

**State of Rhode Island and Providence Plantations  
OFFICE OF THE HEALTH INSURANCE COMMISSIONER  
1511 Pontiac Avenue, Building 69-1  
Cranston, RI 02920**

**NOTICE OF PROPOSED AMENDMENTS TO REGULATION 2  
AND NOTICE OF PUBLIC HEARING**

Notice is hereby given, in accordance with R.I.G.L. §§ 42-14-5, 42-14-17, 42-14.5-1 *et seq.*, and 42-35-3, that the Office of the Health Insurance Commissioner (“OHIC”) proposes to amend the following Regulation:

**OHIC REGULATION 2 – POWERS AND DUTIES OF  
THE OFFICE OF THE HEALTH INSURANCE COMMISSIONER**

The Proposed Amendments to Section 9 of Regulation 2, “Affordable Health Insurance” are designed to:

1. Identify the purposes and general goals of the Affordable Health Insurance requirements of Section 9 of Regulation 2.
2. Clarify that the Commissioner of OHIC may take into consideration the Affordable Health Insurance requirements of Section 9 of Regulation 2 with respect to health insurance rate filings, and in connection with the discharge of any of the duties of OHIC.
3. Identify specific payment strategies for health insurers, implementation of which will be considered by the Commissioner in determining whether a health insurer is enhancing the cost effective utilization of appropriate services. Those specific payment strategies are:
  - Financial support for primary care services.
  - Financial support for the Patient Centered Medical Home Initiative.
  - Electronic Health Records incentive payments.
  - Cost-effective contracting with hospitals.

and

4. Provide for the review of the payment strategies by the Health Insurance Advisory Council every two years.

The Proposed Amendments also provide for, in Section 12, a new effective date and applicability provision.

The remainder of the Proposed Amendments are changes to grammar and form.

Notice is also hereby given, in accordance with R.I. Gen. Laws § 42-35-3, that the Office of the Health Insurance Commissioner will hold a public hearing beginning at 10:00 a.m. on May 4, 2011 in the main conference room of the Rhode Island Department of Labor and Training, Main Complex, 1511 Pontiac Avenue, Building 73-1 Cranston, RI 02920, regarding the Proposed Amended Regulation.

Copies of the Proposed Amendments are on file at the Office and copies may be obtained from the Office during normal working hours on regular business days or by mail upon request. The Proposed Amendments may also be obtained from the Office's website [www.ohic.ri.gov](http://www.ohic.ri.gov)

In the development of the Proposed Amendments, consideration was given to overlapping approaches, overlap and duplication with other statutory and regulatory provisions and economic impact on small business and cities and towns.

All interested persons may submit their views, data or arguments regarding the proposed Regulation, including information relating to alternative approaches, duplication or overlap with other state rules or regulations and the economic impact of the proposed Regulation on small business and/or cities and towns, orally at the public hearing or in writing, either by delivering the same in person or United States mail with postage pre-paid thereon to the Office of the Health Insurance Commissioner, 1511 Pontiac Ave., Building 69-1, Cranston, RI 02920, attention Herbert W. Olson, Legal Counsel, or by e-mail to [healthinquiry@ohic.ri.gov](mailto:healthinquiry@ohic.ri.gov)

ALL WRITTEN SUBMISSION MUST BE RECEIVED NOT LATER THAN May 4, 2011 AT 10:00 A.M.

The hearing room is accessible to the handicapped. Individuals requesting interpreter services for the hearing impaired must notify the Office at (401) 462-9517 or TDD 711 not less than ninety-six (96) hours in advance of the hearing date.



Christopher F. Koller  
Health Insurance Commissioner

**State of Rhode Island and Providence Plantations  
OFFICE OF THE HEALTH INSURANCE COMMISSIONER  
233 Richmond Street  
Providence, RI 02903**

**OFFICE OF THE HEALTH INSURANCE COMMISSIONER REGULATION 2  
POWERS AND DUTIES OF THE OFFICE OF THE HEALTH INSURANCE  
COMMISSIONER**

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***Section 1***      **Authority**

This regulation is promulgated pursuant to R.I. Gen. Laws §§ 42-14.5-1 *et seq.*, 42-14-5, 42-14-17 and 42-35-1 *et seq.*

***Section 2***      **Purpose and Scope**

When creating the Office of the Health Insurance Commissioner (OHIC or Office), the General Assembly created a list of statutory purposes for the OHIC at R.I. Gen. Laws § 42-14.5-2 (the OHIC Purposes Statute). In order to meet the requirements established by the OHIC Purposes Statute, the OHIC has developed this regulation, which is designed to:

- ensure effective regulatory oversight by the OHIC;
- provide guidance to the state’s health insurers, health care providers, consumers of health insurance, consumers of health care services and the general public as to how the OHIC will interpret and implement its statutory obligations; and
- implement the intent of the General Assembly as expressed in the OHIC Purposes Statute.

