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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 HEALTH AND SAFETY - HEALTH CARE SERVICES - UTILIZATION
REVIEW ACT

Introduced By: Senators Miller, Cool Rumsey, Ottiano, Sosnowski, and Goldin

Date Introduced: February 12, 2014

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 23-17.12-12 and 23-17.12-14 of the General Laws in Chapter 23-
2 17.12 entitled "Health Care Services - Utilization Review Act" are hereby amended to read as
3 follows:

4 **23-17.12-12. Reporting requirements.** -- (a) The department shall establish reporting
5 requirements to determine if the utilization review programs are in compliance with the
6 provisions of this chapter and applicable regulations.

7 **(b) By November 14, 2014, the department shall report to the general assembly regarding**
8 **hospital admission practices and procedures and the effects of such practices and procedures on**
9 **the care and wellbeing of patients who present behavioral healthcare conditions on an emergency**
10 **basis. The report shall be developed with the cooperation of the department of behavioral**
11 **healthcare, developmental disabilities, and hospitals and of the department of children, youth, and**
12 **families, and shall recommend changes to state law and regulation to address any necessary and**
13 **appropriate revisions to the department's regulations related to utilization review based on the**
14 **Federal Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and the Patient**
15 **Protection and Affordable Care Act, Pub. L.111-148, and the state's regulatory interpretation of**
16 **parity in insurance coverage of behavioral healthcare. These recommended or adopted revisions**
17 **to the department's regulations shall include, but not be limited to:**

18 **(1) Adverse determination and internal appeals, with particular regard to the time**

1 [necessary to complete a review of urgent and/or emergent services for patients with behavioral](#)
2 [health needs;](#)

3 [\(2\) External appeal requirements;](#)

4 [\(3\) The process for investigating whether insurers and agents are complying with the](#)
5 [provisions of § 23-17.12 in light of parity in insurance coverage for behavioral healthcare, with](#)
6 [particular regard to emergency admissions; and](#)

7 [\(4\) Enforcement of the provisions of § 23-17.12 in light of insurance parity for behavioral](#)
8 [healthcare.](#)

9 **23-17.12-14. Penalties.** -- A person who substantially violates any provision of this
10 chapter or any regulation adopted under this chapter or who submits any false information in an
11 application required by this chapter is guilty of a misdemeanor and on conviction is subject to a
12 penalty not exceeding ~~five thousand dollars (\$5,000)~~ [twelve thousand five hundred dollars](#)
13 [\(\\$12,500\).](#)

14 SECTION 2. Section 42-14.5-3 of the General Laws in Chapter 42-14.5 entitled "The
15 Rhode Island Health Care Reform Act of 2004 - Health Insurance Oversight" is hereby amended
16 to read as follows:

17 **42-14.5-3. Powers and duties [Contingent effective date; see effective dates under**
18 **this section.]** -- The health insurance commissioner shall have the following powers and duties:

19 (a) To conduct quarterly public meetings throughout the state, separate and distinct from
20 rate hearings pursuant to section 42-62-13, regarding the rates, services and operations of insurers
21 licensed to provide health insurance in the state the effects of such rates, services and operations
22 on consumers, medical care providers, patients, and the market environment in which such
23 insurers operate and efforts to bring new health insurers into the Rhode Island market. Notice of
24 not less than ten (10) days of said hearing(s) shall go to the general assembly, the governor, the
25 Rhode Island Medical Society, the Hospital Association of Rhode Island, the director of health,
26 the attorney general and the chambers of commerce. Public notice shall be posted on the
27 department's web site and given in the newspaper of general circulation, and to any entity in
28 writing requesting notice.

29 (b) To make recommendations to the governor and the house of representatives and
30 senate finance committees regarding health care insurance and the regulations, rates, services,
31 administrative expenses, reserve requirements, and operations of insurers providing health
32 insurance in the state, and to prepare or comment on, upon the request of the governor, or
33 chairpersons of the house or senate finance committees, draft legislation to improve the regulation
34 of health insurance. In making such recommendations, the commissioner shall recognize that it is

1 the intent of the legislature that the maximum disclosure be provided regarding the
2 reasonableness of individual administrative expenditures as well as total administrative costs. The
3 commissioner shall make recommendations on the levels of reserves including consideration of:
4 targeted reserve levels; trends in the increase or decrease of reserve levels; and insurer plans for
5 distributing excess reserves.

