

1 (4) By incorporation or merger the power of health care insurers in markets of this state
2 for health care services has become great enough to create a competitive imbalance, reducing
3 levels of competition and threatening the availability of high quality, cost effective health care.

4 (5) Health care insurers by incorporation or merger speak through one or two (2)
5 dominant voices. Health care insurers often are able to dictate the terms of the provider contracts
6 that they offer physicians and other health care providers and commonly offer provider contracts
7 on a take-it-or-leave-it basis.

8 (6) The power of health care insurers to unilaterally impose provider contract terms
9 jeopardizes the ability of physicians and other health care providers to deliver the superior quality
10 health care services that have been traditionally available in this state.

11 (7) Current federal anti-trust enforcement policy restricts health care providers' ability to
12 collectively negotiate fee-for-service arrangements with payers and thus places the health care
13 providers in a dramatically weakened negotiating position. The large majority of physicians and
14 other health care providers do not have sufficient market power to reject unfair provider contract
15 terms that impede their ability to deliver medically appropriate care without undue delay or
16 administrative complexity.

17 (8) Health care insurers have undue influence by virtue of their market power, economic
18 resources and control over payments. To protect public health concerns, and restore balance to
19 the market, health care providers require a method to assert their appropriate influence on health
20 care issues.

21 (9) Inequitable reimbursement and other unfair payment terms adversely affect quality
22 patient care and access by reducing the resources that health care providers can devote to patient
23 care and decreasing the time that physicians are able to spend with their patients.

24 (10) Empowering health care providers to negotiate jointly with health care insurers as
25 provided in this act will help restore the competitive balance and improve competition in the
26 markets for health care services in this state, thereby providing benefits for consumers, health
27 care insurers.

28 (11) Allowing health care providers to negotiate jointly with health care insurers through
29 a common joint negotiation representative will improve the efficiency and effectiveness of
30 communications between the parties and result in provider contracts that better reflect the mutual
31 areas of agreement.

32 (12) This act is necessary, proper and constitutes an appropriate exercise of the authority
33 of this state to regulate the business of insurance and the delivery of health care services in order
34 to safeguard the public health and safety of Rhode Islanders.

1 (13) The procompetitive and other benefits of the joint negotiations and related joint
2 activity authorized by this act, including, but not limited to, restoring the competitive balance in
3 the market for health care services protecting access to quality patient care and improving
4 communications, outweigh any anti-competitive effects.

5 (14) It is the intention of the general assembly to authorize health care providers to jointly
6 discuss with health care insurers topics of concern regarding the provision of quality health care
7 or to jointly negotiate with health care insurers and to qualify such joint negotiations and related
8 joint activities for the state-action exemption to the federal and state anti-trust laws through the
9 articulated state policy and active supervision provided in this act.

10 **27-69-3. Definitions.** – The following words and phrases when used in this act shall have
11 the meanings given to them in this section unless the context clearly indicates otherwise:

12 (1) "Attorney general" means the attorney general of the state.

13 (2) "Commercial health insurance market" means the total number of lives covered by
14 health care insurers whose premiums are paid in whole or in part by employers.

15 (3) "Department of attorney general" means the department of attorney general of the
16 state.

17 (4) "Health care insurer" means an insurer defined in general laws subdivision 27-20.6-
18 1(1) and a third-party administrator when interacting with health care providers and enrollees on
19 behalf of such an insurer.

20 (5) "Health care insurer affiliate" means a health care insurer that is affiliated with
21 another entity by either the insurer or equity having a five percent (5%) or greater, direct or
22 indirect ownership or investment interest in the other through equity, debt or other means.

23 (6) "Health care provider" means an individual, acting alone or acting with other
24 individuals through any type or form of partnership, professional services corporation,
25 independent practice association or organization (or group of partnerships, professional services
26 corporations, independent practice associations or organizations) who is licensed, certified or
27 otherwise regulated to provide health care services under the laws of this state, including, but not
28 limited to, a physician, dentist, clinical social worker, podiatrist, optometrist, pharmacist,
29 psychologist, chiropractor, and physical therapist. "Health care provider" shall not include any
30 entity meeting the definition of "health care facility" as set forth in section 23-17-2 of the R.I.
31 general laws.

