

PROTECTING PATIENT ACCESS TO EMERGENCY
 MEDICATIONS ACT OF 2016

NOVEMBER 14, 2016.—Committed to the Committee of the Whole House on the
 State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,
 submitted the following

R E P O R T

[To accompany H.R. 4365]

The Committee on Energy and Commerce, to whom was referred
 the bill (H.R. 4365) to amend the Controlled Substances Act with
 regard to the provision of emergency medical services, having con-
 sidered the same, report favorably thereon with an amendment and
 recommend that the bill as amended do pass.

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The amendment is as follows:
 Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protecting Patient Access to Emergency Medications Act of 2016”.

SEC. 2. EMERGENCY MEDICAL SERVICES.

Section 303 of the Controlled Substances Act (21 U.S.C. 821 et seq.) is amended—

(1) by redesignating subsection (j) as subsection (k); and

(2) by inserting after subsection (i) the following:

“(j) EMERGENCY MEDICAL SERVICES THAT ADMINISTER CONTROLLED SUBSTANCES.—

“(1) REGISTRATION.—For the purpose of enabling emergency medical services professionals to administer controlled substances in schedule II, III, IV, or V to ultimate users receiving emergency medical services in accordance with the requirements of this subsection, the Attorney General—

“(A) shall register an emergency medical services agency if the agency submits an application demonstrating it is authorized to conduct such activity under the laws of each State in which the agency practices; and

“(B) may deny an application for such registration if the Attorney General determines that the issuance of such registration would be inconsistent with the requirements of this subsection or the public interest based on the factors listed in subsection (f).

“(2) OPTION FOR SINGLE REGISTRATION.—In registering an emergency medical services agency pursuant to paragraph (1), the Attorney General shall allow such agency the option of a single registration in each State where the agency administers controlled substances in lieu of requiring a separate registration for each location of the emergency medical services agency.

“(3) HOSPITAL-BASED AGENCY.—If a hospital-based emergency medical services agency is registered under subsection (f), the agency may use the registration of the hospital to administer controlled substances in accordance with this subsection without being registered under this subsection.

“(4) ADMINISTRATION OUTSIDE PHYSICAL PRESENCE OF MEDICAL DIRECTOR OR AUTHORIZING MEDICAL PROFESSIONAL.—Emergency medical services professionals of a registrant emergency medical services agency may administer controlled substances in schedule II, III, IV, or V outside the physical presence of a medical director or authorizing medical professional in the course of providing emergency medical services if the administration is—

“(A) authorized by the law of the State in which it occurs; and

“(B) pursuant to—

“(i) a standing order that is—

“(I) issued and adopted by 1 or more medical directors of the agency; or

“(II) developed by a specific State authority; or

“(ii) a verbal order that is—

“(I) issued in accordance with a policy of the agency;

“(II) provided by an authorizing medical professional in response to a request by the emergency medical services professional with respect to a specific patient;

“(III) in the case of a mass casualty incident; or

“(IV) to ensure the proper care and treatment of a specific patient.

“(5) DELIVERY.—A registrant emergency medical services agency may deliver controlled substances from a registered location of the agency to an unregistered location of the agency only if—

“(A) the agency designates the unregistered location for such delivery;

and

“(B) notifies the Attorney General at least 30 days prior to first delivering controlled substances to the unregistered location.

“(6) STORAGE.—A registrant emergency medical services agency may store controlled substances—

“(A) at a registered location of the agency;

“(B) at any designated location of the agency or in an emergency services vehicle situated at a registered or designated location of the agency; or

“(C) in an emergency medical services vehicle used by the agency that is—

“(i) traveling from, or returning to, a registered or designated location of the agency in the course of responding to an emergency; or

“(ii) otherwise actively in use by the agency.

“(7) NO TREATMENT AS DISTRIBUTION.—The delivery of controlled substances by a registrant emergency medical services agency pursuant to this subsection shall not be treated as distribution for purposes of section 308.

“(8) RESTOCKING OF EMERGENCY MEDICAL SERVICES VEHICLES AT A HOSPITAL.—Notwithstanding paragraph (13)(J), a registrant emergency medical services agency may receive controlled substances from a hospital for purposes of restocking an emergency medical services vehicle following an emergency response, and without being subject to the requirements of section 308, provided all of the following conditions are satisfied:

“(A) The registered or designated location of the agency where the vehicle is primarily situated maintains a record of such receipt in accordance with paragraph (9).

“(B) The hospital maintains a record of such delivery to the agency in accordance with section 307.

“(C) If the vehicle is primarily situated at a designated location, such location notifies the registered location of the agency within 72 hours of the vehicle receiving the controlled substances.

“(9) MAINTENANCE OF RECORDS.—

“(A) IN GENERAL.—A registrant emergency medical services agency shall maintain records in accordance with subsections (a) and (b) of section 307 of all controlled substances that are received, administered, or otherwise disposed of pursuant to the agency’s registration, without regard to subsection 307(c)(1)(B).