6 (c) To establish a consumer/business/labor/medical advisory council to obtain
7 information and present concerns of consumers, business and medical providers affected by
8 health insurance decisions. The council shall develop proposals to allow the market for small
9 business health insurance to be affordable and fairer. The council shall be involved in the
10 planning and conduct of the quarterly public meetings in accordance with subsection (a) above.
11 The advisory council shall develop measures to inform small businesses of an insurance
12 complaint process to ensure that small businesses that experience rate increases in a given year
13 may request and receive a formal review by the department. The advisory council shall assess
14 views of the health provider community relative to insurance rates of reimbursement, billing and
15 reimbursement procedures, and the insurers' role in promoting efficient and high quality health
16 care. The advisory council shall issue an annual report of findings and recommendations to the
17 governor and the general assembly and present their findings at hearings before the house and
18 senate finance committees. The advisory council is to be diverse in interests and shall include
19 representatives of community consumer organizations; small businesses, other than those
20 involved in the sale of insurance products; and hospital, medical, and other health provider
21 organizations. Such representatives shall be nominated by their respective organizations. The
22 advisory council shall be co-chaired by the health insurance commissioner and a community
23 consumer organization or small business member to be elected by the full advisory council.

24 (d) To establish and provide guidance and assistance to a subcommittee ("The
25 Professional Provider-Health Plan Work Group") of the advisory council created pursuant to
26 subsection (c) above, composed of health care providers and Rhode Island licensed health plans.
27 This subcommittee shall include in its annual report and presentation before the house and senate
28 finance committees the following information:

29 (1) A method whereby health plans shall disclose to contracted providers the fee
30 schedules used to provide payment to those providers for services rendered to covered patients;

31 (2) A standardized provider application and credentials verification process, for the
32 purpose of verifying professional qualifications of participating health care providers;

33 (3) The uniform health plan claim form utilized by participating providers;

34 (4) Methods for health maintenance organizations as defined by section 27-41-1, and

1 nonprofit hospital or medical service corporations as defined by chapters 27-19 and 27-20, to
2 make facility-specific data and other medical service-specific data available in reasonably
3 consistent formats to patients regarding quality and costs. This information would help consumers
4 make informed choices regarding the facilities and/or clinicians or physician practices at which to
5 seek care. Among the items considered would be the unique health services and other public
6 goods provided by facilities and/or clinicians or physician practices in establishing the most
7 appropriate cost comparisons;

8 (5) All activities related to contractual disclosure to participating providers of the
9 mechanisms for resolving health plan/provider disputes;

10 (6) The uniform process being utilized for confirming in real time patient insurance
11 enrollment status, benefits coverage, including co-pays and deductibles;

12 (7) Information related to temporary credentialing of providers seeking to participate in
13 the plan's network and the impact of said activity on health plan accreditation;

14 (8) The feasibility of regular contract renegotiations between plans and the providers in
15 their networks; and

16 (9) Efforts conducted related to reviewing impact of silent PPOs on physician practices.

17 (e) To enforce the provisions of Title 27 and Title 42 as set forth in section 42-14-5(d).

18 (f) To provide analysis of the Rhode Island Affordable Health Plan Reinsurance Fund.
19 The fund shall be used to effectuate the provisions of sections 27-18.5-8 and 27-50-17.

20 (g) To analyze the impact of changing the rating guidelines and/or merging the
21 individual health insurance market as defined in chapter 27-18.5 and the small employer health
22 insurance market as defined in chapter 27-50 in accordance with the following:

23 (1) The analysis shall forecast the likely rate increases required to effect the changes
24 recommended pursuant to the preceding subsection (g) in the direct pay market and small
25 employer health insurance market over the next five (5) years, based on the current rating
26 structure, and current products.

27 (2) The analysis shall include examining the impact of merging the individual and small
28 employer markets on premiums charged to individuals and small employer groups.

29 (3) The analysis shall include examining the impact on rates in each of the individual and
30 small employer health insurance markets and the number of insureds in the context of possible
31 changes to the rating guidelines used for small employer groups, including: community rating
32 principles; expanding small employer rate bonds beyond the current range; increasing the
33 employer group size in the small group market; and/or adding rating factors for broker and/or
34 tobacco use.

1 (4) The analysis shall include examining the adequacy of current statutory and regulatory
2 oversight of the rating process and factors employed by the participants in the proposed new
3 merged market.

