ATTACHMENT B

December 11, 2020

To the Honorable Senate and House of Representatives,

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Sections 23 and 43 of House Bill No. 5164, “An Act Making Appropriations for the Fiscal Year 2021 for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements.”

Section 23 proposes to establish 2 new statutory funds in Chapter 29 of the General Laws, a Federal Coronavirus Relief Trust Fund and a Nonpublic Ambulance Service Reimbursement Trust Fund. This section also makes updates to the existing Early Education and Care Public-Private Trust Fund.

The Federal Coronavirus Relief Fund as written would sweep up federal funds that are now managed directly by departments. This would potentially interfere with the rapid and appropriate administration of dozens or even hundreds of federal programs. It would risk delay and confusion, and could create compliance risk if the eventual appropriations do not accord with federal grant requirements. Accordingly, I am proposing to revise this section to follow a similar structure of the fund established earlier this year by the Legislature for funds received under the federal CARES Act, with additional specifications to account for the regular flow of federal funds to the Commonwealth. Specifically, I propose to narrow the scope of the section to cover only those new programs created by Congress specifically to address COVID and related recovery needs.

Sections 23, together with Section 43, also establishes a Nonpublic Ambulance Service Reimbursement Trust Fund and an assessment on nonpublic ambulance service providers to increase MassHealth ambulance transportation reimbursements. I am supportive of establishing such an assessment and payment structure for this provider class. However, the proposal as enacted must be modified in order to bring it into compliance with federal law. First, the assessed class of ambulance services must be limited to emergency transportation only. Second, language requiring that the schedule of payments made from the fund be proportionate to the amounts assessed on nonpublic ambulance service providers must be omitted, as it runs counter to federal prohibitions on hold harmless restrictions. As a result, I am recommending revised language to correct these issues.

Lastly, I am returning to you the language of the Early Education and Care Public-Private Trust Fund unchanged.

For the reasons stated above, I recommend that Section 23 be amended by striking out the section in its entirety and inserting in place thereof the following section:-

SECTION 23. Chapter 29 of the General Laws is hereby amended by striking out section 2IIIII, inserted by section 8 of chapter 124 of the acts of 2020, and inserting in place thereof the following 2 sections:-

Section 2IIIII. (a) There shall be an Early Education and Care Public-Private Trust Fund. The fund shall be administered by the commissioner of early education and care.

(b) There shall be credited to the fund: (i) revenue from appropriations or other money authorized by the general court and specifically designated to be credited to the fund; (ii) interest earned on such revenues; and (iii) funds from public and private sources, including, but not limited to, gifts, grants and donations, to support state, philanthropic and private partnership efforts supporting Massachusetts childcare providers. Amounts credited to the fund that are unexpended at the end of a fiscal year shall not revert to the General Fund.

(c) Amounts credited to the fund may be expended, without further appropriation, by the commissioner for the following purposes:

(i) to assist the needs of providers in the early education and care mixed delivery system;

(ii) for the development of an infrastructure to facilitate state, private and philanthropic efforts in support of the early education and care field; and

(iii) for state collaboration with philanthropic organizations and businesses to establish and maintain an infrastructure for providing ongoing technical assistance and programming for the early education and care field including, but not limited to, the enhancement of business stability and sustainability, the fostering of local cross-sector early childhood education collaboration and the enhancement of program quality, including supports for early childhood educators.

(d) Amounts received from private sources shall be approved by the commissioner of early education and care and subject to review before being deposited in the fund to ensure that pledged funds are not accompanied by conditions, explicit or implicit, on the implementation of early education and care policy and planning. The review shall be made publicly available.

(e) The commissioner of early education and care may designate an administrator of the fund for purposes of implementing approved activities consistent with this section.

(f) Annually, not later than November 1, the commissioner of early education and care shall report on the fund’s activities to the house and senate committees on ways and means, the chairs of the joint committee on education and the house and senate clerks. The report shall include, but shall not be limited to: (i) the source and amount of funds received; (ii) the amounts distributed and the purpose of expenditures from the fund, including, but not limited to, funds expended to assist early education and care providers; (iii) any grants provided to early education and care programs, philanthropic organizations or other stakeholder organizations; and (iv) anticipated revenue and expenditure projections for the next year.

