

SENATE, NO. 2281

[Senate, February 24, 2010 - New draft reported on Senate, No. 755, 753, 756 and House No. 1930, 1959 and 1960 from the committee on Mental Health and Substance Abuse.]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND NINE

AN ACT RELATIVE TO SUBSTANCE ABUSE EDUCATION AND PREVENTION.

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 15 of the General Laws is hereby amended by adding the
2 following section:-
3 Section 68. Each school district shall adopt a substance abuse education and prevention
4 policy, pursuant to guidelines established by the commissioner, in consultation with the

5 commissioner of public health. Each school district shall involve students, parents, guardians,
6 teachers, administrators, school staff, community representatives, and local law enforcement
7 agencies in the development of the policy. The policy shall be in writing and formally adopted
8 by the school committee as a school district policy. A copy of the policy shall be distributed to
9 each student and their parents or legal guardian by October 1st of each year, and shall be
10 provided to any person upon request by the principal of every school within the district. A copy
11 of each school district's policy as adopted shall be sent to the commissioner who shall
12 periodically review each policy for compliance with established guidelines.

13 **SECTION 2.** The first sentence of subsection (b) of section 91 of chapter 71 of the
14 General Laws, as inserted by section 65 of chapter 27 of the acts of 2009, is hereby amended by
15 striking out the words "chapter 70" and inserting in place thereof the following words:-
16 foundation budget.

17 **SECTION 3.** Section 1 of chapter 94C of the General Laws, as appearing in the 2008
18 Official Edition, is hereby amended by inserting after the definition of "Agent" the following
19 definition:-

20 "Board", the board of registration in pharmacy established pursuant to section 22 of chapter 13.

21 **SECTION 4.** Said section 1 of said chapter 94C, as so appearing, is hereby further
22 amended by inserting after the definition of "Dispense" the following definition:-

23 "Dispenser", a person who delivers a schedule II to V, inclusive, controlled substance to the
24 ultimate user, but does not include: (a) a licensed hospital pharmacy that distributes such
25 substances for the purpose of inpatient hospital care or the dispensing of prescriptions for

26 controlled substances at the time of discharge from such a facility; or (b) a wholesale distributor
27 of a schedule II to V, inclusive, controlled substance.

28 **SECTION 5.** Said section 1 of said chapter 94C, as so appearing, is hereby further
29 amended by inserting after the definition of “Drug paraphernalia” the following definition:-

30 “Facility”, a health care provider, registered with the department of public health, which employs
31 more than 1 person who can prescribe drugs.

32 **SECTION 6.** Section 18 of said chapter 94C, as so appearing, is hereby amended by
33 adding the following subsections:-

34 (e) Prescribing practitioners seeking to obtain or renew a Massachusetts professional license
35 shall be required to demonstrate completion of no less than 10 per cent of the required training
36 hours for each such professional license in effective pain management including, but not limited
37 to the identification of patients at high risk for substance abuse and other aspects of prescription
38 medication abuse. Professional licensing boards may count these hours as part of their regular
39 continuing education licensing requirements. The department of public health shall assist
40 professional education organizations in developing training programs that achieve the stated
41 purposes and which shall qualify toward the satisfaction of continuing education licensing
42 requirements.

43 (f) the board of registration of medicine shall develop a training program, to be required of
44 all physicians prescribing schedule II-V pain medications, that trains patients on the prescriptions
45 they are receiving, the side effects of the medications, the addictive nature of the medications
46 and proper storage and disposal techniques for prescription pain medications. The training

47 program shall require patients to sign a waiver that they understand the information they have
48 been given.

49

50 **SECTION 7.** Said chapter 94C is hereby further amended by adding the following 2 sections:-

51

52 Section 49. (a) The board shall designate an official prescription form for use by
53 practitioners authorized to write prescriptions for controlled substances in the commonwealth.

54 (b) The commissioner shall establish security regulations concerning the procurement of the
55 official prescription forms. The forms shall be serialized and tamper resistant so that they cannot
56 be altered, copied or counterfeited. The board may contract with a private vendor to develop and
57 print the official prescription form, provided that the vendor meets security regulations
58 promulgated by the commissioner. Each series of prescriptions shall be issued to a specific
59 practitioner in consecutively numbered blocks of 50 and shall only be used by that practitioner.
60 Official prescription forms shall be provided by the board or by the private vendor to registered
61 practitioners and facilities without charge.

