

SENATE No. 1335

The Commonwealth of Massachusetts

PRESENTED BY:

Rebecca L. Rausch

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act advancing the health of pregnant persons.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/29/2019</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>	<i>1/18/2019</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>1/22/2019</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>1/31/2019</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>1/21/2019</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/1/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>5/7/2019</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>1/29/2020</i>

SENATE No. 1335

By Ms. Rausch, a petition (accompanied by bill, Senate, No. 1335) of Rebecca L. Rausch, Kay Khan, Nika C. Elugardo, Joanne M. Comerford and other members of the General Court for legislation to advance the health of pregnant persons. Public Health.

The Commonwealth of Massachusetts

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

An Act advancing the health of pregnant persons.

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. Section 17C of chapter 32A of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after the words “coverage for”, in line 3, the
3 following words:- abortion and abortion-related care, and by inserting after the words
4 “postpartum care,” in line 4 the following words:- “including postpartum mental health care,”.

5 SECTION 2. Said section 17C of said chapter 32A, as so appearing, is hereby further
6 amended by adding the following sentences:-

7 Coverage provided under this section shall not be subject to any deductible, coinsurance,
8 copayment or any other cost-sharing requirement. Coverage offered under this section shall not
9 impose unreasonable restrictions or delays in the coverage.

10 Benefits for an enrollee under this section shall be the same for the enrollee’s covered
11 spouse and covered dependents.

The commission shall ensure plan compliance with this chapter.

SECTION 3. Chapter 112 of the General Laws is hereby amended by striking out Sections 12K to 12U, inclusive, and inserting in place thereof the following sections:

Section 12K. Short Title; Citation

Sections 12K to 12S, inclusive, shall be known and may be cited as the Pregnant Persons' Health Act.

Section 12L. Definitions applicable to the Pregnant Persons' Health Act

As used in the Act, the following words shall have the following meanings:

(1) Abortion, any medical treatment intended to induce the termination of a clinically diagnosable pregnancy except for the purpose of producing a live birth. The term abortion does not include miscarriage management.

(2) Abortion-related service, a service complementary to the performance of an abortion, provided the service is medically appropriate.

(3) Act, the Pregnant Persons' Health Act, as set forth in Sections 12K to 12S, inclusive.

(4) Pregnancy, the presence of a developing embryo or fetus implanted a person's uterus.

(5) Provider, a physician who, acting within their scope of practice, may lawfully perform an abortion or provide abortion-related services.

(6) Provider facility, a structure in which a provider performs abortions or provides abortion-related services.

Section 12M. Right to pregnancy determination

Every pregnant person shall have an affirmative right to determine whether, when, and how to prevent, commence, terminate, or continue their own pregnancy, including but not limited to the ability to access an abortion and abortion-related services, consistent with this Act.

Section 12N. Medically appropriate treatment

(1) A pregnant person has an affirmative right to receive an abortion and abortion-related services consistent with generally accepted standards of care or otherwise medically appropriate treatment.

(2) A provider shall be permitted, without interference, to perform abortion and provide abortion-related services consistent with generally accepted standards of care or otherwise medically appropriate treatment.

(3) The Commonwealth shall not restrict the performance of abortion or the provision of abortion-related services consistent with generally accepted standards of care or otherwise medically appropriate treatment.

Section 12O. Timing

The time period within which to perform an abortion or provide abortion-related services shall be determined by a pregnant person and their provider, taking into consideration: (1) all factors relevant to the health and well-being of the pregnant person, including but not limited to

physical, emotional, psychological, and familial health; and (2) lethal fetal anomalies or other conditions rendering the fetus incompatible with sustained life outside the uterus.

Section 12P. Informed consent

A provider must obtain a pregnant person's written informed consent prior to performing an abortion in a form prescribed by the Commissioner of the Department of Public Health, and the pregnant person must execute said informed consent form prior to receiving an abortion, except: (1) in an emergency, when an abortion is required to preserve the health of the pregnant person, in which case the provider may perform the abortion without an executed informed consent form; or (2) when a pregnant person is incapacitated due to vegetative state, and said pregnant person was incapacitated prior to and at all times during the pregnancy, and another person serves as legally valid health care proxy for the pregnant person, in which case the health care proxy must execute the informed consent form. A pregnant person's signature on the consent form shall not be deemed invalid due to the pregnant person's age. No waiting period shall be imposed between the execution of the consent form and the performance of the abortion.

Section 12Q. Undue interference

(1) No pregnant person shall be required, as a precondition to receiving an abortion or abortion-related service, to:

(a) wait for an extended period of time, beyond the standard of care or as may be operationally necessary, after executing the informed consent form required by the Act to initiate an abortion or abortion-related services;

(b) undergo an ultrasound inconsistent with the standard of care;

(c) review, see, or hear the results of an ultrasound, unless consistent with the standard of care; or

(d) appear at a provider facility for purposes of receiving an abortion or abortion-related service more than is consistent with the standard of care.

