

# SENATE NO. 638

## **AN ACT** CREATING HEALTHCARE PURCHASING COOPERATIVES

*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. The Massachusetts General Laws are hereby further amended by adding, after Section  
2 176N, the following new Section: -

3 SECTION 176O

4 Section 1. Definitions.

5 “Board,” shall mean the Board of Directors of the Small Group Purchasing Program established by  
6 Section 4.

7 “Carrier,” an insured, licensed or otherwise authorized to transact accident and health insurance under  
8 Chapter 175; non-profit hospital service corporation organized under Chapter 176A; a non-profit medical  
9 service corporation organized under Chapter 176B; a health maintenance organization organized under  
10 Chapter 176G; and an insured group health benefit plan that includes a preferred provider arrangement  
11 organized under Chapter 176I; which issues a health benefit plan to one or more eligible insured on or  
12 after March 1, 1992.

13 “Commissioner,” The Commissioner of the Division of Insurance.

14 “Eligible Employee,” An employee who works on a full-time basis and has a normal work week of thirty  
15 or more hours. The term includes a sole proprietor, a partner of a partnership, and an independent  
16 contractor, if the sole proprietor, partner or independent contractor is included as an employee under a  
17 health benefit plan of a small employer, but does not include an employee who works on a part-time,  
18 temporary or substitute basis.

19 “Health Benefit Plan,” any individual, general, blanket, or group policy of health, accident and sickness  
20 insurance issued by an insurer licensed under Chapter 175; a group hospital service plan issued by a non-  
21 profit hospital service corporation under Chapter 176A; a group medical service plan issued by a non-  
22 profit hospital service corporation under Chapter 176B; a group health maintenance contract issued by a  
23 health maintenance organization under Chapter 176B; an insured group health benefit plan that includes a  
24 preferred provider arrangement under Chapter 176I; and any multiple employer welfare arrangement  
25 (MEWA) required to be licensed under Chapter 175’ offered to an eligible business. The term “health  
26 benefit plan” shall not include accident only, credit, dental or disability income insurance, coverage issued  
27 as a supplement to liability insurance, insurance arising out of a workers’ compensation or similar law,  
28 automobile medical payment insurance, insurance under which beneficiaries are payable with or without  
29 regard to fault and which is statutorily required to be contained in a liability insurance policy or equivalent  
30 self-insurance, long-term care only insurance, or any group blanket or general policy which provide  
31 supplemental coverage to Medicare or other governmental programs.

32 “Health Insurance Purchasing Co-operatives,” (HIPC) A private, non-profit entity established pursuant to  
33 Section 5 of this Act through which small employers may voluntarily obtain health care coverage.

34 “HIPC Area,” the geographic region within which an HIPC operates under this Act, as determined by the  
35 Board.

36 “Member Small Employer,” a small employer who enrolls with an HIPC.

37 “Participating Health Partnership,” a carrier offering coverage under this Act through a contract with an  
38 HIPC, as established in Section 7 of this act.

39 “Plan of Operation,” the articles, bylaws and operating rules adopted by the Board in accordance with  
40 Section 3(F) of this act

41 “Service Area,” a geographic region in which a carrier is authorized or licensed to operate.

42 “Small Employer,” (Insert the definition of small employer contained in the Commonwealth’s small  
43 employer market reform statute. If the Commonwealth has not enacted such a statute, use the following  
44 definition): A person, firm, corporation, partnership, or association who is actively engaged in business  
45 who, on at least 50 percent of its working days during the preceding calendar quarter, employed at least  
46 three but no more than fifty full-time employees, the majority of whom were employed within this state.  
47 In determining the number of full-time employees, companies which are affiliated companies, or which  
48 are eligible to file a combined tax return for purposes of state taxation, shall be considered one employer.