“(B) REQUIREMENTS.—Such records—

“(i) shall include records of deliveries of controlled substances between all locations of the agency; and

“(ii) shall be maintained, whether electronically or otherwise, at each registered and designated location of the agency where the controlled substances involved are received, administered, or otherwise disposed of.

“(10) OTHER REQUIREMENTS.—A registrant emergency medical services agency, under the supervision of a medical director, shall be responsible for ensuring that—

“(A) all emergency medical services professionals who administer controlled substances using the agency’s registration act in accordance with the requirements of this subsection;

“(B) the recordkeeping requirements of paragraph (9) are met with respect to a registered location and each designated location of the agency;

“(C) the applicable physical security requirements established by regulation of the Attorney General are complied with wherever controlled substances are stored by the agency in accordance with paragraph (6); and

“(D) the agency maintains, at a registered location of the agency, a record of the standing orders issued or adopted in accordance with paragraph (9).

“(11) REGULATIONS.—The Attorney General may issue regulations—

“(A) specifying, with regard to delivery of controlled substances under paragraph (5)—

“(i) the types of locations that may designated under such paragraph;

and

“(ii) the manner in which a notification under paragraph (5)(B) must be made;

“(B) specifying, with regard to the storage of controlled substances under paragraph (6), the manner in which such substances must be stored at registered and designated locations, including in emergency medical service vehicles; and

“(C) addressing the ability of hospitals, registered locations, and designated locations to deliver controlled substances to each other in the event of—

“(i) shortages of such substances;

“(ii) a public health emergency; or

“(iii) a mass casualty event.

“(12) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed—

“(A) to limit the authority vested in the Attorney General by other provisions of this title to take measures to prevent diversion of controlled substances; or

“(B) to override the authority of any State to regulate the provision of emergency medical services.

“(13) DEFINITIONS.—In this section:

“(A) The term ‘designated location’ means a location designated by an emergency medical services agency under paragraph (5).

“(B) The term ‘emergency medical services’ means emergency medical response and emergency mobile medical services provided outside of a fixed medical facility.

“(C) The term ‘emergency medical services agency’ means an organization providing emergency medical services, including such an organization that—

“(i) is governmental (including fire-based and hospital-based agencies), nongovernmental (including hospital-based agencies), private, or volunteer-based;

“(ii) provides emergency medical services by ground, air, or otherwise; and

“(iii) is authorized by the State in which the organization is providing such services to provide emergency medical care, including the administering of controlled substances, to members of the general public on an emergency basis.

“(D) The term ‘emergency medical services professional’ means a health care professional (including a nurse, paramedic, or emergency medical technician) licensed or certified by the State in which the professional practices and credentialed by a medical director of the respective emergency medical services agency to provide emergency medical services within the scope of the professional’s State license or certification.

“(E) The term ‘emergency medical services vehicle’ means an ambulance, fire apparatus, supervisor truck, or other vehicle owned or operated by an emergency medical services agency for the purpose of providing or facilitating emergency medical care and transport or transporting controlled substances to and from the registered and designated locations.

“(F) The term ‘hospital-based’ means, with respect to an agency, owned or operated by a hospital.

“(G) The term ‘medical director’ means a physician who is registered under subsection (f) and provides medical oversight for an emergency medical services agency.

“(H) The term ‘medical oversight’ means supervision of the provision of medical care by an emergency medical services agency.

“(I) The term ‘medical professional’ means an emergency or other physician, or another medical professional (including an advanced practice registered nurse or physician assistant) whose scope of practice under a State license or certification includes the ability to provide verbal orders.

“(J) The term ‘registered location’ means a location that appears on the certificate of registration issued to an emergency medical services agency under this subsection or subsection (f), which shall be where the agency receives controlled substances from distributors.

“(K) The term ‘registrant emergency medical services agency’ means—

“(i) an emergency medical services agency that is registered pursuant to this subsection; or

“(ii) a hospital-based emergency medical services agency that is covered by the registration of the hospital under subsection (f).

“(L) The term ‘specific State authority’ means a governmental agency or other such authority, including a regional oversight and coordinating body, that, pursuant to State law or regulation, develops clinical protocols regarding the delivery of emergency medical services in the geographic jurisdiction of such agency or authority within the State that may be adopted by medical directors.

“(M) The term ‘standing order’ means a written medical protocol in which a medical director determines in advance the medical criteria that must be met before administering controlled substances to individuals in need of emergency medical services.

“(N) The term ‘verbal order’ means an oral directive that is given through any method of communication including by radio or telephone, directly to an emergency medical services professional, to contemporaneously administer a controlled substance to individuals in need of emergency medical services outside the physical presence of the authorizing medical director.”.

PURPOSE AND SUMMARY

H.R. 4365 would amend section 303 of the Controlled Substances Act (CSA) to provide emergency medical services (EMS) agencies

an option of a single registration with the Drug Enforcement Administration (DEA) in each State where the EMS agency administers controlled substances. Further, the bill would clarify that EMS professionals are permitted to administer controlled substances pursuant to standing or verbal orders if certain conditions are met.

