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S T A T E O F R H O D E I S L A N D

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

A N A C T

RELATING TO HEALTH AND SAFETY -- TAXATION RELIEF FROM PREMIUM-BASED TAXATION OF HEALTHCARE SERVICES

Introduced By: Representative Agostinho F. Silva

Date Introduced: April 23, 2013

Referred To: House Finance

It is enacted by the General Assembly as follows:

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

23-1-46. ~~Insurers~~ Surcharge. – [Effective July 1, 2014] (a) ~~Beginning in the fiscal year 2007, each insurer licensed or regulated pursuant to the provisions of chapters 18, 19, 20, and 41 of title 27 shall be assessed a child immunization assessment and an adult immunization assessment for the purposes set forth in this section. The department of health shall make available to each insurer, upon its request, information regarding the department of health's immunization programs and the costs related to the program. Further, the department of health shall submit to the general assembly an annual report on the immunization programs and cost related to the programs, on or before February 1 of each year. Annual assessments shall be based on direct premiums written in the year prior to the assessment and for the child immunization program shall not include any Medicare Supplement Policy (as defined in section 27-18.2-1(g)), Medicaid or Medicare premiums. Adult influenza immunization program annual assessments shall include contributions related to the program costs from Medicare, Medicaid and Medicare Managed Care. As to accident and sickness insurance, the direct premium written shall include, but is not limited to, group, blanket, and individual policies. Those insurers assessed greater than ten thousand dollars ($10,000) for the year shall be assessed four (4) quarterly payments of twenty-five percent (25%) of their total assessment. Beginning July 1, 2001, the annual rate of~~

~~assessment shall be determined by the director of health in concurrence with the primary payors, those being insurers assessed at greater than ten thousand dollars ($10,000) for the previous year. This rate shall be calculated by the projected costs for the Advisory Committee on Immunization Practices (ACIP) recommended and state mandated vaccines after the federal share has been determined by the Centers for Disease Control and Prevention. The primary payors shall be informed of any recommended change in rates at least six (6) months in advance, and rates shall be adjusted no more frequently than one time annually. For the childhood vaccine program the director of the department of health shall deposit these amounts in~~ Beginning in fiscal year 2015, a portion of the amount collected from the surcharge described in section 44-65.1-1 et seq., up to the actual amount expended or projected to be expended by the state for vaccines for children that are recommended by the Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and/or mandated by state law, less the federal share determined by the Centers for Disease Control and Prevention, shall be deposited into the "childhood immunization account" described in subsection 23-1-45(a). These ~~assessments~~ funds shall be used solely for the purposes of the "childhood immunization programs" described in section 23-1-44, and no other. ~~For the adult immunization program the director of the department of health shall deposit these amounts in the "adult immunization account".~~ Beginning in fiscal year 2015, a portion of the amount collected from the surcharge described in section 44-65.1-1 et seq., up to the actual amount expended or projected to be expended by the state for adult immunizations recommended by ACIP and/or mandated by state law, less the federal share determined by the centers for disease control and prevention, shall be deposited into the "adult immunization account" described in subsection 23-1-45(c). These funds shall be used solely for the purposes of the "adult immunization programs" described in section 23-1-44 and no other.

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

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

42-12-29. Children's health account. -- [Effective July 1, 2014] (a) There is created within the general fund a restricted receipt account to be known as the "children's health account". All money in the account shall be utilized by the department of human services to effectuate

