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□ - 02/03/2012

SENATE No. 02125

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve.

SECTION 1. Chapter 94C of the General Laws is hereby amended by inserting after section 7 the following section:-

Section 7A. Prior to obtaining or renewing a registration under section 7, a practitioner who prescribes controlled substances shall register as a participant in the prescription monitoring program established in section 24A. For the purposes of this section, a practitioner shall not include a veterinarian.

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

If a person registered to manufacture, distribute, dispense or possess controlled substances discovers a theft or loss of controlled substances that requires the filing of a DEA Form 106 with the federal Drug Enforcement Administration, the person shall simultaneously file a copy of that form with the police department in the city or town wherein the theft or loss is alleged to have occurred and to the department of state police.

SECTION 2A. Section 18 of said chapter 94C, as so appearing, is hereby amended by striking out, in line 36, the word "controlled" and inserting in place thereof the following word:- nonnarcotic.

SECTION 2B. Said section 18 of said chapter 94C, as so appearing, is hereby further amended by inserting after subsection (d) the following subsection:-

(d ½) A prescription for a narcotic substance contained in Schedule II of section 3 may also be issued by a physician who is licensed to practice medicine and registered in a contiguous state wherein he resides or practices, if required, and registered under federal law to write prescriptions. A registered pharmacist filling a prescription under this subsection shall determine, in accordance with professional standards and personal judgment, that such prescription is authentic and valid and shall verify the prescription by telephonic or other means. A pharmacist shall not fill a prescription for which a verification cannot be obtained. A pharmacist shall not be liable for refusing to fill a prescription for which a verification cannot be obtained provided that documented good faith efforts were made to determine the authenticity and validity of such prescription. This subsection shall only apply to authorizations for the filling of prescriptions within the commonwealth, issued within the preceding 5 days, and shall not authorize such practitioner to possess, administer or dispense controlled substances as provided in section 9 or to practice medicine within the commonwealth. A prescription issued under this subsection shall be issued in the manner provided in section 22 and all relevant provisions of this chapter shall apply to any such practitioner and any such prescription. In the case of a prescription for a Schedule II substance filled pursuant to this subsection, a pharmacist shall, within 30 days after filling such prescription, deliver to the department a copy of each such Schedule II prescription; provided, however, that such copy shall not include the name and address of the patient for whom the prescription was issued; and provided further, that such copy and the information contained therein shall not be a public record within the meaning of section 7 of chapter 4 and shall be subject to the restrictions set forth in section 2 of chapter 66A. Nothing in this section shall authorize a mail-order pharmacy.

SECTION 2C. Section 19 of said chapter 94C, as so appearing, is hereby amended by adding the following subsection:-

(d) Naloxone or other opioid antagonist may lawfully be prescribed and dispensed to a person at risk of experiencing an opiate-related overdose or to a family member, friend or other person in a position to assist a person at risk of experiencing an opiate-related overdose. For the purposes of this chapter and chapter 112, a naloxone prescription issued pursuant to this subsection shall be deemed to have been issued for a legitimate medical purpose in the usual course of professional practice.

SECTION 3. Section 21 of said chapter 94C, as so appearing, is hereby amended by adding the following paragraph:-

The department of public health shall produce and distribute to pharmacies pamphlets for consumers relative to controlled substances that includes educational information about: (i) misuse and abuse by adults and children; (ii) risk of dependency and addiction; (iii) proper storage and disposal; (iv) addiction support and treatment

resources; and (v) the telephone helpline operated by the bureau of substance abuse services established in section 18 of chapter 17. A pharmacist shall distribute the pamphlet when dispensing a controlled substance contained in Schedule II or III.

SECTION 4. Said chapter 94C is hereby further amended by inserting after section 21A the following section:-

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

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

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

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

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

SECTION 5. Section 23 of said chapter 94C, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word “means”, in line 25, the following words:- on a secure form.

SECTION 6. Subsection (c) of section 24A of said chapter 94C, as so appearing, is hereby amended by adding the following paragraph:-

The department shall promulgate rules and regulations relative to the use of the prescription monitoring program by registered participants that shall include requiring participants to utilize the prescription monitoring program prior to the issuance of a prescription for a narcotic drug contained in Schedule II or III to a patient for the first time. The department may require participants to utilize the prescription monitoring program prior to the issuance to a patient for the first time of benzodiazepines or any other schedule IV or V commonly abused prescription drug that may lead to physical or

psychological dependence or that patients with a history of substance dependence have been shown to experience significant addictive symptoms. The regulations shall specify the circumstances under which such narcotics may be prescribed without first utilizing the prescription monitoring program. The regulations may also specify the circumstances under which licensed support staff may use the prescription monitoring program on behalf of a registered participant. When promulgating the rules and regulations, the department shall also require that pharmacists be trained in the use of the prescription monitoring program as part of the continuing education requirements mandated for licensure by the board of registration in pharmacy, pursuant to section 24A of chapter 112 of the General Laws. The department shall also study the feasibility and value of expanding the prescription monitoring program to include Schedule VI prescription drugs.