32 (7) "Health care services" means services for the diagnosis, prevention, treatment, cure
33 or relief of a health condition, injury, disease or illness, including, but not limited to, the
34 professional and technical component of professional services, supplies, drugs and biologicals,

1 diagnostic x-ray, laboratory and other diagnostic test, preventive screening services and tests,
2 such as pap smears and mammograms, radium and radioactive isotope therapy, surgical
3 dressings, devices for the reduction of fractures, durable medical equipment, eyeglasses and
4 contact lenses, braces, trusses, artificial limbs and eyes, dialysis services, home health services
5 and hospital and other facility services.

6 (8) "Impasse" means an impasse occurs when either party to a joint negotiation permitted
7 by this act believes in good faith that the parties have reached a point in meetings and
8 negotiations regarding the terms of a provider contract where their differences in position are so
9 substantial or prolonged that future meetings and negotiations would be futile.

10 (9) "Health insurance commissioner" means the health insurance commissioner
11 established by chapter 42-14.5 of the general laws.

12 (10) "Joint negotiation" means the negotiation with a health care insurer by two (2) or
13 more health care providers acting together as part of a formal entity or group or otherwise. The
14 term "joint negotiation" shall not include negotiations by health care providers that are or would
15 be lawful under state and federal law regardless of the effectiveness of this act.

16 (11) "Joint negotiation representative" means a natural person or legal entity selected by a
17 group of health care providers to be the group's representative in joint negotiations with a health
18 care insurer under this act.

19 (12) "Provider contract" means an agreement between a health care provider, or group of
20 health care providers, and a health care insurer which sets forth the terms and conditions under
21 which the provider is or providers are to deliver health care services to enrollees of the health care
22 insurer. The term does not include employment contracts between a health care insurer and a
23 health care professional.

24 (13) "Provider network" means a group of health care provides who have provider
25 contracts with a health care insurer.

26 (14) "Self-funded health benefit plan" means a plan that provides for the assumption of
27 the cost or spreading the risk of loss resulting from health care services of covered lives by an
28 employer, union or other sponsor, substantially out of the current revenues, assets or any other
29 funds of the sponsor.

30 (15) "Third-party administrator" means an entity that provides utilization review,
31 provider network credentialing or other administrative services for a health care insurer or a self-
32 funded health benefit plan.

33 (16) "Application" means the initial document forwarded by health care providers to the
34 attorney general seeking approval to enter into joint negotiations.

1 (17) "Petition" means the document submitted to the health insurance commissioner
2 requesting binding arbitration of an impasse.

3 (18) "Parties" means those entities engaged in or subject to joint negotiations including
4 health care providers, their joint negotiation representative and the relevant health care insurer.

5 **27-69-4. Negotiations regarding provider contracts.** – Health care provider may jointly
6 negotiate with a health care insurer with substantial market power, and engage in related joint
7 activity, as provided in sections 27-69-6 and 27-69-7. Such negotiations shall be limited to any
8 matters that may affect patient care in all or any part of the commercial health insurance market,
9 including, but not limited to, components contained in the provider contract. Nothing in this act
10 shall be construed to permit joint negotiation of matters outside the commercial health insurance
11 market, or with health care insurers who lack substantial market power, unless such negotiation is
12 permitted by other applicable law.

13 **27-69-5. Substantial market power.** – (a) Standard. – A health care insurer has
14 substantial market power over health care providers when:

15 (1) The insurer's market share in the commercial health insurance market or a relevant
16 segment of that market, alone or in combination with the market shares of affiliates, exceeds
17 twenty percent (20%); or

18 (2) The attorney general determines that the market power of the insurer in the relevant
19 service and geographic markets for the services of the providers seeking to jointly negotiate
20 significantly exceeds the countervailing market power of the providers acting individually.

