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September 8, 2017

The Honorable Steven Mnuchin
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Thomas Price, M.D.
Secretary
Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

RE: Massachusetts Request for Transition Relief from Employer Shared Responsibility Requirements

Dear Secretary Mnuchin and Secretary Price,

I am appreciative of the federal government's commitment to working with states to increase state flexibility in complying with the Patient Protection and Affordable Care Act of 2010 ("ACA"). I am writing to formally request an extension of transition relief in the application of the ACA's employer shared responsibility requirements to employers doing business in the Commonwealth; Massachusetts is implementing an equivalent state-specific policy.

For over a decade, Massachusetts has viewed shared responsibility by employers as critical to maintaining the Commonwealth's near-universal coverage rate. Prior to the ACA, Massachusetts enacted a robust state health reform package via the Acts of Chapter 58 of 2006. Among other components, our state law included a state employer shared responsibility program known as the Fair Share Contribution. The state employer contribution was repealed in 2013 in anticipation of the ACA's employer shared responsibility provisions (colloquially known as the "employer mandate").

Since its repeal, the Commonwealth has found that the federal employer mandate is not meeting state needs. Massachusetts employers have invested considerable effort in order to comply with detailed federal reporting requirements, yet the federal penalties have never been enforced. This has created significant challenges for the Commonwealth, wherein responsible employers are tasked with complicated federal reporting requirements, while employers that do not offer coverage do not face any consequences. These shortcomings have resulted in a missed opportunity to help address the continued and unsustainable growth of Massachusetts' public coverage programs, including the Commonwealth's Medicaid program ("MassHealth") and state-based Exchange ("Health Connector").

To remedy this concern, Massachusetts proposes to work with the Treasury Department and the Department of Health and Human Services (“the Departments”), seeking transitional relief from the federal employer mandate and the related reporting requirements, while reviving a comprehensive state approach to ensuring employers appropriately contribute to health coverage effective January 1, 2018. As Governor, I proposed legislation that included reinstating the state’s employer contribution, which was passed by our Legislature in August 2017; at the same time, I indicated that we would seek transitional relief from the federal employer reporting and penalty requirements. Massachusetts requests this flexibility for the period of calendar years 2018 and 2019, which will allow the Commonwealth to implement urgently-needed state measures as a stop-gap while the Internal Revenue Service prepares for implementation, Congress considers longer-term reforms, including broadening opportunities for state flexibility and innovation under ACA Section 1332.

Specifically, I am requesting transitional relief from the implementation of the following federal employer shared responsibility requirements for calendar years 2018 and 2019, for any employer doing business in Massachusetts as applied to employees based in Massachusetts:

- Employer shared responsibility payments under Section 4980H of the Internal Revenue Code (the Code); and
- Employer reporting requirements under Code Section 6056.

I am requesting this transition relief for two primary reasons:

- To ensure that Massachusetts employers receive an appropriate period of notice and technical guidance regarding any implementation of the Section 4980H penalties prior to full implementation;
- To provide my Administration with additional time to seek a permanent remedy to these requirements on behalf of Massachusetts employers, via a Section 1332 waiver or other appropriate mechanisms.

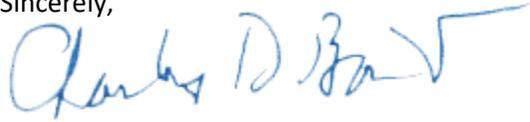
The Treasury Department has authority to grant this relief under Code Section 7805(a), which empowers the Secretary of the Treasury to “prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of [the Code].”¹ The authority has been used repeatedly to postpone the application of new legislation when immediate application would have subjected taxpayers to unreasonable administrative burdens or costs.ⁱ In addition, ACA section 1321(e) provides specific authority to grant relief to Massachusetts, given the Commonwealth’s unique status as a pre-ACA reform state. Providing Massachusetts with additional transition relief in implementing the ACA’s employer mandate would be consistent with previous Treasury Department actions pertaining to all or a subset of employers.

