

JOURNAL OF THE HOUSE.

Wednesday, July 16, 2008.

Met according to adjournment, at eleven o'clock A.M., with Mr. Donato of Medford in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows:

Prayer.

Eternal God, we believe that we live each moment of the day in Your presence for You are present everywhere. We also believe that Your help and guidance are constantly available to assist us as we carry out our daily routine and select our legislative and administrative choices. Your guidance enables us to make clear, logical and principled decisions as we struggle to enact relevant legislation which will meet the needs of the times. In these busy days, teach us to take the time to reflect on the importance of remaining faithful to our ideals, principles and goals in our decision-making activities. By our enthusiasm and creativity, may we continue to build confidence and hope in the future of our communities and Commonwealth.

Grant Your blessings to the Speaker, the members and employees of this House and their families. Amen.

Pledge of allegiance.

At the request of the Chair (Mr. Donato), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Statement Concerning Speaker DiMasi of Boston.

A statement of Mr. Rogers of Norwood concerning Speaker DiMasi of Boston was spread upon the records of the House, as follows:

Statement concerning Speaker DiMasi of Boston.

MR. SPEAKER: I would like to call to the attention of the House the fact that Speaker DiMasi will not be present in the House Chamber for today's sitting due to a death in his family. Any roll calls that he may miss today will be due entirely to the reason stated.

Resolutions.

The following resolutions (filed with the Clerk) were referred, under Rule 85, to the committee on Rules:

Ann M. Maguire.

Resolutions (filed by Ms. Peake of Provincetown) honoring Ann M. Maguire for her great life's work and many accomplishments; and

Monte Carlo Restaurant.

Resolutions (filed by Mr. Welch of Springfield) congratulating the Monte Carlo Restaurant on the occasion of its seventy-fifth anniversary;

Mr. Scaccia of Boston, for the committee on Rules, reported, in each instance, that the resolutions ought to be adopted. Under suspension of the rules, in each instance, on motion of Ms. Peake, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

Petitions.

Petitions severally were presented and referred as follows:

By Mr. Peterson of Grafton, petition (accompanied by bill, House, No. 4975) of George N. Peterson, Jr., and Edward M. Augustus, Jr. (by vote of the town) for legislation to establish the position of town manager of the town of Upton under the jurisdiction of the the board of selectmen of said town; and

Upton, town manager.

By the same member, petition (accompanied by bill, House, No. 4976) of George N. Peterson, Jr., and Edward M. Augustus, Jr. (by vote of the town) for legislation to repeal the law establishing a department of finance in the town of Upton;

Upton, finance department.

Severally to the committee on Municipalities and Regional Government.

Severally sent to the Senate for concurrence.

Papers from the Senate.

The following order (having been reported by the committees on Rules of the two branches, acting concurrently) came from the Senate with the endorsement that it had been adopted by said branch:

Ordered, That notwithstanding the provisions of Joint Rule 10, the committee on Municipalities and Regional Government be until Friday July 25, 2008 within which time to make its final report on current Senate documents numbered 2736 and 2738, relative to various local issues.

Municipalities and Regional Government, extension of time for reporting.

Under suspension of the rules, on motion of Ms. Harkins of Needham, the order was considered forthwith; and it was adopted, in concurrence.

Bills

Relative to housing rights for victims of domestic violence, rape, sexual assault and stalking (Senate, No. 2574) (on Senate, No. 755);

Housing discrimination.

Authorizing the Division of Capital Asset Management and Maintenance to grant an easement in certain land in the town Holden (Senate, No. 2794) (on Senate bill No. 2420); and

Holden, land conveyance.

Relative to children's mental health (Senate, No. 2804, amended in section 1, in lines 140 to 148, inclusive (as changed by the Senate committee on Bills in the Third Reading), by striking out the sentence contained therein and inserting in place thereof the following sentence: "The secretary shall establish guidelines for the department of children and families, the department of youth services, the department of public health, the department of mental retardation and the office of Medicaid, and, in consultation with commissioner of early education and care and the commissioner of elementary and secondary education, shall establish guidelines for those respective departments for the delivery of behavioral health services to children, including children subject to proceedings under sections 39E to 39J, inclusive, of chapter 119, pursuant to which the commissioner of mental health shall be consulted in the design and implementation of the commonwealth's behavioral health services for children."; in section 15, in line 305, by striking out the words

Children, mental health.

Children,
mental
health.

“enrollment card” and inserting in place thereof the following “new enrollment cards issued in the normal course of business, within one year,”; in section 18, in line 359, by striking out the words “and billing codes”; and in section 19 by inserting after line 435 the following paragraph:

“(vi) policies and protocols for a truancy prevention program certification by the department which may include mechanisms to provide technical assistance to school districts and to encourage each school district to adopt and implement a truancy prevention program which meets the certification criteria.”) (on Senate bill No. 2518);

Severally passed to be engrossed by the Senate, were read; and they were referred, under Rule 33, to the committee on Ways and Means.

Quincy,
land.

A Bill authorizing the city of Quincy to convey certain land (Senate, No. 2724) (on a petition) [Local Approval Received], passed to be engrossed by the Senate, was read; and it was referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Manchester-
by-the-Sea,
police
officers.

