

**MassHealth Supplemental Rebates 1**

1 SECTION 4. Chapter 6D of the General Laws is hereby amended by inserting after  
2 section 8 the following section:-

3 Section 8A. (a) Upon receipt of notice from the secretary of health and human services  
4 under subsection (c) of section 12A of chapter 118E, the commission shall require a  
5 manufacturer of a drug for which the secretary of health and human services was unable to  
6 successfully conclude supplemental rebate negotiations with the manufacturer under said section  
7 12A of said chapter 118E to disclose within a reasonable time any requested records or  
8 documents related to the pricing of that drug. The commission shall use a standard disclosure  
9 form developed by the commission with input from manufacturers and other stakeholders.

10 Records disclosed by a manufacturer under this section or subsection (c) of section 12A  
11 of chapter 118E shall not be public records under section 7 of chapter 4 or under chapter 66 and  
12 shall remain confidential; provided, however, that the commission may produce reports  
13 summarizing any findings related to records received under this section to the extent allowable  
14 under applicable state and federal laws.

15 (b) The commission shall review whether a drug manufacturer’s pricing of a drug subject  
16 to the supplemental rebate negotiation that resulted in the provision of notice under subsection  
17 (a) is unreasonable or excessive in relation to the proposed value of the drug posted under  
18 subsection (c) of said section 12A of said chapter 118E or other metric as determined appropriate  
19 by the commission. Any information, analyses or reports reviewed or used during the  
20 commission’s deliberation shall be provided to the manufacturer upon request. The commission  
21 shall consider clarifications, additional information or data provided by the manufacturer. The  
22 commission shall not base a determination solely on the analysis or research of an external party.

23 If after review of records or documents the commission determines that a drug  
24 manufacturer’s pricing of a drug may be unreasonable or excessive, the commission shall hold a  
25 public hearing. The commission shall provide at least 30 days notice to the manufacturer and the  
26 public prior to the date of the hearing. The drug manufacturer shall be required to appear and  
27 testify to provide further information related to the pricing of that drug and the manufacturer’s

28 justification for the pricing. The commission may request testimony from other relevant parties  
29 including, but not limited to, patients, providers, provider organizations and payers. All  
30 testimony at the public hearing shall be provided under oath and shall be subject to examination  
31 by the commission in a manner and form determined by the commission.

32 (c) Not later than 60 days after the date of the hearing, the commission shall issue a report  
33 on whether a drug manufacturer’s pricing of a drug subject to the supplemental rebate  
34 negotiation that resulted in the provision of notice under subsection (a) is unreasonable or  
35 excessive in relation to the proposed value of the drug posted under subsection (c) of section 12A  
36 of chapter 118E or other metric as determined appropriate by the commission. The report shall  
37 be made available to the public on the commission’s website.

38 If the commission concludes that the drug manufacturer’s pricing of the drug was  
39 unreasonable or excessive in relation to the secretary’s proposed value of the drug under  
40 subsection (c) of said section 12A of said chapter 118E or other metric as determined appropriate  
41 by the commission, the commission may refer the drug manufacturer to the office of the attorney  
42 general for appropriate action under chapter 93A or any other applicable provision of the General  
43 Laws.

44 (d) If the drug manufacturer fails to timely comply with the commission’s request for  
45 records, fails to appear at a public hearing under subsection (b) or knowingly obstructs the  
46 commission’s ability to issue its report under subsection (c) including, but not limited to,  
47 providing incomplete, false or misleading information, the commission may impose appropriate  
48 sanctions against the drug manufacturer, which may include a fine of not more than \$500,000 for  
49 each instance of noncompliance or obstruction, and may refer the drug manufacturer to the office  
50 of the attorney general for appropriate action under chapter 93A or any other applicable  
51 provision of the General Laws. The commission shall promote compliance with this section and  
52 shall only impose a civil penalty on the drug manufacturer as a last resort.

53 (e) A sanction or referral under subsection (c) or (d) shall be accompanied by a written  
54 determination by the commission that shall include: (i) a reason for the sanction or referral; (ii)  
55 the sanction amount, if applicable; and (iii) a notice outlining the appeal process for the sanction  
56 or referral.

57 (f) A manufacturer shall have 30 days from the date of receipt of the written  
58 determination under subsection (e) to file an appeal under section 10 of chapter 30A.

59 (g) The commission may, pursuant to an interagency agreement, share information  
60 received under this section with the state office of pharmacy services within the department of  
61 public health; provided, however, that any shared information shall be held confidential and shall  
62 not be a public record under section 7 of chapter 4 or under chapter 66.

63 (h) The commission may adopt regulations to implement this section.

### **Excise on Electronic Nicotine Delivery Systems 1**

1 SECTION 5. Chapter 10 of the General Laws is hereby amended by striking out section  
2 30B, as appearing in the 2016 Official Edition, and inserting in place thereof the following  
3 section:-

4 Section 30B. Upon receiving notice from the commissioner of revenue that a retailer as  
5 defined in section 1 of chapter 64C, a cigar retailer as defined in section 7B of said chapter 64C  
6 or an electronic nicotine delivery system retailer as defined in section 7E of said chapter 64C has  
7 had a cigar, electronic nicotine delivery system or tobacco license suspended or revoked for a  
8 knowing violation of paragraph (1) of subsection (l) of said section 7B of said chapter 64C,  
9 paragraph (1) of subsection (l) of said section 7E of said chapter 64C or section 34 or 35 of said  
10 chapter 64C, the director of the state lottery shall suspend any license to sell lottery tickets or  
11 shares issued to the retailer, cigar retailer or electronic nicotine delivery system retailer pursuant  
12 to sections 26 and 27 for not more than 60 days.

### **Childhood Lead Poisoning Prevention Trust Fund**

1 SECTION 6. Said chapter 10 is hereby further amended by inserting after section 35LLL  
2 the following section:-

3 Section 35MMM. There shall be a Childhood Lead Poisoning Prevention Trust  
4 Fund. The fund shall be administered by the commissioner of public health for the operation of  
5 the childhood lead poisoning prevention program, which shall include, but not be limited to,

6 providing for the: (i) production and dissemination of educational and other materials pertaining  
7 to lead paint poisoning prevention and treatment as required by sections 192B and 197A of  
8 chapter 111; (ii) training of lead paint inspectors; and (iii) training of homeowners in those  
9 aspects of lead paint abatement or containment that the department of public health, through  
10 regulations, authorizes homeowners to perform themselves.

11 The fund shall be credited with: (i) all revenue collected from the surcharge imposed by  
12 section 22 of chapter 482 of the acts of 1993; (ii) appropriations or other money authorized by  
13 the general court and specifically designated to be credited to the fund; and (iii) funds from  
14 public or private sources, including, but not limited to, gifts, grants, donations and settlements  
15 received by the commonwealth that are specifically designated to be credited to the fund.

16 Amounts credited to the fund shall not be subject to further appropriation and money  
17 remaining in the fund at the close of a fiscal year shall not revert to the General Fund and shall  
18 be available for expenditure in subsequent fiscal years.

19 Not later than October 1, the commissioner shall provide an annual report to the joint  
20 committee on public health and the senate and house committees on ways and means providing a  
21 description and accounting of the revenue credited to the fund and expenditures made from the  
22 fund.

**Continuous Skilled Nursing Services Report**

1 SECTION 7. Chapter 12C of the General Laws is hereby amended by adding the  
2 following section:-

3 Section 24. The center, in conjunction with MassHealth, shall prepare a biennial report on  
4 the provision of continuous skilled nursing care as defined in 101 CMR 350.02 and 130 CMR  
5 403.402. The report shall include, but not be limited to: (i) the number of pediatric patients and  
6 the number of adult patients requiring continuous skilled nursing care; (ii) the average and  
7 median number of continuous skilled nursing hours authorized by MassHealth per day, week,  
8 month and year for pediatric patients and for adult patients; (iii) the average and median number  
9 of authorized continuous skilled nursing hours actually delivered per day, week, month and year

10 for pediatric patients and for adult patients; (iv) the total number of continuous skilled nursing  
11 hours authorized and actually delivered by MassHealth per month and year for pediatric patients  
12 and for adult patients; (v) the number of nurses providing continuous skilled nursing care to  
13 more than 1 patient at a time and, for the patients cared for by those nurses, the aggregate  
14 proportion of authorized continuous skilled nursing hours to utilized continuous skilled nursing  
15 hours; (vi) the number of nurses who contract with MassHealth to provide continuous skilled  
16 nursing care, the number of nurses who provide continuous skilled nursing care through a home  
17 health agency that contracts with MassHealth and whether the total number of nurses providing  
18 such care is sufficient to fill all authorized continuous skilled nursing hours; (vii) a description of  
19 the training, experience and education levels of the nurses who contract with MassHealth to  
20 provide continuous skilled nursing care; and (viii) an evaluation of the adequacy of the  
21 reimbursement rates for continuous skilled nursing care as established in 101 CMR 350.04(2)  
22 and a comparison of those rates against: (A) the rate paid to nurses who contract directly with  
23 MassHealth to provide continuous skilled nursing care; (B) the portion of the reimbursement rate  
24 paid directly as wages to nurses providing continuous skilled nursing care through a home health  
25 agency that contracts with MassHealth; and (C) the median wage rate paid to all nurses in the  
26 commonwealth.

27 Not later than January 1 of each even-numbered year, the report shall be filed with the  
28 secretary of health and human services, the clerks of the senate and the house of representatives,  
29 the joint committee on health care financing, the joint committee on public health and the senate  
30 and house committees on ways and means. The center shall make the report publicly available on  
31 its website.

**Excise on Electronic Nicotine Delivery Systems 2**

1 SECTION 8. Section 6 of chapter 14 of the General Laws, as appearing in the 2016  
2 Official Edition, is hereby amended by inserting after the figure “64C,” in line 93, the following  
3 words:- electronic nicotine delivery system distributor or electronic nicotine delivery system  
4 retailer as defined in section 7E of said chapter 64C.

**Fishing and Boating Access Citations**

1 SECTION 9. Section 10H of chapter 21A of the General Laws is hereby amended by  
2 striking out, in lines 3 and 4, as so appearing, the words “17A of said chapter 21” and inserting in  
3 place thereof the following figure:- 11B.

**Regional Transit Authorities 1**

1 SECTION 10. Subsection (d) of section 2ZZZ of said chapter 29, as so appearing, is  
2 hereby amended by striking out clause (2) and inserting in place thereof the following clause:-

3 (2) \$90,500,000 in each fiscal year to regional transit authorities organized under chapter  
4 161B or predecessor laws; provided, however, that notwithstanding any general or special law to  
5 the contrary: (i) the transfer required by this clause shall be increased by the inflation index as  
6 defined in section 35T of chapter 10 for the preceding 12 months as certified by the comptroller  
7 annually on March 1; and (ii) no transfer required under this clause shall exceed 103 per cent of  
8 the transfer amount for the prior fiscal year.

**Excise on Electronic Nicotine Delivery Systems 3**

1 SECTION 11 Section 2000 of chapter 29 of the General Laws is hereby amended by  
2 striking out, in line 11, the words “and (e)” and inserting in place thereof the following words:-

3 (e) revenues credited to the fund pursuant to subsection (m) of section 7E of chapter 64C; and  
4 (f).

**Substance Use Disorder Prevention and Treatment Fund**

1 SECTION 12. Chapter 29 of the General Laws is hereby amended by striking out section  
2 2BBBB, as so appearing, and inserting in place thereof the following section:-

3 Section 2BBBB. There shall be a Substance Use Disorder Prevention and Treatment  
4 Fund. The fund shall be credited with: (i) sales tax revenues collected from the sale of alcoholic  
5 beverages under chapter 64H that are not part of the dedicated sales tax revenue amount  
6 described in section 35T or 35BB of chapter 10; (ii) revenues credited to the fund pursuant to  
7 section 8 of chapter 63D; and (iii) appropriations or other money authorized by the general court  
8 and specifically designated to be credited to the fund. Amounts credited to the fund shall be

9 expended, subject to appropriation, to support substance use treatment and to promote the health  
10 and well-being of residents of the commonwealth. Revenues deposited in the fund that are  
11 unexpended at the end of a fiscal year shall not revert to the General Fund and shall be available  
12 for expenditure in the following fiscal year.

**Behavioral Health Outreach, Access and Support Trust Fund**

1 SECTION 13. Said chapter 29 is hereby further amended by inserting after section  
2 2FFFFFF the following section:-

3 Section 2GGGGG. There shall be a Behavioral Health Outreach, Access and Support  
4 Trust Fund. Expenditures from the fund shall be made to supplement and support efforts to: (i)  
5 increase access to qualified and culturally-competent behavioral health professionals by  
6 supporting current and new workforce opportunities; (ii) ensure equal access to quality  
7 behavioral health services regardless of race, color, religion, creed, national origin, sex, gender  
8 identity, sexual orientation, genetic information, ancestry, status as a veteran, disability, place of  
9 residence or socioeconomic status; (iii) ensure a complete continuum of behavioral health  
10 services from wellness screening to inpatient treatment; and (iv) promote awareness and  
11 encourage the use of available behavioral health services.

12 There shall be credited to the fund: (i) appropriations, grants, gifts or other contributions  
13 made to the fund; (ii) interest earned on money in the fund; and (iii) an amount equal to the  
14 revenues received from federal financial participation earned on any qualifying expenditures  
15 sourced from the fund. All money deposited in the fund shall be subject to appropriation.  
16 Revenues deposited in the fund that are unexpended at the end of a fiscal year shall not revert to  
17 the General Fund and shall be available for expenditure in the following fiscal year. Any fiscal  
18 year-end balance in the fund that is subject to appropriation shall not be subject to section 5C.

**Retroactive Claims Denials for Behavioral Health Services 1**

1 SECTION 14. Chapter 32A of the General Laws is hereby amended by inserting after  
2 section 4A the following section:-

3           Section 4B. (a) For the purposes of this section, the following words shall have the  
4 following meaning unless the context clearly requires otherwise:

5           “Behavioral health services”, as defined in section 1 of chapter 175.

6           “Provider”, (i) a mental health clinic or substance use disorder program licensed by the  
7 department of public health under section 18 of chapter 17, chapter 111, 111B or 111E; or (ii) a  
8 behavioral, substance use disorder or mental health professional who is licensed under chapter  
9 112 and accredited or certified to provide services and who has provided services under an  
10 express or implied contract or with the expectation of receiving payment, other than co-payment,  
11 deductible or co-insurance, directly or indirectly from the commission or other entity.

12           “Retroactive claims denial”, as defined in section 1 of chapter 175.

