2023 -- H 5495 SUBSTITUTE A

LC001501/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

AN ACT

RELATING TO STATE AFFAIRS AND GOVERNMENT -- THE RHODE ISLAND HEALTH CARE REFORM ACT OF 2004 -- HEALTH INSURANCE OVERSIGHT

<u>Introduced By:</u> Representatives Potter, Casey, Donovan, Cotter, Giraldo, Stewart, Baginski, Kislak, Dawson, and Voas

Date Introduced: February 10, 2023

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 42-14.5-3 of the General Laws in Chapter 42-14.5 entitled "The

Rhode Island Health Care Reform Act of 2004 — Health Insurance Oversight" is hereby amended

3 to read as follows:

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4 <u>42-14.5-3. Powers and duties.</u>

The health insurance commissioner shall have the following powers and duties:

6 (a) To conduct quarterly public meetings throughout the state, separate and distinct from

rate hearings pursuant to § 42-62-13, regarding the rates, services, and operations of insurers

8 licensed to provide health insurance in the state; the effects of such rates, services, and operations

on consumers, medical care providers, patients, and the market environment in which the insurers

operate; and efforts to bring new health insurers into the Rhode Island market. Notice of not less

than ten (10) days of the hearing(s) shall go to the general assembly, the governor, the Rhode Island

Medical Society, the Hospital Association of Rhode Island, the director of health, the attorney

general, and the chambers of commerce. Public notice shall be posted on the department's website

and given in the newspaper of general circulation, and to any entity in writing requesting notice.

(b) To make recommendations to the governor and the house of representatives and senate

16 finance committees regarding healthcare insurance and the regulations, rates, services,

administrative expenses, reserve requirements, and operations of insurers providing health

18 insurance in the state, and to prepare or comment on, upon the request of the governor or

chairpersons of the house or senate finance committees, draft legislation to improve the regulation of health insurance. In making the recommendations, the commissioner shall recognize that it is the intent of the legislature that the maximum disclosure be provided regarding the reasonableness of individual administrative expenditures as well as total administrative costs. The commissioner shall make recommendations on the levels of reserves, including consideration of: targeted reserve levels; trends in the increase or decrease of reserve levels; and insurer plans for distributing excess reserves.

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(c) To establish a consumer/business/labor/medical advisory council to obtain information and present concerns of consumers, business, and medical providers affected by health insurance decisions. The council shall develop proposals to allow the market for small business health insurance to be affordable and fairer. The council shall be involved in the planning and conduct of the quarterly public meetings in accordance with subsection (a). The advisory council shall develop measures to inform small businesses of an insurance complaint process to ensure that small businesses that experience rate increases in a given year may request and receive a formal review by the department. The advisory council shall assess views of the health provider community relative to insurance rates of reimbursement, billing, and reimbursement procedures, and the insurers' role in promoting efficient and high-quality health care. The advisory council shall issue an annual report of findings and recommendations to the governor and the general assembly and present its findings at hearings before the house and senate finance committees. The advisory council is to be diverse in interests and shall include representatives of community consumer organizations; small businesses, other than those involved in the sale of insurance products; and hospital, medical, and other health provider organizations. Such representatives shall be nominated by their respective organizations. The advisory council shall be co-chaired by the health insurance commissioner and a community consumer organization or small business member to be elected by the full advisory council.

- (d) To establish and provide guidance and assistance to a subcommittee ("the professional-provider-health-plan work group") of the advisory council created pursuant to subsection (c), composed of healthcare providers and Rhode Island licensed health plans. This subcommittee shall include in its annual report and presentation before the house and senate finance committees the following information:
- (1) A method whereby health plans shall disclose to contracted providers the fee schedules used to provide payment to those providers for services rendered to covered patients;
- (2) A standardized provider application and credentials verification process, for the purpose of verifying professional qualifications of participating healthcare providers;

