

SENATE No. 476

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act promoting efficient revenue use by certain health service providers. ..

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 most recently amended
2 by section 6 of chapter 256 of the acts of 2008, is hereby further amended by adding the
3 following subdivision:-

4 (Q) (a)Each insurer authorized to issue or deliver within the commonwealth any general
5 or blanket policy of insurance described in subdivision (A), (C) or (D) and that has a contract
6 with MassHealth, Commonwealth Care or the Group Insurance Commission shall expend the
7 percentage as herein provided of its Massachusetts-associated revenue as its Massachusetts care
8 share for the purpose of providing health services to persons insured under such policies. The
9 Massachusetts care share for an insurer shall be no less than 90 per cent of Massachusetts-
10 associated revenue and non-health expenditures shall not exceed 10 per cent of Massachusetts-
11 associated revenue for each calendar year.

12 (b) Each insurer shall report annually to the commissioner its total revenues,
13 Massachusetts-associated revenue, total premiums, Massachusetts premiums, total health
14 expenditures, Massachusetts-associated health expenditures, total non-health expenditures, care

15 share and Massachusetts care share. Such information shall be reported on forms provided by
16 the commissioner which shall include all information required by the National Association of
17 Insurance Commissioners' Health Maintenance Organization Financial Report of Affairs and
18 Conditions Form" and such other information as the commissioner shall deem relevant for
19 determining compliance with this section. The commissioner shall issue regulations specifying
20 the methods for calculating the information to be reported in accordance with this section. The
21 commissioner shall publish annually the care share and the Massachusetts care share of each
22 health maintenance organization doing business in the Commonwealth. All written materials
23 used for advertising and marketing blanket or general policies of insurance to prospective
24 insured persons or groups shall include a statement of the insurer's care share and its
25 Massachusetts care share.

26 (c) Any insurer that fails to comply with this section shall refund to the persons insured
27 by it a percentage of its Massachusetts-associated revenues equal to the Massachusetts care share
28 required by subsection (a) for the calendar year less the Massachusetts care share actually
29 expended for the calendar year. The refund payable for any calendar year shall be paid on or
30 before April 30 of the next calendar year. An insurer that reports a shortfall in its Massachusetts
31 care share may, upon written notice to the commissioner, pay the refund owed by reducing the
32 total premiums payable by its insureds for the calendar year in which the shortfall is reported by
33 an amount equal to the total shortfall.

34 The commissioner shall prepare an annual budget of the costs of monitoring and
35 determining compliance with this section and such costs shall be paid by each insurer on a
36 prorata basis.

(d) The knowing violation of any of the requirements of this section by any insurer shall be punished by imprisonment for not more than 5 years or by a fine of not more than 20 per cent of the Massachusetts-associated revenue. A violation of this section shall also be deemed to be a violation of chapter 93A.

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

“Care share”, the percentage obtained by dividing total health expenditures by total revenue for a calendar year.

“Massachusetts-associated health expenditures”, that proportion of total health expenditures paid for the delivery of health services rendered to members pursuant to a blanket or group insurance policy sold in the commonwealth by the insurer.

“Massachusetts-associated revenue”, Massachusetts premiums plus a proportion of total revenues less total premiums, where said proportion equals Massachusetts premiums divided by total premiums.

“Massachusetts care share”, the percentage obtained by dividing Massachusetts-associated health expenditures by Massachusetts-associated revenue for a calendar year.

“Massachusetts premiums”, all revenue derived from the sale in Massachusetts of blanket and group insurance policies for health services.

“Total health expenditures”, all expenditures by or on behalf of an insurer for the purchase of health services or to reimburse an insured for the purchase of health services, including physicians and other professional health services, hospital and other health facility

services, pharmacy services, health education and capital expenditures for the construction or rehabilitation of medical facilities for the delivery of health care.

“Total premiums”, all revenue derived from the sale within or outside the commonwealth of blanket or group insurance policies for coverage for health services.

