




# State of Wisconsin


LEGISLATIVE REFERENCE BUREAU


## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**


Date Transfer Requested: 02/02/2018 (Per: CMH)


### **Compile Draft - Appendix E**


**Appendix A**  The 2017 drafting file for LRB-4937

**Appendix B**  The 2017 drafting file for LRB-4955

**Appendix C**  The 2017 drafting file for LRB-5006

**Appendix D**  The 2017 drafting file for LRB-5014

**Appendix E**  The 2017 drafting file for LRB-5017

**Appendix F**  The 2017 drafting file for LRB-5086

has been copied/added to the drafting file for

**2017 LRB-5242**

2017 DRAFTING REQUEST

Bill

For: **John Nygren (608) 266-2343** Drafter: **mduchek**  
 By: **Chris** Secondary Drafters: **tdodge**  
 Date: **12/7/2017** May Contact:

Same as LRB:

Submit via email: **YES**  
 Requester's email: **Rep.Nygren@legis.wisconsin.gov**  
 Carbon copy (CC) to: **tamara.dodge@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Buprenorphine therapy practice and prior authorization exemptions

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mduchek 12/8/2017	kfollett 12/11/2017			
/P1	tdodge 12/19/2017	kfollett 12/19/2017	lparisi 12/11/2017		
/P2	tdodge 12/19/2017	kfollett 12/19/2017	dwalker 12/19/2017		
/P3			dwalker 12/19/2017		

FE Sent For: <END>

**Duchek, Michael**

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**From:** Duchek, Michael  
**Sent:** Tuesday, December 05, 2017 8:23 AM  
**To:** Paczuski, Konrad; Dodge, Tamara  
**Subject:** Re: FW: Bill Draft

I can follow up with him. I have not heard the phrase waived physician before.

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From: Dodge, Tamara  
Sent: Monday, December 4, 5:04 PM  
Subject: FW: Bill Draft  
To: Duchek, Michael, Paczuski, Konrad

I think this might be one of yours. Let me know if that isn't the case. Otherwise, please let Chris know who is handling this.

Tami

Tamara J. Dodge  
Senior Legislative Attorney  
Wisconsin Legislative Reference Bureau  
P.O. Box 2037  
Madison, WI 53701-2037  
(608) 267 - 7380  
tamara.dodge@legis.wisconsin.gov

**From:** Borgerding, Chris  
**Sent:** Monday, December 04, 2017 2:15 PM  
**To:** Dodge, Tamara <Tamara.Dodge@legis.wisconsin.gov>  
**Subject:** Bill Draft

Good afternoon Tami, hope you had a great weekend.

I was wondering if I could have a bill drafted that alters scope of practice requirements to allow NP/PAs to prescribe Buprenorphine without a waived physician (but still under consultation).

Please let me know if you have any questions!

Chris

**Chris Borgerding**  
Office of State Representative John Nygren  
Co-Chair, Joint Committee on Finance  
89th Assembly District  
309 East, State Capitol  
608.266.2343

**Duchek, Michael**

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**From:** Borgerding, Chris  
**Sent:** Wednesday, December 06, 2017 9:23 AM  
**To:** Duchek, Michael  
**Subject:** buprenorphine scope of practice question

Mike does this help:

To ensure that barriers to providing timely access to evidence-based treatment are removed, the state should eliminate prior authorization requirements for buprenorphine-naloxone products to ease the administrative burden on prescribers and improve access for patients.

The state should alter current scope of practice requirements that limit nurse practitioners and physician assistants from prescribing buprenorphine without a similarly waived supervising physician. These potential changes to scopes of practice can be limited to prescribing authority for buprenorphine only. Removing these treatment barriers could impact access, particularly in rural areas of the state that already face even more significant federally waived physician shortages.

Thanks!

***Chris Borgerding***

Office of State Representative John Nygren  
Co-Chair, Joint Committee on Finance  
89th Assembly District  
309 East, State Capitol  
608.266.2343

## Duchek, Michael

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**From:** Borgerding, Chris  
**Sent:** Wednesday, December 06, 2017 2:20 PM  
**To:** Duchek, Michael  
**Subject:** RE: buprenorphine scope of practice question

Prior authorization scope of practice together. Grant funding separate.