(2) Provider facilities shall not be required to:

(a) Affiliate in any way with, or be constructed within a specified distance of, a hospital, as defined in section 52 of Chapter 111 of the General Laws;

(b) Comply or substantially comply with the licensure requirements for clinics providing ambulatory surgery, consistent with Section 51 of Chapter 111 of the General Laws, unless the provider facility otherwise operates as a free standing ambulatory surgical center;

(c) Construct or maintain medically unnecessary physical structures, sizes, or spaces;

(d) Hire only providers with admitting privileges at a hospital, as defined in section 52 of Chapter 111 of the General Laws; or

(e) Comply with any other medically unnecessary physical or operational standards or requirements.

(3) The Attorney General shall enforce subsection (2) of this section, provided that nothing herein shall preclude a private right of action asserting violations hereof. All actions must be commenced within ten years after the cause of action accrues.

Section 12R. Listing of provider facilities

The Department of Public Health shall publish on its website and in print copy a listing of provider facilities opting to be included on said listing. The listing shall be updated annually, or more frequently as required or requested by a provider or provider facility.

Section 12S. Pregnant persons' health disparities

(1) For purposes of this section, the term "maternal death" shall mean the death of a person while they are pregnant or within one year of when a person ceases to be pregnant.

(2) There is hereby established a special commission for the purpose of making an investigation and study relative to reducing racial disparities in maternal death.

(3) The commission shall consist of 12 members: the director of the office of health equity, who shall serve as chairperson; a member of the Black and Latino Legislative Caucus or a designee; the commissioner of the department of public health, or a designee; a member of the maternal mortality and review committee; three medical professionals belonging to specialties which focus on childbirth or maternal health, including but not limited to OB/GYNs, nurse midwives, doulas, and midwives; a member of a medical organization focused on improving maternal health outcomes, a member of an organization committed to racial justice; and a member of an organization committed to reducing health inequities in communities of color. The governor shall appoint 2 members: one of whom shall be an immediate family member of a victim of maternal death, and one of whom shall be an expert in reducing racial disparities in maternal death. The chairperson may appoint up to 3 additional commission members to fulfill the purpose of the commission.

(4) Said commission shall provide guidance and advice to the governor, the general court and the secretary of health and human services relative to reducing racial disparities in

maternal death including, but not limited to: (i) an assessment of current research on the subject and whether there exist evidence-based, best or promising practices on the reduction of racial disparities in maternal death, including but not limited to risk factors related to health care access before, during, and after pregnancy, the assessment and management of risk factors associated with maternal death, documentation and management of chronic and concurrent medical conditions, and the cultural competency of health care providers; (ii) the extent to which implicit bias, racism, or discrimination affect the prevalence of maternal death in communities of color and potential solutions; (iii) provision of assistance to the department of public health, other state agencies and organizations relative to applications for federal funding to support efforts consistent with the mission and purpose of the commission; (iii) an examination of what data is currently collected by the commonwealth regarding maternal death and whether additional authorization for data is needed and (iv) any other matters that the commission considers relevant to the fulfillment of its mission and purpose.

(5) The special commission may conduct public hearings, forums or meetings to gather information and to raise awareness of maternal death, including the sponsorship of or participation in statewide or regional conferences.

SECTION 4. Section 12I of Chapter 112 of the General Laws is hereby amended by adding the following sentence:

No conscientious objection shall be valid if an abortion is required to preserve the life of the pregnant person and no medical staff other than the objector are available to perform or support the performance of the abortion, as applicable.

134 SECTION 5. Section 10A of chapter 118E of the General Laws, as appearing in the 2016
135 Official Edition, is hereby amended by inserting after the words “coverage for”, in line 1, the
136 following words:- “abortion and abortion-related care,” and by inserting after the words
137 “postpartum care,” in line 2 the words:- “including postpartum mental health care,” and by
138 inserting after the words “gynecological care” in lines 20-21, the following words:- “, including
139 postpartum mental health care”.

140 SECTION 6. Said section 10A of said chapter 118E, as so appearing, is hereby further
141 amended by adding the following sentences:-

142 Coverage provided under this section shall not be subject to any deductible, coinsurance,
143 copayment or any other cost-sharing requirement. Coverage offered under this section shall not
144 impose unreasonable restrictions or delays in the coverage.

145 Benefits for an enrollee under this section shall be the same for the enrollee’s covered
146 spouse and covered dependents.

