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CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

ATTACHMENT F

July 17, 2017

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, I am returning to you for amendment Sections 16, 17, 60-67, inclusive, 93, 110, 111, 122, 146, 147 and 150 of House Bill No. 3800, "An Act Making Appropriations for the Fiscal Year 2018 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."

These sections establish a temporary, two-pronged approach to an employer contribution that builds off of the existing employer medical assistance contribution (EMAC) and is expected to generate \$200 million in revenue in Fiscal Year 2018. The employer contribution represents an important component of a larger set of reforms necessary to attain a sustainable MassHealth program and a balanced budget in Fiscal Year 2018.

These sections, however, must not be considered in isolation of other measures needed to manage spending in the MassHealth program. Absent other reforms, this proposal imposes an unfair burden on Massachusetts' employers without making the structural reforms essential to MassHealth's long-term sustainability. Without further action, MassHealth growth will continue to crowd out other budget priorities and corrode the commercial insurance market.

Therefore, I am proposing a more comprehensive and balanced approach that reinforces the shared commitment between the private and public sectors under Chapter 58. In addition to the employer contribution, I am recommending several reforms, including initiatives that would better align the MassHealth program with commercial insurance products and coverage, and measures to ensure MassHealth is a secondary payer when individuals have access to employer-sponsored health insurance coverage. This proposal will provide savings in Fiscal Year 2018, as well as longer term savings that lay the framework for a more sustainable MassHealth program.

The MassHealth funding level included in the conference report assumes savings and revenues made possible only through the passage of this reform package. The Fiscal Year 2018

savings also assume we will have the federal waiver necessary to accomplish some of these reforms within 2018, which will require legislative approval by the end of the summer. If action is not taken within a timely manner, corrective budgetary measures will be necessary to account for the foregone revenues and savings associated with this proposal. Therefore, I respectfully request that the Legislature hold a public hearing on this proposal within 30 days, and act upon this proposal within 60 days to ensure we achieve the necessary savings and revenues in Fiscal Year 2018.

Finally, I am filing today, as separate legislation, a set of commercial insurance market reform proposals that were previously included in the legislative package that was shared with budget conferees.

In order to protect taxpayers and preserve the health care safety net for those who need it, I recommend striking sections 16, 17, 60-67, inclusive, 93, 110, 111, 122, 146, 147 and 150 and replacing them with the following language:-

SECTION 1. Section 8A of chapter 23H of the General Laws, as so appearing, is hereby amended by inserting after the word "system", in line 2, the following words:- " , the contribution established under section 189A of chapter 149".

SECTION 2. Said section 8A of said chapter 23H is hereby further amended by striking out the words " , the contribution established under section 189A of chapter 149" inserted by section 1.

SECTION 3. Section 7 of said chapter 94C, as so appearing, is hereby amended by striking out the words "practical nurse or a licensed dental hygienist", in lines 80 and 81, and inserting in place thereof the following words:-
practical nurse, or a licensed dental therapist under the supervision of a practitioner as defined in section 1 for the purposes of administering analgesics, anti-inflammatories and antibiotics only, or a licensed dental hygienist.

SECTION 4. Subsection (a) of said section 9 of said chapter 94C, as so appearing, is hereby amended by adding the following paragraph:-
A practitioner, as defined in section 1, may cause controlled substances to be administered under the practitioner's direction by a licensed dental therapist, for the purposes of administering analgesics, anti-inflammatories and antibiotics only.

SECTION 5. Subsection (c) of said section 9 of said chapter 94C, as so appearing, is hereby amended by adding the following paragraph:-
A licensed dental therapist who has obtained a controlled substance from a practitioner, as defined in section 1, for dispensing to an ultimate user under subsection (a) shall return to such practitioner any unused portion of the substance which is no longer required by the patient.

SECTION 6. Section 43A of said chapter 112, as so appearing, is hereby amended by inserting after the definition of "Appropriate supervision" the following 2 definitions:-

“Board”, the board of registration in dentistry or a committee or subcommittee thereof established in the department of public health pursuant to sections 9 and 19 of chapter 13 and sections 43 to 53, inclusive.

“Collaborative management agreement”, a written agreement between a supervising dentist and a dental therapist outlining the procedures, services, responsibilities and limitations of the therapist.

SECTION 7. Said section 43A of said chapter 112, as so appearing, is hereby further amended by inserting after the definition of “Dental hygienist” the following definition:-

“Dental therapist,” a person registered and licensed by the board under section 51B.