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**From:** Duchek, Michael  
**Sent:** Wednesday, December 06, 2017 2:18 PM  
**To:** Borgerding, Chris <Chris.Borgerding@legis.wisconsin.gov>  
**Subject:** RE: buprenorphine scope of practice question

OK. Do you want separate drafts for the prior authorization and the "scope of practice" or all one draft? And would that grant funding component be a separate draft?

-Mike

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**From:** Borgerding, Chris  
**Sent:** Wednesday, December 06, 2017 2:17 PM  
**To:** Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>  
**Subject:** RE: buprenorphine scope of practice question

Hi Mike.

- 1) Yes, just Medicaid.
- 2) If you could just draft something based on your understanding that would be great.

Thank you!

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**From:** Duchek, Michael  
**Sent:** Wednesday, December 06, 2017 10:13 AM  
**To:** Borgerding, Chris <Chris.Borgerding@legis.wisconsin.gov>  
**Subject:** RE: buprenorphine scope of practice question

See red below.

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**From:** Borgerding, Chris  
**Sent:** Wednesday, December 06, 2017 9:23 AM  
**To:** Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>  
**Subject:** buprenorphine scope of practice question

Mike does this help:

To ensure that barriers to providing timely access to evidence-based treatment are removed, the state should eliminate prior authorization requirements for buprenorphine-naloxone products to ease the administrative burden on prescribers and improve access for patients. Prior authorizations are an insurance issue as far as we know. We typically don't draft

things about prior authorizations, but we have done it, at least for Medicaid. Are you talking about Medicaid, private insurance, or both? Or are you talking about something else entirely?

The state should alter current scope of practice requirements that limit nurse practitioners and physician assistants from prescribing buprenorphine without a similarly waived supervising physician. These potential changes to scopes of practice can be limited to prescribing authority for buprenorphine only. Removing these treatment barriers could impact access, particularly in rural areas of the state that already face even more significant federally waived physician shortages. So physician assistants have to be supervised by physicians, and I do see that under the administrative code, a physician assistant can't do anything that exceeds the scope of practice of his/her supervising physician. So while I am not sure, I am guessing that might be the issue that a waived PA can't do buprenorphine without a waived physician to supervise. Nurse prescribers don't have to be supervised, but do have to collaborate with a physician. I'm not sure but maybe it's understood that a nurse prescriber would need a waived collaborating physician in order to prescribe buprenorphine, though it's less obvious to me there where the issue comes from.

So I guess if you have more information on either, I'd appreciate it. As to the first paragraph, I think we need to know the answer to the questions I have above. I could draft something for the second paragraph above based on my understanding of what the issue is, though as I said I'm not entirely sure.

Thanks!

***Chris Borgerding***

Office of State Representative John Nygren  
Co-Chair, Joint Committee on Finance  
89th Assembly District  
309 East, State Capitol  
608.266.2343



State of Wisconsin  
2017 - 2018 LEGISLATURE

In 12-8-17  
Out 12-11-17

LRB-50172  
MED&TJD...

PI  
gf

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

Gen

1 AN ACT ...; relating to: maintenance and detoxification treatment provided by  
2 physician assistants and advanced practice nurse prescribers and prescribing  
3 and dispensing of buprenorphine and naloxone to Medical Assistance  
4 recipients.

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

5 SECTION 1. 49.45 (29<sup>f</sup>) of the statutes is created to read: ✓  
6 49.45 (29<sup>f</sup>) OPIOID TREATMENT AUTHORIZATION. The department may not require  
7 prior authorization for or other limitation on prescribing and dispensing of  
8 buprenorphine and naloxone to a recipient under the Medical Assistance program  
9 under this subchapter by an advanced practice nurse who possesses a valid waiver ✓

1 as described under s. 441.19 or a physician assistant who possesses a valid waiver  
2 as described under s. 448.038, if the prior authorization or other limitation is not  
3 required by 21 USC 823.