A petition of Bruce E. Tarr and Bradford Hill (by vote of the town) for legislation relative to the maximum age requirement for police officers in the town of Manchester-by-the-Sea, came from the Senate referred, under suspension of Joint Rule 7B, to the committee on Public Service.

The House then concurred with the Senate in the suspension of said rule; and the petition (accompanied by bill, Senate, No. 0000) was referred, in concurrence, to the committee on Public Service.

Petitions were referred, in concurrence, under suspension of Joint Rule 12, as follows:

Life
insurers,
reserves.

Petition (accompanied by bill, Senate, No. 0000) of Michael W. Morrissey for legislation relative to compliance with reserve requirements of life insurers. To the committee on Financial Services.

Hamilton and
Manchester-
by-the-Sea.

Petition (accompanied by bill, Senate, No. 0000) of Bruce E. Tarr and Bradford Hill for legislation to authorize the transfer of land in Hamilton and Manchester-by-the-Sea. To the committee on Municipalities and Regional Government.

Reports of Committees.

Sales tax
holiday.

By Mr. Scaccia of Boston, for the committee on Rules and the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the petition of John J. Binienda, William M. Straus and Bradley H. Jones, Jr., for legislation to provide for a two-day exemption from the sales tax in the month of August in the current year. Under suspension of the rules, on motion of Mr. Scaccia, the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Revenue. Sent to the Senate for concurrence.

Undocumented
aliens.

By Ms. Coakley-Rivera of Springfield, for the committee on Children, Families and Persons with Disabilities, on a petition, a Resolve providing for an investigation and study by a special commission relative to the impact of undocumented aliens residing in

the Commonwealth (House, No. 3869, changed in line 2, by striking out the words “and families” and inserting in place thereof the words “, families and persons with disabilities”). Read; and referred, under Joint Rule 29, to the committees on Rules of the two branches, acting concurrently.

By Mr. Pedone of Worcester, for the committee on Municipalities and Regional Government, on a petition, a Bill authorizing the town of Tewksbury to enter into a lease with the Division of Capital Asset Management (House, No. 4943). Read; and referred, under Rule 33, to the committee on Ways and Means.

Tewksbury,
land lease.

By Mr. Rodrigues of Westport, for the committee on Consumer Protection and Professional Licensure, on a petition, a Bill relative to all alcoholic beverages licenses in the town of Arlington (House, No. 4936) [Local Approval Received].

Arlington,
liquor
license.

By the same member, for the same committee, on a petition, a Bill authorizing the town of Northborough to grant additional alcoholic beverages license (House, No. 4937) [Local Approval Received].

Northborough,
Korean-BBQ
Kitchen.

By Mr. Pedone of Worcester, for the committee on Municipalities and Regional Government, on a petition, a Bill relative to employees of the town of Westborough (House, No. 4873) [Local Approval Received].

Westborough,
employee
regulations.

By the same member, for the same committee, on a petition, a Bill authorizing the town of Arlington to issue pension obligation bonds or notes (House, No. 4876) [Local Approval Received].

Arlington, pen-
sion
bonds.

By the same member, for the same committee, on a petition, a Bill relative to the charter of the town of Westborough (House, No. 4878) [Local Approval Received].

Westborough,
charter.

By the same member, for the same committee, on a message from His Excellency the Governor, a Bill validating the actions taken at a certain special town meeting in the town of Hopkinton (printed in House, No. 4888).

Hopkinton,
town
meeting.

By the same member, for the same committee, on a petition, a Bill to authorize the appointment of alternate members of the town of Canton historical commission (House, No. 4931) [Local Approval Received].

Canton,
historical
commission.

By the same member, for the same committee, on the joint petition, a Bill relative to the positions of treasurer and tax collector in the town of Becket (House, No. 4940) [Local Approval Received].

Becket,
treasurer and tax
collector.

By the same member, for the same committee, on a petition, a Bill relative to the water commissioners of the town of Sherborn (House, No. 4941) [Local Approval Received].

Sherborn,
water
commissioners.

By the same member, for the same committee, on a petition, a Bill relative to the town manager in the town of Westborough (House, No. 4944) [Local Approval Received].

Westborough,
town manager.

By the same member, for the same committee, on a petition, a Bill relative to authorization of a long term lease between the city of Cambridge and the Mount Auburn Memorial Post No. 8818, Veterans of Foreign Wars, Inc. (House, No. 4945) [Local Approval Received].

Cambridge,
land lease.

Severally read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Motion to Reconsider.

Richard K.
Ward III,
sick leave.

Mr. Rice of Gardner moved that the vote be reconsidered by which the House, at the preceding sitting, concurred with the Senate in its amendment (adding at the end the following sentence: "Sick leave bank days may not be used for absences unrelated to the illness or disability that necessitated the establishment of the sick leave bank as determined by the trial court.") to the House Bill establishing a sick leave bank for Richard K. Ward II, an employee of the department of correction (House, No. 4819); and the motion prevailed.

Pending the recurring question on concurring with the Senate in its amendment, the same member moved to amend it by striking out the words "trial court" and inserting in place thereof the word "department"; and the further amendment was adopted.

