

SENATE No. 02115

Senate, January 30, 2012 – New draft of Senate, No. 2072 reported from the committee on Health Care Financing.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to prescription drug diversion, abuse and addiction.

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. Chapter 94C of the General Laws is hereby amended by inserting after
2 section 7 the following section:-

3 Section 7A. Prior to obtaining or renewing a registration under section 7, a practitioner
4 who prescribes controlled substances, except a veterinarian, shall register as a participant in the
5 prescription monitoring program established in section 24A.

6 SECTION 2. Section 15 of said chapter 94C, as appearing in the 2010 Official Edition,
7 is hereby amended by inserting the following paragraph:-

8 If a person registered to manufacture, distribute, dispense, or possess controlled
9 substances discovers a theft or loss of controlled substances that requires the filing of a DEA
10 Form 106 with the federal Drug Enforcement Administration, the person shall simultaneously
11 file a copy of that form with local law enforcement and the state police.

12 SECTION 3. Section 18 of chapter 94C of the General Laws, as so appearing, is hereby
13 amended by striking out, in line 38, the word “another” and inserting in place thereof the
14 following words:- a contiguous.

15 SECTION 4. Section 21 of chapter 94C of the General Laws, as so appearing in the 2010
16 Official Edition, is hereby amended by adding the following paragraph:-

17 The department of public health shall produce and distribute to pharmacies a pamphlet
18 for consumers relative to controlled substances that includes educational information about:
19 (i) misuse and abuse by adults and youth, (ii) risk of dependency and addiction, (iii) proper
20 storage and disposal, (iv) addiction support and treatment resources, and (v) the telephone
21 helpline operated by the bureau of substance abuse services. A pharmacist shall distribute the
22 pamphlet when dispensing a controlled substance contained in Schedule II or III.

23 SECTION 5. Said chapter 94C is hereby further amended by inserting after section 21A
24 the following section:-

25 Section 21B. (a) For the purposes of this section, the following words shall, unless the
26 context clearly requires otherwise, have the following meanings:-

27 “Lock box”, a box with a locking mechanism that cannot be tampered with or opened
28 without extreme force.

29 “Pharmacy”, a facility under the direction or supervision of a registered pharmacist
30 which is authorized to dispense controlled substances; provided, however, pharmacy shall not
31 include an institutional pharmacy or a pharmacy department except as otherwise provided in 247
32 CMR.

33 “Prescription drug”, all drugs which, under federal law, are required, prior to being
34 dispensed or delivered, to be labeled with the statement “Caution, Federal law prohibits
35 dispensing without prescription" or a drug which is required by applicable federal or state law or
36 regulation to be dispensed pursuant only to a prescription drug order.

37 (b) A pharmacy registered in the commonwealth to dispense schedule II, III, IV or V
38 prescription drugs shall make available prescription lock boxes for sale at each store location.
39 Pharmacies shall make customers aware of the availability of the lock boxes by displaying a sign
40 on or near the pharmacy counter that: (i) is at least 4 inches by 5 inches, and (ii) includes the
41 following statement in legibly printed font: “Lock boxes for securing your prescription
42 medications are available at this pharmacy.”

43 SECTION 6. Section 23 of chapter 94C of the General Laws, as so appearing in the 2010
44 Official Edition, is hereby amended by inserting after the word “means”, in line 25, the following
45 words:- on a secure form;

46 SECTION 7. Subsection (c) of section 24A of said chapter 94C, as so appearing is
47 hereby amended by adding the following paragraph:-

48 The department shall promulgate rules and regulations relative to the use of the
49 prescription monitoring program by registered participants that shall include requiring
50 participants to utilize the prescription monitoring program prior to the issuance of a prescription
51 for a narcotic drug contained in Schedule II or III to a patient for the first time. The regulations
52 shall specify the circumstances under which such narcotics may be prescribed without first
53 utilizing the prescription monitoring program .