### ***Section 3***      **Definitions**

As used in this regulation:

- (a) “Affiliate” has the same meaning as set out in the first sentence of R.I. Gen. Laws § 27-35-1(a). An “affiliate” of, or an entity or person “affiliated” with, a specific entity or person, is an entity or person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the entity or person specified.
- (b) “Commissioner” means the Health Insurance Commissioner.
- (c) “Examination” has the same meaning as set out in R.I. Gen. Laws § 27-13.1-1 *et seq.*
- (d) “Health insurance” shall mean “health insurance coverage,” as defined in R.I. Gen. Laws §§ 27-18.5-2 and 27-18.6-2, “health benefit plan,” as defined in R.I. Gen. Laws § 27-50-3 and a “medical supplement policy,” as defined in R.I. Gen. Laws § 27-18.2-1 or coverage similar to a Medicare supplement policy that is issued to an employer to cover retirees.
- (e) “Health insurer” means any entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the Commissioner, 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 non-profit hospital service corporation, a non-profit medical service corporation, a non-profit dental service corporation, a non-profit optometric service corporation, a domestic insurance company subject to chapter 1 of title 27 of the General Laws that offers or provides health insurance coverage in the state and a foreign insurance company subject to chapter 2 of title 27 of the General Laws that offers or provides health insurance coverage in the state.
- (f) “Holding company system” has the same meaning as set out in R.I. Gen. Laws § 27-35-1 *et seq.*

### ***Section 4***      **Discharging Duties and Powers**

The Commissioner shall discharge the powers and duties of the Office to:

- (a) Guard the solvency of health insurers;
- (b) Protect the interests of the consumers of health insurance;
- (c) Encourage fair treatment of health care providers by health insurers;
- (d) Encourage policies and developments that improve the quality and efficiency of health care service delivery and outcomes; and
- (e) View the health care system as a comprehensive entity and encourage and direct health insurers towards policies that advance the welfare of the public through overall efficiency, improved health care quality, and appropriate access.

**Section 5**      **Guarding the Solvency and Financial Condition of Health Insurers**

- (a) The solvency of health insurers must be guarded to protect the interests of insureds, health care providers, and the public generally.
- (b) Whenever the Commissioner determines that
  - (i) the solvency or financial condition of any health insurer is in jeopardy or is likely to be in jeopardy;
  - (ii) any action or inaction by a health insurer could adversely affect the solvency or financial condition of that health insurer;
  - (iii) the approval or denial of any regulatory request, application or filing by a health insurer could adversely affect the solvency or financial condition of that health insurer; or
  - (iv) any other circumstances exist such that the solvency or financial condition of a health insurer may be at risk

the Commissioner shall, in addition to exercising any duty or power authorized or required by titles 27 or 42 of the General Laws related specifically to the solvency or financial health of a health insurer, act to guard the solvency and financial condition of a health insurer when exercising any other power or duty of the Office, including, but not limited to, approving or denying any request or application; approving, denying or modifying any requested rate; approving or rejecting any forms, trend factors, or other filings; issuing any order, decision or ruling; initiating any proceeding, hearing, examination, or inquiry; or taking any other action authorized or required by statute or regulation.

- (c) When making a determination as described in subsection (b) of this section or when acting to guard the solvency of a health insurer, the Commissioner may consider and/or act upon the following solvency and financial factors, either singly or in combination of two or more:
  - (i) any appropriate financial and solvency standards for the health insurer, including those set out in title 27 of the General Laws and implementing regulations;
  - (ii) the investments, reserves, surplus and other assets and liabilities of a health insurer;
  - (iii) a health insurer's use of reinsurance, and the insurer's standards for ceding, reporting on, and allowing credit for such reinsurance;
  - (iv) a health insurer's transactions with affiliates, agents, vendors, and other third parties to the extent that such transactions adversely affect the financial condition of the health insurer;
  - (v) any audits of a health insurer by independent accountants, consultants or other experts;

