

SENATE No. 1531

The Commonwealth of Massachusetts

SENATE, May 9, 1991.

The committee on Health Care, to whom was referred the petition (accompanied by bill, Senate, No. 449) of W. Paul White for legislation relative to prescription drug abuse of Schedule II drugs; and the petition (accompanied by bill, House, No. 1171) of John E. McDonough and Sally P. Kerans for legislation to establish a multiple copy prescription system for certain controlled substances subject to abuse, reports the accompanying bill (Senate, No. 1531).

For the committee,

EDWARD L. BURKE.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-One.

AN ACT RELATIVE TO PRESCRIPTION DRUG ABUSE OF SCHEDULE II DRUGS.

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. Section 23 of Chapter 94C of the General Laws,
2 as most recently amended, is hereby further amended by striking
3 out paragraph (b) and inserting in place thereof the following: —

4 (b) (1) A written prescription for a controlled substance in
5 Schedule II shall be kept in a separate file and shall not be refilled.

6 (b) (2) Beginning July 1, 1992, the Department of Public
7 Health shall establish a prescription monitoring system in order
8 to review the prescribing and dispensing of controlled substances
9 in Schedule II. The prescription monitoring system shall consist
10 of an electronic data transfer system and be limited to Schedule
11 II drugs. The department shall, by regulation in accordance with
12 chapter 30A of the General Laws, and following consultation with
13 the advisory board established in paragraph (h), devise a system
14 for pharmacists to use in transmitting Schedule II prescriptions
15 and prescription information, through the use of an electronic
16 data transfer system, to the department in a way which minimizes
17 the expense and inconvenience to the pharmacist. Said data shall
18 include, but not be limited to, the prescription information
19 required by section 22(a) of this chapter.

20 The electronic data transfer system should be able to receive
21 data electronically transmitted via telephone line, computer disk,
22 computer tape, or other technology available to the department
23 and allow for batch processing.

24 Commencing in 1993, on or before September 1 of each year,
25 the Department shall submit a report to the attorney general and
26 the Senate and House Clerk on the effectiveness of the program.
27 Such a report shall include, but not be limited to:

28 (1) the number of indictments, convictions, and peer review
29 proceedings attributable to the prescription monitoring program;

30 (2) the cost of administering the program; and
31 (3) such other information as the department shall deem
32 appropriate.

33 Information submitted to the department in accordance with
34 this section shall not be a public record within the meaning of
35 section 7 of chapter 4 of the General Laws; and shall, except as
36 otherwise herein provided, be subject to the restrictions set forth
37 in section 2 of chapter 66A of the General Laws. There shall be
38 a presumption against the disclosure of said information in any
39 civil proceeding and said information shall not be disclosed as a
40 result of a subpoena or any other civil process, unless a justice
41 of the Massachusetts trial court determines that the interests in
42 favor of disclosure outweigh the interests in terms of confiden-
43 tiality. If disclosure is ordered, protective orders may be issued
44 by the court.

45 The department shall, by regulation in accordance with chap-
46 ter 30A of the General Laws and after consultation with the
47 advisory board established in paragraph (h), establish an
48 automated and secure system to collect, store and disseminate the
49 said information that conforms to the following requirements:

50 (1) review of information by the department shall include
51 consultation with a departmental medical review group comprised
52 of a minimum of two registered practitioners, one of whom shall
53 be affiliated with a health care facility, and one licensed
54 pharmacist appointed by the Commissioner;

55 (2) access to the information shall not be permitted to anyone
56 other than duly authorized representatives of the boards or
57 agencies responsible for the registration, regulation or discipline
58 of practitioners authorized to prescribe or dispense Schedule II
59 controlled substances, and the Diversion Investigative Unit of the
60 State Police, when acting in accordance with their official duties,
61 Federal Drug Enforcement Administration officials, and the
62 attorney general or any district attorney when conducting a bona
63 fide criminal investigation or prosecution of criminal violations
64 of this chapter, except that all requests for information from the
65 system by authorized agencies and boards must be approved by
66 the Department and the medical review group;

67 (3) the department is authorized to promulgate the regulations
68 governing the review of and access to information from the system

69 and the processing of requests for information by authorized
70 agencies or boards;

71 (4) the system shall be designed in all respects to preclude
72 improper dissemination of, or access to, information by utilizing
73 the most advanced and reliable security techniques and devices
74 and by restricting and carefully screening the personnel employed
75 to operate the system;

76 (5) a record-keeping system of all data that is disseminated shall
77 be maintained by the Department. Persons who receive said in-
78 formation shall not disseminate it further to anyone other than
79 a party authorized to have access. Information, once dissemin-
80 ated, shall not be maintained in any other manual or automated
81 data base, other than the one operated by the department, and
82 shall be destroyed as soon as it is no longer required to be
83 maintained by the party given access. Any person authorized by
84 section 23 (b) (3) who knowingly violates any provision of this
85 statute regarding access to or dissemination of the said
86 information shall be punished by a fine of not less than \$500.00
87 nor more than \$2,500.00, or by imprisonment for not more than
88 one year.

1 SECTION 2. Said section 23 is hereby further amended by
2 adding after paragraph (g) the following new paragraph: —

3 (h) There is hereby established within the department a
4 prescription monitoring system advisory board consisting of
5 thirteen members to be appointed by the Governor, five of whom
6 shall serve for a term of three years, four of whom shall serve for
7 a term of two years and four of whom shall serve for a term of
8 one year. The successor of each such member shall serve for a
9 term of three years, and until his successor is duly appointed and
10 qualified, except that any person appointed to fill a vacancy shall
11 serve only for the unexpired term. Any member of the board shall
12 be eligible for reappointment. The membership of the advisory
13 board shall include the commissioner of the department of public
14 health or his designee, the secretary of the executive office of
15 public safety, or his designee, both of whom shall serve ex officio,
16 representatives of the professions authorized to issue or dispense
17 Schedule II prescriptions, disciplinary authorities, law enforce-
18 ment, patient interests, privacy interest, and a person or persons

19 with expertise in the design or operation of secure automated data
20 systems.

21 The department shall not propose or promulgate regulations
22 under paragraph (b) without first consulting with the advisory
23 board and affording the board the opportunity to comment on
24 any plan for implementation of a prescription monitoring system.
25 The advisory board shall assist the department in designing
26 education programs for practitioners and patients relative to
27 appropriate practices regarding the issuing and dispensing of
28 Schedule II prescriptions and the proper use of Schedule II drugs.

1 SECTION 3. Section one of this act shall take effect one year
2 from date of pasage. Section two of this act shall take effect upon
3 passage.

