

SENATE No. 2575

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act Text of the Senate amendment (Ways and Means) to the House Bill relative to the enhancement of the prescription monitoring program, House, No. 4879.

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 17 of the General Laws is hereby amended by adding the
2 following 2 sections:-

3 Section 18. (a) There shall be a bureau of substance abuse services within the
4 department.

5 (b) The bureau shall establish and advertise a free, anonymous and confidential toll-free
6 telephone helpline that provides comprehensive, accurate and current information and referrals
7 related to addiction treatment and prevention services. The administration of the helpline shall
8 be coordinated with other departments and agencies to prevent the duplication of similar
9 services. The operation of the helpline may be contracted to third parties; provided, however,
10 that any such contracts shall be performance-based and subject to approval by the commissioner.

11 Section 19. The department shall promulgate regulations relative to discharge plans for
12 substance abuse treatment programs subject to licensure or approval under sections 24 and 24D
13 of chapter 90, sections 6 and 6A of chapter 111B and section 7 of chapter 111E. A discharge

14 plan shall be issued for each client leaving a licensed substance abuse treatment program and
15 shall include recommended follow-up treatment, contact information for shelters in the area,
16 additional resources for substance abuse treatment and workforce options.

17 SECTION 2. Section 18 of chapter 94C of the General Laws, as appearing in the 2008
18 Official Edition, is hereby amended by adding the following subsection:-

19 (e) Practitioners who prescribe controlled substances, except veterinarians, shall be
20 required, as a prerequisite to obtaining or renewing their professional license, to complete
21 appropriate training relative to: (i) effective pain management; (ii) identification of patients at
22 high risk for substance abuse; and (iii) counseling patients about the side effects, addictive nature
23 and proper storage and disposal of prescription medications. The boards of registration for each
24 professional license that requires such training shall develop the standards for appropriate
25 training programs.

26 SECTION 3. Said chapter 94C is hereby further amended by inserting after section 24 the
27 following section:-

28 Section 24A. (a)(1) The department shall establish and maintain an electronic system to
29 monitor the prescribing and dispensing of all schedule II to V, inclusive, controlled substances
30 and certain additional drugs by all professionals licensed to prescribe or dispense such
31 substances. For the purposes of this section, “additional drugs” shall mean substances
32 determined by the department to carry a bona fide potential for abuse.

33 (2) The department shall enter into reciprocal agreements with other states that have
34 compatible prescription drug monitoring programs to share prescription drug monitoring
35 information among the states.

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

38 (c) For the purposes of monitoring the prescribing and dispensing of all schedule II to V,
39 inclusive, controlled substances and additional drugs, as authorized in subsection (a), the
40 department shall promulgate regulations including, but not limited to, (1) a requirement that each
41 pharmacy that delivers a schedule II to V, inclusive, controlled substance or a substance
42 classified as an additional drug by the department to the ultimate user shall submit to the
43 department, by electronic means, information regarding each prescription dispensed for a drug
44 included under subsection (a); and (2) a requirement that each pharmacy collects and reports, for
45 each prescription dispensed for a drug under subsection (a), a customer identification number
46 and other information associated with the customer identification number, as specified by the
47 department. Each pharmacy shall submit the information in accordance with transmission
48 methods and frequency requirements promulgated by the department; provided, however, that
49 the information shall be submitted at least once every 7 days. The department may issue a waiver
50 to a pharmacy that is unable to submit prescription information by electronic means. The waiver
51 shall permit the pharmacy to submit prescription information by other means promulgated by the
52 department; provided, however, that all information required in this section is submitted in this
53 alternative format.

54 (d) Prescription information submitted to the department under this section shall be
55 confidential and exempt from disclosure under clause Twenty-sixth of section 7 of chapter 4 and
56 chapter 66 and shall be not subject to public or open records laws. The department shall maintain
57 procedures to ensure that the privacy and confidentiality of patients and patient information

58 collected, recorded, transmitted and maintained is not disclosed to persons except as provided for
59 in this chapter.