1	(3) The uniform health plan claim form utilized by participating providers;
2	(4) Methods for health maintenance organizations, as defined by § 27-41-2, and nonprofit
3	hospital or medical-service corporations, as defined by chapters 19 and 20 of title 27, to make
4	facility-specific data and other medical service-specific data available in reasonably consisten
5	formats to patients regarding quality and costs. This information would help consumers make
6	informed choices regarding the facilities and clinicians or physician practices at which to seek care
7	Among the items considered would be the unique health services and other public goods provided
8	by facilities and clinicians or physician practices in establishing the most appropriate cos
9	comparisons;
10	(5) All activities related to contractual disclosure to participating providers of the
11	mechanisms for resolving health plan/provider disputes;
12	(6) The uniform process being utilized for confirming, in real time, patient insurance
13	enrollment status, benefits coverage, including co-pays and deductibles;
14	(7) Information related to temporary credentialing of providers seeking to participate in the
15	plan's network and the impact of the activity on health plan accreditation;
16	(8) The feasibility of regular contract renegotiations between plans and the providers in
17	their networks; and
18	(9) Efforts conducted related to reviewing impact of silent PPOs on physician practices.
19	(e) To enforce the provisions of title 27 and title 42 as set forth in § 42-14-5(d).
20	(f) To provide analysis of the Rhode Island affordable health plan reinsurance fund. The
21	fund shall be used to effectuate the provisions of §§ 27-18.5-9 and 27-50-17.
22	(g) To analyze the impact of changing the rating guidelines and/or merging the individua
23	health insurance market, as defined in chapter 18.5 of title 27, and the small-employer health
24	insurance market, as defined in chapter 50 of title 27, in accordance with the following:
25	(1) The analysis shall forecast the likely rate increases required to effect the change
26	recommended pursuant to the preceding subsection (g) in the direct-pay market and small-employe
27	health insurance market over the next five (5) years, based on the current rating structure and
28	current products.
29	(2) The analysis shall include examining the impact of merging the individual and small
30	employer markets on premiums charged to individuals and small-employer groups.
31	(3) The analysis shall include examining the impact on rates in each of the individual and
32	small-employer health insurance markets and the number of insureds in the context of possible
33	changes to the rating guidelines used for small-employer groups, including: community rating
34	principles: expanding small-employer rate bonds beyond the current range; increasing the employer

group size in the small-group market; and/or adding rating factors for broker and/or tobacco use.

- (4) The analysis shall include examining the adequacy of current statutory and regulatory oversight of the rating process and factors employed by the participants in the proposed, new merged market.
- (5) The analysis shall include assessment of possible reinsurance mechanisms and/or federal high-risk pool structures and funding to support the health insurance market in Rhode Island by reducing the risk of adverse selection and the incremental insurance premiums charged for this risk, and/or by making health insurance affordable for a selected at-risk population.
- (6) The health insurance commissioner shall work with an insurance market merger task force to assist with the analysis. The task force shall be chaired by the health insurance commissioner and shall include, but not be limited to, representatives of the general assembly, the business community, small-employer carriers as defined in § 27-50-3, carriers offering coverage in the individual market in Rhode Island, health insurance brokers, and members of the general public.
- (7) For the purposes of conducting this analysis, the commissioner may contract with an outside organization with expertise in fiscal analysis of the private insurance market. In conducting its study, the organization shall, to the extent possible, obtain and use actual health plan data. Said data shall be subject to state and federal laws and regulations governing confidentiality of health care and proprietary information.
- (8) The task force shall meet as necessary and include its findings in the annual report, and the commissioner shall include the information in the annual presentation before the house and senate finance committees.
- (h) To establish and convene a workgroup representing healthcare providers and health insurers for the purpose of coordinating the development of processes, guidelines, and standards to streamline healthcare administration that are to be adopted by payors and providers of healthcare services operating in the state. This workgroup shall include representatives with expertise who would contribute to the streamlining of healthcare administration and who are selected from hospitals, physician practices, community behavioral health organizations, each health insurer, and other affected entities. The workgroup shall also include at least one designee each from the Rhode Island Medical Society, Rhode Island Council of Community Mental Health Organizations, the Rhode Island Health Center Association, and the Hospital Association of Rhode Island. In any year that the workgroup meets and submits recommendations to the office of the health insurance commissioner, the office of the health insurance commissioner shall submit such recommendations to the health and human services committees of the Rhode Island house of representatives and the Rhode Island senate prior to the implementation of any such recommendations and subsequently