As detailed in the attached Appendix, the Commonwealth does not seek to abrogate employer shared responsibility requirements during this period of transitional relief. Rather, Massachusetts has enacted a state-specific approach to employer shared responsibility that meets the market needs of the Commonwealth, reflects the history of Massachusetts’ pre-ACA state reforms, and offers an equivalent policy solution that will ensure an appropriate balance between employer-sponsored insurance and public coverage without diminishing the coverage gains Massachusetts values so deeply.

¹ 26 U.S. Code § 7805(a).

Thank you for your continued engagement on this matter. I appreciate the commitment your Departments have shown in partnering with states to implement the ACA in a manner that recognizes state innovation and flexibility.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles D. Baker". The signature is fluid and cursive, with a prominent vertical stroke on the right side.

Charles D. Baker
Governor

APPENDIX: MASSACHUSETTS REQUEST FOR TRANSITION RELIEF FROM EMPLOYER SHARED RESPONSIBILITY REQUIREMENTS, GIVEN EQUIVALENT STATE-SPECIFIC POLICY

I. BACKGROUND

Previous State Employer Shared Responsibility Program

Prior to the ACA, Massachusetts enacted a comprehensive employer shared responsibility program that included five components administered jointly by the Department of Unemployment Assistance and the Health Connectorⁱⁱ:

- Fair Share Contribution (FSC)ⁱⁱⁱ: Massachusetts employers with 11 or more employees were required to make a “fair and reasonable” contribution toward the health care costs of their employees, or pay an annual “fair share contribution” of up to \$295 per full-time equivalent employee.
- Section 125 Cafeteria Plans^{iv}: Massachusetts employers subject to the FSC that had non-benefit-eligible employees were required to establish a cafeteria plan under Section 125 of the Internal Revenue Code (the Code) that allowed these employees to purchase nongroup health insurance using pre-tax wages, without any contribution by the employer. The requirement was designed to give part-time workers and other non-benefit-eligible employees the opportunity to obtain tax advantages in purchasing health insurance, similar to those received by benefits-eligible employees.
- Health Insurance Responsibility Disclosure (HIRD)^v: Massachusetts employers subject to the FSC were required to submit annual and quarterly HIRD forms listing their full and part-time employees, whether offers of insurance were provided and accepted, and whether offers of Section 125 plans were provided and accepted.
- Free Rider Surcharge^{vi}: Massachusetts employers subject to the FSC that did not offer a Section 125 plan for non-benefits-eligible employees and whose employees accessed medical care through Massachusetts’ Health Safety Net program could be assessed a penalty between 20-100% of the cost of any medical services received by the employee that exceeded \$50,000.
- Eligibility Firewall^{vii}: Under the Health Connector’s pre-ACA eligibility rules, non-disabled adults could not access state and federal subsidies via the Health Connector if they had access to employer-sponsored insurance. The standards for this eligibility firewall were more extensive than the ACA’s requirements for Exchange premium tax credits, and many of the impacted population are now eligible for Medicaid Expansion, which does not include a firewall.

Together, these state policies were successful in promoting a balance between employer-sponsored insurance and public coverage programs. Upwards of 95 percent of Massachusetts employers met the standards,^{viii} while the remaining non-compliant employers generated approximately \$17 million annually, used to fund the Health Connector’s subsidized coverage.^{ix}

While Massachusetts’ approach was effective, the Commonwealth repealed its state employer shared responsibility provisions in 2014 as part of ACA implementation due to concerns about burdening employers with duplicative requirements and penalties.^x

Evidence of Declines in Employer-Based Coverage

In the years since the Commonwealth repealed its state approach to employer shared responsibility, Massachusetts' insurance market has shown growth in public coverage and declines in employer-sponsored insurance. Since December 2013, the number of people with MassHealth coverage increased by 349,000 new enrollees^{xi} while employer-sponsored coverage declined by 112,000 enrollees.^{xii}

While this market shift has been driven by multiple factors, including labor market and population trends that pre-dated the ACA, these macroeconomic trends do not alone account for the change. For example, the decline in employer-sponsored insurance from 2013 to 2016 occurred even as employment in the Commonwealth increased by 128,500 over the same time period.^{xiii} Based on this employment growth, the Commonwealth would expect to see unsubsidized commercial enrollment that is several hundred thousand greater than it is today. However, data indicates there are other factors at play: roughly 40 percent of the shift appears to be attributable to a decline in coverage through employers,^{xiv} due to both lower employee uptake and employer offer rates.