BACKGROUND AND NEED FOR LEGISLATION

EMS agencies that administer controlled substances are required to register with the DEA. EMS agencies may have multiple locations in each State in which their professionals provide care. This bill would provide EMS agencies with an option of a single registration in each State where the agency administers controlled substances, in lieu of separate registrations for each location, so long as a number of requirements are met related to receipt, movement, and storage.

Further, it is critically important for EMS professionals to be able to administer life-saving medications in a timely manner to patients in emergency situations. Paramedics and emergency medical technicians (EMTs) currently do so pursuant to standing or verbal orders when authorized by State law. Recently, questions have been raised about whether the CSA permits these practices. This bill would codify what is current practice across the U.S. by explicitly authorizing EMS professionals to administer controlled substances in emergency situations outside the physical presence of a medical director or authorizing medical professional when certain requirements are met.

HEARINGS

The Subcommittee on Health held a hearing on H.R. 4365 on July 12, 2016. The Subcommittee received testimony from:

- Craig Manifold, Committee Chair, American College of Emergency Physicians, and
- Brent Myers, President-Elect, National Association of EMS Physicians.

COMMITTEE CONSIDERATION

On September 12 and 13, 2016, the Subcommittee on Health met in open markup session and favorably forwarded H.R. 4365, as amended, to the full Committee by a voice vote. On September 20 and 21, 2016, the full Committee met in open markup session and ordered H.R. 4365, as amended, favorably reported to the House by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 4365 reported.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The purpose of this bill is to provide EMS agencies with a single registration option and to clarify that EMS professionals can administer controlled substances pursuant to standing and verbal orders.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 4365 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 4365 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. At the time this report was filed, the estimate was not available.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

At the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 4365 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 4365 specifically directs to be completed zero specific rule makings within the meaning of 5 U.S.C. 551.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides that the Act may be cited as the “Protecting Patient Access to Emergency Medications Act of 2016”.

Section 2. Emergency Medical Services

Section 2 amends section 303 of the CSA by adding provisions governing EMS agencies that administer controlled substances.

Specifically, section 2 provides EMS agencies with an option of a single registration in each State where such an agency administers controlled substances in lieu of requiring a separate registration for each location of the agency. The language clarifies that hospital-based EMS agencies may continue to use the DEA registration of their hospital without having to register under the new authority established by this section.

Pursuant to such registration, a number of requirements are placed on EMS agencies with respect to the delivery, storage, and restocking of controlled substances. Specifically, a registrant EMS agency may deliver controlled substances from a registered location to an unregistered location only if the agency designates the unregistered location for such delivery and notifies DEA at least 30 days prior to the first delivery. Such delivery shall not be treated as distribution for purposes of section 308. Further, a registrant EMS agency may store controlled substances at a registered or designated location or, in certain circumstances, in an EMS vehicle. Finally, a registrant EMS agency may receive controlled substances from a hospital for purposes of restocking an EMS vehicle following an emergency response, provided certain requirements are met. Hospitals that restock EMS vehicles consistent with such requirements shall not be treated as distributors.

In addition to the provisions relating to registration of an EMS agency and related requirements, section 2 explicitly authorizes EMS professionals of a registered EMS agency to administer controlled substances outside the physical presence of a medical director or authorizing medical professional in the course of providing emergency medical services if the administration is authorized by the law of the State in which it occurs and it is pursuant to a standing or verbal order when certain conditions are satisfied.

Section 2 also authorizes DEA to issue regulations on certain provisions and clarifies that nothing in the bill limits DEA's authority under the CSA to take measures to prevent the diversion of controlled substances. Further, section 2 states that nothing in the bill shall be construed to override the authority of any State to regulate the provision of emergency medical services.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

CONTROLLED SUBSTANCES ACT

* * * * *

TITLE II—CONTROL AND ENFORCEMENT

* * * * *

PART C—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES; PIPERIDINE REPORTING

* * * * *

REGISTRATION REQUIREMENTS

SEC. 303. (a) The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining the public interest, the following factors shall be considered:

- (1) maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;
- (2) compliance with applicable State and local law;
- (3) promotion of technical advances in the art of manufacturing these substances and the development of new substances;
- (4) prior conviction record of applicant under Federal and State laws relating to the manufacture, distribution, or dispensing of such substances;
- (5) past experience in the manufacture of controlled substances, and the existence in the establishment of effective control against diversion; and

(6) such other factors as may be relevant to and consistent with the public health and safety.

(b) The Attorney General shall register an applicant to distribute a controlled substance in schedule I or II unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective controls against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels;

(2) compliance with applicable State and local law;

(3) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) past experience in the distribution of controlled substances; and

(5) such other factors as may be relevant to and consistent with the public health and safety.