4 SECTION 2. 441.19 of the statutes is created to read:

5 **441.19 Maintenance and detoxification treatment under federal**  
6 **waiver.** (1) In this section, "waiver" means a waiver issued by the federal  
7 department of health and human services under (under) 21 USC 823 (2) (A). (g)

8 (2) Notwithstanding s. 441.16 (3) and any rules promulgated by the board that  
9 require an advanced practice nurse who is certified to issue prescription orders to  
10 work in a collaborative relationship with a physician, and subject to any  
11 requirements and limitations under 21 USC 823, an advanced practice nurse who  
12 is certified to issue prescription orders and who possesses a valid waiver is not  
13 required to work in a collaborative relationship with a physician with respect to any  
14 of the following:

15 (a) The prescribing and dispensing of narcotic drugs to individuals for  
16 maintenance treatment or detoxification treatment as permitted under 21 USC 823  
17 (g).

18 (b) Maintenance treatment or detoxification treatment provided to individuals  
19 described in par. (a).

\*\*\*\*NOTE: 21 USC 823 (g) (2) (G) (iv) (III) requires that a nurse practitioner or  
physician assistant who gets a waiver be supervised by, or work in collaboration with, a  
qualifying (i.e., waived) physician. Wisconsin is considered to be a collaborative  
practice state for nurse practitioners, which is a requirement established under s. N 8.10  
(7), Wis. Adm. Code. The above language is my attempt to say that such an advanced  
practice nurse who has a waiver is exempt from that collaboration requirement. Please  
note the following:

a. I'm not sure if any other states have done something like this, and it may be  
worth confirming that a state can in fact waive its collaborative practice requirement  
specifically for this purpose, as the collaboration requirement is part of federal law in  
order to even be considered a qualifying practitioner in the first place. I would also note



that waiving the collaboration requirement may have other implications for things such as malpractice liability.

b. The federal law does specifically allow states to raise the number of patients that a practitioner may treat under a waiver. Let me know if you want to do something like that.

c. The federal law also specifically allows states to impose additional practice requirements for practitioners with waivers. You may want to have the board establish the parameters of practice under this exemption to make clear for the practitioner and the board (i.e., for professional discipline) what is and is not permitted under this exemption. Note that I tried to include language that would not only cover prescribing/dispensing but also the treatment that goes along with it, but I'm not sure what that would all entail and so it might be helpful to establish parameters to delineate what a nurse practitioner can and cannot do under the exemption.

d. Under the current federal law, the waiver authority will expire in October of 2021. Let me know if you want to specifically include an expiration date for these provisions as well.

1           **SECTION 3.** 448.038 of the statutes is created to read:

2           **448.038 Maintenance and detoxification treatment under federal**

3 **waiver.** (1) In this section, "waiver" means a waiver issued by the federal

4 department of health and human services under under 21 USC 823 (2) (A).

5           (2) Notwithstanding ss. 448.01 (6) and 448.21 and any rules promulgated by  
6 the board that require a physician assistant to be supervised by a physician and  
7 subject to any requirements and limitations under 21 USC 823, a physician assistant  
8 who possesses a valid waiver is not required to be supervised by a physician with  
9 respect to any of the following:

10           (a) The prescribing and dispensing of narcotic drugs to individuals for  
11 maintenance treatment or detoxification treatment as permitted under 21 USC 823

12 (g).

13           (b) Maintenance treatment or detoxification treatment provided to individuals  
14 described in par. (a).

\*\*\*\*NOTE: 21 USC 823 (g) (2) (G) (iv) (III) requires that a nurse practitioner or physician assistant who gets a waiver be supervised by, or work in collaboration with, a qualifying (i.e., waived) physician. Wisconsin is considered to be a supervision state for physician assistants, which is built into the definition of what a physician is under s. 448.01 (6). Section 448.21 also contains a number of limitations on physician assistants. The above language is my attempt to say that such a physician assistant who has a waiver

is exempt from that supervision requirement. However, see my notes above with respect to nurse practitioners, which apply equally here.

1

(END)

**Duchek, Michael**

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**From:** Borgerding, Chris  
**Sent:** Thursday, December 14, 2017 2:25 PM  
**To:** Duchek, Michael; Dodge, Tamara  
**Subject:** LRB-5017/P1  
**Attachments:** Recommendation #2 Draft Bill\_ADW\_GDW.PDF

Good afternoon Mike and Tami,

I have attached LRB-5017/P1 with some notes for changes. Would it be possible for one of you to speak with Andrew from PEW Charitable Trust who has been helping us with this draft? He may be able to more eloquently and effectively get our thoughts across.

