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"AIM's vision is to establish a world-class state regulatory system that ensures the health and welfare of society in a manner that meets the highest standards for efficiency, predictability, transparency and responsiveness.

Cutting regulatory red tape is one of the best ways to accelerate job growth in Massachusetts. Employers have a unique opportunity to bring to the attention of state government those regulations that are inefficient, unnecessary and ineffective.

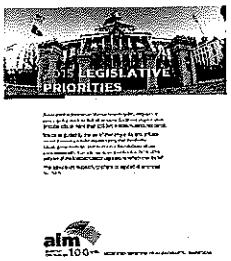
AIM's Blueprint for the Next Century provides a framework and starting point based on businesses priorities for regulatory reform – the blogs and legislative priorities seek to highlight the current challenges Massachusetts business face and the specific solutions to create a world-class regulatory environment.

AIM encourages and welcomes collaboration, feedback and suggestions to build on this work."

Richard C. Lord, President and CEO of AIM

BLUEPRINT FOR THE NEXT CENTURY
ASSOCIATED INDUSTRIES OF MASSACHUSETTS

aimblog



How: To achieve and sustain this it will take people, processes and technology. AIM submits this memo containing observations and suggestions for Governor Baker's state wide regulatory initiative with the goal of improving the Massachusetts business climate. Additional resources can be reviewed on AIM regulatory reform resource page in addition to AIM legislative priorities which largely address regulatory issues that were born from existing laws.

Expected Results: A more dynamic and responsive culture that engages businesses in rulemaking, education, compliance and enforcement matters that provides the right balance between job creation and compliance – rather than a "gotcha" culture. The more efficient the state and municipalities are when it comes to drafting legislation, promulgating, educating and enforcing those rules on the regulated community, the state and municipalities will have more resources that can be used to directly benefit critical services – public safety, transportation, health and human services, education etc. The more time wasted on inefficiency, means less possible resources for important items that are subject to the annual budget debate.

Key Examples: Need for Regulatory Reform:

1. Department of Revenue – Enact broad regulatory reform at the Massachusetts Department of Revenue (DOR). See examples below.

2. Hoisting Regulations – An example of federal preemption: The Massachusetts Department of Public Safety has released final regulations which originally create a redundant state regulation in area where existing Federal Law should prevail. See, AIM's blog: Massachusetts Revises Burdensome On-Site Hoisting Rules, where after AIM intervened, state regulators sought to revise the regulations to recognize preemption. (More details below)

3. Federal Healthcare implementation: Massachusetts should have a waiver from the Affordable Care Act. This would eliminate many of the unnecessary burdens that business and state agencies continue to struggle with.

4. One central Massachusetts employer has two elevators in his facility – one for freight, the other for passengers. The company pays $1,100 to get each elevator inspected, but state officials refuse to inspect the two elevators at the same time. They require two visits, two payments of $1,100.

5. One entrepreneur describes an incident in which his small company lost a significant amount of money and was therefore required to file its tax return electronically. But the Department of Revenue did not permit the company to file using commercially available e-file software. The company had to spend hundreds of dollars to purchase the software required by DOR. The result – the company is moving to Texas, which will enjoy the benefit of high-paying jobs and a huge capital gains tax windfall when the entrepreneur sells the company in a few years.

6. The Massachusetts Toxics Use Reduction Act (TURA) has in many ways lived up to its name – fees established under the law have prompted scores of companies to reduce or eliminate their use of chemicals, cutting overall payments into the program. Unfortunately, the people who run TURA have taken that as a cue to jack up fees to a level that may drive many of the remaining companies out of state.

7. Massachusetts lawmakers and regulators often impose state laws and regulations that duplicate federal laws and regulations and create an administrative nightmare for small business.

8. Regulators appear particularly determined to preserve their authority and revenue flow when confronted with innovative ventures that disrupt an established industry. Manicube, a New York-based company that sends its licensed manicurists to serve customers in corporate offices rather than in traditional nail salons, recently found itself under investigation by the Massachusetts Board of Registration of Cosmetologists because the company employs licensed manicurists, but does not operate out of a licensed nail salon. Regulators of traditional taxi cabs have similarly moved to restrict the growth of Uber.

9. All regulations should be free to access online: Currently the state does not provide a one stop shop for official and up to date regulations. All state laws are maintained and accessible

online, however businesses currently have to pay for them or search each regulated agency for them.

10. Not all State Agencies are operating equally: Some state agencies will not accept electronic filings, others will not provide a means for the regulated community to sign up for "updates" or regulatory notice. The Department of Environmental Protection and its website, provides a good example of how to leverage technology and provide information to the regulated community.

11. A targeted deep dive review of certain agencies and review of practices by constitutional offices that have a significant impact on the state regulatory environment would help to bring about cultural change. AIM urges a focus on the Department of Revenue (Suggestions Below), the Department of Public Safety and hoisting regulations, The Department of Environmental Protection and (TURA) related fees, and the Office of the Treasurer to eliminate the use of contingent based auditors.

Overview

When asked "How can Massachusetts improve the regulatory environment?", employers routinely respond with bottom line challenges and burdens related to the overall costs associated with compliance in arenas that directly impact their business operations, i.e. health care costs, electricity, taxation, workers compensation, employment law and unemployment insurance.[1] AIM members will highlight issues, which are overly burdensome, duplicative, outdated or outright punitive in nature and which often arise from ***legislation*** as well as ***regulation***.

Where We Stand

"Work with the companies of Massachusetts and help our state and companies prosper, not handcuff them. Work with them and do not assume the worst when it comes to businesses. We also want the best for our State, neighbors and environment just like you do. Having State standards more stringent than federal standards doesn't make sense. More confusion, crossover and more tax money spent"

Quote from one Massachusetts business leader

AIM encourages a review of the important roles that every policy maker and resident of the commonwealth has in the creation, administration and enforcement of laws that authorize state agencies to promulgate regulations, respond to the issues of the regulated community and the enforcement of those rules – all combined creates a culture and regulatory regime, the Massachusetts businesses consider to be one of the most challenging in the country.

Role of the business and regulated community: Massachusetts employers acknowledge the need for effective and well-managed regulation that ensures the health and welfare of society without

[1] http://blog.aimnet.org/AIM-IssueConnect/bid/53019/Does-Massachusetts-Have-a-Business-Regulation-Problem

weakening the financial underpinnings of the job market. But the employer community believes that Massachusetts regulations and the regulators who enforce them often stray from the primary objective of protecting society and into a mindset of "punishing" businesses.

