

AN ACT EXPANDING ACCESS TO HEALTH CARE, REDUCING YOUTH SMOKING AND THE USE OF TOBACCO PRODUCTS, AND IMPROVING THE PUBLIC HEALTH IN THE COMMONWEALTH

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

SECTION 1. The second sentence of section 2FF of chapter 29 of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by striking out the words “sections seven A and seven B of chapter sixty-four C” and inserting in place thereof the following words:- sections 7A, 7B, 7D, and 7E of chapter 64C.

SECTION 2. The last sentence of the first paragraph of said section 2FF, as most recently amended by section 54 of chapter 159 of the acts of 2000, is hereby further amended by striking out the words “(c) a program of primary and preventive health care for children from birth through age 18 authorized pursuant to the provisions of section 24G of chapter 111” and inserting in place thereof the following words:- (c) a program of primary and preventive health care for children from birth through age 18 authorized pursuant to the provisions of section 24G of chapter 111; (d) a program of primary and preventive health care for adults authorized pursuant to the provisions of section 24K of chapter 111; and (e) the community health worker outreach program established by section 24L of chapter 111.

SECTION 3. Chapter 64C of the General Laws is hereby amended by inserting after section 5 the following section:-

Section 5A. The department shall aggressively seek to collect all excises imposed by this chapter from residents of the commonwealth who purchase cigarettes and tobacco products in interstate commerce. The department shall, pursuant to section 376 of title 15 of the United State Code, seek statements from persons selling cigarettes in interstate commerce to residents of the commonwealth and obtain the monthly invoices covering all such shipments of cigarettes into the commonwealth, as required by such section. Such invoices shall, as authorized by said section 376, include the name and address of the person to whom the cigarette shipment was made, the brand, the quantity thereof, and the amount paid. Upon receipt of such information, the department shall make all reasonable efforts to collect all excises due under this chapter.

The department shall provide information received pursuant to this section to the department of public health. The department shall report every six months to the house and senate committees on ways and means and the joint committee on health care on the steps taken to enforce the provisions of this section and the amounts collected pursuant to collection activities mandated by this section.

SECTION 4. Said chapter 64C is hereby further amended by inserting after section 7C the following two sections:-

Section 7D. (a) In addition to the excise imposed by sections 6, 7A, and 7C, every licensee who is required to file a return under section 16 of chapter 62C shall, at the time

of filing such a return, pay to the commissioner an excise equal to 25 mills for each cigarette so sold during the calendar month covered by the return; provided, however, that cigarettes with respect to which the excise under this section has once been imposed and has not been refunded, if paid, shall not be subject upon a subsequent sale to the excise imposed by this section. In addition to the excise imposed by sections 6, 7A and 7C, each unclassified acquirer shall, at the time of filing a return required by said section 16 of chapter 62C, pay to the commissioner an excise equal to 25 mills for each cigarette so imported or acquired and held for sale or consumption, and cigarettes with respect to which such excise has been imposed and has not been refunded, if paid, shall not be subject, when subsequently sold, to any further excise under this section.

Notwithstanding the excise on cigarettes imposed by the provisions of this section, the excise imposed by this section shall equal 50 percent of the price paid by such licensee or unclassified acquirer to purchase smokeless tobacco so sold, imported or acquired.

(b) Except as the provisions of this section expressly provide to the contrary, all of the provisions of this chapter and of chapter 62C relative to the assessment, collection, payment, abatement, verification, and administration of taxes, including penalties, shall, so far as pertinent, be applicable to the excise imposed by this section.

(c) Notwithstanding the provisions of section 28, all revenues received pursuant to this section, together with any penalties, forfeitures, interest, cost of suits and fines collected in connection therewith, less all amounts refunded or abated in connection therewith, all as determined by the commissioner of revenue according to his best information and belief, shall be credited to the Children's and Seniors' Health Care Assistance Fund, established pursuant to section 2FF of chapter 29.

(d) Any cigarette which does not contain nicotine shall be exempt from the excise herein referred.

