2019 -- S 0683

STAGE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO INSURANCE HEALTH CARE MARKET STABILITY

Introduced By: Senators Miller, Conley, Goldin, and DiPalma

Date Introduced: March 21, 2019

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

SECTION 1. Section 27-18.5-2 of the General Laws in Chapter 27-18.5 entitled "Individual Health Insurance Coverage" is hereby amended to read as follows:

27-18.5-2. Definitions.

The following words and phrases as used in this chapter have the following meanings unless a different meaning is required by the context:

(1) "Bona fide association" means, with respect to health insurance coverage offered in this state, an association which:

(i) Has been actively in existence for at least five (5) years;

(ii) Has been formed and maintained in good faith for purposes other than obtaining insurance;

(iii) Does not condition membership in the association on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee);

(iv) Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to the members (or individuals eligible for coverage through a member);

(v) Does not make health insurance coverage offered through the association available other than in connection with a member of the association;

(vi) Is composed of persons having a common interest or calling;

(vii) Has a constitution and bylaws; and
(viii) Meets any additional requirements that the director may prescribe by regulation;

(2) "COBRA continuation provision" means any of the following:

(i) Section 4980B of the Internal Revenue Code of 1986, 26 U.S.C. § 4980B, other than subsection (f)(1) of that section insofar as it relates to pediatric vaccines;


(iii) Title XXII of the United States Public Health Service Act, 42 U.S.C. § 300bb-1 et seq.;

(3) "Creditable coverage" has the same meaning as defined in the United States Public Health Service Act, Section 2701(c), 42 U.S.C. § 300gg(c), as added by P.L. 104-191;

(4) "Director" means the director of the department of business regulation;

(5) "Eligible individual" means an individual:

(i) For whom, as of the date on which the individual seeks coverage under this chapter, the aggregate of the periods of creditable coverage is eighteen (18) or more months and whose most recent prior creditable coverage was under a group health plan, a governmental plan established or maintained for its employees by the government of the United States or by any of its agencies or instrumentalities, or church plan (as defined by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.);

(ii) Who is not eligible for coverage under a group health plan, part A or part B of title XVIII of the Social Security Act, 42 U.S.C. § 1395c et seq. or 42 U.S.C. § 1395j et seq., or any state plan under title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (or any successor program), and does not have other health insurance coverage;

(iii) With respect to whom the most recent coverage within the coverage period was not terminated based on a factor described in § 27-18.5-4(b)(relating to nonpayment of premiums or fraud);

(iv) If the individual had been offered the option of continuation coverage under a COBRA continuation provision, or under chapter 19.1 of this title or under a similar state program of this state or any other state, who elected the coverage; and

(v) Who, if the individual elected COBRA continuation coverage, has exhausted the continuation coverage under the provision or program;

(6) "Group health plan" means an employee welfare benefit plan as defined in section 3(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(1), to the extent that the plan provides medical care and including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through
insurance, reimbursement or otherwise;

(7) "Health insurance carrier" or "carrier" means any entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the director, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including, without limitation, an insurance company offering accident and sickness insurance, a health maintenance organization, a nonprofit hospital, medical or dental service corporation, or any other entity providing a plan of health insurance or health benefits by which health care services are paid or financed for an eligible individual or his or her dependents by such entity on the basis of a periodic premium, paid directly or through an association, trust, or other intermediary, and issued, renewed, or delivered within or without Rhode Island to cover a natural person who is a resident of this state, including a certificate issued to a natural person which evidences coverage under a policy or contract issued to a trust or association;

(8)(i) "Health insurance coverage" means a policy, contract, certificate, or agreement offered by a health insurance carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services. Health insurance coverage includes short-term limited duration policies and any policy that pays on a cost-incurred basis, except as otherwise specifically exempted by subsections (8)(ii), (8)(iii), (8)(iv), or (8)(v) of this section.