“Total revenues”, all income and revenues, however derived, including, but not limited to, revenues derived from premium sales, interest, dividends, and other investments, but excluding only income in the form of compensation for administrative services pursuant to a contract or other arrangement for rendering administrative services only to self-funded health plans that are not owned or controlled by the insurer.

SECTION 2. Chapter 176B of the General Laws is hereby amended by inserting after section 12 the following section:-

Section 12A. (a) Each medical service corporation licensed to operate in the commonwealth that has a contract with the Group Insurance Commission, MassHealth or Commonwealth Care shall expend the percentage as herein provided of its Massachusetts-associated revenue as its Massachusetts care share for the purpose of providing health services to its members. The Massachusetts care share for a medical service organization shall be no less than 90 per cent of Massachusetts-associated revenue and non-health expenditures shall not exceed 10 per cent of Massachusetts-associated revenue for each calendar year.

(b) Each medical service corporation shall report annually to the commissioner its total revenues, Massachusetts-associated revenue, total premiums, Massachusetts premiums, total health expenditures, Massachusetts-associated health expenditures, total non-health expenditures, care share and Massachusetts care share. Such information shall be reported on

forms provided by the commissioner, which shall include all information required by the National Association of Insurance Commissioners' Health Maintenance Organization Financial Report of Affairs and Conditions Form and such other information as the commissioner shall deem relevant for determining compliance with the requirements of this section. The commissioner shall issue regulations specifying the methods for calculating the information to be reported in accordance with this section. The commissioner shall publish annually the care share and the Massachusetts care share of the medical service corporation doing business in the commonwealth. All written materials used for advertising and marketing health services contracts to prospective subscribers or groups of subscribers shall include a statement of the corporation's care share and its Massachusetts care share.

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

The commissioner shall prepare an annual budget of the costs of monitoring and determining compliance with this section and such costs shall be paid by each medical service corporation on a prorata basis.

101 The knowing violation of any of the requirements of this section by a medical service
102 corporation shall be punished by imprisonment for not more than 5 years or by a fine of not more
103 than 20 per cent of Massachusetts-associated revenue. A violation of this section shall also be
104 deemed to be a violation of chapter 93A.

105 For the purposes of this section, the following terms shall have the following meanings:

106 “Care share”, the percentage obtained by dividing total health expenditures by total
107 revenue for a calendar year.

108 “Massachusetts-associated health expenditures”, that proportion of total health
109 expenditures paid for the delivery of health services rendered to members pursuant to medical
110 service contracts sold in the commonwealth by the medical service corporation.

111 “Massachusetts-associated revenue”, Massachusetts premiums plus a proportion of total
112 revenues less total premiums, where said proportion equals Massachusetts premiums divided by
113 total premiums.

114 “Massachusetts care share”, the percentage obtained by dividing Massachusetts-
115 associated health expenditures by Massachusetts-associated revenue for a calendar year.

116 “Massachusetts premiums”, all revenue derived from the sale in Massachusetts of
117 medical service contracts and contracts showing evidence of coverage for health services.

118 “Total health expenditures”, all expenditures by or on behalf of a medical service
119 corporation for the purchase of health services, including physicians and other professional
120 health services, hospital and other health facility services, pharmacy services, health education

and capital expenditures for the construction or rehabilitation of medical facilities for the delivery of health care.

“Total premiums”, all revenue derived from the sale within or outside the commonwealth of medical service contracts and contracts showing evidence of coverage for health services.

“Total revenues”, all income and revenues, however derived, including, but not limited to, revenues derived from premium sales, interest, dividends and other investments, but excluding only income in the form of compensation for administrative services pursuant to a contract or other arrangement for rendering administrative services only to self-funded health plans that are not owned or controlled by the insurer.

SECTION 3. Chapter 176G of the General Laws is hereby amended by inserting after section 6A the following section:-

Section 6B. (a) Each organization licensed to operate a health maintenance organization in the commonwealth and that has a contract with the Group Insurance Commission, MassHealth or Commonwealth Care shall expend the percentage as herein provided of its Massachusetts-associated revenue as its Massachusetts care share for the purpose of providing health services to its members. The Massachusetts care share for a health maintenance organization as described in the previous section shall be no less than 90 per cent of the Massachusetts-associated revenue, and non-health expenditures shall not exceed 10 per cent of Massachusetts-associated revenue for each calendar year.