13           (b) The commission or an entity with which the commission contracts to provide or  
14 manage health insurance benefits, including mental health and substance use disorder services,  
15 shall not impose a retroactive claims denial for behavioral health services on a provider unless:  
16 (i) less than 12 months have elapsed from the time of submission of the claim by the provider to  
17 the commission or other entity responsible for payment; (ii) the commission or other entity has  
18 furnished the provider with a written explanation of the reason for the retroactive claims denial  
19 and, where applicable, a description of additional documentation or any other corrective action  
20 required for payment of the claim; and (iii) where applicable, the commission or other entity  
21 responsible for payment allows the provider 30 days to submit additional documentation or to  
22 take any other corrective action required for payment of the claim.

23           (c) Notwithstanding subsection (b), a retroactive claims denial may be allowed after 12  
24 months if: (i) the claim was submitted fraudulently; (ii) the claim, or services for which the claim  
25 was submitted, is the subject of legal action; (iii) the claim payment was incorrect because the  
26 provider or the insured was already paid for the health care services identified in the claim; or  
27 (iv) the health care services identified in the claim were not delivered by the provider.

28           (d) If a retroactive claims denial is imposed because the claim payment is subject to  
29 adjustment due to expected payment from a payer other than the commission or an entity with

30 which the commission contracts to provide or manage health insurance benefits, including  
31 mental health and substance use disorder services, the commission or other entity shall notify the  
32 provider not less than 15 days before imposing the retroactive claims denial. The provider shall  
33 have 12 months from the date of denial to determine whether the claim is subject to payment by  
34 a secondary insurer; provided, however, that if the claim is denied by the secondary insurer due  
35 to the insured’s transfer or termination of coverage, the commission shall allow for resubmission  
36 of the claim.

**Group Insurance Commission Balance Billing Protections**

1 SECTION 15. Section 20 of chapter 32A of the General Laws, as appearing in the 2016  
2 Official Edition, is hereby amended by striking out, in lines 3 and 4, the words “as an indemnity  
3 plan”.

**Excise on Electronic Nicotine Delivery Systems 4**

1 SECTION 16. Section 16 of chapter 62C of the General Laws is hereby amended by  
2 inserting after subsection (c<sup>1/2</sup>), as so appearing, the following subsection:-

3 (c<sup>3/4</sup>) Not later than the twentieth day of each calendar month or not later than the  
4 twentieth day of the month following each calendar quarter as the commissioner may determine,  
5 a licensee under section 7E of chapter 64C shall file with the commissioner a return for each  
6 place of business that the licensee maintains stating the quantity of electronic nicotine delivery  
7 systems sold by the licensee in the commonwealth during the preceding calendar month or  
8 quarter, as so determined. The return shall contain or be accompanied by any additional  
9 information that the commissioner may require. If a licensee ceases to sell electronic nicotine  
10 delivery systems, the licensee shall immediately file with the commissioner a return for the  
11 period in which the cessation took place.

**Gross Receipts Tax on Opioid Manufacturers 1**

1 SECTION 17. Subsection (b) of section 21 of said chapter 62C, as most recently amended  
2 by section 15 of chapter 5 of the acts of 2019, is hereby further amended by adding the following  
3 clause:-

4 (32) the disclosure of information contained in returns and reports filed under chapter  
5 63D to the department of public health pursuant to section 6 of said chapter 63D.

**Sales Tax Integrity**

1 SECTION 18. Said chapter 62C is hereby further amended by inserting after section 35E  
2 the following section:-

3 Section 35F. (a) For the purposes of this section, the following words shall have the  
4 following meanings unless the context clearly requires otherwise:

5 “Automated sales suppression device”, a software program, carried on a memory stick or  
6 removable compact disc or accessed through an internet link or through any other means, that  
7 falsifies the electronic records of electronic cash registers and other point-of-sale systems  
8 including, but not limited to, transaction data and transaction reports.

9 “Phantom-ware”, a hidden programming option that is embedded in the operating system  
10 of an electronic cash register or hardwired into the electronic cash register and may be used to  
11 create a virtual second till or to eliminate or manipulate transaction records to represent the true  
12 or manipulated record of transactions in the electronic cash register.

13 (b) A person or entity that sells an automated sales suppression device or phantom-ware  
14 shall, in addition to any other penalty provided by this chapter, be subject to a civil penalty of not  
15 more than \$25,000 for the first offense and not more than \$50,000 for each subsequent offense.  
16 A person or entity that offers for sale, purchases, installs, transfers, maintains, repairs or  
17 possesses an automated sales suppression device or phantom-ware shall, in addition to any other  
18 penalty provided by this chapter, be subject to a civil penalty of not more than \$10,000 for the  
19 first offense and not more than \$25,000 for each subsequent offense. The penalty shall be paid  
20 upon notice by the commissioner and shall be assessed and collected in the same manner as a  
21 tax.

**Excise on Electronic Nicotine Delivery Systems 5**

1 SECTION 19. Section 67 of said chapter 62C, as so appearing, is hereby amended by  
2 striking out, in lines 7 and 23, the words “retailer, cigar” and inserting in place thereof, in each

3 instance, the following words:- retailer, electronic nicotine delivery system distributor or  
4 electronic nicotine delivery system retailer, cigar.

**Excise on Electronic Nicotine Delivery Systems 6**

1 SECTION 20. Said section 67 of said chapter 62C, as so appearing, is hereby further  
2 amended by striking out, in lines 33 and 35, the words “retailers and ” and inserting in place  
3 thereof, in each instance, the following words:- retailers, electronic nicotine delivery system  
4 retailers and.

**Excise on Electronic Nicotine Delivery Systems 7**

1 SECTION 21. Said section 67 of said chapter 62C, as so appearing, is hereby further  
2 amended by inserting after the word “retailers”, in line 49, the following words:- , electronic  
3 nicotine delivery system distributors, electronic nicotine delivery system retailers.

**Excise on Electronic Nicotine Delivery Systems 8**

1 SECTION 22. Said section 67 of said chapter 62C, as so appearing, is hereby further  
2 amended by inserting after the word “retailers”, in line 65, the first time it appears, the following  
3 words:- ; electronic nicotine delivery system distributors; electronic nicotine delivery system  
4 retailers.

**Excise on Electronic Nicotine Delivery Systems 9**

1 SECTION 23. Said section 67 of said chapter 62C, as so appearing, is hereby further  
2 amended by inserting after the word “wholesaler”, in lines 67 and 68, the following words:- ,  
3 electronic nicotine delivery system distributor.

**Excise on Electronic Nicotine Delivery Systems 10**

1 SECTION 24. Section 68 of said chapter 62C, as so appearing, is hereby amended by  
2 inserting after the figure “64C”, in line 45, the following words:- , an electronic nicotine delivery  
3 system retailer, as defined in subsection (a) of section 7E of said chapter 64C.

**Excise on Electronic Nicotine Delivery Systems 11**

1 SECTION 25. Said section 68 of said chapter 62C, as so appearing, is hereby further  
2 amended by inserting after the figure “64C”, in line 49, the following words:- , paragraph (1) of  
3 subsection (l) of section 7E of said chapter 64C.

**Gross Receipts Tax on Opioid Manufacturers 2**

1 SECTION 26. The General Laws are hereby amended by inserting after chapter 63C the  
2 following chapter:-

3 Chapter 63D.

4 EXCISE ON THE MANUFACTURE AND SALE OF CERTAIN OPIOIDS FOR  
5 DISTRIBUTION IN THE COMMONWEALTH.

6 Section 1. For the purposes of this chapter, the following words shall have the following  
7 meanings unless the context clearly requires otherwise:

8 “Commissioner”, the commissioner of revenue.

9 “Gross receipts”, receipts from sales made by a person to a purchaser that is not a related  
10 party; provided, however, that in the case of sales made to a related party for subsequent resale to  
11 a purchaser that is not a related party, the gross receipts shall be the amount paid for the product  
12 by the first purchaser that is not a related party.

13 “Opioid”, a product included in the pharmacological class category of full opioid agonist,  
14 opioid agonist or partial opioid agonist in the National Drug Code Directory Product File;  
15 provided, however, that “opioid” shall not include products approved by the United States Food  
16 and Drug Administration for the treatment of opioid use disorder.

17 “Person”, a natural person or legal entity.

18 “Related party”, an entity that: (i) belongs to the same affiliated group as defined in section  
19 1504 of the Internal Revenue Code as the person; or (ii) is commonly owned and controlled with  
20 the person.

21           Section 2. A manufacturer of opioids who sells opioids, directly or through another person,  
22 for distribution in the commonwealth shall pay an excise of 15 per cent of its gross receipts from  
23 such sales; provided, however, that gross receipts subject to the excise under this section shall be  
24 limited to the sales of opioids that are ultimately dispensed in the commonwealth pursuant to a  
25 valid prescription issued under section 18 of chapter 94C.

26           Section 3. The excise under section 2 shall only apply to persons: (i) who maintain a place  
27 of business in the commonwealth; or (ii) whose total sales of all products, directly or through  
28 another person, for distribution in the commonwealth are more than \$25,000 in the calendar  
29 quarter in which the excise under said section 2 would otherwise apply.

30           Section 4. (a) A person subject to the excise under section 2 shall file a return with the  
31 commissioner and shall pay such excise by the fifteenth day of the third month following the end  
32 of each calendar quarter. The return shall set out the person’s total sales subject to excise in the  
33 immediately preceding calendar quarter and such other information as may be required by the  
34 commissioner.

35           (b) Annually, not later than June 1, a person subject to the excise under section 2 shall  
36 provide to the commissioner a report detailing all opioids sold, directly or through another  
37 person, for distribution in the commonwealth in the prior calendar year. The report shall include:  
38 (i) the person’s name, address, phone number, United States Drug Enforcement Administration  
39 registration number and controlled substance registration number issued by the department of  
40 public health; (ii) the name and national drug code of the opioid; (iii) the unit of measure and  
41 quantity of the opioid; (iv) the name, address and United States Drug Enforcement  
42 Administration registration number of the purchaser of the opioid that is not a related party; (v)  
43 the date of the sale of the opioid; (vi) whether the opioid was ultimately dispensed in the  
44 commonwealth pursuant to a valid prescription issued under section 18 of chapter 94C; (vii) the  
45 gross receipt total, in dollars, of all opioids sold, directly or through another person, for  
46 distribution in the commonwealth; (viii) the gross receipt total, in dollars, and the quantity, by  
47 national drug code, of all opioids ultimately dispensed in the commonwealth pursuant to a valid  
48 prescription issued under said section 18 of said chapter 94C; and (ix) any other information as  
49 may be required by the commissioner.

50 Section 5. The excise imposed under section 2 shall be in addition to any other tax or  
51 excise imposed under the General Laws.

52 Section 6. The commissioner may disclose information contained in returns and reports  
53 filed under this chapter to the department of public health for the purposes of verifying that the  
54 appropriate amount of a filer’s sales subject to excise under section 2 have been properly  
55 declared and that all reporting is otherwise correct. Return and report information so disclosed  
56 shall remain confidential and shall not be public record under section 7 of chapter 4 or under  
57 chapter 66.

58 Section 7. To the extent that a person subject to excise under section 2 fails to pay amounts  
59 due under this chapter, a related party that directly or indirectly distributes the opioid of such  
60 person in the commonwealth shall be jointly and severally liable for the excise due.

61 Section 8. All revenue received from the excise imposed under this chapter shall be  
62 credited to the Substance Use Disorder Prevention and Treatment Fund established in section  
63 2BBBB of chapter 29.

64 Section 9. The commissioner may promulgate regulations or issue other guidance to  
65 implement this chapter.

66 **Excise on Electronic Nicotine Delivery Systems 12**

67 SECTION 27. Section 1 of chapter 64C of the General Laws is hereby amended by  
68 inserting after the word “cigarettes”, in line 7, as appearing in the 2016 Official Edition, the  
69 following words:- , an electronic nicotine delivery system as defined in subsection (a) of section  
70 7E.

**Smokeless Tobacco Stamping**

1 SECTION 28. The second paragraph of said section 1 of said chapter 64C is hereby  
2 amended by striking out the last sentence, as appearing in the 2016 Official Edition.

**Excise on Electronic Nicotine Delivery Systems 13**

1           SECTION 29. Said chapter 64C is hereby amended by inserting after section 7D the  
2 following section:-

3           Section 7E. (a) As used in this section, the following words shall have the following  
4 meanings:-

5           “Electronic nicotine delivery system”, an electronic device, whether for 1-time use or  
6 reusable, that can be used to deliver nicotine or another substance to a person inhaling from the  
7 device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos,  
8 electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or  
9 aerosolization; provided, however, that “electronic nicotine delivery system” shall also include  
10 any noncombustible liquid or gel that is manufactured into a finished product for use in such  
11 electronic device; provided further, that “electronic nicotine delivery system” shall also include  
12 any component, part or accessory of a device used during the operation of the device even if the  
13 part or accessory was sold separately; and provided further, that “electronic nicotine delivery  
14 system” shall not include a product that has been approved by the Unites States Food and Drug  
15 Administration for the sale of or use as a tobacco cessation product and is marketed and sold  
16 exclusively for the approved purpose.

17           “Electronic nicotine delivery system distributor”, a person who: (i) imports or causes to  
18 be imported into the commonwealth electronic nicotine delivery systems for sale or  
19 manufactures electronic nicotine delivery systems in the commonwealth; and (ii) is authorized by  
20 the commissioner to make returns and pay the excise on electronic nicotine delivery systems  
21 sold, shipped or delivered by the person to a person in the commonwealth.

22           “Electronic nicotine delivery system retailer”, a person who sells or furnishes electronic  
23 nicotine delivery systems to consumers for individual use; provided, however, that the electronic  
24 nicotine delivery systems shall not be used for the purpose of resale.

25           “Person”, a natural person, corporation, association, partnership or other legal entity.

26           “Taxed electronic nicotine delivery system”, an electronic nicotine delivery system upon  
27 which the excise has been paid in full by the date on which payment was due and with respect to

28 which the return has been completed, signed and filed with the commissioner by the date on  
29 which the return was due pursuant to this section and section 16 of chapter 62C.

30 “Untaxed electronic nicotine delivery system”, an electronic nicotine delivery system  
31 upon which the excise has not been paid in full by the date on which payment was due or with  
32 respect to which the return has not been completed, signed and filed with the commissioner by  
33 the date on which the return was due pursuant to this section and section 16 of chapter 62C.

34 “Wholesale price”, in the case of: (i) a manufacturer of electronic nicotine delivery  
35 systems, the price set for such products or, if no price has been set, the wholesale value of the  
36 electronic nicotine delivery system; (ii) an electronic nicotine delivery system distributor who is  
37 not a manufacturer of electronic nicotine delivery systems, the price at which the electronic  
38 nicotine delivery system distributor purchased the electronic nicotine delivery system; or (iii) an  
39 electronic nicotine delivery system retailer or a consumer, the price at which the electronic  
40 nicotine delivery system retailer or consumer purchased the electronic nicotine delivery system.