54 SECTION 8. Said chapter 94C of the General Laws is hereby amended by inserting after
55 section 34 the following section:-

56 Section 34A. (a) A person who, in good faith, seeks medical assistance for someone
57 experiencing a drug-related overdose shall not be charged or prosecuted for possession of a
58 controlled substance pursuant to the provisions of section 34 if the evidence for the charge of
59 possession of a controlled substance was gained as a result of the seeking of medical assistance.

60 (b) A person who experiences a drug related overdose and is in need of medical
61 assistance shall not be charged or prosecuted for possession of a controlled substance pursuant to
62 section 34 if the evidence for the charge of possession of a controlled substance was gained as a
63 result of the overdose and the need for medical assistance.

64 (c) The act of seeking medical assistance for someone who is experiencing a drug related
65 overdose may be used as a mitigating factor in a criminal prosecution pursuant to the Controlled
66 Substance Act.

67 (d) A person who, in good faith, seeks medical assistance for someone experiencing a
68 drug-related overdose shall not be charged or prosecuted pursuant to the provisions of section 35
69 if the evidence for the charge under section 35 was gained as a result of the seeking of medical
70 assistance.

71 (e) A person who experiences a drug related overdose and is in need of medical
72 assistance shall not be charged pursuant to section 35 if the evidence for the charge under
73 section 35 was gained as a result of the overdose and the need for medical assistance.

74 (f) Nothing contained herein shall prevent anyone from being charged with trafficking,
75 distribution, and/or possession of a controlled substance with intent to distribute.

76 SECTION 9. Section 12F of chapter 112 of the General Laws, as appearing in the 2010
77 Official Edition, is hereby amended by striking out, in lines 37 and 38, the words “upon the
78 written consent of the minor or a proper judicial order” and inserting in place thereof the
79 following words:- (i) upon the written consent of the minor, (ii) under a proper judicial order or
80 (iii) if the information or records relate to a minor’s treatment for a drug or alcohol overdose, as
81 defined by department of public health in its regulations, and are being provided to the minor’s
82 parents or legal guardian.

83 SECTION 10. Said chapter 112 is hereby further amended by inserting after section 12F
84 the following section:-

85 Section 12F ½. The department of public health shall produce a pamphlet with contact
86 information for its bureau of substance abuse services, including its telephone helpline and with
87 information on the benefits and availability of addiction treatment and on the prevention of
88 future overdoses. Any physician or hospital that treats a person under 18 years of age for a drug
89 or alcohol overdose, as defined by department of public health in its regulations, shall: (i) notify
90 the minor’s parents or legal guardian of the overdose as part of the discharge planning process,
91 (ii) provide the parents or legal guardian and the minor with the pamphlet, and (iii) provide
92 access to a social worker if one is available.

93 SECTION 11. Chapter 118E is hereby amended by adding after section 54 the following
94 section:-

95 Section 54A. The division shall establish a controlled substance management program
96 for MassHealth enrollees who use excessive quantities of prescribed drugs. Those enrollees shall
97 be restricted to obtaining prescription drugs only from the provider that the division designates as
98 the enrollee's primary pharmacy. The division shall promulgate rules and regulations relative to
99 the program, including criteria for participation, service restriction, responsibilities of primary
100 pharmacy, change in primary pharmacy and participation status, utilization review, and
101 enforcement.

102 SECTION 12. Section 16 of chapter 211B of the General Laws, as appearing in the 2010
103 Official Edition, is hereby amended by inserting after the first paragraph the following
104 paragraph:-

105 The institute, in consultation with the bureau of substance abuse services within the
106 department of public health, shall provide substance abuse training to personnel that helps
107 personnel identify substance abuse treatment resources for persons charged with or convicted of
108 a crime or adjudicated delinquent who could benefit from those resources.

109 SECTION 13. Section 4 of chapter 211D of the General Laws, as so appearing, is hereby
110 amended by adding the following paragraph:-

111 The committee, in consultation with the bureau of substance abuse services within the
112 department of public health, shall provide substance abuse training to counsels that helps
113 counsels identify substance abuse treatment resources for persons charged with or convicted of a
114 crime or adjudicated delinquent who could benefit from those resources.