SECTION 8. Said section 43A of said chapter 112, as so appearing, is hereby further amended by adding the following definition:-

“Supervising dentist”, a dentist licensed under section 45 of this chapter who enters into a collaborative management agreement with a dental therapist.

SECTION 9. Said chapter 112 is hereby further amended by inserting after section 51A the following section:-

Section 51B. (a) The board may approve a dental therapist education program that meets the standards of the Commission on Dental Accreditation for dental therapist education programs and includes training on serving patients with special needs including, but not limited to, people with developmental disabilities including autism spectrum disorders, mental illness, cognitive impairment, complex medical problems, significant physical limitations and the vulnerable elderly.

Any person of good moral character who (i) successfully completes a board approved dental therapy education program, or who is a full time dental student who has satisfactorily completed at least four full semesters in an accredited dental college in subjects considered by the board as essential for a dental therapist, or who is a graduate of an accredited dental college; (ii) passes a board approved comprehensive, competency-based clinical examination that is administered independently of an institution providing dental therapy education; and (iii) obtains a policy of professional liability insurance and shows proof of such insurance as required by the board, shall, upon application and payment of a fee, as determined annually by the secretary of administration and finance under section 3B of chapter 7, be issued a license to practice as a dental therapist in accordance with, and to the extent provided by, a collaborative management agreement with a supervising dentist. Dental therapists licensed under this section shall renew licensure biennially, on a date determined by the board, upon application and payment of a fee, as determined by the secretary of administration and finance under section 3B of chapter 7.

Licensure under this section shall authorize a dental therapist to practice as a public health dental hygienist or dental hygienist under section 51. Upon receipt of a certificate of registration under section 45 any license issued hereunder shall be revoked.

(b) A dental therapist shall have practiced under the direct supervision of a supervising dentist for at least 500 hours or completed 1 year of residency before practicing under general supervision.

A dental therapist shall not operate independently of a supervising dentist and shall not perform any service or procedure described in this section except as authorized by a supervising dentist. Before performing a procedure or providing a service under this section, a dental therapist shall enter into a written collaborative management agreement with a supervising dentist. At a minimum, the collaborative management agreement shall address: practice settings, any limitation on services established by the supervising dentist, the level of supervision required for various services or treatment settings, patient populations that may be served, practice protocols, record keeping, management of medical emergencies, quality assurance, administering and dispensing medications and supervision of dental assistants and dental hygienists. A dental therapist may provide the services authorized in practice settings where the supervising dentist is not on-site and has not previously examined the patient, to the extent authorized by the supervising dentist in the collaborative management agreement; provided, that the supervising dentist shall be available for consultation and supervision by telephone or other means of electronic communication.

The collaborative management agreement shall include specific written protocols to govern situations in which the dental therapist encounters a patient who requires services, procedures, or treatment exceeding those which the dental therapist is authorized to provide. The collaborative management agreement may be updated from time to time, shall be signed and maintained by the supervising dentist and the dental therapist and shall be submitted upon request to the board. A supervising dentist shall not have a collaborative management agreement with more than 4 dental therapists at the same time.

(c) To the extent permitted by a collaborative management agreement, and in accordance with the collaborative management agreement, a dental therapist licensed by the board may: (i) perform all acts provided for in the Commission on Dental Accreditation's dental therapy standards; (ii) interpret radiographs; (iii) place space maintainers; (iv) perform pulpotomies on primary teeth; (v) perform nonsurgical extractions of periodontally diseased permanent teeth with tooth mobility of +3 under general supervision; (vi) supervise dental hygienists and dental assistants; and (vii) dispense and administer analgesics, anti-inflammatories and antibiotics in accordance with state and federal law.

A dental therapist, in accordance with the written collaborative management agreement, shall refer patients to another qualified dental or health care professional to receive any needed services that they are not authorized to provide.

Nothing in this section shall be construed as authorizing a dental therapist to extract a tooth that is unerupted, impacted or needs to be sectioned for removal, or to dispense or administer a narcotic drug as defined in section 1 of chapter 94C.

The supervising dentist shall ensure that a dentist is available to the dental therapist for timely consultation during treatment if needed and shall either provide or arrange with another dentist or specialist to provide the necessary treatment to a patient who requires more treatment than the dental therapist is authorized to provide. The supervising dentist is responsible for directly providing or arranging for another dentist or specialist to provide any necessary advanced services needed by the patient.