1	shall submit a report to the general assembly by June 30, 2024. The report shall include the
2	recommendations the commissioner may implement, with supporting rationale. The workgroup
3	shall consider and make recommendations for:
4	(1) Establishing a consistent standard for electronic eligibility and coverage verification.
5	Such standard shall:
6	(i) Include standards for eligibility inquiry and response and, wherever possible, be
7	consistent with the standards adopted by nationally recognized organizations, such as the Centers
8	for Medicare and Medicaid Services;
9	(ii) Enable providers and payors to exchange eligibility requests and responses on a system-
10	to-system basis or using a payor-supported web browser;
11	(iii) Provide reasonably detailed information on a consumer's eligibility for healthcare
12	coverage; scope of benefits; limitations and exclusions provided under that coverage; cost-sharing
13	requirements for specific services at the specific time of the inquiry; current deductible amounts;
14	accumulated or limited benefits; out-of-pocket maximums; any maximum policy amounts; and
15	other information required for the provider to collect the patient's portion of the bill;
16	(iv) Reflect the necessary limitations imposed on payors by the originator of the eligibility
17	and benefits information;
18	(v) Recommend a standard or common process to protect all providers from the costs of
19	services to patients who are ineligible for insurance coverage in circumstances where a payor
20	provides eligibility verification based on best information available to the payor at the date of the
21	request of eligibility.
22	(2) Developing implementation guidelines and promoting adoption of the guidelines for:
23	(i) The use of the National Correct Coding Initiative code-edit policy by payors and
24	providers in the state;
25	(ii) Publishing any variations from codes and mutually exclusive codes by payors in a
26	manner that makes for simple retrieval and implementation by providers;
27	(iii) Use of Health Insurance Portability and Accountability Act standard group codes,
28	reason codes, and remark codes by payors in electronic remittances sent to providers;
29	(iv) The Uniformity in the processing of claims by payors; and the processing of
30	corrections to claims by providers and payors.
31	(v) A standard payor-denial review process for providers when they request a
32	reconsideration of a denial of a claim that results from differences in clinical edits where no single,
33	common-standards body or process exists and multiple conflicting sources are in use by payors and
34	providers.

1	(vi) Nothing in this section, nor in the guidelines developed, shall inhibit an individual
2	payor's ability to employ, and not disclose to providers, temporary code edits for the purpose of
3	detecting and deterring fraudulent billing activities. The guidelines shall require that each payor
4	disclose to the provider its adjudication decision on a claim that was denied or adjusted based on
5	the application of such edits and that the provider have access to the payor's review and appeal
6	process to challenge the payor's adjudication decision.
7	(vii) Nothing in this subsection shall be construed to modify the rights or obligations of
8	payors or providers with respect to procedures relating to the investigation, reporting, appeal, or
9	prosecution under applicable law of potentially fraudulent billing activities.
10	(3) Developing and promoting widespread adoption by payors and providers of guidelines
11	to:
12	(i) Ensure payors do not automatically deny claims for services when extenuating
13	circumstances make it impossible for the provider to obtain a preauthorization before services are
14	performed or notify a payor within an appropriate standardized timeline of a patient's admission;
15	(ii) Require payors to use common and consistent processes and time frames when
16	responding to provider requests for medical management approvals. Whenever possible, such time
17	frames shall be consistent with those established by leading national organizations and be based
18	upon the acuity of the patient's need for care or treatment. For the purposes of this section, medical
19	management includes prior authorization of services, preauthorization of services, precertification
20	of services, post-service review, medical-necessity review, and benefits advisory;
21	(iii) Develop, maintain, and promote widespread adoption of a single, common website
22	where providers can obtain payors' preauthorization, benefits advisory, and preadmission
23	requirements;
24	(iv) Establish guidelines for payors to develop and maintain a website that providers can
25	use to request a preauthorization, including a prospective clinical necessity review; receive an
26	authorization number; and transmit an admission notification;
27	(v) Develop and implement the use of programs that implement selective prior
28	authorization requirements, based on stratification of health care providers' performance and
29	adherence to evidence-based medicine with the input of contracted health care providers and/or
30	provider organizations. Such criteria shall be transparent and easily accessible to contracted
31	providers. Such selective prior authorization programs shall be available when health care providers
32	participate directly with the insurer in risk-based payment contracts and may be available to
33	providers who do not participate in risk-based contracts;

