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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO INSURANCE

Introduced By: Senator Michael J. McCaffrey

Date Introduced: February 13, 2013

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 27-18 of the General Laws entitled "Accident and Sickness
2 Insurance Policies" is hereby amended by adding thereto the following section:

3 **27-18-79. Prohibition against discretionary clauses.** – (a) If a policy, contract,
4 certificate, or agreement offered, issued, delivered, or renewed, whether or not in Rhode Island,
5 that provides, backs up, reinsures, or funds, in whole or in part, life insurance, health insurance,
6 annuities, accident insurance, long term care insurance, or disability insurance coverage for any
7 Rhode Island resident contains a provision that reserves discretionary authority to the insurer, or
8 an agent of the insurer, to determine eligibility for benefits or coverage, to interpret the terms of
9 the policy, contract, certificate, or agreement, or to provide standards of interpretation or review
10 that are inconsistent with the laws of this state, that provision is void and unenforceable.

11 (b) For purposes of this section, "renewed" means continued in force on or after the
12 policy's anniversary date.

13 (c) For purposes of this section, the term "discretionary authority" means a policy
14 provision that has the effect of conferring discretion on an insurer or other claim administrator to
15 determine entitlement to benefits or interpret policy language that, in turn, could lead to a
16 deferential standard of review by any reviewing court.

17 (d) Nothing in this section prohibits an insurer from including a provision in a contract
18 that informs an insured that as part of its routine operations the insurer applies the terms of its
19 contracts for making decisions, including making determinations regarding eligibility, receipt of

1 benefits and claims, or explaining policies, procedures, and processes, so long as the provision
2 could not give rise to a deferential standard of review by any reviewing court.

3 (e) The commissioner of insurance shall not approve any health, life or disability policy
4 for issuance or delivery in Rhode Island in any of the following circumstances:

5 (1) If it includes a provision that reserves discretionary authority, as defined by
6 subsection (c), to the insurer, or an agent of the insurer, to determine eligibility for benefits or
7 coverage or to interpret the terms of the policy; or

8 (2) If it provides standards of interpretation or review that are inconsistent with the laws
9 of Rhode Island; or if it contains or incorporates by reference, where the incorporation is
10 otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions and
11 conditions that deceptively affect the risk purported to be assumed in the general coverage of the
12 contract; or if it has any title, heading, or other indication of its provisions that is misleading; or

13 (3) If it is printed or otherwise reproduced in a manner that renders any provision of the
14 form substantially illegible; or

15 (4) If it fails to conform in any respect with any law of Rhode Island.

16 (f) If any provision of this section or its application to any person or circumstance is held
17 to be illegal, invalid, or unenforceable, no other provisions or applications of this section that can
18 be given effect without the illegal, invalid or unenforceable provision or application shall be
19 affected; and to this end the provisions of this section are severable.

20 SECTION 2. Chapter 27-19 of the General Laws entitled "Nonprofit Hospital Service
21 Corporations" is hereby amended by adding thereto the following section:

22 **27-19-70. Prohibition against discretionary clauses.** – (a) If a policy, contract,
23 certificate, or agreement offered, issued, delivered, or renewed, whether or not in Rhode Island,
24 that provides, backs up, reinsures, or funds, in whole or in part, life insurance, health insurance,
25 annuities, accident insurance, long term care insurance, or disability insurance coverage for any
26 Rhode Island resident contains a provision that reserves discretionary authority to the insurer, or
27 an agent of the insurer, to determine eligibility for benefits or coverage, to interpret the terms of
28 the policy, contract, certificate, or agreement, or to provide standards of interpretation or review
29 that are inconsistent with the laws of this state, that provision is void and unenforceable.

30 (b) For purposes of this section, “renewed” means continued in force on or after the
31 policy’s anniversary date.

32 (c) For purposes of this section, the term “discretionary authority” means a policy
33 provision that has the effect of conferring discretion on an insurer or other claim administrator to
34 determine entitlement to benefits or interpret policy language that, in turn, could lead to a

1 deferential standard of review by any reviewing court.

2 (d) Nothing in this section prohibits an insurer from including a provision in a contract
3 that informs an insured that as part of its routine operations the insurer applies the terms of its
4 contracts for making decisions, including making determinations regarding eligibility, receipt of
5 benefits and claims, or explaining policies, procedures, and processes, so long as the provision
6 could not give rise to a deferential standard of review by any reviewing court.

7 (e) The commissioner of insurance shall not approve any health, life or disability policy
8 for issuance or delivery in Rhode Island in any of the following circumstances:

9 (1) If it includes a provision that reserves discretionary authority, as defined by
10 subsection (c), to the insurer, or an agent of the insurer, to determine eligibility for benefits or
11 coverage or to interpret the terms of the policy; or

12 (2) If it provides standards of interpretation or review that are inconsistent with the laws
13 of Rhode Island; or if it contains or incorporates by reference, where the incorporation is
14 otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions and
15 conditions that deceptively affect the risk purported to be assumed in the general coverage of the
16 contract; or if it has any title, heading, or other indication of its provisions that is misleading; or

17 (3) If it is printed or otherwise reproduced in a manner that renders any provision of the
18 form substantially illegible; or

19 (4) If it fails to conform in any respect with any law of Rhode Island.

20 (f) If any provision of this section or its application to any person or circumstance is held
21 to be illegal, invalid, or unenforceable, no other provisions or applications of this section that can
22 be given effect without the illegal, invalid or unenforceable provision or application shall be
23 affected; and to this end the provisions of this section are severable.

