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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO HEALTH AND SAFETY -- TAXATION OF HEALTHCARE SERVICES

Introduced By: Senator Walter S. Felag

Date Introduced: February 14, 2012

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 23-1-46 of the General Laws in Chapter 23-1 entitled "Department
2 of Health" is hereby amended to read as follows:

3 **23-1-46. Insurers Surcharge.** -- (a) ~~Beginning in the fiscal year 2007, each insurer~~
4 ~~licensed or regulated pursuant to the provisions of chapters 18, 19, 20, and 41 of title 27 shall be~~
5 ~~assessed a child immunization assessment and an adult immunization assessment for the purposes~~
6 ~~set forth in this section. The department of health shall make available to each insurer, upon its~~
7 ~~request, information regarding the department of health's immunization programs and the costs~~
8 ~~related to the program. Further, the department of health shall submit to the general assembly an~~
9 ~~annual report on the immunization programs and cost related to the programs, on or before~~
10 ~~February 1 of each year. Annual assessments shall be based on direct premiums written in the~~
11 ~~year prior to the assessment and for the child immunization program shall not include any~~
12 ~~Medicare Supplement Policy (as defined in section 27-18.2-1(g)), Medicaid or Medicare~~
13 ~~premiums. Adult influenza immunization program annual assessments shall include contributions~~
14 ~~related to the program costs from Medicare, Medicaid and Medicare Managed Care. As to~~
15 ~~accident and sickness insurance, the direct premium written shall include, but is not limited to,~~
16 ~~group, blanket, and individual policies. Those insurers assessed greater than ten thousand dollars~~
17 ~~(\$10,000) for the year shall be assessed four (4) quarterly payments of twenty five percent (25%)~~
18 ~~of their total assessment. Beginning July 1, 2001, the annual rate of assessment shall be~~
19 ~~determined by the director of health in concurrence with the primary payors, those being insurers~~

1 ~~assessed at greater than ten thousand dollars (\$10,000) for the previous year. This rate shall be~~
2 ~~calculated by the projected costs for the Advisory Committee on Immunization Practices (ACIP)~~
3 ~~recommended and state mandated vaccines after the federal share has been determined by the~~
4 ~~Centers for Disease Control and Prevention. The primary payors shall be informed of any~~
5 ~~recommended change in rates at least six (6) months in advance, and rates shall be adjusted no~~
6 ~~more frequently than one time annually. For the childhood vaccine program the director of the~~
7 ~~department of health shall deposit these amounts in~~ Beginning in fiscal year 2012, a portion of the
8 amount collected from the surcharge described in section 44-65.1-1 et seq., up to the actual
9 amount expended by the state for vaccines for children that are recommended by the Advisory
10 Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP),
11 and/or mandated by state law, less the federal share determined by the Centers for Disease
12 Control and Prevention, shall be deposited into the "childhood immunization account" described
13 in subsection 23-1-45(a). These ~~assessments~~ funds shall be used solely for the purposes of the
14 "childhood immunization programs" described in section 23-1-44 and no other. ~~For the adult~~
15 ~~immunization program the director of the department of health shall deposit these amounts in the~~
16 ~~"adult immunization account".~~ Beginning in fiscal year 2012, a portion of the amount collected
17 from the surcharge described in section 44-65.1-1 et seq., up to the actual amount expended by
18 the state for adult immunizations recommended by ACIP and/or mandated by state law, less the
19 federal share determined by the centers for disease control and prevention, shall be deposited into
20 the "adult immunization account" described in subsection 23-1-45(c). These funds shall be used
21 solely for the purposes of the "adult immunization programs" described in section 23-1-44 and no
22 other.

23 (b) The department of health shall submit to the general assembly an annual report on the
24 immunization programs and cost related to the programs, on or before February 1 of each year.
25 The department of health shall make available to each payer of the surcharge, upon its request,
26 detailed information regarding the department of health's immunization programs and the costs
27 related to those programs. Any funds collected in excess of funds needed to carry-out ACIP
28 recommendations shall be deducted from the subsequent year's ~~assessments~~ surcharge.