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

(b) ~~Beginning in the fiscal year 2007, each insurer licensed or regulated pursuant to the provisions of chapters 18, 19, 20, and 41 of title 27 shall be assessed for the purposes set forth in this section. The department of human services shall make available to each insurer, upon its request, information regarding the department of human services child health program and the costs related to the program. Further, the department of human services shall submit to the general assembly an annual report on the program and cost related to the program, on or before February 1 of each year. Annual assessments shall be based on direct premiums written in the year prior to the assessment and shall not include any Medicare Supplement Policy (as defined in section 27-18-2.1(g)), Medicare managed care, Medicare, Federal Employees Health Plan, Medicaid/RIte Care or dental premiums. As to accident and sickness insurance, the direct premium written shall include, but is not limited to, group, blanket, and individual policies. Those insurers assessed greater than five hundred thousand dollars ($500,000) for the year shall be assessed four (4) quarterly payments of twenty five percent (25%) of their total assessment. Beginning July 1, 2006, the annual rate of assessment shall be determined by the director of human services in concurrence with the primary payors, those being insurers likely to be assessed at greater than five hundred thousand dollars ($500,000). The director of the department of human services shall deposit that amount~~ Beginning in fiscal year 2015, a portion of the amount collected from the surcharge described in section 44-65.1-1 et seq., up to the actual amount expended or projected to be expended by the state for the services described in subsection 42-12-29(a), but not more than the limit set forth in subsection 42-12-29(d), shall be deposited in the "children's health account". The ~~assessment~~ funds shall be used solely for the purposes of the "children's health account" and no other.

(c) The department of human services shall submit to the general assembly an annual report on the program and costs related to the program, on or before February 1 of each year. The department shall make available to each payer of the surcharge, upon its request, detailed information regarding the department of health's children's health programs described in

subsection (a) and the costs related to those programs. Any funds collected in excess of funds needed to carry out the programs shall be deducted from the subsequent year's ~~assessment~~ surcharge.

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

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

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

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

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

CHAPTER 65.1

HEALTHCARE SERVICES SURCHARGE

44-65.1-1. Short title. -- This chapter shall be known and may be cited as "The Healthcare Services Surcharge Act."

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

(1) "Administrator" means the tax administrator within the department of administration.

(2) "Healthcare services" means and includes all of the following when provided by a provider (as defined below) to a patient in this state:

(i) Inpatient hospital services;

(ii) Outpatient hospital services;

(iii) Nursing facility services (other than services of intermediate care facilities for individuals with intellectual disabilities);

(iv) Physician services;

(v) Home healthcare services;

(vi) Outpatient prescription drugs;

(vii) Services of managed care organizations (including health maintenance organizations and preferred provider organizations);

(viii) Ambulatory surgical center services;

(ix) Podiatric services;

(x) Chiropractic services;

(xi) Psychological services;

(xii) Therapist services, meaning physical therapy, speech therapy, occupational therapy, respiratory therapy, audiological services, and rehabilitative specialist services;

(xiii) Nursing services, including services of nurse midwives, nurse practitioners, and private duty nurses;

(xiv) Laboratory and imaging services, including x-ray, ultrasound, echocardiography, computed tomography (CT), magnetic resonance imaging (MRI), positron emission tomography (PET), positron emission tomography/computed tomography (PET/CT), general nuclear medicine, and bone densitometry procedures;

(xv) Emergency ambulance services; and

(xvi) Any other healthcare items or services not listed above when provided by a provider, as defined below, in this state.

(3) "Insurer" means all persons (as defined below) offering, administering, and/or insuring healthcare services, including, but not limited to, policies of accident and sickness insurance, as defined by chapter 18 of title 27:

(i) Nonprofit hospital or medical service plans, as defined by chapters 19 and 20 of title 27;

(ii) Any other person whose primary function is to provide diagnostic, therapeutic, or preventive services to a defined population on the basis of a periodic premium;

(iii) All domestic, foreign, or alien insurance companies, mutual associations and organizations; health maintenance organizations, as defined by chapter 41 of title 27;

(iv) All persons providing health benefits coverage on a self-insurance basis;

(v) All third-party administrators described in chapter 20.7 of title 17;

(vi) All pharmacy benefits managers; and

(vii) All persons providing health benefit coverage under Title XIX of the Social Security Act (Medicaid), including the state's Medicaid plan and Medicaid managed care organizations offering managed Medicaid.

