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SENATE . . . . . No. 2122

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

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:

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 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 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.

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) Napthylpyrovalerone, 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.

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 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 inserting 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 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 prescribing practices for acute and chronic pain with the goal of reducing diversion, abuse and addiction. The working group shall consist of 9 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 Massachusetts Medical Society, the Massachusetts Dental Society, the Massachusetts Association of Physician Assistants 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 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 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 for opioid-dependent offenders leaving correctional facilities and transitioning to community-based treatment programs. 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 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 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 percent 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 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.