

SENATE No. 475

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to promoting the efficient use of health care revenues..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 110 of Chapter 175 of the General Laws, as appearing in the 2004
2 Official Edition, is hereby amended by adding the following new subdivision (O):

3 (O). (a) Each insurer authorized to issue or deliver within the Commonwealth any
4 general or blanket policy of insurance described in subdivision (A), (C), or (D) of this section
5 shall expend the following percentage of its Massachusetts-associated revenue as its
6 Massachusetts care share, as defined herein, for the purpose of providing health services to
7 persons insured under such policies:

8 (1) The Massachusetts care share for an insurer with 50,000 or more persons
9 insured for health coverage sold in the Commonwealth and that has been doing business in the
10 Commonwealth for more than one year shall be no less than 90 percent of Massachusetts-
11 associated revenue, and non-health expenditures shall not exceed 10 percent of Massachusetts-
12 associated revenue, for each calendar year.

13 (2) The Massachusetts care share for an insurer with at least 25,000 but not more
14 than 50,000 persons insured for health coverage sold in the Commonwealth and that has been
15 doing business in the Commonwealth for more than one year shall be no less than 85 percent of
16 Massachusetts-associated revenue, and non-health expenditures shall not exceed 15 percent of
17 Massachusetts-associated revenue, for each calendar year.

18 (b) Each insurer operating in the Commonwealth shall report annually to the
19 Commissioner its total revenues, Massachusetts-associated revenue, total premiums,
20 Massachusetts premiums, total health expenditures, Massachusetts-associated health
21 expenditures, total non-health expenditures, care share, and Massachusetts care share. Such
22 information shall be reported on forms provided by the Commissioner, which shall include all
23 information required by the National Association of Insurance Commissioners' "Health
24 Maintenance Organization Financial Report of Affairs and Conditions Form," and such other
25 information as the Commissioner shall deem relevant for determining compliance with the
26 requirements of this section. The Commissioner shall issue regulations specifying the methods
27 for calculating the information to be reported in accordance with this section. The
28 Commissioner shall publish annually the care share and the Massachusetts care share of each
29 health maintenance organization doing business in the Commonwealth. All written materials
30 used for advertising and marketing blanket or general policies of insurance to prospective
31 insured persons or groups shall include a statement of the insurer's care share and its
32 Massachusetts care share.

33 (c) (1) Any insurer that fails to comply with the provisions of this section shall
34 refund to the persons insured by it a percentage of its Massachusetts-associated revenues equal to
35 the Massachusetts care share required by subsection (a) hereof for the calendar year less the

36 Massachusetts care share actually expended for the calendar year. The refund payable for any
37 calendar year shall be paid on or before April 30 of the next calendar year. An insurer that
38 reports a shortfall in its Massachusetts care share may, upon written notice to the Commissioner,
39 pay the refund owed by reducing the total premiums payable by its insureds for the calendar year
40 in which the shortfall is reported by an amount equal to the total shortfall.

41 (2) Each calendar year, the Commissioner shall audit the books and
42 records of a random sample of 10 percent of insurers that have more than 25,000 persons insured
43 under blanket or group insurance policies. The Commissioner may appoint an independent
44 auditor to conduct the audit, subject to the control and supervision of the Commissioner, and
45 shall assess each health maintenance organization a fee to pay the reasonable costs of such audit.

46 (3) The Commissioner shall prepare an annual budget of the costs of
47 monitoring and determining compliance with this section and such costs shall be paid by each
48 insurer that has done business in the Commonwealth for at least 5 years, on a prorata basis.

49 (d) (1) The knowing violation of any of the requirements of this section by any
50 insurer shall be punished by imprisonment for not more than five years or by a fine of not more
51 than twenty percent of Massachusetts-associated revenue.

52 (2) A violation of this section shall also be deemed to be a violation of
53 chapter ninety-three A.

54 (e) For purposes of this section, the following terms shall have the following meanings:

55 (1) "Total revenues" means all income and revenues, however derived,
56 including, but not limited to, revenues derived from premium sales, interest, dividends, and other

57 investments, but excluding only income in the form of compensation for administrative services
58 pursuant to a contract or other arrangement for rendering administrative services only to self-
59 funded health plans that are not owned or controlled by the insurer.

60 (2) “Massachusetts-associated revenue” means Massachusetts premiums
61 plus a proportion of total revenues less total premiums, where said proportion equals
62 Massachusetts premiums divided by total premiums.