The House then concurred with the Senate in its amendment, as amended. Sent to the Senate for concurrence in the further amendment.

Orders of the Day.

House bills

Authorizing the consolidation of certain public hearings (House, No. 3234) (its title having been changed by the committee on Bills in the Third Reading);

Relative to affordable housing in the town of Chelmsford (House, No. 4758);

Authorizing and directing the Commissioner of Capital Asset Management and Maintenance to convey certain land in the town of Westport (House, No. 4949); and

Establishing the Massachusetts Creative Economy Council (House, No. 4965, amended);

Severally reported by the committee on Bills in the Third Reading to be correctly drawn, were read a third time; and they were passed to be engrossed. Severally sent to the Senate for concurrence.

Senate bills

Relative to the Martha's Vineyard land bank (Senate, No. 1180); and

Relative to the Recreation Revolving Fund in the town of Rutland (Senate, No. 2519); and

House bills

Further regulating exits in sports complexes (House, No. 1852, changed);

Relative to confined space rescue services (House, No. 2374); and

Exempting the position of police captain in the town of Hudson from the provisions of the civil service law (House, No. 4777);

Severally were read a second time; and they were ordered to a third reading.

The House Bill relative to kayak safety (House, No. 2382, amended), reported by the committee on Bills in the Third Reading to be correctly drawn, read a third time.

Third
reading
bills.

Second
reading
bills.

Kayak
safety.

Pending the question on passing the bill to be engrossed, Representatives Straus of Mattapoisett and Khan of Newton moved to amend it by substitution of a bill with the same title (House, No. 4981), which was read.

The amendment was adopted; and the substituted bill was passed to be engrossed. Sent to the Senate for concurrence.

Recess.

At half past eleven o'clock A.M., on motion of Ms. Rogeness of Longmeadow (Mr. Donato of Medford being in the Chair), the House recessed until the hour of one o'clock P.M.; and at ten minutes after one o'clock the House was called to order with Mr. Petrolati of Ludlow in the Chair.

Recess.

Emergency Measures.

The engrossed Bill establishing a sick leave bank for Shannon Crouse, an employee of the Trial Court (see House, No. 4866, amended), having been certified by the Clerk to be rightly and truly prepared for final passage, was considered, the question being on adopting the emergency preamble.

Shannon
Crouse,
sick leave.

A separate vote was taken, as required by the provisions of Article XLVIII (as amended by Article LXVII) of the Amendments to the Constitution; and the preamble was adopted, by a vote of 8 to 0. Sent to the Senate for concurrence.

The engrossed Bill establishing a sick leave bank for Mary Mercurio, an employee of the Department of Social Services (see House, No. 4868, amended), having been certified by the Clerk to be rightly and truly prepared for final passage, was considered, the question being on adopting the emergency preamble.

Mary
Mercurio,
sick leave.

A separate vote was taken, as required by the provisions of Article XLVIII (as amended by Article LXVII) of the Amendments to the Constitution; and the preamble was adopted, by a vote of 8 to 0. Sent to the Senate for concurrence.

The engrossed Bill establishing a sick leave bank for Sarah Carmichael, an employee of the Department of Youth Services (see House, No. 4882, amended), having been certified by the Clerk to be rightly and truly prepared for final passage, was considered, the question being on adopting the emergency preamble.

Sarah
Carmichael,
sick leave.

A separate vote was taken, as required by the provisions of Article XLVIII (as amended by Article LXVII) of the Amendments to the Constitution; and the preamble was adopted, by a vote of 8 to 0. Sent to the Senate for concurrence.

Engrossed Bills.

Engrossed bills

Authorizing the city of Cambridge to abate certain fiscal year 2003 real property taxes (see House, No. 4081);

Bills
enacted.

Relative to the leasing of certain property in the city of Waltham (see House, No. 4636); and

Bills
enacted.

Further protecting children (see House, No. 4811, amended); (Which severally originated in the House); Severally having been certified by the Clerk to be rightly and truly prepared for final passage, were passed to be enacted; and they were signed by the acting Speaker and sent to the Senate.

Recess.

Recess.

At thirteen minutes after one o'clock P.M., on motion of Mr. Peterson of Grafton (Mr. Petrolati of Ludlow being in the Chair), the House recessed until a half past one o'clock P.M.; and at twenty-two minutes before three o'clock the House was called to order with Mr. Petrolati in the Chair.

*Engrossed Bill — Land Taking.*Lexington,
land.

The engrossed Bill authorizing the Division of Capital Asset Management and Maintenance to transfer control of a certain parcel of land in the town of Lexington (see House, No. 4202) (which originated in the House), in respect to which the Senate had concurred in adoption of the emergency preamble, was put upon its final passage.

Bill enacted (land
taking), yea
and nay
No. 431.

On the question on passing the bill to be enacted, the sense of the House was taken by yeas and nays (this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution); and on the roll call 153 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 431 in Supplement.]

Therefore the bill was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

*Orders of the Day.*Quality
health
care.

The Senate Bill to promote cost containment, transparency and efficiency in the delivery of quality health care (Senate, No. 2660) was read a second time.