(ii) "Health insurance coverage" does not include one or more, or any combination of, the following:

(A) Coverage only for accident, or disability income insurance, or any combination of those;

(B) Coverage issued as a supplement to liability insurance;

(C) Liability insurance, including general liability insurance and automobile liability insurance;

(D) Workers' compensation or similar insurance;

(E) Automobile medical payment insurance;

(F) Credit-only insurance;

(G) Coverage for on-site medical clinics; and

(H) Other similar insurance coverage, specified in federal regulations issued pursuant to P.L. 104-191, under which benefits for medical care are secondary or incidental to other insurance benefits;

(i) Short-term limited duration insurance;

(iii) "Health insurance coverage" does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are not an integral part of
the coverage:

(A) Limited scope dental or vision benefits;

(B) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination of these;

(C) Any other similar, limited benefits that are specified in federal regulation issued pursuant to P.L. 104-191;

(iv) “Health insurance coverage” does not include the following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to the event under any group health plan maintained by the same plan sponsor:

(A) Coverage only for a specified disease or illness; or

(B) Hospital indemnity or other fixed indemnity insurance; and

(v) “Health insurance coverage” does not include the following if it is offered as a separate policy, certificate, or contract of insurance:

(A) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act, 42 U.S.C. § 1395ss(g)(1);

(B) Coverage supplemental to the coverage provided under 10 U.S.C. § 1071 et seq.; and

(C) Similar supplemental coverage provided to coverage under a group health plan;

(9) “Health status-related factor” means any of the following factors:

(i) Health status;

(ii) Medical condition, including both physical and mental illnesses;

(iii) Claims experience;

(iv) Receipt of health care;

(v) Medical history;

(vi) Genetic information;

(vii) Evidence of insurability, including conditions arising out of acts of domestic violence; and

(viii) Disability;

(10) “Individual market” means the market for health insurance coverage offered to individuals other than in connection with a group health plan;

(11) “Network plan” means health insurance coverage offered by a health insurance carrier under which the financing and delivery of medical care including items and services paid...
for as medical care are provided, in whole or in part, through a defined set of providers under
contract with the carrier;

(12) "Preexisting condition" means, with respect to health insurance coverage, a
condition (whether physical or mental), regardless of the cause of the condition, that was present
before the date of enrollment for the coverage, for which medical advice, diagnosis, care, or
treatment was recommended or received within the six (6) month period ending on the enrollment
date. Genetic information shall not be treated as a preexisting condition in the absence of a
diagnosis of the condition related to that information; and

(13) "High-risk individuals" means those individuals who do not pass medical
underwriting standards, due to high health care needs or risks;

(14) "Wellness health benefit plan" means that health benefit plan offered in the
individual market pursuant to § 27-18.5-8; and

(15) "Commissioner" means the health insurance commissioner.

SECTION 2. Section 35-4-27 of the General Laws in Chapter 35-4 entitled "State Funds"
is hereby amended to read as follows:

35-4-27. Indirect cost recoveries on restricted receipt accounts.

Indirect cost recoveries of ten percent (10%) of cash receipts shall be transferred from all
restricted-receipt accounts, to be recorded as general revenues in the general fund. However, there
shall be no transfer from cash receipts with restrictions received exclusively: (1) From
contributions from non-profit charitable organizations; (2) From the assessment of indirect cost-
recovery rates on federal grant funds; or (3) Through transfers from state agencies to the
department of administration for the payment of debt service. These indirect cost recoveries shall
be applied to all accounts, unless prohibited by federal law or regulation, court order, or court
settlement. The following restricted receipt accounts shall not be subject to the provisions of this
section:

Executive Office of Health and Human Services
Organ Transplant Fund
HIV Care Grant Drug Rebates
Department of Human Services
Veterans' home -- Restricted account
Veterans' home -- Resident benefits
Pharmaceutical Rebates Account
Demand Side Management Grants
Veteran's Cemetery Memorial Fund
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SECTION 3. Chapter 44-30 of the General Laws entitled "Personal Income Tax" is hereby amended by adding thereto the following sections:

**44-30-101. Requirements concerning qualifying health insurance coverage.**

(a) Definitions. For purposes of this section:

(1) "Applicable individual" has the same meaning as set forth in 26 U.S.C. § 5000A(d).