60 (e) The department shall review the prescription and dispensing monitoring information.
61 If there is reasonable cause to believe a violation of law or breach of professional standards may
62 have occurred, the department shall notify the appropriate law enforcement or professional
63 licensing, certification or regulatory agency or entity and provide prescription information
64 required for an investigation.

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

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

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

71 (3) persons authorized to act on behalf of state boards and regulatory agencies that
72 supervise or regulate a profession that may prescribe controlled substances; provided, however,
73 that the data request is in connection with a bona fide specific controlled substance or additional
74 drug-related investigation;

75 (4) local, state and federal law enforcement or prosecutorial officials working with the
76 executive office of public safety engaged in the administration, investigation or enforcement of
77 the laws governing prescription drugs; provided, however, that the data request is in connection
78 with a bona fide specific controlled substance or additional drug-related investigation;

79 (5) personnel of the executive office of health and human services regarding Medicaid
80 program recipients; provided, however that the data request is in connection with a bona fide
81 specific controlled substance or additional drug-related investigation; or

82 (6) personnel of the United States attorney, office of the attorney general or a district
83 attorney; provided, however, that the data request is in connection with a bona fide specific
84 controlled substance or additional drug related investigation.

85 (g) The department may, at its initiative, provide data from the prescription monitoring
86 program to practitioners in accordance with section 24.

87 (h) The department may provide de-identified, aggregate information to a public or
88 private entity for statistical research or educational purposes.

89 (i) The department may contract with another agency or with a private vendor, as
90 necessary, to ensure the effective operation of the prescription monitoring program. A contractor
91 shall be bound to comply with the provisions regarding confidentiality of prescription
92 information in this section.

93 (j) The department shall promulgate rules and regulations setting forth the procedures and
94 methods for implementing this section.

95 (k) The department shall submit an annual report on the effectiveness of the prescription
96 monitoring program with the clerks of the house and senate, the chairs of the joint committee on
97 public health, the chairs of the joint committee on health care financing and the chairs of the joint
98 committee on public safety and homeland security.

99 SECTION 4. Said chapter 94C is hereby further amended by inserting after section 44
100 the following section:-

101 Section 44A. (a) A person, who in good faith, seeks medical assistance for someone who
102 is or there is reason to believe is experiencing a drug-related overdose shall not be charged or
103 prosecuted for possession of a controlled substance, under this chapter, if the evidence for the
104 charge of or prosecution for possession of a controlled substance was obtained as a result of the
105 seeking of medical assistance.

106 (b) A person who experiences or has reason to believe he is experiencing a drug-related
107 overdose and is in need of medical assistance shall not be charged or prosecuted for possession
108 of a controlled substance, under this chapter, if the evidence for the charge of or prosecution for
109 possession of a controlled substance was obtained as a result of the seeking of medical
110 assistance.

111 (c) Nothing in this section shall prohibit a charge or prosecution for any other crime,
112 including, but not limited to, possession with intent to manufacture, distribute or dispense a
113 controlled substance or the entry of a plea or verdict of guilty for possession of a controlled
114 substance as a lesser included offense of a complaint or indictment charging possession of a
115 controlled substance with intent to manufacture, distribute, or dispense.

116 (d) The act of seeking medical assistance for someone who is, or there is reason to
117 believe is, experiencing a drug-related overdose shall be admissible as evidence if proffered by a
118 defendant in a criminal prosecution under this chapter, if the evidence for the charge or
119 prosecution was obtained as a result of the seeking of medical assistance.

120 SECTION 5. Said chapter 94C is hereby further amended by adding the following
121 section:-

122 Section 49. The department of public health shall enforce section 24A in accordance with
123 rules and regulations promulgated by the department.

124 SECTION 6. Section 12A of chapter 112 of the General Laws, as appearing in the 2008
125 Official Edition, is hereby amended by adding the following paragraph:-

126 In cases of examination or treatment of a person with injuries resulting from opiate,
127 illegal or illicit drug overdose, a hospital, community health center or clinic shall report de-
128 identified, aggregate information in a manner to be determined in conjunction with the
129 department of public health.