SECTION 7. Paragraph (e) of Class C of section 31 of said chapter 94C, as so appearing, is hereby amended by adding the following 16 clauses:-

- (17) 3, 4 - methylenedioxymethcathinone, MDMC
- (18) 3, 4 - methylenedioxypyrovalerone, MDPV
- (19) 4 - methylmethcathinone, 4-MMC
- (20) 4 - methoxymethcathinone, bk-PMMA, PMMC
- (21) 3, 4 - fluoromethcathinone, FMC
- (22) Naphylpyrovalerone, NRG-1
- (23) Beta-keto-N-methylbenzodioxolylpropylamine
- (24) 2-(methylamino)-propiophenone; OR alpha-(methylamino) propiophenone
- (25) 3-methoxymethcathinone
- (26) 4-methyl-alpha-pyrrolidinobutyrophenone
- (27) 2-(methylamino)-1-phenylpropan-1-one
- (28) 4-ethylmethcathinone
- (29) 3,4-Dimethylmethcathinone
- (30) alpha-Pyrrolidinopentiophenone
- (31) beta-Keto-Ethylbenzodioxolylbutanamine
- (32) 3,4-methylenedioxy-N-ethylcathinone.

SECTION 8. Said chapter 94C is hereby further amended by inserting after section 34 the following section:-

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

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

(c) The act of seeking medical assistance for someone who is experiencing a drug-related overdose may be used as a mitigating factor in a criminal prosecution under this chapter.

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

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

(f) Nothing in this section shall preclude a person from being charged with trafficking, distribution or possession of a controlled substance with intent to distribute.

(g) A person acting in good faith may receive and possess a naloxone prescription, and may administer naloxone to an individual appearing to experience an opiate-related overdose.

SECTION 9. Chapter 112 of the General Laws is hereby amended by inserting after section 12E the following section:-

Section 12E½. The department of public health shall produce a pamphlet with contact information for its bureau of substance abuse services, including its telephone helpline number, and with information on the benefits and availability of addiction treatment and on the prevention of future overdoses. A physician, nurse practitioner or hospital that treats a person under 18 years of age for a drug or alcohol overdose, as defined by regulations of the department, shall: (i) notify the minor's parent, legal guardian or other person having custody or control of a minor child of the overdose as

part of the discharge planning process; (ii) provide the pamphlet to the parent, legal guardian or other person having custody or control of a minor child and to the minor child; and (iii) provide access to a social worker, if available.

SECTION 10. Chapter 118E of the General Laws is hereby amended by inserting after section 54 the following section:-

Section 56. The division shall establish a controlled substance management program for MassHealth enrollees who use excessive quantities of prescribed drugs. Those enrollees shall be restricted to obtaining prescription drugs only from the provider that the division designates as the enrollee's primary pharmacy. The division shall promulgate rules and regulations relative to the program, including criteria for participation, service restriction, responsibilities of the primary pharmacy, change in the primary pharmacy and participation status, utilization review and enforcement.

SECTION 11. Section 16 of chapter 211B of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by adding the following paragraph:-

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

SECTION 12. Section 4 of chapter 211D of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

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

SECTION 13. Section 11 of chapter 283 of the acts of 2010 is hereby repealed.

SECTION 13A. The first paragraph of section 14 of said chapter 283 is hereby amended by adding the following 2 sentences:- The study shall also include a cost estimate for a pilot substance abuse education program in 5 school districts that have surrounding communities with high rates of opioid drug abuse. The pilot program shall include evidence-based curricula to decrease experimentation and provide skills for using prescription drugs appropriately.

SECTION 13B. The second paragraph of said section 14 of said chapter 283 is hereby amended by striking out the words "December 31, 2011" and inserting in place thereof the following words:- April 1, 2012.

SECTION 14. The commissioner of public health shall promulgate regulations to implement section 5 not later than January 1, 2013.

SECTION 15. The department of public health shall promulgate rules and regulations as required by section 6 not later than January 1, 2013.

SECTION 16. The department of public health shall, not later than January 1, 2013, notify pharmacists of the opportunity to use the prescription monitoring program established in section 24A of chapter 94C of the General Laws when conducting a prospective drug review, as required by sections 21A of said chapter 94C.

SECTION 17. The director of Medicaid shall promulgate regulations as required by section 10 not later than January 1, 2013.

