



**STATE OF RHODE ISLAND**  
**OFFICE OF THE ATTORNEY GENERAL**

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*Peter F. Neronha*  
*Attorney General*

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**VIA EMAIL ONLY**

Office of the Health Insurance Commissioner  
Attention: Charles Estabrook  
1511 Pontiac Avenue  
Building 69, First Floor  
Cranston, Rhode Island 02920  
[Charles.Estabrook@ohic.ri.gov](mailto:Charles.Estabrook@ohic.ri.gov)

Dear Mr. Estabrook,

The following Public Comment is submitted on behalf of the Office of Attorney General (“Attorney General”) in response to the proposed amendment to 230-RICR-20-30-4: Powers and Duties of the Health Insurance Commissioner (“Proposal”). The Attorney General submits this comment in his role as the state’s health care advocate, pursuant to which he is empowered to, “advocate for any changes necessary and appropriate . . . to support the goal of quality and affordable health care for all . . .” R.I. Gen. Laws § 42-9.1-2(a)(5).

The Rhode Island health care system is in crisis, 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 insurance, which is good news.<sup>1</sup> Yet, 11.6% of adult Rhode Islanders reported not having a regular place they can access health care.<sup>2</sup> Rhode Island has also struggled to maintain an adequate health care workforce. In the next 6 years, the state will need 99 more primary care doctors

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<sup>1</sup> HealthSourceRI, “Rhode Island Achieves Lower ever Uninsured Rate,” August 30, 2022, <https://healthsourceri.com/rhode-island-achieves-lowest-ever-uninsured-rate-survey-finds/>

<sup>2</sup> The Commonwealth Fund, “Adults with a Usual Source of Care,” <https://www.commonwealthfund.org/datacenter/adults-usual-source-care>

to meet demand.<sup>3</sup> The State’s current provider shortages in primary care are only projected to get worse.<sup>4</sup> And again, while premium rates continue to rise, Rhode Island’s reimbursement rates remain lower than our neighboring states, which is likely to contribute to these shortages.<sup>5</sup> The average inpatient and outpatient standardized price paid by employer sponsored health plans were lower in Rhode Island than in both Massachusetts and Connecticut,<sup>6</sup> meaning that revenues for providers are constrained even as consumers pay more.

Primary care providers serve a critical role in our health care system; seeing and treating patients; providing the care that keeps these patients out of emergency rooms; and allowing for continuation of care. These providers are the cornerstone of a healthy health care system. Yet, in Rhode Island, primary care providers are shackled with a combination of high administrative burdens and low payments. An American Medical Association survey of its members found that on average, physicians and their staff spend 12 hours each week completing prior authorizations.<sup>7</sup> Ninety-five percent of the physicians that responded to the survey reported that the current prior authorization demands are increasing provider burnout.<sup>8</sup>

Increasing payments to primary care providers and decreasing the burden of prior authorization, as this regulation proposes, are two important elements in mitigating the deficiencies in the Rhode Island health care system. As such, this proposed regulatory update is an important first step in addressing two of the many challenges that burden the Rhode Island health care system. At the same time, the Attorney General encourages OHIC to be more aggressive in its proposal. As set forth more fully in this comment, the Attorney General encourages OHIC to (1) provide a detailed explanation of its choice to require a 20% reduction in prior authorizations, rather than a larger

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<sup>3</sup> Robert Graham Center, “Rhode Island: Projecting Primary Care Physician Work Force,” <https://www.graham-center.org/content/dam/rgc/documents/maps-data-tools/state-collections/workforce-projections/Rhode%20Island.pdf>

<sup>4</sup> 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>.

<sup>5</sup> 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/>.

<sup>6</sup> 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](https://assets.rifoundation.org/documents/RIF-Hospital-and-Health-Systems-Study_March-FINAL.pdf)

<sup>7</sup> American Medical Association, “2023 AMA Prior Authorizations physician survey,” <https://www.ama-assn.org/system/files/prior-authorization-survey.pdf>

<sup>8</sup> *Id.*

reduction, (2) ensure any reduction in prior authorization levels is made from a baseline that complies with existing legal constraints, (3) clarify its intent to enforce existing law and regulation surrounding prior authorization, and (4) require that any increased investment in primary care results in increased payments and supports to primary care providers. The crisis plaguing the Rhode Island health care system demands more than piecemeal action; Rhode Islanders deserve aggressive enforcement of current law and robust solutions.

## **I. Prior Authorization**

The Attorney General agrees that a reduction in prior authorization volume is a necessary step to relieve the excessive administrative burdens faced by primary care providers. However, the proposed regulations lack the necessary support, enforcement options, and public accountability to provide the benefit Rhode Island providers deserve.

