Senator Rebecca L. Rausch, Representative Andres X. Vargas, Representative Paul J. Donato
An Act Promoting Community Immunity S1517 and H2271 (the "Act")
https://malegislature.gov/Bills/192/SD1499

The Act purports to improve and standardize immunization reporting but goes well beyond this reasonable goal. It is complicated, wasteful, and blatantly coercive, not only for students but also for schools and physicians. Schools and students in disadvantaged and marginalized communities will be hardest hit by measures that will ultimately limit access to early childhood education, discriminate against religious minorities, and cause additional stress for underserved schools.

There is no immunization problem in Massachusetts. DPH is doing an excellent job tracking and assessing immunizations, including by administering the Massachusetts Immunization and Information System (MIIS), which covers all children in the Commonwealth. We enjoy the highest school vaccination rates in the country, without coercive measures, and have had no outbreaks of vaccine preventable illness in school-aged children in the past decade.

Critical Failings of the Act

1. The Act would allow any physician to vaccinate any minor without parental consent or knowledge and without any constraints on age, intellectual ability, or capacity to consent. Medical records related to vaccination would be hidden from parents (lines 173-177).[1]
    - This creates extreme risk of mistakes, duplications and serious medical consequences in the case of adverse events.
    - The Supreme Court has unequivocally held that parents have the right to make medical decisions for their children.[2]

2. The Act would allow any private daycare, preschool, school, or school-affiliated extra-curricular program ("covered program") to require additional vaccines outside of those specified by the Massachusetts Department of Public Health (DPH) (lines 108-112).[3]
    - Public health officials should be the only ones making vaccination requirements.

3. The Act would allow any covered program to deny the religious exemption for vaccination (lines 108-112). [3] "Covered programs" would be strongly incentivized to refuse religious exemptions to avoid being publicly branded as an "elevated risk program" under the Act (lines 127-132).
    - DPH school immunization data is currently freely available to the public, without stigmatizing labelling.
    - Schools with lower vaccination rates are overwhelmingly located in marginalized communities. Calling out and shaming these programs does nothing to ameliorate the challenges and inequities that underlie lower rates.
    - 74% of early childhood programs in MA are "covered programs" and thus subject to restricted access under the CIA[4] Barring children from early education has long-term consequences for educational attainment and lifetime health, especially when early education serves as a remedy for socio-economic and racial disparity.[5] Limiting access to daycare and preschool has a crippling economic impact on families, especially single-parent families, who are overwhelmingly families of color.

4. The Act would place special needs students particularly at risk
    - The vast majority of special needs programs are "covered programs," and thus would be subject to a powerful incentive to deny religious exemption to avoid the stigmatizing label of "elevated risk program."
    - Clinical experience suggests that special needs students use exemptions at higher rates.
    - This would be devastating for children with autism and other special needs who critically depend on specialized education and therapeutic services. These students cannot realistically be home-schooled.

5. The Act restricts the criteria a physician may use in consideration of a medical exemptions for vaccination. Only narrowly defined "contraindications" may be used (lines 67-68; 93-94). Contraindications are meant to specify circumstances where vaccines should categorically not be administered. They are not meant to define every possible circumstance where an exemption would be appropriate.
    - A physician's ability to provide nuanced, individualized, appropriate medical care would be obstructed.

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[1] The bill modifies Section 12F of Chapter 112 existing laws which originally allowed only for the treatment of dangerous medical conditions or exposures in minors.

[2] Pierce v. Soc'y of Sisters, 268 U.S. 510, 534-35 (1925).

[3] Section 13. A private covered program may implement immunization requirements more stringent than those set forth in this chapter, including but not limited to accepting medical exemptions only; provided, however, that no private covered program shall refuse to accept medical exemptions; and provided further, that the program creates and maintains a written immunization policy, which shall be made available to all responsible adults. https://malegislature.gov/Bills/192/SD1499?eType=EmailBlastContent&eId=ca32f976-ff38-4ce5-b1b7-63fb2e5132e8

[4] https://www.mass.gov/info-details/school-immunizations#childcare/preschool-data-

[5] https://www.epi.org/publication/education-inequalities-at-the-school-starting-gate/

6. The Act requires that DPH approve all medical exemptions, thereby relegating patient care decisions to a DPH employee who has never met the patient, may not have relevant clinical experience, and is not ethically bound to the patient's best interest (lines 90-94).

Reasonable, Efficient, and Non-Discriminatory Alternatives to the Community Immunity Act Exist

- School reporting can be strengthened by providing support for school administrators and nurses. Requiring reporting is reasonable, but resources, not labels and shaming, are needed to achieve this in under-served schools.
- The MA Immunization Information System (MIIS) provides DPH with robust vaccination data. We don't need to duplicate information.
- Standardized forms are certainly reasonable but diverting DPH resources to process all exemptions is not a wise use of precious resources and raises privacy concerns.
- DPH can already provide outreach to communities with lower vaccination rates. New legislation is not needed.

Community Immunity Act: Other Problematic Elements

- Creates enormous burden for DPH in processing thousands of exemptions: logistically burdensome, wasteful, expensive and bureaucratic and does nothing to address gap populations. DPH already has accurate data on vaccination via the MIIS (Massachusetts Immunization Information System).

- The proposed funding source, surplus from the Vaccine Purchase Trust Fund, is problematic given that the Trust Fund does not report surpluses every year and resources are to be primarily dedicated to insuring access to vaccination, not administration of exemptions.

- Creates chaos for DPH with respect to tracking vaccination rates—multiple "covered programs" (camps, after-school programs, schools) would be reporting data on the same child.

- Creates stigma for schools, mostly in marginalized communities, that are working to achieve adequate vaccination rates. Support, not shame and coercion, are needed to improve rates in vulnerable communities.

- Creates enormous potential for breaches of confidential personal health information both at DPH and also at schools, which would "publish" exemption information. For students at smaller schools, privacy breaches could easily create a situation where children are targeted or bullied. Currently DPH does not publish vaccination or exemption data if grade size is less than 30 students but the proposed legislation does not specify any privacy protections for smaller schools.