21 **27-69-6. Conduct of negotiations.** – The following requirements shall apply to the
22 exercise of joint negotiation rights and related activity under this act, which are limited by this act
23 to all or any part of the commercial health insurance market.

24 (1) Health care providers shall select the members of their joint negotiation group by
25 mutual agreement;

26 (2) Health care providers shall designate a joint negotiation representative as the sole
27 party authorized to negotiate, to the extent permitted by this act, with one or more health care
28 insurers that have substantial market power;

29 (3) The health care providers may discuss with each other in anticipation of a formation
30 of a joint negotiation group such subjects as are necessary to the formation of that group, but no
31 others. And upon the selection of the health care providers' joint negotiation representative he or
32 she shall advise the health care providers of the provisions of this act and shall inform the health
33 care providers of the potential for legal action against health care providers who violate the
34 federal and state anti-trust laws:

1 (4) For the duration of the application and petition process, health care providers may
2 communicate with each other and their joint negotiation representative with respect to the matters
3 to be negotiated with the health care insurer;

4 (5) Health care providers may agree upon a proposal to be presented by their joint
5 negotiation representative to the health care insurer;

6 (6) Health care providers may agree to be bound by the terms and conditions negotiated
7 by their joint negotiation representative and may only jointly negotiate with a health care insurer
8 pursuant to this act if the health care providers in the group have agreed to be so bound;

9 (7) The health care providers' joint negotiation representative may provide the health care
10 providers with the results of negotiations with the health care insurer and an evaluation of any
11 offer made by the health care insurer;

12 (8) The health care providers' joint negotiation representative may reject a contract
13 proposal by a health care insurer on behalf of the health care providers. In the event of such
14 rejection, the health care providers subject to the contract proposal shall be free to contract
15 individually with the health care insurer or to obtain binding arbitration by the health insurance
16 commissioner in accordance with subsection 27-69-7(c), but may not use failure to reach
17 agreement with the health care insurer to coordinate or encourage the represented health care
18 providers to terminate any and all existing contracts the health care providers maintain
19 individually or otherwise with said health insurer, which behavior shall remain subject to
20 applicable federal and state anti-trust laws;

21 (9) Health care providers may not negotiate the inclusion or alteration of terms and
22 conditions to the extent the terms or conditions are required or prohibited by government
23 regulation. This paragraph shall not be construed to limit the right of health care providers to
24 jointly petition government for a change in such regulation;

25 (10) Upon request by the health care providers' joint negotiation representative and after
26 approval of the negotiations by the attorney general pursuant to subsection 27-69-7(a), health care
27 insurers shall be required to participate in negotiations under this subsection. Failure of a health
28 care insurer to participate in negotiations shall constitute an impasse, upon the occurrence of
29 which, the health care provider may submit the matter to binding arbitration by the health
30 insurance commissioner in accordance with section 27-69-7(c).

31 **27-69-7. Oversight.** – (a) Application for approval of joint negotiations. Before
32 engaging in any joint negotiation with a health care insurer, health care providers shall obtain the
33 attorney general's approval to proceed with the negotiations. The application seeking approval
34 shall include:

1 (1) the names and business addresses of the health care providers' joint negotiation
2 representative;
3 (2) the names and business addresses of the health care providers applying to jointly
4 negotiate;
5 (3) the names and business addresses of the health care insurer or insurers with which the
6 applying providers seek to jointly negotiate;
7 (4) the proposed subject matter of the negotiations or discussions with the health care
8 insurer or insurers;
9 (5) the proportionate relationship of the health care providers to the total population of
10 health care providers in the relevant geographic service area of the providers by providers type
11 and specialty;
12 (6) the health care providers' joint negotiation representative's plan of operation and
13 procedures to ensure compliance with this act;
14 (7) certification that the health care providers have agreed to be bound by the outcome of
15 the joint negotiation process, including any determination by the health insurance commissioner
16 pursuant to subsection 27-69-7(c); and
17 (8) such other data, information and documents that the applicants desire to submit in
18 support of their application, and/or other information or documents requested by the attorney
19 general.
20 (b) Application for approval of modification of the subject of joint negotiations. --
21 Health care providers shall supplement an application under the provisions of this section as new
22 information becomes available that indicates that the subject matter of the proposed negotiations
23 with the health care insurer has or will materially change and must obtain the attorney general's
24 approval of material changes. The petition seeking approval shall include:
25 (1) the attorney general's file reference for the original application for approval of joint
26 negotiations;
27 (2) the proposed new subject matter;
28 (3) the information required by subdivision (a)(4) herein with respect to the proposed
29 new subject matter; and
30 (4) such other data, information and documents that the health care providers or health
31 care insurer desire to submit in support of their application, or other information and documents
32 requested by the attorney general.
33 (c) Petition to health insurance commissioner for arbitration of contract terms. – Any
34 party to a joint negotiation approved by the attorney general who believes an impasse has been

1 reached, may submit the matter to binding arbitration by the health insurance commissioner. A
2 petition for binding arbitration shall include:

3 (1) the attorney general's file reference for the original application for approval of joint
4 negotiations;

5 (2) a statement of the positions of each party and the issues that the parties have not been
6 able to resolve through negotiation; and

7 (3) such other data, information and documents as the parties desire to submit in support
8 of their position.

9 **27-69-8. Advice and counsel.** – The attorney general and health insurance commissioner,
10 in their sole discretion, may seek the advice and counsel of any department or agency of the state
11 for purposes of their review of the application or petition. The attorney general or health
12 insurance commissioner shall make any such request in writing to the director of each state
13 department or agency from which counsel is sought. The director of each said department or
14 agency shall provide a substantive response in writing to the request within thirty (30) days of
15 receiving such request.

16 **27-69-9. Procedures and standards for determinations.** – (a) Time period for review.
17 -- The attorney general shall have sole discretion to approve or disapprove an application under
18 subsection(s) 27-69-7(a) or (b) within sixty (60) days after such application is filed. The health
19 insurance commissioner shall have sole discretion to accept or reject a petition under subsection
20 27-69-7(c) within a reasonable time not to exceed thirty (30) days after the petition is filed or
21 after the health insurance commissioner receives the response(s) requested, if any, of the state
22 departments or agencies pursuant to section 27-69-8, whichever is later. If any application or
23 petition is disapproved or rejected as a result of technical deficiencies, the attorney general or
24 health insurance commissioner, as appropriate, shall furnish a written explanation of any
25 deficiencies with such application or petition along with a statement of specific remedial
26 measures as to how such deficiencies may be corrected.

27 (b) Standards for reviewing applications. -- The department of attorney general shall
28 approve an application under subsections 27-69-7(a) and (b) if the application includes all
29 information required under such subsections and is in compliance with other applicable laws and
30 regulations.

31 (c) Standards for approving petitions to health insurance commissioner. -- The health
32 insurance commissioner's determination under subsection 27-69-7(c) must, in the health
33 insurance commissioner's judgment, further the purposes set forth in general laws section 42-
34 14.5-2. Such determination and the health insurance commissioner's rationale therefore, must be

1 set forth in writing, shall be binding on the parties and shall be a public document.

2 (d) Standards for arbitration of contract terms by health insurance commissioner. – The
3 health insurance commissioner shall promulgate regulations for the administration of arbitration
4 proceedings under this chapter, which regulations may, at the health insurance commissioner's
5 sole discretion, incorporate the rules of procedure for arbitration as promulgated by the American
6 Health Lawyers Association Alternative Dispute Resolution Service, as amended from time to
7 time. Such arbitration shall be completed within one hundred and fifty (150) days from the date
8 the petition for arbitration was accepted by the health insurance commissioner under subsection
9 27-69-9(a).