- (vi) the annual financial statement and any other report prepared by or on behalf of a health insurer related to its financial position or financial activities;
- (vii) a health insurer's transactions within an insurance holding company system;
- (viii) whether the management of a health insurer, including its officers, directors, or any other person who directly or indirectly controls the operation of the health insurer, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in the position;
- (ix) the findings reported in any financial condition or market conduct examination report and financial analysis procedures;
- (x) the ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annual premium and net investment income, which could lead to an impairment of capital and surplus;
- (xi) concerns that a health insurer's asset portfolio, when viewed in light of current economic conditions, is not of sufficient value, liquidity, or diversity to ensure the health insurer's ability to meet its outstanding obligations as such obligations mature;
- (xii) the ability of an assuming reinsurer to perform and whether the health insurer's reinsurance program provides sufficient protection for the health insurer's remaining surplus after taking into account the health insurer's cash flow and the classes of business written and the financial condition of the assuming reinsurer;
- (xiii) the health insurer's operating loss in the last twelve month period or any shorter period of time, including but not limited to net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders, is greater than fifty percent of the health insurer's remaining surplus as regards policyholders in excess of the minimum required;
- (xiv) whether any affiliate, subsidiary, or reinsurer of a health insurer is insolvent, threatened with insolvency, or delinquent in the payment of its monetary or other obligations;
- (xv) any contingent liabilities, pledges, or guaranties of a health insurer that either individually or collectively involve a total amount which in the opinion of the Commissioner may affect the solvency of the health insurer;
- (xvi) whether any person, firm, association, or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of a health insurer, is delinquent in the transmitting to, or payment of, net premiums to the insurer;
- (xvii) the age and collectibility of a health insurer's receivables;

- (xviii) whether the management of a health insurer has
  - (A) failed to respond to inquiries by the Commissioner, the Department of Business Regulation, the Department of Health, the Department of the Attorney General, any other state or federal agency relative to the financial condition of the health insurer;
  - (B) furnished false and misleading information concerning an inquiry by the Commissioner, the Department of Business Regulation, the Department of Health, the Department of the Attorney General, any other state or federal agency regarding the financial condition of the health insurer; or
  - (C) failed to make appropriate disclosures of financial information to the Commissioner, the Department of Business Regulation, the Department of Health, the Department of the Attorney General, any other state or federal agency, or the public.
- (xix) whether the management of a health insurer either has filed any false or misleading sworn financial statement, or has released a false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the health insurer;
- (xx) whether a health insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; and
- (xxi) whether a health insurer has experienced or will experience in the foreseeable future cash flow and/or liquidity problems.
- (d) The factors enumerated in subsection (c) of this section shall not be construed as limiting the Commissioner from making a finding that other factors not specifically enumerated in subsection (c) are necessary or desirable factors for the evaluation and maintenance of the sound financial condition and solvency of a health insurer.

***Section 6      Protecting the Interests of Consumers***

- (a) The interests of the consumers of health insurance, including individuals, groups and employers, must be protected.
- (b) The provisions of this regulation do not require the Commissioner to act as an advocate on behalf of a particular health insurance consumer. Instead, while the Commissioner will endeavor to address individual consumer complaints as they arise, the OHIC Purposes Statute requires the OHIC to protect the interests of health insurance consumers, including individuals, groups and employers, on a system-wide basis.

- (c) Whenever the Commissioner determines that
- (i) the interests of the state’s health insurance consumers are, or are likely to be, adversely affected by any policy, practice, action or inaction of a health insurer;
  - (ii) the approval or denial by the Commissioner of any regulatory request, application or filing made by a health insurer could adversely affect the interests of the state’s health insurance consumers; or
  - (iii) any other circumstances exist such that the interests of the state’s health insurance consumers may be adversely affected

the Commissioner shall, in addition to exercising any duty or power authorized or required by titles 27 or 42 of the General Laws related specifically to the protection of the interests of the consumers of health insurance, act to protect the interests of consumers of health insurance when exercising any other power or duty of the Office, including, but not limited to, approving or denying any request or application; approving, denying or modifying any requested rate; approving or rejecting any forms, trend factors, or other filings; issuing any order, decision or ruling; initiating any proceeding, hearing, examination, or inquiry; or taking any other action authorized or required by statute or regulation.

- (d) When making a determination as described in subsection (c) of this section or when acting to protect the interests of the state’s health insurance consumers, the Commissioner may consider and/or act upon the following consumer interest issues, either singly or in combination of two or more:
- (i) the privacy and security of consumer health information;
  - (ii) the efforts by a health insurer to ensure that consumers are able to
    - (A) to read and understand the terms and scope of the health insurance coverage documents issued or provided by the health insurer and
    - (B) make fully informed choices about the health insurance coverage provided by the health insurer;
  - (iii) the effectiveness of a health insurer’s consumer appeal and complaint procedures;<sup>1</sup>
  - (iv) the efforts by a health insurer to ensure that consumers have ready access to claims information;
  - (v) the efforts by a health insurer to increase the effectiveness of its communications with its insureds, including, but not limited to, communications related to the insureds’ financial responsibilities;
  - (vi) that the benefits in health insurance coverage documents issued or provided by a health insurer are consistent with state laws;

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<sup>1</sup> For matters other than medical necessity and utilization review, which are within the jurisdiction of the Department of Health.

