

SENATE, No. 2195

[Senate, November 9, 2009 - New Draft of House, No. 3453 reported from the committee on Health Care Financing]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND NINE

AN ACT ESTABLISHING THE MASSACHUSETTS CHILDHOOD VACCINE PROGRAM AND THE MASSACHUSETTS IMMUNIZATION REGISTRY.

Be it enacted by the Senate and House of Representatives in General Court assembled,

And by the authority of the same, as follows:

1 **SECTION 1.** The General Laws, as appearing in the 2008 Official Edition, shall be amended

2 by adding after section chapter 118H the following new chapter:

3 Chapter 118I: Section 1:

4 Definitions. The following words, as used in this section, unless a different meaning is required

5 by the context or is specifically prescribed, shall have the following meanings:

6 “Child or Children,” individuals less than nineteen years of age.

7 “Clinician,” a health care professional licensed under chapter 112.

8 “Estimated vaccine cost,” the estimated cost over the course of a fiscal year of the purchase,
9 storage, and distribution of vaccines for all children in the commonwealth.

10 “Facility,” a hospital, clinic or nursing home licensed under chapter 111 or a home health
11 agency.

12 “Health care provider,” a clinician, a facility or a physician group practice.

13 “Health insurer,” includes surcharge payors as defined in section 34 of chapter 118G of the General
14 Laws; however, for the purposes of this section, health insurer shall also include a contributory group
15 general or blanket insurance for persons in the service of the commonwealth under chapter 32A; a
16 contributory group general or blanket insurance for persons in the service of counties, cities, towns and
17 districts, and their dependents under chapter 32B; and the medical assistance program administered by
18 the division of medical assistance pursuant to chapter 118E and in accordance with Title XIX of the
19 Social Security Act or any successor statute; Medicaid managed care organizations referenced in St.
20 1997, c. 47, § 28 for those health plans offered pursuant to M.G.L. c. 118H; and any other medical
21 assistance program operated by a governmental unit for persons categorically eligible for such program.
22 For the purposes of this act, “health insurer” shall not include any entity to the extent it offers a policy,
23 certificate or contract of insurance that provides coverage solely for dental care services or vision care
24 services. “Insured,” an enrollee, covered person, member, policyholder, subscriber or beneficiary of a
25 health insurer.

26 “Participating provider”, a provider who, under a contract with a health insurer or with its contractor or
27 subcontractor, has agreed to provide health care services to insureds with an expectation of receiving
28 payment, other than coinsurance, copayments or deductibles, directly or indirectly, from the carrier.

29 “Physician group practice,” two or more physicians who deliver patient care, make joint use of
30 equipment and personnel and by agreement divide income earned by the physicians in the group.

31 “Routine childhood immunizations,” immunizations for children until their nineteenth birthday,
32 including, but not limited to: (1) the immunizations recommended by the federal Vaccines for Children
33 Program; and (2) any immunizations as recommended by the Advisory Committee on Immunization
34 Practices of the U.S. Department of Health and Human Services.

35 “Total non-federal program cost,” the estimated annual cost of vaccines needed for routine
36 childhood immunizations for children covered by health insurers in the Commonwealth less the amount
37 of federal revenue available to the commonwealth for purchase, storage, distribution and administration
38 of such vaccines.

39 “Vaccine Purchase Trust Fund,” a fund to support a universal purchase system for childhood
40 vaccines in the commonwealth.

41 Section 2: (a) There is established by the commonwealth a separate trust fund to be known as the
42 Vaccine Purchase Trust Fund, in this section called the “Fund,” to support a universal purchase system
43 for childhood vaccines in the Commonwealth. The specific purpose of the Fund shall be to cover the
44 costs to purchase, store and distribute vaccines for routine childhood immunizations and to administer
45 the Fund and the Massachusetts Immunization Registry, as established under section 24K of chapter 111.
46 The fund shall consist of all monies paid to the commonwealth under subsection (c) and any interest
47 earnings on such monies. The Fund shall be maintained by the commissioner of the division of health
48 care finance and policy or his or her designee. The monies shall be expended under the direction of the
49 department of public health, without prior appropriation, solely for the purposes described in this section.
50 Any balance in the Fund at the close of a fiscal year shall be available for expenditure in subsequent
51 fiscal years and shall not be transferred to any other fund or revert to the General Fund. The
52 commissioner of the division of health care finance and policy or his or her designee shall report

53 annually to the house and senate committees on ways and means the amount of funds collected and any
54 expenditures made from the Fund.

55 (b) There is established a vaccine purchase advisory council consisting of the commissioner of public
56 health or his or her designee; the Medical Director of the Massachusetts Immunization Program of the
57 Department of Public Health; the commissioner of the division of health care finance and policy or his or
58 her designee; the Executive Director of the Commonwealth Health Insurance Connector Authority or his
59 or her designee; the medical directors of the three health insurance companies having the most covered
60 lives in the commonwealth; four health care provider representatives appointed by the commissioner of
61 public health, one of whom shall be a member of the Massachusetts Medical Society; one of whom shall
62 be a member of The Massachusetts Chapter of the American Academy of Pediatrics; one of whom shall
63 be a member of the Massachusetts Academy of Family Physicians; and one of whom shall be a physician
64 licensed to practice in the commonwealth and who shall have expertise in the area of childhood vaccines.
65 The commissioner of public health, or his or her designee, shall be the chair of the council. The council
66 shall recommend the types of vaccine(s) to be purchased based on a list of routine childhood
67 immunizations and shall take into account provider preference, cost, availability, and other factors as
68 determined by the council. The council shall recommend the amount of funding needed each fiscal year
69 by calculating the total non-federal program cost. The council shall have independent authority to make
70 recommendations required by this subsection. The commissioner of the department of public health shall
71 determine the final vaccine(s) to be purchased. The commissioner of the division of health care finance
72 and policy shall determine the final amount required to be included in the Vaccine Purchase Trust Fund
73 for the next fiscal year to cover vaccines required for purchase, storage and distribution pursuant to this
74 subsection.

