## SENATE, No. 2575

[July 28, 2010 - Text of the Senate amendment (Ways and Means) to the House Bill relative to the enhancement of the prescription monitoring program, House, No. 4879.]

## The Commonwealth of Alassachusetts

In the Year Two Thousand and Ten

SECTION 1. Chapter 17 of the General Laws is hereby amended by adding the following 2 sections:-

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

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

Section 19. The department shall promulgate regulations relative to discharge plans for substance abuse treatment programs subject to licensure or approval under sections 24 and 24D of chapter 90, sections 6 and 6A of chapter 111B and section 7 of chapter 111E. A discharge plan shall be issued for each client leaving a licensed substance abuse treatment program and

shall include recommended follow-up treatment, contact information for shelters in the area, additional resources for substance abuse treatment and workforce options.

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

- (e) Practitioners who prescribe controlled substances, except veterinarians, shall be required, as a prerequisite to obtaining or renewing their professional license, to complete appropriate training relative to: (i) effective pain management; (ii) identification of patients at high risk for substance abuse; and (iii) counseling patients about the side effects, addictive nature and proper storage and disposal of prescription medications. The boards of registration for each professional license that requires such training shall develop the standards for appropriate training programs.
- **SECTION 3.** Said chapter 94C is hereby further amended by inserting after section 24 the following section:-
- Section 24A. (a)(1) The department shall establish and maintain an electronic system to monitor the prescribing and dispensing of all schedule II to V, inclusive, controlled substances and certain additional drugs by all professionals licensed to prescribe or dispense such substances. For the purposes of this section, "additional drugs" shall mean substances determined by the department to carry a bona fide potential for abuse.
- (2) The department shall enter into reciprocal agreements with other states that have compatible prescription drug monitoring programs to share prescription drug monitoring information among the states.

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

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- (c) For the purposes of monitoring the prescribing and dispensing of all schedule II to V, inclusive, controlled substances and additional drugs, as authorized in subsection (a), the department shall promulgate regulations including, but not limited to, (1) a requirement that each pharmacy that delivers a schedule II to V, inclusive, controlled substance or a substance classified as an additional drug by the department to the ultimate user shall submit to the department, by electronic means, information regarding each prescription dispensed for a drug included under subsection (a); and (2) a requirement that each pharmacy collects and reports, for each prescription dispensed for a drug under subsection (a), a customer identification number and other information associated with the customer identification number, as specified by the department. Each pharmacy shall submit the information in accordance with transmission methods and frequency requirements promulgated by the department; provided, however, that the information shall be submitted at least once every 7 days. The department may issue a waiver to a pharmacy that is unable to submit prescription information by electronic means. The waiver shall permit the pharmacy to submit prescription information by other means promulgated by the department; provided, however, that all information required in this section is submitted in this alternative format.
- (d) Prescription information submitted to the department under this section shall be confidential and exempt from disclosure under clause Twenty-sixth of section 7 of chapter 4 and chapter 66 and shall be not subject to public or open records laws. The department shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information

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

- (e) The department shall review the prescription and dispensing monitoring information. If there is reasonable cause to believe a violation of law or breach of professional standards may have occurred, the department shall notify the appropriate law enforcement or professional licensing, certification or regulatory agency or entity and provide prescription information required for an investigation.
- (f) The department shall, upon request, provide data from the prescription monitoring program to the following:-
  - (1) persons authorized to prescribe or dispense controlled substances, for the purpose of providing medical or pharmaceutical care for their patients;
  - (2) individuals who request their own prescription monitoring information in accordance with procedures established under chapter 66A;
  - (3) persons authorized to act on behalf of state boards and regulatory agencies that supervise or regulate a profession that may prescribe controlled substances; provided, however, that the data request is in connection with a bona fide specific controlled substance or additional drug-related investigation;
  - (4) local, state and federal law enforcement or prosecutorial officials working with the executive office of public safety engaged in the administration, investigation or enforcement of the laws governing prescription drugs; provided, however, that the data

