STATE OF RHODE ISLAND
OFFICE OF THE ATTORNEY GENERAL

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August 8, 2024
Via Electronic Mail Only
Mr. Cory King
Acting Health Insurance Commissioner
Office of the Health Insurance Commissioner
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In Re: Rates Filed for 2025 Individual, Small and Large Group Markets

Dear Commissioner King:

Pursuant to Rhode Island General Laws § 27-36-1, and consistent with the request for public comment set forth in the Office of the Health Insurance Commissioner's ("OHIC") Public Comment Solicitation, the Rhode Island Attorney General submits the following public comment in response to the filings for requested rate increases in the individual, small, and large group markets—rate increases that range from an arguably modest 2.5% to an astronomical 22.7%, impacting a total of 171,466 Rhode Islanders. The Attorney General files this comment in furtherance of his distinct role in the health insurance rate review process: to represent, protect and advocate for Rhode Islander consumers.[1] At the same time, the Attorney General also files this comment in his role as the State's

[1] *See* R.I. Gen. Laws § 27-36-1.

Health Care Advocate: "to advocate for any changes necessary to support the goal of quality and affordable health care for all."[2] And as such, it is not the role of the Attorney General to simply advise whether the actuarial projections provided by an insurer can support requested rate increases; rather, it is incumbent upon the Attorney General to also determine whether such increases are warranted given the health care and economic landscape against which they are sought. As we set forth below, and to put it bluntly, we have a system that is broken. How health care is paid for, provided, and regulated in this country has resulted in an expensive system that is incapable of meeting demand or providing quality care to those in need. History has shown that significant rate increases year after year have not translated into improved access to and quality of care. Insurers get what they need, while consumers, providers, and our healthcare system continue to suffer. We need systemic reform—not tinkering on the margins—and conclude that the Office of the Health Insurance Commissioner should deny these requested increases.

Continued Rate Increases Have Not Delivered Better Health Care for Rhode Islanders

Year after year, as part of this rate review process, Rhode Islanders are asked to pay more and more for their health insurance. And yet, while insurers are granted increases in their premiums, we have yet to see gains in terms of access to care or improvement in our overall healthcare landscape. As the Attorney General has repeatedly warned, the Rhode Island health care system is "on the precipice of a disaster,"[3] with myriad signs that conditions are continuing to deteriorate. As of the 2022 Health Information Survey, only 2.9% of Rhode Islanders did not have health

[2] *See* R.I. Gen. Laws § 42-9.1-2(5).
[3] The Providence Journal, "At RI Health Care summit, many familiar ailments, few treatments available," May 29 2024 https://www.providencejournal.com/story/news/healthcare/2024/05/29/ri-state-house-health-care-summit-yields-many-challenges-few-solutions/73894280007/

insurance, which is good news.[4] Yet, 11.6% of adult Rhode Islanders reported not having a regular place they can access health care.[5] Rhode Island has also struggled to maintain an adequate health care workforce. In fact, Rhode Island has the lowest supply in the country of licensed practical nurses, personal care workers, service workers, and physician assistants per 100,000 residents.[6] We are also facing provider shortages in primary care, which are only projected to get worse.[7] And again, while rates continue to rise, Rhode Island's reimbursement rates remain lower than our neighboring states, which likely contributes to these shortages.[8]

Rhode Island hospitals are also struggling financially, and more so than in our neighboring states. We need look no further than the precarious condition of Roger Williams and Fatima to understand how dire the conditions are for our hospitals. And again, despite repeated rate increases for consumers, the average inpatient and outpatient standardized price paid by employer sponsored health plans were lower in Rhode Island than in both Massachusetts and Connecticut.[9] Health system operating margins for Rhode Island hospital health care systems also continue to decline.[10] Between 2018 and 2022, Rhode Island acute care hospitals' operating costs grew faster than their net patient revenues.[11]

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[4] https://healthsourceri.com/rhode-island-achieves-lowest-ever-uninsured-rate-survey-finds/
[5] https://www.commonwealthfund.org/datacenter/adults-usual-source-care
[6] RI Current, "Report: Rhode Island Hospitals are bleeding care, but we already knew that." April 2, 2024, https://rhodeislandcurrent.com/2024/04/02/report-rhode-island-hospitals-are-bleeding-cash-but-we-already-knew-that/
[7] OHIC, Primary Care in Rhode Island: Current Status and Policy Recommendations 17-18 (December 2023), https://ohic.ri.gov/sites/g/files/xkgbur736/files/2023-12/Primary%20Care%20in%20Rhode%20Island%20-%20Current%20Status%20and%20Policy%20Recommendations%20December%202023.pdf.
[8] The Providence Journal, "Finding a primary care doctor in Rhode Island is getting more difficult. Here's why,' February 8, 2024, https://www.providencejournal.com/story/news/healthcare/2023/02/08/primary-care-doctor-shortage-in-ri/69843973007/.
[9] Rhode Island Foundation, "Examining the Financial Structure and Performance of Rhode Island Acute Hospitals and Health System," Page 8, March 2024, https://assets.rifoundation.org/documents/RIF-Hospital-and-Health-Systems-Study_March-FINAL.pdf
[10] *Id* at 9.
[11] *Id*