- (vii) that the benefits delivered by a health insurer are consistent with those guaranteed by the health insurance coverage documents issued or provided by the health insurer; and
  - (viii) the steps taken by a health insurer to enhance the affordability of its products, as described in section 9 of this regulation.
- (e) The factors enumerated in subsection (d) of this section shall not be construed as limiting the Commissioner from making a finding that other consumer protection issues not specifically enumerated in subsection (d) are necessary or desirable factors upon which the Commissioner may act to protect the interests of consumers of health insurance.

***Section 7      Encouraging Fair Treatment of Health Care Providers***

- (a) The Commissioner will act to encourage the fair treatment of health care providers by health insurers.
- (b) The provisions of this regulation do not require the Commissioner to act as an advocate for a particular health care provider or for a particular group of health care providers. Instead, while the Commissioner will endeavor to address individual health care provider complaints as they arise, the OHIC Purposes Statute requires the OHIC to act to enhance system-wide treatment of providers.
- (c) Whenever the Commissioner determines that
  - (i) health care providers are being treated unfairly by a health insurer;
  - (ii) the policies or procedures of a health insurer place an undue, inconsistent or disproportionate burden upon a class or providers;
  - (iii) the approval or denial by the Commissioner of any regulatory request, application or filing made by a health insurer will result in unfair treatment of health care providers by a health insurer; or
  - (iv) any other circumstances exist such that Commissioner is concerned that health care providers will be treated unfairly by a health insurer

the Commissioner shall, in addition to exercising any duty or power authorized or required by titles 27 or 42 of the General Laws related specifically to the fair treatment of health care providers, take the treatment of health care providers by a health insurer into consideration when exercising any other power or duty of the Office, including, but not limited to, approving or denying any request or application; approving, denying or modifying any requested rate; approving or rejecting any forms, trend factors, or other filings; issuing any order, decision or ruling; initiating any proceeding, hearing, examination, or inquiry; or taking any other action authorized or required by statute or regulation.

- (d) When making a determination as described in subsection (c) of this section or when acting to encourage the fair treatment of providers, the Commissioner may consider and/or act upon the following issues, either singly or in combination of two or more:

- (i) the policies, procedures and practices employed by health insurers with respect to provider reimbursement, claims processing, dispute resolution, and contracting processes;
  - (ii) a health insurer's provider rate schedules; and
  - (iii) the efforts undertaken by the health insurers to enhance communications with providers.
- (e) The factors enumerated in subsection (d) of this regulation shall not be construed as limiting the Commissioner from making a finding that other factors related to the treatment of health care providers by a health insurer not specifically enumerated are necessary or desirable factors for the evaluation of whether health care providers are being treated fairly by a health insurer.<sup>2</sup>

**Section 8**      ***Improving the Efficiency and Quality of Health Care Delivery and Increasing Access to Health Care Services***

- (a) Consumers, providers, health insurers and the public generally have an interest in
- (i) improving the quality and efficiency of health care service delivery and outcomes in Rhode Island;
  - (ii) viewing the health care system as a comprehensive entity; and
  - (iii) encouraging and directing insurers towards policies that advance the welfare of the public through overall efficiency, improved health care quality, and appropriate access.
- (b) The government, consumers, employers, providers and health insurers all have a role to play in increasing access to health care services and improving the quality and efficiency of health care service delivery and outcomes in Rhode Island. Nevertheless, the state's health insurers, because of their prominent role in the financing of health care services, bear a greater burden with respect to improving the quality and efficiency of health care service delivery and outcomes in Rhode Island, treating the health care system as a comprehensive entity, and advancing the welfare of the public through overall efficiency, improved health care quality, and appropriate access. Furthermore, a balance must be struck between competition among the health plans, which can result in benefits such as innovation, and collaboration, which can promote consumer benefits such as standardization and simplification.
- (c) Whenever the Commissioner determines that
- (i) the decision to approve or deny any regulatory request, application or filing made by a health insurer
    - (A) can be made in a manner that will

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<sup>2</sup> The factors that may be considered by the Commissioner will not typically include those matters over which other agencies, such as the Department of Health, have jurisdiction.

