

SENATE No. 859

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Establishing the Massachusetts Childhood Vaccines 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:

4 Section 1:

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

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

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

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

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

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

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

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

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

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

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

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

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

53 Section 2:

54 (a) There is established by the commonwealth a separate trust fund to be known as the
55 Vaccine Purchase Trust Fund, in this section called the “Fund,” to support a universal purchase
56 system for childhood vaccines in the Commonwealth. The specific purpose of the Fund shall be
57 to cover the costs to purchase, store and distribute vaccines for routine childhood immunizations
58 and to administer the Fund and the Massachusetts Immunization Registry, as established under
59 section 24K of chapter 111. The fund shall consist of all monies paid to the commonwealth
60 under subsection (c) and any interest earnings on such monies. The Fund shall be maintained by
61 the commissioner of insurance or his or her designee. The monies shall be expended under the
62 direction of the department of public health, without prior appropriation, solely for the purposes
63 described in this section. Any balance in the Fund at the close of a fiscal year shall be available
64 for expenditure in subsequent fiscal years and shall not be transferred to any other fund or revert
65 to the General Fund. The commissioner of insurance or his or her designee shall report annually
66 to the house and senate committees on ways and means the amount of funds collected and any
67 expenditures made from the Fund.

68 (b) There is established a vaccine purchase advisory council consisting of the
69 commissioner of public health or his or her designee; the Medical Director of the Massachusetts
70 Immunization Program of the Department of Public Health; the commissioner of insurance or his
71 or her designee; the Executive Director of the Commonwealth Health Insurance Authority or his
72 or her designee; the medical directors of the three health insurance companies having the most
73 covered lives in the commonwealth; four health care provider representatives appointed by the
74 commissioner of public health, one of whom shall be a member of the Massachusetts Medical
75 Society; one of whom shall be a member of The Massachusetts Chapter of the American
76 Academy of Pediatrics; one of whom shall be a member of the Massachusetts Academy of

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

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

100 each health insurer as a percentage of total children insured by all health insurers in the
101 Commonwealth that are not eligible for federally purchased vaccines.

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

106 Section 3:

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

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

121 SECTION 2: Chapter 111 of the General Laws, as appearing in the 2006 Official
122 Edition, is hereby amended by inserting after 24K the following section:-

123 Section 24L. The department of public health shall establish, maintain, and operate a
124 computerized information system to be known as the Massachusetts Immunization Registry.
125 The Massachusetts immunization registry shall record immunizations and immunization history
126 with identifying information. The Massachusetts immunization registry shall include
127 appropriate controls to protect the security of the system and the privacy of the information.

128 The department shall promulgate rules and regulations to implement the Massachusetts
129 immunization registry.

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

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

140 All licensed health care providers practicing in Massachusetts who administer
141 immunizations to individuals in Massachusetts shall report to the Massachusetts immunization

142 registry such data related to immunizations as the department determines is necessary for disease
143 prevention and control.

144 Immunization information may be released from the Massachusetts immunization
145 registry to the select group of individuals and agencies outlined below without further explicit
146 consent of the individual or the minor child's parent or guardian, unless the individual or the
147 parent or guardian objects to such disclosure.

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

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

162 Persons authorized by the commissioner may conduct research studies pursuant to c. 111,
163 §24A, provided that the researcher submits a written request for information and executes a
164 research agreement that protects the confidentiality of the information provided.

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

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

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