Section 2JJJJJ. (a) There shall be established and set up on the books of the commonwealth a separate fund known as the Nonpublic Ambulance Service Reimbursement Trust Fund to be administered by the secretary of health and human services. There shall be credited to the fund: (i) all revenues generated from the funds collected pursuant to subsection (b) of section 67A of chapter 118E; (ii) an amount equal to any federal financial participation revenues claimed and received by the commonwealth for eligible expenditures made from the fund; (iii) any revenue from appropriations or other money authorized by the general court and specifically designated to be credited to the fund; and (iv) interest earned on any money in the fund. Amounts credited to the fund shall be expended without further appropriation. Money remaining in the fund at the end of a fiscal year shall not revert to the General Fund and shall be available for expenditure in subsequent fiscal years. No expenditure shall be made from said fund which shall cause said fund to be in deficit at the close of a fiscal year.

(b) Money in the fund shall be expended for Medicaid payments to nonpublic ambulance services defined in subsection (a) of section 67A of chapter 118E.

(c) Revenues generated from clauses (i) and (ii) of the second sentence of subsection (a) shall be expended exclusively for nonpublic ambulance services defined in subsection (a) of section 67A of chapter 118E and shall not be used to replace payment commitments between the nonpublic ambulance services and the commonwealth. The expenditures shall be established by the executive office of health and human services in a manner consistent with the requirements and conditions of federal financial participation under 42 U.S.C. 1396b(w) and 42 C.F.R. 433.68, including the prohibitions against hold harmless provisions as defined under 42 U.S.C. 1396b(w)(4) and 42 C.F.R. 433.68(f) and shall be made only under federally-approved payment methods and consistent with federal funding requirements and all federal payment limits as determined by the secretary of health and human services. Federal financial participation shall be sought in a manner that achieves the maximum amount of federal revenue such that the assessment amount equals the state share of the qualifying Medicaid ambulance service payments related to this section.

(d) The schedule of payment amounts to be established and distributed by the executive office of health and human services under this section shall be developed in a manner that: (i) promotes the provider capacity, access and quality management needs of the Medicaid program as those needs are determined by the secretary of health and human services; (ii) considers the cost of services delivered by providers for which the providers are not fully reimbursed or otherwise compensated, including, but not limited to, free care and services delivered in good faith reliance on authorization; (iii) considers existing Medicaid reimbursement rates; and (iv) closes the gap between Medicaid rates and average commercial rates. The executive office of health and human services shall consult with stakeholders, including the Massachusetts Ambulance Association, Incorporated, in the development and implementation of the payments. In order to accommodate timing discrepancies between the receipt of revenue and related expenditures, the comptroller may certify for payment amounts not to exceed the most recent revenue estimates as certified by the secretary of health and human services to be transferred, credited or deposited under this section.

(e) Annually, not later than September 30, the executive office of health and human services shall file a report with the house and senate committees on ways and means which shall include: (i) a detailed accounting of all money transferred, credited or deposited into and from the fund; (ii) the reasons for any unspent amount in the fund; and (iii) an analysis of the respective uniform assessment paid by nonpublic ambulance services, defined in section 67A of chapter 118E.

And further recommend that the bill be amended by striking out section 43 and inserting in place thereof the following section:-

SECTION 43. Said chapter 118E, as so appearing, is hereby amended by inserting after section 67 the following section:-

Section 67A. (a) The following words shall, unless the context clearly requires otherwise, have the following meanings:

“Ambulance service”, as defined in section 1 of chapter 111C.

“Emergency”, as defined in section 1 of chapter 111C.

“Executive office”, the executive office of health and human services.

“Gross patient service revenue”, the total dollar amount of nonpublic ambulance charges for services rendered in a fiscal year.

“Nonpublic emergency ambulance assessed charges”, gross patient service revenue attributable to all patients for emergency ambulance serviceless bad debt, charity care and payer discounts relating to such emergency ambulance service.

“Nonpublic ambulance service”, ambulance services which are not provided by a city or town, county, district or other governmental body and are licensed pursuant to section 6 of chapter 111C.

“Total nonpublic emergency ambulance service assessment amount”, an amount not less than 1- quarter of 1 per cent lower than the maximum limit for a provider assessment pursuant to 42 C.F.R. 433.68(f), inclusive of an annual amount of $500,000; provided, that the annual amount of $500,000 shall be for administrative costs of the executive office.

