

**SENATE . . . . . No. 896**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Karen E. Spilka**

*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 passage of the accompanying bill:

An Act relative to women’s health and cancer recovery.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Karen E. Spilka	Second Middlesex and Norfolk
Anne M. Gobi	5th Worcester
Patricia D. Jehlen	Second Middlesex
Linda Dorcena Forry	12th Suffolk
James E. Timilty	Bristol and Norfolk
Ellen Story	3rd Hampshire
Scott P. Brown	Norfolk, Bristol and Middlesex
Christine E. Canavan	10th Plymouth
David P. Linsky	5th Middlesex
Pam Richardson	6th Middlesex
Benjamin Swan	11th Hampden
Mark C. Montigny	Second Bristol and Plymouth

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S01327 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### AN ACT RELATIVE TO WOMEN'S HEALTH AND CANCER RECOVERY.

*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. Notwithstanding any general law or special acts to the contrary:
- 2 A. Any insurer proposing to issue individual or group accident and sickness insurance policies  
3 providing hospital, medical and surgical, or major medical coverage on an expense-incurred  
4 basis; any corporation providing individual or group accident and sickness insurance policies  
5 providing hospital, medical and surgical, or major medical coverage on an expense-incurred  
6 basis; any health maintenance organization contract providing a health care plan for health care  
7 services; and any group blanket policy of accident and sickness insurance, including the  
8 contributory group insurance for persons in the active or retired service of the Commonwealth,  
9 that covers medical and surgical benefits, shall provide coverage consistent with all of the  
10 provisions of this section, known as the "Women's Health and Cancer Recovery Act."
- 11 B. Coverage under this section shall include benefits that provide a minimum hospital stay for  
12 such period as is determined by the attending physician in consultation with the patient to be

13 medically appropriate for such covered person undergoing a lymph node dissection or a  
14 lumpectomy or a mastectomy for the treatment of breast cancer. Such coverage may be subject  
15 to annual deductibles and coinsurance as may be deemed appropriate by the Division of  
16 Insurance, herein referred to as “the division”, and as are consistent with those established for  
17 other benefits within a given policy.

18 C. Every policy which provides hospital, medical, major medical, or similar comprehensive-  
19 type coverage must provide coverage for a second medical opinion by an appropriate specialist,  
20 including but not limited to a specialist affiliated with a specialty care center for the treatment of  
21 cancer, in the event of a positive or negative diagnosis of cancer or a recurrence of cancer or a  
22 recommendation of a course of treatment for cancer, subject to the following:

23 (i) In the case of a policy that requires, or provides financial incentives for, the insured  
24 to receive covered services from health care providers participating in a provider network  
25 maintained by or under contract with the insurer, the policy shall include coverage for a second  
26 medical opinion from a non-participating specialist, including but not limited to a specialist  
27 affiliated with a specialty care center for the treatment of cancer, when the attending physician  
28 provides a written referral to a non-participating specialist, at no additional cost to the insured  
29 beyond what such insured would have paid for services from a participating appropriate  
30 specialist. Provided however, that nothing herein shall impair an insured's rights (if any) under  
31 the policy to obtain the second medical opinion from a non-participating specialist without a  
32 written referral, subject to the payment of additional coinsurance (if any) required by the policy  
33 for services provided by non-participating providers. The insurer shall compensate the non-  
34 participating specialist at the usual, customary and reasonable rate, or at a rate listed on a fee

35 schedule filed and approved by the division, which provides a comparable level of  
36 reimbursement.

37 (ii) In the case of a policy that does not provide financial incentives for, and does not  
38 require, the insured to receive covered services from health care providers participating in a  
39 provider network maintained by or under contract with the insurer, the policy shall include  
40 coverage for a second medical opinion from a specialist at no additional cost to the insured  
41 beyond what the insured would have paid for comparable services covered under the policy.

