

HOUSE No. 3817

The Commonwealth of Massachusetts



CHARLES D. BAKER
GOVERNOR

OFFICE OF THE GOVERNOR COMMONWEALTH OF MASSACHUSETTS , MA

KARYN POLITO
LIEUTENANT GOVERNOR

October 15, 2015

To the Honorable Senate and House of Representatives,

I am filing for your consideration a bill entitled “An Act Relative to Substance Use Treatment, Education, and Prevention.”

This legislation represents a critical next step in the Baker-Polito administration’s ongoing effort to combat the opioid addiction crisis in Massachusetts. We recognize that this is a complex and persistent problem that will not be solved through a single solution. The legislation therefore offers a range of measures that seek to improve efforts at prevention and to enhance existing intervention, treatment, and recovery services. These provisions implement recommendations issued by the Governor’s Opioid Working Group in its June 2015 report.

We know that opioid addiction begins for many people through the use or misuse of prescription opioids. This legislation introduces several provisions designed to reduce that risk. First, it sets a strict 72-hour limit on the supply of opioids that a practitioner may prescribe for a patient in any first-time prescription except in limited emergency situations and other carefully defined circumstances. Second, it establishes a new requirement that physicians, dentists, and other persons who prescribe controlled substances complete at least five hours of training every two years on the risks of addiction associated with medications prescribed for pain management. Third, the legislation enhances the effectiveness of the existing prescription monitoring program by requiring that a practitioner employ that monitoring tool before issuing any prescription for an opiate without exception.

The legislation also requires that the people best positioned to detect and prevent opioid misuse among our young people receive regular training on the risks of addiction presented by prescription painkillers. Athletic coaches, trainers, school nurses, parents, and other adults involved in high school sports and extracurricular activities are already required to complete annual training on the risks of concussion and head injury. This legislation requires that these people now also receive annual training on the potential risks of opioid use and the dangers of misuse so they will be better equipped to prevent young people from falling victim to this problem.

Young people who suffer from a substance use disorder and who have begun the path to recovery need our support. Students who enroll in a Recovery High School as part of their plan for recovery do not currently receive funds from the Commonwealth or from their local municipalities to cover the cost of transportation from home to school. This legislation requires the Department of Public Health and the Department of Elementary Secondary Education to work together to develop a plan that will address this gap in support.

The legislation also makes important changes to the way that we deal with people who suffer the most severe forms of substance use disorder, those for whom other forms of treatment have failed and who may only be treated on a compulsory basis. The legislation creates a new pathway to emergency treatment by giving physicians the right to hold a patient for an initial three day period at a hospital or treatment center if the physician determines that the patient suffers from a substance use disorder and that a failure to treat the patient would present a serious risk of harm. This provision parallels existing law that authorizes a three day period of involuntary emergency treatment for patients who suffer from a mental illness and who pose a comparable risk of harm. This new pathway to treatment will make it possible for families to access emergency treatment for loved ones most at risk of harm because of addiction twenty-four hours a day and seven days a week, not just, as now, only when the courts are open. The legislation will require a physician to encourage a patient held for treatment during this initial three day period to accept voluntary treatment as an alternative, but it will also permit the physician to seek a court order for a 90-day commitment for involuntary treatment if the patient refuses and the risk of harm persists.

The legislation also makes an important change to where patients may receive treatment for an extended period of court-ordered commitment by eliminating the current statutory provision permitting women to be sent to MCI-Framingham as a secure place for treatment. Going forward, women who require treatment in a secure setting may be admitted instead to new secure treatment centers approved by the Department of Public Health or the Department of Mental Health. These secure treatment units will provide the security measures necessary to ensure that patients complete their initial period of court ordered treatment, and they will also provide treatment at a level that will offer these patients the best prospects for long-term success. Our administration expects to open new facilities at the Taunton State Hospital and the Lemuel Shattuck Hospital beginning in January 2016 to accommodate these patients.

Finally, the legislation increases transparency concerning insurance carrier policies designed to reduce misuse of prescription opioids by requiring carriers annually to file statements of their policies and protocols in this area with the Division of Insurance.

I urge your prompt enactment of this legislation.

