SENATE . . . . . No. 2538

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

SENATE, June 18, 2025.

The committee on Senate Ways and Means to whom was referred the Senate Bill strengthening health care protections in the Commonwealth (Senate, No. 2522), - reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2538).

For the committee,
Michael J. Rodrigues

FILED ON: 6/18/2025

SENATE . . . . . No. 2538

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In the One Hundred and Ninety-Fourth General Court
(2025-2026)

An Act strengthening health care protections in the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Clause twenty-sixth of section 7 of chapter 4 of the General Laws, as amended by section 1 of chapter 363 of the acts of 2024, is hereby further amended by adding the following subclause:-

(x) the name, home address, personal email address, home telephone number or mobile telephone number and any other personal information of an individual engaged in the provision, facilitation or promotion of reproductive health care services or gender-affirming health care services, as defined in section 11I½ of chapter 12.

SECTION 2. Section 11I ½ of chapter 12 of the General Laws, as appearing in the 2022 Official Edition, is hereby amended by adding the following 3 subsections:-

(g) Notwithstanding any general or special law to the contrary and except as required by federal law, no state or local agency of the commonwealth or officer or employee or any other person acting on behalf of a state or local agency of the commonwealth while acting under the color of law shall cooperate with or provide information or assistance to any federal law

enforcement agency or other agency or any other state or local law enforcement agency or other agency or any individual or quasi-law enforcement agent or expend or use any time, money, facilities, property, equipment, personnel or other resources in relation to an investigation or inquiry into services constituting legally-protected health care activity if such services would be lawful as provided had they occurred entirely in the commonwealth.

(h) Evidence relating to the involvement of an individual in any legally-protected health care activity shall not be offered as evidence that such individual has engaged in wrongdoing, whether civil, criminal, professional or otherwise, by virtue of the fact that the individual who received such services was not physically present in the commonwealth when they received such services. Nothing in this section shall prevent a party from offering such evidence in a proceeding that: (i) sounds in tort or contract; (ii) is actionable, in an equivalent or similar manner, under the laws of the commonwealth; and (iii) was brought by the patient who received reproductive health care services or gender-affirming health care services or the patient's legal representative.

(i) The attorney general may bring a civil action for injunctive or other equitable relief to enforce this section.

SECTION 3. Section 12 of chapter 12C of the General Laws, as so appearing, is hereby amended by striking out subsection (b) and inserting in place thereof the following:-

(b) The center shall permit a government agency or authority to access identifiable health information of an individual only to the extent necessary for such government agency or authority to accomplish the public purposes for which access was given, subject to subsection (f) of this section. Except as required by federal law, the center shall not provide access to any data,

including de-identified data or any other data that would allow the identification of a patient or provider in response to an out-of-state or federal inquiry or investigation into services constituting legally protected health care activity, as defined in section 11I½ of chapter 12.

(c) The center shall permit providers, provider organizations and public and private health care payers access to identifiable health information of an individual solely for the purposes of carrying out treatment, payment, or health care operations.

(d) The center may disclose identifiable health information of an individual for research, regardless of the source of funding of the research, provided that: (i) the center obtains documentation of authorization from the individual patient; or (ii) waiver of individual authorization has been approved by either an institutional review board or privacy board.

(e) The center may disclose de-identified health information of an individual for the purposes of lowering total medical expenses, coordinating care, benchmarking, quality analysis, research, administrative or planning purposes, informing consumer health care decisions, or other purposes that aim to improve healthcare or public health outcomes for Commonwealth residents that are consistent with the goals this chapter. A recipient of de-identified health information of an individual shall not use such information or data to identify any person for any purpose.

(f) A recipient of de-identified or identifiable health information of an individual patient shall not use such information to: (i) conduct a criminal, civil or administrative investigation into any individual patient; or (ii) impose criminal, civil or administrative liability on any individual patient.

(g) Access to identifiable health information of an individual, including personal data as defined in section 1 of chapter 66A, authorized under this section shall be deemed to comply with the requirements of chapter 66A.

(h) The center may charge an application fee or other fees sufficient to process and provide such access to non-governmental entities.

(i) A violation of this section, or any rule or regulation issued hereunder, shall constitute a violation of chapter 93A.