(4) "Net claims charge" means either:

(i) The amount paid on a cash basis by an insurer to a provider for healthcare services for a patient or, in the case of global payment arrangements, paid by an insurer to a provider for healthcare services rendered to the insurer's members; or

(ii) The gross amount received on a cash basis by a provider from patients (or their authorized representative) for healthcare services that are not paid or reimbursed by an insurer, including, by way of illustration but not of limitation, healthcare services provided to patients who are not enrolled in healthcare coverage, and healthcare services provided to patients that are excluded from the healthcare coverage in which they are enrolled; provided, however, that the term "net-claims charge" for the purposes of paragraph (ii) explicitly excludes:

(A) Amounts that a patient is required to pay to the provider as a copayment, deductible, or coinsurance; and

(B) De minimis amounts. - For purposes of this exclusion, an amount is "de minimis" if the liability to the provider for all healthcare services provided by the provider to the patient (for non-hospital services), provided by the provider to the patient per discharge (for inpatient hospital services), or provided by the provider to the patient within a twenty-four (24) hour period (for outpatient hospital services) after adjustments, if any, for the provider's reasonable discount policy or refunds on a cash basis, does not exceed ten thousand dollars ($10,000). The administrator, by regulation, may exclude from the term "net-claims charge" additional amounts for which billing or enforcing collection of the surcharge would not be cost effective.

(5) "Patient" means any individual receiving healthcare services from a provider, other than a patient whose healthcare services are paid or reimbursed by Part A or Part B of the

Medicare program, a Medicare supplemental policy (as defined in subsection 27-18-2.1(g)) or Medicare managed care policy, the federal employees' health benefit program, Tricare, CHAMPUS, the Veterans' healthcare program, or the Indian health service program; provided, however, that an individual who is not enrolled in any such benefit plan or program, but who is eligible for Medicaid or RIte Care, or whose household income does not exceed four hundred percent (400%) of the federal poverty level for a family of the size involved, shall not be considered a "patient" for purposes of this chapter.

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

(7) "Provider" means any person who furnishes healthcare services to patients that is required to be licensed under title 23; provided, however, that with respect to x-ray and imaging services, the term "provider" shall mean only those persons who furnish imaging services as a hospital, rehabilitation hospital center, or not-for-profit organization ambulatory care facility that is required to be licensed under title 23; and provided, further, that during fiscal year 2014, the term "provider" shall only include a hospital.

(8) "Surcharge" means the assessment imposed on net claims charges pursuant to this chapter.

44-65.1-3. Imposition of surcharge. -- (a) A surcharge shall be imposed upon the net claims charge in each month at the rate provided in this section. Beginning July 1, 2014, the surcharge shall be imposed at a rate of one and twenty-five hundredths percent (1.25%) for fiscal year 2014 and one and five tenths percent (1.5%) for fiscal year 2015. For fiscal year 2016 and after, the surcharge shall be imposed at a rate of eighty-five hundredths of a percent (.85%) plus a rate determined in accordance with subsection (c). This surcharge shall be in addition to any other fees or assessments upon the insurer or provider allowable by law.

(b) The surcharge shall be paid by or on behalf of the provider of healthcare services as follows:

(1) For all net claims charges paid or reimbursed by an insurer, the surcharge shall be paid by the insurer; provided, however a person providing health benefits coverage on a self-insurance basis that uses the services of a third-party administrator or pharmacy benefits manager shall not be required to pay an assessment for a claim where the assessment on that claim has been paid by the third-party administrator or pharmacy benefit manager;

(2) For all net claims charges for patients that are not paid or reimbursed by an insurer, the surcharge shall be paid by the provider that provided the healthcare services to the patient;

provided, however, that the provider shall not be required to pay a surcharge on amounts that are not net claims charges (as defined herein) or that are not for patients (as defined herein), including, but not limited to:

(A) Any amounts not actually received by the provider on a cash basis;

(B) Any amounts received by a provider that a patient is required to pay as a copayment, deductible, or coinsurance;

(C) Any amount received by a provider from a patient that is "de minimis", as defined above;

(D) Any amounts for which billing or enforcing collection of the surcharge would not be cost effective, as determined by regulation;

(E) Any amounts received by a provider for healthcare services for individuals whose healthcare services are paid or reimbursed by Part A or Part B of the Medicare program, a Medicare supplemental policy (as defined in subsection 27-18-2.1(g) or Medicare managed care policy, the federal employees' health benefit program, Tricare, CHAMPUS, the Veteran's healthcare program, or the Indian health service program; or

(F) Any amounts received by a provider for healthcare services from individuals eligible for but not enrolled in Medicaid or RIte Care, or individuals whose household income does not exceed four hundred percent (400%) of the federal poverty level for a family of the size involved.