- (1) improve the quality and efficiency of health care service delivery and outcomes in Rhode Island;
  - (2) view the health care system as a comprehensive entity; or
  - (3) encourage and direct insurers towards policies that advance the welfare of the public through overall efficiency, improved health care quality, and appropriate access; or
- (B) should include conditions when feasible that will
- (1) promote increased quality and efficiency of health care service delivery and outcomes in Rhode Island;
  - (2) incent health insurers to view the health care system as a comprehensive entity; or
  - (3) encourage and direct insurers towards policies that advance the welfare of the public through overall efficiency, improved health care quality, and appropriate access; or
- (ii) any other circumstances exist such that regulatory action by the Commissioner with respect to a health insurer will likely improve the efficiency and quality of health care delivery and increase access to health care services

the Commissioner shall, in addition to exercising any duty or power authorized or required by titles 27 or 42 of the General Laws related specifically to improving the efficiency and quality of health care delivery and increasing access to health care services, act to further the interests set out in subsection (a) of this section when exercising any other power or duty of the Office, including, but not limited to, approving or denying any request or application; approving, denying or modifying any requested rate; approving or rejecting any forms, trend factors, or other filings; issuing any order, decision or ruling; initiating any proceeding, hearing, examination, or inquiry; or taking any other action authorized or required by statute or regulation.

- (d) When making a determination as described in subsection (c) of this section or when acting to further the interests set out in subsection (a) of this section, the Commissioner may consider and/or act upon the following, either singly or in combination of two or more:
- (i) Efforts by health insurers to develop benefit design and payment policies that:
    - (A) enhance the affordability of their products, as described in section 9 of this regulation;
    - (B) encourage more efficient use of the state's existing health care resources;
    - (C) promote appropriate and cost effective acquisition of new health care technology and expansion of the existing health care infrastructure;

- (D) advance the development and use of high quality health care services (e.g., centers of excellence); and
  - (E) prioritize the use of limited resources.
- (ii) Efforts by health insurers to promote the dissemination of information, increase consumer access to health care information, and encourage public policy dialog about increasing health care costs and solutions by:
- (A) providing consumers timely and user-friendly access to health care information related to the quality and cost of providers and health care services so that consumers can make well informed-decisions;
  - (B) encouraging public understanding, participation and dialog with respect to the rising costs of health care services, technologies, and pharmaceuticals; the role played by health insurance as both a financing mechanism for health care and as a hedge against financial risk for the consumers of health care; and potential solutions to the problems inherent in the health insurance market (e.g., market concentration, increasing costs, the growing population of uninsureds, market-driven changes to insurance products (such as the growth of high deductible plans) and segmentation of the insurance market due to state and federal laws); and
  - (C) providing consumers timely and user friendly access to administrative information, including information related to benefits; eligibility; claim processing and payment; financial responsibility, including deductible, coinsurance and copayment information; and complaint and appeal procedures;
- (iii) Efforts by health insurers to promote collaboration among the state's health insurers to promote standardization of administrative practices and policy priorities, including
- (A) participation in administrative standardization activities to increase efficiency and simplify practices; and
  - (B) efforts to develop standardized measurement and provider payment processes to promote the goals set out in this regulation;
- (iv) Directing resources, including financial contributions, toward system-wide improvements in the state's health care system related to quality, access and efficiency, including providing support to local collaboratives, organizations and initiatives that promote quality, access and efficiency;
- (v) Participating in the development and implementation of public policy issues related to health, including
- (A) collaborating with state and local health planning officials;
  - (B) participating in the legislative and regulatory processes; and
  - (C) engaging the public in policy debates and discussions.

- (e) The factors enumerated in subsection (d) of this section shall not be construed as limiting the Commissioner from making a finding that other factors may be considered when acting to further the interests set out in subsection (a) of this section.

**Section 9** **Affordable Health Insurance**

- (a) Consumers of health insurance have an interest in stable, predictable, affordable rates for high quality, cost efficient health insurance products. Achieving an economic environment in which health insurance is affordable will depend in part on improving the performance of the Rhode Island health care system as a whole, including but not limited to the following areas:

- (i) Improved primary care supply, measured by the total number of primary care providers, and by the percentage of physicians identified as primary care providers.
- (ii) Reduced incidence of hospitalizations for ambulatory care-sensitive conditions, and of re-hospitalizations.
- (iii) Reduced incidence of emergency room visits for ambulatory care-sensitive conditions.
- (iv) Reduced rates of premium increase for fully insured, commercial health insurance.

- ~~(b) The Commissioner will consider the following bases for assessing the affordability of health insurance products:~~In discharging the duties of the Office, including but not limited to the Commissioner's decisions to approve, disapprove, modify or take any other action authorized by law with respect to a health insurer's filing of health insurance rates or rate formulas under the provisions of Title 27 or title 42, the Commissioner may consider whether the health insurer's products are affordable, and whether the carrier has implemented effective strategies to enhance the affordability of its products.