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(vi) Require the review of medical services, including behavioral health services, and

1	prescription drugs, subject to prior authorization on at least an annual basis, with the input of
2	contracted health care providers and/or provider organizations. Any changes to the list of medical
3	services, including behavioral health services, and prescription drugs requiring prior authorization,
4	shall be shared via provider-accessible websites;
5	(vii) Improve communication channels between health plans, health care providers, and
6	patients by:
7	(A) Requiring transparency and easy accessibility of prior authorization requirements,
8	criteria, rationale, and program changes to contracted health care providers and patients/health plan
9	enrollees which may be satisfied by posting to provider-accessible and member-accessible
10	websites; and
11	(B) Supporting:
12	(I) Timely submission by health care providers of the complete information necessary to
13	make a prior authorization determination, as early in the process as possible; and
14	(II) Timely notification of prior authorization determinations by health plans to impacted
15	health plan enrollees, and health care providers, including, but not limited to, ordering providers,
16	and/or rendering providers, and dispensing pharmacists which may be satisfied by posting to
17	provider-accessible websites or similar electronic portals or services; and
18	(viii) Increase and strengthen continuity of patient care by:
19	(A) Defining protections for continuity of care during a transition period for patients
20	undergoing an active course of treatment, when there is a formulary or treatment coverage change
21	or change of health plan that may disrupt their current course of treatment and when the treating
22	physician determines that a transition may place the patient at risk; and for prescription medication
23	by allowing a grace period of coverage to allow consideration of preferred health plan options or
24	establishment of medical necessity of the current course of treatment;
25	(B) Requiring continuity of care for medical services, including behavioral health services,
26	and prescription medications for patients on appropriate, chronic, stable therapy through
27	minimizing repetitive prior authorization requirements; and which for prescription medication shall
28	be allowed only on an annual review, with exception for labeled limitation, to establish continued
29	benefit of treatment; and
30	(C) Requiring communication between health care providers, health plans, and patients to
31	facilitate continuity of care and minimize disruptions in needed treatment which may be satisfied
32	by posting to provider-accessible websites or similar electronic portals or services;
33	(D) Continuity of care for formulary or drug coverage shall distinguish between FDA
34	designated interchangeable products and proprietary or marketed versions of a medication.

I	(ix) Encourage health care providers and/or provider organizations and health plans to
2	accelerate use of electronic prior authorization technology, including adoption of national standards
3	where applicable;
4	(x) For the purposes of subsections (h)(3)(v) through (h)(3)(x) of this section, the
5	workgroup meeting may be conducted in part or whole through electronic methods.
6	(4) To provide a report to the house and senate, on or before January 1, 2017, with
7	recommendations for establishing guidelines and regulations for systems that give patients
8	electronic access to their claims information, particularly to information regarding their obligations
9	to pay for received medical services, pursuant to 45 C.F.R. § 164.524.
10	(5) No provision of § 42-14.5-3(h) shall preclude the ongoing work of the office of health
11	insurance commissioner's administrative simplification task force, which includes meetings with
12	key stakeholders in order to improve, and provide recommendations regarding, the prior
13	authorization process.
14	(i) To issue an anti-cancer medication report. Not later than June 30, 2014, and annually
15	thereafter, the office of the health insurance commissioner (OHIC) shall provide the senate
16	committee on health and human services, and the house committee on corporations, with: (1)
17	Information on the availability in the commercial market of coverage for anti-cancer medication
18	options; (2) For the state employee's health benefit plan, the costs of various cancer-treatment
19	options; (3) The changes in drug prices over the prior thirty-six (36) months; and (4) Member
20	utilization and cost-sharing expense.
21	(j) To monitor the adequacy of each health plan's compliance with the provisions of the
22	federal Mental Health Parity Act, including a review of related claims processing and
23	reimbursement procedures. Findings, recommendations, and assessments shall be made available
24	to the public.
25	(k) To monitor the transition from fee-for-service and toward global and other alternative
26	payment methodologies for the payment for healthcare services. Alternative payment
27	methodologies should be assessed for their likelihood to promote access to affordable health
28	insurance, health outcomes, and performance.
29	(1) To report annually, no later than July 1, 2014, then biannually thereafter, on hospital
30	payment variation, including findings and recommendations, subject to available resources.
31	(m) Notwithstanding any provision of the general or public laws or regulation to the
32	contrary, provide a report with findings and recommendations to the president of the senate and the
33	speaker of the house, on or before April 1, 2014, including, but not limited to, the following
34	information:

1	(1) The impact of the current, mandated healthcare benefits as defined in §§ 27-18-48.1,
2	27-18-60, 27-18-62, 27-18-64, similar provisions in chapters 19, 20 and 41 of title 27, and §§ 27-
3	18-3(c), 27-38.2-1 et seq., or others as determined by the commissioner, on the cost of health
4	insurance for fully insured employers, subject to available resources;
5	(2) Current provider and insurer mandates that are unnecessary and/or duplicative due to
6	the existing standards of care and/or delivery of services in the healthcare system;
7	(3) A state-by-state comparison of health insurance mandates and the extent to which
8	Rhode Island mandates exceed other states benefits; and
9	(4) Recommendations for amendments to existing mandated benefits based on the findings
10	in (m)(1), (m)(2), and (m)(3) above.
11	(n) On or before July 1, 2014, the office of the health insurance commissioner, in
12	collaboration with the director of health and lieutenant governor's office, shall submit a report to
13	the general assembly and the governor to inform the design of accountable care organizations
14	(ACOs) in Rhode Island as unique structures for comprehensive healthcare delivery and value-
15	based payment arrangements, that shall include, but not be limited to:
16	(1) Utilization review;
17	(2) Contracting; and
18	(3) Licensing and regulation.
19	(o) On or before February 3, 2015, the office of the health insurance commissioner shall
20	submit a report to the general assembly and the governor that describes, analyzes, and proposes
21	recommendations to improve compliance of insurers with the provisions of § 27-18-76 with regard
22	to patients with mental health and substance use disorders.
23	(p) To work to ensure the health insurance coverage of behavioral health care under the
24	same terms and conditions as other health care, and to integrate behavioral health parity
25	requirements into the office of the health insurance commissioner insurance oversight and health
26	care transformation efforts.
27	(q) To work with other state agencies to seek delivery system improvements that enhance
28	access to a continuum of mental health and substance use disorder treatment in the state; and
29	integrate that treatment with primary and other medical care to the fullest extent possible.
30	(r) To direct insurers toward policies and practices that address the behavioral health needs
31	of the public and greater integration of physical and behavioral healthcare delivery.
32	(s) The office of the health insurance commissioner shall conduct an analysis of the impact
33	of the provisions of § 27-38.2-1(i) on health insurance premiums and access in Rhode Island and
34	submit a report of its findings to the general assembly on or before June 1, 2023.

1	(t) To undertake the analyses, reports, and studies contained in this section:
2	(1) The office shall hire the necessary staff and prepare a request for proposal for a qualified
3	and competent firm or firms to undertake the following analyses, reports, and studies:
4	(i) The firm shall undertake a comprehensive review of all social and human service
5	programs having a contract with or licensed by the state or any subdivision of the department of
6	children, youth and families (DCYF), the department of behavioral healthcare, developmenta
7	disabilities and hospitals (BHDDH), the department of human services (DHS), the department of
8	health (DOH), and Medicaid for the purposes of:
9	(A) Establishing a baseline of the eligibility factors for receiving services;
0	(B) Establishing a baseline of the service offering through each agency for those
1	determined eligible;
12	(C) Establishing a baseline understanding of reimbursement rates for all social and human
3	service programs including rates currently being paid, the date of the last increase, and a proposed
4	model that the state may use to conduct future studies and analyses;
5	(D) Ensuring accurate and adequate reimbursement to social and human service providers
6	that facilitate the availability of high-quality services to individuals receiving home and
7	community-based long-term services and supports provided by social and human service providers;
8	(E) Ensuring the general assembly is provided accurate financial projections on social and
9	human service program costs, demand for services, and workforce needs to ensure access to entitled
20	beneficiaries and services;
21	(F) Establishing a baseline and determining the relationship between state government and
22	the provider network including functions, responsibilities, and duties;
23	(G) Determining a set of measures and accountability standards to be used by EOHHS and
24	the general assembly to measure the outcomes of the provision of services including budgetary
25	reporting requirements, transparency portals, and other methods; and
26	(H) Reporting the findings of human services analyses and reports to the speaker of the
27	house, senate president, chairs of the house and senate finance committees, chairs of the house and
28	senate health and human services committees, and the governor.
29	(2) The analyses, reports, and studies required pursuant to this section shall be
80	accomplished and published as follows and shall provide:
31	(i) An assessment and detailed reporting on all social and human service program rates to
32	be completed by January 1, 2023, including rates currently being paid and the date of the last
33	increase;
34	(ii) An assessment and detailed reporting on eligibility standards and processes of all