Overall, the majority of Massachusetts employers continue to offer health insurance to their employees, with over 65 percent of all employers offering in 2016. However, the offer rate dropped among smaller employers with between 3-24 employees from 2009 to 2016.^{xv} See *Figure 1*. Many of these groups were subject to Massachusetts' version of employer shared responsibility, but are not subject to the federal version.

Similarly, 75 percent of eligible Massachusetts employees chose to enroll in a plan in 2016. However, the take-up rate fell notably among smaller employers with between 25-49 employees from 2009-2016.^{xvi} See *Figure 2*. While Massachusetts coverage options prior to the ACA generally would have barred these employees from seeking subsidized coverage, ACA standards are more lenient – for example, income-eligible employees may seek coverage through Medicaid Expansion even if an offer of employer-sponsored coverage is available.

Though Massachusetts remains firmly committed to universal coverage for its residents, the Commonwealth cannot afford this trend away from employer-sponsored insurance. The state's Medicaid program, MassHealth, now accounts for 40 percent of the state budget and covers 30 percent of Massachusetts residents.^{xvii} It is clear that the federal employer mandate, while aligned with Massachusetts' own policy goals, is not sufficient to maintain balance between public and employer-based coverage.

Figure 1. Offer Rates by Establishment Size, 2009-2016.

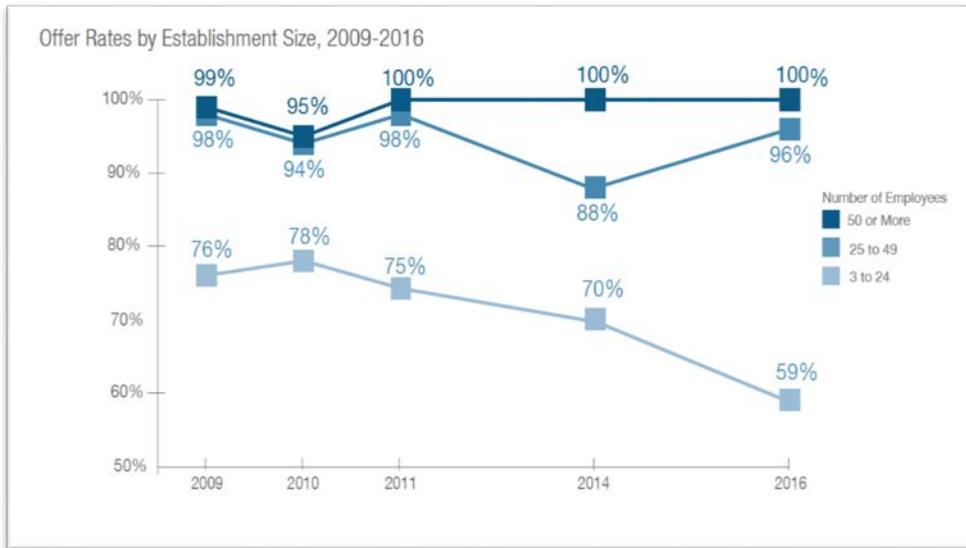
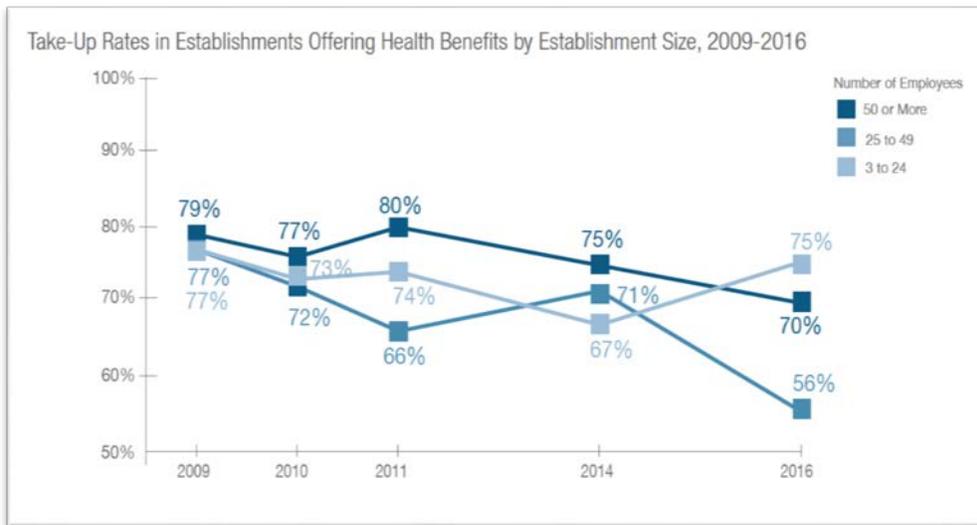


