



March 13, 2013

His Excellency Deval Patrick
State House, Room 360
Boston, MA 02133

Dear Governor Patrick:

On behalf of a broad group of business organizations, brokers and health plans, we are writing relative to our deep concern with the release of final federal Market Reform Rules related to the Affordable Care Act (ACA) and their impact on our state's health reform efforts.

In 2006, Massachusetts struck a unique and delicate balance when the state's universal coverage legislation (Chapter 58 of the Acts of 2006) became law. During that effort, a broad and diverse group of stakeholders, including many signatories to this letter came together to work for the law's passage and its successful implementation. While the road was not always easy, almost seven years later, we can claim extraordinary success as a state that covers 98 percent of its residents in a way that uniquely works for Massachusetts. We write to you to today because federal rules issued as part of the ACA regulatory process threaten to undermine the important and good work we have collectively done over the past seven years. If allowed to stand, these rules will have a profoundly negative impact on 640,000 small group lives in Massachusetts, impacting all small businesses and the premiums they pay for their employees. Massachusetts, while the model for health reform, now stands to be penalized for decisions that we made during Chapter 58's creation and implementation in several ways. Among them:

Elimination of State Rating Rules

The federal regulations eliminate most of the state's important rating factors, reducing the allowable factors from nine to four, permitting only family structure, geographic area, age, and tobacco use. While these changes are expected to lower rates for individuals, they will result in extreme premium increases for a significant number of Massachusetts small employers.

Massachusetts protected individuals in 2006 by merging the non-group market with our small group market. These changes contributed to significant increases for small businesses in the following years. To mitigate some of the effects of the merger, our law continued to include all small group rating factors such as group size and industry, which allow for a spreading of cost in a more equitable manner. These factors will become all the more important given the future inclusion of the 51-100 sized market into our merged market. Additionally, key state regulatory and market reforms, such as the small business cooperatives, were passed in 2010 to protect and empower our small business community. As the co-ops use a rating factor as a financial incentive for wellness, that reform is in danger of being preempted due to the federal rule.

The CMS regulations would endanger the seven years of progress and reforms we have seen in the Commonwealth, and could lead once again to dramatic small business premium increases. We believe these

increases will cause small employers to drop coverage, as well as encourage a movement to self-insure, both of which could lead to increases in health insurance rates for small businesses remaining in the merged market. Massachusetts officials requested a waiver from these provisions in December and that waiver was denied. A year ago, in March 2012, the Division of Insurance contracted with consultants to conduct a Special Examination to understand the potential impact of these rating changes. To date, the Special Examination has not been made public. We believe it is important to release this study immediately so that we are prepared for and can understand more fully the resulting increase in costs. This data may also help illustrate the need for special consideration for Massachusetts and would hopefully trigger a re-examination by federal officials of the waiver denial.

Restrictions on Rate Development

Under the federal rule, states that merged their individual and small group markets must move to make benefits and rates available only once for the entire year. As one of only two states with a merged market, Massachusetts will be seriously and disproportionately impacted by this rule. The impact of this change is that Massachusetts will be disadvantaged over every other state in the nation in how we approach rating our small group market. This seems particularly unsettling as Massachusetts is the model for federal health reform.

The change will require insurers to set their rates once yearly without the benefit of timely claims experience to more accurately develop their rates. Additionally, as the state transitions to one annual rate filing, some small group rates could be in effect for 18 months or longer. These rates may not accurately reflect current market trends and could actually hurt small businesses by requiring them to pay higher premiums without the benefit of renewing at their anniversary date. For example, in November 2012 the Division of Insurance approved average premium base rate increases of 3.6 percent for first quarter rates in 2013 for small businesses and individuals. Three months later, the Division approved average premium base rate increases of 2.7 percent for policies renewing on April 1. The decrease was due in part to lower than expected utilization, along with efforts to lower costs and move to alternative payment methods. If the federal rule was in place in 2013, all small businesses would be required to pay the January rate with none benefitting from the decrease as seen in the subsequent quarter.

Further, small employers will have less access to new products in the market. Restricting new policies to a calendar-year will limit when small employers can take advantage of new coverage offerings, reducing the amount of choice available to them and their employees. Moreover, yearly deductibles, co-insurance and other cost sharing that may be in effect for less than 12 months will create a significant burden for subscribers. We cannot state strongly enough the unprecedented nature of the changes here and their negative, disproportionate impact on the Massachusetts market. We believe that the federal guidance in this particular area can and must be adjusted to more closely reflect the practice in the Massachusetts marketplace.

Other ACA issues

Other ACA provisions, such as member-level rating, the premium tax, and the Essential Health Benefit requirements, will fall disproportionately on small businesses, as most large employers will not be subject to these items. For example, the federal regulations require member-level rating, meaning that larger families will pay more than smaller families. The health insurance premium tax, which does not apply to large, self-insured employers, will cost Massachusetts employers and consumers \$213 million in 2014 and \$3 billion during the next decade. Likewise, as a result of Essential Health Benefits, which applies to individuals and small groups, coverage must now provide pediatric dental benefits. Additionally, existing products will have to be revised to fit within the standards for the ACA's metallic tiers.

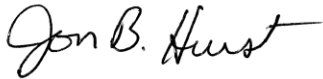
In closing, we believe that in some instances the federal rules can be clarified in a way that will not disadvantage Massachusetts small businesses or undercut our state efforts on health reform. In other instances, we would respectfully request that you seek a waiver from the federal requirements as soon as possible as the state has until March 29, 2013 to notify federal officials of our plans to comply with some provisions of the Act. To that end,

we would request the opportunity to meet with you soon to outline in greater detail the issues raised here and to ask that you communicate our grave concern to those in decision-making roles within the Obama Administration.

Controlling rising health care costs is the critical issue facing the Commonwealth. We applaud your leadership on health care issues and we know you share our interest in ensuring the continued success of our state's health reform efforts and in the stability of our state's small businesses.

We look forward to meeting with you to discuss these issues and would be happy to provide any additional information you need prior to our meeting.

Sincerely,



Jon B. Hurst, President
Retailers Association of Massachusetts



Peter Forman, President & CEO
South Shore Chamber of Commerce
President
MA Association of Chamber of Commerce Executives



Kristen Lepore, Vice President of Government Affairs
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