

HOUSE No. 1935

The Commonwealth of Massachusetts

PRESENTED BY:

Carolyn C. Dykema

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to electronic prescribing of opiates and other controlled substances.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|------------------------------|-----------------------|
| <i>Carolyn C. Dykema</i> | <i>8th Middlesex</i> |
| <i>Patricia A. Haddad</i> | <i>5th Bristol</i> |
| <i>Jennifer E. Benson</i> | <i>37th Middlesex</i> |
| <i>James M. Cantwell</i> | <i>4th Plymouth</i> |
| <i>Thomas J. Calter</i> | <i>12th Plymouth</i> |
| <i>Josh S. Cutler</i> | <i>6th Plymouth</i> |
| <i>Randy Hunt</i> | <i>5th Barnstable</i> |
| <i>Mathew Muratore</i> | <i>1st Plymouth</i> |
| <i>Angelo M. Scaccia</i> | <i>14th Suffolk</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> |
| <i>David M. Rogers</i> | <i>24th Middlesex</i> |
| <i>Robert M. Koczera</i> | <i>11th Bristol</i> |
| <i>Michael J. Finn</i> | <i>6th Hampden</i> |
| <i>James J. Dwyer</i> | <i>30th Middlesex</i> |
| <i>Paul McMurtry</i> | <i>11th Norfolk</i> |
| <i>Tricia Farley-Bouvier</i> | <i>3rd Berkshire</i> |
| <i>Ruth B. Balsler</i> | <i>12th Middlesex</i> |
| <i>Brian M. Ashe</i> | <i>2nd Hampden</i> |

| | |
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| <i>Linda Dean Campbell</i> | <i>15th Essex</i> |
| <i>William Smitty Pignatelli</i> | <i>4th Berkshire</i> |
| <i>Louis L. Kafka</i> | <i>8th Norfolk</i> |
| <i>Chris Walsh</i> | <i>6th Middlesex</i> |
| <i>Carole A. Fiola</i> | <i>6th Bristol</i> |
| <i>Barbara A. L'Italien</i> | <i>Second Essex and Middlesex</i> |
| <i>Michael D. Brady</i> | <i>Second Plymouth and Bristol</i> |
| <i>Eric P. Lesser</i> | <i>First Hampden and Hampshire</i> |
| <i>Danielle W. Gregoire</i> | <i>4th Middlesex</i> |
| <i>RoseLee Vincent</i> | <i>16th Suffolk</i> |
| <i>Nick Collins</i> | <i>4th Suffolk</i> |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> |
| <i>Mary S. Keefe</i> | <i>15th Worcester</i> |
| <i>James J. O'Day</i> | <i>14th Worcester</i> |
| <i>Elizabeth A. Malia</i> | <i>11th Suffolk</i> |
| <i>Daniel J. Hunt</i> | <i>13th Suffolk</i> |
| <i>Joan B. Lovely</i> | <i>Second Essex</i> |
| <i>Viriato M. deMacedo</i> | <i>Plymouth and Barnstable</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> |
| <i>Linda Dorcena Forry</i> | <i>First Suffolk</i> |
| <i>Leah Cole</i> | <i>12th Essex</i> |
| <i>James Arciero</i> | <i>2nd Middlesex</i> |
| <i>Kay Khan</i> | <i>11th Middlesex</i> |
| <i>Christine P. Barber</i> | <i>34th Middlesex</i> |
| <i>Kate Hogan</i> | <i>3rd Middlesex</i> |
| <i>Kevin J. Kuros</i> | <i>8th Worcester</i> |
| <i>Sean Garballey</i> | <i>23rd Middlesex</i> |
| <i>Timothy R. Madden</i> | <i>Barnstable, Dukes and Nantucket</i> |

HOUSE No. 1935

By Ms. Dykema of Holliston, a petition (accompanied by bill, House, No. 1935) of Carolyn C. Dykema and others relative to the electronic prescribing of opiates and other controlled substances. Public Health.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to electronic prescribing of opiates and other controlled substances.

