

SENATE No. 02072

Senate, November 16, 2011 – New draft of Senate, Nos. 983, 991, 992, 994, 995, 996, 997, 998 and 1000 and House, Nos. 1427, 2315 and 2878 reported from the committee on Mental Health and Substance Abuse.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 which
30 is authorized to dispense controlled substances; provided, however, pharmacy shall not include
31 an institutional pharmacy or a pharmacy department except as otherwise provided in 247 CMR.

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

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

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

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

47 The department shall promulgate rules and regulations relative to the use of the
48 prescription monitoring program by registered participants that shall include requiring
49 participants to utilize the prescription monitoring program prior to the issuance of a prescription
50 for a controlled substance to a patient for the first time.

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

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

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

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

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

68 (e) A person who experiences a drug related overdose and is in need of medical
69 assistance shall not be charged or prosecuted for being in possession of a controlled substance
70 pursuant to section 35 if the evidence for the charge of being in possession of a controlled
71 substance was gained as a result of the overdose and the need for medical assistance.

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

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

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

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

91 SECTION 11. Said chapter 118E is hereby amended by adding the following section:-

92 Section 54A. The division shall establish a controlled substance management program
93 for MassHealth enrollees who use excessive quantities of prescribed drugs. Those enrollees shall
94 be restricted to obtaining prescription drugs only from the provider that the division designates as
95 the enrollee’s primary pharmacy. The division shall promulgate rules and regulations relative to

96 the program, including criteria for participation, service restriction, responsibilities of primary
97 pharmacy, change in primary pharmacy and participation status, utilization review, and
98 enforcement.

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

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

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

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

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

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

117 SECTION 16. The department of public health shall promulgate rules and regulations
118 relative to the use of the prescription monitoring program by registered participants when
119 prescribing a controlled substance to a patient for the first time, as required by subsection (c) of
120 section 24A of chapter 94C of the General Laws, not later than January 1, 2013.

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

125 SECTION 18. The director of Medicaid shall promulgate regulations, pursuant to section
126 7 and section 54A of chapter 118E of the General Laws, relative to the MassHealth controlled
127 substance management program not later than October 31, 2012.

128 SECTION 19. The commissioner of public health shall convene a joint policy working
129 group to investigate and study best practices, including those in education, screening, tracking,
130 monitoring, and treatment, including acute and long term chronic pain, to promote safe and
131 responsible opioid prescribing practices with the goal of reducing diversion, abuse and addiction.
132 The working group shall include 1 representative from the department of public health, the board
133 of registration in medicine, the board of registration in dentistry, the board of registration in
134 podiatry, the Massachusetts Medical Society, the Massachusetts Dental Society, and the
135 Massachusetts Podiatric Medical Society. The policy working group shall submit a report of its
136 findings, along with recommendations, to the commissioner and a copy of the report to the
137 general court by filing it with the clerk of the house, the clerk of the senate, the joint committee

138 on mental health and substance abuse and the joint committee on public health not later than
139 December 1, 2012.

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

143 SECTION 20. The department of public health, in collaboration with the department of
144 correction and the Massachusetts Sheriffs' Association, shall investigate and study the use of an
145 FDA approved, non-narcotic, opioid antagonist therapy for opioid dependent offenders leaving
146 correctional facilities and transitioning to community based treatment programs. The department
147 shall report its findings, along with any recommendations, to the general court by filing it with
148 the clerk of the house, the clerk of the senate, the house and senate committees on ways and
149 means and the joint committee on mental health and substance abuse not later than July 1, 2012.

150 If the department determines that use of an FDA approved, non-narcotic, opioid antagonist
151 therapy for opioid dependent offenders leaving correctional facilities and transitioning to
152 community based treatment programs is likely to be effective in improving treatment outcomes
153 and reducing recidivism, the department may enter into pilot programs to provide voluntary
154 treatment for opioid dependent offenders with sheriff's offices that choose to participate.

155 SECTION 21. The executive office of elder affairs, in conjunction with the bureau of
156 substance abuse services in the department of public health shall investigate and study
157 prescription drug abuse among seniors. The study shall include an examination of programs and
158 services offered in the commonwealth and other states that address this issue and steps that can
159 be taken to reduce prescription drug abuse among seniors. The report of its findings, along with

160 any recommendations, shall be submitted to the general court, by filing it with the clerk of the
161 house and the clerk of the senate, the house and senate committees on ways and means, the joint
162 committee on mental health and substance abuse and the joint committee on elder affairs not
163 later than January 31, 2013.

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

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

166 SECTION 24. Except as otherwise specified, this act shall take effect on January 1,
167 2013.