(c) Registration granted under subsections (a) and (b) of this section shall not entitle a registrant to (1) manufacture or distribute controlled substances in schedule I or II other than those specified in the registration, or (2) manufacture any quantity of those controlled substances in excess of the quota assigned pursuant to section 306.

(d) The Attorney General shall register an applicant to manufacture controlled substances in schedule III, IV, or V, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule III, IV, or V compounded therefrom into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable State and local law;

(3) promotion of technical advances in the art of manufacturing these substances and the development of new substances;

(4) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(5) past experience in the manufacture, distribution, and dispensing of controlled substances, and the existence in the establishment of effective controls against diversion; and

(6) such other factors as may be relevant to and consistent with the public health and safety.

(e) The Attorney General shall register an applicant to distribute controlled substances in schedule III, IV, or V, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective controls against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels;

(2) compliance with applicable State and local law;

(3) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) past experience in the distribution of controlled substances; and

(5) such other factors as may be relevant to and consistent with the public health and safety.

(f) The Attorney General shall register practitioners (including pharmacies, as distinguished from pharmacists) to dispense, or conduct research with, controlled substances in schedule II, III, IV, or V and shall modify the registrations of pharmacies so registered to authorize them to dispense controlled substances by means of the Internet, if the applicant is authorized to dispense, or conduct research with respect to, controlled substances under the laws of the State in which he practices. The Attorney General may deny an application for such registration or such modification of registration if the Attorney General determines that the issuance of such registration or modification would be inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Separate registration under this part for practitioners engaging in research with controlled substances in schedule II, III, IV, or V, who are already registered under this part in another capacity, shall not be required. Registration applications by practitioners wishing to conduct research with controlled substances in schedule I shall be referred to the Secretary, who shall determine the qualifications and competency of each practitioner requesting registration, as well as the merits of the research protocol. The Secretary, in determining the merits of each research protocol, shall consult with the Attorney General as to effective procedures to adequately safeguard against diversion of such controlled substances from legitimate medical or scientific use. Registration for the purpose of bona fide research with controlled substances in schedule I by a practitioner deemed qualified by the Secretary may be denied by the Attorney General only on a ground specified in section 304(a). Article 7 of the Convention on Psychotropic Substances shall not be construed to prohibit, or impose additional restrictions upon, research involving drugs or other substances scheduled under the convention which is conducted in conformity with this subsection and other applicable provisions of this title.

(g)(1) Except as provided in paragraph (2), practitioners who dispense narcotic drugs to individuals for maintenance treatment or detoxification treatment shall obtain annually a separate registration for that purpose. The Attorney General shall register an appli-

cant to dispense narcotic drugs to individuals for maintenance treatment or detoxification treatment (or both)—

(A) if the applicant is a practitioner who is determined by the Secretary to be qualified (under standards established by the Secretary) to engage in the treatment with respect to which registration is sought;

(B) if the Attorney General determines that the applicant will comply with standards established by the Attorney General respecting (i) security of stocks of narcotic drugs for such treatment, and (ii) the maintenance of records (in accordance with section 307) on such drugs; and

(C) if the Secretary determines that the applicant will comply with standards established by the Secretary (after consultation with the Attorney General) respecting the quantities of narcotic drugs which may be provided for unsupervised use by individuals in such treatment.

(2)(A) Subject to subparagraphs (D) and (J), the requirements of paragraph (1) are waived in the case of the dispensing (including the prescribing), by a practitioner, of narcotic drugs in schedule III, IV, or V or combinations of such drugs if the practitioner meets the conditions specified in subparagraph (B) and the narcotic drugs or combinations of such drugs meet the conditions specified in subparagraph (C).

(B) For purposes of subparagraph (A), the conditions specified in this subparagraph with respect to a practitioner are that, before the initial dispensing of narcotic drugs in schedule III, IV, or V or combinations of such drugs to patients for maintenance or detoxification treatment, the practitioner submit to the Secretary a notification of the intent of the practitioner to begin dispensing the drugs or combinations for such purpose, and that the notification contain the following certifications by the practitioner:

(i) The practitioner is a qualifying practitioner (as defined in subparagraph (G)).

(ii) With respect to patients to whom the practitioner will provide such drugs or combinations of drugs, the practitioner has the capacity to provide directly, by referral, or in such other manner as determined by the Secretary—

(I) all drugs approved by the Food and Drug Administration for the treatment of opioid use disorder, including for maintenance, detoxification, overdose reversal, and relapse prevention; and

(II) appropriate counseling and other appropriate ancillary services.

(iii)(I) The total number of such patients of the practitioner at any one time will not exceed the applicable number. Except as provided in subclause (II), the applicable number is 30.

(II) The applicable number is 100 if, not sooner than 1 year after the date on which the practitioner submitted the initial notification, the practitioner submits a second notification to the Secretary of the need and intent of the practitioner to treat up to 100 patients.

(III) The Secretary may by regulation change such applicable number.