147 Nothing in this section shall be construed to deny or restrict the division’s authority to
148 ensure its contracted health insurers, health plans, health maintenance organizations, behavioral
149 health management firms and third-party administrators under contract to a Medicaid managed
150 care organization or primary care clinician plan are in compliance with this chapter.

151 SECTION 7. Subsection (b) of section 118 of chapter 127 of the General Laws is hereby
152 amended by striking out, in line 45, the words “post-delivery recuperation” and inserting in place
153 thereof the following words:- “postpartum recovery”.

154 SECTION 8. Said subsection (b) of said section 118 of said chapter 127 of the General
155 Laws is hereby amended further by adding the following paragraph:-

156 For purposes of this section, “postpartum recovery” shall mean the time period that
157 occurs immediately following childbirth up to a minimum of 6 weeks, or longer as determined
158 by a physician.

159 SECTION 9. Said subsection (b) of said section 118 of said chapter 127 of the General
160 Laws is hereby further amended by inserting, in line 46, after the word “physician” the following
161 words:- “or emergency medical personnel”.

162 SECTION 10. Said subsection (b) of said section 118 of said chapter 127 of the General
163 Laws is hereby further amended by striking out, in line 62, the words “post-delivery
164 recuperation” and inserting in place thereof the following words:- “postpartum recovery”.

165 SECTION 11. Said subsection (b) of said section 118 of said chapter 127 of the General
166 Laws is hereby further amended by inserting, in line 72, after the word “inmate” the following
167 words:- under any circumstances or in any setting.

168 SECTION 12. Said subsection (b) of said section 118 of said chapter 127 of the General
169 Laws is hereby further amended by inserting, in line 78, after the word “superintendent” the
170 following words:- “of a state correctional facility or administrator of a county facility.”

171 SECTION 13. Said subsection (b) of said section 118 of said chapter 127 of the General
172 Laws is hereby further amended by adding the following 3 paragraphs:-

The commissioner of correction and administrator of each county correctional facility shall require annual training of staff members who transport or supervise female prisoners as to the provisions of this section.

Any time restraints are used on a pregnant or postpartum inmate, the superintendent of a state correctional facility or administrator of a county correctional facility shall submit a report within 48 hours to the secretary of public safety and security, which shall include the date, time, duration, location and the rationale for the use of restraints, provided, however, that such reports shall not contain individually identifying information.

The secretary of public safety shall submit to the legislature a public report detailing compliance with this section, including all incidents involving use of restraints which shall be filed no later than July 1 of each year with the clerks of the senate and house of representatives, the chairs of the joint committee on public safety and homeland security and the chairs of the joint committee on the judiciary.

SECTION 14. Chapter 127 of the General Laws is hereby amended by inserting after Section 16A the following new sections:

Section 16B. Upon admission to a correctional institution and at any time thereafter, the health services unit in each correctional institution where women are incarcerated shall make available to all prisoners written information on women's health, contraception, and sexually transmitted infections. A user-friendly brochure containing the aforementioned information shall be created by the department of public health and distributed in the women's native languages.

Section 16C. Not less than four months prior to the date of release for a female prisoner of child bearing age, the medical director of the correctional institution where the prisoner is

195 incarcerated shall offer the prisoner contraception counseling and a gynecological exam
196 including a Pap Test. Following said counseling, the medical director shall offer to provide her
197 with the form of contraception she so chooses including but not limited to: female condoms,
198 male condoms, diaphragm, cervical cap, intra-uterine device, prescription birth control, or
199 contraceptive sponges. If the prisoner selects a type of contraception that must be taken for a
200 period of time before it becomes effective, then the prisoner shall begin the regimen not less than
201 three months prior to her date of release. Said medication shall be distributed during regular
202 medication distribution. Upon her release, the medical director shall furnish the woman with a
203 twelve month prescription to refill her medication, a referral to a pharmacy or doctor where said
204 prescription can be refilled, and a referral to a primary care physician or gynecologist for follow
205 up care. The foregoing notwithstanding, no prisoner shall be required to undergo a gynecological
206 exam or accept or utilize any type of contraception.

207 SECTION 15. Chapter 127 of the General Laws is hereby amended by inserting after
208 Section 96B the following new section:

209 Section 96C. The superintendent of each correctional institution where women are
210 incarcerated shall at all times offer a course on health education open to all eligible prisoners
211 incarcerated in said institutions. The course shall include, but not be limited to, the following
212 topics: general health, nutrition, mental health, women's health concerns, domestic violence,
213 substance abuse, sexually transmitted infections, contraception, emergency contraception, sex
214 education, pregnancy, and postpartum health. Said course shall be developed in consultation
215 with the commissioner of public health.

SECTION 16. Section 47F of chapter 175 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the words “for the expense of”, in line 20, the following words:- abortion and abortion-related care, and by inserting after the words “post partum care” in line 21, “including post partum mental health care,”.

