Chapter 127 of the Acts of 2022: Information Session #2 on Thursday, October 13, 2022 at 1PM – Reproductive Health Care

According to Section 1 of Chapter 127, the following is a new definition:

"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.

Certain sections in Chapter 127 modify the provisions of M.G.L. 175, section 47F; M.G.L. c. 176A, section 8H; M.G.L. c. 176B, section 4H; M.G.L. c. 176G, section 4I to add the following:

is hereby amended by inserting after the words "coverage for", in lines 1 and 2, the following words:- abortion, as defined in section 12K of chapter 112, abortion-related care,

Under Section 12K of chapter 112, "Abortion" is defined as "any medical treatment intended to induce the termination of, or to terminate, a clinically diagnosable pregnancy except for the purpose of producing a live birth; provided, however, that "abortion" shall not include providing care related to a miscarriage."

Certain sections in Chapter 127 modify the provisions of M.G.L. 175, section 47F; M.G.L. c. 176A, section 8H; M.G.L. c. 176B, section 4H; M.G.L. c. 176G, section 4I to add the following:

Coverage provided under this section for abortion or abortion-related care shall not be subject to any deductible, coinsurance, copayment or any other cost-sharing requirement; provided, however, that deductibles, coinsurance or copayments shall be required if the applicable plan is governed by the federal Internal Revenue Code and would lose its tax-exempt status as a result of the prohibition on deductibles, coinsurance or copayments for these services. Coverage offered under this section for abortion or abortion-related care shall not impose unreasonable restrictions or delays in the coverage.

Benefits for an enrollee under this section shall be the same for the enrollee's covered spouse and covered dependents.

A policy of accident and sickness insurance that is purchased by an employer that is a church or qualified church-controlled organization, as those terms are defined in subsection (j) of section 8W, shall be exempt from covering abortion or abortion-related care at the request of the employer. An employer that invokes the exemption under this subsection shall provide written notice to prospective enrollees prior to enrollment with the plan and such notice shall list the health care methods and services for which the employer will not provide coverage for religious reasons.

1) Is the definition for “reproductive health care services” understood or do certain terms in the definition need clarification? Is there anything that the Division should consider clarifying regarding access to reproductive health care services within an insured health plan? Is there any specific training or licensing that is appropriate for any of the noted services?

2) Is the term “abortion” as defined in section 12K of chapter 112 understood or do certain terms in the definition need clarification? Is there anything to consider regarding the exclusion from the abortion definition of “care related to a miscarriage”?

3) Is there a specific way to define “abortion-related care”? The MassHealth Program defines “reimbursable abortion-related services” in MassHealth regulations, 130 CMR 484.005 (updated on 9/16/22) as services that “MassHealth will reimburse providers for when they are provided in conjunction with a payable abortion procedure: (1) pre-operative evaluation and examination; (2) pre-operative counseling; (3) laboratory services, including pregnancy testing, blood type, and Rh factor; (4) Rh (D) immune globulin (human); (5) anesthesia (general or local); (6) post-operative care; (7) follow-up; and (8) advice on contraception or referral to family planning services. Would this be an appropriate definition for what is considered “abortion-related care.” Are there other definitions that are more appropriate? Among the items listed in the MassHealth definition, are all the terms understood or do certain terms require additional clarification.

4) Does there need to be clarity about how to bill carriers for abortion and abortion-related care? Could reimbursement for the abortion and abortion-related care be part of a bundled rate of reimbursement?

5) The law applies as insured policies are issued or renewed in the commonwealth. Is this clear or would it be helpful to do a Q&A with examples of what this means? How will covered persons and providers know whether or not the law applies to them?

6) The law applies to “[b]enefits for an enrollee under this section shall be the same for the enrollee’s covered spouse and covered dependents. Is this understood or is there any clarification about who qualifies as a covered spouse or covered dependents?

7) The law identifies that “an employer that is a church or qualified church-controlled organization, as those terms are defined in subsection (j) of [the relevant section of the chapter] shall be exempt from covering abortion or abortion-related care at the request of the employer.” Under this section, a “qualified church-controlled organization" is “an organization described in section 501(c)(3) of the federal Internal Revenue Code, other than an organization that: (I) offers goods, services or facilities for sale, other than on an incidental basis, to the general public, other than goods, services or facilities that are sold at a nominal charge that is substantially less than the cost of providing such goods, services or facilities; and (ii) normally receives more than 25 per cent of its support from: (A) governmental sources; (B) receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in activities that are not unrelated trades or businesses; or (C) both clauses (A) and (B).” Is this definition understood or should there be any clarification about any organization that is to be considered a “qualified church-controlled organization'?

8) The law requires that there be no cost-sharing unless the coverage is in a plan which would lose IRS tax-exempt status if there was a prohibition of this cost-sharing. Is this clear or would it be helpful to do

a Q&A with examples of what this means? How will covered persons and providers know when a plan will need to charge cost-sharing because of the IRS tax issue?

9) The law indicates that "[c]overage offered under this section for abortion or abortion-related care shall not impose unreasonable restrictions or delays in the coverage." Should the Division consider any clarifying language that would highlight what would be considered unreasonable restrictions or delays in obtaining abortions or abortion-related care?

10) What types of provider and member education may be helpful to educate providers and members about the availability and scope of covered services, as well as a clarification about which types of plans are required to make these services available?

11) Are there any barriers or privacy concerns that should be considered regarding information about abortion or abortion-related care? Are there things that should be considered about sharing data with providers about abortions or abortion-related care?