(IV) The Secretary may exclude from the applicable number patients to whom such drugs or combinations of drugs are di-

rectly administered by the qualifying practitioner in the office setting.

(C) For purposes of subparagraph (A), the conditions specified in this subparagraph with respect to narcotic drugs in schedule III, IV, or V or combinations of such drugs are as follows:

(i) The drugs or combinations of drugs have, under the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act, been approved for use in maintenance or detoxification treatment.

(ii) The drugs or combinations of drugs have not been the subject of an adverse determination. For purposes of this clause, an adverse determination is a determination published in the Federal Register and made by the Secretary, after consultation with the Attorney General, that the use of the drugs or combinations of drugs for maintenance or detoxification treatment requires additional standards respecting the qualifications of practitioners to provide such treatment, or requires standards respecting the quantities of the drugs that may be provided for unsupervised use.

(D)(i) A waiver under subparagraph (A) with respect to a practitioner is not in effect unless (in addition to conditions under subparagraphs (B) and (C)) the following conditions are met:

(I) The notification under subparagraph (B) is in writing and states the name of the practitioner.

(II) The notification identifies the registration issued for the practitioner pursuant to subsection (f).

(III) If the practitioner is a member of a group practice, the notification states the names of the other practitioners in the practice and identifies the registrations issued for the other practitioners pursuant to subsection (f).

(ii) Upon receiving a determination from the Secretary under clause (iii) finding that a practitioner meets all requirements for a waiver under subparagraph (B), the Attorney General shall assign the practitioner involved an identification number under this paragraph for inclusion with the registration issued for the practitioner pursuant to subsection (f). The identification number so assigned shall be appropriate to preserve the confidentiality of patients for whom the practitioner has dispensed narcotic drugs under a waiver under subparagraph (A).

(iii) Not later than 45 days after the date on which the Secretary receives a notification under subparagraph (B), the Secretary shall make a determination of whether the practitioner involved meets all requirements for a waiver under subparagraph (B) and shall forward such determination to the Attorney General. If the Secretary fails to make such determination by the end of the such 45-day period, the Attorney General shall assign the practitioner an identification number described in clause (ii) at the end of such period.

(E)(i) If a practitioner is not registered under paragraph (1) and, in violation of the conditions specified in subparagraphs (B) through (D), dispenses narcotic drugs in schedule III, IV, or V or combinations of such drugs for maintenance treatment or detoxification treatment, the Attorney General may, for purposes of section 304(a)(4), consider the practitioner to have committed an act

that renders the registration of the practitioner pursuant to subsection (f) to be inconsistent with the public interest.

(ii)(I) Upon the expiration of 45 days from the date on which the Secretary receives a notification under subparagraph (B), a practitioner who in good faith submits a notification under subparagraph (B) and reasonably believes that the conditions specified in subparagraphs (B) through (D) have been met shall, in dispensing narcotic drugs in schedule III, IV, or V or combinations of such drugs for maintenance treatment or detoxification treatment, be considered to have a waiver under subparagraph (A) until notified otherwise by the Secretary, except that such a practitioner may commence to prescribe or dispense such narcotic drugs for such purposes prior to the expiration of such 45-day period if it facilitates the treatment of an individual patient and both the Secretary and the Attorney General are notified by the practitioner of the intent to commence prescribing or dispensing such narcotic drugs.

(II) For purposes of subclause (I), the publication in the Federal Register of an adverse determination by the Secretary pursuant to subparagraph (C)(ii) shall (with respect to the narcotic drug or combination involved) be considered to be a notification provided by the Secretary to practitioners, effective upon the expiration of the 30-day period beginning on the date on which the adverse determination is so published.

(F)(i) With respect to the dispensing of narcotic drugs in schedule III, IV, or V or combinations of such drugs to patients for maintenance or detoxification treatment, a practitioner may, in his or her discretion, dispense such drugs or combinations for such treatment under a registration under paragraph (1) or a waiver under subparagraph (A) (subject to meeting the applicable conditions).

(ii) This paragraph may not be construed as having any legal effect on the conditions for obtaining a registration under paragraph (1), including with respect to the number of patients who may be served under such a registration.

(G) For purposes of this paragraph:

(i) The term “group practice” has the meaning given such term in section 1877(h)(4) of the Social Security Act.

(ii) The term “qualifying physician” means a physician who is licensed under State law and who meets one or more of the following conditions:

(I) The physician holds a board certification in addiction psychiatry or addiction medicine from the American Board of Medical Specialties.

(II) The physician holds an addiction certification or board certification from the American Society of Addiction Medicine or the American Board of Addiction Medicine.

(III) The physician holds a board certification in addiction medicine from the American Osteopathic Association.

