

DATA-2000 - Public Law 106-310- 106th Congress - An Act

[Amendments added - 8/2/2005 + 12/29/2006]

TITLE NOTE: Drug Addiction Treatment Act of 2000. XXXV--WAIVER AUTHORITY FOR PHYSICIANS WHO DISPENSE OR PRESCRIBE CERTAIN NARCOTIC DRUGS FOR MAINTENANCE TREATMENT OR DETOXIFICATION TREATMENT

SEC. 3501. NOTE: 21 USC 801 note. SHORT TITLE.

This title may be cited as the "Drug Addiction Treatment Act of 2000".

SEC. 3502. AMENDMENT TO CONTROLLED SUBSTANCES ACT.

(a) In General.--Section **303(g)** of the Controlled Substances Act (21 U.S.C. 823(g)) is amended--

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(1) in paragraph (2), by striking "(A) security" and inserting "(i) security", and by striking "(B) the maintenance" and inserting "(ii) the maintenance";(2) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively;(3) by inserting "(1)" after "(g)";(4) by striking "Practitioners who dispense" and inserting "Except as provided in paragraph (2), practitioners who dispense"; and (5) by adding at the end the following paragraph:

"**(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 physician (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 refer the patients for appropriate counseling and other appropriate ancillary services. "~~(iii) In any case in which the practitioner is not in a group practice, the total number*~~ **The total*** of such patients of the practitioner at any one time will not exceed the applicable number. For purposes of this clause, the applicable number is 30, **except that the unless, 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. A second notification under this clause shall contain the certifications required by clauses (i) and (ii) of this subparagraph. The**** Secretary may by

regulation change such total number." ~~(iv) In any case in which the practitioner is in a group practice, the total number of such patients of the group practice at any one time will not exceed the applicable number. For purposes of this clause, the applicable number is 30, except that the Secretary may by regulation change such total number, and the Secretary for such purposes may by regulation establish different categories on the basis of the number of practitioners in a group practice and establish for the various categories different numerical limitations on the number of such patients that the group practice may have*~~

[*Amended by public law 109-56 on 8/2/2005]

[Amended by public law 109-469 on 12/29/2006]**

"(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. NOTE: Federal Register, publication. For purposes of this clause, an adverse determination is a determination published

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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 notification 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) NOTE: Deadline. 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). If the Secretary fails to make such determination by the end of the such 45-day period, the Attorney General shall assign the physician 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) NOTE: Expiration date. 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) NOTE: Federal Register, publication. For purposes of subclause (I), the publication in the Federal Register of an adverse determination by the Secretary pursuant

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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 subspecialty board certification in addiction psychiatry from the American Board of Medical Specialties."(II) The physician holds an addiction certification from the American Society of Addiction Medicine."(III) The physician holds a subspecialty 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 eight 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."(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

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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. NOTE: Federal Register, publication. 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.

"(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.

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) NOTE: Deadline. Not later than 120 days after the date of the enactment of the Drug Addiction Treatment Act of 2000, the Secretary shall issue a treatment improvement protocol containing best practice guidelines for the treatment and maintenance of opiate-dependent patients. The Secretary shall develop the protocol in consultation with the Director of the National Institute on Drug Abuse, the Administrator of the Drug Enforcement Administration, the Commissioner of Food and Drugs, the Administrator of the Substance Abuse and Mental Health Services Administration and other substance abuse disorder professionals. The protocol shall be guided by science.

"(I) During the 3-year period beginning on the date of the enactment of the Drug Addiction Treatment Act of 2000, a State may not preclude a practitioner from dispensing or prescribing drugs in schedule III, IV, or V, or combinations of such drugs, to patients for maintenance or detoxification treatment in accordance with this paragraph unless, before the expiration of that 3-year period, the State enacts a law prohibiting a practitioner from dispensing such drugs or combinations of drug."(J)(i) NOTE: Effective date. This paragraph takes effect on the date of the enactment of the Drug Addiction Treatment Act of 2000, and remains in effect **thereafter. except as provided in clause (iii) (relating to a decision by the Secretary or the Attorney General that this paragraph should not remain in effect).****

"(ii) For purposes relating to clause (iii), the Secretary and the Attorney General may, during the

3-year period beginning on the date of the enactment of the ~~Drug Addiction Treatment Act of 2000~~ **Office of National Drug Control Policy Reauthorization Act of 2006**^{**}, make determinations in accordance with the following: "(I) The Secretary may make a determination of whether treatments provided under waivers under subparagraph (A)

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have been effective forms of maintenance treatment and detoxification treatment in clinical settings; may make a determination of whether such waivers have significantly increased (relative to the beginning of such period) the availability of maintenance treatment and detoxification treatment; and may make a determination of whether such waivers have adverse consequences for the public health."(II) The Attorney General may make a determination of the extent to which there have been violations of the numerical limitations established under subparagraph (B) for the number of individuals to whom a practitioner may provide treatment; may make a determination of whether waivers under subparagraph (A) have increased (relative to the beginning of such period) the extent to which narcotic drugs in schedule III, IV, or V or combinations of such drugs are being dispensed or possessed in violation of this Act; and may make a determination of whether such waivers have adverse consequences for the public health.

"(iii) NOTE: Federal Register, publication. Effective date. If, before the expiration of the period specified in clause (ii), the Secretary or the Attorney General publishes in the Federal Register a decision, made on the basis of determinations under such clause, ~~that this paragraph should not remain in effect, this paragraph ceases to be in effect~~ **subparagraph (B)(iii) should be applied by limiting the total number of patients a practitioner may treat to 30, then the provisions in such subparagraph (B)(iii) permitting more than 30 patients shall not apply, effective.**^{**}60 days after the date on which the decision is so published. The Secretary shall in making any such decision consult with the Attorney General, and shall in publishing the decision in the Federal Register include any comments received from the Attorney General for inclusion in the publication. The Attorney General shall in making any such decision consult with the Secretary, and shall in publishing the decision in the Federal Register include any comments received from the Secretary for inclusion in the publication."

(b) Conforming Amendments.--Section 304 of the Controlled Substances Act (21 U.S.C. 824) is amended--(1) in subsection (a), in the matter after and below paragraph (5), by striking "section 303(g)" each place such term appears and inserting "section 303(g)(1)"; and(2) in subsection (d), by striking "section 303(g)" and inserting "section 303(g)(1)".

(c) Additional Authorization of Appropriations.--For the purpose of assisting the Secretary of Health and Human Services with the additional duties established for the Secretary pursuant to the amendments made by this section, there are authorized to be appropriated, in addition to other authorizations of appropriations that are available for such purpose, such sums as may be necessary for each of fiscal years 2001 through 2003.

[Amended by public law 109-469 on 12/29/2006]**

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