Figure 2. Take-Up Rates by Establishment Size, 2009-2016.



Federal Employer Shared Responsibility Approach

The ACA introduced several provisions that collectively form the federal employer mandate. At a high level, these provisions require employers with over 50 full-time equivalents to offer coverage that meets affordability and actuarial/minimum value standards or pay a penalty. Specifically:

- Code Section 6056 requires annual information reporting by applicable large employers (ALEs) relating to any health insurance that the employer offers or does not offer to its full-time employees. Generally, employers with 50 or more full-time equivalents are considered ALEs. These employers are required to report information to the IRS about whether they offered coverage to employees, via Form 1094-C (“Transmittal of Employer-Provided Health Insurance Offer and

Coverage Information Returns”) and Form 1095-C (“Employer Provided Health Insurance Offer and Coverage”). ALEs are also required to send the Form 1095-C to each employee.

- Code Section 4980H(a) imposes an assessable payment on an ALE that fails to offer minimum essential coverage to at least 95% of its full-time employees (and their dependents) under an eligible employer-sponsored plan, if at least one full-time employee enrolls in a qualified health plan for which a premium tax credit is allowed or paid. The amount of the payment is \$2,000 annually per employee for the number of full-time employees minus 30, calculated on a monthly basis.
- Code Section 4980H(b) imposes an assessable payment on an ALE that offers minimum essential coverage to at least 95% of its full-time employees (and their dependents) under an eligible employer-sponsored plan, but has one or more full-time employees who enroll in a qualified health plan for which a premium tax credit is allowed or paid (for example, if the coverage offered does not meet federal standards for affordability or minimum value). The amount of the payment is \$3,000 annually per full-time employee who receive the premium tax credit, or the payment calculated under Section 4980(a), whichever is less, calculated on a monthly basis.

II. REQUEST: RELIEF FROM EMPLOYER SHARED RESPONSIBILITY REQUIREMENTS

As part of a comprehensive effort to rebalance employer shared responsibility under the Commonwealth’s commitment to universal coverage, Massachusetts seeks immediate relief, for at least calendar year 2018 and 2019, from Code Sections 6056 and 4980H for applicable large employers doing business in Massachusetts with respect to any Massachusetts-based employees. Applicable entities in Massachusetts would continue to comply with all other legal requirements, including Code Section 6055, which requires annual information reporting by health insurance issuers, self-insuring employers, government agencies, and other providers of health coverage.

III. RATIONALE: NEED FOR FLEXIBILITY GIVEN FEDERAL DELAY AND LIMITED SCOPE

Because the ACA stated that the federal employer mandate would be effective starting in 2014, Massachusetts employers made a good faith effort to comply with the federal approach, investing considerable time to transitioning from the previous state employer contribution.^{xviii} The Commonwealth acknowledges and appreciates these efforts by employers, but unfortunately they have not yielded the intended results because the federal implementation process has not been implemented, contains gaps that limit its impact, and does not meet our unique state’s needs

Implementation Delays Have Limited Effectiveness of the Federal Mandate

Though the federal mandate was scheduled to take effect in 2014, the Administration made widespread transition relief available in tax years 2014 and 2015 and show no sign of fully implementing it for 2016. To the Commonwealth’s knowledge, federal implementation of the employer mandate has been delayed or non-enforced for virtually all Massachusetts employers. *See Figure 3.*

Figure 3. Delays in Implementing the Federal Employer Shared Responsibility Provisions.