29 SECTION 2. Section 42-12-29 of the General Laws in Chapter 42-12 entitled
30 "Department of Human Services" is hereby amended to read as follows:

31 **42-12-29. Children's health account.** -- (a) There is created within the general fund a
32 restricted receipt account to be known as the "children's health account". All money in the
33 account shall be utilized by the department of human services to effectuate coverage for the
34 following service categories: (1) home health services, which include pediatric private duty

1 nursing and certified nursing assistant services; (2) comprehensive, evaluation, diagnosis,
2 assessment, referral and evaluation (CEDARR) services, which include CEDARR family center
3 services, home based therapeutic services, personal assistance services and supports (PASS) and
4 kids connect services and (3) child and adolescent treatment services (CAITS). All money
5 received pursuant to this section shall be deposited in the children's health account. The general
6 treasurer is authorized and directed to draw his or her orders on the account upon receipt of
7 properly authenticated vouchers from the department of human services.

8 (b) ~~Beginning in the fiscal year 2007, each insurer licensed or regulated pursuant to the~~
9 ~~provisions of chapters 18, 19, 20, and 41 of title 27 shall be assessed for the purposes set forth in~~
10 ~~this section. The department of human services shall make available to each insurer, upon its~~
11 ~~request, information regarding the department of human services child health program and the~~
12 ~~costs related to the program. Further, the department of human services shall submit to the~~
13 ~~general assembly an annual report on the program and cost related to the program, on or before~~
14 ~~February 1 of each year. Annual assessments shall be based on direct premiums written in the~~
15 ~~year prior to the assessment and shall not include any Medicare Supplement Policy (as defined in~~
16 ~~section 27-18-2.1(g)), Medicare managed care, Medicare, Federal Employees Health Plan,~~
17 ~~Medicaid/Rite Care or dental premiums. As to accident and sickness insurance, the direct~~
18 ~~premium written shall include, but is not limited to, group, blanket, and individual policies. Those~~
19 ~~insurers assessed greater than five hundred thousand dollars (\$500,000) for the year shall be~~
20 ~~assessed four (4) quarterly payments of twenty five percent (25%) of their total assessment.~~
21 ~~Beginning July 1, 2006, the annual rate of assessment shall be determined by the director of~~
22 ~~human services in concurrence with the primary payors, those being insurers likely to be assessed~~
23 ~~at greater than five hundred thousand dollars (\$500,000). The director of the department of~~
24 ~~human services shall deposit that amount~~ Beginning in fiscal year 2012, a portion of the amount
25 collected from the surcharge described in section 44-65.1-1 et seq., up to the actual amount
26 expended by the state for the services described in subsection 42-12-29(a), but not more than the
27 limit set forth in subsection 42-12-29(d), shall be deposited in the "children's health account". The
28 ~~assessment~~ funds shall be used solely for the purposes of the "children's health account" and no
29 other.

30 (c) The department of human services shall submit to the general assembly an annual
31 report on the program and cost related to the program, on or before February 1 of each year. The
32 department of health shall make available to each payer of the surcharge, upon its request,
33 detailed information regarding the department of health's children's health programs described in
34 subsection (a) and the costs related to those programs. Any funds collected in excess of funds

1 needed to carry out the programs shall be deducted from the subsequent year's ~~assessment~~
2 [surcharge](#).

3 (d) The total ~~annual assessment on all insurers~~ [share of the surcharge](#) shall be equivalent
4 to the amount paid by the department of human services for all services, as listed in subsection
5 (a), but not to exceed ~~seven thousand five hundred dollars (\$7,500)~~ [six thousand dollars \(\\$6,000\)](#)
6 per child per service per year.

7 (e) The children's health account shall be exempt from the indirect cost recovery
8 provisions of section 35-4-27 of the general laws.

9 SECTION 3. Section 44-17-1 of the General Laws in Chapter 44-17 entitled "Taxation of
10 Insurance Companies" is hereby amended to read as follows:

11 **44-17-1. Companies required to file -- Payment of tax -- Retaliatory rates.** -- Every
12 domestic, foreign, or alien insurance company, mutual association, organization, or other insurer,
13 including ~~any health maintenance organization, as defined in section 27-41-1,~~ any medical
14 malpractice insurance joint underwriters association as defined in section 42-14.1-1, any
15 nonprofit dental service corporation as defined in section 27-20.1-2 ~~and any nonprofit hospital or~~
16 ~~medical service corporation, as defined in chapters 27-19 and 27-20,~~ except companies mentioned
17 in section 44-17-6, [health maintenance organizations as defined in section 27-41-1, nonprofit](#)
18 [hospital or medical service corporations as defined in chapters 27-19 and 27-20, insurers as](#)
19 [defined in subdivision 42-62-4\(7\)](#) and organizations defined in section 27-25-1, transacting
20 business in this state, shall, on or before March 1 in each year, file with the tax administrator, in
21 the form that he or she may prescribe, a return under oath or affirmation signed by a duly
22 authorized officer or agent of the company, containing information that may be deemed necessary
23 for the determination of the tax imposed by this chapter, and shall at the same time pay an annual
24 tax to the tax administrator of two percent (2%) of the gross premiums on contracts of insurance,
25 except for ocean marine insurance, as referred to in section 44-17-6, covering property and risks
26 within the state, written during the calendar year ending December 31st next preceding, but in the
27 case of foreign or alien companies, except as provided in section 27-2-17(d) the tax is not less in
28 amount than is imposed by the laws of the state or country under which the companies are
29 organized upon like companies incorporated in this state or upon its agents, if doing business to
30 the same extent in the state or country.