Rhode Island's Most Significant Health Care Challenges are National Challenges

While some of Rhode Island's health care challenges may be more or less acute than in other parts of the country, at their core, they are symptomatic of the broader national health care system and fundamental decisions we have made as a country about health care. How health care is paid for, provided, and regulated in this country has resulted in an expensive system that is incapable of meeting demand or providing quality care to those in need. The United States spends more money on health care per capita than any other wealthy developed country, and yet we face a lower life expectancy and worsening health outcomes.[12] Health care spending is nearly two times higher than in Germany, the country with the second most spend.[13] Health care spending makes up 17.8% of the United States GDP, nearly twice that of other Organization for Economic Co-operation and Development countries.[14]

And yet, despite our significant collective investment, Americans do not fare any better health wise than other wealthy countries. In fact, we fare far worse. The data increasingly suggests that the United States health care system, as it currently operates, costs Americans more money every year while delivering worse health outcomes. Life expectancy in the United States is 6 years lower than in similarly situated countries, and premature deaths and mortality are also higher in the United States, especially for men and women of color.[15] While metrics such as wealth and

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[12] Peterson-KFF Health Tracker, "How does the U.S Health System Compare to Other Countries," October 23, 2023, How does the quality of the U.S. health system compare to other countries? - Peterson-KFF Health System Tracker

[13] *Id.*

[14] The Commonwealth Fund, "U.S. Health Care from a Global Perspective, 2022: Accelerating Spending, Worsening Outcomes," https://www.commonwealthfund.org/publications/issue-briefs/2023/jan/us-health-care-global-perspective-2022

[15] Peterson-KFF Health Tracker, "How does the U.S Health System Compare to Other Countries," October 23, 2023, How does the quality of the U.S. health system compare to other countries? - Peterson-KFF Health System Tracker

economic prosperity are usually correlated with lower maternal mortality rates, the United States is an outlier. Here, there are 23.8 maternal deaths per 100,00 births, and these deaths continue to increase. [16] The next closest country is Canada with 8.4 deaths per 100,000 births—a rate approximately three times lower than ours.[17] This country, as compared to similarly situated countries, has higher rates of chronic diseases, obesity, and infant mortality rates.[18]

Not only is our high level of spend failing to translate into health benefits for the American people, but it is also placing an unsustainable economic burden on individuals and families. Four in ten adults report that health care debt is a burden, with over half of Americans saying it is difficult to afford care.[19] Patients in the U.S are also far more likely to miss appointments due to costs.[20] No matter the source of health coverage—employer, Medicaid, Medicare, or the marketplace for individual plans—more than half of those with health insurance coverage reported delaying or forgoing care because of costs and said a health problem of theirs or a family member got worse because of it.[21] This is as unsustainable as it is unacceptable.

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[16] Peterson-KFF Health Tracker, "How does the U.S Health System Compare to Other Countries," October 23, 2023, How does the quality of the U.S. health system compare to other countries? - Peterson-KFF Health System Tracker

[17] The Commonwealth Fund, "U.S. Health Care from a Global Perspective, 2022: Accelerating Spending, Worsening Outcomes,"

[18] The Commonwealth Fund, "U.S. Health Care from a Global Perspective, 2022: Accelerating Spending, Worsening Outcomes," https://www.commonwealthfund.org/publications/issue-briefs/2023/jan/us-health-care-global-perspective-2022

[19] KFF Health, "Americans Challenges with Health Care Costs," https://www.kff.org/health-costs/issue-brief/americans-challenges-with-health-care-costs/

[20] Peterson-KFF Health Tracker, "How does the U.S Health System Compare to Other Countries," October 23, 2023, How does the quality of the U.S. health system compare to other countries? - Peterson-KFF Health System Tracker

[21] Commonwealth Fund, Paying for It: How Health Care Costs and Medical Debt Are Making Americans Sicker and Poorer," https://www.commonwealthfund.org/publications/surveys/2023/oct/paying-for-it-costs-debt-americans-sicker-poorer-2023-affordability-survey

We Need a Broader, Bolder, and More Holistic Approach

Taking all the above together, we are hard-pressed to justify or support imposing more costs on consumers in the form of rate increases, when we cannot identify the benefits of prior increases. And perhaps most significantly in the context of this proceeding, there is currently no mechanism for OHIC to ensure that health care costs across the market are fairly and accurately distributed among all participants—whether insured in state regulated, employer-provided, or governmental plans—because of the fractured nature of our regulatory scheme. OHIC is only authorized to review the rates of "insurers licensed to provide health insurance in the state." R.I. Gen. Laws Ann. § 42-14.5-3. This scope excludes self-insured employers offering employees insurance in accordance with the Employee Retirement Income Security Act of 1974 (ERISA), because federal law preempts state jurisdiction over these plans. It also excludes all Rhode Islanders over 65 years of age and Rhode Islanders enrolled in Medicaid plans. All told, OHIC's authority only extends to about 15 percent of Rhode Islanders.[22]