(IV) The physician has, with respect to the treatment and management of opiate-dependent patients, completed not less than 8 hours of training (through classroom situations, seminars at professional society meetings, electronic communications, or otherwise) that is provided by the American Society of Addiction Medicine, the American Academy of Addiction Psychiatry, the American Medical Association, the American Osteopathic Association, the

American Psychiatric Association, or any other organization that the Secretary determines is appropriate for purposes of this subclause. Such training shall include—

- (aa) opioid maintenance and detoxification;
- (bb) appropriate clinical use of all drugs approved by the Food and Drug Administration for the treatment of opioid use disorder;
- (cc) initial and periodic patient assessments (including substance use monitoring);
- (dd) individualized treatment planning, overdose reversal, and relapse prevention;
- (ee) counseling and recovery support services;
- (ff) staffing roles and considerations;
- (gg) diversion control; and
- (hh) other best practices, as identified by the Secretary.

(V) The physician has participated as an investigator in one or more clinical trials leading to the approval of a narcotic drug in schedule III, IV, or V for maintenance or detoxification treatment, as demonstrated by a statement submitted to the Secretary by the sponsor of such approved drug.

(VI) The physician has such other training or experience as the State medical licensing board (of the State in which the physician will provide maintenance or detoxification treatment) considers to demonstrate the ability of the physician to treat and manage opiate-dependent patients.

(VII) The physician has such other training or experience as the Secretary considers to demonstrate the ability of the physician to treat and manage opiate-dependent patients. Any criteria of the Secretary under this subclause shall be established by regulation. Any such criteria are effective only for 3 years after the date on which the criteria are promulgated, but may be extended for such additional discrete 3-year periods as the Secretary considers appropriate for purposes of this subclause. Such an extension of criteria may only be effectuated through a statement published in the Federal Register by the Secretary during the 30-day period preceding the end of the 3-year period involved.

(iii) The term “qualifying practitioner” means—

(I) a qualifying physician, as defined in clause (ii); or

(II) during the period beginning on the date of enactment of the Comprehensive Addiction and Recovery Act of 2016 and ending on October 1, 2021, a qualifying other practitioner, as defined in clause (iv).

(iv) The term “qualifying other practitioner” means a nurse practitioner or physician assistant who satisfies each of the following:

(I) The nurse practitioner or physician assistant is licensed under State law to prescribe schedule III, IV, or V medications for the treatment of pain.

(II) The nurse practitioner or physician assistant has—
 (aa) completed not fewer than 24 hours of initial training addressing each of the topics listed in clause

(ii)(IV) (through classroom situations, seminars at professional society meetings, electronic communications, or otherwise) provided by the American Society of Addiction Medicine, the American Academy of Addiction Psychiatry, the American Medical Association, the American Osteopathic Association, the American Nurses Credentialing Center, the American Psychiatric Association, the American Association of Nurse Practitioners, the American Academy of Physician Assistants, or any other organization that the Secretary determines is appropriate for purposes of this subclause; or

(bb) has such other training or experience as the Secretary determines will demonstrate the ability of the nurse practitioner or physician assistant to treat and manage opiate-dependent patients.

(III) The nurse practitioner or physician assistant is supervised by, or works in collaboration with, a qualifying physician, if the nurse practitioner or physician assistant is required by State law to prescribe medications for the treatment of opioid use disorder in collaboration with or under the supervision of a physician.

The Secretary may, by regulation, revise the requirements for being a qualifying other practitioner under this clause.

(H)(i) In consultation with the Administrator of the Drug Enforcement Administration, the Administrator of the Substance Abuse and Mental Health Services Administration, the Director of the National Institute on Drug Abuse, and the Commissioner of Food and Drugs, the Secretary shall issue regulations (through notice and comment rulemaking) or issue practice guidelines to address the following:

(I) Approval of additional credentialing bodies and the responsibilities of additional credentialing bodies.

(II) Additional exemptions from the requirements of this paragraph and any regulations under this paragraph.

(III) Such other elements of the requirements under this paragraph as the Secretary determines necessary for purposes of implementing such requirements.

Nothing in such regulations or practice guidelines may authorize any Federal official or employee to exercise supervision or control over the practice of medicine or the manner in which medical services are provided.

(ii) Not later than 18 months after the date of enactment of the Opioid Use Disorder Treatment Expansion and Modernization Act, the Secretary shall update the treatment improvement protocol containing best practice guidelines for the treatment of opioid-dependent patients in office-based settings. The Secretary shall update such protocol in consultation with experts in opioid use disorder research and treatment.

(I) Notwithstanding section 708, nothing in this paragraph shall be construed to preempt any State law that—

(i) permits a qualifying practitioner to dispense narcotic drugs in schedule III, IV, or V, or combinations of such drugs, for maintenance or detoxification treatment in accordance with this paragraph to a total number of patients that is more than

30 or less than the total number applicable to the qualifying practitioner under subparagraph (B)(iii)(II) if a State enacts a law modifying such total number and the Attorney General is notified by the State of such modification; or

(ii) requires a qualifying practitioner to comply with additional requirements relating to the dispensing of narcotic drugs in schedule III, IV, or V, or combinations of such drugs, including requirements relating to the practice setting in which the qualifying practitioner practices and education, training, and reporting requirements.