41 (b) There shall be an excise on an electronic nicotine delivery system held in the  
42 commonwealth at a rate of 75 per cent of the wholesale price. The excise shall be imposed on an  
43 electronic nicotine delivery system distributor at the time that the electronic nicotine delivery  
44 system is manufactured, purchased, imported, received or acquired in the commonwealth. The  
45 excise shall not be imposed on an electronic nicotine delivery system that is exported from the  
46 commonwealth.

47 (c) An electronic nicotine delivery system retailer shall be liable for the collection of the  
48 excise on all electronic nicotine delivery systems that are in the electronic nicotine delivery  
49 system retailer’s possession at any time and upon which the excise has not been paid by an  
50 electronic nicotine delivery system distributor. There shall be a presumption that the excise on  
51 the electronic nicotine delivery system has not been paid and that the electronic nicotine delivery  
52 system retailer is liable for the collection of the excise on the electronic nicotine delivery system  
53 if, upon demand, an electronic nicotine delivery system retailer fails to produce or exhibit to the  
54 commissioner or the commissioner’s authorized representative an invoice by an electronic

55 nicotine delivery system distributor for an electronic nicotine delivery system in the electronic  
56 nicotine delivery system retailer's possession.

57 (d) The amount of the excise advanced and paid by an electronic nicotine delivery system  
58 distributor or electronic nicotine delivery system retailer under this section shall be added to and  
59 collected as part of the sales price of the electronic nicotine delivery system.

60 (e) An electronic nicotine delivery system distributor shall be liable for the payment of  
61 the excise on electronic nicotine delivery systems that the electronic nicotine delivery system  
62 distributor imports or causes to be imported into the commonwealth or that the electronic  
63 nicotine delivery system distributor manufactures in the commonwealth. An electronic nicotine  
64 delivery system distributor authorized by the commissioner to make returns and pay the excise  
65 on electronic nicotine delivery systems sold, shipped or delivered by the electronic nicotine  
66 delivery system distributor to a person in the commonwealth shall be liable for the collection and  
67 payment of the excise on all of the electronic nicotine delivery systems so sold, shipped or  
68 delivered.

69 A person who does not acquire untaxed electronic nicotine delivery systems but acquires  
70 taxed electronic nicotine delivery systems for sale at retail shall not be licensed as an electronic  
71 nicotine delivery system distributor under this section; provided, however, that the person shall  
72 be required to be licensed as an electronic nicotine delivery system retailer during the period that  
73 the person is an electronic nicotine delivery system retailer of taxed electronic nicotine delivery  
74 systems.

75 (f) A person outside the commonwealth who ships or transports electronic nicotine  
76 delivery systems to electronic nicotine delivery system retailers in the commonwealth to be sold  
77 by electronic nicotine delivery system retailers may apply for a license as a nonresident  
78 electronic nicotine delivery system distributor. Upon the issuance of such a license, the licensee  
79 shall be subject to this section and may act as an electronic nicotine delivery system distributor;  
80 provided, however, that such person shall file proof with the person's application that the person  
81 has appointed the state secretary as the person's agent for service of process relating to any  
82 matter or issue arising under this section. The person shall also agree to submit the person's

83 books, accounts and records for examination in the commonwealth during reasonable business  
84 hours upon request by the commissioner or the commissioner’s authorized representative.

85 (g) A resident of the commonwealth shall be liable for the collection of the excise on all  
86 electronic nicotine delivery systems that are in the resident’s possession at any time and upon  
87 which the excise has not been paid by an electronic nicotine delivery system distributor or  
88 electronic nicotine delivery system retailer. There shall be a presumption that the excise on the  
89 electronic nicotine delivery system has not been paid and that the resident is liable for such  
90 excise if a resident, upon demand, fails to produce or exhibit to the commissioner or the  
91 commissioner’s authorized representative an invoice or sales receipt by an electronic nicotine  
92 delivery system distributor or electronic nicotine delivery system retailer for an electronic  
93 nicotine delivery system in the resident’s possession.

94 (h) No person shall act as an electronic nicotine delivery system distributor or electronic  
95 nicotine delivery system retailer in the commonwealth unless licensed to do so under section 67  
96 of chapter 62C. If an electronic nicotine delivery system distributor or electronic nicotine  
97 delivery system retailer acts as both an electronic nicotine delivery system distributor and  
98 electronic nicotine delivery system retailer at 1 place of business, the electronic nicotine delivery  
99 system distributor or electronic nicotine delivery system retailer shall procure a license to act as  
100 an electronic nicotine delivery system distributor and a license to act as an electronic nicotine  
101 delivery system retailer unless, upon application to the commissioner, the commissioner  
102 determines otherwise. Each license so issued or a duplicate copy thereof shall be prominently  
103 displayed on the premises covered by the license.

104 (i) Except as otherwise provided in this section, the provisions of this chapter and chapter  
105 62C relative to the assessment, collection, payment, abatement, verification and administration  
106 of taxes, including penalties, shall apply to the excise imposed by this section.

107 (j) For the purposes of section 5, an electronic nicotine delivery system distributor shall  
108 be a wholesaler and an electronic nicotine delivery system retailer shall be a retailer.

109 (k) For the purposes of section 8, untaxed electronic nicotine delivery systems found in  
110 the commonwealth shall be cigarettes which have not been returned and are not returnable under  
111 section 16 of chapter 62C or section 6 as applicable.

112 (l)(1) A person who sells, offers for sale or possesses with intent to sell an electronic  
113 nicotine delivery system or otherwise acts as an electronic nicotine delivery system distributor or  
114 electronic nicotine delivery system retailer without being licensed as such shall, in addition to  
115 any other penalties provided by this chapter or chapter 62C, be subject to a civil penalty of not  
116 more than \$5,000 for the first offense and not more than \$25,000 for a second or subsequent  
117 offense.

118 A person who knowingly purchases or possesses an electronic nicotine delivery system  
119 not manufactured, purchased or imported by a licensed electronic nicotine delivery system  
120 distributor or licensed electronic nicotine delivery system retailer shall, in addition to any other  
121 penalties provided by this chapter or chapter 62C, be subject to a civil penalty of not more than  
122 \$5,000 for the first offense and not more than \$25,000 for a second or subsequent offense.

123 A person shall not, either as principal or agent, sell or solicit orders for electronic nicotine  
124 delivery systems to be shipped, mailed or otherwise sent or brought into the commonwealth to  
125 any person who is not a licensed electronic nicotine delivery system distributor or licensed  
126 electronic nicotine delivery system retailer unless the same is to be sold to or through a licensed  
127 electronic nicotine delivery system distributor or licensed electronic nicotine delivery system  
128 retailer. A person who knowingly violates this paragraph shall, in addition to any other penalties  
129 provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for  
130 the first offense and not more than \$25,000 for a second or subsequent offense.

131 An electronic nicotine delivery system shall be presumed to be subject to the excise under  
132 this section unless the person on whose premises the electronic nicotine delivery systems were  
133 found establishes otherwise.

134 (2) A person who knowingly: (i) has in the person's possession a shipping case or other  
135 container of electronic nicotine delivery systems that does not bear the name and address of the  
136 person receiving the electronic nicotine delivery systems from a manufacturer or such other

137 markings as the commissioner may require; or (ii) is in possession of such a shipping case or  
138 other container of electronic nicotine delivery systems from which the name and address has  
139 been erased or defaced shall, in addition to any other penalties provided by this chapter or  
140 chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense and not  
141 more than \$25,000 for a second or subsequent offense.

142 (3) A person who files a false return, affidavit or statement or who violates a provision of  
143 this section for which no other penalty has been provided shall, in addition to any other penalty  
144 provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for  
145 the first offense and not more than \$25,000 for a second or subsequent offense.

146 (4) When the commissioner or a police officer discovers an untaxed electronic nicotine  
147 delivery system in the possession of a person who is not a licensed or commissioner-authorized  
148 electronic nicotine delivery system distributor, the commissioner or police officer may seize and  
149 take possession of the electronic nicotine delivery systems and any vending machine or other  
150 receptacle including, but not limited to, a motor vehicle, boat or airplane in which they are  
151 contained or transported.

152 Any electronic nicotine delivery system, vending machine or other receptacle seized by a  
153 police officer shall be turned over to the commissioner and shall be forfeited to the  
154 commonwealth. The commissioner shall destroy the electronic nicotine delivery system and shall  
155 destroy or otherwise dispose of the vending machine or other receptacle. The commissioner may,  
156 within a reasonable time after the seizure and by a public notice of not less than 5 days before the  
157 day of sale, sell the vending machine or other receptacle at public sale and deposit the proceeds  
158 in the General Fund.

159 (5) The state and local police departments may and, at the request of the commissioner or  
160 the commissioner's duly authorized agent, shall enforce this section. Each violation of this  
161 section shall be a separate offense.

162 (m) Revenue received from the excise imposed under this section shall be credited to the  
163 Commonwealth Care Trust Fund established in section 2000 of chapter 29.

164 (n) Marijuana products as defined in section 1 of chapter 94G shall not be subject to the  
165 excise imposed under this section.

166 (o) The commissioner may promulgate regulations to implement this section.

**Sales Tax Treatment of Marketplace Facilitators and Sellers 1**

1 SECTION 30. Chapter 64H of the General Laws is hereby amended by striking out  
2 section 1, as so appearing, and inserting in place thereof the following section:-

3 Section 1. As used in this chapter, the following words shall have the following meanings:-

4 “Business”, any activity engaged in or caused to be engaged in by a person with the object  
5 of receiving a gain, benefit or advantage, either directly or indirectly.

6 “Commissioner”, the commissioner of revenue.

7 “Engaged in business”, commencing, conducting or continuing in business or liquidating a  
8 business when the liquidator thereof holds himself out to the public as conducting such business.

9 “Engaged in business in the commonwealth”, (i) having a business location within the  
10 commonwealth; (ii) regularly or systematically soliciting orders for the sale of services to be  
11 performed within the commonwealth or for the sale of tangible personal property for delivery to  
12 destinations within the commonwealth; (iii) exploiting the retail sales market within the  
13 commonwealth through any means including, but not limited to: (a) a salesman, solicitor or  
14 representative within the commonwealth; (b) catalogs or other solicitation materials sent through  
15 the mail or otherwise; (c) billboards, advertisements or solicitations in newspapers, magazines or  
16 radio or television broadcasts; (d) computer networks; (e) internet websites; (f) software,  
17 including a downloaded application, or cookies distributed or otherwise placed on a customer’s  
18 computer or other communications device; and (g) any other communications medium; (iv)  
19 regularly engaging in the delivery of property or the performance of services within the  
20 commonwealth; or (v) otherwise availing oneself of the substantial privilege of carrying on  
21 business within the commonwealth, including through virtual or economic contacts; provided,  
22 however, that a person shall be considered to have a business location within the commonwealth  
23 only if such person: (1) owns or leases real property within the commonwealth; (2) has at least 1

24 employee located within the commonwealth; (3) regularly maintains a stock of tangible personal  
25 property within the commonwealth for sale in the ordinary course of business; or (4) regularly  
26 leases out tangible personal property for use within the commonwealth; provided further, that for  
27 the purposes of this paragraph, property on consignment in the hands of a consignee and offered  
28 for sale by the consignee on the consignee's own account shall not be considered as stock  
29 maintained by the consignor; provided further, that a person having a business location within  
30 the commonwealth solely by reason of regularly leasing out tangible personal property shall be  
31 considered to have a business location within the commonwealth only with respect to such leased  
32 property; provided further, that an employee shall be considered to be located within the  
33 commonwealth if: (A) the employee's service is performed entirely within the commonwealth;  
34 or (B) the employee's service is performed both within and from without the commonwealth but  
35 in the performance of such service the employee regularly commences the employee's activities  
36 at, and returns to, a place within the commonwealth; and provided further, that "within the  
37 commonwealth" shall mean within the exterior limits of the commonwealth and shall include all  
38 territory within the limits owned by, or leased or ceded to, the United States of America.

39 "Gross receipts", the total sales price received by a vendor as a consideration for retail  
40 sales.

41 "Home service provider", the facilities-based carrier or reseller with which the retail  
42 customer contracts for the provision of mobile telecommunications service.

43 "Marketplace", a physical or electronic forum, including a shop, store, booth, television or  
44 radio broadcast, internet web site, catalogue or dedicated sales software application, where the  
45 tangible personal property or services of a marketplace seller is offered for sale, regardless of  
46 whether, in the case of tangible personal property, such property is physically located in the  
47 commonwealth.

48 "Marketplace facilitator", a person that contracts with a marketplace seller to facilitate for  
49 consideration, regardless of whether deducted as fees from the transaction, the sale of the  
50 marketplace seller's tangible personal property or services through a marketplace operated by the  
51 person and engages: (i) directly or indirectly, through at least 1 related person, in: (a)  
52 transmitting or otherwise communicating the offer or acceptance between a buyer and the

53 marketplace seller; (b) owning or operating the infrastructure, electronic or physical, or  
54 technology that brings buyers and sellers together; (c) providing a virtual currency that buyers  
55 are authorized or required to use to purchase tangible personal property or services from the  
56 marketplace seller; or (d) software development or research and development activities related to  
57 any of the activities described in clause (ii) if such activities are directly related to a physical or  
58 electronic marketplace operated by the person or a related person; and (ii) with respect to the  
59 seller's tangible personal property or services: (a) payment processing services; (b) fulfillment or  
60 storage services; (c) listing tangible personal property or services for sale; (d) setting prices; (e)  
61 branding sales as those of the marketplace facilitator; (f) taking orders; (g) advertising or  
62 promotion; or (h) providing customer service or accepting or assisting with returns or exchanges;  
63 provided, however, that a marketplace facilitator may also be a marketplace seller.

64 "Marketplace seller", a person that makes retail sales through a marketplace operated by a  
65 marketplace facilitator; provided, however, that a marketplace seller may also be a marketplace  
66 facilitator.

67 "Mobile telecommunications service", commercial mobile radio service as defined in  
68 section 20.3 of Title 47 of the Code of Federal Regulations in effect on June 1, 1999.

69 "Motion picture", a feature-length film, a video, digital media project, television series  
70 defined as a season not to exceed 27 episodes or commercial made in the commonwealth, in  
71 whole or in part, for theatrical or television viewing or as a television pilot; provided, however,  
72 that "motion picture" shall not include a production featuring news, current events, weather and  
73 financial market reports, a talk show, game show, sporting event, awards show or other gala  
74 event, a production whose sole purpose is fundraising, a long-form production that primarily  
75 markets a product or service or a production containing obscene material or performances.

