



**Testimony of Patricia M Kelleher**  
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**Before the**  
**Division of Health Care Finance and Policy**  
**regarding**  
**14.5 CMR 16.00: Determination of the Employer Fair Share Contribution**

September 5, 2008

I am here on behalf of home care providers in Massachusetts to join our voices with others today in opposing the changes to the Fair Share Contribution Regulation. These changes, in particular the quarterly filing rule change, add new complexities and costs to an already struggling group of home care agencies. Let me explain.

Our primary concern with these proposed changes is their impact on our smaller, private care home care companies. These companies have emerged to meet a growing need for quality affordable elder care in our state; they are providing *new* jobs in our state, often for workers who are new to the workplace. But the work hours fluctuate widely for their direct care workers depending on the number of clients, on each client's health status, and even the time year. Over this past year the vast majority of these entities have done what they believed the state wanted them to do. They worked to comply with the law, including the state's new fair share rules, and filing deadlines. Few opted to pay rather than comply. **With these proposed changes, especially including that quarterly test, it seems to them that what the state now wants is not compliance, but payment.**

The words of one of the Director of these agencies are typical of the experience of many:

*“Last year we **exceed** the second criterion by paying 50% of the premiums for any individual that wishes to participate in our plan. We offer two plans: a low cost plan and an even lower cost plan. But we failed to meet the 25% participation rate because it is probably **mathematically impossible** for us to do so, particularly because of the fluctuations in hours and the frequent turnover of full-timers.*

*For example, a person who does work full-time for us may complete the 90-day eligibility period and remain eligible only briefly before the assignment terminates. Many such individuals are not successfully placed in a new assignment quickly enough, so they go on to other employment elsewhere after only a brief period of eligibility for*

*our health care plan. Many thousands of hours of employment are provided to workers each year that are ineligible for coverage, but nevertheless count toward our full-time census. So our percentage of participation will always be low.*

*So, I am now (with these proposed changes) faced with the with the Hobesian Choice of offering to share health insurance premiums PLUS pay the penalty, vs. simply paying the penalty.*

*A rational employer will take the penalty without the premiums every time. We would regret this, because we want to be able to offer that coverage to our employees.”*

Additionally the demographics of the home care workforce – mainly middle aged women who are the secondary wage earner in the family – make it hard for these business to meet the 25% participation and the 33% contribution thresholds.

As one agency speaking for many wrote:

*“We have 100 employees, about 35 of whom are full time, and 7 of these take insurance. The majority of those that don’t (take insurance) are women insured elsewhere. It seems I am being asked to be accountable to influence people who already have insurance from another source to purchase mine or pay because the state needs the money.”*

A survey of our member agencies does reveal that most of larger, Medicare-certified agencies are already in compliance with both tests. They have historically offered the best insurance they could afford as they have had to do in order to compete in the marketplace with hospitals for nurses. What they have found, however, is that due to the nature of their work and the composition of their workforce (middle aged nurses) the insurance products that have been available to them are very expensive, even by Massachusetts’ standards.

Although as I said, the two part test would be less onerous for them, their growing concern has been with product selection and costs. As one other agency wrote to me:

*“Last year our premium increased by 25% for exactly the same group of people insured the previous November. Simply put, absent any influence from the Commonwealth (and there was none), if I have to sell and my employees have to buy, the insurance company did what all good business people do in a captive market – raised their price.”*

And it bears noting that many of these homecare organizations have add to absorb these cost when their two major customers, the state and federal governments, have provided no rate increases in several years. And, in the case of the federal government, home care payments have been cut by 2.5% in the each of the past two years

While this issue of their escalating insurance costs for those who would be in compliance with these new rules may seem a little off today’s fair share contribution regulations, I

raise it as these agencies, too, look at these rules as do their smaller private as: ***the wrong approach at the wrong time.***

The members of the Home Care Alliance are in the healthcare business. They know what health insurance means for people and they want to see citizens covered. They want to support this law.

But as we approach the second very critical year of this nationally important program, changes that seem designed to penalize organizations with fluid workforces seem a very wrong next step.

What our members are hoping to see instead is more recognition of their difficulties in for certain sizes and types of businesses in finding affordable insurance and more attention paid to designing a portable insurance product for workers who might over the course of six or nine months work what is a full-time equivalent job but for several different employers. If these rules go forward, we would like to see some sort of waiver or process for employers to count their employees who are elsewhere insured.

The Home Care Alliance represents 135 companies, some of whom did offer insurance for the first-time this past year. It does seem to me and them that in implementing these changes, the Commonwealth is in danger of driving down in year two of reform one of the great successes stories of the first year: the number of new business offering health insurance. That would certainly be a shame.