The Proposal would require that health insurers reduce prior authorization volume by 20%. OHIC spent only two pages on its regulatory and cost benefit analysis describing this reduction.<sup>9</sup> In doing so, it did not explain why a 20% reduction would provide meaningful relief to providers and consumers. The only explanation provided was that insurance companies had already agreed to reduce prior authorization by 20%.<sup>10</sup> Even looking at the publicly available information on this agreement, it remains unclear what studies or analysis OHIC did or relied upon to decide that a 20% reduction would result in a meaningful reduction of the administrative burden for providers.<sup>11</sup>

Insurance companies benefit financially from utilization management. A reduction of prior authorizations, one utilization management tool, may lead to greater access to more costly care, thus resulting in a decrease in their bottom line. A number reached by those with a financial incentive to keep reduction in prior authorization low should be considered the floor and highly scrutinized by the Commissioner. The Attorney General encourages OHIC to release a fully fleshed out explanation as to why only a 20% reduction in prior authorization is a warranted starting point.

The burden needs to shift to the insurance companies to produce documents that show why any prior authorization should be required *at all*. The Attorney General understands that OHIC plans

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<sup>9</sup> Rhode Island Secretary of State, “Proposed Amendments 230-RICR 20-30-4 Regulatory and Costs Benefit Analysis,” [https://risos-apa-production-public.s3.amazonaws.com/DBR/13207/STD\\_13207\\_20241011095039962.pdf](https://risos-apa-production-public.s3.amazonaws.com/DBR/13207/STD_13207_20241011095039962.pdf)

<sup>10</sup> *Id.*

<sup>11</sup> The Office of the Health Insurance Commissioner “Administrative Task Force Meeting 2023-2024 Meeting Series Summary,” <https://ohic.ri.gov/sites/g/files/xkgbur736/files/2024-04/Administrative%20Simplification%20Task%20Force%202023-2024%20Meeting%20Series%20Summary.pdf>

to continue to meet and talk with community partners, including payors and providers, to work together to further reduce prior authorizations. These meetings, and the data required by this proposed regulation should be available to the public for their review and input. And the starting point for those conversations should be a number chosen by OHIC through data collection and vigorous investigation, not a number most convenient to insurance companies. Moreover, by adopting the insurance companies' preferred number, without the underlying mechanics of how that number came to be, the public cannot be well informed in providing feedback on these proposals.

Further, the Attorney General cautions OHIC against crediting any insurer for either actions an insurer has already voluntarily taken to reduce prior authorization or is already required to take under the law. The 20% required in the Proposal should be *additional and new reductions*. No insurance company should be rewarded for taking steps they were either already required to take or previously took. If a company proposes a measure already required of them, or that they are already undertaking, to meet this 20% reduction, OHIC needs to reject that proposal. OHIC needs to aggressively protect consumers and providers by ensuring this already low target of 20% is, at the very least, in *addition to* any reductions or actions already required by law.

It appears the health insurance companies are able to call the shots when it comes to their own regulations. Rather than following the directive given to it by the General Assembly when it amended OHIC's enabling statute to focus on prior authorization, OHIC has seemingly blindly adopted the payors' recommended reductions. *See* R.I. Gen. Law § 42-14.5-3(h). Although OHIC has an obligation to ensure the solvency of insurance companies, it is tasked with equally important obligations to protect Rhode Island consumers and ensure the fair treatment of health care providers. R.I. Gen. Laws § 42-14.5-2. OHIC fails to live up to its legal obligations when it adopts a number created by those that have financial incentives to keep prior authorization intact. If 20% is a data-driven starting point, there needs to be well-reasoned detailed support provided to the public. Enacting an update to a regulation simply based on what payors agreed to voluntarily do is not sufficient to protect providers from the crushing burden of prior authorization.

OHIC should also consider issuing policy guidance regarding its intent to enforce existing law and regulation surrounding prior authorization. Rhode Island has statutes that already govern insurance companies during the benefit determination and utilization review process. R.I. Gen. Laws § 27-18.9 *et. seq.* For example, insurers are required to have a reviewer with the same licensure status as the ordering provider to review the claims for prior authorizations. R.I. Gen. Laws § 27-18.9-5 (b)(1). Insurers also have specific time standards with which they must comply. R. I. Gen. Laws §§

27-18.9-6(B)(1-3); 27-18.9-5(a)(1). And, although not directly aimed at prior authorization, health plans are required to provide coverage for mental health and substance use disorders under the same terms and conditions as that coverage is provided for other illnesses and diseases. R.I. Gen. Laws § 27-38.2-1(a). This requirement means that prior authorization cannot be more burdensome for mental health conditions when compared to prior authorization processes for somatic conditions. It is unclear from the proposal whether the 20% reduction proposed is from compliant prior authorization programs, or whether prior authorization has gone largely unmonitored and would already be at a lower level with increased enforcement.