76 "Motion picture production company", a company, including any subsidiaries, that is  
77 engaged in the business of producing motion pictures, videos, television series or commercials  
78 intended for theatrical release or for television viewing; provided, however, that "motion picture  
79 production company" shall not include a company that is more than 25 per cent owned, affiliated  
80 or controlled by a company or person that is in default on a loan made by the commonwealth or a  
81 loan guaranteed by the commonwealth.

82 “Person”, an individual, partnership, trust or association, with or without transferable  
83 shares, a joint-stock company, corporation, society, club, organization, institution, estate,  
84 receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative  
85 capacity, whether appointed by a court or otherwise, and any combination of individuals acting  
86 as a unit.

87 “Place of primary use”, the street address where the customer’s use of the mobile  
88 telecommunications service primarily occurs, which shall be the residential street address or the  
89 primary business address of the customer and which shall be within the licensed service area of  
90 the home service provider; provided, however, that the “place of primary use” shall be  
91 determined in accordance with 4 U.S.C. 121 and 122.

92 “Prepaid calling arrangement”, the right to exclusively purchase telecommunications  
93 services that shall be paid for in advance and enable the origination of the calls using an access  
94 number or authorization code, whether manually or electronically dialed.

95 “Purchaser”, a person who purchases tangible personal property or services the receipts  
96 from the retail sale of which are taxable under this chapter, including a buyer, vendee, lessee,  
97 licensee or grantee.

98 “Remote marketplace facilitator”, a marketplace facilitator that is engaged in business in  
99 the commonwealth only pursuant to: (i) subclause (b), (c), (d), (e), (f) or (g) of clause (iii) of the  
100 definition of “engaged in business in the commonwealth”; and (ii) clause (v) of said definition of  
101 “engaged in business in the commonwealth”.

102 “Remote marketplace seller”, a remote retailer that is a marketplace seller.

103 “Remote retailer”, a retailer, including a marketplace seller or marketplace facilitator, that  
104 is engaged in business in the commonwealth only pursuant to: (i) subclause (b), (c), (d), (e), (f)  
105 or (g) of clause (iii) of the definition of “engaged in business in the commonwealth”; and (ii)  
106 clause (v) of said definition of “engaged in business in the commonwealth”.

107 “Retailer”, (i) a person, including a marketplace seller, engaged in the business of making  
108 sales at retail; (ii) a person engaged in the making of retail sales at auction of tangible personal

109 property, whether owned by that person or others; (iii) a marketplace facilitator engaged in  
110 facilitating retail sales of tangible personal property or services, irrespective of whether the  
111 tangible personal property is owned by the marketplace facilitator or by a marketplace seller and  
112 irrespective of whether those services are performed by the marketplace facilitator or the  
113 marketplace seller; (iv) a person, including a marketplace seller or marketplace facilitator,  
114 engaged in the business of making sales for storage, use or other consumption or in the business  
115 of making sales at auction of tangible personal property, whether owned by that person or others,  
116 for storage, use or other consumption; (v) a salesperson, representative, peddler or canvasser  
117 who, in the opinion of the commissioner for the efficient administration of this chapter, it is  
118 necessary to regard as the agent of the dealer, distributor, supervisor or employer under whom  
119 the person operates or from whom the person obtains the tangible personal property sold by that  
120 person and, in which case, the commissioner may treat the agent as the retailer jointly  
121 responsible along with the person's principal, employer or supervisor for the collection and  
122 payment of the tax imposed by this chapter; or (vi) the commonwealth or any political  
123 subdivision thereof or their respective agencies when it is engaged in making sales at retail of a  
124 kind ordinarily made by private persons.

125 "Retail establishment", premises in which the business of selling services or tangible  
126 personal property is conducted or in or from which retail sales are made.

127 "Sale" and "selling", (i) a transfer of title or possession or both, exchange, barter, lease,  
128 rental, conditional or otherwise, of tangible personal property or the performance of services for  
129 consideration, in any manner or by any means whatsoever; (ii) producing, fabricating,  
130 processing, printing or imprinting tangible personal property for consideration for consumers  
131 who furnish, either directly or indirectly, the materials used in such producing, fabricating,  
132 processing, printing or imprinting; (iii) the furnishing and distribution of tangible personal  
133 property or services for consideration by social clubs and fraternal organizations to their  
134 members or others; (iv) a transaction whereby the possession of property is transferred but the  
135 seller retains the title as security for the payment of the price; (v) a transfer for consideration of  
136 the title or possession of tangible personal property which has been produced, fabricated or  
137 printed to the special order of the customer, or of any publication; (vi) the furnishing of  
138 information by printed, mimeographed or multigraphed matter or by duplicating written or

139 printed matter in any other manner, including the collecting, compiling or analyzing of  
140 information of any kind or nature and furnishing reports thereof to other persons, but not  
141 including the furnishing of information that is personal or individual in nature and that is not or  
142 may not be substantially incorporated into reports furnished to other persons and not including  
143 the services of advertising or other agents or other persons acting in a representative capacity and  
144 information services used by newspapers, radio broadcasters and television broadcasters in the  
145 collection and dissemination of news and not including the furnishing of information by  
146 photocopy or other similar means by not-for-profit libraries that are recognized as exempt from  
147 taxation under section 501(C)(3) of the Internal Revenue Code; (vii) the performance of services  
148 for consideration; provided, however, that such services shall not include: (a) services performed  
149 by an employee for the employer, whether compensated by salary, commission or otherwise; (b)  
150 services performed by a general partner for the partnership and compensated by the receipt of  
151 distributive shares of income or loss from the partnership; and (c) the performance of services for  
152 which the provider is compensated by means of an honorarium or fee paid to a person or entity  
153 registered under 15 U.S.C. 80b-3 or 15 U.S.C. 78q-1 for services the performance of which  
154 require such registration, for services related thereto or for trust, custody and related cash  
155 management and securities services of a trust company as defined in chapter 172; and (viii) a  
156 sale within the meaning of clauses (i) to (vi), inclusive, that is facilitated by a marketplace  
157 facilitator.

158 “Sale at retail” or “retail sale”, a sale of services or tangible personal property or both for a  
159 purpose other than resale in the regular course of business; provided, however, that when  
160 tangible personal property is physically delivered by an owner, a former owner, a factor or an  
161 agent or representative of the owner, former owner or factor to the ultimate purchaser residing in  
162 or doing business in the commonwealth or to a person for redelivery to the purchaser pursuant to  
163 a retail sale made by a vendor not engaged in business in the commonwealth, the person making  
164 or effectuating the delivery shall be considered the vendor of that property, the transaction shall  
165 be a retail sale in the commonwealth by the person and that person, if engaged in business in the  
166 commonwealth, shall include the retail selling price in its gross receipts, regardless of any  
167 contrary statutory or contractual terms concerning the passage of title or risk of loss that may be  
168 expressly or impliedly applicable to a contract or other agreement or arrangement for the sale,  
169 transportation, shipment or delivery of that property; provided further, that the vendor shall

170 include the retail selling price of the property in the vendor's gross receipts; provided further,  
171 that "sale at retail" or "retail sale" shall not include: (i) sales of tickets for admission to places of  
172 amusement and sports; (ii) sales of transportation services; (iii) professional, insurance or  
173 personal service transactions that do not involve sales or that involve sales as inconsequential  
174 elements for which no separate charges are made; or (iv) a sale in which the only transaction in  
175 the commonwealth is the mere execution of the contract of sale and in which the tangible  
176 personal property sold is not in the commonwealth at the time of the execution; provided further,  
177 that nothing in this definition shall be construed to be an exemption from the tax imposed under  
178 chapter 64I; provided further, that in the case of interstate telecommunication services other than  
179 mobile telecommunications services, the sale of those services shall be considered a sale in the  
180 commonwealth if the telecommunication is either originated or received at a location in the  
181 commonwealth and the services are either paid for in the commonwealth or charged to a service  
182 address located in the commonwealth; provided further, that in the case of interstate and  
183 intrastate mobile telecommunications services, the sale of those services shall be considered to  
184 be provided by the customer's home service provider and shall be considered a sale within the  
185 commonwealth if the customer's place of primary use is located in the commonwealth; provided  
186 further, that to prevent multi-state taxation of a sale of interstate telecommunications services  
187 subject to taxation under this chapter, a taxpayer, upon proof that the taxpayer has paid a tax in  
188 another state on the sale, shall be allowed a credit against the tax imposed by this chapter to the  
189 extent of the amount of the tax properly due and paid in the other state; provided further, that the  
190 credit shall not exceed the tax imposed by this chapter; provided further, that in the case of the  
191 sale or recharge of prepaid calling arrangements, the sale or recharge of those arrangements shall  
192 be considered within the commonwealth if the transfer for consideration physically takes place at  
193 a retail establishment in the commonwealth; provided further, that if there is no such physical  
194 transfer for consideration at a retail establishment, the sale or recharge shall be considered a  
195 retail sale in the commonwealth if the customer's shipping address is in the commonwealth or, if  
196 there is no item shipped, if the customer's billing address or the location associated with the  
197 customer's mobile telephone number, as applicable, is in the commonwealth; provided further,  
198 that for the purpose of collection of the tax imposed by this chapter on such sales, a sale shall be  
199 considered to occur on the date that the bill is first issued by the vendor in the regular course of  
200 its business; provided further, that in the case of prepaid calling arrangements, the sale shall be

201 considered to occur on the date of the transfer for consideration; and provided further, that for  
202 the purpose of reporting the sale or recharge of prepaid calling arrangements, the sale or recharge  
203 of the arrangements shall be considered a taxable sale of tangible personal property unless the  
204 vendor is otherwise required to report sales of telecommunications services.

205 “Sales price”, the total amount paid by a purchaser to a vendor as consideration for a retail  
206 sale, valued in money or otherwise; provided, however, that in determining the sales price: (i) no  
207 deduction shall be taken on account of: (a) the cost of property sold; (b) the cost of materials  
208 used, labor or service cost, interest charges, losses or other expenses; or (c) the cost of  
209 transportation of the property prior to its sale at retail; (ii) there shall be included: (a) any amount  
210 paid for services that are a part of the sale; and (b) any amount for which credit is given to the  
211 purchaser by the vendor; and (iii) there shall be excluded: (a) cash discounts allowed and taken  
212 on sales; (b) the amount charged for property returned by purchasers to vendors upon rescission  
213 of contracts of sale when the entire amounts charged therefor, less the vendor’s established  
214 handling fees, if any, for the return of property are refunded either in cash or credit and when the  
215 property is returned not later than 90 days after the date of sale and the entire sales tax paid is  
216 returned to the purchaser; provided, however, that if a motor vehicle is returned pursuant to a  
217 rescission of contract, the motor vehicle shall be returned not later than 180 days after the date of  
218 sale; (c) the amount charged for labor or services rendered in installing or applying the property  
219 sold; (d) the amount of reimbursement of tax paid by the purchaser to the vendor under this  
220 chapter; (e) transportation charges, separately stated, if the transportation occurs after the sale of  
221 the property is made; (f) the amount of the manufacturer’s excise levied upon motor vehicles  
222 under section 4061(a) of the Internal Revenue Code as amended; and (g) a service charge or tip  
223 that is distributed by a vendor to service employees, wait staff employees or service bartenders as  
224 provided in section 152A of chapter 149.

225 “Services”, a commodity consisting of activities engaged in by a person for another person  
226 for consideration; provided, however, that “services” shall not include activities performed by a  
227 person who is not in a regular trade or business offering that person’s services to the public;  
228 provided further, that “services” shall not include services rendered to a member of an affiliated  
229 group as defined by section 1504 of the Internal Revenue Code by another member of the same  
230 affiliated group that does not sell to the public the type of service provided to its affiliate;

231 provided further, that “services” shall be limited to telecommunications services; and provided  
232 further, that nothing in this definition shall exempt from taxation sales of tangible personal  
233 property subject to taxation under this chapter.

234 “Tangible personal property”, personal property of any nature, consisting of produce,  
235 goods, wares, merchandise and commodities brought into, produced, manufactured or being  
236 within the commonwealth; provided, however, that “tangible personal property” shall not include  
237 rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences  
238 of indebtedness or ownership; provided further, that “tangible personal property” shall include  
239 gas, electricity and steam; provided further, that a transfer of standardized computer software  
240 including, but not limited to, electronic, telephonic or similar transfer, shall also be a transfer of  
241 tangible personal property; and provided further, that the commissioner may, by regulation,  
242 provide rules for apportioning tax in those instances in which software is transferred for use in  
243 more than 1 state.

244 “Tax”, the excise imposed by this chapter.

245 “Taxpayer”, a person required to make returns or pay the tax imposed by this chapter.

246 “Telecommunications services”, the transmission of messages or information by electronic  
247 or similar means, between or among points, by wire, cable, fiberoptics, laser, microwave, radio,  
248 satellite or similar facilities; provided, however, that “telecommunication services” shall not  
249 include cable television; and provided further, that “telecommunication services” shall be  
250 deemed to be services for the purposes of this chapter and chapter 64I.

251 “Use of a service”, enjoyment of the benefit of a service.

252 “Vendor”, a retailer or other person selling tangible personal property or services of a kind  
253 the gross receipts from the retail sale of which are required to be included in the measure of the  
254 tax imposed by this chapter.

### **Excise on Electronic Nicotine Delivery Systems 14**

1 SECTION 31. Section 3A of chapter 64H, as so appearing, is hereby amended by inserting  
2 after the word “cigars”, in line 4, the following words:- , electronic nicotine delivery systems.

**Sales Tax Treatment of Marketplace Facilitators and Sellers 2**

1 SECTION 32. Said chapter 64H is hereby further amended by adding the following  
2 section:-

3 Section 34. (a) A remote retailer shall be subject to the registration, collection and  
4 remittance requirements of this chapter and chapters 62C and 64I as a vendor if its sales within  
5 the commonwealth in the prior taxable year or the current taxable year exceed \$100,000.

6 (b) In the case of a remote marketplace facilitator, sales within the commonwealth shall  
7 include both the remote marketplace facilitator’s direct sales and those sales facilitated on behalf  
8 of marketplace sellers. A remote marketplace facilitator whose sales within the commonwealth  
9 in the prior taxable year or the current taxable year exceed \$100,000 shall report all taxable sales  
10 made through such marketplace and collect and remit tax on all such sales, whether such sales  
11 are direct sales by the marketplace facilitator or sales facilitated for a marketplace seller.

12 (c) In the case of a marketplace facilitator that is not a remote marketplace facilitator, sales  
13 within the commonwealth shall include both the marketplace facilitator’s direct sales and those  
14 sales facilitated on behalf of marketplace sellers. A marketplace facilitator that is not a remote  
15 marketplace facilitator and whose sales within the commonwealth in the prior taxable year or the  
16 current taxable year exceed \$100,000 shall report all taxable sales made through such  
17 marketplace and collect and remit tax on all such sales, whether such sales are direct sales by the  
18 marketplace facilitator or sales facilitated for a marketplace seller.

