SENATE DOCKET, NO. FILED ON: 1/12/2009

**SENATE . . . . . . . . . . . . . . No.**

|  |
| --- |
|  |

The Commonwealth of Massachusetts

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

PRESENTED BY:

**Ms. Jehlen**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General  
 Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

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

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

PETITION OF:

|  |  |
| --- | --- |
| Name: | District/Address: |
| Ms. Jehlen | Second Middlesex |

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S00593 OF 2007-2008.]

The Commonwealth of Massachusetts

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**In the Year Two Thousand and Nine**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12A. Expenditures for health services.

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

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

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

(b) Each medical service corporation shall report annually to the Commissioner its total revenues, Massachusetts-associated revenue, total premiums, Massachusetts premiums, total health expenditures, Massachusetts-associated health expenditures, total non-health expenditures, care share, and Massachusetts care share. Such information shall be reported on forms provided by the Commissioner, which shall include all information required by the National Association of Insurance Commissioners’ “Health Maintenance Organization Financial Report of Affairs and Conditions Form,” and such other information as the Commissioner shall deem relevant for determining compliance with the requirements of this section. The Commissioner shall issue regulations specifying the methods for calculating the information to be reported in accordance with this section. The Commissioner shall publish annually the care share and the Massachusetts care share of the medical service corporation doing business in the Commonwealth. All written materials used for advertising and marketing health services contracts to prospective subscribers or groups of subscribers shall include a statement of the corporation’s care share and its Massachusetts care share.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6A. Expenditures for health services.

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

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

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

(b) Each organization operating a health maintenance organization in the Commonwealth shall report annually to the Commissioner its total revenues, Massachusetts-associated revenue, total premiums, Massachusetts premiums, total health expenditures, Massachusetts-associated health expenditures, total non-health expenditures, care share, and Massachusetts care share. Such information shall be reported on forms provided by the Commissioner, which shall include all information required by the National Association of Insurance Commissioners’ “Health Maintenance Organization Financial Report of Affairs and Conditions Form,” and such other information as the Commissioner shall deem relevant for determining compliance with the requirements of this section. The Commissioner shall issue regulations specifying the methods for calculating the information to be reported in accordance with this section. The Commissioner shall publish annually the care share and the Massachusetts care share of each health maintenance organization doing business in the Commonwealth. All written materials used for advertising and marketing health maintenance contracts to prospective members or groups of members shall include a statement of the health maintenance organization’s care share and its Massachusetts care share.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3B. Expenditures for health services.

(a) Each organization that enters into a preferred provider arrangement in the Commonwealth pursuant to this chapter shall expend the following percentage of its Massachusetts-associated revenue as its Massachusetts care share, as defined herein, for the purpose of providing health services to its members:

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

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

(b) Each organization operating in the Commonwealth shall report annually to the Commissioner its total revenues, Massachusetts-associated revenue, total premiums, Massachusetts premiums, total health expenditures, Massachusetts-associated health expenditures, total non-health expenditures, care share, and Massachusetts care share. Such information shall be reported on forms provided by the Commissioner, which shall include all information required by the National Association of Insurance Commissioners’ “Health Maintenance Organization Financial Report of Affairs and Conditions Form,” and such other information as the Commissioner shall deem relevant for determining compliance with the requirements of this section. The Commissioner shall issue regulations specifying the methods for calculating the information to be reported in accordance with this section. The Commissioner shall publish annually the care share and the Massachusetts care share of each organization doing business in the Commonwealth. All written materials used for advertising and marketing preferred provider arrangements to prospective members or groups of members shall include a statement of the organization’s care share and its Massachusetts care share.

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

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

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

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

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

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

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

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

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

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

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

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

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

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