(b) A nonpublic ambulance service’s liability to the Nonpublic Ambulance Service Reimbursement Trust Fund, established in section 2JJJJJ of chapter 29, shall equal the product of: (i) the ratio of its nonpublic emergency ambulance assessed charges to all nonpublic ambulance services’ nonpublic emergency ambulance assessed charges statewide; and (ii) the total nonpublic emergency ambulance service assessment amount. Annually, before October 1, the executive office shall establish each nonpublic ambulance service’s liability to said fund using the best data available as determined by the executive office and shall update each nonpublic ambulance service’s liability to said fund as updated information becomes available. The executive office shall specify, by regulation an appropriate mechanism for interim determination and payment of a nonpublic ambulance service’s liability to the fund. A nonpublic ambulance service's liability to the fund shall, in the case of a transfer of ownership, be assumed by the successor in interest to the nonpublic ambulance service.

(c) There shall be imposed in each fiscal year a uniform assessment upon the nonpublic emergency ambulance assessed charges of all nonpublic emergency ambulance services. Such uniform assessment shall not be implemented unless and until the executive office receives notice of federal matching funds approval from the federal Centers for Medicare and Medicaid Services.

(d) All nonpublic ambulance services, regardless of payment model, shall be subject to the uniform assessment pursuant to subsection (c), including, but not limited to, those nonpublic ambulance services in fee-for-service and managed care arrangements. The uniform assessment shall be set as a percentage of the nonpublic emergency ambulance assessed charges of each such nonpublic ambulance service and, for each fiscal year, the percentage shall be equal to the ratio of: (i) the total nonpublic emergency ambulance service assessment amount for the same fiscal year; to (ii) the total nonpublic emergency ambulance assessed charges in the same fiscal year and as the amount of those charges is determined by the executive office under this section. A nonpublic ambulance service’s liability to the fund shall, in the case of a transfer of ownership, be assumed by the successor in interest to the nonpublic ambulance service.

(e) The executive office shall establish an appropriate mechanism for enforcing each nonpublic ambulance service’s liability to the fund in the event that a nonpublic ambulance service does not make a scheduled payment to the fund.

And further recommend that the bill be amended by inserting after section 102 the following section:-

SECTION 102A.  There shall be established and set up on the books of the commonwealth a separate fund called the Federal COVID Response Fund. The fund shall consist of revenues received by the commonwealth from the federal government to assist the commonwealth in its public health, community and economic recovery efforts related to the state of emergency concerning the novel coronavirus disease outbreak declared by the governor on March 10, 2020. Revenues, excluding those related to extensions or expansions of COVID-19-related federal grants previously credited to the General Federal Grants Fund established pursuant to section 2C of chapter 29 of the General Laws or related to increased Federal Medical Assistance Percentage (FMAP) rates under section 1905(b) of the Social Security Act, from federal funds allocated to the commonwealth pursuant to federal legislation that is enacted after December 4, 2020 and in response to the COVID-19 outbreak or related economic recovery, and only with respect to those federal funds made available in the form of newly created federal grant or reimbursement programs, and any interest earned on such revenues shall be deposited in the fund; provided, that any amounts received by the commonwealth from the federal government after December 4, 2020 that supplement or expand appropriations originally made to the commonwealth under section 5001(a) of the federal Coronavirus Aid, Relief, and Economic Security Act shall be deposited in the Massachusetts Coronavirus Relief Fund established pursuant to section 98 of chapter 124 of the acts of 2020. Spending from the fund shall be governed by applicable federal statutory requirements and any related guidance issued by the federal government, including the return of unexpended funds to the federal government.

Except where federal grant agreements require otherwise, the fund shall be administered by the secretary of administration and finance. Where federal grant agreements require administration of funds other than by the secretary of administration and finance, the funds shall be administered pursuant to federal grant agreements, and the secretary of administration and finance shall be informed of revenue and expenditure details in a form and manner determined by said secretary. The fund shall not be subject to appropriation. Any balance remaining in the fund at the close of a fiscal year shall be available for expenditure in the following fiscal year.

The comptroller may establish procedures necessary to effectuate this section, including procedures for the proper transfer, accounting and expenditures of funds.

Respectfully submitted,

Charles D. Baker

 Governor