The amendment previously recommended by the committee on Ways and Means,— that the bill be amended by striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 4974,— was adopted.

The bill (Senate, No. 2660, amended) then was ordered to a third reading.

Subsequently, under suspension of the rules, on motion of Mrs. Walrath of Stow, the bill (having been reported by the committee on Bills in the Third Reading to be correctly drawn) was read a third time.

After remarks on the question on passing the bill to be engrossed, Ms. Grant of Beverly moved to amend it in section 2, in paragraph (b), by striking out the following: "16 members" and inserting in place thereof the following: "18 members", in said paragraph, in clause (ii), by striking out the following: "7 representatives" (as changed by the committee on Bills in the Third Reading) and inserting in place thereof the following: "9 representatives", in said clause, after the words "academic institution", by striking out the word "and" and

inserting in place thereof the following: "; and at the end of said paragraph, after the words "a purchaser of health insurance", by adding the following: "; and 2 clinicians, who must be either a physician or nurse practitioner and practice in a primary care or community hospital setting".

After remarks the amendments were adopted.

Mr. Jones of North Reading and other members of the House then moved to amend the bill by inserting after section 53 the following section:

"SECTION 53A. Section 15 shall take effect on November 1, 2009."

After remarks the amendment was adopted.

Mr. Jones and other members of the House then moved to amend the bill in section 42, in subsection (b), in paragraph 1, after the words "speaker of the house" the following: "; 1 person to be appointed jointly by the minority leader of the senate and the minority leader of the house of representatives"; and the amendment was adopted.

Mr. Jones of North Reading and other members of the House then moved to amend the bill by adding the following section:

"SECTION 57. (a) For the purposes of this section the following terms will have the following meanings:

'Prescriber', an individual licensed to prescribe medication according to Section 9 of Chapter 94C.

'Unused medication', any unused or expired prescription medications, including but not limited to, controlled substances and over the counter medications.

(b) There is hereby established a task force to investigate and study the disposal of unused medications, and to consider innovative and coordinated measures to prevent and reduce unused medications. The task force shall develop a pilot program for the safe disposal of unused medications. The department shall implement said pilot program. The task force shall remain as an advisory body to the department.

The task force shall consist of the following member: the commissioner of the department of public health, or his designee, who shall serve as chair of the task force; the commissioner of the department of environmental protection or his designee; commissioner of the department of public safety or his designee; 3 members of the house of representatives, 2 of whom shall be appointed by the speaker of the house and 1 of whom shall be appointed by the house minority leader; 3 members of the senate, 2 of whom shall be appointed by the senate president and 1 of whom shall be appointed by the senate minority leader; the diversion program manager of the Federal Drug Enforcement Administration for the New England Field Division or his designee; one member from the board of registration of pharmacists; one member from the board of the registry in medicine; a representative from the Massachusetts department of public health, bureau of substance abuse services; a representative from Massachusetts biotechnology council; a representative of Massachusetts association of health plans; a representative from Massachusetts pharmacy association; a representative of the Massachusetts Aging Services Association.

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(c) The task force shall investigate and report the following entities, but not be limited to, (1) data collected on the types and quantities of unused or expired medications not being used by consumers, (2) the results of a survey that investigates why consumers are not utilizing medications, (3) analysis of the prescribing policies of entities, such as health insurance plans or prescriber practices which result in significant amounts of unused medications, (4) a quantification of the amount healthcare dollars wasted on unused medications and (5) research detailing any or all other reasons for unused medications.

The task force shall develop a pilot program to take-back unused medications to be implemented by the department. The pilot program may include, but not be limited to, secure locations for the drop-off and collection of unused medications, processes for the documentation of collected unused medication, processes for the environmentally safe disposal of unused medications, and public education of potential participating consumers. Said pilot program shall include measures to improve training and expansion of physician awareness regarding the types of medications being prescribed with excess amounts remaining unused by the intended consumer. Said pilot program shall include measures to expand public education regarding patient adherence to prescribed medications, education regarding proper and effective disposal of unused medications, and the potential need for expanded use of warning labels on drugs that present potentials for dependence and addiction.

The department shall implement, under advisory of the task force, said pilot program to take-back unused medications for safe disposal.

(d) Said task force shall report to the speaker of the house of representatives, the president of the senate, the house and senate clerks, and the house and senate chairs of the joint committee on public health the results of the investigation and study and proposal for said pilot program on or before July 1, 2009.”.

The amendment was adopted.

Ms. Malia of Boston and other members of the House then moved to amend the bill by striking out section 12 and inserting in place thereof the following section:

“SECTION 12. The General Laws are hereby amended by inserting after chapter 268B the following chapter:—

CHAPTER 268C.

Health Care Practitioner and Pharmaceutical and Medical Device Manufacturer Conduct.

