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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO TAXATION - FACILITY AND IMAGING SURCHARGES

Introduced By: Senators Gallo, and Lanzi

Date Introduced: January 24, 2012

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 44-64 of the General Laws entitled "The Outpatient Health Care
2 Facility Surcharge" is hereby repealed in its entirety.

3 ~~CHAPTER 44-64~~

4 ~~The Outpatient Health Care Facility Surcharge~~

5 ~~44-64-1. Short title. --- This chapter shall be known as "The Outpatient Health Care~~
6 ~~Facility Surcharge Act."~~

7 ~~44-64-2. Definitions. --- The following words and phrases as used in this chapter have the~~
8 ~~following meaning:~~

9 ~~(1) "Administrator" means the tax administrator within the department of revenue.~~

10 ~~(2) "Gross patient revenue" means the gross amount received on a cash basis by the~~
11 ~~provider from all patient care and other gross operating income. However, charitable~~
12 ~~contributions, fund raising proceeds, and endowment support shall not be considered "gross~~
13 ~~patient revenue."~~

14 ~~(3) "Net patient services revenue" means the charges related to patient care services less~~
15 ~~(i) charges attributable to charity care, (ii) bad debt expenses, and (iii) contractual allowances.~~

16 ~~(4) "Person" means any individual, corporation, company, association, partnership, joint~~
17 ~~stock association, and the legal successor thereof.~~

18 ~~(5) "Provider" means a licensed facility or operator, including a government facility or~~
19 ~~operator, subject to a surcharge under this chapter.~~

1 ~~(6) "Surcharge" means the assessment that is imposed upon net patient revenue pursuant~~
2 ~~to this chapter.~~

3 ~~**44-64-3. Imposition of surcharge -- Outpatient health care facility.** (a) For the~~
4 ~~purposes of this section, an "outpatient health care facility" means a person or governmental unit~~
5 ~~that is licensed to establish, maintain, and operate a free-standing ambulatory surgery center or a~~
6 ~~physician ambulatory surgery center or a podiatry ambulatory surgery center, in accordance with~~
7 ~~chapter 17 of title 23.~~

8 ~~(b) A surcharge at a rate of two percent (2.0%) shall be imposed upon the net patient~~
9 ~~services revenue received each month by every outpatient health care facility. Every provider~~
10 ~~shall pay the monthly surcharge no later than the twenty-fifth (25th) day of the month following~~
11 ~~the month that the gross patient revenue is received. This surcharge shall be in addition to any~~
12 ~~other authorized fees that have been assessed upon outpatient facilities.~~

13 ~~**44-64-4. Returns.** (a) Every provider shall, on or before the twenty-fifth (25th) day of~~
14 ~~the month following the month that the gross patient revenue is received, make a return to the tax~~
15 ~~administrator.~~

16 ~~(b) The tax administrator is authorized to adopt rules relative to the form of the return~~
17 ~~and the data it must contain for the correct computation of gross patient revenue and the~~
18 ~~surcharge. All returns shall be signed by the provider or its authorized representative, subject to~~
19 ~~the penalties of perjury. If a return shows an overpayment of the surcharge due, the tax~~
20 ~~administrator shall refund or credit the overpayment to the provider.~~

21 ~~(c) The tax administrator, for good cause shown, may extend the time within which a~~
22 ~~provider is required to file a return. If the return is filed during the period of extension, no penalty~~
23 ~~or late filing charge may be imposed for failure to file the return at the time required by this~~
24 ~~chapter, but the provider shall be liable for any interest as prescribed in this chapter. Failure to~~
25 ~~file the return during the period for the extension shall make the extension null and void.~~

26 ~~**44-64-5. Set-off for delinquent payment of surcharge.** If a provider shall fail to pay a~~
27 ~~surcharge within thirty (30) days of its due date, the tax administrator may request any agency of~~
28 ~~state government to set off the amount of the delinquency against any payment they might be due~~
29 ~~the provider from the agency and to remit any such payment to the tax administrator. Upon~~
30 ~~receipt of a request for set off from the tax administrator, any agency of state government is~~
31 ~~authorized and empowered to set off the amount of any delinquency against any payment that is~~
32 ~~due the provider. The amount of set-off shall be credited against the surcharge due from the~~
33 ~~provider.~~

34 ~~**44-64-6. Surcharge on available information -- Interest on delinquencies -- Penalties**~~