19 (d) Where a marketplace facilitator reports, collects and remits tax on sales made by the  
20 marketplace facilitator on behalf of a remote marketplace seller, such sales shall not be counted  
21 as a part of the remote marketplace seller’s sales within the commonwealth and the remote  
22 marketplace seller shall not be liable to report those sales.

23 (e) The commissioner shall issue regulations and other guidance to further explain the sales  
24 and use tax rules that pertain to remote retailers. Such regulations and guidance shall include  
25 rules that further explain the requirements of this chapter and said chapters 62C and 64I as they  
26 pertain to marketplace sellers and marketplace facilitators, including rules that explain the rights  
27 and responsibilities of such sellers and facilitators with respect to each other. Such regulations

28 and guidance may also include rules to aggregate the sales of related remote retailers with  
29 respect to the \$100,000 threshold described in subsection (a).

30 The commissioner may issue regulations or other guidance to limit the application of the  
31 definition of “marketplace facilitator” as it might otherwise apply or to establish a process by  
32 which a marketplace facilitator may request a waiver from the requirements of this section.

**Sales Tax Treatment of Marketplace Facilitators and Sellers 3**

1 SECTION 33. Section 1 of chapter 64I of the General Laws, as appearing in the 2016  
2 Official Edition, is hereby amended by striking out, in line 4, the words ““gross receipts”,  
3 ‘person’” and inserting in place thereof the following words:- “gross receipts”, “marketplace”,  
4 “marketplace facilitator”, “marketplace seller”, “person”, “remote marketplace facilitator”,  
5 “remote marketplace seller”, “remote retailer”.

**Sales Tax Treatment of Marketplace Facilitators and Sellers 4**

1 SECTION 34. Section 4 of said chapter 64I, as so appearing, is hereby amended by striking  
2 out, in line 1, the words “vendor engaged” and inserting in place thereof the following words:-  
3 vendor, including a remote retailer, engaged.

**Sales Tax Treatment of Marketplace Facilitators and Sellers 5**

1 SECTION 35. Section 9 of said chapter 64I, as so appearing, is hereby amended by  
2 inserting after the word “vendor”, in line 1, following words:- , including a remote retailer.

**Voluntary Contributions to the Vaccine Purchase Trust Fund**

1 SECTION 36. Section 24N of chapter 111 of the General Laws, as so appearing, is hereby  
2 amended by inserting after the words “ subsection (d)”, in line 33, the following words:- , all  
3 monies received as voluntary contributions to the fund.

**Senior Care Options Enrollment**

1 SECTION 37. Subsection (b) of section 9D of chapter 118E of the General Laws, as so  
2 appearing, is hereby amended by adding the following sentence:- For the purposes of this

3 section, an individual shall be deemed to have reached the age of 65 on the first day of the month  
4 in which the individual's sixty-fifth birthday occurs.

### **Senior Care Options Disenrollment**

1 SECTION 38. Said section 9D of said chapter 118E, as so appearing, is hereby further  
2 amended by striking out, in line 64, the word "The" and inserting in place thereof the following  
3 words:- To the extent consistent with federal law and regulations, the.

### **MassHealth Supplemental Rebates 2**

1 SECTION 39. Said chapter 118E is hereby further amended by inserting after section 12  
2 the following section:-

3 Section 12A. (a) As used in this section, the following words shall have the following  
4 meaning unless the context clearly requires otherwise:

5 "Manufacturer", an entity that manufactures a pharmaceutical drug covered by  
6 MassHealth.

7 "Secretary", the secretary of health and human services.

8 (b) Notwithstanding 801 CMR 21.00 or any successor regulation and notwithstanding  
9 any general or special law to the contrary, the secretary may, subject to the required federal  
10 approvals, directly negotiate supplemental rebate agreements with manufacturers including, but  
11 not limited to, agreements utilizing guaranteed net prices based on either: (i) the public health  
12 value of drugs subject to a supplemental rebate negotiation as determined by an independent  
13 third party designated by the secretary; or (ii) any other appropriate measure of value. The  
14 supplemental rebate negotiation shall be based on a proposed value of the drug.

15 A manufacturer may request to enter into negotiations for a supplemental rebate  
16 agreement for a prescription drug; provided, however, that the secretary may prioritize other  
17 negotiations or refuse to enter into said negotiations. Nothing in this paragraph shall preclude the  
18 secretary from entering into a supplemental rebate agreement with a manufacturer at a later date.

19 Any information, analyses or reports reviewed or used in creating either the proposed  
20 value of the drug or supplemental rebate shall be provided to the manufacturer upon request for  
21 review and input. The secretary shall consider any clarifications, additional information or data  
22 provided by the manufacturer.

23 (c) If a manufacturer and the secretary are unable to establish a supplemental rebate  
24 agreement for a drug projected to exceed either a post-rebate cost per utilizer of \$25,000 per year  
25 or a post-rebate aggregate annual cost to MassHealth of \$10,000,000, the secretary may provide  
26 notice of a referral to the health policy commission for review under section 8A of chapter 6D.  
27 The secretary may then disclose or require the manufacturer to disclose within a reasonable time  
28 any records that describe or relate to the manufacturer's pricing of any such drugs that are the  
29 subject of a supplemental rebate negotiation to the health policy commission for review under  
30 said section 8A of said chapter 6D. If the secretary provides notice under the preceding sentence,  
31 the secretary shall post the proposed value for the drug on the website of the executive office.

32 (d) Any information disclosed by a manufacturer pursuant to negotiations under  
33 subsection (b) or disclosure to the health policy commission under subsection (c) shall not be  
34 public records under section 7 of chapter 4 or under chapter 66 and shall remain confidential;  
35 provided, however, that the secretary may produce reports summarizing any findings related to  
36 records received under this section to the extent allowable under applicable state and federal  
37 laws.

38 (e) Annually, not later than October 15, the secretary shall report on activities conducted  
39 pursuant to this section including, but not limited to: (i) whether the pharmaceutical spending  
40 target was achieved; (ii) the amount of supplemental rebates received under this section; (iii) the  
41 number of pharmaceutical drugs receiving a supplemental rebate under this section, broken down  
42 by manufacturer; (iv) a breakdown of the duration of the supplemental rebates received; and (v)  
43 a breakdown of the percentage of each supplemental rebate's contribution to meeting the  
44 pharmaceutical spending target. The report shall be filed with the clerks of the senate and house  
45 of representatives, the joint committee on health care financing and the senate and house  
46 committees on ways and means.

47 (f) The secretary shall adopt regulations to implement this section.

**Expanded Medicare Savings Programs 1**

1 SECTION 40. Said chapter 118E is hereby further amended by inserting after section 25  
2 the following section:-

3 Section 25A. (a) The division shall, for individuals 65 years of age or older, disregard  
4 income in an amount equivalent to 30 per cent of the federal poverty level and disregard assets in  
5 an amount equivalent to the federal resource limit for the Medicare Savings Programs, each as  
6 adjusted annually, in determining eligibility for the qualified Medicare beneficiary, specified  
7 low-income Medicare beneficiary and qualified individual programs, Medicare Savings or  
8 Medicare Buy-In programs as described in 42 U.S.C. 1396a(a)(10)(E). Enrollment in the  
9 qualified individual program shall be capped if the federal allotment for the program is  
10 exhausted.

11 (b) The division shall promulgate regulations to implement this section.

**Retroactive Claims Denials for Behavioral Health Services 2**

1 SECTION 41. Said chapter 118E is hereby further amended by inserting after section 38  
2 the following section:-

3 Section 38A. (a) For the purposes of this section, the following words shall have the  
4 following meanings unless the context clearly requires otherwise:

5 “Behavioral health services”, as defined in section 1 of chapter 175.

6 “Provider”, (i) a mental health clinic or substance use disorder program licensed by the  
7 department of public health under section 18 of chapter 17, 111, 111B or 111E; or (ii) a  
8 behavioral, substance use disorder or mental health professional who is licensed under chapter  
9 112 and accredited or certified to provide services and who has provided services under an  
10 express or implied contract or with the expectation of receiving payment, other than co-payment,  
11 deductible or co-insurance, directly or indirectly from the division or managed care entity.

12 “Retroactive claims denial”, the denial of a previously paid claim for services that results  
13 in: (i) the requirement to repay the claim; (ii) the imposition of a reduction in other payments; or

14 (iii) a withholding or affects future payments owed to a provider in order to recoup payment for  
15 the denied claim.

16 (b) The division or an entity with which the division contracts to provide or manage  
17 health insurance benefits, including mental health and substance use disorder services, shall not  
18 impose a retroactive claims denial for behavioral health services on a provider unless: (i) less  
19 than 12 months have elapsed from the time of submission of the claim by the provider to the  
20 division or other entity responsible for payment; (ii) the division or other entity has furnished the  
21 provider with a written explanation of the reason for the retroactive claims denial and, where  
22 applicable, a description of additional documentation or any other corrective action required for  
23 payment of the claim; and (iii) where applicable, the division or other entity responsible for  
24 payment allows the provider 30 days to submit additional documentation or to take any other  
25 corrective action required for payment of the claim.

26 (c) Notwithstanding subsection (b), a retroactive claims denial may be allowed after 12  
27 months if: (i) the claim was submitted fraudulently; (ii) the claim payment is subject to  
28 adjustment due to expected payment from another payer other than the division or an entity with  
29 which the division contracts to provide or manage health insurance benefits, including mental  
30 health and substance use disorder services; (iii) the claim, or services for which the claim has  
31 been submitted, is the subject of legal action; (iv) the claim payment was incorrect because the  
32 provider or the insured was already paid for the services identified in the claim; (v) the services  
33 identified in the claim were not delivered by the provider; or (vi) the services were not delivered  
34 in accordance with MassHealth regulations.

35 (d) If a retroactive claims denial is imposed under clause (ii) of subsection (c), the  
36 division or other entity shall notify the provider not less than 15 days before imposing the  
37 retroactive claims denial. The provider shall have 12 months from the date of denial to determine  
38 whether the claim is subject to payment by a secondary insurer; provided, however, that if the  
39 claim is denied by the secondary insurer due to the insured's transfer or termination of coverage,  
40 the division shall allow for resubmission of the claim.

**Retroactive Claims Denials for Behavioral Health Services 3**

1 SECTION 42. Section 1 of chapter 175 of the General Laws, as appearing in the 2016  
2 Official Edition, is hereby amended by striking out the definition of “Commissioner” and  
3 inserting in place thereof the following 2 definitions:-

4 “Behavioral health services”, mental health and substance use disorder prevention,  
5 recovery and treatment services including, but not limited to, inpatient, 24-hour levels of care,  
6 24-hour and non-24-hour diversionary levels of care, intermediate levels of care and outpatient  
7 services.

8 “Commissioner”, the commissioner of insurance.

**Retroactive Claims Denials for Behavioral Health Services 4**

1 SECTION 43. Said section 1 of said chapter 175, as so appearing, is hereby amended by  
2 inserting after the definition of “Resident” the following definition:-

3 “Retroactive claims denial”, an action by an insurer, an entity with which the insurer  
4 subcontracts to manage behavioral health services or an entity with which the insurer has entered  
5 into an administrative services contract or a contract to manage behavioral health services to  
6 deny a previously paid claim for services and to require repayment of the claim or to impose a  
7 reduction in other payments or otherwise withhold or affect future payments owed to a provider  
8 in order to recoup payment for the denied claim.

**Retroactive Claims Denials for Behavioral Health Services 5**

1 SECTION 44. Section 108 of said chapter 175, as so appearing, is hereby amended by  
2 adding the following subdivision:-

3 14. (a) For the purposes of this section, “provider” shall mean (i) a mental health clinic or  
4 substance use disorder program licensed by the department of public health under section 18 of  
5 chapter 17, 111, 111B or 111E; or (ii) a behavioral, substance use disorder or mental health  
6 professional who is licensed under chapter 112 and accredited or certified to provide services and  
7 who has provided services under an express or implied contract or with the expectation of  
8 receiving payment, other than co-payment, deductible or co-insurance, directly or indirectly from  
9 an insurer or other entity.

10 (b) No insurer or other entity shall impose a retroactive claims denial for behavioral  
11 health services on a provider unless: (i) less than 12 months have elapsed from the time of  
12 submission of the claim by the provider to the insurer or other entity responsible for payment; (ii)  
13 the insurer or other entity has furnished the provider with a written explanation of the reason for  
14 the retroactive claims denial and, where applicable, a description of additional documentation or  
15 other any corrective action required for payment of the claim; and (iii) where applicable, the  
16 insurer or other entity responsible for payment allows the provider 30 days to submit additional  
17 documentation or to take other corrective action required for payment of the claim.

18 (c) Notwithstanding subsection (b), a retroactive claims denial may be allowed after 12  
19 months if: (i) the claim was submitted fraudulently; (ii) the claim, or services for which the claim  
20 was submitted, is the subject of legal action; (iii) the claim payment was incorrect because the  
21 provider or the insured was already paid for the services identified in the claim; or (iv) the  
22 services identified in the claim were not delivered by the provider.

23 (d) If a retroactive claims denial is imposed because the claim payment is subject to  
24 adjustment due to expected payment from a payer other than the insurer or an entity with which  
25 the insurer contracts to provide or manage health insurance benefits, including mental health and  
26 substance use disorder services, the insurer or other entity shall notify the provider not less than  
27 15 days before imposing the retroactive claims denial. The provider shall have 12 months from  
28 the date of denial to determine whether the claim is subject to payment by a secondary insurer;  
29 provided, however, that if the claim is denied by the secondary insurer due to the insured's  
30 transfer or termination of coverage, the insurer shall allow for resubmission of the claim.

**Retroactive Claims Denials for Behavioral Health Services 6**

1 SECTION 45. Chapter 176A of the General Laws is hereby amended by inserting after  
2 section 8A the following section:-

3 Section 8A3/4. (a) For the purposes of this section, the following words shall have the  
4 following meanings unless the context clearly requires otherwise:

5 "Behavioral health services", as defined in section 1 of chapter 175.

6           “Provider”, (i) a mental health clinic or substance use disorder program licensed by the  
7 department of public health under section 17 of chapter 18, 111, 111B or 111E; or (ii) a  
8 behavioral, substance use disorder or mental health professional who is licensed under chapter  
9 112 and accredited or certified to provide services and who has provided services under an  
10 express or implied contract or with the expectation of receiving payment, other than co-payment,  
11 deductible or co-insurance, directly or indirectly from the commission or other entity.

12           “Retroactive claims denial”, as defined in section 1 of chapter 175.