31 SECTION 4. Title 44 of the General Laws entitled "TAXATION" is hereby amended by
32 adding thereto the following chapter:

33 [CHAPTER 65.1](#)

34 [HEALTHCARE SERVICES SURCHARGE](#)

1 **44-65.1-1. Short title.** – This chapter shall be known and may be cited as “The
2 Healthcare Services Surcharge Act.”

3 **44-65.1-2. Definitions.** – The following words and phrases as used in this chapter have
4 the following meaning:

5 (1) “Administrator” means the tax administrator within the department of administration.

6 (2) “Healthcare services” means and includes all the professional and technical
7 components of an admission, diagnostic procedure, therapeutic procedure, assessment, treatment,
8 ordering and/or filling of medications, and such other services, activities, or supplies provided by
9 or through a provider (as defined below) on an inpatient or outpatient basis for the diagnosis,
10 treatment, or management of an injury, disease, or medical, mental health, substance abuse, or
11 other condition.

12 (3) “Insurer” means all persons (as defined below) offering, administering, and/or
13 insuring healthcare services, including, but not limited to, policies of accident and sickness
14 insurance, as defined by chapter 18 of title 27; nonprofit hospital or medical service plans, as
15 defined by chapters 19 and 20 of title 27; any other person whose primary function is to provide
16 diagnostic, therapeutic, or preventive services to a defined population on the basis of a periodic
17 premium; all domestic, foreign, or alien insurance companies, mutual associations and
18 organizations; health maintenance organizations, as defined by chapter 41 of title 27; all persons
19 providing health benefits coverage on a self-insurance basis; and all third party administrators
20 described in chapter 20.7 of title 17.

21 (4) “Net claims charge” means either: (i) The amount paid on a cash basis by an insurer
22 to a provider for healthcare services for a patient or, in the case of global payment arrangements,
23 paid by an insurer to a provider for health care services rendered to the insurer’s members; or (ii)
24 The gross amount received on a cash basis by a provider from all income derived from the
25 provision of health care services to patients whose health care services are not paid or reimbursed
26 by an insurer, less: (A) Charges attributable to charity care; (B) Bad debt expenses; and (C)
27 Contractual allowances.

28 (5) “Patient” means any individual receiving health care services from a provider, other
29 than a patient whose healthcare services are paid or reimbursed by Part A or Part B of the
30 Medicare program, a Medicare Supplemental policy (as defined in subsection 27-18-2.1(g)) or
31 Medicare Managed Care policy, Medicaid and RItE Care programs, the Federal Employees
32 Health Benefit program, Tricare, CHAMPUS, the Veterans Healthcare program, the Indian
33 Health Service program, or the Rhode Island state employee benefits program under chapter 36-
34 12; provided, however, that an individual who is not enrolled in any such benefit plan or program,

1 but who is eligible for Medicaid or RIte Care, or whose household income does not exceed four
2 hundred percent (400%) of the federal poverty level for a family of the size involved, shall not be
3 considered a “patient” for purposes of this chapter.

4 (6) “Person” means any individual, corporation, company, association, partnership,
5 limited liability company, firm, state and local governmental corporations, districts, and agencies,
6 joint stock associations, and the legal successor thereof.

7 (7) “Provider” means any person who furnishes health care services to patients as a
8 hospital, rehabilitation center, free-standing emergency care facility, or facility providing surgical
9 treatment to patients not requiring hospitalization (surgi-center) required to be licensed under
10 chapter 17 of title 23 of the Rhode Island general laws, as it may hereafter be amended.

11 (8) “Surcharge” means the assessment imposed on net claims charges pursuant to this
12 chapter.