42 (iii) Such coverage may be subject to annual deductibles and coinsurance as may be  
43 deemed appropriate by the division and as are consistent with those established for other benefits  
44 within a given policy, and, where applicable, consistent with the provisions of clauses (i) and (ii)  
45 of this subsection.

46 However, nothing in paragraph C. shall be construed as requiring the provision of secondary  
47 consultations where the patient determines not to seek such a consultation.

48 D. Every policy which provides hospital, medical, major medical, or similar comprehensive-  
49 type coverage shall provide the following coverage for breast reconstruction surgery after a  
50 mastectomy:

51 (i) All stages of reconstruction of the breast on which the mastectomy has been  
52 performed;

53 (ii) Surgery and reconstruction of the other breast to produce a symmetrical appearance;  
54 and

55 (iii) Prostheses and physical complications of mastectomy, including lymphedemas.

56 Such coverage shall be provided in the manner determined by the attending physician and the  
57 patient to be medically appropriate. Such coverage may be subject to annual deductibles and  
58 coinsurance provisions as may be deemed appropriate by the division and as are consistent with  
59 those established for other benefits within a given policy.

60 E. Every policy which provides hospital, medical, major medical, or similar comprehensive-  
61 type coverage shall provide coverage which includes benefits for equipment, supplies, complex  
62 decongestive therapy, and outpatient self-management training and education for the treatment of  
63 lymphedema, if prescribed by a health care professional legally authorized to prescribe or  
64 provide such items under law. Such coverage may be subject to annual deductibles and  
65 coinsurance provisions as may be deemed appropriate by the division and as are consistent with  
66 those established for other benefits within a given policy.

67 F. Written notice of the availability of such coverage provided by this section shall be  
68 delivered to the policyholder or beneficiary of such policy, contract, arrangement or plan prior to  
69 inception or renewal of such policy and annually thereafter.

70 G. An insurer providing coverage under this section and any participating entity through  
71 which the insurer offers health services shall not:

72 (i) Deny to a covered person eligibility, or continued eligibility, to enroll or to renew  
73 coverage under the terms of the policy or vary the terms of the policy for the purpose or with the  
74 effect of avoiding compliance with this section;

75 (ii) Provide incentives (monetary or otherwise) to encourage a covered person to accept  
76 less than the minimum protections available under this section;

77 (iii) Penalize in any way or reduce or limit the compensation of a health care  
78 practitioner for recommending or providing care to a covered person in accordance with this  
79 section;

80 (iv) Provide incentives (monetary or otherwise) to a health care practitioner relating to  
81 the services provided pursuant to this section intended to induce or have the effect of inducing  
82 such practitioner to provide care to a covered person in a manner inconsistent with this section;  
83 or

84 (v) Restrict coverage for any portion of a period within a hospital length of stay  
85 required under this section in a manner that is inconsistent with the coverage provided for any  
86 preceding portion of such stay.

87 H. This Act shall take effect on the first of January next succeeding the date on which it shall  
88 have become a law, and shall apply to all insurance policies, plans, arrangements, and contracts  
89 issued, renewed, extended, modified, altered or amended on or after such date.

90 I. Exclusions —

91 This section shall not apply to, nor include, the following, or any combination thereof:

92 (i) Coverage for accidental death or dismemberment;

93 (ii) Coverage for short-term travel;

- 94 (iii) Coverage providing wages or payments in lieu of wages for any period during  
95 which the employee is absent from work on account of sickness or injury;
- 96 (iv) A Medicare supplemental policy, as defined in Section 1852(g)(1) of the Social  
97 Security Act, or any other similar coverage under state or federal government plans;
- 98 (v) Coverage issued as a supplement to liability insurance;
- 99 (vi) Worker's compensation or similar insurance;
- 100 (vii) Automobile medical-payment insurance; and
- 101 (viii) A long-term policy, including a nursing home fixed indemnity policy, unless the  
102 division determines that such a policy provides sufficiently comprehensive coverage of a benefit  
103 so that it should be treated as a health insurance plan under Section 1.A. of this Act.