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 29 of the General Laws, as appearing in the 2012 Official Edition,
2 is hereby amended by adding the following section:-

3
4 Section 2NNNN. (a) There shall be established and set upon the books of the
5 commonwealth a separate fund to be known as the ePrescription Trust Fund, to be expended
6 without further appropriation by the department of public health. Unless a greater amount is
7 authorized by law, the fund shall consist of revenues collected by the commonwealth including:
8 (i) any revenue from appropriations or other monies authorized by the general court and
9 specifically designated to be credited to the fund; (ii) any funds from public and private sources,
10 including gifts, grants and donations; (iii) any interest earned on such revenues; and (iv) any
11 funds provided from other sources. The commissioner of public health or a designee shall
12 administer the fund and shall make expenditures from the fund for the administrative costs of

13 operations and programs related to the Universal ePrescription Achievement Program, as
14 outlined in section 232 of chapter 111, and for grants and awards made thereunder. The
15 department may incur expenses and the comptroller may certify for payment, amounts in
16 anticipation of expected receipts; provided, however, that no expenditure shall be made from the
17 fund which shall cause the fund to be in deficit at the close of a fiscal year. Moneys deposited in
18 the fund that are unexpended at the end of a fiscal year shall not revert to the General Fund.

19

20 The commissioner shall report annually not later than March 1 to the house and senate
21 committees on ways and means and the joint committee on health care financing on the fund.
22 The report shall include, but not be limited to, revenue received by the fund, revenue and
23 expenditure projections for the forthcoming fiscal year and details of all expenditures from the
24 fund, including an analysis of whether the fund expenditures assisted the department in meeting
25 its regulatory mandates and in making grants and awards to eligible recipients.

26

27 (b) There shall be an ePrescribing Implementation and Trust Fund Advisory Board
28 constituted to make recommendations to the commissioner of public health concerning the
29 implementation of electronic prescribing for controlled substances across the Commonwealth, as
30 well as the administration and allocation of the ePrescription Trust Fund, including, but not
31 limited to, the establishment of evaluation criteria and recommendations for maximizing the
32 interoperability of ePrescribing and the Prescription Monitoring Program. The board shall consist
33 of the following members: the commissioner of public health, or a designee, who shall serve as
34 chair; the Chief Information Officer of the commonwealth, or a designee; and 17 members or

35 their designees from the following organizations who shall be appointed by the commissioner:
36 Massachusetts Medical Society, Massachusetts Dental Society, Massachusetts Podiatric Medical
37 Society, Massachusetts Society of Optometrists, Massachusetts Association of Physician
38 Assistants, Massachusetts Council of Nurse Practitioners, Massachusetts Association of Nurse
39 Anesthetists, Massachusetts Association of Advanced Practice Psychiatric Nurses, Massachusetts
40 Affiliate of the America College of Nurse-Midwives, Massachusetts Hospital Association,
41 Massachusetts Council of Community Hospitals, Massachusetts Senior Care Association,
42 Massachusetts Pharmacists Association, Massachusetts Chain Pharmacy Council, Massachusetts
43 Independent Pharmacists Association, the Massachusetts College of Pharmacy and Health
44 Sciences, and a member of the public with experience in health care service delivery,
45 administration or consumer advocacy. At least one-half of the total appointed members of the
46 Advisory Board shall constitute a quorum for the transaction of business.

47

48 SECTION 2. Section 1 of chapter 94C of the General Laws, as so appearing, is hereby
49 amended by striking the definition for “written prescription” in its entirety and replacing it with
50 the following definition:-

51

52 “Written prescription”, a lawful order from a practitioner for a drug or device for a
53 specific patient that is transmitted electronically, consistent with federal requirements for
54 electronic prescriptions for controlled substances, with the electronic signature and electronic
55 instructions of the prescriber, and transmitted directly to a pharmacy designated by the patient
56 without alteration of the prescription information, except that third-party intermediaries may act

57 as conduits to route the prescription from the prescriber to the pharmacist; provided, however,
58 that “written prescription” shall not include an order for medication which is dispensed for
59 immediate administration to the ultimate user by a practitioner, registered nurse or licensed
60 practical nurse. A prescription generated on an electronic system that is printed out or
61 transmitted via facsimile is not considered an electronic prescription.

62

63 SECTION 3. Section 8 of chapter 94C, as so appearing, is hereby amended, in subsection
64 (f), by striking, in line 57, the words “oral or”.

65

66 SECTION 4. Section 17 of chapter 94C, as so appearing, is hereby amended, in
67 subsection (c), by striking in line 9, the words “or oral”.

