

## **MASSACHUSETTS STATE LAW PROTECTS ACCESS TO ABORTION**

### **Frequently Asked Questions about Abortion and Abortion Related Care: Massachusetts Chapter 127 of the Acts of 2022, An Act Expanding Protections for Reproductive and Gender-Affirming Care**

Chapter 127 of the Acts of 2022 (“Chapter 127”), an *Act Expanding Protections for Reproductive and Gender Affirming Care*, mandates that insurance companies provide coverage for abortion and abortion-related services. Chapter 127 also includes provisions related to over-the-counter and prescription emergency contraception, including a statewide standing order regarding dispensing of all FDA-approved emergency contraception pills. These provisions are in addition to the existing state requirement (Chapter 120 of the Acts of 2017) that emergency contraceptives be covered without cost-sharing.

The Division of Insurance developed the following Q&A to help insurance companies, providers, pharmacists, and consumers understand the reproductive access rights provided under the law. Chapter 127 applies to fully insured health plans issued under Massachusetts law by insurance companies, Blue Cross and Blue Shield of Massachusetts, and Health Maintenance Organizations (collectively referred to as “Insurance Carriers”).

### **DIFFERENT TYPES OF HEALTH PLANS**

#### **Does Chapter 127 apply to all health plans?**

No. Chapter 127 applies to all fully insured health benefit plans issued to individuals and employers in Massachusetts, including health plans purchased through the Massachusetts Health Connector (e.g., all ConnectorCare Health Plans)<sup>1</sup>. Massachusetts-issued insured health plans must provide access to mandated health benefits.

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<sup>1</sup> Chapter 127 of the Acts of 2022 requires coverage without cost sharing for abortions and abortion-related care. However, the application of the benefit based on license type includes a variation. Amendments to M.G.L. c. 175, Section 47F apply to coverage “which is issued or subsequently renewed by agreement between the insurer and the policyholder, *within or without the commonwealth* [emphasis added].” Amendments made to M.G.L. c. 176A, s. 8H and M.G.L. c. 176B, s. 4H, state that coverage which is “delivered or issued or renewed in the commonwealth shall provide, as a basic benefit to all individual subscribers and members *within the commonwealth* [emphasis added] and to all group members having a principal place of employment *within the commonwealth* [emphasis added] for expense for abortion, as defined in section 12K of chapter 112, abortion-related care, prenatal care, childbirth and post partum care.” In M.G.L. c. 176G, s. 4I, it is noted that “[a]ny health maintenance contract shall provide coverage for prenatal care, childbirth and postpartum care [without any reference to “within or without the commonwealth” language].

In effect, this means that for coverage issued by insurance companies, Massachusetts residents are covered for abortion and abortion-related care whether the coverage was issued in Massachusetts or outside Massachusetts. For coverage issued by Blue Cross and Blue Shield of Massachusetts or by a Health Maintenance Organization, Massachusetts residents are covered for abortion and abortion-related care only when the coverage was issued in Massachusetts. If you have questions on which provisions applies to you, please contact the Bureau of Managed Care at [bmc.mailbox@mass.gov](mailto:bmc.mailbox@mass.gov).

Chapter 127 also applies to some government programs (e.g., MassHealth and plans offered by the Group Insurance Commission); however, these programs are not subject to Division of Insurance jurisdiction.

Many large employers self-fund employee health benefits, meaning that they pay the benefits from their own resources rather than buying an insured health plan from an Insurance Carrier. These self-funded health plans are exempt from state laws, including statutorily mandated benefit requirements, like those in Chapter 127.

### **How can someone know if their health plan is subject to Chapter 127?**

Individuals should contact their employer's human resources representative or their health insurance plan to understand whether they are in an insured health benefit plan issued in Massachusetts that is subject to the protections of Chapter 127. Ask "Is my health plan fully insured and subject to state insurance mandates, or is it self-funded?"

## **ABORTION and ABORTION-RELATED CARE**

### **What abortion services are available to me/my patient under this law?**

Under M.G.L. c. 112, § 12K, "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."

Care related to a pregnancy in which the individual intends to produce a live birth or care related to a miscarriage is not considered within the definition of "abortion"; however, care for pregnancy and miscarriages is covered under all insured health plans under the federal Affordable Care Act and relevant state statutes.

### **What abortion-related services are available to me/my patient under this law?**

"Abortion-related care" includes services defined under 130 CMR 484.005 that 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." The Division considers ultrasounds, pre-abortion evaluation and examination, and post-abortion care provided in conjunction with a covered surgical or medication-based abortion to be "abortion-related care."