49 “Standard health benefit plan,” a health benefit plan developed by the Board of Reinsurance Program  
50 pursuant to Section 8 of Chapter 176J. If the Board of Reinsurance Program has not developed a standard  
51 health benefit plan then a standard health benefit plan shall be developed by the Board of the Small Group  
52 Purchasing Program.

53 Section 2. Creation of the Program.

54           There is created a non-profit legal entity to be known as the Massachusetts Small Group  
55 Purchasing Program. The program shall perform its functions under the plan of operation established and  
56 approved under Section 3(F) and shall exercise its powers through a Board of Directors established under  
57 Section 4.

58           Said program shall come under the immediate supervision of the Commissioner. As needed, the  
59 Commissioner will provide technical assistance to the Program and to the Program's Board of Directors.

60 Section 3. Powers and Duties of the Programs.

61 The Program, acting through the Board, shall have the following powers and duties to:

62 (a) Define, within 120 days of the appointment of the initial Board, a standard health benefit plan has not  
63 been developed by the Board of Reinsurance Program.

64 (b) Establish, within 120 days of the appointment of the Board, HIPC areas which shall be contiguous and  
65 which in total shall encompass the entire Commonwealth. To the largest extent possible HIPC shall  
66 reflect metropolitan standard areas and other existing markets.

67 (c) Develop a carrier comparison form to be used in providing member small employers and their eligible  
68 employees with information regarding participating health partnerships.

69 (d) Develop a dispute resolution procedure to be used in resolving disputes between a HIPC and a  
70 member small employers and enrollees. The dispute resolution procedure shall include the right to  
71 appeal to the Commissioner the Program's resolution of the dispute.

72 (e) Report annually to the Governor and the General Assembly on the operation of the Program, the  
73 HIPCs, and the participating health partnerships. Such report shall also be made available to the public.

74 (f) (1) Submit to the Commissioner, within 120 days of the appointment of the initial Board, a plan of  
75 operation necessary or suitable to assure the fair, reasonable, and equitable administration of the Program,  
76 and submit to the Commissioner any subsequent amendments to such plan of operation. The plan of  
77 operation and any amendments thereto shall become effective, after appropriate notice and hearing, upon  
78 the Commissioner's written approval or unless the Commissioner has failed to approve it within 120 days.

79 (2) If the Program fails to submit a suitable plan of operation within 120 days following the appointment  
80 of the initial Board, or if at any time thereafter the Program fails to submit suitable amendments to the  
81 plan of operation, the Commissioner shall, after notice and hearings, adopt and promulgate such  
82 reasonable rules as are necessary or advisable to effectuate the provisions of this Act. Such rules shall  
83 continue in force until superseded by a plan of operation submitted by the Program and approved by the  
84 Commissioner.

85 (3) All participating health partnerships, member small employers and HIPCs shall comply with the  
86 plan of operation.

87 (g) Develop standard enrollment procedures to be used in enrolling small employers and their eligible  
88 employees and dependents.

89 (h) Establish participation requirements to be used by member small employers. The participation  
90 requirements must be applied consistently by the HIPCs and the participating health partnerships which  
91 contract with the HIPCs.

- 92 (i) Develop uniform standards for use by HIPCs and participating health partnerships in reporting medical  
93 outcomes data and other data from participating health partnerships. In formulating such standards, the  
94 Program shall be consistent with health care data collection activities in effect in this and/or nationally.  
95 Any data collection requirements promulgated by the Program shall be based on a study of the feasibility  
96 and cost-effectiveness of the requirements and on the credibility of the data collected, including the  
97 constituency with national standards for electronic data interchange and their necessity for supporting  
98 evaluation of participating health partnerships with respect to cost containment, quality, control of  
99 technology expense, and customer satisfaction.
- 100 (j) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this  
101 Act.
- 102 (k) Sue or be sued.
- 103 (l) Determine an annual budget which shall be submitted to and approved by the Commissioner. The  
104 Program shall raise the monies necessary to fund its budget by assessing all HIPCs on a prorated basis  
105 based on the number of individuals participating in the HIPC. The Program's assessment shall be funded  
106 by each HIPC through the surcharge permitted under Section 6(B).
- 107 (m) Establish operating procedures and reporting requirements for HIPCs to assure that they are operating  
108 in accordance with the provisions of this Act and to conduct audits of HIPCs as appropriate.
- 109 (n) Establish operating procedures for the electronic transfer of information between participating health  
110 partnerships and the HIPC following the ANSI 12 standards and the guidelines developed by the  
111 Workgroup on Electronic Data Interchange.