(b) Each organization operating a health maintenance organization shall report annually to the commissioner its total revenues, Massachusetts-associated revenue, total premiums,

143 Massachusetts premiums, total health expenditures, Massachusetts-associated health
144 expenditures, total non-health expenditures, care share and Massachusetts care share. Such
145 information shall be reported on forms provided by the commissioner which shall include all
146 information required by the National Association of Insurance Commissioners' Health
147 Maintenance Organization Financial Report of Affairs and Conditions Form and such other
148 information as the commissioner shall deem relevant for determining compliance with the
149 requirements of this section. The commissioner shall issue regulations specifying the methods
150 for calculating the information to be reported in accordance with this section. The commissioner
151 shall publish annually the care share and the Massachusetts care share of each health
152 maintenance organization doing business in the commonwealth. All written materials used for
153 advertising and marketing health maintenance contracts to prospective members or groups of
154 members shall include a statement of the health maintenance organization's care share and its
155 Massachusetts care share.

156 (c) Any organization that fails to comply with this section shall refund to its members a
157 percentage of its Massachusetts-associated revenues equal to the Massachusetts care share
158 required by subsection (a) for the calendar year less the Massachusetts care share actually
159 expended for the calendar year. The refund payable for any calendar year shall be paid on or
160 before April 30 of the next calendar year. A health maintenance organization that reports a
161 shortfall in its Massachusetts care share may, upon written notice to the commissioner, pay the
162 refund owed by reducing the total premiums payable by its members for the calendar year in
163 which the shortfall is reported by an amount equal to the total shortfall.

The commissioner shall prepare an annual budget of the costs of monitoring and determining compliance with this section and such costs shall be paid by each health maintenance organization on a prorata basis.

(d) The knowing violation of any of the requirements of this section by a carrier or health maintenance organization shall be punished by imprisonment for not more than 5 years or by a fine of not more than 20 per cent of Massachusetts-associated revenue. A violation of this section shall also be deemed to be a violation of chapter 93A.

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

“Care share”, the percentage obtained by dividing total health expenditures by total revenue for a calendar year.

“Massachusetts-associated health expenditures”, that proportion of total health expenditures paid for the delivery of health services rendered to members pursuant to health maintenance contracts sold in the commonwealth by the health maintenance organization.

“Massachusetts-associated revenue”, Massachusetts premiums plus a proportion of total revenues less total premiums, where said proportion equals Massachusetts premiums divided by total premiums.

“Massachusetts care share”, the percentage obtained by dividing Massachusetts-associated health expenditures by Massachusetts-associated revenue for a calendar year.

“Massachusetts premiums”, all revenue derived from the sale in Massachusetts of health maintenance contracts and contracts showing evidence of coverage for health services.

184 “Total health expenditures”, all expenditures by or on behalf of a health maintenance
185 organization for the purchase of health services, including physicians and other professional
186 health services, hospital and other health facility services, pharmacy services, health education
187 and capital expenditures for the construction or rehabilitation of medical facilities for the
188 delivery of health care.

189 “Total premiums”, all revenue derived from the sale within or outside the
190 commonwealth of health maintenance contracts and contracts showing evidence of coverage for
191 health services.

192 “Total revenues”, all income and revenues, however derived, including, but not limited
193 to, revenues derived from premium sales, interest, dividends, and other investments, but
194 excluding only income in the form of compensation for administrative services pursuant to a
195 contract or other arrangement for rendering administrative services only to self-funded health
196 plans that are not owned or controlled by the health maintenance organization.