4 (5) The analysis shall include assessment of possible reinsurance mechanisms and/or
5 federal high-risk pool structures and funding to support the health insurance market in Rhode
6 Island by reducing the risk of adverse selection and the incremental insurance premiums charged
7 for this risk, and/or by making health insurance affordable for a selected at-risk population.

8 (6) The health insurance commissioner shall work with an insurance market merger task
9 force to assist with the analysis. The task force shall be chaired by the health insurance
10 commissioner and shall include, but not be limited to, representatives of the general assembly, the
11 business community, small employer carriers as defined in section 27-50-3, carriers offering
12 coverage in the individual market in Rhode Island, health insurance brokers and members of the
13 general public.

14 (7) For the purposes of conducting this analysis, the commissioner may contract with an
15 outside organization with expertise in fiscal analysis of the private insurance market. In
16 conducting its study, the organization shall, to the extent possible, obtain and use actual health
17 plan data. Said data shall be subject to state and federal laws and regulations governing
18 confidentiality of health care and proprietary information.

19 (8) The task force shall meet as necessary and include their findings in the annual report
20 and the commissioner shall include the information in the annual presentation before the house
21 and senate finance committees.

22 (h) To establish and convene a workgroup representing health care providers and health
23 insurers for the purpose of coordinating the development of processes, guidelines, and standards
24 to streamline health care administration that are to be adopted by payors and providers of health
25 care services operating in the state. This workgroup shall include representatives with expertise
26 that would contribute to the streamlining of health care administration and that are selected from
27 hospitals, physician practices, community behavioral health organizations, each health insurer
28 and other affected entities. The workgroup shall also include at least one designee each from the
29 Rhode Island Medical Society, Rhode Island Council of Community Mental Health
30 Organizations, the Rhode Island Health Center Association, and the Hospital Association of
31 Rhode Island. The workgroup shall consider and make recommendations for:

32 (1) Establishing a consistent standard for electronic eligibility and coverage verification.
33 Such standard shall:

34 (i) Include standards for eligibility inquiry and response and, wherever possible, be

1 consistent with the standards adopted by nationally recognized organizations, such as the centers
2 for Medicare and Medicaid services;

3 (ii) Enable providers and payors to exchange eligibility requests and responses on a
4 system-to-system basis or using a payor supported web browser;

5 (iii) Provide reasonably detailed information on a consumer's eligibility for health care
6 coverage, scope of benefits, limitations and exclusions provided under that coverage, cost-sharing
7 requirements for specific services at the specific time of the inquiry, current deductible amounts,
8 accumulated or limited benefits, out-of-pocket maximums, any maximum policy amounts, and
9 other information required for the provider to collect the patient's portion of the bill;

10 (iv) Reflect the necessary limitations imposed on payors by the originator of the
11 eligibility and benefits information;

12 (v) Recommend a standard or common process to protect all providers from the costs of
13 services to patients who are ineligible for insurance coverage in circumstances where a payor
14 provides eligibility verification based on best information available to the payor at the date of the
15 request of eligibility.

16 (2) Developing implementation guidelines and promoting adoption of such guidelines
17 for:

18 (i) The use of the national correct coding initiative code edit policy by payors and
19 providers in the state;

20 (ii) Publishing any variations from codes and mutually exclusive codes by payors in a
21 manner that makes for simple retrieval and implementation by providers;

22 (iii) Use of health insurance portability and accountability act standard group codes,
23 reason codes, and remark codes by payors in electronic remittances sent to providers;

24 (iv) The processing of corrections to claims by providers and payors.

25 (v) A standard payor denial review process for providers when they request a
26 reconsideration of a denial of a claim that results from differences in clinical edits where no
27 single, common standards body or process exists and multiple conflicting sources are in use by
28 payors and providers.

29 (vi) Nothing in this section or in the guidelines developed shall inhibit an individual
30 payor's ability to employ, and not disclose to providers, temporary code edits for the purpose of
31 detecting and deterring fraudulent billing activities. The guidelines shall require that each payor
32 disclose to the provider its adjudication decision on a claim that was denied or adjusted based on
33 the application of such edits and that the provider have access to the payor's review and appeal
34 process to challenge the payor's adjudication decision.

1 (vii) Nothing in this subsection shall be construed to modify the rights or obligations of
2 payors or providers with respect to procedures relating to the investigation, reporting, appeal, or
3 prosecution under applicable law of potentially fraudulent billing activities.