Section 1. As used in this chapter, the following words shall have the following meanings:

‘Gift’, a payment, entertainment, meals, travel, honorarium, subscription, advance, services or anything of value, unless consideration of equal or greater value is received and for which there is a contract with specific deliverables which are not related to marketing and are restricted to medical or scientific issues; provided, however, that a gift shall not include (1) anything of value received by inheritance; (2) a gift received from a member of the health care practitioner’s immediate family or from a relative within the third

degree of consanguinity of the health care practitioner or of the health care practitioner’s spouse or from the spouse of any such relative; (3) prescription drugs provided to a health care practitioner solely and exclusively for use by the health care practitioner’s patients; (4) peer reviewed academic, scientific or clinical informational materials; (5) product-specific, printed informational materials developed for use by health care practitioners; or (6) printed informational materials developed exclusively for use by patients.

‘Health care practitioner’, a person who prescribes prescription drugs for any person and is licensed to provide health care, or a partnership or corporation comprised of such persons, or an officer, employee, agent or contractor of such person acting in the course and scope of his employment, agency or contract related to or in support of the provision of health care to individuals.

‘Immediate family’, a spouse and any dependent children residing in the reporting person’s household.

‘Medical device’, an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, which is: (1) recognized in the official National Formulary or the United States Pharmacopeia or any supplement thereto; (2) intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease, in persons or animals; or (3) intended to affect the structure or function of the body of a person or animal, and which does not achieve its primary intended purposes through chemical action within or on such body and which is not dependent upon being metabolized for the achievement of its primary intended purposes.

‘Person’, a business, individual, corporation, union, association, firm, partnership, committee or other organization.

‘Pharmaceutical or medical device manufacturer agent’, a pharmaceutical or medical device marketer or any other person who for compensation or reward does any act to promote, oppose or influence the prescribing of a particular prescription drug, medical device, or category of prescription drugs or medical devices; provided, however, that ‘pharmaceutical or medical device manufacturer agent’ shall not include a licensed pharmacist, licensed physician or any other licensed health care practitioner with authority to prescribe prescription drugs who is acting within the ordinary scope of the practice for which he is licensed.

‘Pharmaceutical or medical device manufacturing company’, any entity that participates in a commonwealth health care program and which is engaged in the production, preparation, propagation, compounding, conversion or processing of prescription drugs or medical devices, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling or distribution of prescription drugs; provided, however, that “pharmaceutical or medical device manufacturing company” shall not include a wholesale drug distributor licensed under section 36A of chapter 112 or a retail pharmacist registered under section 37 of said chapter 112.

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'Pharmaceutical or medical device marketer', a person who, while employed by or under contract with a pharmaceutical or medical device manufacturing company that participates in a commonwealth health care program, engages in detailing, promotional activities or other marketing of prescription drugs or medical devices in the commonwealth to any physician, hospital, nursing home, pharmacist, health benefits plan administrator, other health care practitioner or person authorized to prescribe, dispense or purchase prescription drugs; provided, however, that the 'pharmaceutical or medical device marketer' shall not include a wholesale drug distributor licensed under section 36A of chapter 112, a representative of such a distributor who promotes or otherwise markets the services of the wholesale drug distributor in connection with a prescription drug or a retail pharmacist registered under section 37 of said chapter 112 if such person is not engaging in such practices under contract with a manufacturing company.

'Physician', a person licensed to practice medicine by the board of registration in medicine under section 2 of chapter 112 who prescribes prescription drugs, or the physician's employees or agents.

'Prescription drugs', drugs upon which the manufacturer or distributor has placed or is required by federal law and regulations to place the following or a comparable warning: 'Caution federal law prohibits dispensing without prescription'.

Section 2. No pharmaceutical or medical device manufacturer agent shall knowingly and willfully offer or give to a health care practitioner, a member of a health care practitioner's immediate family, a health care practitioner's employee or agent, a health care facility or an employee or agent of a health care facility, a gift of any value. Nothing in this section shall prohibit: (1) the provision, distribution, dissemination, or receipt of peer reviewed academic, scientific or clinical informational materials; (2) the provision, distribution, dissemination, or receipt of product-specific, printed informational materials developed for use by health care practitioners; (3) the provision, distribution, dissemination, or receipt of printed informational materials developed exclusively for use by patients; or (4) the purchase of advertising in peer reviewed academic, scientific or clinical journals.

Section 3. (a)(1) By July 1 of each year, every pharmaceutical or medical device manufacturing company shall disclose to the department of public health the value, nature, purpose and recipient of any fee, payment, subsidy or other economic benefit not prohibited in Section 2, which the company provides, directly or through its agents, to any physician, hospital, nursing home, pharmacist, health benefit plan administrator, health care practitioner or other person in the commonwealth authorized to prescribe, dispense, or purchase prescription drugs or medical devices in this state. For each expenditure, the company shall identify the recipient and the recipient's address, credentials, institutional affiliation and state board or Drug Enforcement Administration numbers.

(2) Each company subject to this section shall disclose to the department of public health the name and address of the individual responsible for the company's compliance with this section or, if

this information has been previously reported to the department, any changes to the name or address of the individual responsible for such compliance.

(3) The report shall be accompanied by the payment of a fee, to be determined by the department of public health, to pay the costs of administering this section.

(b)(1) Information submitted to the department of public health pursuant to this section shall constitute public records except to the extent that it includes information that is protected by state or federal law as a trade secret.

