

HOUSE No. 3453

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act establishing the Massachusetts childhood vaccine program and the Massachusetts immunization registry..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1: The General Laws, as appearing in the 2006 Official Edition, shall be
2 amended by adding after section chapter 176R the following new chapter:

3 Chapter 176S:Section 1:

4 Definitions. The following words, as used in this section, unless a different meaning is
5 required by the context or is specifically prescribed, shall have the following meanings:

6 “Child or Children,” individuals less than nineteen years of age.

7 “Clinician,” a health care professional licensed under chapter 112.

8 “Estimated vaccine cost,” the estimated cost over the course of a fiscal year of the
9 purchase, storage, and distribution of vaccines for all children in the commonwealth.

10 “Facility,” a hospital, clinic or nursing home licensed under chapter 111 or a home health
11 agency.

12 “Health care provider,” a clinician, a facility or a physician group practice.

13 “Health insurer,” an insurer licensed or otherwise authorized to transact accident or
14 health insurance under chapter 175; a nonprofit hospital service corporation organized under
15 chapter 176A; a nonprofit medical service corporation organized under chapter 176B; a health
16 maintenance organization organized under chapter 176G; an organization entering into a
17 preferred provider arrangement under chapter 176I; a contributory group general or blanket
18 insurance for persons in the service of the commonwealth under chapter 32A; a contributory
19 group general or blanket insurance for persons in the service of counties, cities, towns and
20 districts, and their dependents under chapter 32B; the medical assistance program administered
21 by the division of medical assistance pursuant to chapter 118E and in accordance with Title XIX
22 of the Social Security Act or any successor statute; Medicaid managed care organizations
23 referenced in St. 1997, c. 47, § 28 for those health plans offered pursuant to M.G.L. c. 118H;
24 group excess loss insurance policies where the policy or certificate of coverage has been issued
25 or delivered in Massachusetts, and where coverage has been purchased by a group health
26 insurance plan subject to the Employee Retirement Income Security Act of 1974, Public Law
27 No. 93-406 (ERISA); all self-insured plans to the extent not preempted by federal law; any entity
28 that offer Qualifying Student Health Insurance Plans pursuant to 114.6 CMR 3.00; and any other
29 medical assistance program operated by a governmental unit for persons categorically eligible
30 for such program. “Health Insurer” shall not include any entity to the extent it offers a policy,
31 certificate or contract of insurance that provides coverage solely for dental care services or vision
32 care services, or only for accident, credit, hospital indemnity, disability income, supplements to
33 liability insurance, specified disease or long term care.

“Insured,” an enrollee, covered person, member, policyholder, subscriber or beneficiary of a health insurer.

“Participating provider”, a provider who, under a contract with a health insurer or with its contractor or subcontractor, has agreed to provide health care services to insureds with an expectation of receiving payment, other than coinsurance, copayments or deductibles, directly or indirectly, from the carrier.

“Physician group practice,” two or more physicians who deliver patient care, make joint use of equipment and personnel and by agreement divide income earned by the physicians in the group.

"Routine childhood immunizations," immunizations for children until their nineteenth birthday, including, but not limited to: (1) the immunizations recommended by the federal Vaccines for Children Program; and (2) any immunizations as recommended by the Advisory Committee on Immunization Practices of the U.S. Department of Health and Human Services.

“Total non-federal program cost,” the estimated annual cost of vaccines needed for routine childhood immunizations for children covered by health insurers in the Commonwealth less the amount of federal revenue available to the commonwealth for purchase, storage, distribution and administration of such vaccines.

“Vaccine Purchase Trust Fund,” a fund to support a universal purchase system for childhood vaccines in the commonwealth.

Section 2: (a) There is established by the commonwealth a separate trust fund to be known as the Vaccine Purchase Trust Fund, in this section called the “Fund,” to support a

universal purchase system for childhood vaccines in the Commonwealth. The specific purpose of the Fund shall be to cover the costs to purchase, store and distribute vaccines for routine childhood immunizations and to administer the Fund and the Massachusetts Immunization Registry, as established under section 24K of chapter 111. The fund shall consist of all monies paid to the commonwealth under subsection (c) and any interest earnings on such monies. The Fund shall be maintained by the commissioner of insurance or his or her designee. The monies shall be expended under the direction of the department of public health, without prior appropriation, solely for the purposes described in this section. Any balance in the Fund at the close of a fiscal year shall be available for expenditure in subsequent fiscal years and shall not be transferred to any other fund or revert to the General Fund. The commissioner of insurance or his or her designee shall report annually to the house and senate committees on ways and means the amount of funds collected and any expenditures made from the Fund.

(b) There is established a vaccine purchase advisory council consisting of the commissioner of public health or his or her designee; the Medical Director of the Massachusetts Immunization Program of the Department of Public Health; the commissioner of insurance or his or her designee; the Executive Director of the Commonwealth Health Insurance Authority or his or her designee; the medical directors of the three health insurance companies having the most covered lives in the commonwealth; four health care provider representatives appointed by the commissioner of public health, one of whom shall be a member of the Massachusetts Medical Society; one of whom shall be a member of The Massachusetts Chapter of the American Academy of Pediatrics; one of whom shall be a member of the Massachusetts Academy of Family Physicians; and one of whom shall be a physician licensed to practice in the commonwealth and who shall have expertise in the area of childhood vaccines. The

commissioner of public health, or his or her designee, shall be the chair of the council. The council shall determine the types of vaccine(s) to be purchased based on a list of routine childhood immunizations and shall take into account provider preference, cost, availability, and other factors as determined by the council. The council shall also recommend the amount of funding needed each fiscal year by calculating the total non-federal program cost. Such calculation shall be based on health care claims data, as defined in 129 C.M.R. § 3.00, relating to all children covered by health insurers in the Commonwealth. The council shall be advised by a committee within the department of public health, as determined by the commissioner of public health. The council shall have independent authority to make the determinations and recommendations required by this subsection. The commissioner of insurance shall determine the final amount required to be included in the Vaccine Purchase Trust Fund for the next fiscal year to cover vaccines required for purchase and distribution pursuant to this subsection.