62 (c) A practitioner authorized to write a prescription in the commonwealth shall issue all written
63 prescriptions upon an official prescription form. A pharmacist shall not fill a written prescription
64 from a Massachusetts practitioner unless issued upon an official prescription form. Nothing in
65 this section shall be construed to impact regulations regarding oral, electronic, or out-of-state
66 prescription practices.

67 (d) A practitioner or facility shall register with the department in order to be issued official
68 prescription forms. Registration shall be without charge. Registration shall include, but not be
69 limited to:

70 (1) the name of a practitioner authorized to prescribe controlled substances;

71 (2) the primary address and the address of additional places of business;

72 (3) the practitioner's federal Drug Enforcement Agency number; and

73 (4) practitioner's license number.

74 A practitioner's or facility's registration shall be subject to approval by the department, pursuant
75 to rules promulgated by the commissioner. Any change to a practitioner's or a facility's
76 registered information shall be promptly reported to the department in a manner promulgated by
77 the commissioner.

78 (e) A registered facility shall obtain official prescription forms for use at the facility and shall
79 assign the forms to registered staff practitioners. The number of official prescription forms
80 issued to a registered practitioner or facility, by the department or the private vendor, shall be a
81 reasonable quantity and at the discretion of the commissioner. Official prescription forms shall
82 be imprinted with:

83 (1) the name of the registered practitioner or the registered practitioners at a registered facility;

84 (2) the registered practitioner's federal Drug Enforcement Agency's identification number;

85 (3) the primary address and the address of additional places of business of the registered
86 practitioner; and

87 (4) the registered practitioner's license number.

88 An official prescription form is not transferable and shall be used only by the registered
89 practitioner or facility to whom issued.

90 (f) A registered practitioner or facility shall undertake adequate safeguards and security measures
91 promulgated by the commissioner to assure against destruction, theft, or unauthorized use of an
92 official prescription form. A registered practitioner shall, at minimum, maintain a record of
93 official prescription forms received and establish a system requiring forms be secure pursuant to
94 security measures promulgated by the commissioner. A registered facility shall, at minimum,
95 maintain a record of official prescription forms received, maintain a record of forms assigned to
96 its registered staff practitioners, establish a system requiring forms be secure pursuant to security
97 measures promulgated by the commissioner and require a registered staff practitioner to
98 surrender their assigned forms when the practitioner terminates affiliation with the registered
99 facility.

100 (g) A registered practitioner or facility shall immediately notify the department, in a manner
101 promulgated by the commissioner, upon their knowledge of the loss, destruction, theft or
102 unauthorized use of an official prescription form. A registered practitioner or facility shall report
103 the failure to receive official prescription forms to the department within a reasonable time after
104 ordering the forms. A registered practitioner or facility shall immediately notify the board upon
105 their knowledge of prescription diversion or suspected diversion pursuant to the loss, theft, or
106 unauthorized use of an official prescription form.

107 (h) Whoever violates a provision of this section shall be punished by imprisonment for not more
108 than 2 1/2 years in a house of correction or by imprisonment in a state prison for 3 years or by a
109 fine of not more that \$2,000, or both; and, for a second or subsequent offense in this section or
110 in this chapter, by imprisonment for not more than 2 1/2 years in a house of correction or by
111 imprisonment in a state prison for 10 years or by a fine of not more that \$10,000, or both.

112 (i) The board, in conjunction with the executive office of public safety, shall submit an annual
113 report on the effectiveness the official Massachusetts prescription form to the general court by
114 filing the report with the clerk of the house of representatives and the clerk of the senate.

115 Section 50. The executive office of public safety, in consultation with the board, shall
116 enforce section 49. To carry out this purpose, the executive office of public safety shall:

117 (a) inspect, copy, and audit records, inventories of controlled substances, and reports required
118 under said section and rules adopted under said sections;

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

121 (c) assist the law enforcement agencies of the state in enforcing this chapter;

122 (d) conduct investigations to enforce this chapter;

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

126 (f) work in cooperation with the board, to accomplish the purposes of said section.

127 **SECTION 8.** Section 12F of chapter 112 of the General Laws, as appearing in the 2008
128 Official Edition, is hereby amended by striking out, in lines 37 and 38, the words “minor or a
129 proper judicial order” and inserting in place thereof the following words: - minor, a proper
130 judicial order or in case of the minor’s treatment for a drug or alcohol overdose, as defined by
131 department of public health in its regulations.

