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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO COMMERCIAL LAW - GENERAL REGULATORY PROVISIONS

Introduced By: Representatives Lombardi, McKiernan, Coughlin, Craven, and Morin

Date Introduced: January 12, 2018

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 6 of the General Laws entitled "COMMERCIAL LAW - GENERAL
2 REGULATORY PROVISIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 13.4

4 PATIENT BROKERING ACT

5 **6-13.4-1. Definitions.**

6 The following words as used in this chapter, unless a different meaning is required by the
7 context or is specifically prescribed, shall have the following meanings:

8 (1) "Healthcare provider" means any person or entity licensed, certified, or registered;
9 required to be licensed, certified or registered; or lawfully exempt from being required to be
10 licensed, certified or registered with the department of health; any person or entity that has
11 contracted with the department of health to provide goods or services to Medicaid recipients
12 pursuant to Rhode Island law; any provider of behavioral healthcare services provided by the
13 department of behavioral healthcare, developmental disabilities and hospitals; or any federally
14 supported primary care program authorized under 42 U.S.C. Chapter 6 A Public Health Service.

15 (2) "Healthcare provider network entity" means a corporation, partnership, or limited
16 liability company owned or operated by two (2) more health care providers and organized for the
17 purpose of entering into agreements with health insurers, health care purchasing groups, or the
18 Medicare or Medicaid program.

19 (3) "Health insurer" means any insurance company authorized to transact health

1 insurance in the state, any insurance company authorized to transact health insurance or casualty
2 insurance in the state that is offering a minimum premium plan or stop-loss coverage for any
3 person or entity providing health care benefits, any self-insurance plan as defined in title 27, any
4 health maintenance organization, any prepaid health clinic, any prepaid limited health service
5 organization, any multiple-employer welfare arrangement authorized to transact business in the
6 state pursuant to title 27, or any fraternal benefit society lawfully providing health benefits to its
7 members.

8 **6-13.4-2. Patient brokering prohibited.**

9 It is a unfair sales practice for any person, including any healthcare provider or healthcare
10 facility, to:

11 (1) Offer or pay a commission, benefit, bonus, rebate, kickback, or bribe, directly or
12 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to
13 induce the referral of a patient or patronage to or from a healthcare provider or healthcare facility;

14 (2) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or
15 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in
16 return for referring a patient or patronage to or from a healthcare provider or healthcare facility;

17 (3) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or
18 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in
19 return for the acceptance or acknowledgement of treatment from a healthcare provider or
20 healthcare facility; or

21 (4) Aid, abet, advise, or otherwise participate in the conduct prohibited under subsections
22 (a)(1), (a)(2), or (a)(3) of this section.

23 **6-13.4-3. Exceptions.**

24 This section shall not apply to:

25 (1) Any discount, payment, waiver of payment, or payment practice not prohibited by 42
26 U.S.C. § 1320a-7b(b) or regulations promulgated thereunder.

27 (2) Any payment, compensation, or financial arrangement within a group practice,
28 provided such payment, compensation, or arrangement is not to or from persons who are not
29 members of the group practice.

30 (3) Payments to a healthcare provider or healthcare facility for professional consultation
31 services.

32 (4) Commissions, fees, or other remuneration lawfully paid to insurance agents as
33 provided under title 27.

34 (5) Payments by a health insurer who reimburses, provides, offers to provide, or

1 administers health, mental health, or substance abuse goods or services under a health benefit
2 plan.

3 (6) Payments to or by a healthcare provider or healthcare facility, or a healthcare provider
4 network entity, that has contracted with a health insurer, a healthcare purchasing group, or the
5 Medicare or Medicaid program to provide health, mental health, or substance abuse goods or
6 services under a health benefit plan when such payments are for goods or services under the plan.
7 However, nothing in this section affects whether a healthcare provider network entity is an
8 insurer required to be licensed under Rhode Island law.

9 (7) Insurance advertising gifts lawfully permitted under title 27.

10 (8) When applicable, commissions or fees paid to a nurse registry licensed pursuant to the
11 department of health for referring persons providing health care services to clients of the nurse
12 registry.

13 (9) Payments by a healthcare provider or healthcare facility to a health, mental health, or
14 substance abuse information service that provides information upon request and without charge to
15 consumers about providers of healthcare goods or services to enable consumers to select
16 appropriate providers or facilities, provided that such information service:

17 (i) Does not attempt through its standard questions for solicitation of consumer criteria or
18 through any other means to steer or lead a consumer to select or consider selection of a particular
19 healthcare provider or healthcare facility;

20 (ii) Does not provide or represent itself as providing diagnostic or counseling services or
21 assessments of illness or injury and does not make any promises of cure or guarantees of
22 treatment;

23 (iii) Does not provide or arrange for transportation of a consumer to or from the location
24 of a healthcare provider or healthcare facility; and

25 (iv) Charges and collects fees from a healthcare provider or healthcare facility
26 participating in its services that are set in advance, are consistent with the fair market value for
27 those information services, and are not based on the potential value of a patient or patients to a
28 healthcare provider or healthcare facility or of the goods or services provided by the healthcare
29 provider or healthcare facility.

30 (10) An individual employed by the assisted living facility, or with whom the facility
31 contracts to provide marketing services for the facility, if the individual clearly indicates that they
32 work with or for the facility.

33 (11) Payments by an assisted living facility to a referral service that provides information,
34 consultation, or referrals to consumers to assist them in finding appropriate care or housing

1 options for seniors or disabled adults if the referred consumers are not Medicaid recipients.

2 (12) A resident of an assisted living facility who refers a friend, family members, or other
3 individuals with whom the resident has a personal relationship to the assisted living facility, in
4 which case the assisted living facility may provide a monetary reward to the resident for making
5 such referral.

6 **6-13.4-4. Penalties - Enforcement.**

7 (a) Any person, including an officer, partner, agent, attorney or other representative of a
8 firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity,
9 who violates any provision of this chapter commits a felony and shall, in addition to any criminal
10 sentence imposed, be ordered to pay a fine of fifty thousand dollars (\$50,000) for a violation
11 involving fewer than ten (10) patients; one hundred thousand dollars (\$100,000) for a violation
12 involving between ten (10) and twenty (20) patients; and five hundred thousand dollars
13 (\$500,000) for any violation where the prohibited conduct involves twenty (20) or more patients.

14 (b) Notwithstanding the existence or pursuit of any other remedy, the Rhode Island
15 attorney general may maintain an action for injunctive or other process to enforce the provisions
16 of this chapter.

17 (c) The party bringing an action under this chapter may recover reasonable expenses in
18 obtaining injunctive relief, including, but not limited to, investigative costs, court costs,
19 reasonable attorney's fees, witness costs, and deposition expenses.

20 (d) The provisions of this chapter are in addition to any other civil, administrative, or
21 criminal actions provided by law and may be imposed against both corporate and individual
22 defendants.

23 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 COMMERCIAL LAW - GENERAL REGULATORY PROVISIONS

1 This act would prohibit the practice of patient brokering and would provide penalties and
2 enforcement.

3 This act would take effect upon passage.

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