Role of the Executive Branch and Constitutional Officers: Improving our regulatory system involves a review of current regulations, agency processes for creating regulations and how those agency provide "customer service" to the regulated community. A full review and scorecard report of every state and local authority with powers to regulate, impose rules or a process on taxpayer and business is critical. In total, the regulatory agency, the people and technology used must be fully reviewed to ensure that effective regulations are in place and we are administering them in a fashion that is cost-effective and keep economic development as a key priority. Educate vs. play "gotcha" games.

One troubling aspect is that often, state agencies engage in the lobbying of a state law, with the regulations already in mind. What happens then is a one side law that provides the greatest level of power to the state agency at the expense of fairness to businesses.

Role of the Legislature and Municipalities: Creating a world-class regulatory system start with the state law and local ordinances. More often than not, state law and local ordinances is often seen the "regulatory" burden – while the actual state agency or local regulations simply make the burden that much worse. Legislators and policy makers must keep in mind as legislation is drafted, proposed and debated: Does it include the business or regulated communities voice, How clear is it? Will it lead to more litigation? What are the ripple effects? Does this overlap or have interplay with other state and federal laws? What is the fiscal impact? How much authority does the legislature relinquish to a state agency to come up with the details? If the law is written clearly enough, does it require regulations?

Role of the public: Stay engaged, listen and speak up. Like businesses, we need to stay engaged, listen and speak up. Often, Massachusetts businesses become concerned when the public and policy makers do not listen, do not have similar work experience or understanding – yet are charged with passing laws and regulating those business in a way that significantly disrupts their ability to operate, expand and invest in jobs in Massachusetts – jobs that people want and tax revenues municipalities and the state needs.

Cost: Small Business Impact statements – it is impossible for any state agency or policy maker to suggest that any law, regulation or guidance – "has no fiscal impact". For a business to be aware of law and regulatory changes, engage in a meaningful way, work with professional to interprets the law and regulations – determine applicability and then operationalize and sustain compliance with training and oversight – ALL cost money and time away from the core business activities.

Evaluation of Decisions and Ripple Effects: How heavy is the burden state laws and regulations place on Massachusetts businesses? The economic cost of regulation is hard to quantify on a state level, but a study by researchers Nicole Crain and Mark Crain found that U.S. employers spent $1.75 trillion –

or $10,585 in per employee – to comply with federal regulations alone in 2008. The compliance tab amounted to 14 percent of U.S. national income. Add the federal tax burden of 21 percent and one out of every three dollars earned in the United States goes to comply with federal laws and regulations.

The financial load falls disproportionately on small companies with fewer than 20 employees. That means regulatory expenses choke the very entrepreneurial ventures we count on to drive the innovation-based Massachusetts economy.

Complexity:

Example: To comply with the state tax code, one must follow the state law, DOR regulations, guidance, directive documents, technical information releases, court cases and active legislation that is drafted by the DOR to benefit revenue generation. Businesses describe this body of work as voluminous, punitive, costly, overly complex, "Massachusetts only" and often unnecessary.

The U.S. score in the World Economic Forum Global Competitiveness Index has declined by six percent in the past decade, while China has improved its score by 12 percent. Business executives responding to the Forum's most recent survey cited "inefficient government bureaucracy," taxes and tax regulation as the most problematic factors for doing business in the United States.

American employers have long been convinced that inefficient regulation and bureaucratic governmental institutions make it harder to run a business in the United States than elsewhere.

Turns out, they're right. Harvard historian Niall Ferguson argues in a book to be published today, and in an adaptation in the Wall Street Journal this week, that economic growth in the United States is being undermined by creaky regulation, staggeringly complex legislation and a court system choked by frivolous litigation.

Ferguson argues more broadly in *The Great Degeneration:How Institutions Decay and Economies Die*, that the central institutions of Western democracy - representative government, the free market, the rule of law and civil society, are all in decline.

"If poor countries can get rich by improving their institutions, is it not possible that rich countries can get poor by allowing their institutions to degenerate?" Ferguson asks in the Journal.

The news is even more sobering for employers doing business in highly regulated, high-cost states like Massachusetts. Ferguson notes in the Journal that the pace of institutional degeneration is not uniform. He maintains that the nation's four primary growth corridors – the Great Plains, the Gulf Coast, the Intermountain West and the Southeast – "are growing not just because they have natural resources but also because state governments in those regions are significantly more friendly to business."

Ferguson is not the only researcher to underscore the growing friability of key American economic institutions. Michael Porter of Harvard Business School last year asked alumni to indentify the areas

where the United States was falling behind other countries. The most common responses – the effectiveness of the political system, the K-12 education system and the complexity of the tax code.

Associated Industries of Massachusetts believes that the cost and sheer complexity of starting a business here in the commonwealth often acts as an unseen brake on the innovation, discovery and entrepreneurship that are the Bay State's most visible economic strengths. That complexity is about to increase as Massachusetts prepares to implement the 906-page Affordable Care Act and its thousands of pages of accompanying regulations.

It already takes 433 days to get a business on its feet in the United States. Business people can't wait another day.

Department of Revenue (Tax Policy and Administration):

The administration and enforcement of the Commonwealth's tax laws continue to pose a challenge for many business taxpayers. Massachusetts Department of Revenue (DOR) is well-known for its aggressive interpretation of statutes and focus on revenue maximization. While streamlining regulations may be part of the solution, there are many other issues on the tax policy front that need to be addressed.

First and foremost, to improve the DOR, we need to change the mindset of many senior staff who believes that the agency is always right, maximizing revenue is always appropriate and that DOR should help make the law in addition to implementing and enforcing it. Contributing to this problem is the deference that the Legislature gives to the DOR. Because there is no institutional expertise in the legislature and our tax laws have become increasingly more complicated, legislators rely on DOR to tell them what good tax policy is.

Several laws enacted in recent years have given the Commissioner of Revenue unfettered discretion to determine parts of the law and its interpretation. The combined reporting statue is the most recent example. Another troubling phenomenon is the trend by DOR to propose changes to the law following a court case that results in the taxpayer prevails in tax dispute through mediation or court. For example, when a court found that the work product of tax professionals prepared on behalf of a taxpayer client was not subject to disclosure in litigation, the DOR filed legislation to change it.