- (c) In determining whether a carrier's health insurance products are affordable, the Commissioner may consider the following factors:

- (i) Trends, including:
  - (A) Historical rates of trend for existing products;
  - (B) National medical and health insurance trends (including Medicare trends);
  - (C) Regional medical and health insurance trends; and
  - (D) Inflation indices, such as the Consumer Price Index and the medical care component of the Consumer Price Index~~;~~
- (ii) Price comparison to other market rates for similar products (including consideration of rate differentials, if any, between not-for-profit and for-profit insurers in other markets);
- (iii) The ability of lower-income individuals to pay for health insurance;

- (iv) Efforts of the health insurer to maintain close control over its administrative costs; ~~and~~
  - (v) Implementation of effective strategies by the health insurer to enhance the affordability of its products; and
  - (vi) Any other relevant affordability factor, measurement or analysis determined by the Commissioner to be necessary or desirable to carry out the purposes of this Regulation.
- (e)(d) ~~A health insurer's strategies to enhance the affordability of its products will be evaluated based on the following~~In determining whether a health insurance carrier has implemented effective strategies to enhance the affordability of its products, the Commissioner may consider the following factors:
- (i) Whether the health insurer offers a spectrum of product choices to meet consumer needs;.
  - (ii) Whether the health insurer offers products that address the underlying cost of health care by creating appropriate and effective incentives for consumers, employers, providers and the insurer itself. Such incentives ~~will~~shall be designed to drive~~promote~~ efficiency in the following areas:
    - (A) Creating a focus on primary care, prevention and wellness;.
    - (B) Establishing active management procedures for the chronically ill population;.
    - (C) Encouraging use of the least cost, most appropriate settings;<sup>3</sup> and
    - (D) Promoting use of evidence based, quality care;.
  - (iii) Whether the insurer employs provider payment strategies to enhance cost effective utilization of appropriate services; Such payment strategies shall include, but not be limited to the following:
    - (A) Financial support for primary care services. The health insurer shall provide adequate financial support for primary care services, in accordance with the provisions of this subdivision (A).
      - (1) The proportion of the insurer's medical expense to be allocated to primary care for the 12 months starting January 1, 2011 (adjusted to reflect the number of months in the calendar year following the effective date of the 2011 amendments to this Regulation) shall be one percentage point higher (e.g., from 6% to 7% of medical expense) than reflected in actual spending for the twelve months starting January 1, 2008. The proportion shall continue to increase by one percentage point per year for five years. A health insurer's targeted primary care spend rate in a given year (the proportion of the insurer's medical expense

<sup>3</sup> This goal is meant to apply in the aggregate. Use of some higher cost providers and settings do result in better outcomes and should not be discouraged.

allocated to primary care) shall be calculated in accordance with this section.

- (2) Health insurers shall submit a Primary Care Spend Report to the Commissioner on or before April 1 of each year, in a manner prescribed by the Commissioner. The Report shall use a template produced by the OHIC and posted on the OHIC website.

  - (I) The Report shall document historical insurer total medical and primary care spend in detail, and shall include spending history through the prior calendar year. The Report shall document for the next preceding calendar year, for all fully insured commercial business, all medical payments made to primary care providers in Rhode Island, regardless of where the member resides. Payments shall be reported as both total dollars spent during the time period and as a percentage of total medical payments during the time period. Any prescription drug “carve outs” shall be reported on by carriers on their primary care spend reports. Medical payments shall be separately reported by payment for services (e.g., CPT codes, capitation, etc.); and by incentive or bonus payments, including both performance and infrastructure payments.
  - (II) Health insurers shall also submit to the Commissioner an estimated Primary Care Spend Report on September 1 of each calendar year, documenting anticipated primary care spending for the current calendar year.
- (3) By July 1 of a each year, each health insurer shall enter into a public planning process with the Commissioner to determine the most appropriate usage of the additional monies to be spent in the next calendar year with priority given to uses that align the interests and actions of primary care providers and patients in improving the affordability of health insurance. As a result of this process, no later than October 1 of each year through 2013, each health insurer shall submit to the Commissioner, in a manner approved by the Commissioner, an itemized budget with its targeted primary care spending for the coming year and the anticipated uses of those funds. This proposed budget, along with any quarterly adjustments, shall be reported to the Commissioner in the following manner:

  - (I) An Annual Investment Plan, documenting each health insurer’s proposed investments in primary care for the following calendar year, shall be submitted as of October 1<sup>st</sup> of each year in accordance with a mutually-agreed to template.