197 SECTION 4 Chapter 176I of the General Laws is hereby amended by inserting after
198 section 3A the following section:-

199 Section 3B. (a) Each organization that enters into a preferred provider arrangement in
200 the commonwealth pursuant to this chapter and that has a contract with the Group Insurance
201 Commission, MassHealth or Commonwealth Care shall expend the percentage as herein
202 provided of its Massachusetts-associated revenue as its Massachusetts care share for the purpose
203 of providing health services to its members. The Massachusetts care share for an organization as
204 described in the previous section shall be no less than 90 per cent of Massachusetts-associated

205 revenue, and non-health expenditures shall not exceed 10 per cent of Massachusetts-associated
206 revenue for each calendar year.

207 (b) Each organization shall report annually to the commissioner its total revenues,
208 Massachusetts-associated revenue, total premiums, Massachusetts premiums, total health
209 expenditures, Massachusetts-associated health expenditures, total non-health expenditures, care
210 share and Massachusetts care share. Such information shall be reported on forms provided by
211 the commissioner which shall include all information required by the National Association of
212 Insurance Commissioners' Health Maintenance Organization Financial Report of Affairs and
213 Conditions Form and such other information as the commissioner shall deem relevant for
214 determining compliance with the requirements of this section. The commissioner shall issue
215 regulations specifying the methods for calculating the information to be reported in accordance
216 with this section. The commissioner shall publish annually the care share and the Massachusetts
217 care share of each organization doing business in the commonwealth. All written materials used
218 for advertising and marketing preferred provider arrangements to prospective members or groups
219 of members shall include a statement of the organization's care share and its Massachusetts care
220 share.

221 (c) Any organization that fails to comply with this section shall refund to its members a
222 percentage of its Massachusetts-associated revenues equal to the Massachusetts care share
223 required by subsection (a) for the calendar year less the Massachusetts care share actually
224 expended for the calendar year. The refund payable for any calendar year shall be paid on or
225 before April 30 of the next calendar year. An organization that reports a shortfall in its
226 Massachusetts care share may, upon written notice to the commissioner, pay the refund owed by

227 reducing the total premiums payable by its members for the calendar year in which the shortfall
228 is reported by an amount equal to the total shortfall.

229 The commissioner shall prepare an annual budget of the costs of monitoring and
230 determining compliance with this section and such costs shall be paid by each organization on a
231 prorata basis.

232 (d) The knowing violation of any of the requirements of this section by any organization
233 shall be punished by imprisonment for not more than 5 years or by a fine of not more than 20 per
234 cent of Massachusetts-associated revenue. A violation of this section shall also be deemed to be
235 a violation of chapter 93A.

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

237 “Care share”, the percentage obtained by dividing total health expenditures by total
238 revenue for a calendar year.

239 “Massachusetts-associated health expenditures”, that proportion of total health
240 expenditures paid for the delivery of health services rendered to members pursuant to health
241 services contracts sold in the commonwealth by the organization.

242 “Massachusetts-associated revenue”, Massachusetts premiums plus a proportion of total
243 revenues less total premiums, where said proportion equals Massachusetts premiums divided by
244 total premiums.

245 “Massachusetts care share”, the percentage obtained by dividing Massachusetts-
246 associated health expenditures by Massachusetts-associated revenue for a calendar year.

247 “Massachusetts premiums”, all revenue derived from the sale in Massachusetts of health
248 services contracts and contracts showing evidence of coverage for health services.

249 “Total health expenditures”, all expenditures by or on behalf of an organization for the
250 purchase of health services, including physicians and other professional health services, hospital
251 and other health facility services, pharmacy services, health education and capital expenditures
252 for the construction or rehabilitation of medical facilities for the delivery of health care.

253 “Total premiums”, all revenue derived from the sale within or outside the
254 commonwealth of health services contracts and contracts showing evidence of coverage for
255 health services.

256 “Total revenues”, all income and revenues, however derived, including, but not limited
257 to, revenues derived from premium sales, interest, dividends and other investments, but
258 excluding only income in the form of compensation for administrative services pursuant to a
259 contract or other arrangement for rendering administrative services only to self-funded health
260 plans that are not owned or controlled by the organization.