78	request is in connection with a bona fide specific controlled substance or additional drug-
79	related investigation;
80	(5) personnel of the executive office of health and human services regarding Medicaid
81	program recipients; provided, however that the data request is in connection with a bona
82	fide specific controlled substance or additional drug-related investigation; or
83	(6) personnel of the United States attorney, office of the attorney general or a district
84	attorney; provided, however, that the data request is in connection with a bona fide
85	specific controlled substance or additional drug related investigation.
86	(g) The department may, at its initiative, provide data from the prescription monitoring
87	program to practitioners in accordance with section 24.
88	(h) The department may provide de-identified, aggregate information to a public or
89	private entity for statistical research or educational purposes.
90	(i) The department may contract with another agency or with a private vendor, as
91	necessary, to ensure the effective operation of the prescription monitoring program. A contractor
92	shall be bound to comply with the provisions regarding confidentiality of prescription
93	information in this section.
94	(j) The department shall promulgate rules and regulations setting forth the procedures and
95	methods for implementing this section.
96	(k) The department shall submit an annual report on the effectiveness of the prescription

monitoring program with the clerks of the house and senate, the chairs of the joint committee on

public health, the chairs of the joint committee on health care financing and the chairs of the joint committee on public safety and homeland security.

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

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

- (b) A person who experiences or has reason to believe he is experiencing a drug-related overdose and is in need of medical assistance shall not be charged or prosecuted for possession of a controlled substance, under this chapter, if the evidence for the charge of or prosecution for possession of a controlled substance was obtained as a result of the seeking of medical assistance.
- (c) Nothing in this section shall prohibit a charge or prosecution for any other crime, including, but not limited to, possession with intent to manufacture, distribute or dispense a controlled substance or the entry of a plea or verdict of guilty for possession of a controlled substance as a lesser included offense of a complaint or indictment charging possession of a controlled substance with intent to manufacture, distribute, or dispense.
- (d) The act of seeking medical assistance for someone who is, or there is reason to believe is, experiencing a drug-related overdose shall be admissible as evidence if proffered by a

defendant in a criminal prosecution under this chapter, if the evidence for the charge or prosecution was obtained as a result of the seeking of medical assistance.

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

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

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

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

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

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

**SECTION 9.** (a) There is hereby established a special commission to investigate and determine a best practices model for the implementation of an official Massachusetts tamper proof prescription form. The form shall be serialized and tamper resistant. For the purposes of this section, tamper-resistant is defined as having 1 or more of the following industry-recognized features designed to prevent: (i) unauthorized copying of a completed or blank prescription form; (ii) the erasure or modification of information written on the prescription by the prescriber; and (iii) the use of counterfeit prescription forms.

- (b) The commission shall consist of 3 members of the house of representatives, 1 of whom shall be appointed by the minority leader of the house of representatives; 3 members of the senate, 1 of whom shall be appointed by the minority leader of the Senate; 1 representative from the executive office for administration and finance; the commissioner of mental health or the commissioner's designee; the commissioner of public health drug control program or the commissioner's designee; the director of the prescription monitoring program or the director's designee; and 3 members appointed by the governor that represent the medical and substance abuse treatment community with specialty experience in drug regulation, prescription, treatment and abuse.
- (c) The commission's investigation, shall include, but not be limited to, the following information: where to purchase the serialized and tamper resistant forms; the cost of the forms; the cost of integrating the forms to the commonwealth's prescription monitoring program; physician and pharmacist training; and the implementation of a state-wide e-prescribing system. The commission shall submit a report of its findings, including legislative recommendations, if any, to the joint committee on health care financing and the house and senate committees on ways and means by April 15, 2011.

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

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

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

"Board" the board of registration in pharmacy in section 22 of chapter 13 of the General Laws.

"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, pharmacy shall not include an institutional pharmacy or a pharmacy department except as otherwise provided in 247 CMR.

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

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

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

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

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The investigation and study shall include, but shall not be limited to, the prospects of developing a jail diversion program specifically for veterans convicted of non-violent substance abuse offenses. The commission, as part of its review, analysis and study, in making the recommendations regarding the implementation of a drug court for veterans, shall focus on and consider the following issues, proposals and impacts: (i) determining the cost to the state for establishing and maintaining this new program within the state court system; (ii) whether state taxes need to be raised for the implementation of this program; (iii) what the potential savings could be realized through the diversion of veterans into treatment programs as opposed to detention; (iv) what the impact would be on an overcrowded court docket; (v) whether the program would help or hinder the current court in processing cases based on substance abuse charges; (vi) what the potential benefits, consequences or adverse impacts on creating this new court program might be; (vii) the feasibility of a system of treatment, accountability and mentoring to be made available for veterans who are diverted from prison or jail time; (viii) what models would be used for creating this system; (ix) a determination of the providers, service organizations, state departments and municipal departments that would need to be involved in the creation or maintenance of this program; (x) research analyzing statistics tracking veteran involvement in the court system and (xi) researching the prevalence of alcohol and substance abuse disorders among Massachusetts veterans.

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

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

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

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