132 **SECTION 9.** Said chapter 112 is hereby further amended by inserting after section 12F
133 the following section:-

134 Section 12F ½. Any physician or hospital that treats a person under the age of 18 for a
135 drug or alcohol overdose, as defined by department of public health in its regulations, shall
136 notify the minor’s parents or legal guardian of the overdose as part of the discharge planning
137 process. The parents or legal guardian shall be provided with contact information for the bureau
138 of substance abuse services within the department of public health and the substance abuse
139 helpline operated by the department of public health. The department of public health will
140 produce a pamphlet to be distributed in emergency departments to the parents or legal guardian
141 of a person under the age of 18 who is treated for a non fatal drug or alcohol overdose. The
142 pamphlet shall include: information on how treatment can help, information on what a parent or
143 legal guardian can do to prevent future overdoses, and information on where the patient can go to
144 get treatment.

145 **SECTION 10.** Said chapter 112 hereby further amended by inserting after section 12CC
146 the following section:-

147 Section 12DD. (a) Any person, who in good faith, seeks medical assistance for someone
148 who is or there is reason to believe is experiencing a drug related overdose shall not be charged
149 or prosecuted for possession of a controlled substance, pursuant chapter 94C, if the evidence for
150 the charge of or prosecution for possession of a controlled substance was obtained as a result of
151 the seeking of medical assistance.

152 (b) Any person who experiences or has reason to believe he or she is experiencing a drug-related
153 overdose and is in need of medical assistance shall not be charged or prosecuted for possession

154 of a controlled substance, pursuant to chapter 94C, if the evidence for the charge of or
155 prosecution for possession of a controlled substance was obtained as a result of the seeking of
156 medical assistance.

157 (c) Nothing in this section shall prohibit a charge or prosecution for possession with intent to
158 manufacture, distribute or dispense a controlled substance or the entry of a plea or verdict of
159 guilty for possession of a controlled substance as a lesser included offense of a complaint or
160 indictment charging possession of a controlled substance with intent to manufacture, distribute,
161 or dispense. The act of seeking medical assistance for someone who is or there is reason to
162 believe is experiencing a drug-related overdose shall be admissible as evidence in a criminal
163 prosecution pursuant to chapter 94C, if the evidence for the charge or prosecution was obtained
164 as a result of the seeking of medical assistance.

165 **SECTION 11.** Section 12 of chapter 176O of the General Laws, as appearing in the 2008
166 Official Edition, is hereby amended by inserting after the word “provider”, in line 20, the
167 following words:- provided, however, that in making an adverse determination for mental health
168 or substance abuse treatment, the carrier or its designated utilization review organization shall
169 defer to the judgment of the treating clinician unless there is a preponderance of evidence that the
170 requested admission, continued stay or other health care service does not meet the requirements
171 for coverage based on medical necessity, appropriateness of health care setting and level of care,
172 or effectiveness.

173 **SECTION 12.** Section 99 of chapter 276 of the General Laws, as so appearing, is hereby
174 amended by adding the following paragraph:-

175 The commissioner shall, in conjunction with the criminal history systems board and the bureau
176 of substance abuse services within the department of public health, create a substance abuse
177 certificate program for those individuals with criminal offender record information. The
178 substance abuse certificate program shall enable a person convicted of or adjudicated delinquent
179 by reason of any felony or misdemeanor charges in the commonwealth or a person who has been
180 charged with a crime in the commonwealth but which charges did not result in a conviction to
181 petition the superior court of the trial court department in the county in which he then resides, to
182 enter a substance abuse certificate program if the charges were a consequence of substance
183 abuse, for ascertainment and declaration of the fact of his rehabilitation or recovery and
184 rehabilitation on that individual's criminal offender record information, if the following
185 conditions are met:

186 (a) the petitioner has not been sentenced to incarceration since being discharged from a felony or
187 misdemeanor or since the termination of any ancillary proceedings related to such felony or
188 misdemeanor including, but not limited to, any period of probation, parole or continuation;

189 (b) the petitioner is not the subject of a probationary or parole term for the commission of any
190 other felony or misdemeanor;