(2) "Minimum essential coverage" has the same meaning as set forth in 26 U.S.C. § 5000A(f).

(3) "Shared responsibility payment penalty" means the penalty imposed pursuant to subsection (c) of this section.

(4) "Taxpayer" means any resident individual, as defined in § 44-30-5.

(b) Requirement to maintain minimum essential coverage. Every applicable individual must maintain minimum essential coverage for each month beginning after December 31, 2019.

(c) Shared responsibility payment penalty imposed for failing to maintain minimum essential coverage. As of January 1, 2020, every applicable individual required to file a personal income tax return pursuant to § 44-30-51, shall indicate on the return, in a manner to be prescribed by the tax administrator, whether and for what period of time during the relevant tax year the individual and his or her spouse and dependents who are applicable individuals were covered by minimum essential coverage. If a return submitted pursuant to this subsection fails to indicate that such coverage was in force or indicates that any applicable individuals did not have such coverage in force, a shared responsibility payment penalty shall hereby be assessed as a tax on the return.

(d) Shared responsibility payment penalty calculation. Except as provided in subsection
(e) of this section, the shared responsibility payment penalty imposed shall be equal to a taxpayer's federal shared responsibility payment for the taxable year under section 5000A of the Internal Revenue Code of 1986, as amended, and as in effect on December 15, 2017.

(e) Exceptions.

(1) Penalty cap. The amount of the shared responsibility payment penalty imposed under this section shall be determined, if applicable, using the statewide average premium for bronze-level plans offered through the Rhode Island health benefits exchange rather than the national average premium for bronze-level plans.

(2) Hardship exemption determinations. Determinations as to hardship exemptions shall be made by the exchange under § 42-157-11.

(3) Religious conscience exemption determinations. Determinations as to religious conscience exemptions shall be made by the exchange under § 42-157-11.

(4) Taxpayers with gross income below state filing threshold. No penalty shall be imposed under this section with respect to any applicable individual for any month during a calendar year if the taxpayer's household income for the taxable year as described in 42 U.S.C. § 18082(b)(1)(B) of the Patient Protection and Affordable Care Act is less than the amount of gross income requiring the taxpayer to file a return as set forth in § 44-30-51.

(5) Out of State Residents. No penalty shall be imposed by this section with respect to any applicable individual for any month during which the individual is a bona fide resident of another state.

(f) Health insurance market integrity fund. The tax administrator is authorized to withhold from any state tax refund due to the taxpayer an amount equal to the calculated shared responsibility payment penalty and shall place such amounts in the health insurance market integrity fund created pursuant to § 42-157.1-5.

(g) Deficiency. If, upon examination of a taxpayer's return, the tax administrator determines there is a deficiency because any refund due to the taxpayer is insufficient to satisfy the shared responsibility penalty or because there was no refund due, the tax administrator may notify the taxpayer of such deficiency in accordance with § 44-30-81 and interest shall accrue on such deficiency as set forth in § 44-30-84. All monies collected on said deficiency shall be placed in the health insurance market integrity fund created pursuant to § 42-157.1-5.

(h) Data Sharing.

(1) The tax administrator, upon written request from the exchange pursuant to § 42-157-13, shall disclose to officers, employees, and contractors of the exchange, the name, age, mailing address, income and penalty amount of any such applicable individual who, for the applicable
year, did not have the minimum essential coverage required by § 44-30-101(b).

(2) Definition of applicable year. For purposes of this subsection, the term "applicable year" means the most recent taxable year for which information is available in the Rhode Island department of revenue’s taxpayer data information systems, or, if there is no return filed for such taxpayer for such year, the prior taxable year.

(3) Restriction on use of disclosed information. Taxpayer information disclosed under this subsection may be used only for the purposes authorized by § 42-157-13.

