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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - EARLY OFFERS FOR MEDICAL
INJURY CLAIMS

Introduced By: Senators Bates, and Hodgson

Date Introduced: March 06, 2013

Referred To: Senate Health & Human Services

(Lieutenant Governor)

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 5 of the General Laws entitled "BUSINESSES AND PROFESSIONS"

2 is hereby amended by adding thereto the following chapter:

3 CHAPTER 37.8

4 EARLY OFFERS FOR MEDICAL INJURY CLAIMS

5 **5-37.8-1. Defintions.** – As used in this chapter:

6 (1) "Claim for medical injury" means any claim against a medical care provider, whether
7 based in tort, contract, or otherwise, to recover damages on account of a medical injury.

8 (2) "Claimant" means an individual who, in his or her own right, or on behalf of another
9 as otherwise permitted by law, is seeking compensation for a medical injury, due to alleged sub-
10 standard medical care or treatment.

11 (3) "Early offer" means an offer to pay an injured person's economic loss related to a
12 medical injury, and reasonable attorney's fees and costs incurred in representing the injured
13 person under this chapter. No other damages of any kind shall be included in an early offer under
14 this chapter.

15 (4) "Economic loss" means monetary expenses incurred by or on behalf of a claimant
16 reasonably related to a medical injury and its consequences, including actual out-of-pocket
17 medical expenses, replacement services, additional payment to the claimant pursuant to section 5-
18 37.8-7, and one hundred percent (100%) of the claimant's salary, wages, or income from self-

1 employment or contract work lost as a result of the medical injury. Economic loss does not
2 include: pain and suffering, punitive damages, enhanced compensatory damages, exemplary
3 damages, damages for loss of enjoyment of life (hedonic damages), inconvenience, physical
4 impairment, mental anguish, emotional pain and suffering, and loss of the following: earning
5 capacity, consortium, society, companionship, comfort, protection, marital care, parental care,
6 attention, advice, counsel, training, guidance or education, and all other non-economic damages
7 of any kind.

8 (5) “Hearing officer” means a person of judicial and/or legal training, common sense, and
9 a respect for the law, chosen by agreement of the parties from a list of neutral persons maintained
10 by the judicial branch office of mediation and arbitration. If the parties cannot agree on the choice
11 of a hearing officer, one will be selected at random from the list by the insurance department.
12 Fees paid to the hearing officer for presiding at hearings under this chapter shall be paid by the
13 medical care provider at a rate of two hundred dollars (\$200) per hour and shall be reviewed for
14 reasonableness by the insurance department. No hearing officer shall be employed by the
15 insurance department or shall serve if such service would constitute a conflict under the Rhode
16 Island Rules of Professional Conduct, or would require disqualification under the Code of
17 Judicial Conduct.

18 (6) “Medical care provider” means a physician, physician’s assistant, registered or
19 licensed practical nurse, hospital, clinic, or other health care provider or agency licensed by the
20 state, or otherwise lawfully providing medical care or services, or an officer, employee, or agent
21 thereof acting in the course of and scope of employment.

22 (7) “Medical injury” or “injury” means any adverse, untoward, or undesired
23 consequences caused by professional services rendered by a medical care provider, whether
24 resulting from negligence, error, or omission in the performance of such services; from rendition
25 of such services without informed consent or in breach of warranty or in violation of contract;
26 from failure to diagnose; from premature abandonment of a patient or of a course of treatment;
27 from failure properly to maintain equipment or appliances necessary to the rendition of such
28 services; or otherwise arising out of or sustained in the course of such services.