Prioritize a deep agency review and reform at the DOR

1. Ensure that taxpayer returns remain confidentially held by the DOR.
2. Eliminate the practice and use of contingent auditors statewide
3. Enact broad regulatory reform at the Massachusetts Department of Revenue
4. Improve the DOR's electronic filing system from the worst in the country to the best.
5. Equalized Interest Payments – currently the state charges double interest.
6. Require all DOR rules and regulations to include a business impact statement and be subject to the 30A rules.
7. Ban DOR from lobbying the Legislature and other elected officials. (DOR Lobby's for tax policy that favors greater tax revenues)

8. Conduct a full audit of DOR existing and active audits identifying how long have the audits been open, who is managing those audits and could they be resolved in a more expedited fashion.
9. Encouraging the Settlement of Cases in the Litigation Pipeline
10. Reform the DOR's audit practices to ensure timely resolution of disputes and increase the use the mediation. (Some audits are several years old)
11. Reform the Appellate Tax Board to ensure fair, equitable and timely resolution of tax disputes.
12. Require Dynamic Analysis of tax policy
13. Four Equal Quarterly Payments for Estimated Taxes
14. Reduce and standardize fees for the purpose of incorporating and filing annual online reports by corporations, Limited Partnership (LP), Limited Liability Partnership (LLP) and Limited Liability Corporation (LLC). LP, LLP and LLC's are considered to be unduly high.

Department of Public Safety (DPS)

The Massachusetts Department of Public Safety has released final regulations which are create a redundant state regulation in area where existing Federal Law should prevail. See, AIM's blog: http://blog.aimnet.org/aim-issueconnect/state-safety-officials-narrow-hoisting-regulations where the state regulations are in addition to any federal Occupational Safety and Health Administration requirements that cover hoisting equipment. The rules also impact temporary permits that may be issued by a short-term rental entity for the operation of compact hoisting machinery.

AIM objected to the regulations because they were costly and duplicated federal rules enforced by the Occupational Safety and Health Administration. The state rules forced some employers to comply by reassigning long-term employees who had operated hoisting equipment for years to other jobs.

"The Department of Public Safety (DPS) deserves tremendous credit for an intelligent approach to regulation," said Robert Rio Vice President of Government Affairs at AIM.

AIM and lawyers representing forklift manufacturers and technicians, prepared a legal memo to DPS outlining the case for pre-emption, citing several similar major national cases. DPS reviewed the memo and, following several discussions, agreed with AIM's position and released the guidance making the hoisting regulations consistent with pre-emption law.

Health & Human Services (Healthcare)

1. Seek a state waiver to the Affordable Care Act
2. Impose a moratorium on health insurance benefit mandates and cost benefit analysis for any new proposed mandates.
3. Amend Minimum Creditable Coverage to allow deductibles to keep pace with medical inflation;
4. Repeal section 304 of Chapter 149 of the Act of 2004, which requires the Executive Office of Health and Human Services to produce a list of employers who have 50 or more employees using public health assistance each year.

Office of the Attorney General/ MCAD/ DUA (Employment Law/Workforce):

1. Fix the Personnel Records Statute: Pass clarifying language that would answer many of the questions posed by employers and employees around the issue of what exactly triggers the notification requirement under the new personnel records law. Specifically, the ambiguity lies in the question of what is considered to be part of the personnel record. The Office of the Attorney General is authorized to enforce this law.

2. Fix Treble Damages statute: Pass the House approved Fiscal Year 13 budget proposal which included a provision that would limit the treble damages statute to "willful" violations of the wage and hour statute. The change would remove the threat of automatic punitive damages for employers who make honest mistakes understanding the complex state wage laws or who are involved in good-faith compensation disputes. The Office of the Attorney General is authorized to enforce this law.

3. Fix Independent Contractor Statute: Pass legislation that would provide relief to individuals and employers that want to engage in legitimate independent contractor relationships. The current Massachusetts independent contractor statute conflicts with federal law and prohibits many opportunities for job creation. The Office of the Attorney General is authorized to enforce this law and promulgate regulations and guidance.

4. Reform adjudicatory process for the Massachusetts Commission Against Discrimination (MCAD): Pass legislation to improve the operation of the MCAD and its ability to provide timely due process and equity for all parties by requiring guidelines and standardized procedures.

5. Division of Unemployment Assistance – Conduct reviews of processes and administration of the entire UI system. Engage with the Office of the State Auditor, who has been charged with chairing a working group of experts to provide guidance on an audit of the agency.

Department of Environmental Protection (Environment)

1. Lamp Recycling - In 2007 the DEP adopted regulations implementing the lamp recycling law. The regulations took the most restrictive approach possible and rejected industry efforts

to allow significant flexibility so that industry could avoid fines if the state failed to achieve a designated recycling rate. While we are trying to amend the underlying statutory requirement, in the event that we do not succeed another approach would be to amend those initial regulations.

2. Prevent overly burdensome storm water regulations: In 2009, DEP proposed statewide stormwater regulations. The proposed regulations unfairly imposed on commercial and industrial facilities the bulk of the cost and burden of reducing phosphorous in stormwater discharges. The estimated compliance costs associated with the state's draft regulations were in the billions of dollars. The draft regulations went well beyond what other states have adopted for their stormwater regulatory programs. DEP did not undertake any cost/benefit analysis that could have been used to determine if (i) the cost of the proposed program would achieve a comparable level of environmental benefit or (ii) there were other less costly regulatory approaches to managing stormwater discharges. After significant pushback from the business community, the state regulations were put on hold. Since that time, EPA issued draft MS-4 permits and a draft RDA General Permit for the communities of Milford, Franklin and Bellingham. EPA's initiatives target phosphorus in stormwater and have many of the same water quality goals as DEP's proposed program. For these reasons, DEP should hold off on moving forward with any stormwater regulations until the impact of EPA's initiatives take effect. This would ensure that commercial and industrial facilities regulated under both permitting programs would not be burdened with redundant or inconsistent regulatory requirements.

3. Department of Public safety Steam Boiler and hoisting licenses: The DPS laws and regulations as they pertain to steam boiler licensing and hoisting requirements are often outdated and overlap or are inconsistent with federal law. The DPS should review and update these licensing laws and regulations with an eye toward streamlining, including consistency with nearby states. Massachusetts licensing requirements for these two areas are far more stringent than neighboring states and in some cases have been outdated due to technological changes in the industry.