(2) Notwithstanding any other law to the contrary, the identities of health care practitioners and other recipients of gifts, payments and materials required by this chapter to be reported shall not constitute confidential information or trade secrets protected by this section.

(3) The department of public health shall make all disclosed data publicly available and easily searchable on its website.

(c) The department of public health shall report to the attorney general any payment, entertainment, meals, travel, honorarium, subscription, advance, services or anything of value provided in violation of this chapter, including anything of value provided when consideration of equal or greater value was not received or which was not subject to a contract with specific deliverables restricted to medical or scientific issues.

Section 4. The department of public health, in consultation with the board of registration in pharmacy and board of registration in medicine, shall adopt regulations requiring the licensing of all pharmaceutical and medical device manufacturer agents. As a prerequisite to such licensing, pharmaceutical and medical device manufacturer agents shall complete such training as may be deemed appropriate by the department. As a prerequisite to the renewal of such licenses, pharmaceutical and medical device manufacturer agents shall complete continuing education as the department deems appropriate. The fee for such licenses shall be determined by the department of public health, in conjunction with the board of registration in pharmacy and the board of registration in medicine at a rate sufficient to provide for the administration and enforcement of this chapter. Revenue generated from this fee shall be divided in equal shares, with 75 per cent allocated for the use of the department of public health and 25 per cent allocated for the use of the office of attorney general for the administration of this chapter.

Section 5. This chapter shall be enforced by the attorney general, the district attorney with jurisdiction over a violation or the department of public health. A person who violates this chapter shall be punished by a fine of not more than \$5,000 for each transaction, occurrence or event that violates this chapter."

After debate the amendment was rejected.

Ms. Provost of Somerville then moved to amend the bill in section 8, at the end of the definition of "Serious reportable event", the following sentence: "The department shall adopt regulations to create a list of serious reportable events consistent with the list established by the National Quality Forum.", and in said section, in

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line 31, after the word “transmit”, and also in line 33, before the word “publication”, by inserting, in each instance, the words “facility-specific”.

After remarks the amendments were rejected.

The same member then moved to amend the bill in section 8 by adding the adding the following three paragraphs:

“(d) The department shall adopt regulations prohibiting a health care facility from charging or seeking reimbursement for services associated with a serious reportable event. In adopting the regulations, the department shall consider that the list of serious reportable events established under subsection (a) is intended to facilitate public reporting and was not designed to serve as a basis for determining whether reimbursement shall be sought or forgone. A health care facility shall not charge or seek reimbursement for a serious reportable event that the health care facility has determined, through a documented review process, was: (i) preventable; (ii) within its control; and (iii) unambiguously the result of a system failure based on the health care provider’s policies and procedures.

(e) The health care facility shall include in any ongoing reporting of serious reportable events to the department of public health, the decision to seek or forgo reimbursement and charges for the serious reportable event. The department may review any such reports for consistency with the regulations promulgated under subsection (b).

(f) Notwithstanding any general or special law to the contrary, all communications and documentation regarding whether reimbursement for health care services that are directly associated with an occurrence of a serious reportable event shall be sought or forgone shall be privileged and confidential, shall be exempt from the disclosure of public records under section 10 of chapter 66 and shall not be subject to subpoena or discovery or introduced into evidence in any judicial or administrative proceeding.”.

The amendment was rejected.

Ms. Provost then moved to amend the bill in section 55, in line 1, by striking out the year “2012” and inserting in place thereof the year “2010”; and the amendment was rejected.

Mr. Kennedy of Brockton then moved to amend the bill in section 9 by striking out subsection 53G; and by striking out section 47; and the amendments were rejected.

The same member then moved to amend the bill in section 6, in subsection 25M, in paragraph (b), by inserting after the words “appointed by the Governor:” the following: “1 of whom shall be a representative of the Massachusetts Extended Care Federation”; and the amendment was adopted.

Mr. Rushing of Boston and other members of the House then moved to amend the bill by adding at the end of section 4 the following subsection:

“Section 6F. Any implementation plan created by the health information technology advisory council or recipient of monies for the adoption of health information technology approved by the health information technology advisory council shall:

(1) establish a mechanism to allow patients to opt-in to the health information network and to opt-out at any time;

(2) maintain identifiable health information in physically and technologically secure environments by means including but not limited to prohibiting the storage or transfer of identifiable health information on portable data storage devices, requiring data encryption, unique alpha-numerical identifiers, password protection, and other methods to prevent unauthorized access to identifiable health information; and

(3) provide individuals the option of, upon request, obtaining a list of individuals and entities that have accessed their identifiable health information.”.

The amendment was adopted.

Mr. Donato of Medford being in the Chair,—

At a quarter after four o’clock P.M., on motion of Mr. Petrolati of Ludlow, the House recessed until a quarter before five o’clock; and at four minutes after five o’clock the House was called to order with Mr. Donato in the Chair. Recess.