29 (8) “Notice of injury” means written notice by certified mail provided to the medical care
30 provider alleged to have caused a medical injury, and containing:

31 (i) The name, address, and telephone number of the claimant;

32 (ii) The believed date and place of the alleged medical injury;

33 (iii) The nature of the alleged injury;

34 (iv) An explanation, if known, as to how the alleged injury was caused;

1 (v) A description of the severity of the alleged injury, including the claimant’s opinion of
2 where the injury is located on the National Practitioner Data Bank severity scale;

3 (vi) Medical records and medical bills associated with the alleged injury or a limited
4 authorization allowing the medical care provider to obtain medical records and medical bills
5 associated with the alleged injury;

6 (vii) Evidence of lost wages or income from self-employment or contract work for the
7 individual suffering from an alleged medical injury, which may be supplied through income tax
8 returns or paycheck stubs for the year prior to the alleged injury and any subsequent records up to
9 the date of the notice of alleged injury, or a limited authorization allowing the medical care
10 provider to obtain such records;

11 (viii) A demand for economic loss resulting from the alleged injury, that includes only
12 medical expenses, replacement services, reasonable attorney’s fees, and lost wages, or income
13 from self-employment or contract work;

14 (ix) The name, address, and telephone number of claimant’s attorney; and

15 (x) A request that the medical care provider extend an early offer of settlement of the
16 claim.

17 (9) “Personal representative” means an executor, administrator, successor personal
18 representative, or special administrator of a decedent’s estate or a person legally authorized to
19 perform substantially the same functions.

20 (10) “Reasonable attorney’s fee” means twenty percent (20%) of the present value of the
21 claimant’s economic loss and the reasonable costs incurred in representing the injured person
22 under this chapter.

23 (11) “Replacement services” means expenses reasonably incurred in obtaining ordinary
24 and necessary services from others, who are not members of the injured person’s household, in
25 lieu of those the injured person would have performed for the benefit of the household, but could
26 not because of the injury.

27 (12) “Wages” means monetary payment for services rendered, and the reasonable value
28 of board, rent, housing, lodging, fuel, or a similar advantage received from the employer and
29 gratuities received in the course of employment from others than the employer; but “wages” shall
30 not include any sum paid by the employer to the employee to cover any special expenses incurred
31 by the employee because of the nature of the employment. For individuals receiving employment
32 security benefits pursuant to chapters 42-44 of title 28 at the time of the injury, wages shall equal
33 the wage rate used to determine the unemployed individual’s benefit pursuant to section 28-44-1
34 at all. For a minor who is injured prior to reaching the age of eighteen (18) and who is unable to

1 perform any gainful work as a result of the medical injury, upon reaching the age of eighteen (18)
2 wages shall equal the mean Rhode Island per capita income as shown by the American
3 Community Survey's 1-year Estimate (inflation adjusted), produced by the United States Census
4 Bureau.

5 **5-37.8-2. Procedure. -- (a) After a medical injury, the claimant may:**

6 (1) Pursue resolution of a claim for medical injury pursuant to this chapter; or

7 (2) Pursue an action for medical injury as provided in title 9 of the Rhode Island general
8 laws.

9 (b) For as long as the claimant and medical provider are proceeding under this chapter,
10 this section shall govern the procedure for resolving the medical injury claim at issue between the
11 two (2) parties, notwithstanding any other provision of law.

12 (c) If the claimant elects to pursue a remedy under this chapter, the claimant shall serve a
13 notice of injury to the medical care provider alleged to be responsible for the injury and an
14 executed notification and waiver of rights in the form set forth in section 5-37.8-13, by certified
15 mail, return receipt requested.

16 (d) Upon the receipt by the medical care provider of a notice of injury and an executed
17 notification and waiver of rights, the medical care provider may elect to:

18 (1) Extend an early offer of settlement; or

19 (2) Decline to extend an early offer of settlement.

20 (e) A claimant's failure to submit a notice of injury requesting an early offer, or a
21 provider's failure to extend an early offer, shall not be subject to review in any hearing, court, or
22 other proceeding of any kind.

23 (f) The medical care provider shall respond to the claimant's notice of injury in writing,
24 within ninety (90) days, setting forth the details of its early offer, or indicating that the medical
25 care provider has decided not to extend an early offer of settlement. The medical care provider's
26 written response shall be sent by certified mail, return receipt requested, to the address provided
27 in the claimant's notice of injury.