4. Endangered Species Enforcement - The Massachusetts Endangered Species program needs to be reformed and the program needs to operate within the confines of the statute that the legislative passed in 1990 so that developers and other can have a predictable process.

   The 1990 Endangered species statute granted the Natural Heritage and Endangered Species Program (NH) to set aside areas in the Commonwealth as "significant habitat", a designation used to protect the habitats of species that are considered endangered or threatened. When designating a certain piece of land significant habitat, NH must notify the land owner, hold a public hearing, record its findings and pay just compensation. Since 1990, the Natural Heritage

Program has gone beyond its legislative mandate, designating thousands of acres as "priority habitat" which has no grounding in statute. In effect this circumvents the rules that this legislature established and often times halts development and requires expensive consulting costs to prove that there are no endangered species in the area.

5. Department of Environmental Protection (DEP) – Regulatory change – currently new gas stations are not exempted from Stage II vapor recovery systems. The states of CT[2], NY, ME, NH and VT have already exempted new stations from Stage II.

Other Regulations: Directly below are comments that were submitted by AIM members and may require additional research. AIM is ready to work with the administration and AIM members to identify the necessary details for these suggested items for regulatory review.

1. Local permitting for business expansion is onerous
2. Onerous record keeping and disclosure regulations for pharmaceutical companies
3. Extremely vague lobbying and reporting requirements
4. Ever changing Building Codes and lack of notification
5. New sprinkler requirements for commercial and new homes
6. Recent HVAC regulations and licensing – overextended qualification periods for construction trade licensing makes it difficult for smaller firms to train new people to enter the trades.
7. Review of Department of Public Safety and DCAM regulations that conflict with federal law. Most often state regulations are more burdensome and conflict with OSHA or HUD standards including:

[2] In a press release by the state of CT, stated "The responsible elimination of these now obsolete vapor recovery systems is a good example of how we are striving to leverage the benefits of new technology to reduce the regulatory costs of our clean air programs," said DEEP Commissioner Daniel C. Esty. "These and other efforts to modernize the regulatory process – while still maintaining high environmental standards – will help make Connecticut a less costly place to do business and a better place to live."

- Section 310 CMR 6.02 – Requires that training is site and equipment specific
- Section 310 CMR 6.R 6.03 Performance evaluation is only valid for 2 years, when OSHA is valid for 3 years.
- Section 310 CMR 6.06 Requires far more rigorous inspections and documentation than OSHA

8. 780 CMR 901.5.1 and Chapter 13 section 103.7 that effectively saddle architects and engineers with liability as "super inspectors" and responsible for subcontractors liability.

9. Extensive time and overly burdensome process for state bidding and contracting with the State Purchasing & Operational Services

10. Provide oversight and or analysis of DEP's application of the toxic use reduction act (TURA)

11. Rideshare Regulation 310 CMR 7.16 The difficult parts of the regulation are the convoluted reporting requirements and the need for burdensome / questionable value biennial employee surveys of where employees (and contractors working on site) have to track and submit their commute info for a given week and data must be obtained from at least 50% of the site population to be valid. An employer's submittal was rejected by DEP in the past because it had data on slightly less than 50% of the site population. There are alternatives to get around the survey, but they have been even more difficult to do. In order to get >50% response, a major promotion of the survey is required.

12. Lack of harmonization of plumbing regulations, causing conflict and inconsistent application between state plumbing codes (interior building) and the state BOH regulations, which govern the exterior issues outside of a building.

13. Gateway Cities: Revitalize and Encourage the Redevelopment of Brownfield Sites
    a. Revise Regulatory Definition of Background to Expedite Cleanup of Brownfield Sites - The concept of "Background" in the Massachusetts Contingency Plan is important for those who are involved in the actual clean-up of disposal sites, since the 21E statute and the MCP require that any such remediation have, as its goal, the reduction of contaminant concentrations to this level. In 1993, DEP significantly limited the concept of background contamination. With no basis in either legislative text or history, DEP eliminated from consideration the majority of situations that would meet the statutory definition of background. DEP's narrow definition of "background" in the MCP is particularly problematic at brownfield sites. In many older urban and industrialized areas of the Commonwealth, elevated levels of various common contaminants are widespread. These "background" contaminants can rarely be attributed to a particular release, source or "disposal site," and appear to be precisely the situation the Legislature had in mind in enacting the statutory background concept. Yet, under DEP's current MCP definition of "background," sites containing historic fill and other instances of such widespread contamination are subject to the provisions of the MCP, and require at least some response actions (assessment and/or remediation). The cost and time required to go through this process, which for most urban development projects results in no real net benefit, present yet another obstacle to the successful redevelopment of Brownfield sites. We urge DEP to revise the definition of

"background" in the MCP to be consistent with the broad definition of "background" in the statute. Eliminating the need to assess and remediate such typical widespread contaminants in urban and industrialized areas would expedite and reduce the cost of brownfields redevelopment in the Commonwealth, without adding additional risks to the environment. Passage of S. 340, *An Act to Revitalize Urban Centers*, would address this issue.

b. Allow for Permanent Solution at Brownfield Sites with Active Systems- We also urge DEP to expand the existing regulatory definition of Permanent Solution contained in the MCP to include a disposal site with an active remedial system whose purpose is to mitigate vapor intrusion. Under the existing regulatory definition, it is simply not possible to achieve closure for sites with an active remedial system, and without such an endpoint, financing - already difficult in the present economy – becomes nearly impossible. Once a Permanent Solution has been achieved, it would be possible to close out the site, as is the case with other sites subject to the requirements of the MCP. Passage of S. 339, *An Act to Advance the Redevelopment of Brownfields*, would also address this issue.

14. Building code regulations, etc.
    a. State building codes and challenges associated with rainwater use / grey water reuse (having to dye the water a different color), wind turbines (especially the fall zones including roadways), etc.
    b. Historic commission requirements that prevent efficiency measures (new windows, adding exterior insulation that would slightly change dimensions, solar on roof), etc.
    c. A lot of the air quality permitting gets in the way of distributed generation of power; nobody wants to run their generators, even if their generators are cleaner and more efficient than some of our other centralized power options. Eased air permits in terms of run hours (still strict about air pollutants) for generation equipment.