63 (3) “Total premiums” means all revenue derived from the sale within or
64 outside the Commonwealth of blanket or group insurance policies for coverage for health
65 services.

66 (4) “Massachusetts premiums” means all revenue derived from the sale in
67 Massachusetts of blanket and group insurance policies for health services.

68 (5) “Total health expenditures” means all expenditures by or on behalf of
69 an insurer for the purchase of health services or to reimburse an insured for the purchase of
70 health services, including physicians and other professional health services, hospital and other
71 health facility services, pharmacy services, health education, and capital expenditures for the
72 construction or rehabilitation of medical facilities for the delivery of health care.

73 (6) “Massachusetts-associated health expenditures” means that proportion
74 of total health expenditures paid for the delivery of health services rendered to members pursuant
75 to a blanket or group insurance policy sold in the Commonwealth by the insurer.

76 (7) “Care share” means the percentage obtained by dividing total health
77 expenditures by total revenue for a calendar year.

78 (8) "Massachusetts care share" means the percentage obtained by dividing
79 Massachusetts-associated health expenditures by Massachusetts-associated revenue for a
80 calendar year.

81 SECTION 2. Chapter 176B of the General Laws, as appearing in the 1996 Official
82 Edition, is hereby amended by adding the following new Section 12A:

83 12A. Expenditures for health services.

84 (a) Each medical service organization licensed to operate in the Commonwealth shall
85 expend the following percentage of its Massachusetts-associated revenue as its Massachusetts
86 care share, as defined herein, for the purpose of providing health services to its members:

87 (1) The Massachusetts care share for a medical service corporation with 50,000
88 or more subscribers for health coverage sold in the Commonwealth and that has been doing
89 business in the Commonwealth for more than one year shall be no less than 90 percent of
90 Massachusetts-associated revenue, and non-health expenditures shall not exceed 10 percent of
91 Massachusetts-associated revenue, for each calendar year.

92 (2) The Massachusetts care share for a medical service corporation with at least
93 25,000 but not more than 50,000 subscribers for health coverage sold in the Commonwealth and
94 that has been doing business in the Commonwealth for more than one year shall be no less than
95 85 percent of Massachusetts-associated revenue, and non-health expenditures shall not exceed 15
96 percent of Massachusetts-associated revenue, for each calendar year.

97 (b) Each medical service corporation shall report annually to the Commissioner its
98 total revenues, Massachusetts-associated revenue, total premiums, Massachusetts premiums,

99 total health expenditures, Massachusetts-associated health expenditures, total non-health
100 expenditures, care share, and Massachusetts care share. Such information shall be reported on
101 forms provided by the Commissioner, which shall include all information required by the
102 National Association of Insurance Commissioners' "Health Maintenance Organization Financial
103 Report of Affairs and Conditions Form," and such other information as the Commissioner shall
104 deem relevant for determining compliance with the requirements of this section. The
105 Commissioner shall issue regulations specifying the methods for calculating the information to
106 be reported in accordance with this section. The Commissioner shall publish annually the care
107 share and the Massachusetts care share of the medical service corporation doing business in the
108 Commonwealth. All written materials used for advertising and marketing health services
109 contracts to prospective subscribers or groups of subscribers shall include a statement of the
110 corporation's care share and its Massachusetts care share.

111 (c) (1) Any medical service corporation that fails to comply with the provisions of
112 this section shall refund to its subscribers a percentage of its Massachusetts-associated revenues
113 equal to the Massachusetts care share required by subsection (a) hereof for the calendar year less
114 the Massachusetts care share actually expended for the calendar year. The refund payable for
115 any calendar year shall be paid on or before April 30 of the next calendar year. A corporation
116 that reports a shortfall in its Massachusetts care share may, upon written notice to the
117 Commissioner, pay the refund owed by reducing the total premiums payable by its subscribers
118 for the calendar year in which the shortfall is reported by an amount equal to the total shortfall.

119 (2) Each calendar year, the Commissioner shall audit the books and records of a
120 random sample of 10 percent of medical service corporations that have more than 25,000
121 members. The Commissioner may appoint an independent auditor to conduct the audit, subject

122 to the control and supervision of the Commissioner, and shall assess each medical service
123 corporation a fee to pay the reasonable costs of such audit.