28 (g) The medical care provider may request in writing that the individual alleging a
29 medical injury submit to an independent medical examination by a qualified and board certified
30 physician chosen by the medical care provider and agreed to by the claimant at a time and place
31 reasonably convenient for the claimant. If the parties cannot agree on a physician to conduct the
32 examination within thirty (30) days of the request, the hearing officer shall select the physician.
33 The physician conducting the examination shall not be affiliated directly or indirectly in any way,
34 with the medical care provider alleged to have caused the injury. The cost of the examination,

1 including reasonable travel expenses for the claimant, shall be paid by the medical care provider's
2 professional liability insurance company. Within five (5) days of receipt, the medical provider or
3 its insurer shall, at no cost to the claimant, provide the claimant with all reports and documents
4 originating from the examination. The claimant shall also be entitled to obtain a transcript and/or
5 audio-video recording of the examination at the claimant's expense. Any physician conducting
6 medical examinations under this section shall be in good standing with the department of health.

7 (h) If the medical care provider requests that the claimant submit to a physical
8 examination as set forth in subsection (g), the time allowed for a medical care provider to respond
9 to the claimant's notice of injury shall be extended by thirty (30) days.

10 (i) If the medical care provider extends an early offer, the claimant shall accept or reject
11 the medical care provider's written offer in writing within sixty (60) days of receipt of the offer.
12 If the claimant requests a hearing pursuant to section 5-37.8-10, to resolve any dispute with
13 respect to the content of an early offer, the timeframe within which the claimant may accept or
14 reject the early offer shall be extended until ten (10) days after the decision on the disputed issue
15 is issued by the hearing officer.

16 (j) If the claimant accepts the medical care provider's early offer, the claimant shall
17 notify the medical care provider in writing by certified mail, return receipt requested, and
18 thereafter, the claimant is barred from pursuing any claim for the same medical injury against any
19 medical care provider.

20 (k) If the claimant rejects the medical care provider's early offer or does not accept the
21 medical care provider's early offer within the time constraints provided by subsection (i), the
22 early offer shall be considered rejected. A claimant who rejects an early offer may pursue an
23 action for medical injury against the medical care provider pursuant to title 9 of the Rhode Island
24 general laws.

25 (l) A claimant who rejects an early offer and who does not prevail in an action for
26 medical injury against the medical care provider by being awarded at least one hundred twenty-
27 five percent (125%) of the early offer amount, shall be responsible for paying the medical care
28 provider's reasonable attorney's fees and costs incurred in the proceedings under this chapter. The
29 claimant shall certify to the court that a bond or other suitable security for payment of the medical
30 care provider's reasonable attorney's fees and costs has been posted before the court shall consider
31 the claimant's case.

32 **5-37.8-3. Unrepresented Claimant.** -- (a) If the claimant is not represented by legal
33 counsel, upon receiving a notice of injury, the medical care provider shall provide a neutral
34 advisor who is a member of the Rhode Island Bar Association, at the medical care provider's

1 expense, to offer assistance to the claimant and medical care provider under this chapter. Among
2 other things, the neutral advisor shall encourage the claimant to consider retaining an attorney,
3 and shall ensure the claimant is aware of the differences between proceeding under this chapter or
4 as provided in title 9 of the Rhode Island general laws.

5 (b) A claimant who was unrepresented at the time the claimant submitted the notice and
6 waiver of rights shall have the right to withdraw the notice of injury and the notice and waiver of
7 rights within five (5) business days after the claimant's first meeting with the neutral advisor,
8 which shall occur no later than ten (10) business days from claimant's notification of the identity
9 of the neutral advisor. In the event the claimant withdraws the notice of injury, the early offer
10 process shall be terminated and both parties shall proceed as if the notice of injury was never
11 filed.

12 (c) No medical care provider or insurer shall extend an early offer prior to the expiration
13 of fifteen (15) business days after the claimant receives notification of the appointment of the
14 neutral advisor.