SECTION 4. Section 75 of chapter 31 of the General Laws, as amended by chapter 238 of the acts of 2024, is hereby further amended by adding the following paragraph:-

Nothing in this section shall be construed to permit civil service employees to furnish information to, or cooperate with, law enforcement authorities in contravention of section 11I½ of chapter 12 and section 63 of chapter 147.

SECTION 5. Section 10B of chapter 66 of the General Laws is hereby amended by striking out, in lines 34 and 35, as appearing in the 2022 Official Edition, the words “persons providing or training in family planning services,” and inserting in place thereof the following words:- persons engaged in the provision, facilitation or promotion of reproductive health care services or gender-affirming health care services, as defined in section 11I½ of chapter 12.

SECTION 6. Chapter 93 of the General Laws is hereby amended by adding the following section:-

Section 115. (a) As used in this section, the following terms shall have the following meanings unless the context requires otherwise:

"Electronic communication", any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photo-optical system; provided, however, such term shall not include: (i) any communication made through a tone only paging device; (ii) any communication made through a tracking device consisting of an electronic or mechanical device which permits the tracking of the movement of a person or object; or (iii) any communication that is disseminated by the sender through a method of transmission that is configured so that such communication is readily accessible to the public.

"Electronic communication services", any service which provides to users thereof the ability to send or receive wire or electronic communications.

"Prohibited violation", any civil or criminal offense defined under the laws of another state that creates civil or criminal liability for legally-protected health care activity as defined in section 11I½ of chapter 12.

(b) A business entity that operates in the commonwealth and provides electronic communication services or remote computing services to residents of the commonwealth or business entities organized under the laws of the commonwealth shall not comply with a subpoena, warrant or other civil or criminal legal process for records, information or assistance that the business entity knows relates to a resident, health care provider or business entity in the commonwealth in connection with legally-protected health care activity as defined in section 11I½ of chapter 12, except as required by a valid federal law, unless the subpoena, warrant or other civil or criminal legal process includes, or is accompanied by, an attestation, made under penalty of perjury, stating that the subpoena, warrant or other civil or criminal legal process does

not seek documents, information or testimony relating to an investigation into, or the enforcement of, another state's law that asserts criminal or civil liability for the provision, receipt, attempted provision or receipt, assistance in the provision or receipt or attempted assistance in the provision or receipt of legally=protected health care activity that is lawful in the commonwealth.

(c) Any false attestation submitted under this section shall be subject to a statutory penalty of not more than $50,000 per violation. Submission of such attestation subjects the attester to the jurisdiction of the courts of the commonwealth for any suit, penalty or damages arising out of a false attestation under this section.

(d) The attorney general may bring a civil action for injunctive or other equitable relief to compel any business entity that operates in the commonwealth and that provides electronic communications services or remote computing services to residents of the commonwealth to comply with this section.

SECTION 7. Section 21 of chapter 94C of the General Laws, as most recently amended by section 6 of chapter 285 of the acts of 2024, is hereby further amended by striking the first paragraph and inserting in place thereof the following:-

The pharmacist filling a written, electronic or oral prescription for a controlled substance shall package the controlled substance in a container, affixing to the container a label showing the date of filling, the pharmacy name and address, the filling pharmacist's initials, the serial number of the prescription, the name of the patient, unless it is a veterinary prescription, the name of the prescribing practitioner except as otherwise provided in this section, the name of the controlled substance, directions for use and cautionary statements, if any, contained in such

prescription or required by law, and if the controlled substance is dispensed as tablets or capsules the number of same in such container.

Except as required by federal law, the label for a controlled substance prescribed for reproductive health care services or gender-affirming health care services, as defined in section 11I½ of chapter 12, shall, at the request of the provider, include the name of the prescribing health care practice instead of the name of the prescribing practitioner; provided, however, that a pharmacy benefit manager, as defined in section 1 of chapter 176Y, shall not recoup or recover funds from a pharmacy due to the absence of such dispensing practitioner's name under this paragraph. The department may promulgate regulations to implement this paragraph.

SECTION 8. Section 22 of said chapter 94C, as appearing in the 2022 Official Edition, is hereby amended by adding the following subsection:-

(d) Notwithstanding subsection (b) and to the extent allowable under federal law, the label for a controlled substance prescribed for reproductive health care services or gender-affirming health care services, as defined in section 11I½ of chapter 12, may include the name of the dispensing health care practice instead of the name of the dispensing practitioner.