115 SECTION 14. Section 11 of chapter 283 of the acts of 2010 is hereby repealed.

116 SECTION 15. The commissioner of public health shall promulgate regulations, pursuant
117 to section 6 of chapter 94C, relative to security standards for written prescription forms, as
118 required by subsection (g) of section 23 of chapter 94C of the General Laws, not later than
119 January 1, 2013.

120 SECTION 16. The department of public health shall promulgate rules and regulations
121 relative to the use of the prescription monitoring program by registered participants when
122 prescribing a narcotic drug contained in Schedule II or III to a patient for the first time, as
123 required by subsection (c) of section 24A of chapter 94C of the General Laws. The regulations
124 shall specify the circumstances under which such narcotics may be prescribed without first
125 utilizing the prescription monitoring program . Such rules and regulations shall be promulgated
126 not later than January 1, 2013.

127 SECTION 17. The department of public health shall promulgate rules and regulations
128 relative to the use of the prescription monitoring program by a pharmacist when conducting a
129 prospective drug review, as authorized by sections 21A and 24A of chapter 94C of the General
130 Laws, not later than January 1, 2013.

131 SECTION 18. The director of Medicaid shall promulgate regulations, pursuant to section
132 7 and section 54A of chapter 118E of the General Laws, relative to the MassHealth controlled
133 substance management program not later than October 31, 2012.

134 SECTION 19. The commissioner of public health shall convene a joint policy working
135 group to investigate and study best practices, including those in education, screening, tracking,
136 monitoring, and treatment to promote safe and responsible opioid prescribing practices for acute
137 and long-term chronic pain with the goal of reducing diversion, abuse and addiction. The

138 working group shall consist of 9 members and include 1 representative from each of the
139 following: the department of public health, the board of registration in medicine, the board of
140 registration in nursing , the board of registration in dentistry, the board of registration in podiatry,
141 the Massachusetts Medical Society, the Massachusetts Dental Society, the Massachusetts
142 Association of Physician Assistants , and the Massachusetts Podiatric Medical Society. The
143 policy working group shall submit a report of its findings, along with recommendations, to the
144 commissioner and a copy of the report to the general court by filing it with the clerk of the house,
145 the clerk of the senate, the joint committee on mental health and substance abuse and the joint
146 committee on public health not later than December 1, 2012.

147 The commissioner shall promulgate rules and regulations relative to safe and responsible
148 opioid prescribing practices with the goal of reducing diversion, abuse and addiction not later
149 than July 1, 2013.

150 SECTION 20. The department of public health, in collaboration with the department of
151 correction and the Massachusetts Sheriffs' Association, shall investigate and study the use of
152 FDA approved medication assisted treatments for opioid dependent offenders leaving
153 correctional facilities and transitioning to community based treatment programs. The department
154 shall report its findings, along with any recommendations, to the general court by filing it with
155 the clerk of the house, the clerk of the senate, the house and senate committees on ways and
156 means and the joint committee on mental health and substance abuse not later than July 1, 2012.

157 If the department determines that use of an FDA approved medication assisted treatment
158 for opioid dependent offenders leaving correctional facilities and transitioning to community
159 based treatment programs is likely to be effective in improving treatment outcomes and reducing

160 recidivism, the department may enter into pilot programs to provide voluntary treatment for
161 opioid dependent offenders with sheriff's offices that choose to participate.

162 SECTION 21. The executive office of elder affairs, in conjunction with the bureau of
163 substance abuse services in the department of public health shall investigate and study
164 prescription drug abuse among seniors. The study shall include an examination of programs and
165 services offered in the commonwealth and other states that address this issue and steps that can
166 be taken to reduce prescription drug abuse among seniors. The report of its findings, along with
167 any recommendations, shall be submitted to the general court, by filing it with the clerk of the
168 house and the clerk of the senate, the house and senate committees on ways and means, the joint
169 committee on mental health and substance abuse and the joint committee on elder affairs not
170 later than January 31, 2013.

171 SECTION 22. Section 6 shall take effect on July 1, 2013.

172 SECTION 23. Sections 15 to 18, inclusive, shall take effect immediately.

173 SECTION 24. Except as otherwise specified, this act shall take effect on January 1,
174 2013.