24 SECTION 3. Chapter 27-20 of the General Laws entitled "Nonprofit Medical Service
25 Corporations" is hereby amended by adding thereto the following section:

26 **27-20-66. Prohibition against discretionary clauses.** -- (a) If a policy, contract,
27 certificate, or agreement offered, issued, delivered, or renewed, whether or not in Rhode Island,
28 that provides, backs up, reinsures, or funds, in whole or in part, life insurance, health insurance,
29 annuities, accident insurance, long term care insurance, or disability insurance coverage for any
30 Rhode Island resident contains a provision that reserves discretionary authority to the insurer, or
31 an agent of the insurer, to determine eligibility for benefits or coverage, to interpret the terms of
32 the policy, contract, certificate, or agreement, or to provide standards of interpretation or review
33 that are inconsistent with the laws of this state, that provision is void and unenforceable.

34 (b) For purposes of this section, "renewed" means continued in force on or after the

1 policy's anniversary date.

2 (c) For purposes of this section, the term "discretionary authority" means a policy
3 provision that has the effect of conferring discretion on an insurer or other claim administrator to
4 determine entitlement to benefits or interpret policy language that, in turn, could lead to a
5 deferential standard of review by any reviewing court.

6 (d) Nothing in this section prohibits an insurer from including a provision in a contract
7 that informs an insured that as part of its routine operations the insurer applies the terms of its
8 contracts for making decisions, including making determinations regarding eligibility, receipt of
9 benefits and claims, or explaining policies, procedures, and processes, so long as the provision
10 could not give rise to a deferential standard of review by any reviewing court.

11 (e) The commissioner of insurance shall not approve any health, life or disability policy
12 for issuance or delivery in Rhode Island in any of the following circumstances:

13 (1) If it includes a provision that reserves discretionary authority, as defined by
14 subsection (c), to the insurer, or an agent of the insurer, to determine eligibility for benefits or
15 coverage or to interpret the terms of the policy; or

16 (2) If it provides standards of interpretation or review that are inconsistent with the laws
17 of Rhode Island; or if it contains or incorporates by reference, where the incorporation is
18 otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions and
19 conditions that deceptively affect the risk purported to be assumed in the general coverage of the
20 contract; or if it has any title, heading, or other indication of its provisions that is misleading; or

21 (3) If it is printed or otherwise reproduced in a manner that renders any provision of the
22 form substantially illegible; or

23 (4) If it fails to conform in any respect with any law of Rhode Island.

24 (f) If any provision of this section or its application to any person or circumstance is held
25 to be illegal, invalid, or unenforceable, no other provisions or applications of this section that can
26 be given effect without the illegal, invalid or unenforceable provision or application shall be
27 affected; and to this end the provisions of this section are severable.

28 SECTION 4. Chapter 27-41 of the General Laws entitled "Health Maintenance
29 Organizations" is hereby amended by adding thereto the following section:

30 **27-41-83. Prohibition against discretionary clauses.** -- (a) If a policy, contract,
31 certificate, or agreement offered, issued, delivered, or renewed, whether or not in Rhode Island,
32 that provides, backs up, reinsures, or funds, in whole or in part, life insurance, health insurance,
33 annuities, accident insurance, long term care insurance, or disability insurance coverage for any
34 Rhode Island resident contains a provision that reserves discretionary authority to the insurer, or

1 an agent of the insurer, to determine eligibility for benefits or coverage, to interpret the terms of
2 the policy, contract, certificate, or agreement, or to provide standards of interpretation or review
3 that are inconsistent with the laws of this state, that provision is void and unenforceable.

4 (b) For purposes of this section, “renewed” means continued in force on or after the
5 policy’s anniversary date.

6 (c) For purposes of this section, the term “discretionary authority” means a policy
7 provision that has the effect of conferring discretion on an insurer or other claim administrator to
8 determine entitlement to benefits or interpret policy language that, in turn, could lead to a
9 deferential standard of review by any reviewing court.

10 (d) Nothing in this section prohibits an insurer from including a provision in a contract
11 that informs an insured that as part of its routine operations the insurer applies the terms of its
12 contracts for making decisions, including making determinations regarding eligibility, receipt of
13 benefits and claims, or explaining policies, procedures, and processes, so long as the provision
14 could not give rise to a deferential standard of review by any reviewing court.

15 (e) The commissioner of insurance shall not approve any health, life or disability policy
16 for issuance or delivery in Rhode Island in any of the following circumstances:

17 (1) If it includes a provision that reserves discretionary authority, as defined by
18 subsection (c), to the insurer, or an agent of the insurer, to determine eligibility for benefits or
19 coverage or to interpret the terms of the policy; or

20 (2) If it provides standards of interpretation or review that are inconsistent with the laws
21 of Rhode Island; or if it contains or incorporates by reference, where the incorporation is
22 otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions and
23 conditions that deceptively affect the risk purported to be assumed in the general coverage of the
24 contract; or if it has any title, heading, or other indication of its provisions that is misleading; or

25 (3) If it is printed or otherwise reproduced in a manner that renders any provision of the
26 form substantially illegible; or

27 (4) If it fails to conform in any respect with any law of Rhode Island.

28 (f) If any provision of this section or its application to any person or circumstance is held
29 to be illegal, invalid, or unenforceable, no other provisions or applications of this section that can
30 be given effect without the illegal, invalid or unenforceable provision or application shall be
31 affected; and to this end the provisions of this section are severable.

32 SECTION 5. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE

1 This act would prohibit certain types of discretionary clauses in insurance contracts and
2 policies.

3 This act would take effect upon passage.

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