

SENATE No. 2763

The Commonwealth of Massachusetts

—
In the One Hundred and Ninety-First General Court
(2019-2020)
—

SENATE, June 15, 2020.

The committee on Public Health to whom was referred the petition (accompanied by bill, Senate, No. 2359) (subject to Joint Rule 12) of Rebecca L. Rausch, Paul J. Donato, Maria Duaine Robinson, Denise Provost and other members of the General Court for legislation to promote community immunity, reports the accompanying bill (Senate, No. 2763).

For the committee,
Joanne M. Comerford

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**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act promoting community immunity.

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. Chapter 76 of the General Laws is hereby amended by striking out section
2 15, as appearing in the 2018 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 15. All schools shall comply with the requirements established in section 238 of
5 chapter 111.

6 SECTION 2. Said chapter 76 is hereby further amended by striking out section 15C, as so
7 appearing, and inserting in place thereof the following section:-

8 Section 15C. All institutions of higher learning shall comply with the requirements
9 established in sections 238 of chapter 111.

10 SECTION 3. Section 15D of said chapter 76 is hereby repealed.

11 SECTION 4. Section 24N of chapter 111 of the General Laws, as appearing in the 2018
12 Official Edition, is hereby amended by inserting after the word “24M”, in line 32, the following
13 words:- , and to administer section 238.

14 SECTION 5. Said chapter 111 is hereby further amended by adding the following
15 section:-

16 Section 238.

17 (a) As used in this section, the following words shall have the following meanings unless
18 the context clearly requires otherwise:-

19 “Covered program”, (i) a child care center, an early education and care program, a family
20 child care home, a large family child care home, a public preschool program, or a school-aged
21 child care program, as defined in section 1A of chapter 15D; (ii) a school, whether public,
22 private or charter, that provides education to students in any combination of grade levels from
23 kindergarten to grade 12, inclusive, and including, but not limited to, any school activity open to
24 children who are otherwise instructed in accordance with section 1 of chapter 76; (iii) a
25 recreational camp; or (iv) an institution of higher education, whether public or private.

26 “Department”, the department of public health.

27 “Exemption”, written authorization from the department for a participant to be excused
28 from the schedule.

29 “Herd immunity”, population-wide resistance to the spread of an infectious disease
30 within that population, resulting from a sufficient percentage of people receiving one or more
31 immunizations with immunity against the disease.

32 “Immunization”, an inoculation administered for the purpose of making a person resistant
33 to an infectious disease.

34 “Participant”, a person who engages in 1 or more activities of a covered program through
35 enrollment or other registration process.

36 “Provider”, a health care provider licensed by an agency, board or division of the
37 commonwealth who, acting within their scope of practice, may lawfully administer an
38 immunization.

39 “Responsible adult”, a parent or legal guardian of a participant, a participant who is an
40 emancipated minor or a participant who has achieved the age of majority.

41 “Schedule”, the immunization administration schedule established by the department and
42 consistent with generally accepted medical practice.

43 (b) No covered program shall enroll a participant whose records do not include: (i)
44 documentation of immunizations in accordance with the schedule, or other medical evidence of
45 immunity against diseases listed on the schedule; (ii) an exemption approval letter issued by the
46 department, consistent with subsections (d) to (l), inclusive; (iii) evidence that the participant is
47 in the process of obtaining immunizations with the objective of compliance with the schedule;
48 (iv) for public schools only, evidence that the participant moved into the commonwealth not
49 more than 90 days before the date of enrollment and the responsible adult is making a good faith
50 effort to obtain the necessary immunization documentation or exemption approval; or (v)
51 evidence that more than 60 days have elapsed since a responsible adult applied to the department
52 for an exemption and the department has not responded.

53 (c) The two types of immunization exemptions shall be: (i) medical, for a participant
54 whose medical conditions or circumstances preclude the administration of immunizations, as
55 determined in the best medical judgment of a provider; provided, however, that medical
56 judgment may include, but shall not be limited to, medically accepted immunization
57 contraindications or guidelines; and (ii) religious, for a participant who holds, or whose family
58 holds, sincere religious beliefs conflicting with immunizations. There shall be no other type of
59 exemption.

60 (d) The department shall prepare and maintain separate standardized exemption
61 application forms for medical and religious exemptions. The department shall make the forms
62 available to the public online and, as necessary, in hard copy; provided, however, that no covered
63 program shall provide an application form, whether in hard copy or electronically, to a
64 responsible adult or a participant absent a specific request for an application form from the
65 responsible adult.

66 (e) The department shall include in the medical exemption application form the following
67 required elements: (i) a statement of the medical condition or conditions substantiating the
68 exemption, including: (1) a checklist of generally accepted contraindications to immunizations;
69 and (2) an “other” category wherein a provider may describe 1 or more conditions within the
70 totality of the participant’s medical circumstances; provided, however, that this medical
71 conditions section shall be completed by a provider; and provided further, that if an application
72 uses the “other” category, the medical conditions section shall be completed by a provider who,
73 acting within their scope of practice, may lawfully prescribe an immunization; (ii) a statement
74 that the provider has an established provider-patient relationship with the participant; (iii) the
75 signature of the provider; (iv) a unique government-issued professional identification number

76 assigned to the provider; (v) the signature of the responsible adult; and (vi) dates for all
77 signatures.

