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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO INSURANCE - DURABLE MEDICAL EQUIPMENT FREEDOM OF
CHOICE – FAIR COMPETITION AND PRACTICES

Introduced By: Senators Nesselbush, Conley, Archambault, and DaPonte

Date Introduced: June 03, 2014

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 - FAIR COMPETITION AND
5 PRACTICES

6 **27-29.3-1. Definitions.** – For purposes of this chapter, the following terms shall mean:

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

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

12 Durable medical equipment does not include mobility enhancing equipment.

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

16 (4) "Insurer" means an insurance carrier as defined in chapters 18, 19, 20 and 41 of title
17 27.

18 (5) "Insured" mean any person who is entitled to have all or some costs associated with

1 durable medical equipment paid by an insurer pursuant to a policy, certificate, contract or
2 agreement of insurance or coverage.

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

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

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

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

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

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

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

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

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

1 (7) Select a successful bidder using solely the criteria provided to eligible bidders
2 pursuant to subsection (a)(4) above, applied in a uniform manner.

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

9 **27-29.3-3. Participation of small and mid-sized durable medical equipment**
10 **manufacturers and suppliers.** – (a) Any durable medical equipment suppliers that are licensed,
11 accredited, and located within the state that are not owned or controlled, directly or indirectly, by
12 an entity licensed in two (2) or more jurisdictions in addition to Rhode Island, which are not
13 participating in an insurer's restricted durable medical equipment network contract shall
14 nevertheless have the right to provide durable medical equipment and/or services directly
15 associated with the durable medical equipment including, but not limited to, maintenance to the
16 insurer's insureds and be paid by the insurer as if the durable medical equipment manufacturer or
17 supplier were participating in the insurer's restricted durable medical equipment network, and be
18 entitled to all the rights and privileges associated with participating in the insurer's restricted
19 durable medical equipment network including access to fee schedules and covered codes,
20 provided that such non-network durable medical equipment manufacturers or suppliers agree:

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

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

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

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

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

1 (6) To participate in the insurer's satisfaction surveys and complaint resolution programs
2 for its insureds;

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

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

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

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

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

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

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

24 **27-29.3-5. Enforcement.** – The office of the health insurance commission shall have
25 authority to enforce the provisions of §§ 27-29.3-2 – 27-29.3-4, subject to the provisions of
26 chapter 35 of title 42.

27 **27-29.3-6. Severability.** – If any provision of §§ 27-29.3-1 – 27-29.3-5, or the
28 application of those sections to any person or circumstances is held invalid, the invalidity shall
29 not affect other provisions or applications of §§ 27-29.3-1 – 27-29.3-5 which can be given effect
30 without the invalid provision or application; to this end the provisions of §§ 27-29.3-1 – 27-29.3-
31 5 are declared to be severable.

32 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 INSURANCE - DURABLE MEDICAL EQUIPMENT FREEDOM OF
CHOICE – FAIR COMPETITION AND PRACTICES

1 This act would authorize freedom of choice by an insured party in the selection of
2 durable medical equipment, and would establish criteria for fair competition between carriers
3 offering durable medical equipment.

4 This act would take effect upon passage.

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