

## Chapter 127 of the Acts of 2022

### Information Session #1 on Thursday, September 22 at 1PM – General

According to Section 23 of Chapter 127, the following change was made to the medical malpractice statutes:

Section 193U of said chapter 175, as so appearing, is hereby amended by inserting after the word “specialty”, in line 14, the following words:- ; provided further, that 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.

“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.

According to section 4 of Chapter 127, the following definitions are added to Chapter 12 with a newly created section 111½/2:

“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

- 1) Under M.G.L. c. 175, section 193U, every medical malpractice insurer that is licensed and currently writing medical malpractice insurance in Massachusetts, shall make available to every health care provider, as defined by statute, every category of primary malpractice offered by the insurer. The Division maintains a list at [Medmal Writers Web0102721 - tab 1.xls \(live.com\)](#) of those medical practice carriers of those writing coverage by category of provider and which are required to comply with the “take all comers” requirements for any providers in their category of coverage. Is there anything that the Division should do make this information clearer or any suggested changes to the chart or Q&A documents that should make this known to all eligible providers?
- 2) Section 23 amends M.G.L. c. 175, section 193U to make clear that a provider’s risk classification nor premium should not change based on the definitions within section 111½ of chapter 12.
- 3) Are there any items in section 111½ of chapter 12 that are unclear and should be made clear in Division of Insurance guidance?