He is free until 5pm today for a phone call.

Let me know what works and I can help facilitate the phone call.

Thanks!

**Chris Borgerding**  
Office of State Representative John Nygren  
Co-Chair, Joint Committee on Finance  
89th Assembly District  
309 East, State Capitol  
608.266.2343



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-5017/P1  
MED&TJD:kjf

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT** *to create* 49.45 (29z), 441.19 and 448.038 of the statutes; **relating to:**  
2             maintenance and detoxification treatment provided by physician assistants  
3             and advanced practice nurse prescribers and prescribing and dispensing of  
4             buprenorphine and <sup>1</sup>naloxone to Medical Assistance recipients.

---

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

5             **SECTION 1.** 49.45 (29z) of the statutes is created to read:  
6             49.45 (29z) OPIOID TREATMENT AUTHORIZATION. The department may not require  
7             prior authorization for or other limitation on prescribing and dispensing of  
8             buprenorphine and naloxo<sup>2</sup> to a recipient under the Medical Assistance program  
9             under this subchapter by a<sup>3</sup> advanced practice<sup>4</sup> nurse who possesses a valid waiver

# Summary of Comments on (17-5017/P1)

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Page: 1

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Number: 1 Author: awhitacre Subject: Sticky Note Date: 12/12/2017 2:52:55 PM

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The way this is written implies that the bill is parsing out buprenorphine and naloxone as two separate medications. What it should be written as is "buprenorphine combination products" (e.g. buprenorphine products that contain naloxone, such as Suboxone) or "buprenorphine-naloxone combination product". You could provide a definition up front, such as "For the purposes of this chapter, "buprenorphine" means buprenorphine combinations products approved by the federal Food and Drug Administration for maintenance and detoxification of opioid dependence."

Number: 2 Author: gwright Subject: Sticky Note Date: 12/14/2017 1:49:31 PM

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Same note as above regarding buprenorphine and naloxone combination products.

Number: 3 Author: awhitacre Subject: Sticky Note Date: 12/12/2017 2:43:59 PM

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Since APRNs and PAs are singled out here, it would make sense to include prescribing physicians as well. It wouldn't make much sense to bar prior authorizations for mid-level practitioners, but allow them for physicians.

Author: gwright Subject: Sticky Note Date: 12/14/2017 1:51:39 PM

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We should remove mentions of advance practice nurses and physician assistants here. This section's aim is to remove the prior authorization for Buprenorphine combination products for non-pregnant persons under the Medical Assistance program regardless of the prescriber.

Number: 4 Author: gwright Subject: Sticky Note Date: 12/14/2017 2:14:36 PM

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We should remove mentions of advance practice nurses and physician assistants here. This section's aim is to remove the prior authorization for Buprenorphine combination products for non-pregnant persons under the Medical Assistance program regardless of the prescriber.

1 as described under s. 441.19 or a physician assistant who possesses a valid waiver  
2 as described under s. 448.038, if the prior authorization or other limitation is not  
3 required by 21 USC 823.

4 **SECTION 2.** 441.19 of the statutes is created to read:

5 **441.19 Maintenance and detoxification treatment under federal**  
6 **waiver.** (1) In this section, "waiver" means a waiver issued by the federal  
7 department of health and human services under 21 USC 823 (g) (2) (A).

8 (2) Notwithstanding s. 441.16 (3) and any rules promulgated by the board that  
9 require an advanced practice nurse who is certified to issue prescription orders to  
10 work in a collaborative relationship with a physician, and subject to any  
11 requirements and limitations under 21 USC 823, an advanced practice nurse who  
12 is certified to issue prescription orders and who possesses a valid waiver is not  
13 required to work in a collaborative relationship with a physician with respect to any  
14 of the following:

15 (a) The prescribing and dispensing of narcotic drugs to individuals for  
16 maintenance treatment or detoxification treatment as permitted under 21 USC 823  
17 (g).

