

HOUSE No. 4770

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act RELATIVE TO THE ENHANCEMENT OF THE PRESCRIPTION MONITORING PROGRAM. ..

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. Section 1 of chapter 94C of the General Laws, as appearing in the 2008
2 Official Edition, is hereby amended by inserting after the definition “Dispense” the following
3 definition:-

4 “Dispenser”, a person who delivers a schedule II to V, inclusive, controlled substance to
5 the ultimate user, but shall not include: a wholesale distributor of a schedule II to V, inclusive,
6 controlled substance.

7 SECTION 2. Said chapter 94C, as so appearing, is hereby further amended by inserting
8 after section 24 the following section:-

9 Section 24A. (a) The department shall establish and maintain an electronic system to
10 monitor the prescribing and dispensing of all Schedule II to V, inclusive, controlled substances
11 and certain additional drugs by all professionals licensed to prescribe or dispense such
12 substances. “Additional drugs” shall mean substances determined by the department that
13 demonstrate a bona fide potential of abuse. The department shall enter into reciprocal agreements

14 with any other state to share prescription drug monitoring information if the other state's
15 prescription drug monitoring program is compatible with the program as set forth in this section.

16 (b) The requirements of this section shall not apply to the dispensing of controlled
17 substances to
18 inpatients in a hospital.

19 (c) Each dispenser shall submit to the department, by electronic means, information
20 regarding each prescription dispensed for a drug included pursuant to subsection (a) as required
21 by rules and regulations promulgated by the department. Each dispenser shall submit the
22 information in accordance with transmission methods and frequency promulgated by the
23 department, but at least once every 7 days. The department may issue a waiver to a dispenser that
24 is unable to submit prescription information by electronic means. Such waiver shall permit the
25 dispenser to submit prescription information by other means promulgated by the department,
26 provided all information required in this section is submitted in this alternative format.

27 (d) Prescription information submitted to the department pursuant to this section shall be
28 confidential and exempt from disclosure under chapter 66 and clause Twenty-sixth of section 7
29 of chapter 4 and not subject to public or open records laws. The department shall maintain
30 procedures to ensure that the privacy and confidentiality of patients and patient information
31 collected, recorded, transmitted and maintained is not disclosed to persons except as provided for
32 in this chapter.

33 (e) The department shall review the prescription and dispensing monitoring information.
34 If there is reasonable cause to believe a violation of law or breach of professional standards may
35 have occurred, the department shall notify the appropriate law enforcement or professional

36 licensing, certification or regulatory agency or entity, and provide prescription information
37 required for an investigation.

38 (f) The department shall, upon request, provide data from the prescription monitoring
39 program to the following:-

40 (1) persons authorized to prescribe or dispense controlled substances, for the purpose of
41 providing medical or pharmaceutical care for their patients;

42 (2) individuals who request their own prescription monitoring information in accordance
43 with procedures established under chapter 66A;

44 (3) persons authorized to act on behalf of state boards and regulatory agencies that
45 supervise or regulate a profession that is authorized to prescribe controlled substances; provided,
46 that the data request is in connection with a bona fide specific drug related investigation;

47 (4) local, state and federal law enforcement or prosecutorial officials working with the
48 executive office of public safety engaged in the administration, investigation or enforcement of
49 the laws governing prescription drugs; provided, that the data request is in connection with a
50 bona fide specific drug related investigation;

51 (5) personnel of the executive office of health and human services regarding Medicaid
52 program

53 recipients, provided, that the data request is in connection with a bona fide specific drug
54 related

55 investigation; or

56 (6) personnel of the United States attorney, office of the attorney general or the district
57 attorneys; provided, that the data request is in connection with a bona fide specific drug related
58 investigation.

59 (g) The department may provide de-identified, aggregate information to public or private
60 entities for statistical, research or educational purposes.

61 (h) The department may contract with another agency of this state or with a private
62 vendor, as necessary, to ensure the effective operation of the prescription monitoring program.
63 Any contractor shall be bound to comply with the provisions regarding confidentiality of
64 prescription information in this section. and shall be subject to the penalties specified in this
65 section.

66 (i) The department shall promulgate rules and regulations setting forth the procedures and
67 methods for implementing this section.

68 (j) The departments shall submit an annual report on the effectiveness of the prescription
69 monitoring program with the clerks of the house and senate, the chairs of the joint committee on
70 public health, the chairs of the joint committee on health care financing, and the chairs of the
71 joint committee on public safety and homeland security.

72 SECTION 3. Said chapter 94C, as so appearing, is hereby further amended by adding the
73 following section:-

74 Section 49. The department of public health shall enforce section 24A. To carry out this
75 purpose, the department shall:-

76 (a) inspect, copy and audit records, inventories of controlled substances and reports
77 required under said section 24A and rules and regulations adopted under said section;

78 (b) enter the premises of regulated distributors and dispensers during normal business
79 hours to conduct administrative inspections;

80 (c) assist law enforcement agencies in enforcing this chapter;

81 (d) conduct investigations to enforce this chapter;

82 (e) present evidence obtained from investigations conducted in conjunction with the
83 office of the attorney general and the appropriate district attorneys for civil or criminal
84 prosecution or for administrative action against regulated distributors, dispensers and licensees;
85 and

86 SECTION 4. Notwithstanding any general or specific law to the contrary, the department
87 of public health shall promulgate rules and regulations relative to the prescription monitoring
88 program established by section 24A of chapter 94C (not later than October 1, 2012).

89 SECTION 5. The department of public health shall submit a report on the status of this
90 act with the clerks of the house and senate, the chairs of the joint committee on public health,
91 the chairs of the joint committee on health care financing and the chairs of the joint committee
92 on public safety and homeland security within 90 days of the passage of this act.

93 SECTION 6. Section 2 shall take effect on January 1, 2011.