(4) Privacy and security. The exchange and the tax administrator shall develop a detailed set of data privacy and data security safeguards to govern the conveyance of data between their agencies under this section. With respect to information disclosed by the tax administrator to the exchange pursuant to this subsection, the exchange its officers, employees and contractors shall be subject to § 44-30-95(c).

(i) Application of federal law. The shared responsibility payment penalty shall be assessed and collected as set forth in this chapter and, where applicable, consistent with regulations promulgated by the federal government, the exchange and the tax administrator. Any federal regulation implementing section 5000A of the Internal Revenue Code of 1986, as amended, and in effect on December 15, 2017, shall apply as though incorporated into the Rhode Island code of regulations. Federal guidance interpreting these federal regulations shall similarly apply. Except as provided in subsections (j) and (k) of this section, all references to federal law shall be construed as references to federal law as in effect on December 15, 2017, including applicable regulations and administrative guidance that were in effect as of that date.

(j) Unavailability of federal premium tax credits. For any taxable year in which federal premium tax credits available pursuant to 26 U.S.C. § 36B become unavailable due to the federal government repealing that section or failing to fund the premium tax credits, the shared responsibility payment penalty under this section shall not be enforced.

(k) Imposition of federal shared responsibility payment. For any taxable year in which a federal penalty under section 5000A of the Internal Revenue Code of 1986 is imposed on a taxpayer in an amount comparable to the shared responsibility payment penalty assessed under this section, the state penalty shall not be enforced.

(m) Agency coordination. Where applicable, the tax administrator shall implement this section in consultation with the office of the health insurance commissioner, the office of management and budget, the executive office of health and human services, and the Rhode Island health benefits exchange.

44-30-102. Reporting Requirement for Applicable Entities providing Minimum
Essential Coverage.

(a) Findings.

(1) Ensuring the health of insurance markets is a responsibility reserved for states under the McCarran-Ferguson Act and other federal law.

(2) There is substantial evidence that being uninsured causes health problems and unnecessary deaths.

(3) The shared responsibility payment penalty imposed by § 44-30-101(c) is necessary to protect the health and welfare of the state's residents.

(4) The reporting requirement provided for in this section is necessary for the successful implementation of the shared responsibility payment penalty imposed by § 44-30-101(c). This requirement provides the only widespread source of third-party reporting to help taxpayers and the tax administrator verify whether an applicable individual maintains minimum essential coverage. There is compelling evidence that third-party reporting is crucial for ensuring compliance with tax provisions.

(5) The shared responsibility payment penalty imposed by § 44-30-101(c), and therefore the reporting requirement in this section, is necessary to ensure a stable and well-functioning health insurance market. There is compelling evidence that, without an effective shared responsibility payment penalty in place for those who go without coverage, there would be substantial instability in health insurance markets, including higher prices and the possibility of areas without any insurance available.

(6) The shared responsibility payment penalty imposed by § 44-30-101(c), and therefore the reporting requirement in this section, is also necessary to foster economic stability and growth in the state.

(7) The reporting requirement in this section has been narrowly tailored to support compliance with the shared responsibility payment penalty imposed by § 44-30-101(c), while imposing only an incidental burden on reporting entities. In particular, the information that must be reported is limited to the information that must already be reported under a similar federal reporting requirement under section 6055 of the Internal Revenue Code of 1986. In addition, this section provides that its reporting requirement may be satisfied by providing the same information that is currently reported under such federal requirement.

(b) Definitions. For purposes of this section:

(1) "Applicable entity" means:

(i) An employer or other sponsor of an employment-based health plan that offers employment-based minimum essential coverage to any resident of Rhode Island.
(ii) The Rhode Island Medicaid single state agency providing Medicaid or Children's Health Insurance Program (CHIP) coverage.

(iii) Carriers licensed or otherwise authorized by the Rhode Island office of the health insurance commissioner to offer health coverage providing coverage that is not described in sections (b)(1)(i) or (ii) of this section.

(2) "Minimum essential coverage" has the meaning given such term by § 44-30-101(a)(2).