Mr. Rushing of Boston and other members of the House then moved to amend the bill by adding at the end of section 4 the following subsection:

“Section 6G. In the event of an unauthorized access to or disclosure of individually identifiable patient health information by or through the statewide health information network or by or through any technology grantees funded in whole or in part under this section, the operator of such network or grantee shall: (i) report the conditions of such unauthorized access or disclosure as required by the Massachusetts Technology Collaborative; and (ii) provide notice, as defined in section 1 of chapter 93H of the General Laws, as soon as practicable, but not later than 10 business days, to person whose patient health information may have been compromised as a result of such unauthorized access or disclosure, and shall report the conditions of such unauthorized access or disclosure.

Any aggrieved individual claiming violations of GL chapter 40J sec. 6D may bring a civil action in Superior Court. The Attorney General may bring a civil action in Superior Court to enforce GL chapter 40J, sec 6D.

A court shall find a violation of this chapter and order relief if it determines that any of the following circumstances has occurred:—

(1) the failure to impose and maintain safeguards for the confidentiality and security of protected health information as required by this statute or any rule or regulation promulgated pursuant to this chapter;

(2) the disclosure of protected health information in violation of this chapter; or

(3) any other violation of this chapter.

The court may order a health information network or any participating entity or individual to comply with this chapter and may order any other appropriate civil or equitable relief, including an injunction to prevent non-compliance. If the court determines that there has been a violation of this chapter, the aggrieved person is entitled to recover damages for losses sustained as a result of this violation. The measure of damages shall be the greater of the aggrieved person’s actual damages, or liquidated damages of \$1,000

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for each violation, provided that liquidated damages shall not exceed \$10,000 for any particular claim.

If the court determines that there has been a violation of this chapter that results from willful or grossly negligent conduct, the aggrieved person may recover punitive damages not to exceed \$10,000, exclusive of any other loss, for each violation from the offending party.

If the aggrieved person prevails, the court shall assess reasonable attorney's fees and all other expenses reasonably incurred in the litigation against the non-prevailing parties.

Responsible parties are jointly and severally liable for any compensatory damages, attorney's fees or other costs awarded.

Any action under this section is barred unless the action is commenced within three years after the cause of action accrues or was or should reasonably have been discovered by the aggrieved person or the person's lawful representative.

No employee shall be terminated, discharged, or retaliated against because he does any of the following based on a reasonable belief that an activity, policy or practice of the employer or another entity with whom the employer has a relationship is in violation of this chapter or any rule or regulation promulgated pursuant to this chapter:

- (1) objects to or refuses to participate in any such activity, policy or practice of the employer;
- (2) discloses or threatens to disclose such activity, policy or practice to a manager or to a public body; or
- (3) provides information to or testifies before any public body conducting an investigation, hearing or inquiry into any violation of this chapter, or rule or regulation promulgated pursuant to this chapter."

The amendment was adopted.

Mr. Bosley of North Adams then moved to amend the bill in section 12, in subsection 2, by inserting at the end of paragraph (a) the following sentence: "Adoption of the most recent version of the Code on Interactions with HealthCare Professionals developed by the Advanced Medical Technology Association satisfies the requirements of this subsection."; and the amendment was adopted.

Mrs. Walrath of Stow then moved to amend the bill in section 2 by inserting before paragraph (e) the following two paragraphs:

"Insurers and health care providers shall submit data to the council, to an independent health care organization with which the council has contracted, or to the division of health care finance and policy, as required by the council's regulations. The council, through its rules and regulations, may determine what type of information may reasonably be required and the format in which it should be provided.

If any insurer or health care provider fails to submit required data to the council on a timely basis, the council shall provide written notice to the insurer or health care provider. An insurer or health care provider that fails, without just cause, to provide the required information within 2 weeks following receipt of the written notice may be required to pay a penalty of \$1,000 for each week of delay;

provided, however, that the maximum annual penalty under this section shall be \$50,000."; in section 15, in subsection 39D (a), by striking out the definition of "Pharmacy benefits manager"; and in section 31, in paragraph (b), in the fourth sentence, by striking out the words "private institutions of higher education institutions in partnership with public institutions of higher education" and inserting in place thereof the words "private higher education institutions, private higher education institutions in partnership with public higher education institutions".

The amendments were adopted.

Ms. Khan of Newton then moved to amend the bill in section 6, in subsection 25M, paragraph (b), by striking out the following: "1 of whom shall be a registered nurse, registered under section 74 of said chapter 112" and inserting in place thereof the following: "1 of whom shall be a representative of the Massachusetts Organization of Nurse Executives"; and the amendment was adopted.

Mr. Koutoujian of Waltham then moved to amend the bill by adding the following section:

"SECTION 58. Section 26 shall take effect on January 1, 2009."

The amendment was adopted.

The same member then moved to amend the bill in section 26 by inserting after the definition of "Participating Provider" the following definition:

"'Physician's Assistant', a person duly registered by the Board of Registration in Medicine and meets all requirements of Sections 9E and 9F of Chapter 112 and regulations promulgated thereafter.", and in said section, in subsection 2, in the first sentence, both times it appears, in subsection 3, both times it appears, and in subsection 5, by inserting after the words "nurse practitioners", in each instance, the words "and physician's assistants".

The amendments were adopted.