SECTION 17. Said section 47F of said chapter 175, as so appearing, is hereby further amended by inserting after the third paragraph the following paragraphs:-

Coverage provided under this section shall not be subject to any deductible, coinsurance, copayment or any other cost-sharing requirement. Coverage offered under this section shall not impose unreasonable restrictions or delays in the coverage.

Benefits for an enrollee under this section shall be the same for the enrollee’s covered spouse and covered dependents.

A policy of accident and sickness insurance that is purchased by an employer that is a church or qualified church-controlled organization, as defined in section 47W of this chapter, shall be exempt from covering abortion and abortion-related care at the request of the employer. An employer that invokes the exemption under this section shall provide written notice to prospective enrollees prior to enrollment with the plan and such notice shall list the health care methods and services for which the employer will not provide coverage for religious reasons.

SECTION 18. Section 8H of Chapter 176A of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the words “expense for”, in line 8, the following words:- “abortion and abortion-related care,” and by inserting after the words “post partum care,” in lines 7-8 the following words:- “ including postpartum mental health care,”.

SECTION 19. Said section 8H of said chapter 176A, as so appearing, is hereby further amended by striking out, in lines 9 and 10, the words “to the same extent that benefits are provided for medical conditions not related to pregnancy”.

SECTION 20. Said section 8H of said chapter 176A, as so appearing, is hereby further amended by inserting after the third paragraph the following paragraphs:-

Coverage provided under this section shall not be subject to any deductible, coinsurance, copayment or any other cost-sharing requirement. Coverage offered under this section shall not impose unreasonable restrictions or delays in the coverage.

Benefits for an enrollee under this section shall be the same for the enrollee’s covered spouse and covered dependents.

A policy of accident and sickness insurance that is purchased by an employer that is a church or qualified church-controlled organization, as defined in section 8W of this chapter, shall be exempt from covering abortion and abortion-related care at the request of the employer. An employer that invokes the exemption under this subsection shall provide written notice to prospective enrollees prior to enrollment with the plan and such notice shall list the health care methods and services for which the employer will not provide coverage for religious reasons.

SECTION 21. Section 4H of chapter 176B of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the words “expense for”, in lines 7 and 8, the following words:- “abortion and abortion-related care,” and by inserting after the words “post partum care,” in line 8 the following words:- “ including postpartum mental health care,”.

SECTION 22. Said section 4H of said chapter 176B, as so appearing, is hereby further amended by striking out, in lines 8 to 10, inclusive, the words “to the same extent that benefits are provided for medical conditions not related to pregnancy”.

SECTION 23. Said section 4H of said chapter 176B, as so appearing, is hereby further amended by inserting after the third paragraph the following paragraphs:-

Coverage provided under this section shall not be subject to any deductible, coinsurance, copayment or any other cost-sharing requirement. Coverage offered under this section shall not impose unreasonable restrictions or delays in the coverage.

Benefits for an enrollee under this section shall be the same for the enrollee’s covered spouse and covered dependents.

A policy of accident and sickness insurance that is purchased by an employer that is a church or qualified church-controlled organization, as defined in section 4W of this chapter, shall be exempt from covering abortion and abortion-related care at the request of the employer. An employer that invokes the exemption under this subsection shall provide written notice to prospective enrollees prior to enrollment with the plan and such notice shall list the health care methods and services for which the employer will not provide coverage for religious reasons.

SECTION 24. Section 4I of chapter 176G of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the words “coverage for”, in lines 1 and 2, the following words:- “abortion and abortion-related care,” and by inserting after the words “postpartum care,” in line 2 the following words:- “ including postpartum mental health care,”.

277 SECTION 25. Said section 4I of said chapter 176G, as so appearing, is hereby further
278 amended by inserting after the second paragraph the following paragraphs:-

279 Coverage provided under this section shall not be subject to any deductible, coinsurance,
280 copayment or any other cost-sharing requirement. Coverage offered under this section shall not
281 impose unreasonable restrictions or delays in the coverage.

282 Benefits for an enrollee under this section shall be the same for the enrollee's covered
283 spouse and covered dependents.

284 A health maintenance contract that is purchased by an employer that is a church or
285 qualified church-controlled organization, as defined in section 40 of this chapter, shall be exempt
286 from covering abortion and abortion-related care at the request of the employer. An employer
287 that invokes the exemption under this subsection shall provide written notice to prospective
288 enrollees prior to enrollment with the plan and such notice shall list the health care methods and
289 services for which the employer will not provide coverage for religious reasons.

290 SECTION 26. The provisions of sections 1, 2, 5, 6, and 16-25, inclusive, of this act shall
291 take effect 6 months from the effective date of this act.