15. Use of generators / co-generation units as primary power and grid as back-up / emergency power. To do so would only be cost-effective if they didn't need to also provide an emergency generator, which would require regulation re-interpretation. The logic is this:

    d. Current System: Grid power primary, emergency generator back-up

        i. Pros: Have reliable power and a back up that is there just in case, though it is almost never used

        ii. Cons: Owners spend a lot of money on a generator that doesn't get used and the overall system efficiency isn't very good – we need to build more large power plants

    e. Proposed System: Co-generation primary power (at least for a portion of the building including life safety), grid power back-up

i. Pros: More efficient overall, still just as much redundancy built into system, essentially the same cost of equipment as the current system, reduce need for new power plants and ease congestion of distribution system

ii. Cons: Regulations would need to be change, emissions would shift from centralized to local

16. Timeliness of Workers Compensation Claims: Review the administration and timeliness of Workers Compensation claims in the following three specific areas as described by statute – (M.G.L. 152 Section 10A) A. Conciliation to Conference B. Conference to Hearing and C. Hearing decision due date. For all three events, the workers compensation statute calls for no more than 28 days between each of the separate events listed above. For all parties involved, the time it takes for a decision at each of these events is excessive and costly. The lack of timeliness and decision making is a serious concern.

17. Department of Public Health: 105 CMR Department of Public Health CMR 140.00 Licensure of Clinics. These regs are for different kinds of clinics, we are a Physical Rehabilitation Services. The regulations for the Physical Plant, along with the retention of Medical records for 30 years are way over the top. Medicare only requires retention for 7 years and has no specific physical plant requirements as outlined in these regulations. To open a clinic you must hire and architect and have him/her draw plans, get them approved before you can start to build out your space. There should be some very general requirements, not the hair splitting ones that exist, and you should be able to go and get a pre-built space and start a physical rehab practice. This is the way it works under Medicare if you wanted to open a certified Rehab Agency. You could look up there regs on their website. In addition, the regs require you to have a survey by an outside survey organization (CARF) every 3 years which costs thousands of dollars. For all this hard work, you get nothing more for your efforts. You could open an office as a private practice, get your provider numbers and not have to do any of this. It inhibits the growth of integrated clinics in Massachusetts. Anything you can do to help us is greatly appreciated. We are always asked to open a new clinic by different groups in the state, but we don't because of the costs associated with the State's regulations.

Division of Insurance (DOI)

Regulatory Review Examples

Health Connector

Align regulations with Affordable Care Act

Example:

956 CMR 5.00 – Minimum Creditable Coverage (MCC)

- The Affordable Care Act contains elements that protect Massachusetts consumers from substandard coverage making the state MCC requirements unnecessary and overly complex and confusing. The ACA Essential Health Benefits, Minimum Essential Coverage and

Minimum Actuarial Value rules ensure access to comprehensive and affordable health insurance. Therefore, MCC only adds an additional layer of administrative burden for the state and additional administrative costs for employers (particularly those with employees in other states). MCC also limits employer flexibility when attempting to manage the Cadillac tax and offer affordable health insurance options to employees. For these reasons, MCC regulations should be repealed or conform to ACA requirements.

Division of Insurance

Update Regulations to reflect changes in the market

Example:

211 CMR 52.00 – Managed Care Consumer Protections and Accreditation of Carriers

- Strike paper directory requirement. Electronic directories exist that are updated one time per week, whereas paper directories are updated one time per year.

211 CMR 41.00 – Nongroup Health Insurance Rate and Policy Form Filings, Review, and Hearing Procedures under M.G.L. c. 176M

- These regulations applied to the nongroup market before it was merged with the small group market in 2006. No products are written under this statute.

211 CMR 63.00 – Young Adult Health Benefit Plans

- These regulations have been replaced by another section, 956 CMR 8.00

Center for Health Information and Analysis (CHIA)

Recognize out of date data requests from previous entity, Division of Health Care Finance and Policy (DHCFP)

Example:

114.5 CMR 11.00 – Criteria and Procedure for the Submission of Health Plan Data

- These regulations are a holdover from when the agency was DHCFP
- These regulations are no longer enforced and this data is provided by another external entity, not health plans.

Board of Registration in Medicine

243 CMR 2.00 – Licensing and the Practice of Medicine

- Suggested change: Strike section 2.08(4) **Billing For Services of a Physician Assistant. A physician assistant may not bill separately for services rendered.**

- Rationale: Strike this section from the provisions concerning PA billing to allow PAs to bill carriers directly in alignment with Chapter 224 re: PAs as PCPs.

Center for Health Information and Analysis

114.5 CMR 11.00 – Criteria and Procedure for the Submission of Health Plan Data

- Suggested change: Repeal full regulation
- Rationale:
  - These regulations are a holdover from the former agency and are no longer followed or enforced.
  - The requested health plan data is given to CHIA by the Massachusetts Health Quality Partners (MHQP), not the health plans.

Connector Authority

956 CMR 5.00 – Minimum Creditable Coverage

- Suggested change: Repeal or conform to ACA requirements

- Rationale: The Affordable Care Act contains elements that protect Massachusetts consumers from substandard coverage making the state MCC requirements unnecessary and overly complex and confusing. The ACA Essential Health Benefits, Minimum Essential Coverage and Minimum Actuarial Value rules ensure access to comprehensive and affordable health insurance. Therefore, MCC only adds an additional layer of administrative burden for the state and additional administrative costs for employers (particularly those with employees in other states). MCC also limits employer flexibility when attempting to manage the Cadillac tax and offer affordable health insurance options to employees. For these reasons, MCC regulations should be repealed or conform to ACA requirements.

956 CMR 6.00 – Determining Affordability for the Individual Mandate

- Suggested change: Repeal or conform to ACA requirements

- Rationale: The state has already changed the operation of the penalty provisions related to the individual mandate in an attempt to assure that no one is double penalized under both ACA and this regulation. Since the ACA provides for a penalty if individuals do not obtain health insurance, and the penalties are more onerous (i.e. state law provides a three month grace period when changing between insurance plans, ACA requires that you demonstrate that you

have insurance at least one day of each month of the year), the state law penalties are duplicative and administratively burdensome. A duplicative set of federal and state requirements also creates confusion in the marketplace.