Tax Year	Departments’ Transition Relief Policy
2014	Comprehensive transition relief – no payments owed and no reporting required. ^{xix}
2015	Transition relief remained available for many employers, including: ^{xx}

	<ul style="list-style-type: none"> • Employers with fewer than 100 full-time employees in 2014 owed no payments provided certain conditions were met regarding the employer’s maintenance of workforce and pre-existing health coverage; • Employers with at least 100 full-time employees were afforded a relaxation in the calculation of the penalty, allowing an 80 employee reduction rather than a 30 employee reduction; • Employers were afforded a relaxation of the requirement that 95% of full-time employees are eligible for coverage, instead requiring only a 70% threshold; • Employers were afforded a relaxation of the requirement to offer coverage to full-time employees’ dependents, provided certain conditions were met; • Employers were permitted a shorter 6-month period for determining ALE status, rather than a 12-month status; • Employers were permitted to adopt a transition measurement period for determining full-time employee status that is between six and 12 months; • Employers sponsoring non-calendar year plans were afforded additional time to come into compliance, in line with their plan’s yearly renewal, provided certain conditions were met; and • Employers offering coverage prior to the first payroll period of January 2015 are deemed compliant for January 2015.
2016 and Beyond	<p>While formal transition relief has not yet been made available for 2016 or later years, it appears that the IRS is not yet fully administering the federal employer mandate. An April 2017 evaluation by the Treasury Inspector General for Tax Administration indicates that the IRS has experienced significant operational readiness issues with respect to systems needed to identify and calculate penalties for noncompliant ALEs.^{xxi} The report indicates, among other outstanding issues:</p> <ul style="list-style-type: none"> • The development and implementation of key systems needed to identify noncompliant employers have been delayed, not initiated, or cancelled; • Other filing season priorities delayed processing paper information returns; and • Programming errors inaccurately identifies employers as noncompliant ALEs.

While it is possible that the IRS will move forward with a more robust implementation in the coming tax years, the IRS has not yet given any indication it will do so. The IRS has indicated that it intends to issue sub-regulatory guidance to provide more specific information prior to assessment of the employer penalties.^{xxii} The fact that IRS has not yet done so for the ACA’s employer shared responsibility provisions suggests that there will be additional delays..

Federal Mandate Does Not Extend to Key Circumstances

In addition to enforcement delays, the federal employer mandate is limited in its impact because it does not extend to the full range of circumstances under which an employer’s workers might seek public coverage.

The federal mandate penalty is only designed to be triggered if an ALE has an employee that accesses premium tax credits through an Exchange, and if no safe harbor applies. This scheme does not address a number of other circumstances, such as:

- The employer is not an ALE – for example, an employer with 49 full-time equivalents will not be subject to the penalty;
- The employee accesses subsidized coverage programs other than the premium tax credit – for example, a worker that accesses Medicaid or state safety net programs will not trigger the penalty; or
- The employer’s offer of insurance meets safe harbor standards – for example, the employer is generally exempt from penalties if the offer is affordable based on wages paid to the employee, even if the employee can still receive the premium tax credit.

In these and other circumstances, the federal mandate may inadvertently permit or encourage employers to rely on public coverage programs rather than employer-sponsored insurance.

IV. STATE ALTERNATIVE SHARED RESPONSIBILITY PROGRAM

Given that the ACA’s employer mandate has not been implemented and Massachusetts’ pressing need to rebalance employer-based and public coverage, the Commonwealth is moving forward to implement its own employer contribution program.

In January 2017, Governor Baker introduced a package of reforms to the state Legislature that proposed reviving a state-based employer contribution. After months of dialogue with the state Legislature and stakeholders, the Baker-Polito Administration proposed a compromise employer contribution approach^{xxiii} that was enacted on July 7, 2017 and signed into law August 1, 2017.^{xxiv}

The new state law builds on the Employer Medical Assistance Contribution (EMAC), the assessment on employers doing business in the Commonwealth with over six employees (part and full time) that Massachusetts retained when repealing the Fair Share Contribution. Starting January 1, 2018, EMAC will include a temporary two-tiered structure, scheduled to sunset after two years. *See Figure 4.*

Figure 4. Massachusetts’ Tiered Employer Contribution Structure.

