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MEMORANDUM

TO: Thomas Scott, M.A.S.S.
FROM: Leslie Carey, Long & DiPietro, LLP
DATE: March 25, 2016
RE: Opioid Addiction Prevention Bill (H. No. 4056)

SUMMARY:

On March 14, 2016, just six days after it was filed, Governor Charlie Baker signed into law "An Act relative to substance use, treatment, education and prevention" (H. No. 4056) hereinafter referred to as "Law". The Law aims to prevent and curtail opioid and heroin abuse in the Commonwealth in a multitude of ways, many of which will directly impact schools and students.

Most significantly for M.A.S.S., the Law mandates that schools and districts; 1) create substance abuse and education policies informed by DESE and Massachusetts Board of Health; 2) (with some exceptions) must verbally conduct student substance abuse screenings with nonidentifying reporting requirements, and; 3) incorporate addiction and substance abuse education into driver education curriculum and concussion safety training.

Please review the school relevant provisions of the Law noted below in order of section. The majority directly impose new or heightened requirements on schools. The remainders are included because they have an impact on schools and minor students despite not requiring school action.

SCHOOL MANDATES:

1. Drivers Education

Section 14 amends M.G.L. c. 71, sec. 13D to require schools to "include a module on the science related to addiction and addictive substances, including the impact of psychoactive substances on the brain and the effect of such substances on a person while operating a motor vehicle" in driver education course curriculum.

Sections 16-18 amend M.G.L. c. 90, secs. 8 and 32G, to incorporate language nearly identical to that quoted in Section 14 above regarding the required inclusion of addiction substance education into driver education course curriculum.

2. Policy on Addiction/Substance Abuse Required

Section 15 amends M.G.L. c. 71, sec. 96 to require each public school, including charter schools, to “have a policy regarding substance use prevention and the education of its students about the dangers of substance abuse.” Each school “shall notify the parents or guardians of all students attending the school of the policy and shall post the policy on the school’s website.” School committees, in conjunction with superintendents (or boards of trustees in the case of a charter school), are responsible for creating the policy and any “standards and rules enforcing the policy.” DESE, in consultation with the Massachusetts Department of Public Health, must provide “guidance and recommendations” to schools relative to the development and implementation of effective “substance use prevention and abuse education policies,” made publically available on the DESE website and be regularly reviewed and updated to reflect “research and best practices.” Each district and charter school is required to file its policies with DESE.

Under **Section 66** of the Law, M.A.S.S., M.S.C., and the Massachusetts Charter Public School Association shall each provide an update to DESE, the joint committee on education and the joint committee on mental health and substance abuse on efforts to ensure compliance with M.G.L. c. 71, Section 96 no later than July 1, 2016.

3. Verbal Screening Tool

Section 15, amended M.G.L. c. 71 by striking out Section 96 and inserting the new Sections 96 and 97, and also provides that, subject to appropriation, by the **2017-2018 school year** (deadline provided for under **Section 63** of the Law) all district, vocational and charter schools must “utilize a verbal screening tool” to screen students for a substance use disorders annually at two different grade levels (levels to be determined by DESE in consultation with the Massachusetts Department of Public Health). Parents or guardians must be notified of the screening at the beginning of the school year and may choose to opt out at any time prior to or during screening (opt-out form to be created by DESE under **Section 64** of the Law). Screening results that have been redacted to eliminate identifying information must be reported to the Department of Public Health no later than ninety (90) days after the screening has been completed. Any “statement, response or disclosure” made by a student during a screening shall be confidential and shall not be disclosed without prior written consent of the student, parent or guardian “except in cases of immediate medical emergency or a disclosure is otherwise required by state law.” Any consent must be documented on a Massachusetts Department of Public Health approved form and “shall not be subject to discovery or subpoena in any civil, criminal, legislative or administrative proceeding.” No record of any student’s statement, response or disclosure during screening shall be made in any form that includes student identifying information.

DESE is required to notify each school district of the screening mandate in writing. Any school district with alternative substance abuse screening policies already in place may, on a

DESE-provided form, opt out of the otherwise required verbal screening tool. The district opt-out form must be signed by the superintendent and “provide a detailed description” of the alternative policies as well as “reasons why the required verbal screening tool is not appropriate for the district.”

4. Concussion Education

Section 33 amends M.G.L. c. 111, sec. 222(a) to require the inclusion of education about opioid use and misuse during concussion safety training. The Department of Public Health’s bureau of substance abuse will be responsible for providing educational materials for distribution to all students participating in an extracurricular athletic activity prior to the start of the athletic season.

ADDITIONAL PROVISIONS POSSIBLY IMPACTING SCHOOLS / MINOR STUDENTS:

1. Safe School Commission

Sections 11-13 amend M.G.L. c. 69, sec. 1P to modify Safe and Supportive School Commission membership to include a “representative of Massachusetts recovery high schools with expertise in adolescent substance use disorders,” to be appointed by the Secretary of Education.

2. 7 Day Limit on Prescription Duration – May Affect In-School Distribution of Medication by Nurse

Section 24 amends M.G.L. c. 94C by inserting Section 19D, imposing a seven day supply limit not only upon all first-time opiate prescriptions, but also upon every opiate prescription prescribed to a minor at any time, unless one of the following exceptions apply: an acute medical condition requiring more than a seven day supply in the doctor’s professional judgment, chronic pain, pain associated with cancer, or pain while patient is in palliative care. A practitioner must discuss the risks associated with opiate use and the reasons why an opiate prescription is necessary with the parent or guardian of a minor for which he prescribes opiates.

3. Good Faith Administration of Narcan

Section 37 amends M.G.L. c. 112 by inserting Section 12FF, expanding the “Good Samaritan Law” to ensure liability protection to anyone administering naloxone [“Narcan”] or any other opioid antagonist in good faith during emergency care, absent gross negligence or willful or wanton misconduct.

4. Grants to Target Substance Abuse

Section 56 amends Item 4000-0005 of Section 2 of Chapter 46 of the Acts of 2014 by authorizing violence prevention grants to be used to target youth substance misuse.

CONCLUSION:

All districts and schools should immediately begin working toward compliance with the mandates outlined above. Care should be taken to satisfy these new requirements while remaining in compliance with existing obligations to instruct students in “the effects of alcoholic drinks and of stimulants, including tobacco, and narcotics on the human system” under M.G.L. c. 71, sec. 1, and obligations relative to concussion safety under M.G.L. c. 111, sec. 222.

Feel free to contact this office or your local counsel with any questions.