1 ~~--- **Collection powers.** ---~~ If any provider shall fail, within the time required by this chapter, to file
2 a return, or shall file an insufficient or incorrect return, or shall not pay the surcharge imposed by
3 this chapter when it is due, the tax administrator shall make an assessment based upon
4 information that may be available, which assessment shall be payable upon demand and shall
5 bear interest from the date when the surcharge should have been paid at the annual rate set forth
6 in section 44-1-7 of the Rhode Island general laws, as amended. If any part of the surcharge is
7 caused by the negligence or intentional disregard of the provisions of this chapter, a penalty of ten
8 percent (10%) of the amount of the determination shall be added to the surcharge. The tax
9 administrator shall collect the surcharge with interest in the same manner and with the same
10 powers as are prescribed for collection of taxes in this title.

11 ~~**44-64-7. Claims for refund -- Hearing upon denial.** ---~~ (a) Any provider, subject to the
12 provisions of this chapter, may file a claim for refund with the tax administrator at any time
13 within two (2) years after the surcharge has been paid. If the tax administrator shall determine
14 that the surcharge has been overpaid, the tax administrator shall make a refund with interest from
15 the date of overpayment.

16 ~~(b) Any provider aggrieved by an action of the tax administrator in determining the~~
17 ~~amount of any surcharge or penalty imposed under the provisions of this chapter may, within~~
18 ~~thirty (30) days after the notice of the action was mailed, apply to the tax administrator, for a~~
19 ~~hearing relative to the surcharge or penalty. The tax administrator shall fix a time and place for~~
20 ~~the hearing and shall so notify the provider.~~

21 ~~**44-64-8. Hearing by tax administrator on application.** ---~~ Following hearing, if the tax
22 administrator upholds the assessment of the surcharge, the amount owed shall be assessed
23 together with any penalty or interest thereon.

24 ~~**44-64-9. Appeals.** ---~~ Appeals from administrative orders or decisions made pursuant to
25 any provisions of this chapter shall be to the sixth division district court pursuant to chapter 8 of
26 title 8 of the Rhode Island general laws, as amended. The provider's right to appeal under this
27 section shall be expressly made conditional upon prepayment of all surcharges, interest, and
28 penalties, unless the provider moves for and is granted an exemption from the prepayment
29 requirement, pursuant to section 8-8-26 of the Rhode Island general laws, as amended. Following
30 the appeal, if the court determines that the provider is entitled to a refund, the provider shall also
31 be paid interest on the refund at the rate provided in section 44-1-7.1 of the Rhode Island general
32 laws, as amended.

33 ~~**44-64-10. Provider records.** ---~~ Every provider shall:

34 ~~(1) Keep records as may be necessary to determine the amount of its liability under this~~

1 chapter;

2 ~~(2) Preserve those records for the period of three (3) years following the date of filing of~~
3 ~~any return required by this chapter, or until any litigation or prosecution under this chapter has~~
4 ~~been completed; and~~

5 ~~(3) Make those records available for inspection upon demand by the tax administrator or~~
6 ~~his authorized agents at reasonable times during regular business hours.~~

7 ~~**44-64-11. Method of payment and deposit of surcharge.** --- (a) Payments required by~~
8 ~~this chapter may be made by electronic transfer of monies to the general treasurer for deposit in~~
9 ~~the general fund.~~

10 ~~(b) The general treasurer is authorized to establish necessary accounts and to take all~~
11 ~~steps necessary to facilitate the electronic transfer of monies. The general treasurer shall provide~~
12 ~~the tax administrator a record of any such monies transferred and deposited.~~

13 ~~**44-64-12. Rules and regulations.** --- The tax administrator is authorized to promulgate all~~
14 ~~necessary rules, regulations, and procedures, not inconsistent with state law and fiscal procedures,~~
15 ~~for the proper administration of this chapter and in order to carry out the provisions, policy, and~~
16 ~~purposes of this chapter.~~

17 ~~**44-64-13. Severability.** --- If any provision of this chapter or the application of this~~
18 ~~chapter to any person or circumstances is held invalid, that invalidity shall not affect other~~
19 ~~provisions or applications of the chapter that can be given effect without the invalid provision or~~
20 ~~application, and to this end the provisions of this chapter are declared to be severable.~~

21 SECTION 2. Chapter 44-65 of the General Laws entitled "Imaging Services Surcharge"
22 is hereby repealed in its entirety.

