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## AIM Opposes Proposed Changes in Health Reform Assessments

September 5, 2008

### STATEMENT OF ASSOCIATED INDUSTRIES OF MASSACHUSETTS BEFORE THE DIVISION OF HEALTH CARE FINANCE AND POLICY IN OPPOSITION TO PROPOSED REGULATIONS 114.5 CMR 16.00 DETERMINATION OF EMPLOYER FAIR SHARE CONTRIBUTION.

Good morning, I am Eileen McAnney Senior Vice President and Associate General Counsel of Associated Industries of Massachusetts (AIM), the state's largest nonprofit, nonpartisan association of Massachusetts' employers. AIM's mission is to promote the well-being of its 7,000 members and their 680,000 employees and the prosperity of the Commonwealth of Massachusetts by improving the economic climate, proactively advocating fair and equitable public policy, and providing relevant, reliable information and excellent services.

These regulations make two major changes. The proposed fair share contribution calculation requires a company to pass both the primary (25% of full-time employees enrolled in the employer-sponsored group health plan) AND the secondary test (employer offers to pay 33% of the premium cost for its group health plan for all full-time employees that work at least ninety days) rather than either one. Secondly, the fair share contribution will be determined and paid quarterly. Presently, the determination is made on an annual basis and the employer can choose whether to pay it annually, semi-annually or quarterly. These changes are expected to raise up to an additional \$45 million annually from employers.

On behalf of AIM, I testify in opposition to these proposed changes. AIM's opposition is strongly held and the reasons for it are numerous.

First, the proposed changes to the fair share test distort the original purpose of the concept of "fair share."

It was never about an employer health insurance mandate. In fact, an employer mandate was proposed, considered and explicitly rejected by the legislature during the health care reform debate. Instead, the fair share assessment was designed to broaden the number of employers contributing to the cost of uncompensated care. Representative Mariano, a member of the conference committee that negotiated the final health care reform bill, very accurately explained its purpose on the floor of the House during the debate on Governor Romney's veto of this provision, "It (the fair share assessment) takes the free care pool and divides it among those not paying anything and asks them to contribute."

Thus, the original two-pronged fair share test was designed to ensure that companies offering insurance to a number of their full-time employees would not be subject to the assessment. Any purchaser of private insurance, in addition to insuring some portion of their workforce, already contributes to free care through the \$320 million in aggregate surcharges on hospitals and insurers that are passed along to employers in the form of higher charges and premiums. The test was designed to impact companies offering little or no insurance at all. These proposed changes fundamentally alter that test and the original purpose for the assessment wrongly subjecting employers that offer generous coverage to the fair share assessment.

In addition, requiring a waiting period of 90 days or less to meet the second prong of the fair share test subjects many retailers and other employers in industries with high employee turnover to the fair share assessment, despite the fact that many of these employers provide coverage to their workers. Again, this is contrary to the original intent of this provision.

The quarterly reporting requirement adds an unnecessary administrative burden and an unnecessary administrative cost to employers without a clear reason for doing so. If the change is designed to improve cash flow for the Commonwealth, may we suggest that the annual filing be retained and the quarterly payment be mandated rather than allowing employers a choice of annual, semi-annual or quarterly

payments as is currently the case?

Moreover, there is no actual need for this new money. Per the news accounts, the Patrick Administration put forth tightening the fair share rules as one of several proposals to generate more than \$130 million in new revenues to pay for even greater projected increased costs of subsidizing health insurance coverage for the uninsured than originally anticipated. The FY09 budget for Commonwealth Care skyrocketed from \$647 million in FY2008 to \$869 million based on enrollment growth of 50,000. This new revenue is needed to cover an additional 30,000 enrollees beyond the 50,000 enrollee growth already budgeted for. In the time since the original and revised projections were made, it is evident that they were grossly exaggerated. Commonwealth Care enrollment remains flat at approximately 175,000 enrollees, as it has for months. More troubling is the fact that the money from the fair share assessment is not earmarked for health care costs. It is deposited into the General Fund where it can be appropriated for any governmental spending.

By the Governor's own account, employer engagement is critical to health care reform's success. In a recent speech, the Governor stated the Bush administration supports the reform effort because "the private insurers (employers) have remained a part of this reform." In fact, the willingness of employers to support health care reform and its ongoing efforts is the envy of the nation. Many business associations outside the Commonwealth are truly astonished that businesses in this state are so supportive. This support is not universal and came about only after a hard-fought, carefully crafted compromise was reached. We need to make sure that employer support of health care reform remains strong. These proposed regulatory changes seriously jeopardize that business support by unnecessarily overreaching and impacting far greater numbers of employers than originally intended.

Much of this need for more money from the employer community is driven by the notion that employers are not doing enough under a shared responsibility concept. That assumption is meritless on its face. Since health care reform's inception, 439,000 more residents of Massachusetts have health insurance, with 159,000 getting employer-sponsored coverage. The employers of this state have continued to provide health insurance to their employees at levels far surpassing the national average, and despite having the highest annual health care cost per employee in the nation - \$9,304. Health insurance costs in Massachusetts exceed the national average by 30% - (\$9,304 versus \$6,881.) The debate on shared responsibility stems from the increase in consumers' co-payments in the Commonwealth Care subsidized insurance products by \$5 or fourteen percent for 2009. Advocates argue that because consumers are paying more, it is only right that employers pay more, too. This argument ignores the fact that copayments only materialize if a patient actually utilizes services. It also fails to recognize that employers are shouldering considerable health insurance cost inflation, only their portion of the premium is much greater and the dollars much bigger. It is also worth noting that proposed regulatory changes increase the fair share assessment by almost 500%, raising the estimated revenue from \$7 million to \$45 million - considerably more than the fourteen percent consumers may have to pay.

Regulators must realize that the proposed increases in health care assessments are one of several new costs that employers are facing. After a very challenging legislative session, business taxes increased by more than \$400 million; energy costs increased by \$100 million per year as a result of the regional greenhouse gas initiative; more stringent environmental laws concerning renewable energy requirements increases costs by tens of millions of dollars each year for the next decade; and the possibility of paying treble damages if an employer makes an honest mistake that violates the Fair Wages Act now looms. This is against the backdrop of a weak national and global economy. Is it any wonder that employers are feeling under siege?

In closing, I ask you to reject the proposed changes to the fair share assessment. The fair share assessment was carefully crafted to win over the business community's support of health care reform. These changes represent a significant departure from the original purpose of the fair share assessment and are without a public policy justification. At a minimum, we suggest that the Division of Health Care Finance and Policy comply with both requirements of section 5 of M.G.L. Chapter 30A and complete a general fiscal impact and a small business impact statement prior to finalization of these regulations.

Thank you for the opportunity to provide comments.