Mr. Dempsey of Haverhill and other members of the House then moved to amend the bill by striking out section 47 and inserting in place thereof the following section:

"SECTION 47. Any entity providing ambulatory surgical center services which is in operation or under construction, as determined by the department of public health, on December 31, 2008 shall be exempt from the determination of need requirement of said section 53G of said chapter 111 and shall be eligible for up to 6 months after the effective date of regulations promulgated by the department pursuant to said section 53G of said chapter 111 to be granted a clinic license. For the purposes of this section under construction shall be defined as having made application for a building permit including, but not limited to, applying to environment, historical or any other boards necessary for approval."

The amendment was adopted.

Ms. Callahan of Sutton and other members of the House then moved to amend the bill in section 6, in subsection 25L, in paragraph (a), in clause (ii), by striking out the words "monitor trends in access to primary care and physician subspecialties and nursing services" and inserting in place thereof the words "monitor trends in access to primary care providers, nurse practitioners practicing as

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primary care providers, and other physician and nursing providers.”, in said clause (ii), in subclause (3), by inserting after the word “medical” the words “and nursing”, in said subclause (3), by inserting after the word “physicians” the words “and nurse practitioners practicing as primary care providers”, and in said section by striking out subsection 25M and inserting in place thereof the following subsection:

“Section 25N. (a) There shall be a health care workforce loan repayment program, administered by the health care workforce center established by section 25L. The program shall provide repayment assistance for medical school loans to participants who: (i) are graduates of medical or nursing schools; (ii) specialize in family health or medicine, internal medicine, pediatrics, or obstetrics/gynecology and commit to providing those specialties in medically underserved areas for a minimum of 2 years or specialize in psychiatry and commit to providing public sector psychiatry at state facilities under the control of or contract with the department of mental health for a minimum of 2 years; (v) demonstrate competency in health information technology including, use of electronic medical records, computerized physician order entry and e-prescribing; and (vi) meet other eligibility criteria, including service requirements, established by the board.

(b) The center shall promulgate regulations for the administration and enforcement of this section which shall include penalties and repayment procedures if a participant fails to comply with the program’s requirements.

The center shall, in consultation with the health care workforce advisory council and the public health council, establish criteria to identify medically underserved areas within the commonwealth. These criteria shall consist of quantifiable measures, which may include the availability of primary care medical services within reasonable traveling distance, poverty levels, and disparities in health care access or health outcomes.

(c) The center shall evaluate the program annually, including exit interviews of participants to determine their post-program service plans and to solicit program improvement recommendations.

(d) The center shall, not later than July 1, file an annual report with the governor, the clerk of the house of representatives, the clerk of the senate, the house committee on ways and means, the senate committee ways and means, the joint committee on health care financing, the joint committee on mental health and substance abuse and the joint committee on public health. The report shall include annual data and historical trends of: (i) the number of applicants, the number accepted, and the number of participants by race, gender, medical specialty, medical school, residence prior to medical school, and where they plan to practice after program completion; (ii) the service placement locations and length of service commitments by participants; (iii) the number of participants who fail to fulfill the program requirements and the reason for the failure; (iv) the number of former participants who continue to serve in underserved areas; and (v) program expenditures.”; and in section 26, in subsection 1, by striking the definition of “Participating provider” and inserting in place thereof the following definition:

“‘Participating provider’, a health care professional qualified to provide general medical care for common health care problems, supervises, coordinates, prescribes, or otherwise provides or proposes health care services, initiates referrals for specialist care, and maintains continuity of care within the scope of practice.”, in said subsection, by striking out the last sentence as follows: “This coverage shall be subject to the terms of a negotiated agreement between a carrier and a nurse practitioner.”, and in said section, at the end of subsection 3, by striking out the words “provided, however, that nothing in this section shall require a carrier to accept new nurse practitioners and physician’s assistants in its networks if the carrier has determined that it has sufficient number of nurse practitioners and physician’s assistance in its networks to meet its network adequacy requirements” (as previously amended) and inserting in place thereof the words “provided, however, that nothing in this section shall require a carrier to accept new nurse practitioners in its networks if the carrier has determined that it has sufficient number of nurse practitioners in its networks to meet its network adequacy requirements”.

After remarks the amendments were adopted.

On the question on passing the bill, as amended, to be engrossed, in concurrence, the sense of the House was taken by yeas and nays, at the request of Mrs. Walrath of Stow; and on the roll call 153 members voted in the affirmative and 0 in the negative.

Bill passed
to be
engrossed,
yea and nay
No. 432.

[See Yea and Nay No. 432 in Supplement.]

Therefore the bill (Senate, No. 2660, amended) was passed to be engrossed, in concurrence. Sent to the Senate for concurrence in the amendment (text contained in House document numbered 4974, printed as amended).

Order.

On motion of Mr. Timilty of Milton,—

Ordered, That when the House adjourns today, it adjourn to meet tomorrow at eleven o’clock A.M.

Next
sitting.

Accordingly, without further consideration of the remaining matters in the Orders of the Day, at twenty-four minutes before seven o’clock P.M., on motion of Ms. Rogeness of Longmeadow (Mr. Donato of Medford being in the Chair), the House adjourned, to meet tomorrow at eleven o’clock A.M., in an Informal Session.