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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO COMMERCIAL LAW - GENERAL REGULATORY PROVISIONS

Introduced By: Representative John J. Lombardi

Date Introduced: February 24, 2021

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 6 of the General Laws entitled "COMMERCIAL LAW - GENERAL
2 REGULATORY PROVISIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 13.4

4 PATIENT BROKERING ACT

5 **6-13.4-1. Definitions.**

6 The following words as used in this chapter, unless a different meaning is required by the
7 context or is specifically prescribed, shall have the following meanings:

8 (1) "Health care provider" means any person or entity licensed, certified, or registered;
9 required to be licensed, certified or registered; or lawfully exempt from being required to be
10 licensed, certified or registered with the department of health; any person or entity that has
11 contracted with the department of health to provide goods or services to Medicaid recipients
12 pursuant to Rhode Island law; any provider of behavioral health care services provided by the
13 department of behavioral health care, developmental disabilities and hospitals; or any federally
14 supported primary care program authorized under 42 U.S.C. Chapter 6 A, "Public Health Service."

15 (2) "Health care provider network entity" means a corporation, partnership, or limited
16 liability company owned or operated by two (2) more health care providers and organized for the
17 purpose of entering into agreements with health insurers, health care purchasing groups, or the
18 Medicare or Medicaid program.

19 (3) "Health insurer" means any insurance company authorized to transact health insurance

1 in the state, any insurance company authorized to transact health insurance or casualty insurance in
2 the state that is offering a minimum premium plan or stop-loss coverage for any person or entity
3 providing health care benefits, any self-insurance plan as defined in title 27, any health maintenance
4 organization, any prepaid health clinic, any prepaid limited health service organization, any
5 multiple-employer welfare arrangement authorized to transact business in the state pursuant to title
6 27, or any fraternal benefit society lawfully providing health benefits to its members.

7 **6-13.4-2. Patient brokering prohibited.**

8 It is an unfair sales practice for any person, including any health care provider or health
9 care facility, to:

10 (1) Offer or pay a commission, benefit, bonus, rebate, kickback, or bribe, directly or
11 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to
12 induce the referral of a patient or patronage to or from a health care provider or health care facility;

13 (2) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or
14 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in
15 return for referring a patient or patronage to or from a health care provider or health care facility;

16 (3) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or
17 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in
18 return for the acceptance or acknowledgement of treatment from a health care provider or health
19 care facility; or

20 (4) Aid, abet, advise, or otherwise participate in the conduct prohibited under this section.

21 **6-13.4-3. Exceptions.**

22 This section shall not apply to:

23 (1) Any discount, payment, waiver of payment, or payment practice not prohibited by 42
24 U.S.C. § 1320a-7b(b) or regulations promulgated thereunder.

25 (2) Any payment, compensation, or financial arrangement within a group practice,
26 provided such payment, compensation, or arrangement is not to or from persons who are not
27 members of the group practice.

28 (3) Payments to a health care provider or health care facility for professional consultation
29 services.

30 (4) Commissions, fees, or other remuneration lawfully paid to insurance agents as provided
31 under title 27.

32 (5) Payments by a health insurer who reimburses, provides, offers to provide, or
33 administers health, mental health, or substance abuse goods or services under a health benefit plan.

34 (6) Payments to or by a health care provider or health care facility, or a health care provider

1 network entity, that has contracted with a health insurer, a health care purchasing group, or the
2 Medicare or Medicaid program to provide health, mental health, or substance abuse goods or
3 services under a health benefit plan when such payments are for goods or services under the plan.
4 However, nothing in this section affects whether a health care provider network entity is an insurer
5 required to be licensed under Rhode Island law.

6 (7) Insurance advertising gifts lawfully permitted under title 27.

7 (8) When applicable, commissions or fees paid to a nurse registry licensed pursuant to the
8 department of health for referring persons providing health care services to clients of the nurse
9 registry.

10 (9) Payments by a health care provider or health care facility to a health, mental health, or
11 substance abuse information service that provides information upon request and without charge to
12 consumers about providers of health care goods or services to enable consumers to select
13 appropriate providers or facilities, provided that such information service:

14 (i) Does not attempt through its standard questions for solicitation of consumer criteria or
15 through any other means to steer or lead a consumer to select or consider selection of a particular
16 health care provider or health care facility;

17 (ii) Does not provide or represent itself as providing diagnostic or counseling services or
18 assessments of illness or injury and does not make any promises of cure or guarantees of treatment;

19 (iii) Does not provide or arrange for transportation of a consumer to or from the location
20 of a health care provider or health care facility; and

21 (iv) Charges and collects fees from a health care provider or health care facility
22 participating in its services that are set in advance, are consistent with the fair market value for
23 those information services, and are not based on the potential value of a patient or patients to a
24 health care provider or health care facility or of the goods or services provided by the health care
25 provider or health care facility.

26 (10) An individual employed by the assisted living facility, or with whom the facility
27 contracts to provide marketing services for the facility, if the individual clearly indicates that they
28 work with or for the facility.

29 (11) Payments by an assisted living facility to a referral service that provides information,
30 consultation, or referrals to consumers to assist them in finding appropriate care or housing options
31 for seniors or disabled adults if the referred consumers are not Medicaid recipients.

32 (12) A resident of an assisted living facility who refers a friend, family members, or other
33 individuals with whom the resident has a personal relationship to the assisted living facility, in
34 which case the assisted living facility may provide a monetary reward to the resident for making

1 such referral.

2 **6-13.4-4. Penalties - Enforcement.**

3 (a) Any person, including an officer, partner, agent, attorney or other representative of a
4 firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who
5 violates any provision of this chapter commits a felony and shall, in addition to any criminal
6 sentence imposed, be ordered to pay a fine of fifty thousand dollars (\$50,000) for a violation
7 involving fewer than ten (10) patients; one hundred thousand dollars (\$100,000) for a violation
8 involving between ten (10) and twenty (20) patients; and five hundred thousand dollars (\$500,000)
9 for any violation where the prohibited conduct involves twenty (20) or more patients.

10 (b) Notwithstanding the existence or pursuit of any other remedy, the Rhode Island attorney
11 general may maintain an action for injunctive or other process to enforce the provisions of this
12 chapter.

13 (c) The party bringing an action under this chapter may recover reasonable expenses in
14 obtaining injunctive relief, including, but not limited to, investigative costs, court costs, reasonable
15 attorneys' fees, witness costs, and deposition expenses.

16 (d) The provisions of this chapter are in addition to any other civil, administrative, or
17 criminal actions provided by law and may be imposed against both corporate and individual
18 defendants.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO COMMERCIAL LAW - GENERAL REGULATORY PROVISIONS

1 This act would prohibit the practice of patient brokering and would provide penalties and
2 enforcement.

3 This act would take effect upon passage.

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