- (II) A Quarterly Investment Plan Forecast, updating each health insurer's investment plan, for up to date information on actual spending vs. plan, implementation deadline changes, new and cancelled categories of investment, etc. shall be submitted in January, April, July, and October, in accordance with a template produced approved by the Commissioner and posted on the OHIC website.
- (III) Health insurers shall work with the Commissioner and other stakeholders to refine the definition of primary care and to monitor past performance and determine future targets for primary care spending.
- (4) Consistent with the development of the incentives established in subdivision (d)(ii), for plan years commencing after October 31, 2011 each health insurer shall collect information on the subscriber's and dependent's usual source of care at the time of enrollment and annually thereafter from all commercially insured subscribers and any dependents, consistent with the following standards and procedures:

  - (I) Annual updating of this information may occur either at the time of contract renewal or during an annual updating period for all subscribers, as selected by the insurer. Information at enrollment may be collected in the format and means deemed most efficient and effective by the insurer, but shall include statements on the desirability of having a usual source of care, and on the relationship – if any – between the information provided and the subscriber's insurance benefits.
  - (II) Once the information is collected, the insurer shall record the name of the primary care physician or primary care practice in the electronic enrollment and eligibility record of each subscriber and dependent. The insurer shall use this information as appropriate for purposes including but not limited to benefit plan design and adjudication, provider reporting, provider and patient communications and provider payment.
  - (III) The insurer shall report to the OHIC by April 1 of each year in correspondence from senior management its efforts in the previous 12 months at collecting the information required by this subsection (e), measures of the information's comprehensiveness and accuracy, and the insurer's plans for improving both in the coming year.
- (5) As used in this subdivision (A):

  - (I) "Payment" means paid claims.

- (II) “Medical payments” exclude payments for prescription, lab, and imaging services.
  - (III) “Primary care provider” means providers within the following practice type: Family Practice, Internal Medicine and Pediatrics; and providers with the following professional credentials: Doctors of Medicine and Osteopathy, Nurse Practitioners, and Physicians’ Assistants. The term shall not include “dual” providers (i.e., those who deliver both primary and specialty care), except in those instances where the specialist is paid on a primary care provider fee schedule.
  - (IV) “Total medical payments” includes all payments made to Rhode Island facilities and providers, regardless of where the member resides. The term includes prescription drugs, behavioral health, lab, and imaging services. The term includes any secondary payer payments. With respect to prescription drug payments, the term includes payments in Rhode Island only. In connection with Blue Cross Blue Shield of Rhode Island prescription drug payments, the term includes only those payments made to pharmacies in Rhode Island, plus mail order payments. The health insurer shall report prescription drug carve out payments by adjusting the percentage of members with pharmacy benefits, and that percentage shall be included in ongoing reporting. Any prescription drug carve outs payments shall also be reported on by carriers on their primary care spend reports.
- (B) Patient Centered Medical Home Initiative. The health insurer shall participate in and provide adequate financial support of a patient centered medical home collaborative convened by the health insurance commissioner, and consisting of providers, health insurers, purchasers, consumers and other stakeholders, in accordance with the provisions of this subdivision (B).
- (1) The collaborative will use consensus methods to develop a payment system that requires all health insurers to make per-person care coordination payments to select patient centered medical homes for providing care coordination services and directly managing on-site or employing care coordinators as part of all health insurance plans offered in Rhode Island.
  - (2) The care coordination payments under this subdivision (B) may be modified as the collaborative determines is necessary, will be consistent across insurers and patient centered medical homes and will be in addition to any other incentive payments such as quality incentive payments. The care coordination payment system shall be in place through at least July 1, 2016. Its

continuation beyond that point shall depend on results of evaluation reports.

(3) The collaborative shall also:

(I) provide guidance to the state health care program as to the appropriate payment system for the state health care program to the same patient centered medical homes;

(II) develop the standards for the patient centered medical home to be used in the payment system based on national models where feasible;

(III) develop the standards for the selection of specific patient centered medical homes participating in the payment system;

(IV) determine other activities necessary to carry out its goals including but not limited to technical assistance, performance measurement and project evaluation; and

(V) determine the collaborative's budget and levels of financial support and administrative staffing.

(C) Electronic Health Record Incentive Payment. Each health insurer shall provide effective financial support for provider adoption of electronic health records, in accordance with the provisions of this subdivision (C). Such support shall include incentive payments to providers, if the following eligibility criteria are met:

(1) Eligible providers must demonstrate "meaningful use" of electronic health records, as defined by the Electronic Health Records Program of the Center for Medicare and Medicaid Services ("EHR Program"), and in accordance with the eligibility criteria of the EHR Program.

(2) Eligible providers must, in addition to the requirements of subdivision (C)(1):

(I) demonstrate routine and consistent enrollment of patients in the "currentcare" program, as established and administered by the Rhode Island Quality Institute, and, if applicable;

(II) enroll in the Rhode Island Regional Extension Center, and participate as in the Direct Project, if the provider is eligible for such programs under criteria established and administered by the Rhode Island Quality Institute.

(3) The amount per eligible provider and the form of such incentive payments shall be determined by the health insurer. The payments shall be reasonably consistent with the amount and the form of payments to an eligible provider by the EHR Program, and reasonably consistent with the relative size of total payments to that eligible provider by the health insurer compared to

payments to other eligible providers. The health insure shall submit a plan to OHIC by November 1 of each year documenting its Electronic Health Record Incentive Program for the following calendar year.