(c) For purposes of administering the shared responsibility payment penalty to individuals who do not maintain minimum essential coverage under § 44-30-101(b), every applicable entity that provides minimum essential coverage to an individual during a calendar year shall, at such time as the tax administrator may prescribe, file a form in a manner prescribed by the tax administrator.

(d) Form and manner of return.

(1) A return, in such form as the tax administrator may prescribe, contains the following information:

   (i) The name, address and Taxpayer Identification Number or "TIN" of the primary insured and the name and TIN of each other individual obtaining coverage under the policy;

   (ii) The dates during which such individual was covered under minimum essential coverage during the calendar year, and

   (iii) Such other information as the tax administrator may require.

(2) Sufficiency of information submitted for federal reporting. Notwithstanding the requirements of subsection (d)(1) of this section, a return shall not fail to be a return described in this section if it includes the information contained in a return described in section 6055 of the Internal Revenue Code of 1986, as that section is in effect and interpreted on December 15, 2017.

(e) Statements to be furnished to individuals with respect to whom information is reported.

(1) Any applicable entity providing a return under the requirements of this section shall also provide to each individual whose name is included in such return a written statement containing the name, address and contact information of the person required to provide the return to the tax administrator and the information included in the return with respect to the individuals listed thereupon. Such written statement must be provided on or before January 31 of the year following the calendar year for which the return was required to be made or by such date as may be determined by the tax administrator.

(2) Sufficiency of federal statement. Notwithstanding the requirements of subsection
(e)(1) of this section, the requirements of this subsection (e) of this section may be satisfied by a written statement provided to an individual under section 6055 of the Internal Revenue Code of 1986, as that section is in effect and interpreted on December 15, 2017.

(f) Reporting responsibility.

(1) Coverage provided by governmental units. In the case of coverage provided by an applicable entity that is any governmental unit or any agency or instrumentality thereof, the officer or employee who enters into the agreement to provide such coverage (or the person appropriately designated for purposes of this section) shall be responsible for the returns and statements required by this section.

(2) Delegation. An applicable entity may contract with third-party service providers, including insurance carriers, to provide the returns and statements required by this section.

SECTION 4. Chapter 42-157 of the General Laws entitled “Rhode Island Health Benefit Exchange” is hereby amended by adding thereto the following sections:

42-157-11. Exemptions from the shared responsibility payment penalty.

(a) Establishment of program. The exchange shall establish a program for determining whether to grant a certification that an individual is entitled to an exemption from the shared responsibility payment penalty set forth in § 44-30-101(c) by reason of religious conscience or hardship.

(b) Eligibility determinations. The exchange shall make determinations as to whether to grant a certification described in subsection (a) of this section. The exchange shall notify the individual and the tax administrator for the department of revenue of any such determination in such a time and manner as the exchange, in consultation with the tax administrator, shall prescribe. In notifying the tax administrator, the exchange shall adhere to the data privacy and data security standards adopted in accordance with § 44-30-101(i)(4) and 45 C.F.R. 155.260. The exchange shall only be required to notify the tax administrator to the extent that the exchange determines such disclosure is permitted under 45 C.F.R. 155.260.

(c) Appeals. Any person aggrieved by the exchange’s determination of eligibility for an exemption under this section has the right to an appeal in accordance with the procedures contained within chapter 35 of title 42.

42-157-12. Special enrollment period for qualified individuals assessed a shared responsibility payment penalty.

(a) Definitions. The following definition shall apply for purposes of this section:

(1) "Special enrollment period“ means a period during which a qualified individual who is assessed a penalty in accordance with § 44-30-101 may enroll in a qualified health plan through
the exchange outside of the annual open enrollment period.

(b) In the case of a qualified individual who is assessed a shared responsibility payment in accordance with § 44-30-101 and who is not enrolled in a qualified health plan, the exchange must provide a special enrollment period consistent with this section and the Federal Patient Protection and Affordable Care Act (Pub. L. 111-148), as amended by the Federal Care and Reconciliation Act of 2010 (Pub. L. 111-152), and any amendments to, or regulations or guidance issued under, those acts.