956 CMR 7.00 – Small Group Wellness Incentive Program

- Suggested change: Repeal

- Rationale: Since the program applies to a very small portion of the market only within the Connector and depends on state funding that has not yet been fully allocated, the regulations should be repealed.

956 CMR 8.00 – Student Health Insurance Program

- Suggested change: Amend section 8.04(2)(d) and section 8.05(2)(b) to strengthen the Student Health Insurance Program by allowing students with MassHealth coverage to obtain a waiver from the mandatory participation provision, but not students who obtain subsidized coverage in the Connector.

- Rationale: While this provision was inserted to drive more traffic and revenue to the Connector, it has had the effect of lowering enrollment levels in student health plans thereby potentially affecting premium rates for those plans. Further, it creates an adverse selection process where students who are healthy and are therefore okay with more limited networks, higher deductibles and less covered services, select cheaper Connector plans, and students who are less health stay in the more robust student health plans. This can also have an adverse effect on premiums.

Department of Public Health

105 CMR 130.00 – Hospital Licensure

- Suggested change: Revise 105 CMR 130.20(A) to read as follows:

(A) A hospital which meets all of the applicable regulations and laws shall be recommended for licensure to the Public Health Council ***no less than 60 days in advance of the effective date of the license****. Upon approval of the application for a license by the Public Health Council, the Department shall issue a hospital license to the applicant. Every license shall state the name and address of the hospital if it either differs from that of the licensee; the period of the licensure; the specific service(s) which the hospital is licensed to deliver; and the name and address of any satellite unit for which the Department has authorized coverage by the hospital license.*

- Rationale:
  - Less than 60 days' notice of state approval of changes affecting licensure negatively affects carriers' ability to operationalize changes, including payment rates and execution of new contracts. These challenges in turn pose a threat to network continuity as they are a necessary prerequisite to maintaining a contractual arrangement with a hospital.
  - The above-mentioned challenges were evident with respect to Baystate's recent acquisition of Wing Memorial Hospital and the limited notice of the approval of that acquisition afforded to carriers.
  - In private contracts, 60 days' notice is generally required to make such a change, which is not inconsistent with industry standards. For example, § 130.122(c) requires a minimum of *90* days' notice to the DPH in the event of a planned discontinuation of services.

Division of Insurance

<u>211 CMR 41.00 – Nongroup Health Insurance Rate and Policy Form Filings, Review, and Hearing Procedures under M.G.L. c. 176M</u>

- Suggested change: Repeal full regulation

- Rationale: M.G.L. c. 176M, which is the source of these regulations, is an obsolete statute. Chapter 176M regulated the nongroup market before it was merged with the small group market in 2006. When the small and nongroup markets were merged, the nongroup market became governed by M.G.L. c. 176J. As a result, BCBSMA, and to our knowledge every other carrier, no longer writes products under 176M.

<u>211 CMR 52.00 – Managed Care Consumer Protections and Accreditation of Carriers</u>

- Suggested change #1:
  - Include "physician assistant" in definitions and throughout 211 CMR 52.00 (alongside "nurse practitioner").

- Rationale:
  - Makes regulations consistent with current Massachusetts law.

- Suggested change #2: Amend section 52.12 – (Standards for Provider Contracts)

  - Add electronic notification as an option for providing notice

- Rationale:
  - Clarifies that notice may either be electronically or in writing and makes regulations consistent with current business practice.

- Suggested change #3: Amend section 211 CMR 52.13 – (Evidences of Coverage)

  - Strike paper format requirement and move to strictly electronic EOCs
  - Add "carrier" to involuntary disenrollment of members

- Rationale:
  - The requirement for paper EOCs is administratively burdensome.
  - "Carrier" should be added as there's otherwise no right to cancel or refuse to renew an insured's coverage for commission of acts of physical or verbal abuse against a carrier.

- Suggested change #4: Amend section 211 CMR 52.15 – Managed Care Consumer Protections (Provider Directories)

  - Strike paper directory requirement

- Rationale:
  - The requirement for paper directories is administratively burdensome. We have electronic directories that are updated one time per week, whereas paper directories are updated one time per year.

<u>211 CMR 63.00 – Young Adult Health Benefit Plans</u>

- Suggested change: Repeal full regulation

- Rationale:
  - These regulations have been replaced by 956 CMR 8.00 and therefore need to be repealed.

<u>211 CMR 66.00 - Small Group Health Insurance</u> [Suggested changes: see below for changes by subsection.]

Suggested Changes to 211 CMR 66.04 – Definitions:

- Delete definition of "Actuarial Equivalent", as no longer applicable.

    - Rationale: This defined term is only used in the definition of "eligible individual" (and our recommendation below for revising the definition of eligible individual removes the language containing the term "actuarial equivalent") and certain subsections of 66.07 which we also recommend be deleted. This definition is not included in M.G.L. c. 176J Sec. 1.

- Replace definition of "Creditable Coverage" with the attached new definition, to remove the last section referencing waiting periods and pre-existing conditions.

    - Rationale: make consistent with the definition in M.G.L. c. 176J Sec. 1. As further explained below, we recommend that references to waiting periods and pre-existing conditions be removed to be consistent with 176J.

- Replace definition of "Eligible Dependent" with the attached new definition.

    - Rationale: make consistent with current definition in M.G.L. c. 176J Sec. 1 as updated by Chapter 35 of the Acts of 2013, Sec. 43 (176J updated effective 1/1/14 to include age limit of dependents).

- Replace definition of "Eligible Individual" with the attached new definition.

    - Rationale: make consistent with current definition in M.G.L. c. 176J Sec. 1, as updated by Chapter 35 of the Acts of 2013, Sec. 44 (176J updated effective 1/1/14 to expand definition of eligible individual to any individual who is a resident of the commonwealth).

- Delete definition of "Pre-existing Conditions Provision"

    - Rationale: make consistent with 176J Sec. 1. The definition of "Pre-existing conditions provision" was deleted from 176J Sec. 1 effective 1/1/14 by Chapter 35 of the Acts of 2013, Sec. 46.

- Delete definition of "Waiting Period".

- Rationale: make consistent with M.G.L. c. 176J Sec. 1. The definition of "Waiting period" was deleted from 176J Sec. 1 effective 1/1/14 by Chapter 35 of the Acts of 2013, Sec. 47.