(d) The Board may adopt guidelines, rules and regulations governing the licensure and practice of dental therapists to protect the public health, safety and welfare, including without limitation, guidelines for collaborative management agreements, continuing education requirements, license renewal, standards of conduct, and the investigation of complaints, conduct of disciplinary proceedings and grounds for discipline.

SECTION 10. Section 9A of chapter 118E of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

(17) The division may, consistent with the terms and conditions of a demonstration project, deny or terminate MassHealth eligibility for non-disabled persons who would otherwise qualify for a program of medical benefits under this chapter who have access to affordable employer sponsored health insurance. The division shall promulgate regulations to implement this clause. The department of unemployment assistance and the department of revenue shall share wage information, employer information, and other information as necessary to implement this subsection, provided, however, that such information may be shared only in accordance with a written agreement that is consistent with the provisions of 20 C.F.R. Pt 603.

SECTION 11. Said chapter 118E is hereby further amended by adding the following section:-

Section 78. (a) Upon request from the division, an employer shall provide, under oath, health insurance information about an employee who has applied for benefits from a state subsidized health insurance program. An employer receiving information that identifies, or could be used to identify, a MassHealth member or recipient of subsidized health insurance shall not use or disclose such information except as authorized by the division.

(b) Information reported under this section that identifies individual employees by name or health insurance status or is protected health information shall not be a public record under

clause Twenty-sixth of section 7 of chapter 4 or under chapter 66. The information may be exchanged among the executive office of health and human service, the commonwealth health insurance connector authority, the department of unemployment assistance, the center for health information and analysis and the department of revenue. An employer who knowingly falsifies or fails to file any information required by this section, or its implementing regulation, shall be subject to a penalty of not less than \$1,000 or more than \$5,000 for each violation.

SECTION 12. Said chapter 118E is hereby further amended by adding the following section:-

Section 79. (a) The division shall create a Health Insurance Responsibility Disclosure form. Every employer with 6 or more employees, doing business in the commonwealth, shall annually complete and submit said form under oath. The form shall indicate whether the employer has offered to pay for or arrange for the purchase of health care insurance and information about such health care insurance such as the premium cost, benefits offered, cost sharing details, eligibility criteria and other information necessary to implement subsection (17) of section 9A. The division may make arrangements with other agencies of the commonwealth, including the department of revenue and the department of unemployment assistance, to assist with the administration of this section. Employers shall provide supplemental information that is necessary to implement said subsection (17) of said section 9A to the division or its designee, upon request. An employer receiving information that identifies, or could be used to identify, a MassHealth member or recipient of subsidized health insurance shall not use or disclose such information except as authorized by the division.

(b) Notwithstanding any general or special law to the contrary, information reported under subsection (a) that identifies individual employees by name or health insurance status or is protected health information shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or under chapter 66, but the information may be exchanged among the executive office of health and human service, the commonwealth health insurance connector authority, the department of unemployment assistance, the center for health information and analysis and the department of revenue as necessary to implement subsection (17) of section 9A. An employer who knowingly falsifies or fails to file any information required by this section, or its implementing regulation, shall be subject to a penalty of not less than \$1,000 or more than \$5,000 for each violation.

SECTION 13. Section 189 of chapter 149 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out, in line 8, the figure “.34” and inserting in place thereof the following figure:— .51.

SECTION 14. Said section 189 of said chapter 149, as amended by section 13, is hereby further amended by striking out the figure “.51”, inserted by section 13, and inserting in place thereof the following figure:— .34.

SECTION 15. Said section 189 of said chapter 149, as appearing in the 2016 Official Edition, is hereby further amended by striking out, in line 50, the figure “.12” and inserting in place thereof the following figure:— .18.

SECTION 16. Said section 189 of said chapter 149, as amended by section 15, is hereby further amended by striking out the figure “.18”, inserted by section 15, and inserting in place thereof the following figure:— .12.

SECTION 17. Said section 189 of said chapter 149, as appearing in the 2016 Official Edition, is hereby further amended by striking out, in line 54, the figure “.24” and inserting in place thereof the following figure:— .36.

SECTION 18 Said section 189 of said chapter 149, as amended by section 17, is hereby further amended by striking out the figure “.36”, inserted by section 17, and inserting in place thereof the following figure:— .24.