13           (b) The corporation shall not impose a retroactive claims denial for behavioral health  
14 services on a provider unless: (i) less than 12 months have elapsed from the time of submission  
15 of the claim by the provider to the corporation; (ii) the corporation has furnished the provider  
16 with a written explanation of the reason for the retroactive claims denial and, where applicable, a  
17 description of additional documentation or any other corrective action required for payment of  
18 the claim; and (iii) where applicable, the corporation allows the provider 30 days to submit  
19 additional documentation or to take any other corrective action required for payment of the  
20 claim.

21           (c) Notwithstanding subsection (b), a retroactive claims denial may be allowed after 12  
22 months if: (i) the claim was submitted fraudulently; (ii) the claim, or services for which the claim  
23 has been submitted, is the subject of legal action; (iii) the claim payment was incorrect because  
24 the provider or the insured has already paid for the services identified in the claim; or (iv) the  
25 services identified in the claim were not delivered by the provider.

26           (d) If a retroactive claims denial is imposed because the claim payment is subject to  
27 adjustment due to expected payment from a payer other than the corporation or an entity with  
28 which the insurer contracts to provide or manage health care services, including mental health  
29 and substance use disorder services, the corporation shall notify the provider not less than 15  
30 days before imposing the retroactive claims denial. The provider shall have 12 months from the  
31 date of denial to determine whether the claim is subject to payment by a secondary insurer;  
32 provided, however, that if the claim is denied by the secondary insurer due to the insured’s  
33 transfer or termination of coverage, the corporation shall allow for resubmission of the claim.

**Retroactive Claims Denials for Behavioral Health Services 7**

1           SECTION 46. Chapter 176B of the General Laws is hereby amended by inserting after  
2 section 7C the following section:-

3           Section 7D. (a) For the purposes of this section, the following words shall have the  
4 following meanings unless the context clearly requires otherwise:

5           “Behavioral health services”, as defined in section 1 of chapter 175.

6           “Provider”, (i) a mental health clinic or substance use disorder program licensed by the  
7 department of public health under section 18 of chapter 17, 111, 111B or 111E; or (ii) a  
8 behavioral, substance use disorder or mental health professional who is licensed under chapter  
9 112 and accredited or certified to provide services and who has provided services under an  
10 express or implied contract or with the expectation of receiving payment, other than co-payment,  
11 deductible or co-insurance, directly or indirectly from the commission or other entity.

12           “Retroactive claims denial”, as defined in section 1 of chapter 175.

13           (b) A corporation shall not impose a retroactive claims denial for behavioral health  
14 services on a provider unless: (i) less than 12 months have elapsed from the time of submission  
15 of the claim by the provider to the corporation; (ii) the corporation has furnished the provider  
16 with a written explanation of the reason for the retroactive claims denial and, where applicable, a  
17 description of additional documentation or any other corrective action required for payment of  
18 the claim; and (iii) where applicable, the corporation allows the provider 30 days to submit  
19 additional documentation or to take any other corrective action required for payment of the  
20 claim.

21           (c) Notwithstanding subsection (b), a retroactive claims denial may be allowed after 12  
22 months if: (i) the claim was submitted fraudulently; (ii) the claim, or services for which the claim  
23 was submitted, is the subject of legal action; (iii) the claim payment was incorrect because the  
24 provider or the insured has already paid for the services identified in the claim; or (iv) the  
25 services identified in the claim were not delivered by the provider.

26 (d) If a retroactive claims denial is imposed because the claim payment is subject to  
27 adjustment due to expected payment from a payer other than the corporation or an entity with  
28 which the corporation contracts to provide or manage health care services, including mental  
29 health and substance use disorder services, the corporation shall notify the provider not less than  
30 15 days before imposing the retroactive claims denial. The provider shall have 12 months from  
31 the date of denial to determine whether the claim is subject to payment by a secondary insurer;  
32 provided, however, that if the claim is denied by the secondary insurer due to the insured's  
33 transfer or termination of coverage, the corporation shall allow for resubmission of the claim.

**Retroactive Claims Denials for Behavioral Health Services 8**

1 SECTION 47. Chapter 176G of the General Laws is hereby amended by inserting after  
2 section 6A the following section:-

3 Section 6B. (a) For the purposes of this section, the following words shall have the  
4 following meanings unless the context clearly requires otherwise:

5 "Behavioral health services", as defined in section 1 of chapter 175.

6 "Provider", (i) a mental health clinic or substance use disorder program licensed by the  
7 department of public health under section 18 of chapter 17, 111, 111B or 111E; or (ii) a  
8 behavioral, substance use disorder or mental health professional who is licensed under chapter  
9 112 and accredited or certified to provide services and who has provided services under an  
10 express or implied contract or with the expectation of receiving payment, other than co-payment,  
11 deductible or co-insurance, directly or indirectly from the commission or other entity.

12 "Retroactive claims denial", as defined in section 1 of chapter 175.

13 (b) An insurer or other entity shall not impose a retroactive claims denial for behavioral  
14 health services on a provider unless: (i) less than 12 months have elapsed from the time of  
15 submission of the claim by the provider to the insurer or other entity; (ii) the insurer or other  
16 entity has furnished the provider with a written explanation of the reason for the retroactive  
17 claims denial and, where applicable, a description of additional documentation or any other  
18 corrective action required for payment of the claim; and (iii) where applicable, the insurer or

19 other entity responsible for payment allows the provider 30 days to submit additional  
20 documentation or to take any other corrective action required for payment of the claim.

21 (c) Notwithstanding subsection (b), a retroactive claims denial may be allowed after 12  
22 months if: (i) the claim was submitted fraudulently; (ii) the claim, or services for which the claim  
23 was submitted, is the subject of legal action; (iii) the claim payment was incorrect because the  
24 provider or the insured has already paid for the services identified in the claim; or (iv) the  
25 services identified in the claim were not delivered by the provider.

26 (d) If a retroactive claims denial is imposed because the claim payment is subject to  
27 adjustment due to expected payment from a payer other than the insurer or other entity with  
28 which the insurer contracts to provide or manage health care services, including mental health  
29 and substance use disorder services, the insurer or other entity shall notify the provider not less  
30 than 15 days before imposing the retroactive claims denial. The provider shall have 12 months  
31 from the date of denial to determine whether the claim is subject to payment by a secondary  
32 insurer; provided, however, that if the claim is denied by the secondary insurer due to the  
33 insured's transfer or termination of coverage, the insurer shall allow for resubmission of the  
34 claim.

### **Trial Court Transferability**

1 SECTION 48. The third paragraph of section 9A of chapter 211B of the General Laws, as  
2 appearing in the 2016 Official Edition, is hereby amended by striking out clause (xiii) and  
3 inserting in place thereof the following clause:-

4 (xiii) notwithstanding any general or special law to the contrary, the court administrator  
5 may transfer funds from any item of appropriation within the trial court; provided, however, that  
6 the court administrator shall not transfer more than 5 per cent of funds from items 0339-1001 or  
7 0339-1003 to any other item of appropriation within the trial court; provided further, that the  
8 transfers shall be made in accordance with schedules submitted to the senate and house  
9 committees on ways and means, which shall include: (a) the amount of money transferred from  
10 any item of appropriation to any other item of appropriation; (b) the reason for the necessity of  
11 the transfer; and (c) the date on which the transfer shall be completed; and provided further, that

12 a transfer under this clause shall not occur until 10 days after the revised funding schedules have  
13 been submitted in writing to the senate and house committees on ways and means.

**Committee for Public Counsel Services Hour Caps**

1 SECTION 49. Section 11 of chapter 211D of the General Laws is hereby amended by  
2 striking out subsections (c) and (d), as so appearing, and inserting in place thereof the following  
3 subsection:-

4 (c) Notwithstanding the billable hours limitation in subsection (b), the chief counsel of the  
5 committee may waive the annual cap on billable hours for private counsel appointed or assigned  
6 to indigent cases if the chief counsel finds that: (i) there is limited availability of qualified  
7 counsel in that practice area; (ii) there is limited availability of qualified counsel in a geographic  
8 area; or (iii) increasing the limit would improve efficiency and quality of service; provided,  
9 however, that counsel appointed or assigned to such cases within the private counsel division  
10 shall not bill more than 2,000 billable hours. It shall be the responsibility of private counsel to  
11 manage their billable hours.

**Transitional Aid to Families with Dependent Children Motor Vehicle Disregard**

1 SECTION 50. Section 110 of chapter 5 of the acts of 1995 is hereby amended by striking  
2 out subsection (b), as most recently amended by section 53 of chapter 154 of the acts of 2018,  
3 and inserting in place thereof the following subsection:-

4 (b) A family shall be eligible for assistance provided its maximum allowable countable  
5 resources do not exceed \$5,000 and upon meeting all other eligibility criteria; provided,  
6 however, that the value of 1 vehicle shall not count toward the family’s countable resources; and  
7 provided further, that an assistance unit shall be allowed the value and balance of a college  
8 savings plan established and maintained pursuant to, or consistent with, section 529 of the  
9 Internal Revenue Code.

10 The department shall exclude from a family’s countable resources any earned income of  
11 dependent children of the family who are working part time while attending school full time. The

12 department shall promulgate regulations in accordance with this section, which shall include, but  
13 not be limited to, updating 106 CMR 204.210(D)(2).

**Gaming Revenues 1**

1 SECTION 51. Section 95 of chapter 194 of the acts of 2011 is hereby repealed.

**Paid Family and Medical Leave Reimbursement**

1 SECTION 52. Item 7003-0300 of section 2A of chapter 273 of the acts of 2018 is hereby  
2 amended by adding the following words:- ; provided, that notwithstanding any general or special  
3 law to the contrary, upon receipt of sufficient contributions to the Family and Employment  
4 Security Trust Fund established in section 7 of chapter 175M of the General Laws, the  
5 department shall reimburse the General Fund for the total amount of this appropriation.

**Pension Cost-of-Living Adjustment**

1 SECTION 53. Notwithstanding any general or special law to the contrary, the amounts  
2 transferred pursuant to subdivision (1) of section 22C of chapter 32 of the General Laws shall be  
3 made available for the Commonwealth’s Pension Liability Fund established in section 22 of said  
4 chapter 32. The amounts transferred pursuant to said subdivision (1) of said section 22C of said  
5 chapter 32 shall meet the commonwealth’s obligations pursuant to said section 22C of said  
6 chapter 32, including retirement benefits payable by the state employees’ retirement system and  
7 the teachers’ retirement system, for the costs associated with a 3 per cent cost-of-living  
8 adjustment pursuant to section 102 of said chapter 32, for the reimbursement of local retirement  
9 systems for previously authorized cost-of-living adjustments pursuant to said section 102 of said  
10 chapter 32 and for the costs of increased survivor benefits pursuant to chapter 389 of the acts of  
11 1984. The state board of retirement and each city, town, county and district shall verify these  
12 costs, subject to rules that shall be adopted by the state treasurer. The state treasurer may make  
13 payments upon a transfer of funds to reimburse certain cities and towns for pensions of retired  
14 teachers, including any other obligations that the commonwealth has assumed on behalf of a  
15 retirement system other than the state employees’ retirement system or the teachers’ retirement  
16 system, including the commonwealth’s share of the amounts to be transferred pursuant to section  
17 22B of said chapter 32. The payments under this section shall be made only pursuant to a

18 distribution of money from the Commonwealth's Pension Liability Fund and any distribution,  
19 and the payments for which any such distribution is required, shall be detailed in a written report  
20 filed quarterly by the secretary of administration and finance with the chairs of the senate and  
21 house committees on ways and means and the senate and house chairs of the joint committee on  
22 public service in advance of the distribution. Distributions shall not be made in advance of the  
23 date on which a payment is actually to be made. If the amount transferred pursuant to said  
24 subdivision (1) of said section 22C of said chapter 32 exceeds the amount necessary to  
25 adequately fund the annual pension obligations, the excess amount shall be credited to the  
26 Pension Reserves Investment Trust Fund established in subdivision (8) of said section 22 of said  
27 chapter 32 to reduce the unfunded pension liability of the commonwealth.

### **Other Post-Employment Benefits Liability**

1 SECTION 54. (a) Notwithstanding any general or special law to the contrary, the  
2 unexpended balances in items 0699-0015 and 0699-9100 of section 2 shall be deposited into the  
3 State Retiree Benefits Trust Fund established in section 24 of chapter 32A of the General Laws  
4 before the certification of the fiscal year 2019 consolidated net surplus under section 5C of  
5 chapter 29 of the General Laws. The amount deposited shall be equal to 10 per cent of all  
6 payments received by the commonwealth in fiscal year 2020 under the master settlement  
7 agreement in Commonwealth of Massachusetts v. Philip Morris, Inc. et al., Middlesex Superior  
8 Court, No. 95-7378; provided, however, that if in fiscal year 2019 the unexpended balances of  
9 said items 0699-0015 and 0699-9100 of said section 2 are less than 10 per cent of all payments  
10 received by the commonwealth in fiscal year 2020 under the master settlement agreement  
11 payments, an amount equal to the difference shall be transferred to the State Retiree Benefits  
12 Trust Fund from payments received by the commonwealth under the master settlement  
13 agreement.

14 (b) Notwithstanding any general or special law to the contrary, the payment percentage set  
15 forth in section 152 of chapter 68 of the acts of 2011 shall not apply in fiscal year 2020.

### **Expanded Medicare Savings Programs 2**

SECTION 55. Notwithstanding any general or special law to the contrary, the secretary of administration and finance, in consultation with the secretary of health and human services, may transfer not more than a total of \$7,500,000 from the prescription advantage program in item 9110-1455 and the Health Safety Net Trust Fund in fiscal year 2020 to support the Medicare Savings or Medicare Buy-In programs established in section 25A of chapter 118E of the General Laws; provided, however, that the secretary of health and human services shall certify to the senate and house committees on ways and means, not less than 45 days in advance of the transfer, in writing, the amount to be transferred and an explanation of the amount of expected savings to those programs resulting from the transfer.

**Health Safety Net Administration**

1 SECTION 56. Notwithstanding any general or special law to the contrary, payments from  
2 the Health Safety Net Trust Fund established in section 66 of chapter 118E of the General Laws  
3 may be made either as safety net care payments under the commonwealth’s waiver pursuant to  
4 section 1115 of the Social Security Act, 42 U.S.C. 1315, or as an adjustment to service rate  
5 payments under Title XIX and XXI of the Social Security Act or a combination of both. Other  
6 federally-permissible funding mechanisms available for certain hospitals, as defined by  
7 regulations of the executive office of health and human services, may be used to reimburse up to  
8 \$70,000,000 of uncompensated care pursuant to said section 66 and section 69 of said chapter  
9 118E using sources distinct from the funding made available to the Health Safety Net Trust  
10 Fund.