18 (b) Maintenance treatment or detoxification treatment provided to individuals  
19 described in par. (a).

\*\*\*\*NOTE: 21 USC 823 (g) (2) (G) (iv) <sup>1</sup> requires that a nurse practitioner or  
physician assistant who gets a waiver be supervised by, or work in collaboration with, a  
qualifying (i.e., waivered) <sup>2</sup> physician. Wisconsin is considered to be a collaborative  
practice state for nurse practitioners, which is a requirement established under s. N 8.10  
(7), Wis. Adm. Code. The above language is my attempt to say that such an advanced  
practice nurse who has a waiver is exempt from that collaboration requirement. Please  
note the following:

a. I'm not sure if any other states have done something like this, and it may be  
worth confirming that a state can in fact waive its collaborative practice requirement  
specifically for this purpose, as the collaboration requirement is part of federal law in  
order to even be considered a qualifying practitioner in the first place. I would also note

## Page: 2

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Number: 1 Author: awhitacre Subject: Sticky Note Date: 12/12/2017 3:16:59 PM

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I think you've done a good job here to spell out the exemption. My non-legal read of the federal law is that there is deference to the state in this space. If Wisconsin were to exempt NPs and PAs from collaborative/supervisory requirements, my interpretation is that it would be permissible under the federal code.

Specifically here: "(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."

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Number: 2 Author: gwright Subject: Sticky Note Date: 12/14/2017 1:59:11 PM

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If we cannot exempt this specific practice from the collaboration agreement, then we should be clear that working with a qualified physician is sufficient. The physician does NOT need to be waived in order to be deemed a qualified physician. They must meet AT LEAST one of many possible requirements: [https://www.asam.org/docs/default-source/education-docs/cara-language-on-qualifying-physicians.pdf?sfvrsn=26427ec2\\_2](https://www.asam.org/docs/default-source/education-docs/cara-language-on-qualifying-physicians.pdf?sfvrsn=26427ec2_2)

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Number: 3 Author: awhitacre Subject: Sticky Note Date: 12/12/2017 4:02:05 PM

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A few states have changed scope of practice to allow prescribing authority, which this exemption does in a small way - see <https://www.advisory.com/daily-briefing/2017/05/02/np-pa-opioid>.

that waiving the collaboration requirement may have other implications for things such as malpractice liability.

b. The federal law does not specifically allow states to raise the number of patients that a practitioner may treat under a waiver. Let me know if you want to do something like that.

c. The federal law also specifically allows states to impose additional practice requirements for practitioners with waivers. You may want to have the board establish the parameters of practice under this exemption to make clear for the practitioner and the board (i.e., for professional discipline) what is and is not permitted under this exemption. Note that I tried to include language that would not only cover prescribing/dispensing but also the treatment that goes along with it, but I'm not sure what that would all entail and so it might be helpful to establish parameters to delineate what a nurse practitioner can and cannot do under the exemption.

d. Under the current federal law, the waiver authority will expire in October of 2021. Let me know if you want to specifically include an expiration date for these provisions as well.

1           **SECTION 3.** 448.038 of the statutes is created to read:

2           **448.038 Maintenance and detoxification treatment under federal**  
3 **waiver.** (1) In this section, "waiver" means a waiver issued by the federal  
4 department of health and human services under 21 USC 823 (g) (2) (A).

5           (2) Notwithstanding ss. 448.01 (6) and 448.21 and any rules promulgated by  
6 the board that require a physician assistant to be supervised by a physician and  
7 subject to any requirements and limitations under 21 USC 823, a physician assistant  
8 who possesses a valid waiver is not required to be supervised by a physician with  
9 respect to any of the following:

10           (a) The prescribing and dispensing of narcotic drugs to individuals for  
11 maintenance treatment or detoxification treatment as permitted under 21 USC 823  
12 (g).


13           (b) Maintenance treatment or detoxification treatment provided to individuals  
14 described in par. (a).