Sincerely,

Charles D. Baker,
Governor

HOUSE No. 3817

Message from His Excellency the Governor recommending legislation relative to substance use treatment, education and prevention.

The Commonwealth of Massachusetts

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

An Act relative to substance use treatment, 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. Subsection (e) of section 18 of chapter 94C of the General Laws, as so
2 appearing, is hereby amended by inserting after the word “programs”, in line 156, the following
3 words:- ; provided, that the boards shall each require at least 5 hours of training relative to the
4 topics identified in clauses (i) to (iii), inclusive, every 2 years. Each board of registration shall
5 require practitioners to certify that they have completed the required training at each renewal
6 period.

7 SECTION 2. Said chapter 94C is hereby amended by inserting after section 19C the
8 following section:-

9 Section 19D. (a) A practitioner shall not issue a prescription for more than a 72-hour
10 supply of an opiate to a patient the first time the practitioner prescribes an opiate to that patient.

11 (b) Notwithstanding subsection (a), if in the professional medical judgment of a
12 practitioner more than a 72-hour supply of an opiate is required to stabilize the patient’s
13 emergency medical condition, then the practitioner may issue a prescription for the quantity

needed to stabilize the patient’s emergency medical condition. The emergency medical condition shall be documented in the patient’s medical record and the practitioner shall indicate that a non-opiate alternative was not appropriate to address the emergency medical condition.

(c) The commissioner of public health, through regulation, may promulgate exceptions to subsection (a).

SECTION 3. Section 24A of said chapter 94C, as appearing in the 2014 Official Edition, is hereby amended by inserting after the word “program”, in line 49, the following words:- ; provided, however, that said regulations shall require every practitioner to use the prescription monitoring program prior to prescribing an opiate.

SECTION 4. Subsection (a) of section 222 of chapter 111 of General Laws, as so appearing, is hereby amended by striking out, in line 5, the word “participate” and inserting in place thereof the following words:- participate; provided, that said program shall also educate participants about the dangers of opioid use and misuse.

SECTION 5. The second paragraph of said subsection (a) of said section 222 of said chapter 111, as so appearing, is hereby further amended by adding the following clause:- ; and (3) educational information for parents, students, and staff about the dangers of opioid use and misuse.

SECTION 6. Section 35 of chapter 123 of the General Laws, as so appearing, is hereby amended by striking out the first two paragraphs and inserting in place thereof the following paragraph:-

For the purposes of this section and sections 35A and 35B, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

“Alcohol use disorder,” a medical disorder in which a person chronically or habitually consumes alcoholic beverages to the extent that (1) such use substantially injures the person’s health or substantially interferes with the person’s social or economic functioning, or (2) the person has lost the power of self-control over the use of such beverages.

“Facility,” a public or private facility that provides care and treatment for a person with an alcohol or substance use disorder.

“Substance use disorder,” a medical disorder in which a person chronically or habitually consumes or ingests controlled substances or intentionally inhales toxic vapors to the extent that: (i) such use substantially injures the person’s health or substantially interferes with the person’s social or economic functioning; or (ii) the person has lost the power of self-control over the use of such controlled substances or toxic vapors.

SECTION 7. Said section 35 of said chapter 123, as so appearing, is hereby further amended by striking out the words “an alcoholic or substance abuser”, in lines 17 and 18 and in line 39, and inserting in place thereof, in each instance, the words:- a person with an alcohol or substance use disorder.

SECTION 8. Said section 35 of said chapter 123, as so appearing, is hereby further amended by striking out the words “or a”, in line 36, and inserting in place thereof the following words:- or a qualified.

SECTION 9. Said section 35 of said chapter 123, as so appearing, is hereby further amended by striking out the fourth and fifth paragraphs and inserting in place thereof the following 3 paragraphs:-

If, after a hearing which shall include expert testimony and may include other evidence, the court finds that such person is an individual with an alcohol or substance use disorder and there is a likelihood of serious harm as a result of the person's alcohol or substance use disorder, the court may order such person to be committed for a period not to exceed 90 days to a facility designated by the department of public health, followed by the availability of case management services provided by the department of public health for up to 1 year; provided, however, that a review of the necessity of the commitment shall take place by the superintendent on days 30, 45, 60 and 75 as long as the commitment continues. A person so committed may be released prior to the expiration of the period of commitment upon written determination by the superintendent of the facility that release of that person will not result in a likelihood of serious harm. Such commitment shall be for the purpose of inpatient care for the treatment of an alcohol or substance use disorder in a facility licensed or approved by the department of public health or the department of mental health; provided further, that subsequent to the issuance of a commitment order, the department of public health and the department of mental health may transfer a patient to a different facility for continuing treatment.

