

SENATE No. 475

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. 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
Elizabeth A. Malia	11 th Suffolk
Bruce E. Tarr	First Essex and 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):

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

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

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

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

34 (c) (1) Any insurer that fails to comply with the provisions of this section
35 shall refund to the persons insured by it a percentage of its Massachusetts-associated revenues

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

85 12A. Expenditures for health services.

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

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

94 (2) The Massachusetts care share for a medical service corporation with at least
95 25,000 but not more than 50,000 subscribers for health coverage sold in the Commonwealth and
96 that has been doing business in the Commonwealth for more than one year shall be no less than
97 85 percent of Massachusetts-associated revenue, and non-health expenditures shall not exceed 15
98 percent of Massachusetts-associated revenue, for each calendar year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

160 (8) "Massachusetts care share" means the percentage obtained by dividing
161 Massachusetts-associated health expenditures by Massachusetts-associated revenue for a
162 calendar year.

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

165 6A. Expenditures for health services.

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

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

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

180 (b) Each organization operating a health maintenance organization in the
181 Commonwealth shall report annually to the Commissioner its total revenues, Massachusetts-
182 associated revenue, total premiums, Massachusetts premiums, total health expenditures,
183 Massachusetts-associated health expenditures, total non-health expenditures, care share, and
184 Massachusetts care share. Such information shall be reported on forms provided by the
185 Commissioner, which shall include all information required by the National Association of
186 Insurance Commissioners' "Health Maintenance Organization Financial Report of Affairs and
187 Conditions Form," and such other information as the Commissioner shall deem relevant for
188 determining compliance with the requirements of this section. The Commissioner shall issue
189 regulations specifying the methods for calculating the information to be reported in accordance
190 with this section. The Commissioner shall publish annually the care share and the Massachusetts
191 care share of each health maintenance organization doing business in the Commonwealth. All
192 written materials used for advertising and marketing health maintenance contracts to prospective

193 members or groups of members shall include a statement of the health maintenance
194 organization's care share and its Massachusetts care share.

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

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

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

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

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

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

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

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

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

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

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

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

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

243 (8) "Massachusetts care share" means the percentage obtained by dividing
244 Massachusetts-associated health expenditures by Massachusetts-associated revenue for a
245 calendar year.

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

248 3B. Expenditures for health services.

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

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

258 (2) The Massachusetts care share for an organization with at least 25,000 but not
259 more than 50,000 members in health coverage sold in the Commonwealth and that has been
260 doing business in the Commonwealth for more than one year shall be no less than 85 percent of

261 Massachusetts-associated revenue, and non-health expenditures shall not exceed 15 percent of
262 Massachusetts-associated revenue, for each calendar year.

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

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

283 pay the refund owed by reducing the total premiums payable by its members for the calendar
284 year in which the shortfall is reported by an amount equal to the total shortfall.

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

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

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

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

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

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

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

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

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

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

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

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

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