15 **5-37.8-4. Confidentiality.--** (a) Proceedings, records, and communications during
16 negotiation of an early offer shall be treated as private and confidential by the claimant and the
17 medical care provider. The outcome and any other writings, evidence, or statements made or
18 offered by a party or a party's representative during negotiation of an early offer and relevant
19 only to the early offer process are not admissible in court, shall not be submitted or used for any
20 purpose in a subsequent trial, and shall not be publicly disclosed.

21 (b) A notice of injury provided pursuant to subsection 5-37.8-2(c), and subsequent
22 actions taken pursuant to this chapter shall be exempt from any requirement to report information
23 to the department of health, except in the case the parties reach a settlement under this chapter.

24 **5-37.8-5. Payment of Early Offer. --** (a) If an early offer is accepted, economic losses
25 previously incurred by the claimant as a result of the medical injury and the reasonable attorney's
26 fees shall be paid by the medical care provider to the claimant within fifteen (15) days of an
27 acceptance by the claimant of an early offer.

28 (b) If an early offer is accepted, the medical care provider shall pay future economic
29 losses incurred by the claimant to the claimant as such losses accrue. If any requested payment is
30 denied, the medical provider shall notify the claimant in writing of the denial and the basis for
31 denial, and inform the claimant that any request for a hearing under section 5-37.8-10 regarding
32 the denial must be made within thirty (30) days of the date of denial.

33 (1) Payments for medical bills arising after the early offer settlement is reached shall be
34 made within fifteen (15) days after the medical care provider receives reasonable proof of the

1 facts asserted by the claimant and the amount of loss sustained. If reasonable proof is not supplied
2 as to the entire claim, the amount supported by reasonable proof shall be paid within fifteen (15)
3 days after such proof is received by the medical care provider. Any part or all of the remainder of
4 the claim that is later supported by reasonable proof shall be paid within fifteen (15) days of such
5 proof being received by the medical care provider. The medical care provider shall pay any and
6 all fees and charges incurred by the claimant resulting from failure to make timely payment of
7 medical bills.

8 (2) Payment of lost wages shall be made weekly. At a minimum, such payments shall be
9 adjusted annually on July 1 by a factor equal to the percentage change in the Consumer Price
10 Index for All Urban Consumers (CPI-U) for the prior twelve (12) months established by the
11 Federal Bureau of Labor Statistics.

12 (3) Payment of any other amounts due under an early offer shall be paid within thirty (30)
13 days of the date that the provider receives notice and proof of the fact and amount that is due.

14 (4) When necessary for the medical care provider or its insurer to evaluate whether
15 medical expenses are reasonably related to the medical injury, the medical care provider may
16 request in writing that the claimant submit to an independent medical evaluation as provided by
17 subsection 5-37.8-2(g).

18 (c) Interest shall accrue at the rate of one and one half percent (1.5%) per month on any
19 amounts due under an early offer that are not paid as prescribed by this section.

20 (d) In lieu of periodic payments, the claimant and medical care provider may agree upon
21 a lump sum payment for any and all potential future economic losses suffered by the claimant,
22 provided that the lump sum agreement is reviewed and approved by a hearing officer after a
23 hearing.

24 **5-37.8-6. Compensation for Death.** – If death results from a medical injury, the amount
25 of an early offer pursuant to this chapter shall include:

26 (1) Any economic loss incurred by the decedent prior to death;

27 (2) The value at the time of death of what would have been the net earnings of the
28 deceased, less living expenses during the period of his or her life expectance, but for the medical
29 injury;

30 (3) The value of replacement services during the period of the decedent's life expectance,
31 but for the medical injury;

32 (4) The additional payment determined pursuant to section 5-37.8-7; and

33 (5) A reasonable attorney's fee.

34 **5-37.8-7. Additional Payment to the Claimant.** -- (a) In addition to the lost wages,

1 medical expenses, and replacement services, economic loss included in any early offer under this
2 chapter shall include an additional payment to the claimant.

3 (b) The additional payment, as adjusted under subsection (e), that must be included in an
4 early offer shall be:

5 (1) For a temporary injury involving only emotional harm, without physical injury: six
6 thousand six hundred dollars (\$6,600).

7 (2) For a temporary injury involving insignificant harm: two thousand one hundred
8 dollars (\$2,100).