If the department of public health informs the court that there are no other suitable facilities available for treatment, or if the court makes a specific finding that the only appropriate setting for treatment for the person is a secure facility, then the person may be committed to a secure facility for women approved by the department of public health or the department of mental health, if a female; or to the Massachusetts correctional institution at Bridgewater, if a

male; provided, however, that any person so committed shall be housed and treated separately from persons currently serving a criminal sentence. Such person shall, upon release, be encouraged to consent to further treatment and shall be allowed voluntarily to remain in the facility for such purpose.

Nothing in this section shall preclude a facility, including the Massachusetts correctional institution at Bridgewater, from treating persons on a voluntary basis.

SECTION 10. Said section 35 of said chapter 123, as so appearing, is hereby further amended by inserting after the word “section”, in line 86, the following words:- or section 35A.

SECTION 11. Chapter 123 of the General Laws is hereby amended by inserting after section 35 the following 2 sections:-

Section 35A. (a) Any physician who is licensed pursuant to section 2 of chapter 112 or qualified psychiatric nurse mental health clinical specialist authorized to practice as such under regulations promulgated pursuant to section 80B of said chapter 112 or a qualified psychologist licensed pursuant to sections 118 to 129, inclusive, of said chapter 112, or a licensed independent clinical social worker licensed pursuant to sections 130 to 137, inclusive, of chapter 112 who, after examining a person, has reason to believe that failure to commit such person for treatment would create a likelihood of serious harm by reason of an alcohol or substance use disorder may restrain or authorize the restraint of such person and apply for the treatment of such person for a 3-day period at a facility authorized for such purposes by the department of public health or the department of mental health.

If an examination is not possible because of the emergency nature of the case or because of the refusal of the person to consent to such examination, the physician, qualified psychologist,

99 qualified psychiatric nurse mental health clinical specialist or licensed independent clinical social
100 worker on the basis of the facts and circumstances may determine that treatment is necessary and
101 may apply therefore. In an emergency situation, if a physician, qualified psychologist, qualified
102 psychiatric nurse mental health clinical specialist or licensed independent clinical social worker
103 is not available, a police officer, who believes that failure to treat a person would create a
104 likelihood of serious harm by reason of an alcohol or substance use disorder may restrain such
105 person and apply for the treatment of such person for a 3-day period at a facility authorized for
106 such purpose by the department of public health or the department of mental health.

107 An application for treatment shall state the reasons for the restraint of such person and
108 any other relevant information which may assist the admitting clinician. Whenever practicable,
109 prior to transporting such person, the applicant shall telephone or otherwise communicate with a
110 facility to describe the circumstances and known clinical history and to determine whether the
111 facility is the proper facility to receive such person and also to give notice of any restraint to be
112 used and to determine whether such restraint is necessary.

113 (b) Only if the application for treatment under this section is made by a physician
114 specifically designated to have the authority to admit to a facility in accordance with the
115 regulations of the department of mental health or department of public health shall the person be
116 admitted to the facility immediately after the person's reception. If the application is made by
117 someone other than a designated physician, the person shall be given an examination by a
118 designated physician within a reasonable amount of time after the person's reception at such
119 facility. If the physician determines that failure to treat the person would create a likelihood of
120 serious harm by reason of an alcohol or substance use disorder the physician may admit the
121 person to the facility for care and treatment.

122 Upon admission of a person under this subsection, the facility shall inform the person
123 that, upon the person's request, the facility will notify the committee for public counsel services
124 of the name and location of the person admitted. The committee for public counsel services shall
125 forthwith appoint an attorney who shall meet with the person. If the appointed attorney
126 determines that the person voluntarily and knowingly waives the right to be represented, or is
127 presently represented or will be represented by another attorney, the appointed attorney shall so
128 notify the committee for public counsel services, which shall withdraw the appointment.

