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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 INSURANCE - DURABLE MEDICAL EQUIPMENT FREEDOM OF
CHOICE

Introduced By: Senators DeVall, Miller, Crowley, and Nesselbush

Date Introduced: February 16, 2012

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
2 by adding thereto the following chapter:

3 CHAPTER 29.3

4 DURABLE MEDICAL EQUIPMENT FREEDOM OF CHOICE

5 **27-29.3-1. Definitions.** – For purposes of this chapter, the following terms shall mean:

6 (1) "Commissioner" means the health insurance commissioner.

7 (2) "Durable medical equipment" means equipment (including repair and replacement
8 parts) which: (i) Can withstand repeated use; (ii) is primarily and customarily used to serve a
9 medical purpose; (iii) Generally is not useful to a person in the absence of illness or injury; and
10 (iv) Is appropriate for use in the home. Durable medical equipment does not include mobility
11 enhancing equipment.

12 (3) "Eligible bidder" means a supplier of durable medical equipment, irrespective of
13 corporate structure, who is willing to bid for participation in a restricted durable medical
14 equipment contract.

15 (4) "Insurer" means an insurance carrier as defined in chapters 18, 19, 20 and 41 of title
16 27.

17 (5) "Insured" means any person who is entitled to have all or some costs associated with
18 durable medical equipment paid by an insurer pursuant to a policy, certificate, contract or

1 agreement of insurance or coverage.

2 (6) "Non-restricted durable medical equipment supplier network" means a network that
3 permits any supplier of durable medical equipment to participate on substantially uniform terms
4 and conditions established by an insurer.

5 (7) "Restricted durable medical equipment network" means an arrangement: (i) For the
6 provision of durable medical equipment and/or services directly associated with the durable
7 medical equipment including, but not limited to, maintenance to insureds, and; (ii) Which, under
8 the terms of an insurer's policy, certificate, contract or agreement of insurance or coverage,
9 requires an insured or creates a financial incentive for an insured to obtain said equipment and/or
10 services from one or more participating suppliers that have entered into a specific contractual
11 relationship with the insurer.

12 **27-29.3-2. Fair competition – Requirements for carriers offering durable medical**
13 **equipment networks. -- (a) Any insurer that offers insureds a restricted durable medical**
14 **equipment network shall, in soliciting, arranging, competitively bidding, contracting for, and**
15 **operating such a network, comply with the following requirements for the purpose of promoting**
16 **fair and competitive bidding:**

17 (1) Conduct and complete an initial open bidding process to establish the restricted
18 network and at least once every three (3) years thereafter;

19 (2) Provide notice to all eligible bidders of the insurer's intent to solicit bids for
20 participation in a restricted durable medical equipment network;

21 (3) Inform eligible bidders of the date such bids will be solicited;

22 (4) Provide eligible bidders with identical, equal and uniform information, including, but
23 not limited to, bid procedure information, financial and utilization information needed to make an
24 informed competitive bid, criteria to be used in awarding a restricted durable medical equipment
25 network contract and proposed contractual requirements for the restricted durable medical
26 equipment network;

27 (5) Provide eligible bidders with at least thirty (30) days to prepare and submit bids
28 between the bid solicitation date and the bid submission deadline;

29 (6) Open all bids: (i) At a previously specified time, which shall not be more than thirty
30 (30) days after the bid submission deadline; and (ii) In a public manner; provided, that certain
31 information contained in said bids may be held as confidential from public review consistent with
32 regulations promulgated by the commissioner regarding the disclosure of proprietary data or
33 information submitted by any bidders; and

34 (7) Select a successful bidder using solely the criteria provided to eligible bidders

1 pursuant to subdivision (a)(4) herein, applied in a uniform manner.

2 (b) An insurer shall neither exclude nor favor any individual durable medical equipment
3 supplier in the design of a competitive bid involving restricted or nonrestricted durable medical
4 equipment networks in compliance with the requirements of this section. An entity and its
5 affiliates that assists an insurer in the development of the bid, design, bid specifications or the bid
6 process, or assists in the review or evaluation of said bids, shall be prohibited from bidding on
7 such a contract.