191 (c) the petitioner presents satisfactory evidence of 2 years of residence in the commonwealth
192 prior to the filing of the petition;

193 (d) the petitioner has demonstrated a period of rehabilitation, as defined in the General Laws, and

194 (e) the petitioner has completed a substance abuse treatment program approved by the bureau of
195 substance abuse treatment services;

196 **SECTION 13.** The commissioner of elementary and secondary education, in
197 consultation with the commissioner of public health, shall establish a pilot program for the
198 purpose of providing substance abuse and addiction training to a teacher, a guidance counselor or
199 a school nurse in at least 1 middle school and at least 1 high school in each county of the
200 commonwealth. The teacher, guidance counsel, or school nurse shall conduct an initial
201 screening, intervention and referral of those students who are identified as having substance
202 abuse or addiction needs for a subsequent comprehensive assessment and appropriate treatment.

203 **SECTION 14.** The bureau of substance abuse services within the department of public
204 health, in consultation with the supreme judicial court, shall develop and implement a program
205 for judges and court personnel that examines substance abuse treatment resources in the
206 commonwealth for persons convicted of or adjudicated delinquent by reason of any felony or
207 misdemeanor charges in the commonwealth or a person who has been charged with a crime in
208 the commonwealth but which charges did not result in a conviction. The program shall also
209 include instruction for said participating individuals in developing skills to recognize the signs of
210 persons with a substance abuse disorder that could benefit from treatment.

211 **SECTION 15.** The bureau of substance abuse services within the department of public
212 health shall establish and advertise a free, anonymous, and confidential toll free telephone
213 helpline that shall provide comprehensive, accurate, and current information and referrals related
214 to addiction treatment and prevention services. The administration of the helpline shall be
215 coordinated with the other departments and agencies of the commonwealth in order to prevent
216 the duplication of similar services. The operation of the helpline may be contracted to third
217 parties, provided that any such contracts shall be performance based and subject to approval by
218 the commissioner of the department of public health.

219 **SECTION 16.** The department of public health shall issue regulations to include all
220 schedule II, schedule III, schedule IV, and schedule V prescriptions in electronic reporting and
221 prescription monitoring program requirements within 90 days of the passage of this act.

222 **SECTION 17.** The department of public health shall issue a report relative to the
223 modification and improvement of health care to increase the flow of information to prescribing
224 physicians and law enforcement personnel. The report shall include the department's efforts to
225 update the prescription monitoring program by streamlining case reporting, expanding proactive
226 reporting, including additional prescription schedules, increasing reporting frequency,
227 implementing an online system accessible to prescribers, pharmacies and law enforcement
228 personnel, reducing Medicaid fraud, and improving interstate operability. The report shall
229 include specific timelines to achieve the goals stated in the report. The report shall be issued
230 within 90 days of the passage of this act.

231 **SECTION 18.** The department of public health shall issue requirements on all state
232 licensed treatment facilities to include mandated discharge plans for all clients leaving said
233 facility. The discharge plans shall include follow up treatment, contact information for shelters
234 in the area, additional resources for substance abuse treatment and workforce options.

235 **SECTION 19.** The department of labor and workforce development, in consultation with
236 the department of public health, shall conduct an investigation and study on the feasibility of a
237 post treatment job skills training program and/or re-entry program for individuals recovering
238 from substance use disorders. The study shall include information on best practices for similar
239 job training programs, guidelines by which the commonwealth can use to establish an effective
240 job skills training program, projected costs of such a program, and types of job skills that can be

241 utilized by a program. Results of said study shall be filed with the clerk of the house of
242 representatives and the clerk of the senate and, the joint committee on mental health and
243 substance abuse, and the joint committee on labor and workforce development by July 15, 2011.

244 **SECTION 20.** The bureau of substance abuse services within the department of public
245 health shall develop a statewide parent support network. The network shall include a support
246 group that assists parents with issues of substance abuse disorders, facilitation of local forums to
247 help educate the public on the issues of substance use disorders and coordination with other state
248 agencies to disseminate information throughout the commonwealth.

249 **SECTION 21.** The board of registration in pharmacy and the executive office of public
250 safety shall submit a report on the status of this act to the general court by filing it with the clerk
251 of the house of representatives and the clerk of the senate on or before July 15, 2011.

252 **SECTION 22.** Section 7 shall take effect on July 1, 2011.