Tier	Goal	Rate
Tier 1	Broad-based funding mechanism to support public coverage.	Raises the current EMAC rate from 0.34% of annual wages to 0.51% of annual wages, up to an annual per-employee wage cap of \$15,000. This would raise the rate from \$51 per employee to \$77 per employee.
Tier 2	Targeted penalty, only for employers with employees that access subsidized public coverage via MassHealth or the Health Connector.	For each non-disabled employee on public coverage, employers must pay an additional 5% of annual wages, up to an annual per-employee wage cap of \$15,000.

The revised EMAC program will continue to be administered via the state Department of Unemployment Assistance (DUA), but will feature a revived HIRD form to ensure accurate reporting by employers. The DUA is prepared to implement these new processes effective January 1, 2018, including the issuance of

regulatory guidance. Funds collected from the contribution will be deposited in the Commonwealth Care Trust Fund for use to support public coverage programs.

Together with ongoing state reforms, the Commonwealth anticipates that this proposal will serve as the first step toward slowing the trend toward public coverage where employer-sponsored insurance may be available. Massachusetts' approach has several advantages over the federal employer mandate:

- **Broader Applicability:** The state employer contribution will apply to employers with six or more employees, while the federal employer mandate generally applies only to employers with fifty or more employees (including full-time equivalents). This broadened applicability will allow the Commonwealth to better address the market segments where the starkest declines in employer-sponsored coverage are occurring.
- **Immediate Effectiveness:** The state employer contribution will begin January 1, 2018. Massachusetts will be able to manage this implementation toward a successful near-term roll-out, rather than relying on the federal system, which could continue to experience delays.
- **Administrative Simplicity:** The state employer contribution will leverage an existing reporting and contribution system that employers doing business in Massachusetts use for unemployment insurance reporting and administration of the existing EMAC assessments. Any additional reporting will build off Massachusetts' pre-ACA HIRD process, a reporting structure that will be familiar to most employers doing business in Massachusetts.
- **Shared Savings:** Because Tier 2 of the state employer contribution is tied to employees' enrollment in MassHealth and subsidized Health Connector coverage, the Commonwealth anticipates a chilling effect on employers' reliance on these public programs to cover their low-income workers. Under the federal employer mandate, employers do not face a penalty if their employees take up coverage in MassHealth, and smaller employers are exempt from the penalty for subsidized Health Connector coverage. The state employer contribution addresses these gaps, encouraging employers to provide employer-sponsored insurance for a broader swath of their employees. This will reduce subsidized coverage expenditures for both the Commonwealth and the federal government, offsetting future federal revenue that may be anticipated from the employer mandate.^{xxv} While employer-sponsored insurance is excluded from income for federal tax purposes, the low incomes of affected employees means that any associated reduction in federal income tax revenue would be minimal.
- **Complementary Reforms:** The state employer contribution is designed to complement other state initiatives, such as ongoing efforts to improve program integrity, maximize premium assistance, and explore innovative mechanisms to encourage employer-sponsored insurance.^{xxvi} Massachusetts expects to continue to seek opportunities to use its revived HIRD forms to build stronger mechanisms to protect against inappropriate state and federal liability for subsidies.

V. FORM OF FLEXIBILITY

Given the immediate need for a state program and the continued non-enforcement of federal provisions, the Commonwealth requests flexibility. .

The Commonwealth sees two immediate sources of authority for such relief. First, the Departments could grant transition relief to the Commonwealth under ACA Section 1321(e), which provides a presumption of compliance for Massachusetts given its history of state reform. This provision states:

“(1) In general. In the case of a State operating an Exchange before January 1, 2010, and which has insured a percentage of its population not less than the percentage of the population projected to be covered nationally after the implementation of this Act, that seeks to operate an Exchange under this section, the Secretary shall presume that such Exchange meets the standards under this section unless the Secretary determines, after completion of the process established under paragraph (2), that the Exchange does not comply with such standards. (2) Process. The Secretary shall establish a process to work with a State described in paragraph (1) to provide assistance necessary to assist the State’s Exchange in coming into compliance with the standards for approval under this section.”