112 (o) Conduct a study to determine whether a risk adjustment mechanism should be developed for use by  
113 HIPCs.

114 Section 4. Board of Directors.

115 (a) A Board of Directors for the Massachusetts Small Group Purchasing Program is hereby created. The  
116 Board shall consist of nine members, composed and appointed in accordance with the following: -

117 (1) The Commission, who shall also serve as the Board's chair;

118 (2) One representative of consumers employed by small employers;

119 (3) The representatives of health benefit plans, one of whom shall be a representative of an insurance  
120 company with experience in the small employer market, one of whom shall be a representative of a health  
121 maintenance organization, and one of whom shall be a representative of either a hospital or health  
122 services plan corporation;

123 (4) Two representatives of small employers; and

124 (5) Two representatives of the medical community, one of whom shall be a representative of hospitals  
125 and one of whom shall be a representative of other medical providers.

126 (b) With the exception of the Commissioner, each Board member shall be appointed by the Governor  
127 within 60 days of the effective date of this Act.

128 (c) With the exception of the Commissioner, four members of the initially appointed Board shall be  
129 appointed to serve two-year terms and the remaining four members shall be appointed to serve four-year

130 terms. Thereafter, with the exception of the Commissioner, the terms of all Board members shall be four  
131 years.

132 (d) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any  
133 member of the Board, or its employees or agents, for any action taken in good faith by them in the  
134 performance of their powers and duties as set forth under this Act.

135 Section 5. The Establishment of Health Insurance Purchasing Cooperatives.

136 (a) The Board shall establish geographic HIPC areas each of which shall be contiguous. To the largest  
137 extent possible HIPC areas shall reflect metropolitan standard areas and other existing markets.

138 (b) The Board shall create a single HIPC within each designated geographic HIPC area for the benefit of  
139 its member small employers. Each HIPC shall be operated as a state chartered, non-profit private  
140 organization.

141 (c) Each HIPC shall be operated by a Board of Directors which shall consist of seven members each of  
142 whom shall be representatives of small employers. The Program's Board of Directors shall appoint each  
143 HIPC's initial Board of Directors. Four members of the initial Board shall be appointed to one-year terms  
144 and the remaining three members shall be appointed to two-year terms. Subsequent members of the  
145 HIPC Board of Directors shall be elected according to the by-laws of the HIPC.

146 (d) Each HIPC Board shall adopt by-laws that include a procedure for the election of HIPC Board  
147 members by the HIPC's member small employers.

148 (e) HIPCs may not purchase both health care services, assume risk for the cost or provision of health care  
149 services, or otherwise contract with health care providers for the provision of health care services to  
150 member small employers.

151 (f) HIPCs may not deny membership to any small employer.

152 (g) No state funds shall be used to fund the operation of a HIPC nor to subsidize the coverage provided  
153 by participating health partnerships through HIPC.

154 (h) In order to participate in the HIPC, a member small employer must provide a reasonable contribution  
155 toward the cost of coverage of its eligible employees.

156 Section 6. Powers and Duties of Health Insurance Purchasing Cooperatives.

157 HIPCs shall have the following powers and duties exercisable in accordance with any guidelines  
158 established by the Program:

159 (a) Enter into contracts with participating health partnerships to provide standard health benefit plans to  
160 member small employers, eligible employees and their dependents. Each HIPC shall contract with  
161 participating health partnerships separately for its HIPC area. Each HIPC shall contract with each carrier  
162 in its area that is designated by the Commissioner, under Section 7, participating health partnership and  
163 shall offer to member small employers every standard health benefit plan of each participating health  
164 plan.