With this fractured system, even if we were to conclude that investment is necessary and warranted, we cannot ensure that the investments will be enough or that the costs of the system are borne fairly and equitably by all, when we increase rates for a relatively insignificant percentage of Rhode Island's insureds. We need more meaningful reform. First, in the form of independent and robust government

[22] The limited reach of OHIC's authority is reflected in the results of this process over the years. Holding insurers to strict actuarial standards alone is not enough. Several insurance companies have incorporated the Attorney General's methodology recommendations from prior years into current rate requests, incorporating the best data and methods available. Over the past several years, there have been several changes in response to our expert recommendations: Harvard Pilgrim changed the manual rate data source, changed their credibility approach for assigning credibility to their small group experience, and also changed the source of its large group manual rate data. Neighborhood Health Plan adjusted its risk adjustment calculation to account for market-wide premium changes from the base year to the rating year. United Healthcare changed its small group manual rate source from Pennsylvania to Massachusetts, which is a more similar data set to Rhode Island. United Healthcare revised the development of Rhode Island assessment costs to be applied to Rhode Island residents only, rather than total membership nationally, in its small group markets. Yet, even when robust actuarial methods are followed, rate increases continue.

infrastructure that has both the authority and the mandate to look at the system as a whole. Second, we need bold healthcare payment reform that provides alternatives to traditional health insurance by consolidating larger groups' purchasing power and risk pools while streamlining administrative costs. And while some of these reforms can and should happen at the State level, some, and perhaps the most promising paths to success, will require national leadership.

To be sure, as a country we have taken significant steps to reform our health care system over the past decade-and-a-half. In March 2010, Congress passed the Patient Protection and Affordable Care Act and applicable amendments ("ACA"). To address "[t]he provision of health care," "a concern of national dimension," Congress could have "installed a federal system" to ensure everyone had access to health coverage, but "Congress chose, instead, to preserve a central role for private insurers and state governments." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 589 (2012) (Ginsburg, J., concurring in part). In providing for insurance market reforms, including the individual mandate, the idea was to prevent "cost shifting by those who would otherwise go without" health insurance to those with health insurance while simultaneously forcing "into the insurance risk pool more healthy individuals, whose premiums on average will be higher than their health care expenses." *NFIB v. Sebelius*, 567 U.S. at 548. Importantly, the Act outlawed the practice of carriers denying coverage to those with preexisting conditions, which ensured access to coverage those who were previously denied coverage or priced out.

These reforms were "plainly designed to expand health insurance coverage," *id.* at 567, and they succeeded. In the ten years since the passage of the Affordable Care Act, access to health insurance has certainly increased. In 2023, only 7.6% of Americans did not have health insurance.[23] In 2009, the number was over double that

[23] CDC, "US. Uninsured rate Drop by 26% since 2019," https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2024/20240618.htm

amount.[24] There is no question that, in expanding coverage, the ACA has been a success; nearly 20 million more people have coverage than before the law passed.[25] But the Act did little to contain the ever-increasing costs of prescription drugs or deductibles; indeed, when the law was drafted, the pressure to keep the overall price tag down has often resulted in plans with higher deductibles, meaning that individuals end up responsible for significant cost share amounts.[26] Despite the improvements the ACA has made in the marketplace, it is clear that the U.S health care system remains far from equitable and affordable.

The Attorney General is convinced that a new, holistic approach to paying for and delivering health care is necessary and finding that approach can no longer be delayed. Why must we continue to "preserve a central role for private insurers"? And why must accessing health care be one of the most complicated and expensive consumer transactions that people face? Investment in the health care system is warranted, but it cannot be accomplished through raising premiums on a small fraction of Rhode Islanders. The actuarial analysis provided by OHIC's and the RIAG's experts does not, and cannot, account for the systemic flaws underlying these proceedings. Accordingly, for all the reasons set forth in this comment, the Attorney General strongly believes that the Commissioner should reject the proposed rate increases.

To the extent the Commissioner disagrees with the Attorney General and believes that an increase in rates is justified, the Commissioner should carefully scrutinize all of the actuarial methodologies and data sources proffered and pick the most reliable methodologies available.

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[24] Gallup, "More American's Went Uninunsured in 2009 Than in 2008," https://news.gallup.com/poll/124973/Americans-Went-Uninsured-2009-2008.aspx#:~:text=According%20to%20the%20Gallup%20Healthways%20Well-Being%20Index%2C%20an,coincident%20with%20the%20worst%20of%20the%20economic%20crisis.

[25] NY Times, "Obamacare Turns 10: Here a Look at What Works and Doesn't," https://www.nytimes.com/2020/03/23/health/obamacare-aca-coverage-cost-history.html

[26] *Id.*

Respectfully submitted,

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