SECTION 18. The commissioner of public health shall convene a joint policy working group to investigate and study best practices, including those in education, screening, tracking, monitoring and treatment to promote safe and responsible opioid and other harmful commonly abused prescription drug, as determined by the commissioner of the department of public health, prescribing practices for acute and chronic pain with the goal of reducing diversion, abuse and addiction. The working group shall consist of 14 members and shall include 1 representative from each of the following: the department of public health, the board of registration in medicine, the board of registration in nursing, the board of registration in dentistry, the board of registration in podiatry, the board of registration in pharmacy, the Massachusetts Medical Society, the Massachusetts Dental Society, the Massachusetts Association of Physician Assistants, the Massachusetts Coalition of Nurse Practitioners, the Massachusetts Pharmacists Association, a physician specializing in pain management appointed by the commissioner of public health, an individual specializing in substance abuse counseling and therapy appointed by the bureau of substance abuse services and the Massachusetts Podiatric Medical Society. The policy working group shall submit a report of its findings, along with recommendations, if any, to the commissioner and a copy of the report to the general court by filing it with the clerks of the senate and house of representatives, the joint committee on mental health and substance abuse and the joint committee on public health not later than six months after the effective date of this act.

The commissioner shall promulgate rules and regulations relative to safe and responsible opioid and other harmful commonly abused prescription drug, as determined by the commissioner of the department of public health, prescribing practices with the goal of reducing diversion, abuse and addiction not later than six months after the joint policy working group releases its report.

SECTION 18A. The commissioner of public health or a designee shall work with a nationally-recognized entity specializing in prescription monitoring programs to

establish interstate compacts between the commonwealth and other states that have programs and with those states that do not to securely share prescription data to improve public health and safety.

SECTION 19. The department of public health, in collaboration with the department of correction and the Massachusetts Sheriffs Association, shall investigate and study the use of United States Food and Drug Administration-approved medication-assisted treatments, including nonnarcotic, opioid antagonist therapies, for opioid-dependent offenders leaving correctional facilities and transitioning to community-based treatment programs. In conducting the study, the department of public health shall ensure access to United States Food and Drug Administration's nonnarcotic, opioid antagonist therapies for the participants in the same manner as access to any other United States Food and Drug Administration-approved medication-assisted treatment. The department shall report its findings, along with its recommendations, if any, to the general court by filing the same with the clerks of the senate and house of representatives, the house and senate committees on ways and means and the joint committee on mental health and substance abuse not later than July 1, 2013.

If the department determines that the use of any United States Food and Drug Administration-approved medication-assisted treatment for opioid-dependent offenders leaving correctional facilities and transitioning to community-based treatment programs is likely to be effective in improving treatment outcomes and reducing recidivism, the department may enter into pilot programs to provide voluntary treatment for opioid-dependent offenders with sheriffs' offices that choose to participate.

SECTION 19A. Notwithstanding subsection (a1/2) of section 2 of chapter 94C of the General Laws, the commissioner of public shall, not later than January 1, 2013, reschedule the controlled substance hydrocodone combination product <15 mg/du (DEA Number 9806) from schedule III to schedule II.

SECTION 19B. The department of public health, in collaboration with the department of correction and the Massachusetts Sheriffs Association, shall investigate and study the treatment programs and services available within the Massachusetts correctional system for offenders dealing with substance abuse and opioid dependency issues. The study shall focus on the accessibility and adequacy of those programs and services that currently exist within the department of corrections, and shall attempt to identify any gaps within the existing system and ways to improve upon the delivery and effectiveness of these treatment programs and services, including, but not limited to, the use of United States Food and Drug Administration-approved medication-assisted treatments. The department shall complete the study and submit a report, along with its recommendations, if any, to the general court by filing the same with the clerks of the senate and house of representatives, the house and senate committees on ways and means

and the joint committee on mental health and substance abuse not later than 180 days after the effective date of this act.

SECTION 20. The executive office of elder affairs, in conjunction with the bureau of substance abuse services in the department of public health, shall investigate and study prescription drug abuse among seniors. The study shall include an examination of programs and services offered in the commonwealth and other states that address this issue and steps that may be taken to reduce prescription drug abuse among seniors. The report of its findings, along with its recommendations, if any shall be submitted to the general court, by filing the same with the clerks of the senate and house of representatives, the house and senate committees on ways and means, the joint committee on mental health and substance abuse and the joint committee on elder affairs not later than January 31, 2013.

SECTION 21. Notwithstanding any general or special law to the contrary, a practitioner, identified by the prescription monitoring program established in section 24A of chapter 94C of the General Laws as within the top 30 per cent of prescribers of controlled substances in the preceding 12 months shall register as a participant in the prescription monitoring program not later than January 1, 2013. For the purposes of this section, a "practitioner" shall not include a veterinarian.

SECTION 22. Section 5 shall take effect on July 1, 2013.

SECTION 22A. Sections 13A and 13B shall take effect as of December 31, 2011.

SECTION 23. Sections 14 to 17, inclusive, and section 21 shall take effect upon their passage.

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