Section 7E. (a) In addition to the excise imposed by section 7B, and notwithstanding the excise imposed by sections 6, 7A, and 7D, every licensee who is required to file a return under section 16 of chapter 62C for products sold by such licensee in the commonwealth shall, at the time of filing such a return, pay to the commissioner an excise that shall equal 30 percent of the price paid by such licensee or unclassified acquirer to purchase cigars and smoking tobacco so sold, imported or acquired and held for sale or consumption in the commonwealth, and such tobacco products with respect to which such excise has been imposed and has not been refunded, if paid, shall not be subject, when subsequently sold, to any further excise under this section.

(b) Except as the provisions of this section expressly provide to the contrary, all of the provisions of this chapter and of chapter 62C relative to the assessment, collection, payment, abatement, verification, and administration of taxes, including penalties, shall, so far as pertinent, be applicable to the excise imposed by this section.

(c) Notwithstanding the provisions of section 28, all revenues received pursuant to this section, together with any penalties, forfeitures, interest, cost of suits and fines collected in connection therewith, less all amounts refunded or abated in connection therewith, all as determined by the commissioner of revenue according to his best information and belief, shall be credited to the Children's and Seniors' Health Care Assistance Fund, established pursuant to section 2FF of chapter 29.

SECTION 5. The first paragraph of section 24G of chapter 111 of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by striking out clause (4) and inserting in place thereof the following clause:-

(4) smoking and tobacco use cessation treatment and information, and the provision of smoking and tobacco use prevention, educational information and materials to an enrolled youth and to the parent, guardian or person with whom an enrollee resides.

SECTION 6. Said chapter 111 is hereby further amended by inserting after section 24J the following two sections:-

Section 24K. There is hereby established the Adult Medical Security Plan, a program of managed care to provide primary and preventive health care services for eligible uninsured residents of the commonwealth above age 18. The department shall establish eligibility criteria for the program, which shall require that

(a) an eligible person's financial eligibility, as determined by the department, shall be less than 300 percent of the federal poverty level;

(b) an eligible person shall be ineligible for medical benefits pursuant to chapter 118E and ineligible for any similar program of comprehensive medical benefits from the commonwealth;

(c) an eligible person shall be ineligible for benefits under the Medicare program; and

(d) an eligible person shall not be eligible for employer-provided health insurance; provided, however, that the department shall specify by regulation minimum standards for employer-provided health insurance, including cost-sharing requirements, premium contribution requirements, medical benefits and other criteria of employer-provided health insurance that disqualifies a person for eligibility for said program.

Said program shall be administered by the department subject to appropriation from the Children's and Seniors' Health Care Assistance Fund established pursuant to section 2FF of chapter 29 and other appropriated funds.

The department shall determine the benefits and services available to participants in said program; provided, that the average cost per enrolled person of such benefits and services shall not generally exceed one-half of the average cost of benefits provided to non-disabled beneficiaries enrolled in the MassHealth Standard plan, so called; and provided further, that the benefits and services of the program shall include:

(1) preventive care in a participating doctor's office, community health center, or health maintenance organization; provided that services provided by a participating independent laboratory for diagnostic laboratory tests shall be reimbursed by said program;

(2) sick visits in a participating doctor's office, community health center, or health maintenance organization; and

(3) smoking and tobacco use cessation treatment and information and the provision of smoking and tobacco use prevention educational information and materials.

In determining such other benefits and services that may be offered by the program, the department shall use as a model the services provided under section 24G, as appropriate.

The department shall establish cost-containment measures designed to ensure that only medically necessary services are reimbursed by said program. The schedule, scope,

maximum dollar coverage and duration of the benefits established by this section may be revised by the department to ensure that the costs of said program are limited to the funds appropriated therefor.

Enrollees whose household income is 200 percent or less of the federal poverty level shall not pay premiums to participate in the program. Such enrollees shall be deemed financially unable to pay for hospital services for purposes of the definition of “free care” in section 1 of chapter 118G, and such status shall be noted on any enrollment card or notification materials provided to such enrollees.