9 (3) For a temporary injury involving minor harm: seven thousand eight hundred dollars
10 (\$7,800).

11 (4) For a temporary injury involving major harm: (thirty-one thousand five hundred
12 dollars (\$31,500).

13 (5) For a permanent injury involving minor harm: thirty-five thousand five hundred
14 dollars (\$35,500).

15 (6) For a permanent injury involving significant harm: eighty-one thousand five hundred
16 dollars (\$81,500).

17 (7) For a permanent injury involving major harm: one hundred twenty-seven thousand
18 five hundred dollars (\$127,500).

19 (8) For a permanent injury involving grave harm, or an injury resulting in death: one
20 hundred forty thousand dollars (\$140,000).

21 (c) Classification of injuries under subsection 37.8-7(b) using the National Practitioner
22 Data Bank severity scale.

23 (d) Either party may request a hearing pursuant to section 5-37.8-10 to resolve a dispute
24 regarding classification of injury severity under this section.

25 (e) The additional payment amounts in subsection (b) shall be adjusted annually on July 1
26 beginning in 2013 by a factor equal to the percentage change in the CPI-U index for medical care
27 for the Northeast Region for the prior twelve (12) months established by the Federal Bureau of
28 Labor Statistics.

29 **5-37.8-8. Assignments; Certain Claims of Creditors. --**

30 (a) Payments for economic loss under this chapter shall not be assignable.

31 (b) Claims for child support, spousal support, or combination child and spousal support
32 payments, pursuant to section 15-11.1-1, may be enforced against economic loss settlements.

33 **5-37.8-9. Multiple Parties Alleged to Have Contributed to Causing Medical Injury. --**

34 (a) Every early offer to settle a claim under this chapter shall include all of the economic

1 loss, plus a reasonable attorney fee as set forth herein, and shall not be reduced or apportioned
2 based on comparative fault of multiple providers. Any medical care provider, or combination of
3 providers alleged to have contributed to causing an injury may extend an early offer as provided
4 in this chapter, and acceptance of that offer by the claimant shall bar any further lawsuit or other
5 claims for compensation by the claimant against all medical care providers arising as a result of
6 the same medical injury. However, any medical care provider that extends an early offer to a
7 claimant may seek contribution in a separate action against any medical care provider or other
8 party that contributed to causing the medical injury. The injured individual shall not be a party to
9 any action for contribution between medical care providers; however, the injured individual shall
10 reasonably cooperate with the proceedings and provide such reasonable information and
11 testimony as may be necessary to resolve the contribution claim. The parties to the action shall
12 pay the injured individual all reasonable costs associated with such reasonable cooperation and
13 testimony, including travel expenses and reasonable loss of earnings or a witness fee of one
14 hundred dollars (\$100) per day, whichever is greater.

15 (b) Nothing in this section shall limit claims by the claimant against any party other than
16 medical care providers who participated in providing medical care which gave rise to the medical
17 injury.

18 **5-37.8-10. Dispute Resolution. --** (a) Upon the request of either party, a qualified
19 hearing officer shall be chosen as provided in subdivision 5-37.8-1(5) to resolve a dispute
20 regarding an early offer made under this chapter.

21 (b) Dispute resolution under this chapter shall be limited to the following issues:

22 (1) Whether an early offer includes all of the economic loss related to the injury that is
23 required by this chapter;

24 (2) Whether economic loss of any kind, past or future, asserted by the claimant, is
25 reasonably related to an injury that is the subject of an early offer;

26 (3) Which severity level, pursuant to section 5-37.8-7, most closely describes the injury
27 that is the subject of an early offer; or

28 (4) What the net present value of an early offer is, for the purposes of calculating the
29 appropriate payment for reasonable attorney's fees.

30 (c) No other disputes arising under this chapter may be the subject of, or resolved
31 through, a hearing under this section.