124 (3) The Commissioner shall prepare an annual budget of the costs of monitoring
125 and determining compliance with this section and such costs shall be paid by each medical
126 service corporation that has done business in the Commonwealth for at least 5 years, on a prorata
127 basis.

128 (d) (1) The knowing violation of any of the requirements of this section by any
129 medical service corporation shall be punished by imprisonment for not more than five years or
130 by a fine of not more than twenty percent of Massachusetts-associated revenue.

131 (2) A violation of this section shall also be deemed to be a violation of chapter
132 ninety-three A.

133 (e) For purposes of this section, the following terms shall have the following meanings:

134 (1) "Total revenues" means all income and revenues, however derived, including,
135 but not limited to, revenues derived from premium sales, interest, dividends, and other
136 investments, but excluding only income in the form of compensation for administrative services
137 pursuant to a contract or other arrangement for rendering administrative services only to self-
138 funded health plans that are not owned or controlled by the corporation.

139 (2) "Massachusetts-associated revenue" means Massachusetts premiums plus a
140 proportion of total revenues less total premiums, where said proportion equals Massachusetts
141 premiums divided by total premiums.

142 (3) “Total premiums” means all revenue derived from the sale within or outside
143 the Commonwealth of medical service contracts and contracts showing evidence of coverage for
144 health services.

145 (4) “Massachusetts premiums” means all revenue derived from the sale in
146 Massachusetts of medical service contracts and contracts showing evidence of coverage for
147 health services.

148 (5) “Total health expenditures” means all expenditures by or on behalf of a
149 medical service corporation for the purchase of health services, including physicians and other
150 professional health services, hospital and other health facility services, pharmacy services, health
151 education, and capital expenditures for the construction or rehabilitation of medical facilities for
152 the delivery of health care.

153 (6) “Massachusetts-associated health expenditures” means that proportion of total
154 health expenditures paid for the delivery of health services rendered to members pursuant to
155 medical service contracts sold in the Commonwealth by the medical service corporation.

156 (7) “Care share” means the percentage obtained by dividing total health
157 expenditures by total revenue for a calendar year.

158 (8) “Massachusetts care share” means the percentage obtained by dividing
159 Massachusetts-associated health expenditures by Massachusetts-associated revenue for a
160 calendar year.

161 SECTION 3. Chapter 176G of the General Laws, as appearing in the 1996 Official
162 Edition, is hereby amended by adding the following new Section 6A:

163 6A. Expenditures for health services.

164 (a) Each organization licensed to operate a health maintenance organization in the
165 Commonwealth shall expend the following percentage of its Massachusetts-associated revenue
166 as its Massachusetts care share, as defined herein, for the purpose of providing health services to
167 its members:

168 (1) The Massachusetts care share for a health maintenance organization with
169 50,000 or more members in health coverage sold in the Commonwealth and that has been doing
170 business in the Commonwealth for more than one year shall be no less than 90 percent of
171 Massachusetts-associated revenue, and non-health expenditures shall not exceed 10 percent of
172 Massachusetts-associated revenue, for each calendar year.

173 (2) The Massachusetts care share for a health maintenance organization with at
174 least 25,000 but not more than 50,000 members in health coverage sold in the Commonwealth
175 and that has been doing business in the Commonwealth for more than one year shall be no less
176 than 85 percent of Massachusetts-associated revenue, and non-health expenditures shall not
177 exceed 15 percent of Massachusetts-associated revenue, for each calendar year.

178 (b) Each organization operating a health maintenance organization in the
179 Commonwealth shall report annually to the Commissioner its total revenues, Massachusetts-
180 associated revenue, total premiums, Massachusetts premiums, total health expenditures,
181 Massachusetts-associated health expenditures, total non-health expenditures, care share, and
182 Massachusetts care share. Such information shall be reported on forms provided by the
183 Commissioner, which shall include all information required by the National Association of
184 Insurance Commissioners' "Health Maintenance Organization Financial Report of Affairs and

185 Conditions Form,” and such other information as the Commissioner shall deem relevant for
186 determining compliance with the requirements of this section. The Commissioner shall issue
187 regulations specifying the methods for calculating the information to be reported in accordance
188 with this section. The Commissioner shall publish annually the care share and the Massachusetts
189 care share of each health maintenance organization doing business in the Commonwealth. All
190 written materials used for advertising and marketing health maintenance contracts to prospective
191 members or groups of members shall include a statement of the health maintenance
192 organization’s care share and its Massachusetts care share.