165 (b) Surcharge member small employers a reasonable fee in connection with their premium payments for  
166 necessary costs incurred in connection with the operation of the HIPC and the Program. Such surcharge  
167 shall be based on a small employer's number of enrollees in a participating health plan.

- 168 (c) Establish procedures for the collection of premiums and surcharges from member small employers,  
169 including remittance of the share of premium paid by enrollees.
- 170 (d) Pay participating health partnerships their contracted rates on a monthly basis or as otherwise  
171 specified under by the contract.
- 172 (e) Determine how to enroll small employers and their employees and how to make participating health  
173 partnerships available to member small employees and their eligible employees and dependents.
- 174 (f) Publicize the existence of the HIPC.
- 175 (g) Collect and make available to member small employers and their employees marketing materials that  
176 participating health partnerships have voluntarily provided by the HIPC.
- 177 (h) Prepare and make available to member small employers and their employees comparison sheets which  
178 fairly and accurately summarize the health care plans, rates, cost, and other relevant information of each  
179 participating health partnership.
- 180 (i) Establish administrative and accounting procedures for the operation of the HIPC.
- 181 (j) Contract with, if deemed necessary by the HIPC, a small employer carrier or other administrator to  
182 provide administrative services to the HIPC.
- 183 (k) Appoint committees, hire personnel, and enter into contracts with third parties for any service  
184 necessary to carry out the powers, duties, and responsibilities of the HIPC.
- 185 (l) Report annually to the Program on the operations of the HIPC and its contracts with participating  
186 health partnerships and on such other information as may be requested by the Board.

187 (m) Notify the Commissioner of any potential violations of the Act by a participating health partnership.

188 (n) Hire and executive director.

189 Section 7. Designation of Participating Health Partnership.

190 (a) Within 90 days of the formation of the HIPC, the Commissioner shall establish a process whereby a  
191 carrier that fulfills the qualifications of Subsection (B) of this section shall be designated by the  
192 Commissioner as a participating health partnership.

193 (b) Upon application, a carrier shall be designated as a participating health partnership if it meets the  
194 following operating characteristics:

195 (1) Licensed with the Division of Insurance;

196 (2) The capacity to administer the approved health care plans;

197 (3) The ability to provide for utilization management;

198 (4) The ability to monitor and evaluate the quality and cost-effectiveness of care;

199 (5) The ability to demonstrate, consistent with plan requirements, that enrollees have adequate access to  
200 providers of health care including geographic availability and adequate numbers and types of providers;

201 (6) A satisfactory grievance procedure, including the ability to respond to an enrollee's calls, questions  
202 and complaints;

203 (7) Financial solvency, including the ability to assume the risk of providing and paying for covered  
204 services, as applicable. A participating health partnership may utilize reinsurance, provider risk sharing,  
205 and other appropriate mechanisms to share a portion of the risk;

206 (8) Ability to provide to the Program information on medical outcome data and other data as required  
207 by the Program under Section 3(I).

208 (c) In order to be designated a participating health partnership, a carrier must be willing to contract with  
209 the HIPC to provide a standard health benefit plan to any of the HIPC's member small employers and  
210 their eligible employees and dependents; provided, however, a participating health partnership's area.

211 (d) Participating health partnerships must submit to the HIPC, on a quarterly basis, the premium rates for  
212 the standard health benefit plans that the participating health partnership's service area.

#### 213 Section 8. Conditions Applicable to Participating Health Partnerships.

214 (a) Participating health partnerships shall be subject to the following provisions of Chapter 176J Sections  
215 2 through 8 of the Insurance Code.

216 (b) A carrier may participate as a participating health partnership in more than one HIPC and within any  
217 one HIPC a participating health partnership may offer more than one variation of a standard health benefit  
218 plan through either an indemnity plan or managed care network or both.