Suggested Changes to 211 CMR 66.05 – Minimum Coverage Standards:

- Update dates of open enrollment period listed in 211 CMR 66.05(1)(a) from July 1-August 15 to October 15-December 7.
    - Rationale: Make regulation consistent with requirements under M.G.L. c. 176J. 176J sec. 4(a)(3) was updated by Chapter 3 of the Acts of 2013, Sec. 8, to revise the open enrollment period dates.
- Revise subsections 66.05(1)(a)(1)-(2) to reflect new requirements regarding enrollment of individuals.
    - Rationale: Make consistent with requirements under M.G.L. c. 176J Sec. 4(a)(2). 176J Sec. 4(a)(2) was revised by Chapter 35 of Acts of 2013, Sec. 49, effective 1/1/14 (as well as Chapter 3 of Acts of 2013, Sec. 8, effective 2/15/13 and as reflected in DOI Bulletin 2013-04) to include certain individuals, other than just HIPAA-eligible individuals, in an exception to the mandatory open enrollment period.
- Revise effective dates of coverage listed in 66.05(1)(b) consistent with changes to M.G.L. c. 176J Sec. 4(a)(2) and 4(a)(3).
    - Rationale: make effective dates of coverage consistent with 176J sec. 4(a)(2) and (4)(a)(3) as updated by Chapter 35 of the Acts of 2013, Sec. 49 and Chapter 3 of the Acts of 2013, Sec. 8.

Suggested Changes to 211 CMR 66.07 -- Pre-existing Conditions and Waiting Periods:

- Delete subsections 66.07(3) - (9), leaving unchanged subsections (1) and (2) of 211 CMR 66.07. Also recommend adding one sentence prohibiting carriers from imposing pre-existing conditions or waiting periods on a health plan.
    - Rationale: make consistent with M.G.L. c. 176J Sec. 4 and 5. Chapter 35 of Acts of 2013, Sec. 50, deleted from 176J Sec. 5 the provisions regarding pre-existing conditions and waiting periods, and Chapter 35 of the Acts of 2013, Sec. 49, added a

new sentence to 176J Sec. 4(a)(2) prohibiting carriers from imposing pre-existing conditions or waiting periods of any duration. The sentence we recommend adding is identical to the language in 176J Sec. 4(a)(2).

Suggested Changes to 211 CMR 66.09 -- Submission and Review of Rate Filings:

- Update filing deadlines listed in subsection 66.09(2) to July 1 for rates effective the following January 1.

    - Rationale: reflect current submission deadlines outlined in M.G.L. c. 176J Sec. 6(c). 176J Sec. 6(c) was updated by Chapter 35 of the Acts of 2013, Sec. 51, effective July 5, 2013.

Suggested Changes to 211 CMR 66.12 -- Disclosure:

- Delete subsection (2).
    - Rationale: make consistent with M.G.L. c.176J, which (as described above) was updated by the Acts of 2013 to remove references to pre-existing conditions and waiting periods.

END OF MEMO

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Massachusetts State House
Office of the Governor
Room 280
Boston, MA 02133

April 16, 2015

Dear Governor Baker,

I have read with interest that you are setting up a group to study the regulation morass that besets companies trying to do business in Massachusetts. We are a printing company with 11 employees in business since 1964. We used to do business with the state during 1978 – 1991, for some 13 years. Our business was done through the State Printing Office. It went well and efficiently. Small jobs were posted on their bulletin board. Larger jobs were sent out automatically to interested vendors on a bidding list. That office had a staff of about 4 people. It worked much like New Hampshire and other states presently do today. The Federal system for printing procurement (GPO - Government Printing Office) in Washington is similarly run. No fuss, very little red tape, quite efficient.

In Massachusetts, however, the process is a paperwork nightmare and entirely ineffective in encouraging and providing opportunities for Massachusetts companies to do business with the state. Additionally, the process severely limits competitive bidding while at the same time encourages burgeoning and outrageous administrative costs compared with other states.

How did this come about? Sometime around 1991, the State Printing Office was discontinued and our business with the state ceased. To the best of my knowledge, there was no follow-up explanation to state vendors as to what was happening or how they would continue doing state business. Private-sector business soon filled up the void left by our loss of state business. For about 21 years we did no state business. With the 2009 downturn in the economy, I revisited the possibility of doing state work again. This was a very revealing and unsettling exercise.

During that effort, I became frustrated at the complexity confronting prospective vendors in attempting to do business with the state of Massachusetts. I was amazed that something so simple could be made so burdensome. Our efforts to do business with other states did not encounter similar obstacles. Their procurement systems were far simpler, and involved only filling out minimal, simple straightforward forms. Then bids of interest to vendors arrived automatically via email.

In Massachusetts, potential vendors must first execute an administrative contract in order to be eligible to bid on state work. In other words, you have to be awarded an initial primary contract before you can bid on an actual contract to perform work. The only

purpose for this initial step is to register those vendors who will be allowed to bid on, and obtain contracts to produce future work. This first step, as in other states, is to identify those wishing to do state business. While in other states it is a simple formality that can be done online taking from 2 to 6 pages, Massachusetts provides 92 plus pages of information and forms for companies to deal with just to be allowed to do business (See attachment). It is so complex that seminars are given to explain to vendors how to fill it out and how to find bids. These 92 plus pages include 12 pages of questions and answers posed by applicants for clarification purposes.

What is most important, however, is that while the registration process to do business in other states opens up opportunities for many companies in an entire industry to participate, the registration process in Massachusetts is designed to limit the number of potential bidders for state work to a select few (See further information below). ***The opening date of the latest registration contract that is currently being advertised has been postponed until May 6. I strongly suggest that the governor's office postpone it indefinitely until a better system is put in place.*** I could get into much detail here as to why the level of information given and requested is ridiculous, but it would take another 96 pages. Suffice it to say that the bid document appears to be created by those unfamiliar with the printing industry and whose sole purpose is to create solutions for which there are no problems, clearly a make-work effort involving high costs and a lot of administrative personnel. Surely, it should not be necessary to have to deal with 96 pages of paperwork in order to be allowed to bid on printing a brochure, letterhead, book, map, or anything involving general commercial printing.

This first administrative contract lasts for multiple years and is very difficult, if not prohibitive, for new vendors to access. Vendors are only allowed to apply when it comes up for renewal. This denial of immediate access to do state work could require years of waiting. The present system limits participants, and creates barriers in restraint of competition. In Massachusetts, there are 984 printing establishments, employing over 20,000.[1] Only 31 of these 984 printers were authorized under the previous administrative eligibility contract OFF33 to bid on Executive branch department work. Perplexed by this complicated process, four and a half years ago, I requested an interview with the Director of Operational Services, Mr. Timothy Kennedy.