1	mandatory and discretionary social and human service programs to be completed by January 1,
2	2023;
3	(iii) An assessment and detailed reporting on utilization trends from the period of January
4	1, 2017, through December 31, 2021, for social and human service programs to be completed by
5	January 1, 2023;
6	(iv) An assessment and detailed reporting on the structure of the state government as it
7	relates to the provision of services by social and human service providers including eligibility and
8	functions of the provider network to be completed by January 1, 2023;
9	(v) An assessment and detailed reporting on accountability standards for services for social
0	and human service programs to be completed by January 1, 2023;
1	(vi) An assessment and detailed reporting by April 1, 2023, on all professional licensed
12	and unlicensed personnel requirements for established rates for social and human service programs
13	pursuant to a contract or established fee schedule;
14	(vii) An assessment and reporting on access to social and human service programs, to
15	include any wait lists and length of time on wait lists, in each service category by April 1, 2023;
16	(viii) An assessment and reporting of national and regional Medicaid rates in comparison
17	to Rhode Island social and human service provider rates by April 1, 2023;
18	(ix) An assessment and reporting on usual and customary rates paid by private insurers and
19	private pay for similar social and human service providers, both nationally and regionally, by April
20	1, 2023; and
21	(x) Completion of the development of an assessment and review process that includes the
22	following components: eligibility; scope of services; relationship of social and human service
23	provider and the state; national and regional rate comparisons and accountability standards that
24	result in recommended rate adjustments; and this process shall be completed by September 1, 2023,
25	and conducted biennially hereafter. The biennial rate setting shall be consistent with payment
26	requirements established in § 1902(a)(30)(A) of the Social Security Act, 42 U.S.C. §
27	1396a(a)(30)(A), and all federal and state law, regulations, and quality and safety standards. The
28	results and findings of this process shall be transparent, and public meetings shall be conducted to
29	allow providers, recipients, and other interested parties an opportunity to ask questions and provide
30	comment beginning in September 2023 and biennially thereafter.
31	(3) In fulfillment of the responsibilities defined in subsection (t), the office of the health
32	insurance commissioner shall consult with the Executive Office of Health and Human Services.
33	(u) Annually, each department (namely, EOHHS, DCYF, DOH, DHS, and BHDDH) shall

include the corresponding components of the assessment and review (i.e., eligibility; scope of

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services; relationship of social and human service provider and the state; and national and regional

rate comparisons and accountability standards including any changes or substantive issues between

biennial reviews) including the recommended rates from the most recent assessment and review

with their annual budget submission to the office of management and budget and provide a detailed

explanation and impact statement if any rate variances exist between submitted recommended

budget and the corresponding recommended rate from the most recent assessment and review

process starting October 1, 2023, and biennially thereafter.

8 (v) The general assembly shall appropriate adequate funding as it deems necessary to

9 undertake the analyses, reports, and studies contained in this section relating to the powers and

duties of the office of the health insurance commissioner.

SECTION 2. This act shall take effect upon passage.

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LC001501/SUB A

EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

AN ACT

RELATING TO STATE AFFAIRS AND GOVERNMENT -- THE RHODE ISLAND HEALTH CARE REFORM ACT OF 2004 -- HEALTH INSURANCE OVERSIGHT

This act would require a workgroup of health care providers and health insurers convened
by the office of the health commissioner, to make recommendations regarding prior authorization
policies.

This act would take effect upon passage.

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