SECTION 9. Paragraph (1) of subsection (a) of section 24A of said chapter 94C, as so appearing, is hereby amended by adding the following sentence:-

Notwithstanding any other provision of this section, medications specifically prescribed for reproductive health care services and gender-affirming health care services, as defined in section 11I ½ of chapter 12, shall be excluded from this electronic monitoring program unless reporting of such is determined by the department to be necessary to protect the public health.

SECTION 10. Said section 24A of said chapter 94C, as so appearing, is hereby further amended by adding the following subsection:-

(n) Notwithstanding any general or special law to the contrary, except as required by federal law, the department shall not provide disaggregated data or individually identifiable data, from the prescription drug monitoring program to a federal law enforcement agency or other agency or any other state or local law enforcement agency or other agency or any private citizen or entity or quasi-law enforcement agent in relation to an investigation or inquiry into reproductive health care services or gender-affirming health care services, as defined in section 11I½ of chapter 12, if such services would be lawful as provided had they occurred entirely in the commonwealth. This section shall not be construed to apply to prescription drugs for usages, including off-label usages, that are unrelated to reproductive health care services or gender-affirming health care services.

SECTION 11. Chapter 111 of the General Laws is hereby amended by inserting after section 51 the following section:-

Section 51¼. (a) For purposes of this section, the following terms shall have the following meaning unless the context clearly requires otherwise:

"Emergency medical condition", a medical condition manifesting itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in: (i) placing the health of the patient in serious jeopardy; (ii) serious impairment of bodily functions; or (iii) serious dysfunction of any bodily organ or part; provided, however, that such conditions shall include, but shall not be limited to: ectopic pregnancy, complications of pregnancy loss or abortion, risks to future fertility, preterm

premature rupture of membranes, placental abruption or bleeding from placenta previa or emergent hypertensive disorders, such as preeclampsia and eclampsia and peripartum cardiomyopathy, and any other condition a licensed health care provider, acting within their lawful scope of practice, determines in the provider's best medical judgment, to be an emergency as defined in this paragraph.

"Patient", any person who presents at the hospital or who is brought to a hospital by ambulance or specialized emergency medical services vehicle as defined in section 1 of chapter 111C.

"Stabilizing treatment", includes abortion when abortion is necessary to resolve the patient's injury or emergency medical condition.

(b) Acute-care hospitals licensed under section 51G, during all operating hours of an emergency department or a satellite emergency facility as defined in section 51½, shall provide hospital emergency services to any patient who applies for the same in case of injury or an emergency medical condition. Acute care hospitals shall furnish hospital emergency services, including, but not limited to, medical screening by qualified medical personnel, to reach with reasonable clinical confidence a determination of whether a patient has an emergency medical condition and to provide necessary stabilizing treatment for patients with an emergency medical condition. Acute care hospitals shall establish and maintain policies and procedures for the provision of hospital emergency services, including for a patient's refusal to consent, restricting transfers until the patient is stabilized, appropriate transfers of patients, nondiscrimination in providing services to patients, preventing delay in examination or treatment of patients and whistleblower protections.

(c) The department may promulgate regulations to implement this section.

(d) The attorney general may bring a civil action for injunctive or other equitable relief to enforce this section. In any action brought by the attorney general under this section, the court may also award a civil penalty of not more than $10,000 for each violation.

SECTION 12. Said chapter 111 is hereby amended by inserting after section 70H the following section:-

Section 70I. (a) For the purposes of this section, the following words shall have the following meanings unless context clearly requires otherwise:

"Business", (i) a business organized for the purpose of maintaining medical information to make an individual's medical information available to said individual or to a provider of health care at the request of said individual or a provider of health care, for purposes of allowing the individual or the provider to manage the individual's medical information or for the diagnosis and treatment of the individual;

(ii) a business that offers medical recordkeeping, electronic health records or electronic medical record services, including, but not limited to, software or hardware, to consumers that makes an individual's medical information available to another person or a provider of health care at the request of the individual or a provider of health care, for purposes of allowing the other person or the provider to manage the individual's medical information or for the diagnosis, treatment or management of a medical condition of the individual;

(iii) any business that is licensed by the department of public health or the department of mental health to provide medical, clinical, behavioral or health services; or

(iv) a business that offers a digital service to a consumer for the purpose of allowing such consumer to manage the consumer's reproductive or sexual health information or for the diagnosis, treatment or management of a reproductive or sexual health medical condition of the consumer.

