



**COMMONWEALTH OF MASSACHUSETTS**  
**Office of Consumer Affairs and Business Regulation**  
**DIVISION OF INSURANCE**

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COMMISSIONER OF INSURANCE

**BULLETIN 2023-02**

To: All Commercial Insurers Offering Medical Malpractice Coverage

From: Gary D. Anderson, Commissioner of Insurance 

Date: January 4, 2023

Re: Medical Malpractice Coverage for Providers of Reproductive or Gender-Affirming Health Care Services

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The Division of Insurance (“Division”) issues this Bulletin 2023-02 to Commercial Insurers Offering Medical Malpractice Coverage (“Insurers”) to make Insurers aware of recent changes to the Commonwealth’s statutory requirements relative to medical malpractice coverage for certain providers who may provide reproductive or gender-affirming care. The Division issues this Bulletin pursuant to Section 23 of Chapter 127 of the Acts of 2022, which amends M.G.L. c. 175, §193U (“Section 193U”). This section became effective on November 8, 2022.

**Modifications to Medical Malpractice Coverage**

Chapter 127 of the Acts of 2022 adds the following provisions to Section 193U:

“No medical malpractice insurer shall discriminate against a provider or adjust or otherwise calculate a provider’s risk classification or premium charges on the basis that, applying the definitions of section 111½ of chapter 12:

- (i) the health care provider offers reproductive health care services or gender-affirming health care services that are unlawful in another state;
- (ii) another state’s laws create potential or actual liability for those services; or
- (iii) abusive litigation against a provider concerning reproductive health care services or gender-affirming health care services resulted in a judgment against the provider, if such health care services would be lawful and consistent with good medical practice as provided if they occurred entirely in the commonwealth.”

Section 193U includes the following definition:

“Health care provider”, any category of health care provider that was authorized to obtain medical malpractice insurance from the Joint Underwriting Association established by section 6 of chapter 362 of the acts of 1975, including but not limited to, a doctor of medicine, osteopathy, optometry, dental science, physical therapists and physical therapist assistants licensed under chapter 112, podiatry, chiropractic, or registered nurse licensed under the provisions of said chapter 112, an intern, fellow or medical officer licensed under the provisions of section 9 of said chapter 112 or a licensed hospital, clinic, or nursing home, and its agents and employees, and any other category of health care provider as the commissioner of insurance may from time to time designate as eligible for being ceded to the medical malpractice reinsurance plan.

As used within the amendments to Section 193U, the Division highlights the following definitions referenced in the newly created section 111½ of chapter 12:

“Gender-affirming health care services”, all supplies, care and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventative, rehabilitative or supportive nature relating to the treatment of gender dysphoria.

“Abusive litigation”, litigation or other legal action to deter, prevent, sanction or punish any person engaging in legally-protected health care activity by: (i) filing or prosecuting any action in any state other than the commonwealth where liability, in whole or part, directly or indirectly, is based on legally-protected health care activity that occurred in the commonwealth, including any action in which liability is based on any theory of vicarious, joint or several liability derived therefrom; or (ii) attempting to enforce any order or judgment issued in connection with any such action by any party to the action or any person acting on behalf of a party to the action; provided, however, that a lawsuit shall be considered to be based on conduct that occurred in the commonwealth if any part of any act or omission involved in the course of conduct that forms the basis for liability in the lawsuit occurs or is initiated in the commonwealth, whether or not such act or omission is alleged or included in any pleading or other filing in the lawsuit

“Legally-protected health care activity”, (i) the exercise and enjoyment, or attempted exercise and enjoyment, by any person of rights to reproductive health care services or gender-affirming health care services secured by the constitution or laws of the commonwealth or the provision of insurance coverage for such services; or (ii) any act or omission undertaken to aid or encourage, or attempt to aid or encourage, any person in the exercise and enjoyment, or attempted exercise and enjoyment, of rights to reproductive health care services or gender-affirming health care services secured by the constitution or laws of the commonwealth; provided, however, that the provision of such a health care service by a person duly licensed under the laws of the commonwealth and physically present in the commonwealth and the provision of insurance coverage for such services shall be legally protected if the service is permitted under the laws of the commonwealth, regardless of the patient's location; and provided further, that “legally-protected health care activity” shall not include any service rendered below an applicable professional standard of care or that would violate anti-discrimination laws of the commonwealth.

“Reproductive health care services”, all supplies, care and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventative, rehabilitative or supportive nature relating to pregnancy, contraception, assisted reproduction, miscarriage management or the termination of a pregnancy.

If you have any questions about this Bulletin, please contact Kevin Beagan, Deputy Commissioner for the Health Care Access Bureau, at (617) 521-7323.