

MASSACHUSETTS CHAPTER, AMERICAN ACADEMY OF PEDIATRICS

ANNUAL MEETING

REPORT OF COUNSEL

EDWARD J. BRENNAN, JR., ESQ.

May 11, 2016

Over the past year the Chapter has been active on Beacon Hill advocating on behalf of children and pediatricians. Because this is an election year, the formal session of the Legislature ends on July 31, 2016. The following is a summary of the Chapter's Legislative activities for the year. This is not a final list. There may be other issues coming before the Legislature in the coming months which the Chapter will monitor and, when appropriate, take a position on issues of importance to the health, safety and welfare of children.

I. Opioid Legislation: Chapter 52 of the Acts of 2016: An Act Relative to Substance Abuse Treatment, Education and Prevention

A priority of Governor Baker and the Legislature this year was to enact a sweeping law to address the opioid scourge in Massachusetts. Highlights of the law are as follows:

Prescribing of Opioids.¹

- Imposes a 7 day limit on prescribing of opioids to a patient for the first time. Minors every time, with parental notification. Outpatient only. Exceptions for acute medical conditions, chronic pain, cancer and palliative care. Effective immediately.
- Prescribers must check the Prescription Monitoring Program (PMP) every time for Schedule II and III's. Effective October 15, 2016.
- Allows patients the option of partially filling an opioid prescription. The pharmacist must notify the prescriber within 7 days. Prescribers must discuss with the patient the quantity of the prescription and the option to partial fill. Remainder of the prescription becomes void. Effective immediately.
- All prescribers must complete appropriate training in pain management and addiction, to be determined by boards of registration.
- Prescriptions for extended-release long-acting opioids require the prescriber and patient to enter into a written pain management treatment agreement. Effective immediately.
- Requires DPH to establish a voluntary non-opiate directive form, indicating to all practitioners that an individual does not want to be administered or offered a prescription or medication order for an opioid. Directive may be revoked at any time, in writing or verbally. Directive to be recorded in patient's medical records. Exemptions for emergencies. Liability protections for prescribers and pharmacists. Effective December 1, 2016.
- Establishes a "benchmarking" mechanism for prescribers. DPH determines mean and median quantity and volume of prescriptions for opiates, within categories of similar specialty or

¹ A summary and guidance addressing several key changes to the prescribing laws, prepared by Massachusetts Medical Society, is attached to this Report of Counsel.

practice types. Prescribers who exceed mean or median will be sent notice. Rankings are confidential, are not admissible as evidence in a civil or criminal proceeding and are not to be used as the sole basis for an investigation by the board. Effective March 1, 2017.

Substance Abuse Screening in Schools- SBIRT.

- Each public school district shall utilize a verbal screening tool; such as, SBIRT to screen pupils for substance abuse disorders on an annual basis at 2 different grade levels as recommended by the Department of Education in consultation with DPH.
- A pupil or parent may opt out of screening.
- Any statement or disclosure made by a student during screening is confidential and cannot be disclosed without consent of student or parent/guardian, except in case of immediate medical emergency.
- De-identified screening results must be reported to DPH.

Emergency Department Substance Abuse Evaluations.

- The law requires overdose and naloxone patients in emergency departments to undergo a substance abuse evaluation by a licensed mental health professional or through ESP within 24 hours. Can't be discharged before 24 hours or before evaluation, whichever comes first. Clinician's cannot be held liable in a civil suit for releasing a patient who does not wish to remain in the ED after stabilization but before a substance abuse evaluation has taken place. Parents of overdose minors must be notified. ED's must notify a patient's primary care provider, if known. Private insurers must pay for substance abuse evaluations without prior authorization. Effective July 1, 2016.

II. Pending Legislation.

1. Tobacco. The Senate has passed S.2234, which would (i) raise the age of sale of tobacco products across the Commonwealth from 18 to 21; (ii) Regulate E-cigarettes and treat these products as tobacco products; (iii) Ban the sale of nicotine liquids and gels without child resistant packaging; and (iv) Ban the sale of all tobacco and nicotine delivery products in pharmacies and health care institutions. The Chapter supports S.2234.

2. Lead Abatement. Legislation to lower the standards of lead exposure intervention from the current MA lead poisoning standard of 25 µg/dL to 10 micrograms per deciliter. The bill, H 2049 would increase tax credits for property owners who de-lead their housing units. The Chapter supports H.2049, which has been reported favorably from The Health Care Financing Committee.

3. Immunization—Personal Exemption. Legislation was filed to add a personal exemption to the Massachusetts childhood immunization law, which would allow a parent to refuse to have his/her child immunized for "personal reasons." Currently, Massachusetts only allows religious exemptions. The Chapter strongly opposes S.317. The bill was sent to a study by the Education Committee, which effectively kills the bill.

4. Nurse Practitioners - Independent Practice. The Massachusetts Coalition of Nurse Practitioners filed legislation (H.1996 & S.1207) to grant nurse practitioners independent practice by eliminating the statutory provision requiring NPs to practice under the supervision of a physician, and removing the Board of Registration in Medicine from its current role in jointly regulating with the Board of Registration in Nursing the scope of practice of NPs. The scope of practice of NPs would be left

solely with the Nursing Board. Moreover, the bill would expand their scope of practice by allowing NPs to interpret tests. The bills are currently before the Health Care Financing Committee. The Chapter opposes the legislation.

5. MCPAP. H. 1785 would codify the MCPAP program within the Department of Mental Health, and expand it to provide access to behavioral health consultations for patients with postpartum depression, as part of a MCPAP for Moms program (already included in state budget). The bill would also codify in the General Laws the state budget requirement that health insurance companies contribute their fair share to the operation of the MCPAP program. The bill received a favorable report from the Health Care Financing Committee.

6. Conversion Therapy Ban. The Chapter supports H.97 which would prohibit conversion or reparative therapy. Such alleged “therapy” would seek to change a minor’s sexual orientation or gender identity. It has no validation in science, and poses significant risk to children and their families. The bill has been reported favorably by the Committee on Children and Family and the Health Care Financing Committee. It is on the House calendar.

7. Physical Education. The Chapter supports S. 318, which will help ensure that quality physical education (PE) will be provided in schools by requiring that PE be taught as a required subject in all grades, that it is taught by licensed and certified teachers, that there be no substitution of other instruction or activities. The bill passed the Senate and is now before the House.

8. Gender Identity and Nondiscrimination. The chapter supports S.735, which would add to the state’s nondiscrimination law gender identity. The bill would require a public accommodation that lawfully segregates or separates access to such accommodation or entity based on a person’s sex to grant access to such accommodation or entity consistent with the person’s gender identity. The so-called transgender bill is before the Senate for debate on May 12, and a separate House bill (H.1577) has been reported favorably from the Judiciary Committee to the House.

9. State Budget. The House recently passed its version of the state budget. The Chapter supported amendments: (i) to increase funding for early intervention, which was adopted; (ii) require health insurers to pay their fair share of MCPAP, adopted; (iii) increase funding for DPH smoking cessation program, which was not adopted. The Senate will take up the budget in late May and the Chapter will continue to support these programs.