32 (d) Any request for a hearing pursuant to this section shall contain a reasonably complete
33 statement of the issue or issues to be resolved in the hearing and shall fully identify all parties to
34 the dispute. Any issue not listed in subsection 5-37.8-10(b) shall not be considered. Hearings

1 concerning economic loss that arise after a settlement under this chapter shall be requested within
2 thirty (30) days of the date payment for such economic loss is denied under subsection 5-37.8-
3 5(b).

4 (e) The medical care provider or, if applicable, the medical care provider's insurer shall
5 pay all reasonable costs associated with a hearing under this section.

6 (f) Hearings conducted under this chapter shall be governed exclusively by this section
7 and by rules adopted pursuant to section 5-37.8-15.

8 (g) Any hearing conducted under this chapter shall be conducted within forty-five (45)
9 days of the request and a decision shall be issued within ten (10) days of completion of the
10 hearing. Hearings may be conducted in person or telephonically.

11 (h) On a motion from any party, or on his or her own motion, a hearing officer may
12 summarily determine any issue in dispute without a hearing if it appears from the record that
13 there are no material issues of fact in dispute. By agreement of the parties, any dispute may be
14 determined by the hearing officer on the written record without a hearing.

15 (i) Hearings conducted pursuant to this chapter shall be limited to a reasonable amount of
16 time as determined by the hearing officer, shall not require the presence or testimony of expert
17 witnesses, and shall be recorded by an accurate audio or stenographic recording of all testimony,
18 available to both parties at the non-prevailing parties' expense.

19 (j) Parties to a hearing under this section shall exchange exhibits and witness lists at least
20 ten (10) days prior to the hearing. No exhibit may be introduced or witness called in a hearing
21 unless exchanged with the opposing party pursuant to this subsection.

22 (k) The hearing officer shall issue a written decision resolving the issues in dispute. If the
23 hearing officer finds against the medical provider on any issue, the decision shall modify the
24 terms of the early offer. The early offer, as modified by the decision of the hearing officer, shall
25 be binding on the parties.

26 (l) In a hearing conducted pursuant to this section, if the hearing officer determines the
27 claimant's position to be frivolous, the claimant shall reimburse the medical care provider for its
28 costs related to presenting the dispute to the hearing officer, up to a maximum of one thousand
29 dollars (\$1,000).

30 (m) In a hearing conducted pursuant to subsection 5-37.8-10(b) of this section, if the
31 hearing officer determines the medical care provider's position to be frivolous, the medical care
32 provider shall reimburse the claimant for its costs related to presenting the dispute to the hearing
33 officer, up to a maximum of one thousand dollars (\$1,000), or if the claimant is unrepresented,
34 pay the claimant double the amount that was frivolously disputed or denied.

1 **5-37.8-11. Limitations of Claims.** -- (a) Claims for medical injury under this chapter
2 shall be subject to the limitation set forth in section 9-1-14.1.

3 (b) Providing a notice of injury to a medical care provider as provided in this chapter
4 shall operate to toll the applicable statute of limitation with respect to that injury from the time
5 such notice is provided to a medical care provider until the expiration of time for a medical care
6 provider to extend an early offer, or if an early offer is extended, until the acceptance or rejection
7 of an early offer by the claimant, whichever occurs later.

8 **5-37.8-12. Subrogation.** -- Any insurer or third party who has paid or reimbursed
9 economic losses to or for the benefit of the claimant, shall have the right of subrogation against
10 the medical provider entering into an early offer of settlement under this chapter.

11 **5-37.8-13. Notice and Waiver of Rights.** -- (a) Claimants electing to pursue resolution
12 of a medical injury under this chapter shall execute a notice and waiver of rights which contains
13 the following wording:

14 WAIVER OF RIGHTS

15 By agreeing to submit a notice of injury to the medical care provider, I understand that
16 my rights to seek legal remedies and a trial for my injuries guaranteed by title 9 of the Rhode
17 Island general laws may be affected.

18 I understand that I have the right to consult and retain an attorney to represent me
19 regarding this matter, and that if an early offer settlement is reached, my attorney will be paid
20 pursuant to Rhode Island general laws subsection 5-37.8-5(a) by the health care provider, in
21 addition to any amount that is paid for my economic loss.