4 (3) Developing and promoting widespread adoption by payors and providers of
5 guidelines to:

6 (i) Ensure payors do not automatically deny claims for services when extenuating
7 circumstances make it impossible for the provider to obtain a preauthorization before services are
8 performed or notify a payor within an appropriate standardized timeline of a patient's admission;

9 (ii) Require payors to use common and consistent processes and time frames when
10 responding to provider requests for medical management approvals. Whenever possible, such
11 time frames shall be consistent with those established by leading national organizations and be
12 based upon the acuity of the patient's need for care or treatment. For the purposes of this section,
13 medical management includes prior authorization of services, preauthorization of services,
14 precertification of services, post service review, medical necessity review, and benefits advisory;

15 (iii) Develop, maintain, and promote widespread adoption of a single common website
16 where providers can obtain payors' preauthorization, benefits advisory, and preadmission
17 requirements;

18 (iv) Establish guidelines for payors to develop and maintain a website that providers can
19 use to request a preauthorization, including a prospective clinical necessity review; receive an
20 authorization number; and transmit an admission notification.

21 (i) To issue an ANTI-CANCER MEDICATION REPORT. - Not later than June 30,
22 2014 and annually thereafter, the office of the health insurance commissioner (OHIC) shall
23 provide the senate committee on health and human services, and the house committee on
24 corporations, with: (1) Information on the availability in the commercial market of coverage for
25 anti-cancer medication options; (2) For the state employee's health benefit plan, the costs of
26 various cancer treatment options; (3) The changes in drug prices over the prior thirty-six (36)
27 months; and (4) Member utilization and cost-sharing expense.

28 (j) To monitor the adequacy of each health plan's compliance with the provisions of the
29 federal mental health parity act, including a review of related claims processing and
30 reimbursement procedures. Findings, recommendations and assessments shall be made available
31 to the public.

32 (k) To monitor the transition from fee for service and toward global and other alternative
33 payment methodologies for the payment for healthcare services. Alternative payment
34 methodologies should be assessed for their likelihood to promote access to affordable health

1 insurance, health outcomes and performance.

2 (l) To report annually, no later than July 1, 2014, then biannually thereafter, on hospital
3 payment variation, including findings and recommendations, subject to available resources.

4 (m) Notwithstanding any provision of the general or public laws or regulation to the
5 contrary, provide a report with findings and recommendations to the president of the senate and
6 the speaker of the house, on or before April 1, 2014, including, but not limited to, the following
7 information:

8 (1) The impact of the current mandated healthcare benefits as defined in sections 27-18-
9 48.1, 27-18-60, 27-18-62, 27-18-64, similar provisions in title 27, chapters 19, 20 and 41, and
10 subsection 27-18-3(c), 27-38.2-1 et seq., or others as determined by the commissioner, on the cost
11 of health insurance for fully insured employers, subject to available resources;

12 (2) Current provider and insurer mandates that are unnecessary and/or duplicative due to
13 the existing standards of care and/or delivery of services in the healthcare system;

14 (3) A state-by-state comparison of health insurance mandates and the extent to which
15 Rhode Island mandates exceed other states benefits; and

16 (4) Recommendations for amendments to existing mandated benefits based on the
17 findings in (1), (2) and (3) above.

18 (n) On or before July 1, 2014, the office of the health insurance commissioner in
19 collaboration with the director of health and lieutenant governor's office shall submit a report to
20 the general assembly and the governor to inform the design of accountable care organizations
21 (ACOs) in Rhode Island as unique structures for comprehensive healthcare delivery and value
22 based payment arrangements, that shall include, but not limited to:

23 (1) Utilization review;

24 (2) Contracting; and

25 (3) Licensing and regulation.

26 (o) On or before February 3, 2015, the office of the health insurance commissioner shall
27 submit a report to the general assembly and the governor that describes, analyzes, and proposes
28 recommendations to improve compliance of insurers with the provisions of § 27-18-76 with
29 regard to patients with mental health and substance use disorders.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY - HEALTH CARE SERVICES - UTILIZATION
REVIEW ACT

1 This act would require the department of health in cooperation with the department of
2 behavioral healthcare, developmental disabilities and hospitals and the department of children,
3 youth and families, to submit a written report to the general assembly, that proposes regulatory
4 changes concerning the issue of parity in behavioral health care insurance coverage. It would also
5 increase the criminal fine from five thousand dollars (\$5,000) to twelve thousand five hundred
6 dollars (\$12,500) for any person who violates the "Utilization Review Act" or any of its
7 regulations.

8 This act would take effect upon passage.

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