SECTION 19. Said chapter 149 is hereby amended by inserting after section 189 the following section:-

Section 189A. (a) Each employer, subject to sections 14, 14A and 14C of chapter 151A, except those who employ 5 or fewer employees, shall pay a contribution for each employee who receives health insurance coverage through the division of medical assistance or subsidized insurance through the commonwealth health insurance connector authority. The contribution shall be computed by multiplying the wages the employer paid any such employee by 5 per cent. The department of unemployment assistance, in consultation with the division of medical assistance and the commonwealth health insurance connector authority, shall promulgate implementing regulations, which shall specify the number of days that an individual must receive publicly subsidized health care coverage to cause the assessment. The contribution shall be paid in a manner prescribed by the director of unemployment assistance.

(b) For the purposes of this section, the term "wages" shall mean the “unemployment insurance taxable wage base” as defined in subsection (a)(4) of section 14 of chapter 151A. For the purposes of this paragraph, remuneration shall include remuneration paid to an individual during the calendar year with respect to employment with a transferring employer, as that term is used in subsection (n) of section 14 of chapter 151A.

(c) Any employer notified of a liability determination under this section may request a hearing on such determination. The request for a hearing shall be filed within 10 days after the mailing of the notice of the determination. If a hearing is requested, the employer shall have a reasonable opportunity for a fair hearing before an impartial hearing officer designated by the director of unemployment assistance. The hearing shall be conducted in accordance with the procedures in subsection (b) of section 39 of chapter 151A. Following the hearing, an aggrieved party may appeal the decision to superior court.

(d) (1) Except where inconsistent with this section, the terms and conditions of chapter 151A that are applicable to the payment and collection of contributions or payments in lieu of contributions shall apply to the same extent to the payment of and the collection of the contribution under this section; provided, however, that such contributions shall not be credited to the employer's account or to the solvency account established under section 14, 14A or 14C of chapter 151A.

(2) The director of unemployment assistance may share information with the commissioner of revenue for the purposes of enforcement and collection of the contribution under this section. The commissioner of revenue may enforce and collect a debt certified by the director as owed under this section in the manner of a tax due and unpaid under chapter 62C; provided, that the remedies authorized in subsection (c) shall be the sole remedies for an employer to dispute a debt so certified, and remedies otherwise available under chapter 62C to dispute a tax assessment shall not be available. Notwithstanding any general or special law to the contrary, for purposes of enforcement of this section the commissioner of revenue may disclose to the department of unemployment assistance any information referred to in chapter 62E or any information relating to the commissioner's collection activities under chapter 62C with regard to debts certified by the director.

(e) Data collected by the department of unemployment insurance, the department of revenue, the division of medical assistance and the commonwealth health insurance connector authority under this section shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or under chapter 66. The department of unemployment insurance, the department of revenue, the division of medical assistance and the commonwealth health insurance connector authority may share information to implement this section.

SECTION 20. Chapter 176Q of the General Laws is hereby amended by striking out section 7A, as so appearing, and inserting in place thereof the following section:-

Section 7A. (a) There shall be a small group incentive program to expand the prevalence of employee health plans offered by small businesses. The program shall be administered by the board, in consultation with the department of public health. The program shall provide subsidies and technical assistance for eligible small groups that offer health plans to employees.

(b) An eligible small group shall be qualified to participate in the program if: (1) the eligible small group purchases group coverage through the connector; and (2) the eligible small group meets certain criteria, as determined by the board, which may include criteria regarding the size of the employer group, the level of employer subsidy of the cost of employee coverage, the average salary of employees in the group, enrollment in a high-value plan that promotes employee wellness, or participation in a plan-administered or employer-administered wellness program.

(c) For eligible small groups participating in the program, the connector shall provide an annual subsidy not to exceed 50 per cent of eligible employer health care costs, as calculated by the

board. The connector may seek a state innovation waiver from the U.S. Department of Health and Human Services pursuant to 42 U.S.C. s. 18052 to obtain moneys otherwise available under 26 U.S.C. s. 45R to fund this program.

(d) If the director determines that available funds are insufficient to meet the projected costs of enrolling new eligible employers, the director shall impose a cap on enrollment in the program or subsidy amounts available to eligible groups.

(e) The connector shall report annually to the joint committee on community development and small businesses, the joint committee on health care financing and the house and senate committees on ways and means on the enrollment in the small group incentive program and evaluate the impact of the program on expanding health plan participation for small groups.

(f) The connector shall adopt regulations to implement this section.

SECTION 21. Section 79L of chapter 233, as so appearing, is hereby amended by inserting after the word "dentist", in line 12, the following words:- " , dental therapist".

SECTION 22. Notwithstanding any general or special law to the contrary, there shall be a 5 year moratorium on the addition of any new mandatory health care benefits, except as required by federal law.