"Gender affirming health care services", as defined in section 11I½ of chapter 12.

"Reproductive health care services", as defined in section 11I½ of chapter 12.

(b) A business that electronically stores or maintains medical information related to the provision of reproductive health care services, in vitro fertilization and gender-affirming health care services, including, but not limited to, on an electronic health record system or electronic medical record system, on behalf of a provider of health care, health care insurance plan, pharmaceutical company, pharmacy benefit manager, contractor or employer, shall develop capabilities, policies and procedures to enable and shall enable features that:

(i) limit user access privileges to information systems that contain medical information related to reproductive health care services, in vitro fertilization and gender-affirming health care services only to those persons who are authorized in writing by the patient to access such medical information;

(ii) prevent the disclosure, access, transfer, transmission or processing of medical information related to reproductive health care services, in vitro fertilization or gender-affirming health care services to persons and entities outside of the commonwealth, absent the express written consent of the patient, independent of any other agreement, that specifically authorizes the disclosure, access, transfer, transmission or processing of such medical information to the named persons or entities outside of the commonwealth; and

(iii) automatically disable access by individuals and entities outside the commonwealth to segregated medical information related to reproductive health care services, in vitro fertilization or gender-affirming health care services, absent the express written consent of the patient that specifically authorizes access by named persons or entities outside of this commonwealth to such segregated medical information.

(c) The department may promulgate such regulations for licensed providers and entities as may be necessary to implement this section.

(d) The department shall create a consent form that meets the requirements of this section and shall require its use by all licensed health care providers in the commonwealth.

(e) The attorney general may bring a civil action for injunctive or other equitable relief to enforce this section. In an action brought by the attorney general under this section, the court may also award a civil penalty of not more than $5,000 per violation.

SECTION 13. Section 12Q of chapter 112 of the General Laws, as appearing in the 2022 Official Edition, is hereby amended by adding the following paragraph:-

The commissioner of public health shall not, pursuant to this section, collect, maintain, use, disclose or disseminate disaggregated surveillance data or individually identifiable surveillance data on abortions performed in the commonwealth. The name, home address, personal email address and telephone number of individuals engaged in the provision, facilitation or promotion of reproductive health care services, as defined in section 11I½ of chapter 12, shall not be considered a public record under chapter 66.

SECTION 14. Said chapter 112 is hereby further amended by adding after section 12Q the following section:-

Section 12Q½. The commissioner of public health shall not collect, maintain or use individually identifiable data on gender-affirming health care services provided in the commonwealth, as defined in section 11I ½ of chapter 12, except as authorized by law, and shall not disclose or disseminate disaggregated data or individually identifiable surveillance data on gender-affirming health care services, as defined in said section 11I ½ of said chapter 12, provided in the commonwealth. The name, home address, personal email address, home telephone number and mobile telephone number of individuals engaged in the provision, facilitation or promotion of gender-affirming health care services, as defined in section 11I½ of chapter 12, shall not be considered a public record under chapter 66.

SECTION 15. Section 61 of said chapter 112, as most recently amended by section 2 of chapter 353 of the acts of 2024, is hereby further amended by adding the following 3 paragraphs:-

Notwithstanding any general or special law to the contrary, no person shall be subject to discipline by a board of registration, including through the revocation, suspension or cancellation of a certificate, registration or license, or a reprimand, censure or monetary fine, for providing or assisting in the provision of reproductive health care services or gender-affirming health care services, as those terms are defined in section 11I½ of chapter 12, or for any judgment, discipline or other sanction arising from such health care services if the services as provided would have been lawful and consistent with the standard of conduct for the designated profession had they occurred entirely in the commonwealth.

No board of registration shall make available for public dissemination on an individual's profile the record of any criminal conviction or charge for a felony or serious misdemeanor, final disciplinary action by a licensing board in another state or a malpractice court judgment, arbitration award or settlement that resulted from providing or assisting in the provision of reproductive health care services or gender-affirming health care services or for any judgment, discipline or other sanction arising from such health care services if the services as provided would have been lawful and consistent with the scope and standards of practice for the designated profession had they occurred entirely in the commonwealth.

No board of registration shall take adverse action on an application for registration or licensure based on a criminal or civil action or disciplinary action by a licensing board of another state or a medical malpractice claim in another state that resulted from providing or assisting in the provision of reproductive health care services or gender-affirming health care services that, as provided, would have been lawful and consistent with the standard of conduct for the designated profession had they occurred entirely in the commonwealth.