8 **27-29.3-3. Participation of small and mid-sized durable medical equipment**
9 **manufacturers and suppliers. -- (a) Any durable medical equipment suppliers that are licensed,**

10 accredited, and located within the state of Rhode Island that are not owned or controlled, directly
11 or indirectly, by an entity licensed in two (2) or more jurisdictions in addition to Rhode Island,
12 which are not participating in an insurer's restricted durable medical equipment network contract
13 shall nevertheless have the right to provide durable medical equipment and/or services directly
14 associated with the durable medical equipment including, but not limited to, maintenance, to the
15 insurer's insureds and be paid by the insurer as if the durable medical equipment manufacturer or
16 supplier were participating in the insurer's restricted durable medical equipment network, and be
17 entitled to all the rights and privileges associated with participating in the insurer's restricted
18 durable medical equipment network including access to fee schedules and covered codes,
19 provided that such non-network durable medical equipment manufacturers or suppliers agree:

20 (1) To accept as the insurer's payments in full the price required of durable medical
21 equipment manufacturers or suppliers in the insurer's restricted durable medical equipment
22 network;

23 (2) To bill to the insured up to and not in excess of any copayment, coinsurance,
24 deductible, other amount required of an insured by the insurer, or for other uncovered services;

25 (3) To be reimbursed on the same methodological basis, including, but not limited to,
26 capitation or other risk-sharing methodology, as required of durable medical equipment
27 manufacturers or suppliers in the insurer's restricted durable medical equipment network;

28 (4) To participate in the insurer's utilization review and quality assurance programs,
29 including utilization reports as required of durable medical equipment manufacturers or suppliers
30 in the carrier's restricted durable medical equipment network;

31 (5) To provide computerized online eligibility determinations and claims submissions if
32 and as required of durable medical equipment manufacturers or suppliers in the insurer's
33 restricted durable medical equipment network;

34 (6) To participate in the insurer's satisfaction surveys and complaint resolution programs

1 for its insureds;

2 (7) To protect the insurer's proprietary information and an insured's confidentiality and
3 privacy;

4 (8) To abide by the insurer's performance standards with respect to waiting times,
5 response rates and inventory management;

6 (9) To comply with the insurer's claims audit provisions; and

7 (10) To certify, using audit results or accountant statements, the fiscal soundness of the
8 non-network durable medical equipment manufacturer or supplier.

9 (b) An insurer may waive any of the aforementioned agreements in arranging for the
10 provision of durable medical equipment to insureds through a non-network durable medical
11 equipment manufacturer or supplier. An insurer shall not impose any agreements, terms or
12 conditions on any non-network durable medical equipment supplier which are more restrictive
13 than those required of durable medical equipment suppliers in the insurer's restricted durable
14 medical equipment network. The failure of a non-network durable medical equipment supplier to
15 abide by the aforementioned agreements may, at the option of the insurer, serve as the basis for
16 cancellation of the non-network durable medical equipment supplier's participation.

17 **27-29.3-4. Applicability and allowances.** -- (a) Nothing in this chapter shall preclude an
18 insurer from entering into an agreement to allow non-network providers the ability to participate
19 with the insurer's plans under terms and conditions set forth by the insurer.

20 (b) Nothing in this chapter shall be construed to require the provision of pharmacy
21 benefits to insureds through a restricted durable medical equipment network nor any other
22 arrangement for the provision of durable medical equipment.

23 **27-29.3-5. Enforcement.** – The health insurance commission shall have authority to
24 enforce the provisions of sections 27-29.3-2 and 27-29.3-4, subject to provisions of “The
25 Administrative Procedures Act”, chapter 35 of title 42.

26 **27-29.3-6. Severability.** – If any provision of this chapter or of any rule or regulation
27 made under this chapter, or its application to any person or circumstance is held invalid by a court
28 of competent jurisdiction, the remainder of the chapter, rule, or regulation and the application of
29 the provision to other persons or circumstances shall not be affected by this invalidity. The
30 invalidity of any section or sections or parts of any section or sections shall not affect the validity
31 of the remainder of the chapter.

32 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 INSURANCE - DURABLE MEDICAL EQUIPMENT FREEDOM OF
CHOICE

- 1 This act would provide consumers of durable medical equipment with freedom of choice
- 2 in the selection of a supplier.
- 3 This act would take effect upon passage.

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