SECTION 23. Notwithstanding section 14 of chapter 151A of the General Laws, for calendar year 2018 the experience rate of an employer qualifying therefor under subsection (b) of said section 14 of said chapter 151A shall be the rate which appears in column "D" of paragraph (1) of subsection (i) of said section 14 of said chapter 151A and for calendar year 2019 the experience rate of an employer qualifying therefor under subsection (b) of said section 14 of said chapter 151A shall be the rate which appears in column "E" of paragraph (1) of subsection (i) of said section 14 of said chapter 151A.

SECTION 24. Notwithstanding section 53 of chapter 118E of the General Laws or any general or special law to the contrary, the executive office of health and human services, subject to federal approval may restructure pharmacy benefits. At least 30 days before implementing benefit changes under this section, the secretary shall file a report with the house and senate committees on ways and means detailing the proposed changes and the anticipated fiscal impact of those changes.

SECTION 25. Notwithstanding section 53 of chapter 118E of the General Laws or any general or special law to the contrary, the executive office of health and human services may restructure or eliminate covered services that are optional benefits under the Medicaid program to generate savings. At least 30 days before implementing benefit changes under this section, the secretary shall file a report with the house and senate committees on ways and means detailing the proposed changes and the anticipated fiscal impact of those changes.

SECTION 26. Notwithstanding sections 9 and 16D of chapter 118E of the General Laws, subject to federal approval under the Commonwealth's 1115 Demonstration, individuals otherwise dually eligible for MassHealth Limited and ConnectorCare shall be eligible for subsidized insurance through the commonwealth health insurance connector authority only.

SECTION 27. Notwithstanding any general or special law to the contrary, subject to federal approval under the Commonwealth's 1115 Demonstration, non-disabled adults age 21 through 64 with income above 100% of the federal poverty level, excluding pregnant women and individuals with HIV-AIDS or breast or cervical cancer, shall be determined eligible for and enrolled in subsidized insurance through the Connector only. At least 30 days before implementing eligibility changes under this section, the secretary shall file a report with the house and senate committees on ways and means detailing the proposed changes and the anticipated fiscal impact of those changes.

SECTION 28. Notwithstanding any general or special law to the contrary, the comptroller shall count as revenue in fiscal year 2018 any increased contributions collected pursuant to sections 13 to 19, inclusive, that are received by the commonwealth on or before August 31, 2018.

SECTION 29. Notwithstanding any general or special law to the contrary, the comptroller shall count as revenue in fiscal year 2019 any increased contributions collected pursuant to sections 13 to 19, inclusive, that are received by the commonwealth on or after September 1, 2018 and on or before August 31, 2019.

SECTION 30. The division shall not use the authority conferred in Section 10 or enforce the requirements under Section 12 until receipt of approval from the federal government permitting MassHealth to implement eligibility criteria that bars individuals with access to affordable employer sponsored insurance from obtaining insurance coverage through MassHealth.

SECTION 31. Sections 1, 13, 15, 17, 19 and 25 are hereby repealed.

SECTION 32. Notwithstanding section 31, the director of unemployment assistance shall have the authority to collect any outstanding contributions established pursuant to section 189A of chapter 149 of the General Laws for obligations arising prior to January 1, 2020. The collection of any outstanding contributions shall be conducted in accordance with the regulations promulgated by the department of unemployment assistance pursuant to said section 189A of said chapter 149. The director of unemployment assistance may share information with the commissioner of revenue for the purposes of enforcement and collection of said outstanding contributions. The commissioner of revenue may enforce and collect a debt certified by the director as owed under this section in the manner of a tax due and unpaid under chapter 62C; provided, that the remedies authorized under department of unemployment assistance regulation shall be the sole remedies for an employer to dispute a debt so certified, and remedies otherwise available under chapter 62C to dispute a tax assessment shall not be available. Notwithstanding any general or special law to the contrary, for purposes of enforcement of this section the

commissioner of revenue may disclose to the department of unemployment assistance any information referred to in chapter 62E or any information relating to the commissioner's collection activities under chapter 62C with regard to debts certified by the director.

SECTION 33. Sections 1, 3 to 9, inclusive, 13, 15, 17, 19, and 21 shall take effect on January 1, 2018.

SECTION 34. Sections 2, 14, 16, 18, 31 and 32 shall take effect on December 31, 2019.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Charles D. Baker", is written over the printed name.

Charles D. Baker
Governor