SECTION 16. Section 63 of chapter 147 of the General Laws, as appearing in the 2022 Official Edition, is hereby amended by striking out subsection (b) and inserting in place thereof the following 2 subsections:-

(b) Notwithstanding any general or special law to the contrary and except as required by federal law, no state or local law enforcement agency or officer or employee or any other person acting on behalf of a state or local law enforcement agency of the commonwealth, while acting under color of law, shall provide information or assistance to a federal law enforcement agency or any other state's agency, including a law enforcement agency, or any private citizen or quasi-

law enforcement agent, or expend or use time, money, facilities, property, equipment, personnel or other resources in relation to an investigation or inquiry into services constituting legally-protected health care activity, as defined in section 11I½ of chapter 12, if such services would be lawful as provided had they occurred entirely in the commonwealth.

(c) The attorney general may bring a civil action for injunctive or other equitable relief to enforce this section.

SECTION 17. Chapter 175 of the General Laws is hereby amended by inserting after section 193U the following section:-

Section 193V. No insurance company offering for sale any policy of insurance shall discriminate against a nonprofit charitable organization, including those corporations qualified under 26 USC section 501(c)(3), or adjust or otherwise calculate such nonprofit charitable organization's risk classification or premium charges in the provision of any form of liability insurance covering negligence, wrongful acts, errors or omissions of the organization and its respective members, directors and officers, on the basis that: (i) the organization offers reproductive health care services or gender-affirming health care services, as those terms are defined in section 11I½ of chapter 12; (ii) the organization engages in legally-protected health care activity, as defined in said section 11I½ of said chapter 12; or (iii) the organization is or has been be the subject of abusive litigation, as defined in said section 11I½ of said chapter 12. Nothing herein shall prohibit such insurers from establishing reasonable classifications of risks and premium charges based upon the relative risk associated with practice in a particular specialty.

SECTION 18. Chapter 209B of the General Laws is hereby amended by adding the following section:-

Section 15. (a) A law of a jurisdiction outside the commonwealth that authorizes a child to be removed from the care or custody parent or guardian based on the parent or guardian allowing their child to receive gender-affirming care health care services, as defined in section 11I½ of chapter 12, or that bans the provision of gender-affirming health care services shall not provide a basis to alter custody, parenting time or visitation or to make a finding of abuse, neglect or maltreatment in a case pending in a court in the commonwealth, unless conduct under such law would constitute abuse, neglect or maltreatment under the laws of the commonwealth.

(b) No court in the commonwealth shall admit or consider a finding of abuse, neglect or maltreatment based on a parent or guardian allowing their child to receive or seek gender-affirming health care services or a finding that a parent or guardian is criminally, civilly or otherwise liable for violating another's state's law that bans the provision of gender-affirming health care services, as defined in section 11I ½ of chapter 12, as evidence in any proceeding with respect to that parent or guardian and any of their children, unless such conduct would constitute abuse, neglect or maltreatment under the laws of the commonwealth.

SECTION 19. Chapter 221 of the General Laws is hereby amended by inserting after section 40 the following section:-

Section 40A. Notwithstanding any general or special law or rule or regulation to the contrary, no attorney licensed in the commonwealth may be removed or otherwise subject to discipline, including through the revocation, suspension or cancellation of the attorney's license or reprimand, censure or monetary fine, for advising or representing a client or prospective client

on or in a matter related to the provision of reproductive health care services or gender-affirming health care services, as those terms are defined in section 11I ½ of chapter 12, if the sole basis for such removal or discipline is that: (i) the client offered, provided or received reproductive health care services or gender-affirming health care services that are unlawful in another state; (ii) another state's laws creates actual or potential liability for the reproductive health care services or gender-affirming health care services offered, provided or received by the client; or (iii) the attorney is subject to actual or potential liability, or removal or discipline, in another jurisdiction based on the reproductive health care services or gender-affirming health care services offered, provided or received by the client; provided, however, that the attorney's conduct shall otherwise comply with the laws of the commonwealth and meet the standards set forth in the rules of professional conduct promulgated by the supreme judicial court.

SECTION 20. Sections 7 and 8 shall take effect January 1, 2026.

SECTION 21. Subsection (b) of section 70I of chapter 111 shall take effect no later than July 1, 2026.