(c) Effective date. The exchange must ensure that coverage is effective for a qualified individual who is eligible for a special enrollment period under this section on the first day of the month after the qualified individual completes enrollment in a qualified health plan through the exchange.

(d) Availability and length of special enrollment period. A qualified individual has sixty (60) days from the date he or she is assessed a penalty in accordance with § 44-30-101 to complete enrollment in a qualified health plan through the exchange. The date of assessment shall be determined in accordance with § 44-30-82.

42-157.13. Outreach to Rhode Island residents and individuals assessed a shared responsibility payment penalty. The exchange, in consultation with the office of the health insurance commissioner and the division of taxation, is authorized to engage in coordinated outreach efforts to educate Rhode Island residents about the importance of health insurance coverage, their responsibilities to maintain minimum essential coverage as defined in § 44-30-101, the penalties for failure to maintain such coverage, and information on the services available through the exchange.

42-157.14. Regulatory authority. The exchange may promulgate regulations as necessary to carry out the purposes of this chapter.

SECTION 5. Sections 42-157.1-1, 42-157.1-5 and 42-157.1-7 of the General Laws in Chapter 42-157.1 entitled “Rhode Island Market Stability and Reinsurance Act” are hereby amended to read as follows:

42-157.1-1. Short title and purpose. (a) This chapter shall be known and may be cited as the “Rhode Island Market Stability and Reinsurance Act.”

(b) The purpose of this chapter is to authorize the director to create the Rhode Island reinsurance program to stabilize health insurance rates and premiums in the individual market and provide greater financial certainty to consumers of health insurance in this state.
(c) Nothing in this chapter shall be construed as obligating the state to appropriate funds or make payments to carriers.

42-157.1-5. Establishment of program fund.

(a) A fund shall be The health insurance market integrity fund is hereby established to provide funding for the operation and administration of the program in carrying out the purposes of the program under this chapter.

(b) The director is authorized to administer the fund.

(c) The fund shall consist of:

1. Any pass-through funds received from the federal government under a waiver approved under 42 U.S.C. § 18052;

2. Any funds designated by the federal government to provide reinsurance to carriers that offer individual health benefit plans in the state;

3. Any funds designated by the state to provide reinsurance to carriers that offer individual health benefit plans in the state; and

4. Any other money from any other source accepted for the benefit of the fund.

(d) Nothing in this chapter shall be construed as obligating the state to appropriate funds or make payments to carriers.

A restricted receipt account shall be established for the fund which may be used for the purposes set forth in this section and shall be exempt from the indirect cost recovery provisions of § 35-4-27.

(e) Monies in the fund shall be used to provide reinsurance to health insurance carriers as set forth in this chapter and its implementing regulations, and to support the personnel costs, operating costs and capital expenditures of the exchange and the division of taxation that are necessary to carry out the provisions of this chapter, §§ 44-30-101 through 44-30-102 and §§ 42-157-11 through 42-157-14.

(f) Any excess monies remaining in the fund, not including any monies received from the federal government pursuant to subsections (c)(1) or (c)(2) of this section and after making the payments required by subsection (f) of this section, may be used for preventative health care programs for vulnerable populations in consultation with the executive office of health and human services.


If the state innovation waiver request in § 42-157.1-6 is not approved, the director shall not implement the program or provide reinsurance payments to eligible carriers.
SECTION 6. This act shall take effect upon passage.
This act would establish a reinsurance program, in order to provide stability in the
individual insurance market. It would impose a shared responsibility payment penalty for
individuals who do not have health insurance coverage, with certain exceptions. This act would
mirror the federal penalty, with the exception of capping the penalty at the statewide average
premium for bronze level plans offered on the state's health benefits exchange. The penalty would
be collected by the tax administrator and would be deposited into a restricted account titled the
Health Insurance Market Integrity Fund. The funds would be used to provide reinsurance, or
payments to health insurance carriers, in order to ensure that premiums do not increase
dramatically. Remaining funds from the penalty would be used for preventative health care
programs.

This act would take effect upon passage.