

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>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/1/2019</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>1/21/2019</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>1/31/2019</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.

12 The commission shall ensure plan compliance with this chapter.

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

15 Section 12K. Short Title; Citation

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

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

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

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

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

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

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

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

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

33 Section 12M. Right to pregnancy determination

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

37 Section 12N. Medically appropriate treatment

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

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

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

47 Section 12O. Timing

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

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

53 Section 12P. Informed consent

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

65 Section 12Q. Undue interference

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

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

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

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

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

76 (2) Provider facilities shall not be required to:

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

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

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

83 (d) Hire only providers with admitting privileges at a hospital, as defined in section
84 52 of Chapter 111 of the General Laws; or

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

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

90 Section 12R. Listing of provider facilities

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

94 Section 12S. Pregnant persons' health disparities

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

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

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

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

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

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

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

131 No conscientious objection shall be valid if an abortion is required to preserve the life of
132 the pregnant person and no medical staff other than the objector are available to perform or
133 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:-

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

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

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

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

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

193 Section 16C. Not less than four months prior to the date of release for a female prisoner
194 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.

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

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

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

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

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

233 SECTION 18. Section 8H of Chapter 176A of the General Laws, as appearing in the
234 2016 Official Edition, is hereby amended by inserting after the words “expense for”, in line 8,
235 the following words:- “abortion and abortion-related care,” and by inserting after the words “post
236 partum care,” in lines 7-8 the following words:- “ including postpartum mental health care,”.

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

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

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

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

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

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

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

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

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

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

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

273 SECTION 24. Section 4I of chapter 176G of the General Laws, as appearing in the 2016
274 Official Edition, is hereby amended by inserting after the words “coverage for”, in lines 1 and 2,
275 the following words:- “abortion and abortion-related care,” and by inserting after the words
276 “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.