**Initial Gross Payments to Qualifying Acute Care Hospitals**

1 SECTION 57. Notwithstanding any general or special law to the contrary, not later than  
2 October 1, 2019 and without further appropriation, the comptroller shall transfer from the  
3 General Fund to the Health Safety Net Trust Fund established in section 66 of chapter 118E of  
4 the General Laws the greater of \$45,000,000 or 1/12 of the total expenditures to hospitals and  
5 community health centers required pursuant to this act for the purpose of making initial gross  
6 payments to qualifying acute care hospitals for the hospital fiscal year beginning October 1,  
7 2019. These payments shall be made to hospitals before, and in anticipation of, the payment by  
8 hospitals of their gross liability to the Health Safety Net Trust Fund. Not later than June 30,

9 2020, the comptroller shall transfer from the Health Safety Net Trust Fund to the General Fund  
10 the amount of the transfer authorized by this section and any allocation of that amount as  
11 certified by the director of the health safety net office.

### **Inspector General's Health Care Audits**

1 SECTION 58. Notwithstanding any general or special law to the contrary, in hospital  
2 fiscal year 2020, the office of inspector general may expend up to a total of \$1,000,000 from the  
3 Health Safety Net Trust Fund established in section 66 of chapter 118E of the General Laws for  
4 costs associated with maintaining a health safety net audit unit within the office. The unit shall  
5 continue to oversee and examine the practices in hospitals including, but not limited to, the care  
6 of the uninsured and the resulting free charges. The unit shall also study and review the Medicaid  
7 program under said chapter 118E including, but not limited to, a review of the program's  
8 eligibility requirements, utilization, claims administration and compliance with federal mandates.  
9 The inspector general shall submit a report to the chairs of the senate and house committees on  
10 ways and means on the results of the audits and any other completed analyses not later than  
11 March 1, 2021.

### **MassHealth Dental Coverage**

1 SECTION 59. Notwithstanding section 53 of chapter 118E of the General Laws, for fiscal  
2 year 2020, the executive office of health and human services may determine, subject to required  
3 federal approvals, the extent to which to include within its covered services for adults the  
4 federally-optional dental services that were included in its state plan or demonstration program in  
5 effect on January 1, 2002; provided, however, that dental services for adults enrolled in  
6 MassHealth shall be covered at least to the extent they were covered on January 1, 2019; and  
7 provided further, that notwithstanding any general or special law to the contrary, not less than 45  
8 days before restructuring any MassHealth dental benefits, the executive office of health and  
9 human services shall file a report with the executive office for administration and finance and the  
10 senate and house committees on ways and means detailing the proposed changes and the  
11 anticipated fiscal impact of the changes.

### **Nursing and Resident Care Facility Base Year**

1 SECTION 60. Notwithstanding any general or special law to the contrary, nursing facility  
2 and resident care facility rates to be effective on October 1, 2019 under section 13D of chapter  
3 118E of the General Laws may be developed using the costs of calendar year 2007 or any  
4 subsequent year that the secretary of health and human services may select.

**Transfers between Health Funds**

1 SECTION 61. (a) Notwithstanding any general or special law to the contrary, the  
2 executive office for administration and finance shall transfer not more than \$15,000,000 from the  
3 Commonwealth Care Trust Fund established in section 2000 of chapter 29 of the General Laws  
4 to the Health Safety Net Trust Fund established in section 66 of chapter 118E of the General  
5 Laws.

6 (b) The transfer required from the Commonwealth Care Trust Fund to the Health Safety  
7 Net Trust Fund under subsection (b) of section 189 of chapter 149 of the General Laws shall not  
8 apply in fiscal year 2020.

**Gaming Revenues 2**

1 SECTION 62. Notwithstanding any general or special law to the contrary, the comptroller  
2 shall transfer \$15,000,000 from the unexpended balance of the Race Horse Development Fund  
3 established in section 60 of chapter 23K of the General Laws to the General Fund not later than  
4 June 30, 2020. The Massachusetts gaming commission established in section 3 of said chapter  
5 23K shall ensure a sufficient fund balance to make the transfer required by this section. Subject  
6 to appropriation, money transferred to the General Fund shall be expended to support  
7 programming and operations for the department of agricultural resources and the department of  
8 conservation and recreation.

**Massachusetts School Building Authority Rates**

1 SECTION 63. Notwithstanding section 10 of chapter 70B of the General Laws or any  
2 other general or special law to the contrary, in determining the grant percentage for approved  
3 school projects for calendar year 2019 and calendar year 2020, the Massachusetts School  
4 Building Authority shall calculate the community poverty factor by examining the proportion of

5 economically disadvantaged students from calendar year 2015 to the present and assigning  
6 whichever year’s factor is the highest, as determined by the department of elementary and  
7 secondary education.

**Operational Services Division Special Education Rates**

1 SECTION 64. Notwithstanding any general or special law to the contrary, the bureau of  
2 purchased services in the operational services division shall determine prices for programs under  
3 chapter 71B of the General Laws in fiscal year 2020 by increasing the final fiscal year 2019 price  
4 by the rate of inflation as determined by the division. The division shall adjust prices for  
5 extraordinary relief pursuant to subsection (4) of 808 CMR 1.06. The division shall accept  
6 applications for program reconstruction and special circumstances in fiscal year 2020. The  
7 division shall authorize the annual price for out-of-state purchasers requested by a program, not  
8 to exceed a maximum price determined by the bureau, by identifying the most recent price  
9 calculated for the program and applying the estimated rate of inflation for each year, as  
10 determined by the bureau under section 22N of chapter 7 of the General Laws, in which the rate  
11 of inflation is frozen beginning with fiscal year 2004, in a compounded manner for each fiscal  
12 year.

**Regional Transit Authorities 2**

1 SECTION 65. (a) Notwithstanding any general or special law to the contrary, the  
2 Massachusetts Department of Transportation shall establish a system of performance metrics to  
3 be used to establish targets for each regional transit authority organized under chapter 161B of  
4 the General Laws or predecessor laws. The targets shall be incorporated into a memorandum of  
5 understanding between each regional transit authority and the department. Each memorandum of  
6 understanding shall be individually negotiated with the regional transit authority and the  
7 department and shall include, but not be limited to, a baseline, timeline and target for  
8 performance in the areas of: (i) ridership, customer service and satisfaction; (ii) asset  
9 management; and (iii) financial performance, including farebox recovery. Each memorandum of  
10 understanding shall certify that the budget for fiscal year 2020 is balanced. Of the amount  
11 required to be transferred to regional transit authorities under clause (2) of subsection (d) of  
12 section 2ZZZ of chapter 29 of the General Laws, \$4,500,000 shall be conditioned on the

13 execution of a memorandum of understanding by a regional transit authority and the department  
14 and distributed as performance grants to regional transit authorities that best demonstrate  
15 compliance with or commitment to the service decisions, quality of service and environmental  
16 sustainability recommendations from the report of the task force on regional transit authority  
17 performance and funding established pursuant to section 72 of chapter 154 of the acts of 2018.  
18 The department shall provide a copy of each memorandum of understanding executed between a  
19 regional transit authority and the department within 30 days of execution to the joint committee  
20 on transportation and the senate and house committees on ways and means.

21 (b) The secretary of transportation shall review disputes regarding the content of a  
22 memorandum of understanding. If an agreement on a memorandum of understanding cannot be  
23 reached through the secretary, the dispute shall be referred to the office of dispute resolution at  
24 the University of Massachusetts at Boston and that office shall serve as the facilitator to resolve  
25 the dispute.

26 (c) A regional transit authority that does not enter into a memorandum of understanding for  
27 fiscal year 2020 shall receive the same total funding received by that regional transit authority  
28 under item 1595-6370 in fiscal year 2019 until an agreement is reached on a memorandum of  
29 understanding or until the party's dispute is resolved pursuant to subsection (b); provided,  
30 however, that for the purposes of this section, funding provided pursuant to section 75 of chapter  
31 154 of the acts of 2018 shall not be considered a part of the funding received by a regional transit  
32 authority under said item 1595-6370 in fiscal year 2019.

33 If a regional transit authority does not meet the performance metric targets established in  
34 the memorandum of understanding under this section, the regional transit authority and the  
35 department shall enter into a remedial plan approved by the department. A regional transit  
36 authority that does not enter into a remedial plan shall not receive state operating assistance in  
37 excess of the total amount of funding received by the regional transit authority under item 1595-  
38 6370 in fiscal year 2019; provided, however, that for the purposes of this section, funding  
39 provided pursuant to section 75 of chapter 154 of the acts of 2018 shall not be considered a part  
40 of the funding received by a regional transit authority under said item 1595-6370 in fiscal year  
41 2019.

42           The Massachusetts Department of Transportation may require each regional transit  
43 authority to provide data on ridership, customer service, asset management and financial  
44 performance and shall compile collected data into a report on the performance of regional transit  
45 authorities and each authority’s progress toward meeting the performance metrics established in  
46 the memorandum of understanding under subsection (a). The report shall be filed with the clerks  
47 of the senate and house of representatives, the senate and house committees on ways and means  
48 and the joint committee on transportation not later than July 1, 2020.

49           (d) This section shall apply for fiscal year 2020.

**MassHealth Prescription Drug Purchasing Alternatives Report**

1           SECTION 66. The office of Medicaid shall investigate and provide a report on potential  
2 cost savings for prescription medications by pursuing new purchasing approaches. The  
3 investigation shall include, but not be limited to, an examination of the feasibility, advisability  
4 and potential cost savings of: (i) joining a Medicaid multistate prescription drug bulk purchasing  
5 consortium; (ii) identifying alternate financing mechanisms; and (iii) entering into alternative  
6 payment methods, including value-based purchasing arrangements. The report shall include: (a)  
7 an update on existing supplemental rebates; (b) recommendations to increase the amount of  
8 supplemental rebates received; (c) estimated cost savings related to joining a Medicaid multistate  
9 prescription drug bulk purchasing consortium; (d) estimated administrative savings or other  
10 increased efficiencies related to joining a Medicaid multistate prescription drug bulk purchasing  
11 consortium; (e) opportunities for managed care organizations to receive similar rebates or  
12 discounts; (f) estimated cost savings related to negotiating value-based purchasing agreements  
13 with drug manufacturers; (g) estimated administrative savings or other increased efficiencies  
14 related to negotiating value-based purchasing agreements with drug manufacturers; and (h) an  
15 analysis of cost savings approaches adopted by other states. The office shall file the report with  
16 the clerks of the senate and house of representatives, the joint committee on health care financing  
17 and the senate and house committees on ways and means not later than March 1, 2020.

**Medicaid Pharmacy Benefit Manager Transparency Report**

1 SECTION 67. The state auditor shall investigate and develop a report regarding methods  
2 for increasing transparency on pharmacy services provided by pharmacy benefit managers to  
3 Medicaid managed care organizations and Medicaid accountable care organizations.

4 The report shall include, but not be limited to: (i) an analysis of pharmacy benefit  
5 manager services transparency; (ii) any findings of price spreading between pharmacy  
6 reimbursement and overall costs to the Medicaid program including, but not limited to, a  
7 description of any price spreading for brand name, generic or specialty drugs; (iii) potential  
8 conflicts of interest related to affiliations between retail pharmacy chains and Medicaid  
9 pharmacy benefit managers and any reported reductions to pharmacy reimbursements; (iv) an  
10 analysis of the impact of reductions in pharmacy reimbursement on access to care; and (v) a  
11 description of the ways pharmacy benefit managers are used within Medicaid managed care  
12 organizations and Medicaid accountable care organizations.

13 The report shall provide recommendations on ways to increase transparency on pharmacy  
14 services provided by pharmacy benefit managers to Medicaid managed care organizations and  
15 Medicaid accountable care organizations, including any recommended reporting information or  
16 drafts of proposed legislation necessary to carry those recommendations into effect.

17 The state auditor shall file the report with the clerks of the senate and house of  
18 representatives, the joint committee on health care financing and the senate and house  
19 committees on ways and means not later than March 1, 2020.

### **Nursing Home Sustainability Task Force**

1 SECTION 68. (a) There shall be a task force to: (i) evaluate ways to ensure the financial  
2 stability of skilled nursing facilities; (ii) consider the role of skilled nursing facilities within the  
3 continuum of elder care services; and (iii) address current workforce challenges. The secretary of  
4 health and human services shall furnish reasonable staff and other support for the work of the  
5 commission.

6 The task force shall consist of the following members or their designees: the chairs of the  
7 joint committee on elder affairs who shall serve as co-chairs; the secretary of health and human  
8 services; the secretary of elder affairs; the secretary of labor and workforce development; the

9 commissioner of public health; the assistant secretary for MassHealth; 1 person to be appointed  
10 by the minority leader of the house of representatives; 1 person to be appointed by the minority  
11 leader of the senate; and 5 persons to be appointed by the co-chairs, 1 of whom shall be a  
12 representative of the Massachusetts Senior Care Association, Inc., 1 of whom shall be a  
13 representative of LeadingAge Massachusetts, Inc., 1 of whom shall be a representative of  
14 1199SEIU, 1 of whom shall be a representative of the Massachusetts Senior Action Council, Inc.  
15 and 1 of whom shall be an expert on long-term care and aging policy. In making appointments,  
16 the co-chairs shall, to the maximum extent feasible, ensure that the task force represents a broad  
17 distribution of diverse perspectives and geographic regions.

18 (b) In making its recommendations, the task force shall consider: (i) improvements to the  
19 MassHealth reimbursement system for nursing homes to promote financial stability; (ii)  
20 industry-wide workforce initiatives including, but not limited to, ways to improve recruitment,  
21 training, retention, rates of pay and other methods of ensuring a sustainable workforce; (iii) the  
22 role of external economic factors on the development and retention of the elder care services  
23 workforce such as the increases in the minimum wage and competition from other industries; (iv)  
24 staffing requirements and the associated costs, specifically in regards to direct care staff at elder  
25 care facilities, to ensure an adequate number of nurses, certified nurse assistants and other staff  
26 are available to meet resident needs and safety; (v) the feasibility of establishing a voluntary  
27 reconfiguration program for certain areas of elder care services, including the impact of a  
28 reduction in the number of currently licensed beds, while ensuring quality and maintaining  
29 access; (vi) recommended criteria for a voluntary reconfiguration program including, but not  
30 limited to, occupancy, co-location of services, care standards and regional geographic need; (vii)  
31 recommended incentives for elder care service operators to align the need for elder care services  
32 with current and future demand and conversion of underutilized beds or other resources to meet  
33 current and future demand; and (viii) any additional reforms to strengthen the public process for  
34 facility closures and sales or other recommendations necessary to address the issues referenced  
35 in this section.

36 (c) The task force shall convene its first meeting within 30 days after the effective date of  
37 this act. The task force shall submit its report, including any proposed legislation necessary to  
38 carry out its recommendations, by filing the same with the clerks of the senate and house of

39 representatives, the joint committee on health care financing, the joint committee on elder affairs  
40 and the senate and house committees on ways and means not later than November 1, 2019.