(h) The Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest. Registration under this subsection shall not be required for the distribution of a drug product that is exempted under clause (iv) or (v) of section 102(39)(A). In determining the public interest for the purposes of this subsection, the Attorney General shall consider—

(1) maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) compliance by the applicant with applicable Federal, State, and local law;

(3) any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) such other factors as are relevant to and consistent with the public health and safety.

(i)(1) For purposes of registration to manufacture a controlled substance under subsection (d) for use only in a clinical trial, the Attorney General shall register the applicant, or serve an order to show cause upon the applicant in accordance with section 304(c), not later than 180 days after the date on which the application is accepted for filing.

(2) For purposes of registration to manufacture a controlled substance under subsection (a) for use only in a clinical trial, the Attorney General shall, in accordance with the regulations issued by the Attorney General, issue a notice of application not later than 90 days after the application is accepted for filing. Not later than 90 days after the date on which the period for comment pursuant to such notice ends, the Attorney General shall register the applicant, or serve an order to show cause upon the applicant in accordance with section 304(c), unless the Attorney General has granted a hearing on the application under section 1008(i) of the Controlled Substances Import and Export Act.

(j) *EMERGENCY MEDICAL SERVICES THAT ADMINISTER CONTROLLED SUBSTANCES.*—

(1) *REGISTRATION.*—*For the purpose of enabling emergency medical services professionals to administer controlled substances in schedule II, III, IV, or V to ultimate users receiving emergency medical services in accordance with the requirements of this subsection, the Attorney General—*

(A) shall register an emergency medical services agency if the agency submits an application demonstrating it is au-

thorized to conduct such activity under the laws of each State in which the agency practices; and

(B) may deny an application for such registration if the Attorney General determines that the issuance of such registration would be inconsistent with the requirements of this subsection or the public interest based on the factors listed in subsection (f).

(2) *OPTION FOR SINGLE REGISTRATION.*—In registering an emergency medical services agency pursuant to paragraph (1), the Attorney General shall allow such agency the option of a single registration in each State where the agency administers controlled substances in lieu of requiring a separate registration for each location of the emergency medical services agency.

(3) *HOSPITAL-BASED AGENCY.*—If a hospital-based emergency medical services agency is registered under subsection (f), the agency may use the registration of the hospital to administer controlled substances in accordance with this subsection without being registered under this subsection.

(4) *ADMINISTRATION OUTSIDE PHYSICAL PRESENCE OF MEDICAL DIRECTOR OR AUTHORIZING MEDICAL PROFESSIONAL.*—Emergency medical services professionals of a registrant emergency medical services agency may administer controlled substances in schedule II, III, IV, or V outside the physical presence of a medical director or authorizing medical professional in the course of providing emergency medical services if the administration is—

(A) authorized by the law of the State in which it occurs; and

(B) pursuant to—

(i) a standing order that is—

(I) issued and adopted by 1 or more medical directors of the agency; or

(II) developed by a specific State authority; or

(ii) a verbal order that is—

(I) issued in accordance with a policy of the agency;

(II) provided by an authorizing medical professional in response to a request by the emergency medical services professional with respect to a specific patient;

(III) in the case of a mass casualty incident; or

(IV) to ensure the proper care and treatment of a specific patient.

(5) *DELIVERY.*—A registrant emergency medical services agency may deliver controlled substances from a registered location of the agency to an unregistered location of the agency only if—

(A) the agency designates the unregistered location for such delivery; and

(B) notifies the Attorney General at least 30 days prior to first delivering controlled substances to the unregistered location.

(6) *STORAGE.*—A registrant emergency medical services agency may store controlled substances—

(A) at a registered location of the agency;

(B) at any designated location of the agency or in an emergency services vehicle situated at a registered or designated location of the agency; or

(C) in an emergency medical services vehicle used by the agency that is—

(i) traveling from, or returning to, a registered or designated location of the agency in the course of responding to an emergency; or

(ii) otherwise actively in use by the agency.

(7) **NO TREATMENT AS DISTRIBUTION.**—The delivery of controlled substances by a registrant emergency medical services agency pursuant to this subsection shall not be treated as distribution for purposes of section 308.

(8) **RESTOCKING OF EMERGENCY MEDICAL SERVICES VEHICLES AT A HOSPITAL.**—Notwithstanding paragraph (13)(J), a registrant emergency medical services agency may receive controlled substances from a hospital for purposes of restocking an emergency medical services vehicle following an emergency response, and without being subject to the requirements of section 308, provided all of the following conditions are satisfied:

(A) The registered or designated location of the agency where the vehicle is primarily situated maintains a record of such receipt in accordance with paragraph (9).

(B) The hospital maintains a record of such delivery to the agency in accordance with section 307.

(C) If the vehicle is primarily situated at a designated location, such location notifies the registered location of the agency within 72 hours of the vehicle receiving the controlled substances.