193 (c) (1) Any organization that fails to comply with the provisions of this section shall
194 refund to its members a percentage of its Massachusetts-associated revenues equal to the
195 Massachusetts care share required by subsection (a) hereof for the calendar year less the
196 Massachusetts care share actually expended for the calendar year. The refund payable for any
197 calendar year shall be paid on or before April 30 of the next calendar year. A health
198 maintenance organization that reports a shortfall in its Massachusetts care share may, upon
199 written notice to the Commissioner, pay the refund owed by reducing the total premiums payable
200 by its members for the calendar year in which the shortfall is reported by an amount equal to the
201 total shortfall.

202 (2) Each calendar year, the Commissioner shall audit the books and records of a
203 random sample of 10 percent of health maintenance organizations that have more than 25,000
204 members. The Commissioner may appoint an independent auditor to conduct the audit, subject
205 to the control and supervision of the Commissioner, and shall assess each health maintenance
206 organization a fee to pay the reasonable costs of such audit.

207 (3) The Commissioner shall prepare an annual budget of the costs of monitoring
208 and determining compliance with this section and such costs shall be paid by each health
209 maintenance organization that has done business in the Commonwealth for at least 5 years, on a
210 prorata basis.

211 (d) (1) The knowing violation of any of the requirements of this section by any
212 carrier or health maintenance organization shall be punished by imprisonment for not more than
213 five years or by a fine of not more than twenty percent of Massachusetts-associated revenue.

214 (2) A violation of this section shall also be deemed to be a violation of chapter
215 ninety-three A. [§9 of 176G makes HMOs subject to 93A]

216 (e) For purposes of this section, the following terms shall have the following meanings:

217 (1) "Total revenues" means all income and revenues, however derived, including,
218 but not limited to, revenues derived from premium sales, interest, dividends, and other
219 investments, but excluding only income in the form of compensation for administrative services
220 pursuant to a contract or other arrangement for rendering administrative services only to self-
221 funded health plans that are not owned or controlled by the health maintenance organization.

222 (2) "Massachusetts-associated revenue" means Massachusetts premiums plus a
223 proportion of total revenues less total premiums, where said proportion equals Massachusetts
224 premiums divided by total premiums.

225 (3) "Total premiums" means all revenue derived from the sale within or outside
226 the Commonwealth of health maintenance contracts and contracts showing evidence of coverage
227 for health services.

228 (4) “Massachusetts premiums” means all revenue derived from the sale in
229 Massachusetts of health maintenance contracts and contracts showing evidence of coverage for
230 health services.

231 (5) “Total health expenditures” means all expenditures by or on behalf of a health
232 maintenance organization for the purchase of health services, including physicians and other
233 professional health services, hospital and other health facility services, pharmacy services, health
234 education, and capital expenditures for the construction or rehabilitation of medical facilities for
235 the delivery of health care.

236 (6) “Massachusetts-associated health expenditures” means that proportion of total
237 health expenditures paid for the delivery of health services rendered to members pursuant to
238 health maintenance contracts sold in the Commonwealth by the health maintenance organization.

239 (7) “Care share” means the percentage obtained by dividing total health
240 expenditures by total revenue for a calendar year.

241 (8) “Massachusetts care share” means the percentage obtained by dividing
242 Massachusetts-associated health expenditures by Massachusetts-associated revenue for a
243 calendar year.

244 SECTION 4 Chapter 176G of the General Laws, as appearing in the 2004 Official
245 Edition, is hereby amended by adding the following new Section 3B:

246 3B. Expenditures for health services.

247 (a) Each organization that enters into a preferred provider arrangement in the
248 Commonwealth pursuant to this chapter shall expend the following percentage of its

249 Massachusetts-associated revenue as its Massachusetts care share, as defined herein, for the
250 purpose of providing health services to its members:

251 (1) The Massachusetts care share for an organization with 50,000 or more
252 members in health coverage sold in the Commonwealth and that has been doing business in the
253 Commonwealth for more than one year shall be no less than 90 percent of Massachusetts-
254 associated revenue, and non-health expenditures shall not exceed 10 percent of Massachusetts-
255 associated revenue, for each calendar year.

