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LEGAL ADVISORY:

**MASSACHUSETTS SUBSTANCE USE, TREATMENT, EDUCATION AND
PREVENTION LAW, OFTEN REFERRED TO AS THE "OPIOID LAW"**

I. 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, St. 2016, c. 52) ("Law"). The Law is often referred to as the "Opioid Law," as it aims to prevent and curtail opioid and heroin abuse in the Commonwealth in the midst of the opioid abuse epidemic. M.G.L. c. 71, §§ 13D, 96 and 97, M.G.L. c. 90, §§ 8 and 32G, and M.G.L. c. 111, § 222(a), all as amended by St. 2016, c. 52, directly impact Massachusetts schools and students via provisions creating new or heightened policy, screening, reporting and education requirements.

Most significantly for districts statewide, the Law mandates that schools: 1) create substance abuse and education policies informed by the Massachusetts Department of Elementary and Secondary Education ("DESE") and the Massachusetts Department of Public Health ("DPH"); 2) verbally conduct student substance abuse screenings with nonidentifying reporting requirements (subject to appropriation and opt-outs); and 3) incorporate addiction and substance abuse education into schools' driver education curriculum and concussion safety training. Other provisions discussed herein may also have an impact on schools and minor students, even without requiring district or school action.

II. SCHOOL MANDATES:

A. Policy Regarding Substance Use/Abuse Prevention and Education Required

Section 15 of the Law amended M.G.L. c. 71, § 96 by striking out the prior § 96 and inserting the new §§ 96 and 97, with the new § 96 requiring 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 DPH, must provide “guidance and recommendations” to schools relative to the development and implementation of effective “substance use prevention and abuse education policies,” made publicly available on the DESE website and regularly reviewed and updated to reflect “research and best practices.” Each district and charter school is required to file its policies with DESE.

DESE has required that each Superintendent of Schools file a “Substance Use Prevention and Education Policy” on behalf of each school within his or her district, no later than 5:00pm on October 28, 2016, in accordance with DESE filing instructions. Filing instructions and additional DESE guidance can be found at: <http://www.doe.mass.edu/commissioner/?update=9/16/2016> and <http://www.doe.mass.edu/ssce/Guidance-SubstanceUsePrevention.pdf>. Guidelines include: (1) clearly defined goals; (2) community, parent/guardian, teacher, and student involvement; (3) strategies to encourage communication among students, parents/guardians, teachers, and administrators; (4) implementation of an evidence-based substance use prevention curriculum for grades 5 to 12, inclusive; (5) prohibitions against substance use as well as discipline and enforcement provisions; (6) intervention provisions and treatment opportunities; (7) a timetable for periodic review and revision of the policy. Additional guidance is organized by category, including: (1) leadership; (2) professional development; (3) access to resources and services; (4) academic and non-academic strategies; (5) policies and protocols; and (6) collaboration with families.

Under **Section 66** of the Law, the Massachusetts Association of School Superintendents, the Massachusetts Association of School Committees, and the Massachusetts Charter Public School Association were each required to provide an update to DESE, the Joint Committee on Education and the Joint Committee on Mental Health and Substance Abuse regarding efforts to ensure compliance with M.G.L. c. 71, § 96 no later than July 1, 2016.

B. Incorporation of Substance Use/Misuse and Addiction Education in Driver Education Curriculum and Concussion Safety Training Required

Section 14 of the Law amended M.G.L. c. 71, § 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 the driver education course curriculum.

Sections 16-18 of the Law amended M.G.L. c. 90, §§ 8 and 32G to incorporate language nearly identical to that quoted in Section 14 above regarding the required inclusion of addictive substances education into the driver education course curriculum.

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

C. Verbal Screening Tool Required (By the 2017-2018 School Year)

This requirement is subject to appropriation. Districts with a screening tool already in place can pursue opting out. Parents may opt out of their students being screened.

Section 15 of the Law amended M.G.L. c. 71, § 96 by striking out the prior § 96 and inserting the new §§ 96 and 97, with § 97 providing 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 substance use disorders annually at two different grade levels. Grade levels are to be determined by DESE in consultation with the DPH.

Screening results that have been redacted to eliminate identifying information must be reported to the DPH no later than ninety (90) days after the screening has been completed. No record of any student’s statement, response or disclosure during screening shall be made in any form that includes student identifying information. 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 if “disclosure is otherwise required by state law.” Any consent must be documented on a DPH approved form and “shall not be subject to discovery or subpoena in any civil, criminal, legislative or administrative proceeding.”

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.”

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. The opt-out form is to be created by DESE under **Section 64** of the Law.

III. ADDITIONAL PROVISIONS IMPACTING SCHOOLS / MINOR STUDENTS:

A. Safe School Commission

Sections 11-13 of the Law amended M.G.L. c. 69, § 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.

B. 7 Day Limit on Prescription Duration

Section 24 of the Law amended M.G.L. c. 94C by inserting § 19D, imposing a seven (7) 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 physician's professional judgment, chronic pain, pain associated with cancer, or pain while the patient is in palliative care. A physician 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.

C. Good Faith Administration of Narcan

Section 37 of the Law amended M.G.L. c. 112 by inserting § 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.

D. Grants to Target Substance Abuse

Section 56 of the Law amended 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.

IV. CONCLUSION

All districts should have updated or supplemented existing substance use/abuse policies as needed to comply with the Opioid Law, making sure to comply with DESE guidelines and filing requirements relative to substance use, prevention and education policies. Care should be taken to satisfy Opioid Law 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, § 1. Districts should have also incorporated addiction and substance abuse education into the driver education curriculum as well as concussion safety training.

By the 2017-2018 school year, subject to appropriation and opt-out as permitted, districts should have a verbal screening tool in place and be screening students for substance use disorders annually at two different grade levels, with non-identifiable results being reported to the DPH within ninety days. Districts must notify parents/guardians about this screening tool at the beginning of the 2017-2018 school year, prior to the start of screening.

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