgate regulations for the administration of arbitration  
4 proceedings under this chapter, which regulations may, at the health insurance commissioner's  
5 sole discretion, incorporate the rules of procedure for arbitration as promulgated by the American  
6 Health Lawyers Association Alternative Dispute Resolution Service, as amended from time to  
7 time. Such arbitration shall be completed within one hundred and fifty (150) days from the date  
8 the petition for arbitration was accepted by the health insurance commissioner under subsection  
9 27-69-9(a).

10 **27-69-10. Supplemental information.** -- For the purpose of enabling the attorney  
11 general and health insurance commissioner to make the findings and determinations required by  
12 this section on both applications and petitions, the attorney general and health insurance  
13 commissioner, as appropriate, may require the submission of such supplemental information as  
14 he/she may deem necessary or proper to enable him/her to reach a determination.

15 **27-69-11. Notice to health insurer.** -- In the case of an application under subsections  
16 27-69-7(a) or (b), the attorney general shall notify the health care insurer of the application and  
17 provide the health care insurer with the opportunity to participate in and/or submit written  
18 comments within a specified time frame that does not extend beyond the date on which the  
19 attorney general is required to act on the application.

20 **27-69-12. Confidentiality and disclosure.** -- The attorney general and health insurance  
21 commissioner, as appropriate, shall have the power to decide whether any information required  
22 by this chapter of an applicant is confidential and/or proprietary. Such decisions shall be made  
23 prior to any public notice or any public review of such information. However, any information  
24 deemed public under chapter 2 of title 38 or any other state or federal law or regulation shall be  
25 public.

26 **27-69-13. Good faith negotiations.** -- It shall be unlawful for either party to a  
27 negotiation to refuse or fail to meet and negotiate in good faith.

28 **27-69-14. Application fees.** -- The attorney general and health insurance commissioner  
29 may, in effectuating the purposes of this chapter, engage experts or consultants to assist with the  
30 fulfillment of their respective responsibilities. All copies of reports prepared by experts and  
31 consultants shall be made available to the parties and to the public. All costs incurred under this  
32 chapter shall be the responsibility of the parties in an amount to be determined by the public  
33 official responsible for the process. No application for approval of joint negotiations, application  
34 for approval of modification of joint negotiations, or petition for determination of contract terms

1 shall be considered complete unless an agreement has been executed with the attorney general or  
2 health insurance commissioner, as appropriate, for the payment of costs incurred pursuant to this  
3 chapter.

4 **27-69-15. Construction. --** (a) Nothing contained in this chapter shall be construed to:

5 (1) prohibit or restrict activity by health care providers that is permitted under federal  
6 and/or state laws;

7 (2) prohibit or require governmental approval of or otherwise restrict activity by health  
8 care providers that is not prohibited under the federal or state anti-trust laws;

9 (3) require approval of provider contracts' terms to the extent that the terms are exempt  
10 from state regulation under Section 514 of the Employee Retirement Income Security Act of 1974  
11 (public law 93-406, 88 stat. 829); or

12 (4) expand a health care provider's scope of practice or to require a health care insurer to  
13 contract with any type of specialty of health care providers.

14 Provided, further, that nothing contained in this chapter shall permit a health care insurer  
15 to exclude, limit the participation or reimbursement of, or otherwise discriminate against a class  
16 of health care professionals acting within the scope of their licensure under Rhode Island law  
17 based on such licensure.

18 **27-69-16. Exclusions. --** Nothing contained in this chapter shall authorize joint  
19 negotiations regarding health care services covered under the following insurance policies or  
20 coverage programs:

21 (1) medical payment coverage issued as part of a motor vehicle insurance policy;

22 (2) medicare supplemental;

23 (3) civilian health and medical program of the uniformed services (CHAMPUS);

24 (4) accident only;

25 (5) long-term care insurance;

26 (6) disability insurance; or

27 (7) credit insurance.

28 **27-69-17. Severability. --** If any provision of this chapter or the application thereof to  
29 any person or circumstances is held invalid, such invalidity shall not affect other provisions or  
30 applications of the chapter which can be given effect without the invalid provision or application,  
31 and to this end the provisions of this chapter are declared to be severable.

32 SECTION 2. This act shall take effect on January 1, 2006.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO INSURANCE - AUTHORIZING HEALTH CARE PROVIDERS TO  
NEGOTIATE WITH HEALTH CARE INSURERS AND PROVIDING FOR THE POWERS  
AND DUTIES OF THE ATTORNEY GENERAL

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- 1           This act would authorize health care practitioners to negotiate jointly with health care  
2 insurers.  
3           This act would take effect on January 1, 2006.

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