256 (2) The Massachusetts care share for an organization with at least 25,000 but not
257 more than 50,000 members in health coverage sold in the Commonwealth and that has been
258 doing business in the Commonwealth for more than one year shall be no less than 85 percent of
259 Massachusetts-associated revenue, and non-health expenditures shall not exceed 15 percent of
260 Massachusetts-associated revenue, for each calendar year.

261 (b) Each organization operating in the Commonwealth shall report annually to the
262 Commissioner its total revenues, Massachusetts-associated revenue, total premiums,
263 Massachusetts premiums, total health expenditures, Massachusetts-associated health
264 expenditures, total non-health expenditures, care share, and Massachusetts care share. Such
265 information shall be reported on forms provided by the Commissioner, which shall include all
266 information required by the National Association of Insurance Commissioners' "Health
267 Maintenance Organization Financial Report of Affairs and Conditions Form," and such other
268 information as the Commissioner shall deem relevant for determining compliance with the
269 requirements of this section. The Commissioner shall issue regulations specifying the methods
270 for calculating the information to be reported in accordance with this section. The

271 Commissioner shall publish annually the care share and the Massachusetts care share of each
272 organization doing business in the Commonwealth. All written materials used for advertising
273 and marketing preferred provider arrangements to prospective members or groups of members
274 shall include a statement of the organization's care share and its Massachusetts care share.

275 (c) (1) Any organization that fails to comply with the provisions of this section shall
276 refund to its members a percentage of its Massachusetts-associated revenues equal to the
277 Massachusetts care share required by subsection (a) hereof for the calendar year less the
278 Massachusetts care share actually expended for the calendar year. The refund payable for any
279 calendar year shall be paid on or before April 30 of the next calendar year. An organization that
280 reports a shortfall in its Massachusetts care share may, upon written notice to the Commissioner,
281 pay the refund owed by reducing the total premiums payable by its members for the calendar
282 year in which the shortfall is reported by an amount equal to the total shortfall.

283 (2) Each calendar year, the Commissioner shall audit the books and records of a
284 random sample of 10 percent of organizations that have more than 25,000 members. The
285 Commissioner may appoint an independent auditor to conduct the audit, subject to the control
286 and supervision of the Commissioner, and shall assess each organization a fee to pay the
287 reasonable costs of such audit.

288 (3) The Commissioner shall prepare an annual budget of the costs of monitoring
289 and determining compliance with this section and such costs shall be paid by each organization
290 that has done business in the Commonwealth for at least 5 years, on a prorata basis.

291 (d) (1) The knowing violation of any of the requirements of this section by any
292 organization shall be punished by imprisonment for not more than five years or by a fine of not
293 more than twenty percent of Massachusetts-associated revenue.

294 (2) A violation of this section shall also be deemed to be a violation of chapter
295 ninety-three A.

296 (e) For purposes of this section, the following terms shall have the following meanings:

297 (1) "Total revenues" means all income and revenues, however derived, including,
298 but not limited to, revenues derived from premium sales, interest, dividends, and other
299 investments, but excluding only income in the form of compensation for administrative services
300 pursuant to a contract or other arrangement for rendering administrative services only to self-
301 funded health plans that are not owned or controlled by the organization.

302 (2) "Massachusetts-associated revenue" means Massachusetts premiums plus a
303 proportion of total revenues less total premiums, where said proportion equals Massachusetts
304 premiums divided by total premiums.

305 (3) "Total premiums" means all revenue derived from the sale within or outside
306 the Commonwealth of health services contracts and contracts showing evidence of coverage for
307 health services.

308 (4) "Massachusetts premiums" means all revenue derived from the sale in
309 Massachusetts of health services contracts and contracts showing evidence of coverage for health
310 services.

311 (5) "Total health expenditures" means all expenditures by or on behalf of an
312 organization for the purchase of health services, including physicians and other professional
313 health services, hospital and other health facility services, pharmacy services, health education,
314 and capital expenditures for the construction or rehabilitation of medical facilities for the
315 delivery of health care.

316 (6) "Massachusetts-associated health expenditures" means that proportion of total
317 health expenditures paid for the delivery of health services rendered to members pursuant to
318 health service contracts sold in the Commonwealth by the organization.

319 (7) "Care share" means the percentage obtained by dividing total health
320 expenditures by total revenue for a calendar year.

321 (8) "Massachusetts care share" means the percentage obtained by dividing
322 Massachusetts-associated health expenditures by Massachusetts-associated revenue for a
323 calendar year.