68

69 SECTION 6. Section 18 of chapter 94C, as so appearing, is hereby amended in
70 subsection (c), by striking, in lines 28-29, the words “deliver or mail” and inserting in place
71 thereof the words “transmit electronically”

72

73 SECTION 7. Section 20 of chapter 94C, as so appearing, is hereby amended in
74 subsection (c) by striking the second and third sentences and inserting in place thereof the
75 following:-

76

77 The written prescription shall be transmitted electronically to the pharmacy. Upon
78 receipt, the dispensing pharmacy shall attach said written prescription to the oral prescription,
79 which the pharmacy has reduced to writing.

80

81 SECTION 8. Section 23 of chapter 94C, as so appearing, is hereby amended by striking
82 subsections (g) and (h) in their entirety and inserting in place thereof the following:-

83

84 (g) Unless otherwise prohibited by law, a written prescription for a controlled substance
85 or a medical device with a controlled substance component, provided that the medical device is
86 regulated by the department, shall be: (1) transmitted electronically; and (2) signed by the
87 prescriber using authentication and auditing systems compliant with DEA regulations and (3)
88 prescribed and dispensed using software applications compliant with DEA regulations. The
89 department of public health shall promulgate regulations setting forth standards for electronic
90 prescriptions.

91

92 (h) No practitioner shall issue any written prescription for a controlled substance or a
93 medical device with a controlled substance component, unless it is transmitted electronically,
94 except for prescriptions that are:

95 (1) issued by veterinarians;

96 (2) issued or dispensed in circumstances where electronic prescribing is not available due
97 to temporary technological or electrical failure, as set forth in regulation;

98 (3) issued by practitioners who have received a waiver or a renewal thereof for a
99 specified period determined by the department, not to exceed two years, from the requirement to
100 use electronic prescribing, due to economic hardship, technological limitations that are not
101 reasonably within the control of the practitioner, or other exceptional circumstance demonstrated
102 by the practitioner; provided that the department shall establish in regulation appropriate due
103 process for approvals and denials, including due process on appeal;

104 (4) issued by a practitioner under circumstances outlined in department regulations
105 where, notwithstanding the practitioner's present ability to make an electronic prescription as
106 required by this subdivision, such practitioner reasonably determines that it would be impractical
107 for the patient to obtain substances prescribed by electronic prescription in a timely manner, and
108 such delay would adversely impact the patient's medical condition, provided that if such
109 prescription is for a Schedule II through V controlled substance, the quantity does not exceed a
110 three day supply if it was used in accordance with the directions for use.

111

112 (i) In the case of a written prescription for schedule II through V controlled substances,
113 issued by a practitioner under paragraphs (2), (4) and (5) of subdivision (h) of this section, the
114 practitioner shall be required to note the manner of the issuance of such prescription in the
115 patient record as soon as practicable, as set forth in regulation.

116

117 (j) Clinic pharmacies operated by a health maintenance organization licensed under
118 chapter 176G and licensed pursuant to section 51 of chapter 111 may refill prescriptions which
119 have been previously dispensed by another health maintenance organization clinic pharmacy,

120 provided that prior to dispensing a refill, the pharmacy refilling the prescription verifies the
121 appropriateness of the refill through a centralized database.

122 SECTION 9. Section 24A of chapter 94C of the General Laws, as appearing in the 2012
123 Official Edition, is hereby amended, in lines 27 and 28, by striking the words “7 days” and
124 inserting in place thereof the following words:- “24 hours at the end of each business day.”

125 SECTION 10. Chapter 111 is hereby further amended by adding the following section:-

126

127 Section 232. (b) Pursuant to regulations to be promulgated by the department, there shall
128 be established a grant program to be known as the Universal ePrescription Achievement Program
129 for the purpose of financing the implementation of electronic prescribing in small, rural or
130 underserved health care practices and pharmacies. Eligible grant applicants shall include health
131 care practices and pharmacies (1) consisting of fewer than two prescribing practitioners; (2)
132 separated from the nearest health care practice by more than 15 miles; or (3) serving rural
133 populations. The department, in consultation with the ePrescribing Trust Fund Advisory Board,
134 shall promulgate regulations establishing specific eligibility criteria, application procedures and
135 award amount determination factors. Program. Funds for such grants shall come from the
136 ePrescribing Trust Fund established under section 2NNNN of chapter 29.

137

138 SECTION 11. Sections 2 through 8 of this act shall take effect 2 years after the
139 enactment date.

140

141 SECTION 12. Sections 1 and 9 of this act shall take effect within 1 year of the enactment
142 date.

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144 SECTION 13. Section 10 of this act shall take effect 2 years after the enactment date.