129 Any person admitted under this subsection, who has reason to believe that such
130 admission is the result of an abuse or misuse of this subsection, may request, or request through
131 counsel an emergency hearing in the juvenile court or district court in whose jurisdiction the
132 facility is located, and unless a delay is requested by the person or through counsel, the district
133 court shall hold such hearing on the day the request is filed with the court or not later than the
134 next business day. The superintendent of the facility, if he or she seeks to retain the person for
135 treatment, shall at the time of the hearing file a petition for commitment pursuant to subsection
136 (e).

137 (c) No person shall be admitted to a facility under this section unless the person, or if the
138 person is a minor, the person's parent, is given an opportunity to apply for voluntary admission
139 under section 35B.

140 (d) A person shall be discharged at the end of the 3-day period unless the superintendent
141 applies for a commitment order under subsection (e) or the person remains on a voluntary status.

142 (e) The superintendent of a facility may petition the district court or the division of the
143 juvenile court department in whose jurisdiction the facility is located for the commitment of a

person to the facility if the superintendent determines that the failure to provide continued treatment would create a likelihood of serious harm by reason of an alcohol or substance use disorder.

(f) Whenever a court receives a petition filed under subsection (e) for an order of commitment of a person to a facility, the court shall notify the person and, if under 18, the person's parent or guardian of the receipt of the petition and of the date a hearing on the petition is to be held. Except where a person has requested an emergency hearing under subsection (b), the hearing shall be commenced within 5 days of the filing of the petition, unless a delay is requested by the person or the person's counsel. The periods of time prescribed or allowed under this section shall be computed pursuant to Rule 6 of the Massachusetts Rules of Civil Procedure.

(g) After a hearing which shall include expert testimony and may include other evidence, the district court or the division of the juvenile court department shall order the commitment of the person to a facility for continued treatment if the court finds that (1) the person has an alcohol or substance use disorder, and (2) the discharge of the person from the facility would create a likelihood of serious harm as a result of the person's alcohol or substance use disorder. A person who is the subject of a petition under subsection (e) may waive the right to a hearing, in which case the court may make its finding based on the credible evidence offered in support of the petition filed pursuant to subsection (e). A waiver of the right to a hearing must be made in writing.

(h) The court shall render its decision on the petition filed under subsection (e) within 10 days of the completion of the hearing or within 10 days of the court's receipt of a written waiver of the right to a hearing by the person who is the subject of the petition; provided, that for

reasons stated in writing by the court, the administrative justice for the district court department may extend the 10 day period.

(i) Upon making the finding required under subsection (g), the court may order such person to be committed for a period not to exceed 90 days, followed by the availability of case management services provided by the department of public health for up to 1 year; provided, however, that a review of the necessity of the commitment shall take place by the superintendent on days 30, 45, 60 and 75 as long as the commitment continues; and provided further, that combined periods of treatment under this section shall not exceed 90 days. A person so committed may be released prior to the expiration of the period of commitment upon written determination by the superintendent of the facility that release of that person will not result in a likelihood of serious harm. Such commitment shall be for the purpose of inpatient care for the treatment of an alcohol or substance use disorder in a facility licensed or approved by the department of public health or the department of mental health; provided further, that subsequent to the issuance of a commitment order, the department of public health and the department of mental health may transfer a patient to a different facility for continuing treatment.

If the department of public health informs the court that there are no other suitable facilities available for treatment, or if the court makes a specific finding that the only appropriate setting for treatment for the person is a secure facility, then the person may be committed to a secure facility for women approved by the department of public health or the department of mental health, if a female; or to the Massachusetts correctional institution at Bridgewater, if a male; provided, however, that any person so committed shall be housed and treated separately from persons currently serving a criminal sentence. Such person shall, upon release, be

188 encouraged to consent to further treatment and shall be allowed voluntarily to remain in the
189 facility for such purpose.