23 ~~CHAPTER 44-65~~

24 ~~Imaging Services Surcharge~~

25 ~~**44-65-1. Short title.** --- This chapter shall be known as "The Imaging Services Surcharge~~
26 ~~Act."~~

27 ~~**44-65-2. Definitions.** --- The following words and phrases as used in this chapter have the~~
28 ~~following meaning:~~

29 ~~(1) "Administrator" means the tax administrator within the department of administration.~~

30 ~~(2) "Gross patient revenue" means the gross amount received on a cash basis by a~~
31 ~~provider from all income derived from the provision of imaging services to patients. Charitable~~
32 ~~contributions, fundraising proceeds, and endowment support shall not be considered as "gross~~
33 ~~patient revenue."~~

34 ~~(3) "Imaging services" means and includes all the professional and technical components~~

1 of x ray, ultrasound (including echocardiography), computed tomography (CT), magnetic
2 resonance imaging (MRI), positron emission tomography (PET), positron emission
3 tomography/computed tomography (PET/CT), general nuclear medicine, and bone densitometry
4 procedures.

5 ~~(4) "Net patient services revenue" means the charges related to patient care services less
6 (i) charges attributable to charity care, (ii) bad debt expenses, and (iii) contractual allowances.~~

7 ~~(5) "Person" means any individual, corporation, company, association, partnership, joint
8 stock association, and the legal successor thereof.~~

9 ~~(6) "Provider" means any person who furnishes imaging services for the purposes of
10 patient diagnosis, assessment or treatment, excluding any person licensed as a hospital or a
11 rehabilitation hospital center or a not for profit organization ambulatory care facility, pursuant to
12 the provisions of chapter 17 of title 23 of the Rhode Island general laws, as amended or not
13 performing more than two hundred (200) radiological procedures per month. Further, the term
14 "provider" shall not apply to any person subject to the provisions of chapter 64 of title 44 or to
15 any person licensed in the state of Rhode Island as a dentist or a podiatrist or a veterinarian.~~

16 ~~(7) "Surcharge" means the assessment imposed upon net patient revenue pursuant to this
17 chapter.~~

18 **44-65-3. Imposition of surcharge.** ~~--- A surcharge shall be imposed upon the net patient
19 revenue received by every provider in each month at a rate of two percent (2.0%). Every provider
20 shall pay the monthly surcharge no later than the twenty fifth (25th) day of each month following
21 the month of receipt of net patient services revenue. This surcharge shall be in addition to any
22 other fees or assessments upon the provider allowable by law.~~

23 **44-65-4. Returns.** ~~--- (a) Every provider shall on or before the twenty fifth (25th) day of
24 the month following the month of receipt of gross patient revenue make a return to the tax
25 administrator.~~

26 ~~(b) The tax administrator is authorized to adopt rules, pursuant to this chapter, relative to
27 the form of the return and the data that it must contain for the correct computation of gross patient
28 revenue and the surcharge upon the amount. All returns shall be signed by the provider or by its
29 authorized representative, subject to the pains and penalties of perjury. If a return shows an
30 overpayment of the surcharge due, the tax administrator shall refund or credit the overpayment to
31 the provider.~~

32 ~~(c) The tax administrator, for good cause shown, may extend the time within which a
33 provider is required to file a return, and if the return is filed during the period of extension no
34 penalty or late filing charge may be imposed for failure to file the return at the time required by~~

1 this chapter, but the provider shall be liable for interest as prescribed in this chapter. Failure to
2 file the return during the period for the extension shall void the extension.

3 ~~**44-65-5. Set-off for delinquent payment of surcharge.**~~ If a provider shall fail to pay a
4 surcharge within thirty (30) days of its due date, the tax administrator may request any agency of
5 state government making payments to the provider to set off the amount of the delinquency
6 against any payment due the provider from the agency of state government and remit the sum to
7 the tax administrator. Upon receipt of the set-off request from the tax administrator, any agency
8 of state government is authorized and empowered to set off the amount of the delinquency
9 against any payment or amounts due the provider. The amount of set-off shall be credited against
10 the surcharge due from the provider.

11 ~~**44-65-6. Surcharge on available information -- Interest on delinquencies -- Penalties**~~
12 ~~**--Collection powers.**~~ If any provider shall fail to file a return within the time required by this
13 chapter, or shall file an insufficient or incorrect return, or shall not pay the surcharge imposed by
14 this chapter when it is due, the tax administrator shall assess upon the information as may be
15 available, which shall be payable upon demand and shall bear interest at the annual rate provided
16 by section 44-1-7 of the Rhode Island general laws, as amended, from the date when the
17 surcharge should have been paid. If any part of the surcharge made is due to negligence or
18 intentional disregard of the provisions of this chapter, a penalty of ten percent (10%) of the
19 amount of the determination shall be added to the tax. The tax administrator shall collect the
20 surcharge with interest in the same manner and with the same powers as are prescribed for
21 collection of taxes in this title.