75 (c) Pursuant to regulations to be promulgated by the commissioner of the division of health care finance
76 and policy, each health insurer in the commonwealth shall pay to the commissioner of the division of
77 health care finance and policy, for deposit in the Vaccine Purchase Trust Fund, a child immunizations

78 fee assessed by the commissioner of the division of health care finance and policy. The regulations shall
79 establish dates for assessing and contributing such fee and shall permit and enable expenditure of funds
80 by the department of public health. The annual contribution into the trust fund initially shall be deposited
81 by July 1, 2010 and annually thereafter. Such fee shall be a percentage of the final amount determined
82 by the commissioner of the division of health care finance and policy pursuant to subsection (b).

83 (d) The department of public health may promulgate rules and regulations as necessary to implement the
84 universal purchase and distribution system, in accordance with this section and other applicable state and
85 federal laws. The rules and regulations shall establish the system by which vaccines are distributed for
86 children in the Commonwealth.

87 Section 3: (a) Every health insurer, as defined in section one, shall provide benefits for (1) routine
88 childhood immunizations for Massachusetts residents and (2) immunizations for Massachusetts residents
89 who are 19 years of age and over according to the most recent schedules recommended by the Advisory
90 Committee on Immunization Practices of the U.S. Department of Health and Human Services. These
91 benefits shall be exempt from any copayment, coinsurance, deductible, or dollar limit provisions in the
92 health insurance policy or contract.

93 (b) Health insurers shall pay to health care providers 100% of the reasonable and customary
94 charges for those immunizations described in Section 3(a), excluding those costs covered by the
95 commonwealth or the federal government,, and any reasonable and customary costs associated with the
96 administration of the vaccines. Notwithstanding any general or special law to the contrary, a health
97 insurer shall provide such reimbursement to any health care provider who administers covered
98 immunizations in any facility, health care provider's office or any other setting in the Commonwealth and
99 shall not limit such reimbursement to providers that are participating providers.

100 **SECTION 2.** Chapter 111 of the General Laws, as appearing in the 2008 Official Edition, is
101 hereby amended by inserting after 24K the following section:-

102 Section 24L. The department of public health shall establish, maintain, and operate a
103 computerized information system to be known as the Massachusetts Immunization Registry. The
104 Massachusetts immunization registry shall record immunizations and immunization history with
105 identifying information. The Massachusetts immunization registry shall include appropriate controls to
106 protect the security of the system and the privacy of the information.

107 The department shall promulgate rules and regulations to implement the Massachusetts
108 immunization registry.

109 All licensed health care providers administering vaccinations shall discuss the reporting
110 procedures of the Massachusetts immunization registry with the parent, guardian, or individual receiving
111 the vaccinations, and offer them the right to object to the disclosure of such information as set forth in
112 this section.

113 Notwithstanding any restrictions set forth in chapter 46 and section 24B of chapter 111, upon
114 receipt of an initial birth record for a newborn, the state registrar of vital records and statistics shall
115 transmit to the Massachusetts immunization registry the information regarding immunizations
116 administered to a newborn and such other information transmitted with the birth record that the
117 department determines to be the minimum necessary for the effective operation of the Massachusetts
118 immunization registry.

119 All licensed health care providers practicing in Massachusetts who administer immunizations to
120 individuals in Massachusetts shall report to the Massachusetts immunization registry such data related to
121 immunizations as the department determines is necessary for disease prevention and control.

122 Immunization information may be released from the Massachusetts immunization registry to the
123 select group of individuals and agencies outlined below without further explicit consent of the individual
124 or the minor child's parent or guardian, unless the individual or the parent or guardian objects to such
125 disclosure.

126 The department may grant access to the Massachusetts immunization registry to the following
127 categories of users in the commonwealth: (1) licensed health care providers providing direct care to the
128 individual patient, (2) elementary and secondary school nurses and registration officials who require
129 proof of immunizations for purposes of school enrollment and disease control; (3) local boards of health
130 for disease prevention and control; (4) Women Infants and Children Nutrition Program (WIC) staff who
131 administer WIC benefits to eligible infants and Children; (5) staff of state agencies or state programs
132 whose duties include education and outreach related to the improvement of immunization coverage rates
133 among their clients.

134 The department may designate appropriate users who shall have access only to the individually
135 identifiable information for which access is authorized. Authorized users, including employees of the
136 department, who in good faith disclose or do not disclose information to the Massachusetts
137 immunization registry, shall not be liable in any cause of action arising from the disclosure or
138 nondisclosure of such information. The department may revoke access privileges for just cause.

139 Persons authorized by the commissioner may conduct research studies pursuant to c. 111, §24A,
140 provided that the researcher submits a written request for information and executes a research agreement
141 that protects the confidentiality of the information provided.

142 The department may enter into collaborative agreements with registries of other states, and
143 exchange individual or group information provided that maximum protections are afforded the
144 confidentiality of citizens of the commonwealth in accordance with state law.

145 Information contained in the Massachusetts immunization registry is confidential and shall not
146 constitute a public record nor be available except in accordance with this section. Such confidential
147 information shall not be subject to subpoena or court order and shall not be admissible as evidence in
148 any action of any kind before any court, tribunal, agency, board, or person.

149 The department shall establish procedures that allow for any individual, parent, or guardian to
150 amend incorrect information in the Massachusetts immunization registry and shall provide, upon request,
151 a record of all individuals and agencies that have accessed an individual's information.