13 **44-65.1-3. Imposition of surcharge.** – (a) A surcharge shall be imposed upon the net
14 claims charge in each month at the rate provided in this subsection. Beginning July 1, 2011, the
15 surcharge shall be imposed at a rate of four and eight tenths percent (4.8%): from and after July 1,
16 2012, the surcharge shall be imposed at a rate of two and eight tenths percent (2.8%) plus a rate
17 determined in accordance with subsection (c). This surcharge shall be in addition to any other
18 fees or assessments upon the insurer or provider allowable by law.

19 (b) The surcharge shall be paid by or on behalf of the provider of healthcare services as
20 follows: (1) For all net claims charges paid or reimbursed by an insurer, the surcharge shall be
21 paid by the insurer; and (2) For all net claims charges for patients (as defined herein) that are not
22 paid or reimbursed by an insurer, attributable to charity care or bad debt expense, or subject to
23 contractual allowances, the surcharge shall be paid by the provider.

24 (c) The administrator, with the advice of the directors of the department of health and the
25 department of human services, will calculate the surcharge percentage for each fiscal year based
26 on the projected funding needs for the childhood and adult immunization vaccine programs
27 described in section 23-1-46, the children’s health services programs described in section 42-12-
28 29, and the projected net claims charge of all persons subject to the surcharge. The administrator
29 will establish and publish the surcharge percentage for the year beginning July 1, 2012 before
30 May 1, 2012, and annually by May 1 thereafter.

31 **44-65.1-4. Returns and payment.** – (a) Subject to subsection (b), every person required
32 to pay a surcharge shall on or before the twenty-fifty (25th) day of the month following the month
33 of receipt of net claims charge make a return to the administrator together with payment of the
34 monthly surcharge.

1 (b) Any person required to pay the surcharge that can substantiate that the person's
2 surcharge liability has averaged less than twenty-five thousand dollars (\$25,000) per month may
3 file returns and remit payment on or before the last day of July, October, January and April of
4 each year for the preceding three (3) months' period; provided, however, that the person will be
5 required to make monthly payments if the administrator determines that: (1) The person has
6 become delinquent in either the filing of the return or the payment of the surcharge due thereon;
7 or (2) The liability of the person exceeds seventy-five thousand dollars (\$75,000) in surcharge per
8 quarter for any two (2) subsequent quarters.

9 (c) The administrator is authorized to adopt rules, pursuant to this chapter, relative to the
10 form of the return and the data that it must contain for the correct computation of net claims
11 charge or the surcharge. All returns shall be signed by the person required to pay the surcharge, or
12 by its authorized representative, subject to the pains and penalties of perjury. If a return shows an
13 overpayment of the surcharge due, the administrator shall refund or credit the overpayment to the
14 person required to pay the surcharge.

15 (d) The administrator, for good cause shown, may extend the time within which a person
16 is required to file a return, and if the return is filed during the period of extension no penalty or
17 late filing charge may be imposed for failure to file the return at the time required by this chapter,
18 but the person shall be liable for interest as prescribed in this chapter. Failure to file the return
19 during the period for the extension shall void the extension.

20 **44-65.1-5. Set-off for delinquent payment of surcharge.** – If a person required to pay a
21 surcharge shall fail to pay a surcharge within thirty (30) days of its due date, the administrator
22 may request any agency of state government making payments to the person to set-off the amount
23 of the delinquency against any payment due the person from the agency of state government and
24 remit the sum to the administrator. Upon receipt of the set-off request from the administrator, any
25 agency of state government is authorized and empowered to set-off the amount of the
26 delinquency against any payment or amounts due the person. The amount of set-off shall be
27 credited against the surcharge due from the person.

28 **44-65.1-6. Surcharge on available information –Interest on delinquencies – Penalties**
29 – **Collection powers.** – If any person shall fail to file a return within the time required by this
30 chapter, or shall file an insufficient or incorrect return, or shall not pay the surcharge imposed by
31 this chapter when it is due, the administrator shall assess upon the information as may be
32 available, which shall be payable upon demand and shall bear interest at the annual rate provided
33 by section 44-1-7 of the Rhode Island general laws, as amended, from the date when the
34 surcharge should have been paid. If any part of the surcharge made is due to negligence or

1 intentional disregard of the provisions of this chapter, a penalty of ten percent (10%) of the
2 amount of the determination shall be added to the tax. The administrator shall collect the
3 surcharge with interest in the same manner and with the same powers as are prescribed for
4 collection of taxes in this title.