In the past, Massachusetts has worked collaboratively with the Departments to identify areas where flexibility may be appropriate, given the Commonwealth’s unique health reform and coverage expansion efforts. In these past discussions, the Departments have recognized that flexibility under Section 1321(e) is warranted for insurance market issues that extend beyond the minimum federal functions of an Exchange, given the fact that the Health Connector has authority over a variety of insurance market issues that exceed the role of other state-based Exchanges. Because the Health Connector played an active role in administering the pre-ACA state employer contribution and would continue to do so under the new state program, such flexibility may be appropriate for the current request.

More broadly, the Departments have authority to grant transition relief in a broad or targeted fashion when implementing new laws such as the ACA. The Treasury Department has previously issued relief via its long-standing administrative authority under Section 7805(a) of the Internal Revenue Code, which has been used to postpone the application of new legislation when immediate application would have subjected taxpayers to unreasonable administrative burdens or costs.^{xxvii}

Under either or both of these authorities, Massachusetts respectfully requests relief the federal employer mandate. Given the transitional nature of Massachusetts’ state employer contribution approach, Massachusetts would expect that any such flexibility could be re-evaluated on a regular basis to ensure that the state approach continues to suffice.

The Commonwealth would appreciate the opportunity to discuss how such flexibility could be implemented in a fashion that meet the Departments’ needs. Under one possible implementation pathway, the IRS could instruct employers to continue to count Massachusetts-based employees toward the definition of an applicable large employer, but permit employers to remove these employees when reporting under Section 6056. This approach would reduce reporting burdens for these employers and eliminate the possibility that Massachusetts-based employees could trigger Section 4980H penalties, without requiring significant changes to the processes or operations of the IRS. The Commonwealth is open to other possible implementation processes that may be suggested by the Departments.