219 (c) A participating health partnership may elect to terminate its contract with the HIPC. A participating  
220 health partnership that elects to terminate its contract with the HIPC shall provide at least 120 days notice  
221 of its decision to the HIPC prior to the non-renewal of any coverage provided by the participating health  
222 partnership to a member small employer.

223 (d) A participating health partnership that elects to terminate its contract with the HIPC shall be prohibited  
224 from contracting with the HIPC for three years following the effective date of the termination of its  
225 contract with the HIPC.

226 (e) After notice and hearing, the Commissioner may suspend or revoke the designation as a participating  
227 health partnership within an HIPC of any carrier that fails to maintain compliance with the requirements  
228 of this Act.

229 (f) A participating health partnership shall offer coverage to enrollees throughout its entire service area  
230 within an HIPC geographic region, it shall offer that coverage in that entire county.

231 (g) A participating health partnership may not be required to offer coverage or accept enrollments if:

232 (1) The eligible employee or dependent does not reside within the participating health partnership's  
233 service area; or

234 (2) A participating health partnership provides ninety days prior notice to the Commissioner and the  
235 HIPC that it will not have the capacity to deliver services adequately in its approved service area to  
236 additional enrollees; or

237 (3) The Commissioner determines that acceptance of an application or applications would place a  
238 participating health partnership in a financially impaired condition.

239 (h) A participating health partnership that cannot offer coverage pursuant to paragraph 8(G)(2) may not  
240 offer coverage to any new employer group or individual within the service area until the later of ninety  
241 days following such refusal or the date on which the participating health partnership notifies the  
242 Commissioner and the HIPC that it has regained the capacity to deliver services in the service area. A

243 participating health partnership that cannot offer coverage pursuant to paragraph 8(G)(3) may not offer  
244 coverage or accept applications for any individual or employer group until a determination by the  
245 Commissioner that acceptance of an application will not put the participating health partnership in a  
246 financially impaired condition.

247 (i) Nothing in this Act shall prohibit a participating health partnership from providing coverage in the  
248 HIPC through a managed care system, and from contracting either directly or indirectly through a third  
249 party, with particular health care providers or types, classes or categories of health care providers.  
250 Further, nothing in this Act shall prohibit an accountable health partnership from contracting with third  
251 parties to perform certain functions.

252 (j) Nothing in this Act shall prohibit a participating health partnership from establishing its own level of  
253 payment for reimbursement health care providers providing health care services to enrollees.

254 (k) A participating health partnership shall comply with all claims handling, sales solicitation, unfair  
255 trade practices, licensing, capitalization, reserve, investment standards, and other financial solvency  
256 provisions of the Insurance Cod.

#### 257 Section 9. Marketing Requirements.

258 (a) Each HIPC shall use appropriate and efficient means to notify small employers of the availability of  
259 coverage through HIPC.

260 (b) Each HIPC shall make available to all member small employers the cost comparison from which  
261 fairly and accurately summarizes the benefit plans, rates, cost, and other relevant information on  
262 participating health partnerships available through the HIPC.

263 (c) Nothing in this Act shall be construed to prohibit a participating health partnership from using the  
264 services of a licensed agent or broker in order to assist in marketing.

265 (d) HIPC's shall comply with all sales, solicitation, and unfair trade practices provisions of the Insurance  
266 Code.

267 (e) The member small employer shall make available to its eligible employees cost comparison sheets  
268 which fairly and accurately summarize the benefit plans, rates, costs, and other relevant information on  
269 any plans offered by the member small employer.

270 (f) Member small employers shall select a participating health partnership from the HIPC. Member  
271 small employers may select as many shared standard health benefit plans from the participating health  
272 partnership as the small employer deems appropriate.

273 (g) An HIPC must provide member small employers an opportunity to change participating health  
274 partnerships during a period.