22 If I do not have an attorney when I sign this waiver form, the medical provider will
23 appoint a neutral advisor to assist me in the early offer process and to explain, among other
24 things, the differences between proceeding under this chapter or as provided in title 9 of the
25 Rhode Island general laws.

26 I HAVE THE RIGHT TO WITHDRAW THIS WAIVER AND THE NOTICE OF
27 INJURY ANY TIME PRIOR TO MIDNIGHT OF THE FIFTH BUSINESS DAY AFTER MY
28 FIRST MEETING WITH THE ADVISOR, WHICH MUST OCCUR NO LATER THAN 10
29 BUSINESS DAYS FROM MY NOTIFICATION OF THE IDENTITY OF THE NEUTRAL
30 ADVISOR.

31 If after submitting a notice of injury, the medical care provider does NOT extend an early
32 offer (Rhode Island general laws subdivision 5-37.8-1(3)), I am free to pursue my legal remedies
33 as defined in Rhode Island law without restriction.

34 If after submitting a notice of injury, the medical care provider does extend an early offer

1 (Rhode Island general laws subdivision 5-37.8-1(3)), I may either:

2 (1) Accept the early offer;

3 (2) Request a hearing before a hearing officer to determine whether the early offer
4 includes all of the economic loss I am entitled to under the statute, and if necessary, the hearing
5 officer may order the medical care provider to increase the early offer to meet the requirements of
6 the early offer law; or

7 (3) Reject the early offer and seek alternative legal remedies.

8 I understand that if I reject an early offer and am later awarded economic damages equal
9 to or less than one hundred twenty-five percent (125%) percent of the amount of the early offer, I
10 will be responsible for paying the medical care provider's reasonable attorney's fees and costs
11 incurred in proceedings under this chapter.

12 I understand that if an early offer is made by the medical care provider and I accept that
13 offer, disputes regarding the early offer can be resolved only in accordance with Rhode Island
14 general laws section 5-37.8-10 by a hearing officer listed with the judicial branch office of
15 mediation and arbitration, at my request or the request of the medical care provider. If either party
16 believes that the decision of the hearing officer is unlawful, that party may seek discretionary
17 review in the Rhode Island court system; however, there is no assurance that the courts will
18 undertake such review.

19 Date _____ Signature _____

20 (b) A properly executed waiver form by a claimant who is competent at the time the
21 waiver is executed shall be conclusively presumed to be a sufficient, knowing, and voluntary
22 waiver if the waiver form complies with this section.

23 **5-37.8-14. Other Action for Injury. --** Except as set forth in subsection 5-37.8-2(i) a
24 claimant may only pursue an action for medical injury as provided in title 9 of the Rhode Island
25 general laws when:

26 (1) The claimant elects not to submit a notice of injury pursuant to this chapter;

27 (2) The medical care provider elects not to extend an early offer pursuant to this chapter
28 in response to the notice of injury; or

29 (3) The claimant withdraws the notice of injury and the notice and waiver of rights
30 pursuant to section 5-37.8-3.

31 **5-37.8-15. Rules and Regulation. --** The director of the department of business
32 regulation shall adopt rules necessary to administer the hearings process under this chapter.

33 **5-37.8-16. Reports. --** (a) The director of the department of business regulation shall
34 report to the general assembly annually, on or before November 1, on the effects of the early offer

1 process established in this chapter. Such reports shall include, but not be limited to, statistics
2 regarding every initiation of an early offer process, including the number of claimants requesting
3 early offers, the number of claimants receiving early offers, a record of the amount of each
4 demand for economic loss, the corresponding early offer from the medical provider and, if any,
5 the ultimate amount received by the claimant, the level of severity of the injuries incurred, and the
6 period of time from initial notice to final resolution of claims.

7 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 BUSINESSES AND PROFESSIONS - EARLY OFFERS FOR MEDICAL
INJURY CLAIMS

- 1 This act would create an early offer mechanism for the resolution of medical injury
- 2 claims.
- 3 This act would take effect upon passage.

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