(4) Health insurers' incentive payment obligations under this subdivision (C) are contingent upon the timely submission of quarterly provider enrollment data by the Rhode Island Quality Institute to OHIC and to each health insurer, consistent with a memorandum of understanding entered into between OHIC and the Rhode Island Quality Institute.

(D) Cost-Effective Contracting with Hospitals. Health insurer contracts with hospitals in Rhode Island for services to commercially enrolled members shall include the following terms. The Commissioner, upon petition by a health insurer for good cause shown, or in his or her own discretion, may modify or waive one or more of the requirements of this subdivision (D). Such contracts shall:

(1) Utilize unit of service payment methodologies for both inpatient and hospital outpatient services that realign payments to provide incentives for efficient use of health services, and are derived from nationally utilized payment practices other than fee for service, i.e. inpatient Diagnosis Related Groupings (DRGs) and outpatient Ambulatory Payment Classifications (APCs) in a form substantially derived from CMS. Nothing in this requirement prevents contract terms that provide additional or stronger payment incentives toward quality and efficiency such as performance bonuses, bundled payments, global payments or the formation of supporting functions such as Accountable Care Organizations.

(2) Limit average annual effective rates of price increase for both inpatient and outpatient services to a weighted amount equal to or less than the Centers for Medicare and Medicaid Services (CMS) National Prospective Payment System Hospital Input Price Index ("Index"), for all contractual and optional years covered by the contract. The Index applicable to the new contract year will be based on the most recent Hospital 4 Quarter Moving Average Percent Change published and available as of the signing of the contract. For renewal and optional years it will be based on the applicable most recent Index 4 Quarter Moving Average Percent Change period available prior to the new contract year.

(3) Provide the opportunity for hospitals to increase their total annual revenue for commercially insured enrollment under the contract by at least an additional two percentage points over the

previous contract year by improving or attaining mutually agreed-to performance levels for no less than three nationally-accepted clinical quality, service quality or efficiency-based measures.

(4) Include terms that define the parties' mutual obligations for greater administrative efficiencies, such as improvements in claims and eligibility verification processes, and identify explicit commitments on the part of each party.

(5) Include terms that promote and measure improved clinical communications between the hospital and each patient or member's designated primary care physician, specialist physicians, long term care facility, or other providers.

(6) Include terms that explicitly relinquish the right of either party to contest the public release of the any and all of these five specific terms by state officials or the participating parties to the agreement.

(7) Include such other terms as the Commissioner determines, after notice and an opportunity to be heard, will enhance the cost-effective utilization of appropriate services.

(iv) Whether the insurer supports product offerings with simple and cost effective administrative processes for providers and consumers;

(v) Whether the insurer addresses consumer need for cost information through:

(A) Increasing the availability of provider cost information; and

(B) Promoting public conversation on trade-offs and cost effects of medical choices; ~~and.~~

(vi) Whether the insurer allows for an appropriate contribution to surplus.

~~(d)~~(e) The following constraints on affordability efforts will be considered:

(i) State and federal requirements (e.g., state mandates, federal laws);

(ii) Costs of medical services over which plans have limited control;

(iii) Health plan solvency requirements; ~~and.~~

(iv) The prevailing financing system in United States (i.e., the third-party payor system) and the resulting decrease in consumer price sensitivity.

(f) Review of Payment Strategies. By June 2012 and no less than biennially afterwards, the Health Insurance Advisory Council of the Office of the Health Insurance Commissioner will review the payment strategies established in subsection (d) of this Section 9 and recommend to the Commissioner adjustments deemed necessary to improve efficacy of the payment strategies based on the following considerations:

- (i) Performance of Rhode Island on the system measures articulated at the beginning of this section.
- (ii) Feedback of health plans, providers, employers and other stakeholders.
- (iii) Expert opinion.
- (iv) Best practices in other communities.

***Section 10***     **Severability**

If any section, term, or provision of this regulation is adjudged invalid for any reason, that judgment shall not affect, impair, or invalidate any remaining section, term, or provision, which shall remain in full force and effect.

***Section 11***     **Construction**

- (a) This regulation shall be liberally construed to give full effect to the purposes stated in R.I. Gen. Laws § 42-14.5-2.
- (b) This regulation shall not be interpreted to limit the powers granted the Commissioner by other provisions of the law.

***Section 12***     **Effective Date**

This Regulation shall be effective on the date indicated below, and shall apply to made by the Commissioner on and after the effective date of this Regulation.

EFFECTIVE DATE:             December 15, 2006

AMENDMENT EFFECTIVE DATE: \_\_\_\_\_, 2011.