10 **27-69-10. Supplemental information.** – For the purpose of enabling the attorney
11 general and health insurance commissioner to make the findings and determinations required by
12 this section on both applications and petitions, the attorney general and health insurance
13 commissioner, as appropriate, may require the submission of such supplemental information as
14 he/she may deem necessary or proper to enable him/her to reach a determination.

15 **27-69-11. Notice to health insurer.** – In the case of an application under subsection 27-
16 69-7(a) or (b), the attorney general shall notify the health care insurer of the application and
17 provide the health care insurer with the opportunity to participate in and/or submit written
18 comments within a specified time frame that does not extend beyond the date on which the
19 attorney general is required to act on the application.

20 **27-69-12. Confidentiality and disclosure.** – The attorney general and health insurance
21 commissioner, as appropriate, shall have the power to decide whether any information required
22 by this chapter of an applicant is confidential and/or proprietary. Such decisions shall be made
23 prior to any public notice or any public review of such information. However, any information
24 deemed public under chapter 2 of title 38 or any other state or federal law or regulation shall be
25 public.

26 **27-69-13. Good faith negotiations.** – It shall be unlawful for either party to a negotiation
27 to refuse or fail to meet and negotiate in good faith.

28 **27-69-14. Applications fees.** – The attorney general and health insurance commissioner
29 may, in effectuating the purposes of this chapter, engage experts or consultants to assist with
30 fulfillment of their respective responsibilities. All copies of reports prepared by experts and
31 consultants shall be made available to the parties and to the public. All costs incurred under this
32 chapter shall be the responsibility of the parties in an amount to be determined by the public
33 official responsible for the process. No application for approval of joint negotiations, application
34 for approval of modification of joint negotiations, or petition for determination of contract terms

1 shall be considered complete unless an agreement has been executed with the attorney general or
2 health insurance commissioner, as appropriate, for the payment of costs incurred pursuant to this
3 chapter.

4 **27-69-15. Construction.** – (a) Nothing contained in this chapter shall be construed to:

5 (1) prohibit or restrict activity by health care providers that is permitted under federal
6 and/or state laws;

7 (2) prohibit or require governmental approval of or otherwise restrict activity by health
8 care providers that is not prohibited under the federal or state anti-trust laws;

9 (3) require approval of provider contracts' terms to the extent that the terms are exempt
10 from state regulation under section 514 of the employee retirement income security act of 1974
11 (public law 93-406, 88 stat. 829); or

12 (4) expand a health care provider's scope of practice or to require a health care insurer to
13 contract with any type of specialty of health care providers.

14 Provided, further, that nothing contained in this chapter shall permit a health care insurer
15 to exclude, limit the participation or reimbursement of, or otherwise discriminate against a class
16 of health care professionals acting within the scope of their licensure under Rhode Island law
17 based on such licensure.

18 **27-69-16. Exclusions.** – Nothing contained in this chapter shall authorize joint
19 negotiations regarding health care services covered under the following insurance policies or
20 coverage programs:

21 (1) medical payment coverage issued as part of a motor vehicle insurance policy;

22 (2) medicare supplemental;

23 (3) civilian health and medical program of the uniformed services (CHAMPUS);

24 (4) accident only;

25 (5) long-term care insurance;

26 (6) disability insurance; or

27 (7) credit insurance.

28 **27-69-17. Severability.** – If any provision of this chapter or the application thereof to any
29 person or circumstances is held invalid, such invalidity shall not affect other provisions or
30 applications of the chapter which can be given effect without the invalid provision or application,
31 and to this end the provisions of this chapter are declared to be severable.

32 SECTION 2. This act shall take effect on January 1, 2006.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO INSURANCE -- AUTHORIZING HEALTH CARE PROVIDERS TO
NEGOTIATE WITH HEALTH CARE INSURERS AND PROVIDING FOR THE POWERS
AND DUTIES OF THE ATTORNEY GENERAL

- 1 This act would authorize health care practitioners to negotiate jointly with health care
2 insurers.
3 This act would take effect on January 1, 2006.

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