(9) **MAINTENANCE OF RECORDS.**—

(A) **IN GENERAL.**—A registrant emergency medical services agency shall maintain records in accordance with subsections (a) and (b) of section 307 of all controlled substances that are received, administered, or otherwise disposed of pursuant to the agency's registration, without regard to subsection 307(c)(1)(B).

(B) **REQUIREMENTS.**—Such records—

(i) shall include records of deliveries of controlled substances between all locations of the agency; and

(ii) shall be maintained, whether electronically or otherwise, at each registered and designated location of the agency where the controlled substances involved are received, administered, or otherwise disposed of.

(10) **OTHER REQUIREMENTS.**—A registrant emergency medical services agency, under the supervision of a medical director, shall be responsible for ensuring that—

(A) all emergency medical services professionals who administer controlled substances using the agency's registration act in accordance with the requirements of this subsection;

(B) the recordkeeping requirements of paragraph (9) are met with respect to a registered location and each designated location of the agency;

(C) the applicable physical security requirements established by regulation of the Attorney General are complied

with wherever controlled substances are stored by the agency in accordance with paragraph (6); and

(D) the agency maintains, at a registered location of the agency, a record of the standing orders issued or adopted in accordance with paragraph (9).

(11) REGULATIONS.—The Attorney General may issue regulations—

(A) specifying, with regard to delivery of controlled substances under paragraph (5)—

(i) the types of locations that may be designated under such paragraph; and

(ii) the manner in which a notification under paragraph (5)(B) must be made;

(B) specifying, with regard to the storage of controlled substances under paragraph (6), the manner in which such substances must be stored at registered and designated locations, including in emergency medical service vehicles; and

(C) addressing the ability of hospitals, registered locations, and designated locations to deliver controlled substances to each other in the event of—

(i) shortages of such substances;

(ii) a public health emergency; or

(iii) a mass casualty event.

(12) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed—

(A) to limit the authority vested in the Attorney General by other provisions of this title to take measures to prevent diversion of controlled substances; or

(B) to override the authority of any State to regulate the provision of emergency medical services.

(13) DEFINITIONS.—In this section:

(A) The term “designated location” means a location designated by an emergency medical services agency under paragraph (5).

(B) The term “emergency medical services” means emergency medical response and emergency mobile medical services provided outside of a fixed medical facility.

(C) The term “emergency medical services agency” means an organization providing emergency medical services, including such an organization that—

(i) is governmental (including fire-based and hospital-based agencies), nongovernmental (including hospital-based agencies), private, or volunteer-based;

(ii) provides emergency medical services by ground, air, or otherwise; and

(iii) is authorized by the State in which the organization is providing such services to provide emergency medical care, including the administering of controlled substances, to members of the general public on an emergency basis.

(D) The term “emergency medical services professional” means a health care professional (including a nurse, paramedic, or emergency medical technician) licensed or certified by the State in which the professional practices and

credentialed by a medical director of the respective emergency medical services agency to provide emergency medical services within the scope of the professional's State license or certification.

(E) The term "emergency medical services vehicle" means an ambulance, fire apparatus, supervisor truck, or other vehicle owned or operated by an emergency medical services agency for the purpose of providing or facilitating emergency medical care and transport or transporting controlled substances to and from the registered and designated locations.

(F) The term "hospital-based" means, with respect to an agency, owned or operated by a hospital.

(G) The term "medical director" means a physician who is registered under subsection (f) and provides medical oversight for an emergency medical services agency.

(H) The term "medical oversight" means supervision of the provision of medical care by an emergency medical services agency.

(I) The term "medical professional" means an emergency or other physician, or another medical professional (including an advanced practice registered nurse or physician assistant) whose scope of practice under a State license or certification includes the ability to provide verbal orders.

(J) The term "registered location" means a location that appears on the certificate of registration issued to an emergency medical services agency under this subsection or subsection (f), which shall be where the agency receives controlled substances from distributors.

(K) The term "registrant emergency medical services agency" means—

(i) an emergency medical services agency that is registered pursuant to this subsection; or

(ii) a hospital-based emergency medical services agency that is covered by the registration of the hospital under subsection (f).

(L) The term "specific State authority" means a governmental agency or other such authority, including a regional oversight and coordinating body, that, pursuant to State law or regulation, develops clinical protocols regarding the delivery of emergency medical services in the geographic jurisdiction of such agency or authority within the State that may be adopted by medical directors.

(M) The term "standing order" means a written medical protocol in which a medical director determines in advance the medical criteria that must be met before administering controlled substances to individuals in need of emergency medical services.

(N) The term "verbal order" means an oral directive that is given through any method of communication including by radio or telephone, directly to an emergency medical services professional, to contemporaneously administer a controlled substance to individuals in need of emergency medical services outside the physical presence of the authorizing medical director.

[(j)] (k) In this section, the phrase “factors as may be relevant to and consistent with the public health and safety” means factors that are relevant to and consistent with the findings contained in section 101.

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