130 SECTION 7. Notwithstanding any general or special law to the contrary, the department
131 of public health shall promulgate rules and regulations relative to the prescription monitoring
132 program established by section 24A of chapter 94C of the General Laws not later than October 1,
133 2012.

134 SECTION 8. The department of public health shall submit a report on the status of
135 sections 3 and 5 with the clerks of the senate and house of representatives, the chairs of the joint
136 committee on public health, the chairs of the joint committee on health care financing and the
137 chairs of the joint committee on public safety and homeland security within 90 days of the
138 effective date of this act.

139 SECTION 9. (a) There is hereby established a special commission to investigate and
140 determine a best practices model for the implementation of an official Massachusetts tamper

141 proof prescription form. The form shall be serialized and tamper resistant. For the purposes of
142 this section, tamper-resistant is defined as having 1 or more of the following industry-recognized
143 features designed to prevent: (i) unauthorized copying of a completed or blank prescription form;
144 (ii) the erasure or modification of information written on the prescription by the prescriber; and
145 (iii) the use of counterfeit prescription forms.

146 (b) The commission shall consist of 3 members of the house of representatives, 1 of
147 whom shall be appointed by the minority leader of the house of representatives; 3 members of
148 the senate, 1 of whom shall be appointed by the minority leader of the Senate; 1 representative
149 from the executive office for administration and finance; the commissioner of mental health or
150 the commissioner's designee; the commissioner of public health drug control program or the
151 commissioner's designee; the director of the prescription monitoring program or the director's
152 designee; and 3 members appointed by the governor that represent the medical and substance
153 abuse treatment community with specialty experience in drug regulation, prescription, treatment
154 and abuse.

155 (c) The commission's investigation, shall include, but not be limited to, the following
156 information: where to purchase the serialized and tamper resistant forms; the cost of the forms;
157 the cost of integrating the forms to the commonwealth's prescription monitoring program;
158 physician and pharmacist training; and the implementation of a state-wide e-prescribing system.
159 The commission shall submit a report of its findings, including legislative recommendations, if
160 any, to the joint committee on health care financing and the house and senate committees on
161 ways and means by April 15, 2011.

162 SECTION 10. Notwithstanding any general or special law to the contrary, the bureau of
163 substance abuse services, in consultation with the department of public health, shall conduct a
164 study of alcohol and substance free housing, known as “sober homes”, to examine how best to
165 provide oversight by exploring the feasibility of licensing, regulating, registering or certifying
166 sober homes or operators. The study shall also document the number of sober homes operating in
167 the state, the standards and requirements necessary to protect the health and safety of the home’s
168 residents and any problems created by the operation of sober homes, including impacts on
169 neighborhoods and surrounding areas.

170 The bureau shall report to the general court the results of its study and its
171 recommendations, if any, together with drafts of legislation necessary to carry out its
172 recommendations by filing the same with the clerks of the senate and house of representatives,
173 the joint committee on mental health and substance abuse and the senate and house committees
174 on ways and means not later than December 31, 2011.

175 SECTION 11. (a) For the purposes of this section, the following words shall, unless the
176 context clearly requires otherwise, have the following meanings:-

177 “Board” the board of registration in pharmacy in section 22 of chapter 13 of the General
178 Laws.

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

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

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

188 (b) Notwithstanding any general or special law to the contrary, the board shall require all
189 pharmacies that are registered in the commonwealth to dispense schedule II, III, IV or V
190 prescription drugs to make available prescription lock boxes for sale at each store location. The
191 lock boxes shall be available within 50 feet of the pharmacy counter and shall be displayed in
192 such a manner that they are readily viewable by the public upon receiving their prescription
193 drugs. Pharmacies shall maintain a stock of lockboxes and encourage consumers buying over-
194 the-counter or prescription medications to purchase one.

