

**HOUSE . . . . . No. 2453**

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**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>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>Shawn Dooley</i>	<i>9th Norfolk</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Randy Hunt</i>	<i>5th Barnstable</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>
<i>Kevin J. Kuros</i>	<i>8th Worcester</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>

**HOUSE . . . . . No. 2453**

By Ms. Dykema of Holliston, a petition (accompanied by bill, House, No. 2453) of Carolyn C. Dykema and others relative to electronic prescribing of opiates and other controlled substances. Public Health.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

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 2014 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 5. 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 6. 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 7. 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) and (4) 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 8. Chapter 111 is hereby further amended by adding the following section:-

123

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

134

135 SECTION 9. Sections 2 through 7 of this act shall take effect 2 years after the enactment  
136 date.

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138 SECTION 10. Section 1 of this act shall take effect within 1 year of the enactment date.

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SECTION 11. Section 8 of this act shall take effect 2 years after the enactment date.