78 (f) The department shall include in the religious exemption application form the
79 following required elements: (i) a statement that the participant or responsible adult has a sincere
80 religious belief conflicting with immunizations; (ii) a certification that the responsible adult has
81 provided a complete and accurate copy of the religious exemption application to the participant's
82 primary health care provider, including the name and contact information for the primary health
83 care provider; and (iii) the dated signature of a provider on the participant's primary health care
84 team, indicating receipt of a copy of the exemption application form only. The department shall
85 state on the application form that the department has determined that refusing to immunize is
86 against public health policy and may result in serious illness or death of the participant or others.
87 The department may provide requirements as alternatives to elements (ii) and (iii) of this
88 subsection in the event a participant does not have a primary health care provider.

89 (g) The department may add additional elements to the exemption application forms
90 described in subsections (f) and (g); provided, however, that the department shall not add any
91 elements seeking a participant's or responsible adult's particular religion or a description thereof.

92 (h) A responsible adult shall submit a completed exemption application to the department
93 for review. The department shall determine the method of submission, be it electronic, hard
94 copy, or both.

95 (i) The department shall review each exemption application submitted on a form
96 described in this section. The department shall approve all validly and accurately completed
97 religious exemption applications, described in subsection (g), and all validly and accurately

98 completed medical exemption applications based on clause (1) of item (i) of subsection (f). The
99 department shall approve validly and accurately completed medical exemption applications
100 based on subsection clause (1) of item (ii) of subsection (f);.

101 (j) The department shall issue a letter to each applicant setting forth the department's
102 determination to approve or deny the exemption application. Whenever practicable, the
103 department shall issue a determination letter not more than 60 days after receipt of the
104 application. For approved applications, the determination letter shall include the final signature
105 date of the application or the expiration date of the approval pursuant to subsection (l) or both
106 dates. For denied applications, the determination letter shall include the reason or reasons for the
107 denial. The department shall establish a process for appeal or reconsideration for applicants who
108 are denied. An appeal or reconsideration decision from the department shall be deemed an
109 exhaustion of administrative remedies.

110 (k) An exemption approved by the department shall be valid for a period of not more than
111 1 year from the final signature date of the application. The department may, in its sole discretion,
112 require covered programs to exclude exempted participants during a declared public health
113 emergency.

114 (l) A private covered program may implement immunization requirements more stringent
115 than those set forth in this section, including but not limited to accepting medical exemptions
116 only; provided, however, that no private covered program shall refuse to accept medical
117 exemptions; and provided further, that the program creates and maintains a written immunization
118 policy, which shall be made available to all responsible adults.

119 (m) All covered programs shall annually report total numbers of participants who are
120 immune and participants who are exempted from immunization requirements, delineated by
121 exemption type, as applicable, to the department and publish the data to all responsible adults.
122 The department shall designate the methodology for reporting. Publication may be electronic or
123 in hard copy. Publication shall not be required if it would result in disclosure of personally
124 identifying information, as defined in chapter 93H, or otherwise violate applicable privacy laws.

125 (n) The department shall annually publish immunizations and exemptions data,
126 delineated by exemption type, as applicable, for each covered program and school district. The
127 department may also publish data by municipality, county, or other geographic designation, or
128 otherwise in its discretion. Publication shall be electronic and may also be in hard copy.
129 Publication shall not be required whenever doing so would result in disclosure of personally
130 identifying information, as defined in chapter 93H, or otherwise violate applicable privacy laws.

131 (o) Any covered program that has not achieved herd immunity shall be designated as an
132 elevated risk program. Any covered program that fails to report immunization and exemption
133 rates consistent with this section shall be designated an elevated risk program. Elevated risk
134 program designations shall remain in place for not less than 12 months or for whatever longer
135 period may be necessary to improve immunization rates as determined by the department.

136 (p) The department shall maintain a public, online list of elevated risk programs.

137 (q) The department shall create a notice to responsible adults about an elevated risk
138 designation. An elevated risk program shall issue the notice to all responsible adults for
139 participants or those seeking enrollment in the program during the period in which the
140 designation is in place not more than 10 days after receiving an elevated risk program

141 designation. The department may require elevated risk programs to organize and invite all
142 responsible adults to a presentation by the department about immunization safety, immunization
143 efficacy and herd immunity.

144 (r) The department shall develop and make available online an informational pamphlet
145 about immunization safety, immunization efficacy and herd immunity. The department shall
146 distribute the informational pamphlet, either electronically or in hard copy, to every responsible
147 adult who submits an exemption application pursuant to this section. All elevated risk programs
148 shall distribute the informational pamphlet, either electronically or in hard copy, to all
149 responsible adults for participants or those seeking enrollment in the program during the period
150 in which the designation is in place.

151 (s) The department shall promulgate regulations to administer, implement, and enforce
152 this section, including but not limited to establishing herd immunity rates consistent with
153 established medical practice and public health research. In conjunction with the department of
154 elementary and secondary education, the department of higher education, or the department of
155 early education and care, the department may develop guidelines for covered programs to
156 achieve compliance with this section.

157 (t) In conjunction with and facilitated by the departments listed in subsection (u), the
158 department shall conduct outreach to support the delivery of medically accurate information
159 about immunizations and herd immunity, including but not limited to the availability of
160 programs funded through the Vaccine Purchase Trust Fund established in section 24N of chapter
161 111. Such outreach shall focus on, but not be limited to, immunization gap populations in under-
162 vaccinated communities.

163 SECTION 6. Section 12F of chapter 112 of the General Laws, as appearing in the 2018
164 Official Edition, is hereby amended by striking out, in lines 14 and 15, the words “have come in
165 contact with” and inserting in place thereof the following words:- be at risk of contracting.

166 SECTION 7. Said section 12F of said chapter 112, as so appearing, is hereby further
167 amended by inserting after the word “diagnosis”, in line 18, the following word:- , prevention.

168 SECTION 8. This act shall take effect on July 1, 2021.