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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO INSURANCE - DURABLE MEDICAL EQUIPMENT FREEDOM OF  
CHOICE

Introduced By: Senator Joshua Miller

Date Introduced: May 07, 2015

Referred To: Senate Health & Human Services

(by request)

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 27 of the General Laws entitled "INSURANCE" is hereby amended  
2 by adding thereto the following chapter:

3 CHAPTER 27-29.3

4 Durable Medical Equipment Freedom of Choice – Fair Competition and Practice

5 **27-29.3-1. Definitions.** -- For purposes of this chapter:

6 (1) "Commissioner" means the health insurance commissioner.

7 (2) "Durable medical equipment" means equipment (including repair and replacement  
8 parts) which:

9 (i) Can withstand repeated use;

10 (ii) Is primarily and customarily used to serve a medical purpose;

11 (iii) Generally is not useful to a person in the absence of illness or injury; and

12 (iv) Is appropriate for use in the home. Durable medical equipment does not include  
13 mobility enhancing equipment.

14 (3) "Eligible bidder" means a supplier of durable medical equipment, irrespective of  
15 corporate structure, who is willing to bid for participation in a restricted durable medical  
16 equipment contract.

17 (4) "Insurer" means an insurance carrier as defined in chapters 18, 19, 20 and 41 of title  
18 27.

1 (5) "Insured" means any person who is entitled to have all or some costs associated with  
2 durable medical equipment paid by an insurer pursuant to a policy, certificate, contract or  
3 agreement of insurance or coverage.

4 (6) "Non-restricted durable medical equipment supplier network" means a network that  
5 permits any supplier of durable medical equipment to participate on substantially uniform terms  
6 and conditions established by an insurer.

7 (7) "Restricted durable medical equipment network" means an arrangement:

8 (i) For the provision of durable medical equipment and/or services directly associated  
9 with the durable medical equipment including, but not limited to, maintenance to insureds; and

10 (ii) Which, under the terms of an insurer's policy, certificate, contract or agreement of  
11 insurance or coverage, requires an insured or creates a financial incentive for an insured to obtain  
12 said equipment and/or services from one or more participating suppliers that have entered into a  
13 specific contractual relationship with the insurer.

14 **27-29.3-2. Fair competition – Requirements for carriers offering durable medical**  
15 **equipment networks. -- (a) Any insurer that offers insureds a restricted durable medical**  
16 **equipment network shall, in soliciting, arranging, competitively bidding, contracting for, and**  
17 **operating such a network, comply with the following requirements for the purpose of promoting**  
18 **fair and competitive bidding:**

19 (1) Conduct and complete an initial open bidding process to establish the restricted  
20 network, and at least once every three (3) years thereafter;

21 (2) Provide notice to all eligible bidders of the insurer's intent to solicit bids for  
22 participation in a restricted durable medical equipment network;

23 (3) Inform eligible bidders of the date such bids will be solicited;

24 (4) Provide eligible bidders with identical, equal and uniform information, including, but  
25 not limited to, bid procedure information, financial and utilization information needed to make an  
26 informed competitive bid, criteria to be used in awarding a restricted durable medical equipment  
27 network contract, and proposed contractual requirements for the restricted durable medical  
28 equipment network;

29 (5) Provide eligible bidders with at least a thirty (30) day period to prepare and submit  
30 bids between the bid solicitation date and the bid submission deadline;

31 (6) Open all bids:

32 (i) At a previously specified time, which shall not be more than thirty (30) days after the  
33 bid submission deadline; and

34 (ii) In a public manner; provided, that certain, information contained in said bids may be

1 held as confidential from public review consistent with regulations promulgated by the  
2 commissioner regarding the disclosure of proprietary data or information submitted by any  
3 bidders; and

4 (7) Select a successful bidder using solely the criteria provided to eligible bidders  
5 pursuant to subsection (a)(4) of this section, applied in a uniform manner.

6 (b) An insurer shall neither exclude nor favor any individual durable medical equipment  
7 supplier in the design of a competitive bid involving restricted or non-restricted durable medical  
8 equipment networks in compliance with the requirements of this section. Any entity and/or its  
9 affiliates that assists an insurer in the development of the bid, design, bid specifications or the bid  
10 process, or assists in the review or evaluation of said bids, shall be prohibited from bidding on  
11 such a contract.