The Office of the Health Insurance Commissioner has the necessary statutory tools available to investigate and enforce current law regarding prior authorization, including market conduct examinations. R.I. Gen. Laws § 27-13.1-1. OHIC publicly lists 15 market conduct examinations that it has undertaken during the agency's lifetime.<sup>12</sup> Each time the Commissioner has undertaken his duty to examine payor conduct, he has found repeated failures to comply with law or regulation. It is of concern to the Attorney General that no examination or investigation has been made publicly available regarding insurance compliance with benefit determination and utilization review laws and regulations so that any reduction in prior authorizations can be made from the level achieved by a *compliant* market. To the extent that OHIC lacks the necessary resources to undertake these examinations, then that needs to be made clear to the public and the General Assembly so that the public understands the need for increased enforcement resources. The Attorney General remains prepared and willing to cooperate with OHIC in achieving its enforcement priorities.

## **II. Primary Care Funding.**

The Office of the Health Insurance Commissioner described the proposed primary care regulations as a tool to “hold insurers accountable for the appropriate financing of primary care that is necessary to ensure a high performing health care system and provision of affordable health insurance.”<sup>13</sup> The Attorney General agrees that insurance companies need to be held accountable in the Rhode Island marketplace. It is the insurers' obligation to their enrollees to use the money collected from ever-growing premiums to invest in Rhode Island primary care providers, ensuring that their product delivers the health care it purports to provide. This proposed update, and the underlying

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<sup>12</sup> Office of The Health Insurance Commissioner, “Regulations and Enforcement: Market Conduct Examinations,” <https://ohic.ri.gov/regulations-and-enforcement/market-conduct-examinations>

<sup>13</sup> RI Security of State, “ Powers and Duties of the Health Insurance Commissioner, Proposed Rule,” <https://rules.sos.ri.gov/Promulgations/part/230-20-30-4>

original regulation, focuses on an investment in the primary care system, which includes a wide array of costs, including the overhead of running a practice, including electronic medical systems and basic physical infrastructure.<sup>14</sup> The proposed update changes how OHIC tracks primary care spending and investment and requires insurers to direct 10% of their payments to primary care over the coming years. However, there is no mechanism in the proposal to track whether these increased investments are likely to retain individual primary care providers.

Although the Attorney General agrees that primary care practice transformation may lower costs and provide higher quality care, no transformation will occur without the necessary provider population, a risk that is unfortunately a daily reality for many Rhode Islanders seeking continuing primary care provider coverage.

The Proposal lacks a mechanism to ensure that providers see a direct increase in their pay or improvements in their working conditions that would incentivize them to stay in Rhode Island. Overall, the Proposal will increase the funds that flow into practices, and while this money is important for increasing integrated systems of care, provider pay and support desperately needs to increase. OHIC should update this proposal to include a requirement that all payors subject to the update track and report what percentage of the increased investment in the practice is paid directly to the provider, and what percentage is directly tied to lowering administrative burdens on providers. This data needs to be public to hold all payors accountable for their share in increasing the salaries of primary care providers. Providers are the backbone of the health care system. An overinvestment in overhead of a practice, rather than increased provider payment, hurts Rhode Islanders. If OHIC continues to increase premium rates paid by Rhode Islander, then they deserve to see, transparently, how that money is spent in non-technical terms.<sup>15</sup>

### **III. Conclusion**

The Office of the Health Insurance Commissioner's proposal is a step in the right direction to begin to address the Rhode Island health care crisis. However, given the magnitude of that crisis, the Attorney General encourages the Commissioner to be bold. The Proposal should be effectuated with the changes detailed above that would increase transparency, increase payments to providers, decrease prior authorization, and ensure payors are in full compliance with the law. Rhode Islanders

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<sup>14</sup> 230-RICR-20-30-4.10(B); 230-RICR-20-30-4.10(C).

<sup>15</sup> The Office of the Health Insurance Commissioner, "2025 Commercial Health insurance Rates Have Been Approved with Modifications," September 3, 2024, <https://ohic.ri.gov/sites/g/files/xkgbur736/files/2024-09/Rate%20Review%20Process%20Press%20Release%20-%20Approved%20Rates%20September%202024.pdf>.

deserve aggressive enforcement of current law and robust solutions to the ongoing health care crisis.  
The Attorney General urges OHIC to adopt its recommendations to the Proposal.

Respectfully submitted,

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General**

By its attorneys,

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