### **Are there instances where a health plan might not cover abortion or abortion-related services?**

Yes, members in health maintenance organizations (“HMOs”) must utilize their network. Members in HMOs may not have coverage if they receive non-emergency abortion-related care from an out-of-network health care provider.

When an Insurance Carrier provides an insured health plan to an employer that is a church or qualified church-controlled organization, as defined in M.G.L. c. 175, §47F; M.G.L. c. 176A, §8H; M.G.L. c. 176B, §4H; and M.G.L. c. 176G, §4I, the health plan is exempt from covering abortion or abortion-related care for that employer if so requested. An employer that invokes this exemption is required to provide written notice to prospective enrollees prior to enrollment with the employer’s plan, and such notice must list the health care methods and services that the employer will not cover for religious reasons.

Insurance Carriers are expected to clearly disclose when the insured health plan does not cover abortion services.

The plan may also not be subject to the requirements of the law. See “Different Types of Health Plans” above.

## **COST-SHARING**

### **Are there any out-of-pocket costs for in-network abortion and abortion-related coverage?**

Under the law, the Insurance Carrier must provide coverage for abortion and abortion-related care without any cost sharing to the individual.

### **Could there be instances where cost sharing would apply for abortion or abortion-related care?**

Yes. While there will not be cost sharing directly from the Insurance Carrier for any member, members in HMOs – as stated above – may not have any abortion coverage if they receive non-emergency abortion-related care out of network. Members who are enrolled in preferred provider organization plans (“PPOs”) may be balanced billed by out-of-network providers for any amounts beyond the Insurance Carrier’s usual and customary payment if the member receives non-emergency out-of-network abortion-related care. As such balance bills can be significant, members are advised to check their plan’s network requirements in order to ensure coverage for abortions and abortion-related care that has no additional payment requirements.

Additionally, if you/your patient is enrolled in a High-Deductible Health Plan under the federal Internal Revenue Code that an employer offers with a federally qualified Health Savings Account, the Insurance Carrier is allowed to apply deductibles, coinsurance, copayments, or other cost-sharing requirements to the covered abortion and abortion-related care if the High-Deductible Health Plan would lose its tax-exempt status as a result of the prohibition on deductibles, coinsurance, or copayments for these services. Insurance Carriers are expected to clearly disclose in health plan materials when the insured health plan is a High-Deductible Health Plan that is

applying deductibles, coinsurance, copayments, or other cost-sharing requirements to services provided under these Statutes.

## **EMERGENCY CONTRACEPTIVES**

### **Does this law require coverage for emergency contraceptives?**

An existing statute, Chapter 120 of the Acts of 2017, requires Insurance Carriers to cover FDA-approved emergency contraception whether with a prescription or dispensed by a licensed pharmacist, consistent with the requirements of M.G.L. c. 94C, § 19A. Individuals do not need a prescription from a health care provider to obtain Levonorgestrel-based (“LNG-based”) emergency contraceptives, such as Plan B, at a pharmacy, as these are approved for over-the-counter sale.

Additionally, the Department of Public Health (DPH) has, pursuant to Section 9 of Chapter 127 of the Acts of 2022, established a statewide standing order authorizing the dispensing of both over-the-counter and prescription emergency contraception in Massachusetts by any licensed pharmacist. This means that pharmacists are no longer required to partner with physicians to obtain a standing order. The DPH standing order can be found here: <https://www.mass.gov/doc/standing-order-for-dispensing-emergency-contraception-pills/download>. If for any reason insurance coverage is unavailable at the time of sale, the member can seek reimbursement for over-the-counter emergency contraception coverage from the Insurance Carrier after making the purchase.

Please note that emergency contraceptives are not abortifacients; they are used to prevent pregnancy, not to terminate an existing pregnancy. Additional information about contraceptives and emergency contraceptive coverage under the Massachusetts Act Advancing Contraceptive Coverage and Economic Security in our State (“ACCESS”) Law can be found here: <https://www.mass.gov/access-law>.

## **PRIVACY PROTECTIONS**

### **Does my insurance company keep information about abortions and abortion related services confidential?**

In order to protect members’ privacy, Insurance Carriers are responsible to suppress a member’s summary of payments if so requested by an individual who is legally authorized to consent to care for the member. For more information, see Bulletin 2017-02, Common Summary of Payments Format: <https://www.mass.gov/doc/bulletin-2017-02-common-summary-of-payments-format-issued-4212017/download>.

Additionally, Insurance Carriers are responsible to exclude the identification of sensitive health care services, including abortion-related care services, from any health plan member's summary of payments. For more information, see Bulletin 2017-07, Sensitive Health Care Services Definition: <https://www.mass.gov/doc/bulletin-2017-07-sensitive-health-care-services-definitions-issued-12192017/download>.