(c) Pursuant to regulations to be promulgated by the commissioner of insurance, each health insurer in the commonwealth shall annually pay to the commissioner of insurance, for deposit in the Vaccine Purchase Trust Fund, a child immunizations fee assessed by the commissioner of insurance. The regulations shall establish dates for assessing and contributing such fee and shall permit and enable expenditure of funds by the department of public health. The annual contribution into the trust fund initially shall be deposited by July 1, 2010, and annually thereafter. Such fee shall be a percentage of the final amount determined by the commissioner of insurance pursuant to subsection (b) of this section, and shall be calculated based on the number of children not eligible for federally purchased vaccines who are insured by each health insurer as a percentage of total children insured by all health insurers in the Commonwealth that are not eligible for federally purchased vaccines.

(d) The department of public health may promulgate rules and regulations as necessary to implement the universal purchase and distribution system, in accordance with this section and other applicable state and federal laws. The rules and regulations shall establish the system by which vaccines are distributed for children in the Commonwealth.

Section 3: (a) Every health insurer, as defined in section one, shall provide benefits for (1) routine childhood immunizations for Massachusetts residents and (2) immunizations for Massachusetts residents who are 19 years of age and over according to the most recent schedules recommended by the Advisory Committee on Immunization Practices of the U.S. Department of Health and Human Services. These benefits shall be exempt from any copayment, coinsurance, deductible, or dollar limit provisions in the health insurance policy or contract.

(b) Health insurers shall pay to health care providers 100% of the reasonable and customary charges for those immunizations described in Section 3(a), including the cost of the vaccines not provided by the commonwealth and any reasonable and customary costs associated with the administration of the vaccines. Notwithstanding any general or special law to the contrary, a health insurer shall provide such reimbursement to any health care provider who administers covered immunizations in any facility, health care provider's office or any other setting in the Commonwealth and shall not limit such reimbursement to providers that are participating providers.

SECTION 2: Chapter 111 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after 24K the following section:-

Section 24L. The department of public health shall establish, maintain, and operate a computerized information system to be known as the Massachusetts Immunization Registry.

123 The Massachusetts immunization registry shall record immunizations and immunization history
124 with identifying information. The Massachusetts immunization registry shall include
125 appropriate controls to protect the security of the system and the privacy of the information.

126 The department shall promulgate rules and regulations to implement the Massachusetts
127 immunization registry.

128 All licensed health care providers administering vaccinations shall discuss the reporting
129 procedures of the Massachusetts immunization registry with the parent, guardian, or individual
130 receiving the vaccinations, and offer them the right to object to the disclosure of such
131 information as set forth in this section.

132 Notwithstanding any restrictions set forth in chapter 46 and section 24B of chapter 111,
133 upon receipt of an initial birth record for a newborn, the state registrar of vital records and
134 statistics shall transmit to the Massachusetts immunization registry the information regarding
135 immunizations administered to a newborn and such other information transmitted with the birth
136 record that the department determines to be the minimum necessary for the effective operation of
137 the Massachusetts immunization registry.

138 All licensed health care providers practicing in Massachusetts who administer
139 immunizations to individuals in Massachusetts shall report to the Massachusetts immunization
140 registry such data related to immunizations as the department determines is necessary for disease
141 prevention and control.

142 Immunization information may be released from the Massachusetts immunization
143 registry to the select group of individuals and agencies outlined below without further explicit

consent of the individual or the minor child's parent or guardian, unless the individual or the parent or guardian objects to such disclosure.

The department may grant access to the Massachusetts immunization registry to the following categories of users in the commonwealth: (1) licensed health care providers providing direct care to the individual patient, (2) elementary and secondary school nurses and registration officials who require proof of immunizations for purposes of school enrollment and disease control; (3) local boards of health for disease prevention and control; (4) Women Infants and Children Nutrition Program (WIC) staff who administer WIC benefits to eligible infants and Children; (5) staff of state agencies or state programs whose duties include education and outreach related to the improvement of immunization coverage rates among their clients.

The department may designate appropriate users who shall have access only to the individually identifiable information for which access is authorized. Authorized users, including employees of the department, who in good faith disclose or do not disclose information to the Massachusetts immunization registry, shall not be liable in any cause of action arising from the disclosure or nondisclosure of such information. The department may revoke access privileges for just cause.

Persons authorized by the commissioner may conduct research studies pursuant to c. 111, §24A, provided that the researcher submits a written request for information and executes a research agreement that protects the confidentiality of the information provided.

The department may enter into collaborative agreements with registries of other states, and exchange individual or group information provided that maximum protections are afforded the confidentiality of citizens of the commonwealth in accordance with state law.

166 Information contained in the Massachusetts immunization registry is confidential and
167 shall not constitute a public record nor be available except in accordance with this section. Such
168 confidential information shall not be subject to subpoena or court order and shall not be
169 admissible as evidence in any action of any kind before any court, tribunal, agency, board, or
170 person.

171 The department shall establish procedures that allow for any individual, parent, or
172 guardian to amend incorrect information in the Massachusetts immunization registry and shall
173 provide, upon request, a record of all individuals and agencies that have accessed an individual's
174 information.