22 ~~**44-65-7. Claims for refund -- Hearing upon denial.**~~ (a) Any provider, subject to the
23 provisions of this chapter, may file a claim for refund with the tax administrator at any time
24 within two (2) years after the surcharge has been paid. If the tax administrator shall determine
25 that the surcharge has been overpaid, he or she shall make a refund with interest from the date of
26 overpayment.

27 (b) Any provider whose claim for refund has been denied may, within thirty (30) days
28 from the date of the mailing by the administrator of the notice of the decision, request a hearing
29 and the administrator shall, as soon as practicable, set a time and place for the hearing and shall
30 notify the provider.

31 ~~**44-65-8. Hearing by tax administrator on application.**~~ Any provider aggrieved by
32 the action of the tax administrator in determining the amount of any surcharge or penalty imposed
33 under the provisions of this chapter may apply to the tax administrator, within thirty (30) days
34 after the notice of the action is mailed to it, for a hearing relative to the surcharge or penalty. The

1 ~~tax administrator shall fix a time and place for the hearing and shall so notify the provider. Upon~~
2 ~~the hearing the tax administrator shall correct manifest errors, if any, disclosed at the hearing and~~
3 ~~thereupon assess and collect the amount lawfully due together with any penalty or interest~~
4 ~~thereon.~~

5 ~~**44-65-9. Appeals.** -- Appeals from administrative orders or decisions made pursuant to~~
6 ~~any provisions of this chapter shall be to the sixth division district court pursuant to chapter 8 of~~
7 ~~title 8 of the Rhode Island general laws, as amended. The provider's right to appeal under this~~
8 ~~section shall be expressly made conditional upon prepayment of all surcharges, interest, and~~
9 ~~penalties unless the provider moves for and is granted an exemption from the prepayment~~
10 ~~requirement pursuant to section 8-8-26 of the Rhode Island general laws, as amended. If the~~
11 ~~court, after appeal, holds that the provider is entitled to a refund, the provider shall also be paid~~
12 ~~interest on the amount at the rate provided in section 44-1-7.1 of the Rhode Island general laws,~~
13 ~~as amended.~~

14 ~~**44-65-10. Provider records.** -- Every provider shall:~~

15 ~~(1) Keep records as may be necessary to determine the amount of its liability under this~~
16 ~~chapter.~~

17 ~~(2) Preserve those records for the period of three (3) years following the date of filing of~~
18 ~~any return required by this chapter, or until any litigation or prosecution under this chapter is~~
19 ~~finally determined.~~

20 ~~(3) Make those records available for inspection by the administrator or his/her authorized~~
21 ~~agents, upon demand, at reasonable times during regular business hours.~~

22 ~~**44-65-11. Method of payment and deposit of surcharge.** -- (a) The payments required~~
23 ~~by this chapter may be made by electronic transfer of monies to the general treasurer and~~
24 ~~deposited to the general fund.~~

25 ~~(b) The general treasurer is authorized to establish an account or accounts and to take all~~
26 ~~steps necessary to facilitate the electronic transfer of monies. The general treasurer shall provide~~
27 ~~the tax administrator a record of any monies transferred and deposited.~~

28 ~~**44-65-12. Rules and regulations.** -- The tax administrator is authorized to make and~~
29 ~~promulgate rules, regulations, and procedures not inconsistent with state law and fiscal~~
30 ~~procedures as he or she deems necessary for the proper administration of this chapter and to carry~~
31 ~~out the provisions, policies, and purposes of this chapter.~~

32 ~~**44-65-13. Severability.** -- If any provision of this chapter or the application of this~~
33 ~~chapter to any person or circumstances is held invalid, that invalidity shall not affect other~~
34 ~~provisions or applications of the chapter that can be given effect without the invalid provision or~~

1 ~~application, and to this end the provisions of this chapter are declared to be severable.~~

2 SECTION 3. This act shall take effect upon passage.

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LC00838
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO TAXATION - FACILITY AND IMAGING SURCHARGES

- 1 This act would repeal chapter 44-64 entitled “The Outpatient Health Care Facility
- 2 Surcharge” and chapter 44-65 entitled “Imaging Services Surcharge”.
- 3 This act would take effect upon passage.

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