I asked for an explanation of changes in state procurement policy. He explained that at some time in the past, consultants advised the state that the Mass procurement system should be reformatted based on the hypothesis that it would "operate better with fewer bidders." Mr. Kennedy remarked that while this sounded "counterintuitive," the consultants believed that fewer bidders would translate to more competitive, lower prices, on the theory that fewer bidders, receiving more state work, would somehow result in lower costs, and reduce the time and paperwork of analyzing more bids. I struggled to rationalize this thinking and finally concluded that it must be loosely grounded on the idea that if you order 1,000 of the same item, the price per item is logically going to be less than if you ordered 100. Unit cost reduction comes about by amortizing the cost of manufacturing setups over larger quantities.

[1] Source: Printing Industries of New England, (PINE- the Northeast's principle printing trade association).

Also, material costs may decline as volume increases. But, reducing the number of bidders on any particular project does not result in cost savings by the winning bidder making more of the same product at lower cost.

Quantity is not a variable in a state bid. It is a given. While the net effect of reducing the supply of bidders (the number of companies authorized to bid) may increase the number of different state products the vendor has opportunity to bid on, it has no impact on the cost of manufacturing each separate product. In my view, the idea that reducing the number of bidders will lower manufacturing costs is not only "counterintuitive", but flies in the face of common sense.

Kennedy mentioned that one theory advanced in support of restricting vendor access is that it would be a burden to deal with bids from over 900 companies. This is a specious argument. Each printing company knows the area of graphic production it is best suited to handle, and will only bid on contracts that are consistent with their capabilities. A letter shop is not going to bid on the production of 10,000 - 140 page books or 100,000 maps.

Each company will bid on contracts that suit their production skills and equipment. The Government Printing Office, GPO, in Washington deals efficiently and effectively with a whole nation of printers. Their procurement system is much simpler and more transparent than in Massachusetts, and I would estimate that the number of bids they get on each procurement ranges on average from 6 – 14 vendors.

With only 31 companies able to bid under the former contract OFF33, the variety of equipment and expertise essential to cover a wide range of state graphic arts and printing needs is severely restricted. Consequently, some projects will be run on equipment that is not best suited for the work. Cost effectiveness is diminished. The small number of state registered printers may even choose to farm out all or portions of the work to other printers outside the loop who can be more cost effective. This scenario results in the state paying for double markups and extra shipping costs on their procurements.

As in other industries, each printer has a special niche of types of work they do best and are most cost effective in producing. Areas of specialization arise from the unique skills of management and employees, and the kinds of printing equipment utilized. No two facilities are exactly alike, and the cost effectiveness of each vendor will vary depending on the type of product being manufactured and the equipment being used in its manufacture. In my view, the state of Massachusetts is best served by having access in the bidding process to the wide range of skills and equipment available to select from in the procurement process. This range of skills is not available with only 31 out of 984 companies participating.

In Printing Industries of New England's Annual Directory, there is an index of over 100 categories of printing and related services capabilities. Under each category are listed the printers that offer these capabilities. The list is gleaned from their membership of 350 printers, only 11 of which were on the previous OFF33 contract. The small numbers of printers on the OFF33 contract do not adequately represent the wide diversity of capabilities offered by 350 printers providing 100 categories of services.

In support of maintaining the status quo, Kennedy advanced the argument that no complaints had been heard from state procurers that present practices were inadequate. I

suggest that an appraisal from this singular perspective is inadequate to draw unbiased conclusions. Those within the system have little basis of comparison against other important parameters.

In any venue, private or public, those implementing product design and procurement should be focused on obtaining best value per dollar cost. Under state procurement, that means obtaining value for the taxpayers who provide the where with all for state spending. Evaluating whether or not state procurement is achieving these goals should not be solely based on a perceived lack of complaints from its own operatives. The assessment of adequacy should not be drawn from self-complacency. The opinion of tax payers and tax paying vendors who have the potential to provide goods and services should also be heard. Under present conditions, I see no effort to meet this more inclusory and objective criteria.

I cannot speak to the Massachusetts procurement system as it relates to other industries. I would concede that building roads and bridges requires a higher level of competency to ensure public safety than printing business cards and letterheads, however, I suggest that if what I see going on in the administration of printing procurement is a hint of what is going on over-all, a careful review of the entire administrative procurement system is in order. There may be opportunities to save taxpayers not just millions, but billions. The people who are presently creating this nightmare paper jungle have a mindset that is inimical to simplicity and cost-effectiveness. I don't think they are either qualified or have incentive to fix their creation. I am certain that if asked to explain the reason for most of the questions and detail demanded of potential vendors, just to be allowed to bid on state work, they would be hard-pressed to justify this laborious process.

I note that on the current OFF44 contract that opens May 6th, the number of bidders for commercial printing (940 printers in state of MA) will be further limited to only 10 (page 2). That limitation will not be difficult to achieve. The paperwork involved for any business with potential interest in doing printing for the state is enough to discourage most printers from entering the competition. Large companies with many administrative employees can afford to dedicate personnel to the task, but most medium to small companies will not. This year, of the 10 allowed to compete for Category 1 work, two will be state run printing departments, leaving the field open to only 8 private commercial printers.

Finally, I find that there is a maze of do's and don'ts involved in doing state work, so much so, that the state has had to set up multiple training sessions to assist bidders to understand the requirements. I wonder what these training sessions cost the tax payers, and why is the procurement process in Massachusetts so complex that such training is necessary at all?

Attempting to locate state business opportunities in our industry through the present computer network provided is also ineffective as many qualified procurements are not timely listed. Suffice it to say, that conditions could be improved by training the procurers themselves to make the system more accurate and user friendly. I believe there are simple guidelines that could be employed to help this effort.

I would be pleased to assist the Governor's Commission in ways to achieve a better, more cost effective procurement system. I am a graduate of MIT in the course of Business and

Engineering Administration, and have served over 50 years in this industry. I have access to industry experts who could also contribute to this effort.

Sincerely,

Ralph E. Wilbur
[redacted]

cc: via email from [redacted]
constituent.services@state.ma.us
[redacted]