Massachusetts Chapter 186 of the Acts of 2024 Maternal Health Laws

Chapter 186 of the Acts of 2024 ("Chapter 186" or "the maternal health law")[1] amends Massachusetts laws[2] to expand benefits related to maternal health. The new sections, which apply to insured health benefit plans issued or renewed in Massachusetts, augment coverage within insured health benefit plans for screening of postpartum depression and major depressive disorders, donor human milk and donor human milk-derived products, and universal postpartum home visiting services.

The Division of Insurance provides the following Q&A to help insurance companies, providers, and consumers understand maternal health rights provided under Chapter 186. This and other Massachusetts insurance laws apply 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"). For certain health maintenance organization ("HMO") plans, it is also possible that the maternal health law may apply even if the fully insured HMO plan is issued in another state[3].

DIFFERENT TYPES OF HEALTH PLANS

Does maternal health law apply to all health insurance plans?

The Division of Insurance ("DOI") requires that Massachusetts-issued insured health plans provide maternal health mandated benefits, including comprehensive medically necessary maternal health care. The maternal health law applies to all insured health benefit plans issued to individuals and employers in Massachusetts, including health plans insured through the Massachusetts Health Connector (e.g., all ConnectorCare Health Plans). The maternal health law may also apply to certain fully insured HMO health plans issued in other states. If your HMO health plan is fully insured, you can ask your out-of-state insurance carrier if the maternal health law applies to your plan, and you may send questions to Niels Puetthoff, Director of the Bureau of Managed Care at the DOI, at niels.puetthoff@mass.gov.

The maternal health law also applies to some Massachusetts government programs (e.g., Medicaid (MassHealth) and plans offered by the Group Insurance Commission), but these are not subject to Division of Insurance jurisdiction.

How can someone know if their health plan is subject to the maternal health law?

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 the maternal health law. 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 mandated benefit requirements, including the maternal health law.

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[1] The text of the maternal health law is available at: https://malegislature.gov/Laws/SessionLaws/Acts/2024/Chapter186.

[2] Chapter 186 adds M.G.L. c. 175, §§47WW, 47XX, and 47YY; M.G.L. c. 176A, §§8XX, 8YY, and 8ZZ; M.G.L. c. 176B, §§4XX,4YY, and 4ZZ; and M.G.L. c. 176G, §§4PP, 4QQ, and 4RR to the Massachusetts insurance laws.

[3] The M.G.L. c. 176G laws for screening of postpartum depression, donated milk, and universal postpartum home visiting services apply to all individual or group health maintenance contracts that are "issued or renewed within or without the commonwealth."

COST-SHARING

Are there any out-of-pocket costs for maternal health coverage?

For insured members, the covered postpartum depression screening shall be considered to be part of a regular visit with a provider, and such screenings shall not be subject to separate cost-sharing.

Additionally, universal postpartum home visiting services, in accordance with operational standards to be set by the department of public health, are not subject to any out-of-pocket costs (also known as cost-sharing, which includes deductibles, co-payments, and co-insurance). An exception would be that deductibles, co-payments, or coinsurance shall be required if the applicable plan is governed by the Internal Revenue Code and would lose its tax-exempt status due to the prohibition on co-payments, coinsurance or deductibles for these services.

Covered access to human donor milk products under the maternal health law may be subject to cost sharing requirements for insured members.

SPECIFICS OF COVERAGE UNDER THE MATERNAL HEALTH LAW

What postpartum depression screening is available to me/my patient under this law?

Insured health benefit plans issued or renewed in Massachusetts are required to "provide coverage for postpartum depression and major depressive disorder screenings."[4] The screenings will be part of a regular visit with a provider. The screenings
are to be in accordance with operational standards to be set by the department of public health, and they are to be made available to a covered person who is a "postnatal individual,"[5] defined as "an individual who:

(i) is within 12 months of giving birth;
(ii) is a biological parent or an adoptive or foster parent that is within 12 months from assuming custodial care of a child; or
(iii) has lost a pregnancy due to a stillbirth, miscarriage or a medical termination within the previous 12 months."

If you are a postnatal person whose infant receives health care services from a pediatrician, you may be offered a screening for postpartum depression or major depressive disorder by your infant's pediatrician. If you do not object to the screening, the pediatrician should ensure that you are appropriately screened for postpartum depression or major depressive disorder in accordance with evidence-based guidelines.

If the screening shows a likelihood of postpartum depression or major depressive disorder, the health care professional providing the screening should discuss with you and/or make available treatments to you for postpartum depression or major depressive disorder, including pharmacological treatments. If medically necessary, you should be provided an appropriate referral to a mental health clinician.

What Universal Postpartum Home Visiting Services are available to me/my patient under this law?

Insured health plans are expected to cover "universal postpartum home visiting services[6]," which are "evidence-based, voluntary home or community-based services for birthing people and caregivers with newborns, including but not limited to:

[4]The screenings are to be conducted pursuant to M.G.L. c. 111, §247.

[5] As defined in M.G.L. c. 111, §247(a).

[6] In accordance with operational standards to be set by the department of public health pursuant to M.G.L. c. 111, §248.

(i) screenings for unmet health needs including reproductive health services;
(ii) maternal and infant nutritional needs; and
(iii) emotional health supports, including postpartum depression supports."

The Department of Public Health "shall establish and administer a statewide system of programs providing universal postpartum home visiting services," although health insurers may use appropriate providers from their networks until such a statewide system has been created. Services are to be delivered by a "qualified health professional with maternal and pediatric health training," and "at least 1 visit shall occur at the patient's home or a mutually agreed upon location within 8 weeks postpartum."

What Donor Human Milk and Donor Human Milk-Derived Products are available to me/my patient under this law?

Insured health plans that are issued or renewed in Massachusetts and health maintenance organization health plans that are "issued or renewed within or without the commonwealth," are required to cover "medically necessary pasteurized donor human milk and donor human milk-derived products." This includes, for example, pasteurized donor human milk that is specially formulated to meet the specific needs of newborns in neonatal intensive care units (NICUs). The requirements for coverage of donor human milk are as follows:

(i) the milk is obtained from a human milk bank that meets quality guidelines as established by the department of public health;
(ii) a licensed medical practitioner has issued a written order for the provision of such human breast milk or donor human milk-derived products for the covered infant; and
(iii) the covered infant is:
    (1) under the age of 6 months;
    (2) undergoing treatment in an inpatient setting for a congenital or acquired condition that places the infant at a high risk for development of necrotizing enterocolitis or a congenital or acquired condition that may benefit from the use of such human breast milk as determined by the department of public health; and
    (3) medically or physically unable to receive maternal breast milk or participate in breastfeeding or whose mother is medically or physically unable, despite receiving lactation support, to produce maternal breast milk in sufficient quantities or caloric density.

The Department of Public Health is in the process of drafting quality guidelines that human milk banks must meet in Massachusetts. Until these quality guidelines are created, health insurers may rely on FDA registration. If your infant is under six months of age and meets the criteria for coverage of donor human milk, you may wish to consult with your child's health care provider to ask whether your infant is eligible to obtain it. There may be cost sharing associated with obtaining such donor human milk.

FURTHER QUESTIONS

The information contained in this document explains mandates regarding maternal health care that were codified in Massachusetts law in 2024. However, the benefits discussed herein are in addition to comprehensive maternal health coverage that already exists within Massachusetts major-medical health plans. If you have further questions regarding the information in this document, contact Niels Puetthoff, Director of the Bureau of Managed Care at the DOI, at Niels.Puetthoff@mass.gov.