

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:

Ms. Jehlen

DISTRICT/ADDRESS:

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:

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

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

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10 (1) The Massachusetts care share for an insurer with 50,000 or more persons insured for
11 health coverage sold in the Commonwealth and that has been doing business in the
12 Commonwealth for more than one year shall be no less than 90 percent of Massachusetts-

13 associated revenue, and non-health expenditures shall not exceed 10 percent of Massachusetts-
14 associated revenue, for each calendar year.

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

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

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

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

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

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

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(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.

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

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

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

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94 (8) "Massachusetts care share" means the percentage obtained by dividing
95 Massachusetts-associated health expenditures by Massachusetts-associated revenue for a
96 calendar year.

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

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103 12A. Expenditures for health services.

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

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

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

120 (b) Each medical service corporation shall report annually to the Commissioner its total
121 revenues, Massachusetts-associated revenue, total premiums, Massachusetts premiums, total
122 health expenditures, Massachusetts-associated health expenditures, total non-health expenditures,
123 care share, and Massachusetts care share. Such information shall be reported on forms provided
124 by the Commissioner, which shall include all information required by the National Association
125 of Insurance Commissioners' "Health Maintenance Organization Financial Report of Affairs and
126 Conditions Form," and such other information as the Commissioner shall deem relevant for

127 determining compliance with the requirements of this section. The Commissioner shall issue
128 regulations specifying the methods for calculating the information to be reported in accordance
129 with this section. The Commissioner shall publish annually the care share and the Massachusetts
130 care share of the medical service corporation doing business in the Commonwealth. All written
131 materials used for advertising and marketing health services contracts to prospective subscribers
132 or groups of subscribers shall include a statement of the corporation's care share and its
133 Massachusetts care share.

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

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

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

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

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

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

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

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

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

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

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

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

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

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194 (8) "Massachusetts care share" means the percentage obtained by dividing
195 Massachusetts-associated health expenditures by Massachusetts-associated revenue for a
196 calendar year.

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

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207 6A. Expenditures for health services.

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

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214 (1) The Massachusetts care share for a health maintenance organization with 50,000 or
215 more members in health coverage sold in the Commonwealth and that has been doing business in
216 the Commonwealth for more than one year shall be no less than 90 percent of Massachusetts-

217 associated revenue, and non-health expenditures shall not exceed 10 percent of Massachusetts-
218 associated revenue, for each calendar year.

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220 (2) The Massachusetts care share for a health maintenance organization with at least
221 25,000 but not more than 50,000 members in health coverage sold in the Commonwealth and
222 that has been doing business in the Commonwealth for more than one year shall be no less than
223 85 percent of Massachusetts-associated revenue, and non-health expenditures shall not exceed 15
224 percent of Massachusetts-associated revenue, for each calendar year.

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226 (b) Each organization operating a health maintenance organization in the Commonwealth
227 shall report annually to the Commissioner its total revenues, Massachusetts-associated revenue,
228 total premiums, Massachusetts premiums, total health expenditures, Massachusetts-associated
229 health expenditures, total non-health expenditures, care share, and Massachusetts care share.

230 Such information shall be reported on forms provided by the Commissioner, which shall include
231 all information required by the National Association of Insurance Commissioners' "Health
232 Maintenance Organization Financial Report of Affairs and Conditions Form," and such other
233 information as the Commissioner shall deem relevant for determining compliance with the
234 requirements of this section. The Commissioner shall issue regulations specifying the methods
235 for calculating the information to be reported in accordance with this section. The

236 Commissioner shall publish annually the care share and the Massachusetts care share of each
237 health maintenance organization doing business in the Commonwealth. All written materials
238 used for advertising and marketing health maintenance contracts to prospective members or

239 groups of members shall include a statement of the health maintenance organization's care share
240 and its Massachusetts care share.

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

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

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

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

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

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

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

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

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(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.

306 (8) "Massachusetts care share" means the percentage obtained by dividing
307 Massachusetts-associated health expenditures by Massachusetts-associated revenue for a
308 calendar year.

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

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315 3B. Expenditures for health services.

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

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

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(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.

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

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

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

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

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

377
378 (e) For purposes of this section, the following terms shall have the following meanings:

379
380 (1) "Total revenues" means all income and revenues, however derived, including, but not
381 limited to, revenues derived from premium sales, interest, dividends, and other investments, but
382 excluding only income in the form of compensation for administrative services pursuant to a
383 contract or other arrangement for rendering administrative services only to self-funded health
384 plans that are not owned or controlled by the organization.

385
386 (2) "Massachusetts-associated revenue" means Massachusetts premiums plus a
387 proportion of total revenues less total premiums, where said proportion equals Massachusetts
388 premiums divided by total premiums.

389
390 (3) "Total premiums" means all revenue derived from the sale within or outside the
391 Commonwealth of health services contracts and contracts showing evidence of coverage for
392 health services.

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

396

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

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

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

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410 (8) "Massachusetts care share" means the percentage obtained by dividing
411 Massachusetts-associated health expenditures by Massachusetts-associated revenue for a
412 calendar year.