5 **44-65.1-7. Claims for refund –Hearing upon denial.** – (a) Any person required to pay
6 the surcharge may file a claim for refund with the administrator at any time within two (2) years
7 after the surcharge has been paid. If the administrator shall determine that the surcharge has been
8 overpaid, he or she shall make a refund with interest from the date of overpayment.

9 (b) Any person whose claim for refund has been denied may, within thirty (30) days from
10 the date of the mailing by the administrator of the notice of the decision, request a hearing and the
11 administrator shall, as soon as practicable, set a time and place for the hearing and shall notify the
12 insurer or provider.

13 **44-65.1-8. Hearing by administrator on application.** – Any person aggrieved by the
14 action of the administrator in determining the amount of any surcharge or penalty imposed under
15 the provisions of this chapter may apply to the administrator, within thirty (30) days after the
16 notice of the action is mailed to it, for a hearing relative to the surcharge or penalty. The
17 administrator shall fix a time and place for the hearing and shall so notify the person. Upon the
18 hearing the administrator shall correct manifest errors, if any, disclosed at the hearing and
19 thereupon assess and collect the amount lawfully due together with any penalty or interest
20 thereon.

21 **44-65.1-9. Appeals.** – Appeals from administrative orders or decisions made pursuant to
22 any provisions of this chapter shall be to the sixth (6th) division district court pursuant to chapter 8
23 of title 8 of the Rhode Island general laws, as amended. The right to appeal under this section
24 shall be expressly made conditional upon prepayment of all surcharges, interest, and penalties
25 unless the person moves for and is granted an exemption from the prepayment requirement
26 pursuant to section 8-8-26 of the Rhode Island general laws, as amended. If the court, after
27 appeal, holds that the person is entitled to a refund, the insurer or provider shall also be paid
28 interest on the amount at the rate provided in section 44-1-7.1 of the Rhode Island general laws,
29 as amended.

30 **44-65.1-10. Records.** – Every person required to pay the surcharge shall: (1) Keep
31 records as may be necessary to determine the amount of its liability under this chapter.

32 (2) Preserve those records for the period of three (3) years following the date of filing of
33 any return required by this chapter, or until any litigation or prosecution under this chapter is
34 finally determined.

1 (3) Make those records available for inspection by the administrator or his/her authorized
2 agents, upon demand, at reasonable times during regular business hours.

3 **44-65.1-11. Method of payment and deposit of surcharge.** – (a) The payments required
4 by this chapter may be made by electronic transfer of monies to the general treasurer.

5 (b) The general treasurer is authorized to establish an account or accounts and to take all
6 steps necessary to facilitate the electronic transfer of monies to the “childhood immunization
7 account” described in subsection 23-1-45(a) in the amount described in subsection 23-1-46(a); To
8 the “adult immunization account” described in subsection 23-1-45(c) in the amount described in
9 subsection 23-1-46(a); To the “children’s health account” described in subsection 42-12-29(a) in
10 the amount described in subsection 42-12-29(b); With any excess deposited to the general fund.
11 The general treasurer shall provide the administrator a record of any monies transferred and
12 deposited.

13 **44-65.1-12. Rules and regulations.** – The administrator is authorized to make and
14 promulgate rules, regulations, and procedures not inconsistent with state law and fiscal
15 procedures as he or she deems necessary for the proper administration of this chapter and to carry
16 out the provisions, policies, and purposes of this chapter.

17 **44-65.1-13. Surcharge allocation.** – A person required to pay a surcharge may pass on
18 the cost of that surcharge in the cost of its services, such as the charges for healthcare services to
19 patients (for providers) or its premium rates (for insurers), without being required to specifically
20 allocate those costs to individuals or populations that actually incurred the surcharge.

21 **44-65.1-14. Severability.** – If any provision of this chapter or the application of this
22 chapter to any person or circumstances is held invalid, that invalidity shall not affect other
23 provisions or applications of the chapter that can be given effect without the invalid provision or
24 application, and to this end the provisions of this chapter are declared to be severable.

25 SECTION 5. This act shall take effect on July 1, 2012.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY -- TAXATION OF HEALTHCARE SERVICES

1 This act would replace the current immunization/children health services assessments and
2 premium taxes imposed on health insurance companies with a health care services surcharge
3 calculated to generate the same amount of revenue as the assessments and taxes.

4 This act would take effect on July 1, 2012.

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