The cost of said program shall be funded in part by premiums contributed by enrollees whose household income is greater than 200 percent of the federal poverty level. Such enrollees shall pay a monthly premium of 50 dollars. Household earnings may be defined on the basis of gross earnings, or on an adjusted basis according to criteria deemed appropriate by the department. The department may also require all enrollees to pay reasonable co-payments in connection with the use of services, provided, that the division may waive copayments upon a finding of substantial financial or medical hardship. Said co-payments shall be designed to encourage the cost-effective and cost conscious use of services.

Premiums and copayments contributed by enrollees shall be deposited in the Children's and Seniors' Health Care Assistance Fund, established by section 2FF of chapter 29 and may be used for said program subject to appropriation.

The department shall promulgate regulations necessary to implement the requirements of this section.

Applications for said program shall be coordinated with applications for medical benefits pursuant to chapter 118E, and shall use the single application form provided for by section 41 of chapter 170 of the acts of 1997. The department shall use funds made available for this program for community outreach services to encourage enrollment and promote the public health. Priority for such grants shall be given to organizations that work with communities with high rates of uninsurance.

The department shall report quarterly to the house and senate committees on ways and means and to the joint committee on health care on enrollment demographics, claims expenditures and the annualized costs of said program. The department shall file notice with said committees and the secretaries of the executive office of administration and finance and family services not less than thirty days before modifying program benefits and eligibility standards that are intended to ensure that program costs are limited to the funds appropriated therefor.

The program established by this section shall not give rise to enforceable legal rights in any party or an enforceable entitlement to the services funded herein and nothing stated herein shall be construed as giving rise to such enforceable legal rights or such enforceable entitlement.

Section 24L. The department shall, subject to appropriation, establish a community health worker outreach program to provide community-based education and health promotion activities to communities facing barriers to health care services in the commonwealth and to enhance the community health worker workforce..

Said program shall prepare a comprehensive outreach services plan, which shall be updated and filed with the house and senate committees on ways and means and the committee on health care annually. Said plan shall identify barriers to health care

services, including cultural and language differences between health care providers and their patients, limited accessibility of health care facilities and providers, lack of transportation, inadequate understanding of MassHealth and other health care programs by eligible persons, and providers who are unfamiliar with community needs. Said plan shall detail a strategy for providing community-based education and health promotion services to reduce such barriers and improve public health. Such strategy shall include

(a) activities to bridge cultural, linguistic and logistical gaps between health care providers and communities facing such barriers, particularly minority and low-income communities;

(b) activities to achieve increased awareness of and higher rates of enrollment in MassHealth and other health programs available to such persons, including the uncompensated care pool;

(c) activities to increase the use of primary care and reduce inappropriate use of hospital emergency rooms; and

(d) activities to improve the health status of such communities, including health education, information and referral services, and other activities.

Said program shall establish an advisory board, representing communities with high rates of uninsurance or facing barriers to health care services throughout the commonwealth. Said advisory board shall review the activities of the program, assist in the preparation and implementation of the comprehensive outreach services plan, and advise the department on the activities of said program.

Said program shall, subject to appropriation, contract with organizations providing community health outreach services to implement said plan. Preference in such contracts shall be given to organizations familiar with the communities to be served and known to members of that community. Said program shall institute a training curriculum and community health worker certification program for such organizations to insure high standards and quality of services.

Said program shall, subject to appropriation, expend no more than 10 million dollars in each fiscal year, funded by the Children's and Seniors' Health Care Assistance Fund established by section 2FF of chapter 29. The program may enter into an interagency agreement with the division of medical assistance for the provision of services by the program, and shall seek maximum federal financial participation for expenditures made by the program. Said division shall work cooperatively with the department to secure federal financial participation with the goal of integrating community health workers into the activities of said division, and shall report to the house and senate committees on ways and means and the joint committee on health care the results of a study on the feasibility of incorporating community health worker services into rates paid to providers of medical benefits by said division.

SECTION 7. Said chapter 111 is hereby further amended by inserting after section 186B the following section:-

Section 186C. (a) The department shall by regulation prohibit any person engaged in the business of selling cigarettes and tobacco products to ship or cause to be shipped any cigarettes or tobacco products to any person in the commonwealth who is not a licensed manufacturer, wholesaler, vending machine operator, transportation company, unclassified acquirer or retailer, as such terms are defined in section 1 of chapter 64C.