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- ⁱ See generally, Testimony of J. Mark Iwry, Senior Advisor to the U.S. Department of Treasury, Before the House Energy and Commerce Subcommittee on Oversight and Investigations (July 18, 2013), available at: <https://murphy.house.gov/uploads/iwry.pdf>.
- ⁱⁱ Prior to the Health Connector's regulatory role in the Fair Share Contribution and HIRD policies, the Massachusetts Division of Health Care Finance and Policy set and governed these regulations.
- ⁱⁱⁱ Chapter 58 of the Acts of 2006, 956 CMR 11.00 (repealed, 2014).
- ^{iv} Chapter 58 of the Acts of 2006, 956 CMR 4.00 (repealed, 2014).
- ^v Chapter 58 of the Acts of 2006, 956 CMR 10.00 (repealed, 2014).
- ^{vi} Chapter 58 of the Acts of 2006, 956 CMR 9.00 (repealed, 2014).
- ^{vii} Chapter 58 of the Acts of 2006, 956 CMR 3.00 (repealed, 2014).
- ^{viii} See, e.g., Worcester Business Journal, "Briefing: Fair Share Health Insurance Contributions" (Sept. 26, 2011), available at: www.wbjournal.com/article/20110926/PRINTEDITION/309269973/briefing-fair-share-health-insurance-contributions.
- ^{ix} Information on file.
- ^x The Fair Share Contribution was repealed effective July 1, 2013 via Chapter 38 of the Acts of 2013 (the Fiscal Year 2014 budget). The Section 125 Requirement, HIRD, and Free Rider Surcharge were repealed on March 17, 2014 in Chapter 52 of the Acts of 2014.
- ^{xi} Note: This number does not include MassHealth members who are enrolled in Medicare, commercial plans or MassHealth Limited.
- ^{xii} Center for Health Information and Analysis, "Enrollment Trends Databook" (March 2017), available at: <http://www.chiamass.gov/enrollment-in-health-insurance/>. See also: Executive Office of Health and Human Services, "Massachusetts Insurance Market Reforms" (Feb. 23, 2017), on file.
- ^{xiii} Bureau of Labor Statistics, "Employed individuals in Massachusetts" (as of Dec. 2013), available at: <https://www.bls.gov/data/>.
- ^{xiv} Executive Office of Health and Human Services, *Ibid*.
- ^{xv} Center for Health Information and Analysis, "Massachusetts Employer Survey: 2016" (March 2017), available at: <http://www.chiamass.gov/massachusetts-employer-survey/>.
- ^{xvi} Center for Health Information and Analysis, "Massachusetts Employer Survey: 2016" (March 2017), available at: <http://www.chiamass.gov/massachusetts-employer-survey/>.
- ^{xvii} "Baker's Health Price Cap Plan May Be Seen As A Hybrid Between A Free And Regulated Market" (Jan. 26, 2017), available at: www.wbur.org/commonhealth/2017/01/26/price-caps-masshealth-baker
- ^{xviii} For example, one major employer association indicated in a Health Connector public stakeholder meeting on October 16, 2015 that its employer members were spending between \$5,000-\$10,000 on an ongoing basis on vendors or software to assist in compliance reporting.
- ^{xix} Internal Revenue Service, "Notice 2013-45: "Transition Relief for 2014 Under §§ 6055 (\$ 6055 Information Reporting), 6056 (\$ 6056 Information Reporting) and 4980H (Employer Shared Responsibility Provisions)" (July 9, 2013), available at: www.irs.gov/pub/irs-drop/n-13-45.pdf.
- ^{xx} Internal Revenue Service, "Shared Responsibility for Employers Regarding Health Coverage" 79 FR 8543 (Feb. 12, 2014), available at: www.federalregister.gov/documents/2014/02/12/2014-03082/shared-responsibility-for-employers-regarding-health-coverage#footnote-12-p8570.
- ^{xxi} Treasury Inspector General for Tax Administration, 2017-43-027: "Affordable Care Act: Assessment of Efforts to Implement the Employer Shared Responsibility Provisions" (April 7, 2017), available at: www.treasury.gov/tigta/auditreports/2017reports/201743027fr.pdf.
- ^{xxii} IRS, "Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act, Question 57", available at: <https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act>.
- ^{xxiii} Associated Industries of Massachusetts Blog, "Governor, Business Community Reach Compromise on Health Assessment" (June 20, 2017) <http://blog.aimnet.org/aim-issueconnect/governor-business-community-reach-compromise-on-health-assessment>
- ^{xxiv} Chapter 63 of the Acts of 2017, available at: <https://malegislature.gov/Laws/SessionLaws/Acts/2017/Chapter63>.
- ^{xxv} The Commonwealth is aware that the Office of Management and Budget has projected receipts from collection of the employer mandate penalty. (See Supplemental Materials to the President's Budget, FY 18, available at www.whitehouse.gov/omb/budget/Supplemental). The Commonwealth respectfully suggests that these figures overstate receipts for the first years of enforcement, given the outstanding guidance needed to collect this revenue and the status of the mandate as an assessable penalty requiring proactive enforcement. In addition, the high rate of employers offering coverage in Massachusetts and the incentive created by the state employer contribution will likely result in Massachusetts employers accounting for only a very small share of any actual receipts collected, even absent any transition relief. The Commonwealth is

prepared to engage in further dialogue with the Departments regarding deficit neutrality via a longer-term Section 1332 waiver, but requests immediate relief in the meantime.

^{xxvi} For example, the Baker-Polito Administration proposed introducing an employer-sponsored insurance “firewall” for Medicaid similar to that applicable to Exchange coverage as part of the FY 2018 budgeting process. While it has not yet been approved by the state Legislature, the Baker Administration will continue to consider and propose similar measures to ensure program integrity and an appropriate balance between public and private coverage.

^{xxvii} *See generally*, Testimony of J. Mark Iwry, Senior Advisor to the U.S. Department of Treasury, Before the House Energy and Commerce Subcommittee on Oversight and Investigations (July 18, 2013), available at: <https://murphy.house.gov/uploads/iwry.pdf>.