### **Federal Tax Reform Impact Report**

1 SECTION 69. (a) The department of revenue shall study and report on the estimated and  
2 actual impact of the Tax Cuts and Jobs Act, Public Law 115-97 on tax revenues in the  
3 commonwealth.

4 (b) The review shall include, but not be limited to, an estimate of the revenue impact on  
5 the commonwealth of relevant provisions including, but not limited to: (i) the lowering of the  
6 threshold for deducting medical, dental and other expenses allowed under section 213 of the  
7 Internal Revenue Code; (ii) the inclusion of expenses for tuition in connection with enrollment or  
8 attendance at an elementary or secondary public, private or religious school as qualified higher  
9 education expenses under section 529 of the Internal Revenue Code; (iii) the limitation on the  
10 deduction of wagering losses for professional gamblers under section 165(d) of the Internal  
11 Revenue Code; (iv) the 1-time transition tax on unrepatriated foreign earnings under section 965  
12 of the Internal Revenue Code; (v) the limitation on the deductibility of business interest under  
13 section 163(j) of the Internal Revenue Code; (vi) the inclusion of global intangible low-taxed  
14 income under section 951A of the Internal Revenue Code; (vii) the amortization of research and  
15 experimental expenditures under section 174 of the Code; (viii) the limitations for certain fringe  
16 benefits under sections 67, 132 and 274 of the Internal Revenue Code; and (ix) the deduction for  
17 the foreign-source portion of a dividend received from a controlled foreign corporation by a  
18 domestic corporation that is a United States shareholder under section 245A of the Internal  
19 Revenue Code.

20 (c) Not later than March 2, 2020, the department of revenue shall provide estimates of the  
21 revenue impact for each provision in subsection (b) for fiscal years 2018, 2019, 2020, 2021 and  
22 2022. For each provision identified, the report shall note whether its impact on the revenues of  
23 the commonwealth is expected to be temporary or ongoing. The report shall be filed with the  
24 clerks of the senate and house, the senate and house committees on ways and means and the joint  
25 committee on revenue.

26 (d) Not later than March 2, 2023, the department of revenue shall provide an update on  
27 the revenue impact estimates identified in the report under subsection (c) and revenue impact  
28 estimates for each provision in subsection (b) that has been found by the department to have an  
29 ongoing tax revenue impact. The report shall be filed with the clerks of the senate and house, the  
30 senate and house committees on ways and means and the joint committee on revenue.

**Department of Conservation and Recreation Study**

1 SECTION 70. There shall be a special commission to recommend ways for the  
2 department of conservation and recreation to improve the management, operations and asset  
3 condition of the natural, cultural and recreational resources held by the department.

4 The study shall include, but not be limited to: (i) an examination of the current  
5 responsibilities and structures of the department and the stewardship council established in  
6 chapter 21 of the General Laws; (ii) a determination of whether departments, divisions, assets or  
7 operations of the department should be transferred to other agencies, departments, municipalities  
8 or entities, with special consideration given to urban parks and roadways; (iii) a review of the  
9 capital and operating budgets of the department with an analysis at a component level of the  
10 relationship of cost to value; and (iv) recommendations on how to: (a) improve transparency and  
11 accountability for project choice; (b) maximize returns on the commonwealth’s investment in the  
12 department of conservation and recreation; and (c) improve project planning and execution, with  
13 special consideration given to the role of the stewardship council.

14 The commission shall be comprised of the following members, or their designees: the  
15 chairs of the joint committee on environment, natural resources and agriculture who shall serve  
16 as co-chairs; the secretary of energy and environmental affairs; the secretary of transportation;  
17 the commissioner of conservation and recreation; the chair of the stewardship council; the  
18 minority leader of the house of representatives; the minority leader of the senate; and 6 persons  
19 to be appointed by the governor, 2 of whom shall be representatives of park friends groups, 1 of  
20 whom shall be a representative of the Environmental League of Massachusetts, 1 of whom shall  
21 be a representative of the Appalachian Mountain Club, 1 of whom shall be a representative of the  
22 Trust for Public Land and 1 of whom shall be a representative of the Trustees of Reservations.

23           The commission may solicit input through public hearings and testimony.

24           The commission shall file a report of its findings and recommendations with the clerks of  
25 the senate and house of representatives and the senate and house committees on ways and means  
26 not later than December 1, 2020.

**Department of Correction and Sheriff Funding Commission**

1           SECTION 71. There shall be a special commission to conduct a comprehensive study to  
2 evaluate and make recommendations regarding the appropriate level of funding for the  
3 department of correction and each sheriff’s department. The commission shall consist of: 2  
4 persons appointed by the senate president, 1 of whom shall serve as co-chair; 2 persons  
5 appointed by the speaker of the house of representatives, 1 of whom shall serve as co-chair; 1  
6 person appointed by the minority leader of the senate; 1 person appointed by the minority leader  
7 of the house of representatives; the secretary of public safety and security or a designee; the  
8 commissioner of correction or a designee; the secretary of administration and finance or a  
9 designee; 2 persons appointed by the Massachusetts Sheriffs Association; and 8 persons  
10 appointed by the governor, 1 of whom shall be nominated by The Massachusetts Institute for a  
11 New Commonwealth, Inc., 1 of whom shall be nominated by Pioneer Institute, Inc., 1 of whom  
12 shall be nominated by Prisoners’ Legal Services, 1 of whom shall be nominated by the  
13 Massachusetts Bar Association, 1 of whom shall be nominated by the National Correctional  
14 Employees Union, Inc., 1 of whom shall be nominated by the Boston Bar Association and 1 of  
15 whom shall be employed by a public or private institution of higher education with an expertise  
16 in criminology and criminal justice.

17           The study shall include, but not be limited to: (i) a review of staffing ratios and employee  
18 costs in each state prison and house of correction; (ii) an examination of potential ways to  
19 increase efficiencies and reduce fixed costs in state prisons and houses of correction; (iii) an  
20 analysis of the amount spent by the department of correction and by each sheriff’s department on  
21 mental health and substance use disorder services and the appropriate levels of funding necessary  
22 to meet the service needs of incarcerated people; (iv) a review of all discretionary programming  
23 offered in state prisons and houses of correction, including an analysis of geographical disparities  
24 in discretionary programming; (v) an analysis of chapter 69 of the acts of 2018, its impacts on

25 state prisons and houses of correction and best practices to implement its requirements; (vi) a  
26 review of the physical assets, infrastructure, buildings and communications equipment owned by  
27 each sheriff's department and state prison; and (vii) a review of the funding sources for the  
28 department of correction and each sheriff's department, including appropriations from the  
29 commonwealth, commissary charges, prison industries, trust fund accounts, intermunicipal  
30 agreements, other inmate fees and expenses and other sources of revenue.

31 The study shall include data for each state prison and house of correction on: (i) inmate  
32 population; (ii) costs per inmate, as defined by the commission; (iii) health care expenses; (iv)  
33 payroll expenses, including payroll spending on care and custody personnel; and (v) expenses on  
34 programming for recidivism reduction, including case management, reentry support, behavioral  
35 health counseling, education and vocational or workforce development programs. The report  
36 shall include data for the previous 5 fiscal years, the current fiscal year, and projected data for  
37 fiscal year 2021 and fiscal year 2022.

38 The commission shall compare existing funding levels and expenses at each state prison  
39 and house of correction and include a recommendation for an appropriate level or allocation of  
40 funding. The commission shall recommend targeted solutions for each state prison and house of  
41 correction to reduce spending if actual spending is above the recommended level. The  
42 commission shall also review the feasibility and advisability of establishing distinct line items  
43 for the department of correction and each sheriff's department to identify funding specifically  
44 designated for: (i) fixed costs and payroll spending on care and custody personnel; (ii) recidivism  
45 reduction programming; and (iii) any other separate categories as may be identified by the  
46 commission.

47 The commission shall propose a funding formula for the department of correction and each  
48 sheriff's department based, in part, on the number of people in their custody and control and the  
49 utilization of best practices in recidivism reduction to safely reduce the population of  
50 incarcerated people. The proposed funding formula shall, to the extent possible, increase the  
51 percentage of spending on evidence-based recidivism reduction programming and reduce or  
52 mitigate projected spending increases.

53           The commission shall have access to data, documents and information necessary for the  
54 performance of the commission's duties under this section. The commission may request, and  
55 the department of correction and each sheriff's department shall provide, any such data,  
56 documents or information; provided, however, that nonpublic information shall be provided in an  
57 aggregate and de-identified form; and provided further, that the commission, in collaboration  
58 with the department of correction and each sheriff's department, shall adopt policies and  
59 procedures to ensure the confidentiality of personal information.

60           The commission shall submit a written report of its findings, including legislative and  
61 budgetary recommendations, with the clerks of the senate and house of representatives, the  
62 senate and house committees on ways and means and the joint committee on public safety and  
63 homeland security not later than September 1, 2020.

#### **Special Commission on Foreign-Trained Medical Professional Licensure**

1           SECTION 72. (a) There shall be a special commission to study and make  
2 recommendations regarding the licensing of foreign-trained medical professionals with the goal  
3 of expanding and improving medical services in rural and underserved areas.

4           (b) The commission shall consist of the following members or their designees: the  
5 secretary of health and human services who shall serve as chair; 1 person to be appointed by the  
6 senate president; 1 person to be appointed by the speaker of the house of representatives; 1  
7 person to be appointed by the minority leader of the senate; 1 person to be appointed by the  
8 minority leader of the house of representatives; the chairs of the joint committee on public  
9 health; and 15 members to be appointed by the governor, 1 of whom shall be a member of the  
10 governor's advisory council for refugees and immigrants, 1 of whom shall be a member of the  
11 board of registration in medicine, 1 of whom shall be a member of the board of registration in  
12 dentistry, 1 of whom shall be a member of the board of registration in nursing, 1 of whom shall  
13 be a member of the board of registration of physician assistants, 1 of whom shall be a member of  
14 the board of allied health professionals, 1 of whom shall be a representative of the Massachusetts  
15 Medical Society, 1 of whom shall be a representative of the Massachusetts Health and Hospital  
16 Association, Inc., 1 of whom shall be a representative of The Massachusetts League of  
17 Community Health Centers, Inc., 1 of whom shall be a representative of the Conference of

18 Boston Teaching Hospitals, Inc., 1 of whom shall be a representative of the University of  
19 Massachusetts medical school, 1 of whom shall be a representative of the Boston Welcome Back  
20 Center at Bunker Hill Community College and 3 of whom shall be representatives of the  
21 Massachusetts Immigrant and Refugee Advocacy Coalition, Inc., of whom 1 shall be a foreign-  
22 trained medical professional and 1 shall be a licensed physician.

23 (c) The commission shall make recommendations on: (i) the strategies to integrate  
24 foreign-trained medical professionals into rural and underserved areas in need of medical  
25 services; (ii) state and national licensing regulations that may pose unnecessary barriers to  
26 practice for foreign-trained medical professionals; (iii) changes to state licensing requirements;  
27 (iv) opportunities to advocate for corresponding changes to national licensing requirements; and  
28 (v) any other matters pertaining to licensing foreign-trained medical professionals. The  
29 commission may hold hearings and invite testimony from experts and the public to gather  
30 information. The commission shall review and identify best practices learned from similar efforts  
31 in other states. The report may include guidelines for full licensure and conditional licensing of  
32 foreign-trained medical professionals.

33 (d) The commission shall submit a report containing its recommendations, including  
34 proposed legislation, if any, to carry out its recommendations, by filing the same with the clerks  
35 of the senate and house of representatives and the joint committee on public health not later than  
36 July 1, 2021.

### **Gaming Revenues 3**

1 SECTION 73. Notwithstanding any general or special law to the contrary, in fiscal year  
2 2020, the amount of category 1 gaming revenue specified in subclause (j) of clause (2) of section  
3 59 of chapter 23K of the General Laws shall be credited to the Commonwealth Transportation  
4 Fund established in section 2ZZZ of chapter 29 of the General Laws and the amount of category  
5 1 gaming revenue specified in said subclause (l) of said clause (2) of said section 59 of said  
6 chapter 23K shall be transferred to the General Fund.

### **Gross Receipts Tax on Opioid Manufacturers 3**

1 SECTION 74. Notwithstanding section 3 of chapter 63D of the General Laws, for the 6-  
 2 month period from July 1, 2019 to December 31, 2019, inclusive, the excise under section 2 of  
 3 said chapter 63D shall only apply to persons who maintain a place of business in the  
 4 commonwealth or whose total sales of all products, directly or through another person, for  
 5 distribution in the commonwealth are more than \$50,000 for the 6-month period.

6 Notwithstanding subsection (a) of section 4 of chapter 63D of the General Laws, for the 6-  
 7 month period from July 1, 2019 to December 31, 2019, inclusive, a person subject to excise  
 8 under section 2 of said chapter 63D shall file a return not later than March 15, 2020 and shall pay  
 9 any amount due by that date. The return shall set out the person’s total sales subject to excise  
 10 from July 1, 2019 to December 31, 2019, inclusive, and shall provide such other information as  
 11 the commissioner may require.

12 Notwithstanding subsection (b) of section 4 of chapter 63D of the General Laws, the  
 13 annual report to be provided to the commissioner not later than June 1, 2020 pursuant to said  
 14 subsection (b) of said section 4 of said chapter 63D shall pertain only to opioids sold, directly or  
 15 through another person, for distribution in the commonwealth during the period from July 1,  
 16 2019 to December 31, 2019, inclusive.

**Gaming Revenues 4**

1 SECTION 75. Notwithstanding any general or special law to the contrary, in fiscal year  
 2 2020, the comptroller shall transfer the unexpended balance of the Local Aid Stabilization Fund  
 3 established in section 2CCCC of chapter 29 of the General Laws to the Gaming Local Aid Fund  
 4 established in section 63 of chapter 23K of the General Laws.

**Sales Tax Treatment of Marketplace Facilitators and Sellers 6**

1 SECTION 76. Nothing in sections 30, 32 to 35, inclusive, shall affect tax liability that  
 2 accrued prior to the effective date of this act.

**Excise on Electronic Nicotine Delivery Systems Effective Date**

1 SECTION 77. Sections 5, 8, 11, 16, 19 to 25, inclusive, 27, 29 and 31 shall take effect on  
 2 January 1, 2020.

**Smokeless Tobacco Stamping and Regional Transit Authorities 1 Effective Date**

1 SECTION 78. Subclause (ii) of clause (2) of subsection (d) of section 2ZZZ of chapter 29  
2 of the General Laws and section 28 shall take effect on July 1, 2020.

**Transitional Aid to Families with Dependent Children Motor Vehicle Disregard  
Effective Date**

1 SECTION 79. Section 50 shall take effect on October 1, 2019.

**Effective Date**

1 SECTION 80. Except as otherwise specified, this act shall take effect on July 1, 2019.