(b) The department shall by regulation prohibit any common or contract carrier to knowingly transport cigarettes and tobacco products to any person in the commonwealth reasonably believed by such carrier to not be a licensed manufacturer, wholesaler, vending machine operator, transportation company, unclassified acquirer or retailer, as such terms are defined in section 1 of chapter 64C.

(c) Said regulations shall include a presumption that the delivery or shipment of any cigarettes or tobacco products to a home or residential address is not to a licensed manufacturer, wholesaler, vending machine operator, transportation company, unclassified acquirer or retailer. Said regulations shall establish civil penalties for violations of such regulation, including the seizure and forfeiture of cigarettes and tobacco products transported in violation of the regulations, reasonable exemptions and standards for enforcement, and requirements regarding the marking of shipping cartons and packages containing cigarettes and tobacco products. In formulating such regulations, the commissioner shall refer as a model to the provisions of chapter 262 of the laws of the state of New York of 2000 and any regulations issued thereunder, and any similar laws enacted in other states.

(d) The provisions of this section are severable and if any clause, sentence, subsection or provision or the application of such clause, sentence, subsection or provision to any person or circumstances shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remainder of this section or the application of such remaining provisions to said person or circumstances.

SECTION 8. Clause (c) of subsection 2 of section 9A of chapter 118E of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by striking out the words “children and adolescents aged one to 18 years, inclusive” and inserting in place thereof the words:- children and adolescents more than one year of age and less than 21 years of age.

SECTION 9. Said clause (c) of said subsection 2 of said section 9A of said chapter 118E, as so appearing, is hereby further amended by adding the following words:- , and the parents of such children and adolescents.

SECTION 10. Clause (d) of said subsection 2 of said section 9A of said chapter 118E, as so appearing, is hereby amended by striking out the words “including, but not limited to, the presence of dependent children in the household” and inserting in place thereof the following words:- without regard to the presence of dependent children in the household.

SECTION 11. Said subsection 2 of said section 9A of said chapter 118E, as so appearing, is hereby further amended by adding the following clause:-

(i) disabled persons receiving Medicare benefits who were receiving medical benefits pursuant to clauses (a) through (h), inclusive, immediately prior to becoming eligible for Medicare who meet the financial eligibility standards established by the division; provided, however, that medical benefits provided to such persons shall supplement benefits provided by the Medicare program.

SECTION 12. The second sentence of subsection (9) of section 9B of chapter 118E of the General Laws is hereby amended by striking out the word “Federal” and inserting in place thereof the following words:- Not more than fifty million dollars generated by federal financial participation with respect to payments to disproportionate share hospitals and federal.

SECTION 13. Said chapter 118E is hereby further amended by inserting after section 10C the following section:-

Section 10D. The division shall provide coverage for smoking and tobacco use cessation treatment and information and the provision of smoking and tobacco use prevention educational information and materials.

SECTION 14. The first sentence of section 25 of chapter 203 of the acts of 1996 is hereby amended by striking out the words “and November first, nineteen hundred and ninety-nine” and inserting in place thereof the words:- November 1, 1999, March 1, 2002, and March 1, 2004.

SECTION 15. (a) The division of medical assistance is hereby authorized and directed to seek an extension and expansion of the MassHealth demonstration project approved by the United States Department of Health and Human Service pursuant to section 1115(a) of the Social Security Act.

(b) Notwithstanding the provisions of section 36 of chapter 47 of the acts of 1997, the MassHealth demonstration project and the provisions of said chapter 47 shall continue to be of full force and effect so long as

(1) said division is seeking the extension and expansion of the MassHealth demonstration project pursuant to this section; and

(2) the commonwealth remains eligible for federal financial participation for medical benefits to expansion beneficiaries, as such terms are defined in section 9A of chapter 118E of the General Laws.

(c) In seeking the extension and expansion of the MassHealth demonstration project, said division shall request authority at a minimum to provide medical benefits to

(1) all uninsured adults in the commonwealth below 133 percent of the federal poverty level;

(2) persons below 21 years of age below 200 percent of the federal poverty level; provided, that the division shall seek enhanced federal financial participation pursuant to Title XXI of the Social Security Act to persons 19 and 20 years of age made eligible by this act.