195 SECTION 12. The executive office of labor and workforce development, in consultation
196 with the department of public health, shall conduct an investigation and study on the feasibility
197 of a post-treatment job skills training program or re-entry program for individuals recovering
198 from substance use disorders. The study shall include information on best practices for similar
199 job training programs, guidelines by which the commonwealth can use to establish an effective
200 job skills training program, projected costs of such a program and types of job skills that may be
201 utilized by such a program. Results of the study shall be filed with the clerk of the house of
202 representatives and the clerk of the senate, the joint committee on mental health and substance
203 abuse and the joint committee on labor and workforce development not later than July 15, 2011.

204 SECTION 13. There shall be a special commission for the purpose of making an
205 investigation and study relative to the feasibility of creating a jail diversion program specifically
206 for veterans convicted of non-violent substance abuse offenses.

207 The commission shall consist of: 3 members of the senate, 1 of whom shall be appointed
208 by the minority leader; 3 members of the house of representatives, 1 of whom shall be appointed
209 by the minority leader; and 5 members to be appointed by the governor, 1 of whom shall be a
210 representative from the bureau of substance abuse services, 1 of whom shall be a representative
211 from the department of veterans' services and 1 of whom shall be a judge in the trial court
212 department.

213 The investigation and study shall include, but shall not be limited to, the prospects of
214 developing a jail diversion program specifically for veterans convicted of non-violent substance
215 abuse offenses. The commission, as part of its review, analysis and study, in making the
216 recommendations regarding the implementation of a drug court for veterans, shall focus on and
217 consider the following issues, proposals and impacts: (i) determining the cost to the state for
218 establishing and maintaining this new program within the state court system; (ii) whether state
219 taxes need to be raised for the implementation of this program; (iii) what the potential savings
220 could be realized through the diversion of veterans into treatment programs as opposed to
221 detention; (iv) what the impact would be on an overcrowded court docket; (v) whether the
222 program would help or hinder the current court in processing cases based on substance abuse
223 charges; (vi) what the potential benefits, consequences or adverse impacts on creating this new
224 court program might be; (vii) the feasibility of a system of treatment, accountability and
225 mentoring to be made available for veterans who are diverted from prison or jail time; (viii) what
226 models would be used for creating this system; (ix) a determination of the providers, service

227 organizations, state departments and municipal departments that would need to be involved in
228 the creation or maintenance of this program; (x) research analyzing statistics tracking veteran
229 involvement in the court system and (xi) researching the prevalence of alcohol and substance
230 abuse disorders among Massachusetts veterans.

231 The commission shall report to the general court the results of its investigation and study,
232 and its recommendations, if any, together with drafts of legislation necessary to carry out its
233 recommendations, by filing the same with the clerk of the house of representatives and clerk of
234 the senate not later than December 31, 2011. Any department, division, commission, public
235 body, authority, board, bureau or agency of the commonwealth shall cooperate with the
236 commission for the purpose of providing information or professional expertise and skill relevant
237 to the mission of the commission.

238 SECTION 14. Notwithstanding any general or special law to the contrary, the executive
239 office of education, in conjunction with the bureau of substance abuse services in the department
240 of public health and the joint committees on education and mental health and substance abuse,
241 shall conduct a study of the cost, to the state or to the individual schools or school districts, of
242 implementing an education program for all middle and high school children whereby the
243 children receive a minimum of 5 hours of substance abuse and addiction awareness education
244 during each middle and high school year. The study shall include, but not be limited to,
245 information on prescription drug abuse education, with particular emphasis upon opioid drug
246 abuse, healthy lifestyles, peer pressure and intervention opportunities, the feasibility of training
247 employees in the schools as substance abuse counselors, including, but not limited to, teachers,
248 nurses, guidance counselors and custodians and other activities a school might take to prevent
249 drug abuse.

250 The report shall be submitted not later than December 31, 2011 to the house and senate
251 committees on ways and means, the executive office of administration and finance and the joint
252 committee on mental health and substance abuse.

253 SECTION 15. Section 3 shall take effect on January 1, 2011.