(c) The administrator, will calculate the surcharge percentage for fiscal year 2016 and each subsequent fiscal year based on the funding needs as determined by the director of the department of health for the childhood and adult immunization vaccine programs described in section 23-1-46, the funding needs as determined by the director of the department of human services for the children's health services program described in section 42-12-29, and the projected net claims charge of all persons subject to the surcharge. The administrator will establish and publish the surcharge percentage for the fiscal year beginning July 1, 2016 on or before April 15, 2015, and annually by April 15 thereafter.

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

(b)(1) Upon request of the director of the department of health, the administrator shall develop a process whereby any insurer required to pay the surcharge may be directed to pre-pay a fraction of the next year's estimated surcharge, equal to one-half (1/2) of the portion of the surcharge relating to the immunization programs described in title 23, and the administrator shall

make the pre-paid amount collected by the administrator available to the department of health for the administration of the child and adult immunization programs.

(2) Any person required to pay the surcharge that can substantiate that the person's surcharge liability has averaged less than twenty-five thousand dollars ($25,000) per month may file returns and remit payment on or before the last day of July, October, January and April of each year for the preceding three (3) months' period; provided, however, that the person will be required to make monthly payments if the administrator determines that:

(i) The person has become delinquent in either the filing of the return or the payment of the surcharge due thereon; or

(ii) The liability of the person exceeds seventy-five thousand dollars ($75,000) in surcharge per quarter for any two (2) subsequent quarters.

(3) Providers required to pay a surcharge whose liability does not exceed ten thousand dollars ($10,000) per month then may elect to file returns and remit payment annually on or before the last day of June each year.

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

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

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

44-65.1-6. Surcharge on available information -- Interest on delinquencies --

Penalties -- Collection powers. -- If any person shall fail to file a return within the time required by this chapter, or shall file an insufficient or incorrect return, or shall not pay the surcharge imposed by this chapter when it is due, the administrator shall assess upon the information as may be available, which shall be payable upon demand and shall bear interest at the annual rate provided by section 44-1-7 of the Rhode Island general laws, as amended, from the date when the surcharge should have been paid. If any part of the surcharge made is due to negligence or intentional disregard of the provisions of this chapter, a penalty of ten percent (10%) of the amount of the determination shall be added to the tax. The administrator shall collect the surcharge with interest in the same manner and with the same powers as are prescribed for collection of taxes in this title.

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

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

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

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

as amended.

44-65.1-10. Records. -- Every person required to pay the surcharge shall:

(1) Keep records as may be necessary to determine the amount of its liability under this chapter;

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

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

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

(b) The general treasurer shall take all steps necessary to facilitate the electronic transfer of monies to the "childhood immunization account" described in subsection 23-1-45(a) in the amount described in subsection 23-1-46(a); to the "adult immunization account" described in subsection 23-1-45(c) in the amount described in subsection 23-1-46(a); to the "children's health account" described in subsection 42-12-29(a) in the amount described in subsection 42-12-29(b); and the remainder of the payments not allocated to those programs shall be deposited to the genera1 fund. The general treasurer shall provide the administrator a record of any monies transferred and deposited.

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

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

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

44-65.1-15. Excluded coverage. – This chapter shall not apply to insurance coverage providing benefits for:

(1) Hospital confinement indemnity;

(2) Disability income;

(3) Accident only;

(4) Long term care;

(5) Medicare supplement;

(6) Limited benefit health;

(7) Specified disease indemnity;

(8) Sickness or bodily injury or death by accident or both; and

(9) Other limited benefit policies.

SECTION 5. Sections 1 and 2 of this act shall take effect on July 1, 2014 and Sections 3 and 4 of 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 -- TAXATION RELIEF FROM PREMIUM-BASED TAXATION OF HEALTHCARE SERVICES

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

Sections 1 and 2 of this act would take effect on July 1, 2014 and Sections 3 and 4 of this act would take effect upon passage.

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