(3) parents of all persons eligible for MassHealth benefits pursuant to clause (c) of subsection 2 of chapter 118E of the General Laws; provided, however, that such parents whose financial eligibility exceeds 150 percent of the poverty level may be provided the medical benefits required under Title XXI of the Social Security Act if such parent is not eligible for employer-provided health insurance; and

(4) disabled persons receiving Medicare benefits who were enrolled in MassHealth or the commonwealth program immediately prior to becoming eligible for Medicare who meet the financial eligibility standards established by the division.

(d) The division shall report to the house and senate committees on ways and means and the joint committee on health care not later than 60 days after the effective date of this act on its progress towards implementing this section and shall report every 90 days thereafter on such progress to such committees.

SECTION 16. The division of medical assistance is hereby authorized and directed to seek a senior assistance program waiver from the United States Department of Health and Human Service pursuant to section 1115(a) of the Social Security Act. Said senior assistance program shall provide for the payment of prescription drug benefits by the division, and may also include payment for acute inpatient and outpatient services, transportation, mental health and substance abuse services, and ancillary services, for persons eligible for the subsidized catastrophic prescription drug insurance established pursuant to section 39 of chapter 19A of the General Laws whose financial eligibility is less than 189 percent of the federal poverty level.

Enrollees in said program shall be deemed financially unable to pay for hospital services for purposes of the definition of "free care" in section 1 of chapter 118G, and such status shall be noted on any enrollment card or notification materials provided to such enrollees.

The division shall report to the house and senate committees on ways and means and the joint committee on health care not later than 60 days after the effective date of this act on its progress towards implementing this section and shall report every 90 days thereafter on such progress to such committees.

SECTION 17. Section 4 shall take effect on July 1, 2001. Every manufacturer, wholesaler, vending machine operator, unclassified acquirer or retailer, as defined in section 1 of chapter 64C of the General Laws, who, at the commencement of business on July 1, 2001, has on hand any cigarettes for sale or any unused adhesive or meter stamps, shall make and file with the commissioner of revenue within 20 days a return, subscribed under the penalties of perjury, showing a complete inventory of such cigarettes and stamps, and shall, at the time he is required to file such return, pay an additional excise of 25 mills per cigarette on all cigarettes and all unused adhesive and meter stamps upon which only the excise imposed pursuant to sections 6, 7A and 7C of said chapter 64C has previously been paid; provided, however, that the additional excise imposed by this section shall equal 50 percent of the price paid by such manufacturer, wholesaler, vending machine operator, unclassified acquirer or retailer to purchase smokeless tobacco and 30 percent of the price paid by such manufacturer, wholesaler, vending machine operator, unclassified acquirer or retailer to purchase cigars and smoking tobacco on hand on said date. All of the provisions of chapters chapter 62C and 64C relative to the assessment, collection, payment, abatement, verification, and administration of taxes, including penalties, shall, so far as pertinent, be applicable to the excise imposed by this section.

SECTION 18. (a) Regulations promulgated by the department of public health pursuant to section 7 shall become effective upon the determination by the commissioner of public health that said regulations comply with the Constitution of the United States. In making such determination, said commissioner may refer to decisions, if any, by a

court of competent jurisdiction concerning the constitutionality of chapter 262 of the laws of the state of New York of 2000 and any regulations issued thereunder, and any similar laws enacted in other states.

(b) In conjunction with the issuance of regulations under section 7, the department shall issue a report and findings by the commissioner concerning the benefits of such regulations. Said report shall determine if the shipment of cigarettes sold via the internet or by telephone or by mail order to residents of the commonwealth poses a serious threat to public health, safety, and welfare, and to the funding of health care access programs pursuant to this act and chapter 203 of the acts of 1996. The commissioner shall also determine whether direct shipment to consumers of cigarettes and tobacco products precludes adequate proof that the purchaser is of legal age and therefore enables sellers to sell tobacco products to persons under age 18 notwithstanding the provisions of section 6 of chapter 270 of the General Laws.