12 **27-29.3-3. Participation of small and mid-sized durable medical equipment**  
13 **manufacturers and suppliers. -- (a) Any durable medical equipment suppliers that are licensed,**  
14 **accredited, and located within the state of Rhode Island that are not owned or controlled, directly**  
15 **or indirectly, by an entity licensed in two (2) or more jurisdictions in addition to Rhode Island,**  
16 **which are not participating in an insurer's restricted durable medical equipment network contract**  
17 **shall nevertheless have the right to provide durable medical equipment and/or services directly**  
18 **associated with the durable medical equipment including, but not limited to, maintenance, to the**  
19 **insurer's insureds, and be paid by the insurer as if the durable medical equipment manufacturer or**  
20 **supplier were participating in the insurer's restricted durable medical equipment network, and be**  
21 **entitled to all the rights and privileges associated with participating in the insurer's restricted**  
22 **durable medical equipment network including access to fee schedules and covered codes,**  
23 **provided that such non-network durable medical equipment manufacturers or suppliers agree:**

24 (1) To accept as the insurer's payments in full the price required of durable medical  
25 equipment manufacturers or suppliers in the insurer's restricted durable medical equipment  
26 network;

27 (2) To bill to the insured up to, and not in excess of any copayment, coinsurance,  
28 deductible, other amount required of an insured by the insurer, or for other uncovered services;

29 (3) To be reimbursed on the same methodological basis, including, but not limited to,  
30 capitation or other risk-sharing methodology, as required of durable medical equipment  
31 manufacturers or suppliers in the insurer's restricted durable medical equipment network;

32 (4) To participate in the insurer's utilization review and quality assurance programs,  
33 including utilization reports as required of durable medical equipment manufacturers or suppliers  
34 in the carrier's restricted durable medical equipment network;

1 (5) To provide computerized online eligibility determinations and claims submissions if  
2 and as required of durable medical equipment manufacturers or suppliers in the insurer's  
3 restricted durable medical equipment network;

4 (6) To participate in the insurer's satisfaction surveys and complaint resolution programs  
5 for its insureds;

6 (7) To protect the insurer's proprietary information, and an insured's confidentiality and  
7 privacy;

8 (8) To abide by the insurer's performance standards with respect to waiting times,  
9 response rates and inventory management;

10 (9) To comply with the insurer's claims audit provisions; and

11 (10) To certify, using audit results or accountant statements, the fiscal soundness of the  
12 non-network durable medical equipment manufacturer or supplier.

13 (b) An insurer may waive any of the aforementioned requirements in arranging for the  
14 provision of durable medical equipment to insureds through a non-network durable medical  
15 equipment manufacturer or supplier. An insurer shall not impose any agreements, terms or  
16 conditions on any non-network durable medical equipment supplier which are more restrictive  
17 than those required of durable medical equipment suppliers in the insurer's restricted durable  
18 medical equipment network. The failure of a non-network durable medical equipment supplier to  
19 abide by the aforementioned agreements may, at the option of the insurer, serve as the basis for  
20 cancellation of the non-network durable medical equipment supplier's participation.

21 **27-29.3-4. Applicability and allowances.** -- (a) Nothing in this section shall preclude an  
22 insurer from entering into an agreement to allow non-network providers the ability to participate  
23 with the insurer's plans under terms and conditions set forth by the insurer.

24 (b) Nothing in this section shall be construed to require the provision of pharmacy  
25 benefits to insureds through a restricted durable medical equipment network nor any other  
26 arrangement for the provision of durable medical equipment.

27 **27-29.3-5. Enforcement.** -- The office of the health insurance commission shall have  
28 authority to enforce the provisions of §§ 27-29.3-2 through 27-29.3-4, inclusive, subject to the  
29 provisions of chapter 35 of title 42.

30 **27-29.3-6. Severability.** -- If any provision of this chapter, or the application of same, to  
31 any person or circumstances is held invalid, the invalidity shall not affect other provisions or  
32 applications of this chapter which can be given effect without the invalid provision or application;  
33 to this end the provisions of this chapter are declared to be severable.

1 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

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- 1           This act would create regulatory procedures to ensure fair and competitive bidding
- 2 among providers of durable medical equipment.
- 3           This act would take effect upon passage.

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