190 The court, in its order, shall specify whether such commitment is based upon a finding
191 that the person is a person with an alcohol use disorder, substance use disorder, or both. The
192 court, upon ordering the commitment of a person found to be a person with an alcohol use
193 disorder or substance use disorder pursuant to this section, shall transmit the person's name and
194 nonclinical identifying information, including the person's social security number and date of
195 birth, to the department of criminal justice information services. The court shall notify the person
196 that such person is prohibited from being issued a firearm identification card pursuant to section
197 129B of chapter 140 or a license to carry pursuant to sections 131 and 131F of said chapter 140
198 unless a petition for relief pursuant to section 35 is subsequently granted.

199 Section 35B. (a) (1) Pursuant to regulations on admission procedures, the superintendent
200 of a facility may receive and treat on a voluntary basis any person who has been temporarily
201 restrained under subsection (a) of section 35A; provided, that the person is in need of care and
202 treatment for an alcohol or substance use disorder; and provided further, that the admitting
203 facility is suitable for such care and treatment and approved or licensed by the department of
204 public health or the department of mental health. The application for treatment may be made by a
205 person who has attained the age of 16 or by a parent of a person under the age of 18 years. Prior
206 to accepting an application for a voluntary admission, the superintendent shall afford the person
207 making the application the opportunity for consultation with an attorney, or with a person who is
208 working under the supervision of an attorney, concerning the legal effect of a voluntary
209 admission. The superintendent may discharge any person admitted under this subsection at any
210 time the superintendent deems the discharge in the best interest of the person; provided,

211 however, that if a parent made the application for admission, 14 days' notice shall be given to the
212 parent prior to discharge.

213 (2) Pursuant to regulations, the superintendent of a facility may treat a person as an
214 outpatient; provided that the application for outpatient treatment is made in accordance with
215 paragraph (1). The superintendent may, in the best interest of the person, discontinue the
216 outpatient treatment of a person at any time.

217 (b) A person admitted to a facility under subsection (a) shall be free to leave such facility
218 at any time, and any parent who requested the admission of such person may withdraw such
219 person at any time, upon giving written notice to the superintendent; provided, however, that the
220 superintendent may restrict the right to leave or withdraw to normal working hours and
221 weekdays and, in the superintendent's discretion, may require the person or the person's parent
222 to give 3 days' written notice of his or her intention to leave or withdraw. If a person or the
223 person's parent provides a notice of intention to leave or withdraw, the superintendent may
224 require an examination of the person to determine the person's clinical progress, the person's
225 suitability for discharge and to investigate other aspects of the person's case including the
226 person's legal competency and family, home or community situation. Such person may be
227 retained at the facility beyond the expiration of the 3 day notice period if, prior to the expiration
228 of the 3 day notice period, the superintendent files a petition for commitment under subsection
229 (e) of section 35A.

230 Before accepting an application for voluntary admission where the superintendent may
231 require 3 days written notice of intention to leave or withdraw, the admitting or treating
232 physician shall assess the person's capacity to understand that: (i) the person is agreeing to stay

or remain at the facility; (ii) the person is agreeing to accept treatment; (iii) the person may be required to provide the facility with 3 days written advance notice of the person's intention to leave the facility; and (iv) the facility may petition a court for an extended commitment of the person under section 35A and that the person may be held at the facility until the petition is heard by the court. If the physician determines that the person lacks the capacity to understand these facts and consequences, the application for voluntary admission shall not be accepted.

SECTION 12. Chapter 176O of the General Laws is hereby amended by adding the following section:-

Section 28. A carrier shall annually provide a written attestation to the commissioner outlining the carrier's opioid management policies. The attestation shall include, but not be limited to, an outline of: the prior authorization policies that the carrier utilizes to encourage safe opioid prescribing practices; any member or provider outreach efforts related to education about the risks of opioid use and misuse; the protocols in place to ensure providers are complying with section 19D of chapter 94C; alternative pain management therapies that are covered by the carrier; and the policies that ensure appropriate access to pain medication for individuals suffering from chronic pain.

The attestation shall be posted on the division's website and the carrier's website.

SECTION 13. The department of public health and the department of elementary and secondary education shall develop a transportation plan for recovery high schools. Said plan shall ensure that each student attending a recovery high school has access to transportation between home and school.

254 SECTION 14. The department of public health and the department of mental health shall
255 coordinate and promulgate regulations to implement sections 9 and 11.

256 SECTION 15. Section 11 shall take effect 270 days from the effective date of this act.