\*\*\*\*NOTE: 21 USC 823 (g) (2) (G) (iv) (III) requires that a nurse practitioner or physician assistant who gets a waiver be supervised by, or work in collaboration with, a qualifying (i.e., waived) physician. Wisconsin is considered to be a supervision state for physician assistants, which is built into the definition of what a physician is under s. 448.01 (6). Section 448.21 also contains a number of limitations on physician assistants. The above language is my attempt to say that such a physician assistant who has a waiver




## Page: 3

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 Number: 1 Author: awhitacre Subject: Sticky Note Date: 12/12/2017 3:05:45 PM

I think keeping to the federal guidelines, in terms of number of patients, is preferred.

---

 Number: 2 Author: awhitacre Subject: Sticky Note Date: 12/12/2017 3:50:20 PM

If possible in this bill, it makes sense to have the board establish parameters of practice under the exemption for clarity, as you mention.


Apparently, the Boards have also issued guidance here that is consistent with this bill draft.

---

 Number: 3 Author: awhitacre Subject: Sticky Note Date: 12/12/2017 3:05:15 PM

I think it's okay to leave out, since the waiver authority will lapse if the federal government doesn't extend the expiration date. It would save the state time and effort in making that change legislatively, if it remains untethered in this legislation.

---

 Number: 4 Author: gwright Subject: Sticky Note Date: 12/14/2017 2:00:08 PM

See my comment above. Physicians do not HAVE to be waived in order to be deemed qualifying physicians.

[https://www.asam.org/docs/default-source/education-docs/cara-language-on-qualifying-physicians.pdf?sfvrsn=26427ec2\\_2](https://www.asam.org/docs/default-source/education-docs/cara-language-on-qualifying-physicians.pdf?sfvrsn=26427ec2_2)

is exempt from that supervision requirement. However, see my notes above with respect to nurse practitioners, which apply equally here.

1

(END)

## Duchek, Michael

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**From:** Andrew Whitacre <awhitacre@pewtrusts.org>  
**Sent:** Friday, December 15, 2017 9:50 AM  
**To:** Duchek, Michael  
**Subject:** Re: Email

That's a great point, including that specification would be important. We definitely don't want to give an avenue to exempt from the waiver training, that would likely create tension with the federal government.

I'm talking with Dr. Westlake in 10 minutes. I'll circle back with you after our conversation.

Sent from my iPhone

On Dec 15, 2017, at 9:47 AM, Duchek, Michael <[Michael.Duchek@legis.wisconsin.gov](mailto:Michael.Duchek@legis.wisconsin.gov)> wrote:

Both of these issues connect to who is a "qualifying physician" under federal law. So if we allowed the MEB to say these are our criteria for determining what "other training or experience as the State medical licensing board... considers to demonstrate the ability of the physician to treat and manage opiate-dependent patients," then a physician who satisfies those criteria would also seem to be able to be exempted from the 8-hour training requirement, because the term "qualifying physician" as so defined is used in both places.

Having said that, we could specify that these criteria would only be for purposes of serving as a valid supervising/collaborating physician for an NP/PA.

-Mike

---

**From:** Andrew Whitacre [<mailto:awhitacre@pewtrusts.org>]  
**Sent:** Thursday, December 14, 2017 7:51 PM  
**To:** Duchek, Michael <[Michael.Duchek@legis.wisconsin.gov](mailto:Michael.Duchek@legis.wisconsin.gov)>  
**Subject:** RE: Email

I don't think so. I still think they would be required to get the 8 hour training.

---

**From:** Duchek, Michael [<mailto:Michael.Duchek@legis.wisconsin.gov>]  
**Sent:** Thursday, December 14, 2017 5:03 PM  
**To:** Andrew Whitacre  
**Subject:** RE: Email

It would basically say something like, "The board shall promulgate rules specifying the requisite training or experience that a physician must have in order to be considered a qualifying physician under 21 USC 823 (g) (2) (G) (ii) (VI)." We could then also require the board to do these rules on an emergency (expedited) basis.

I would just note, however, that this would also mean that the physician who holds this training/experience would also not need to get the 8-hour training (because (s)he would then be a "qualifying physician") if the physician himself/herself wanted to do suboxone, correct?

-Mike

---

**From:** Andrew Whitacre [mailto:awhitacre@pewtrusts.org]  
**Sent:** Thursday, December 14, 2017 4:50 PM  
**To:** Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>  
**Subject:** RE: Email

Okay, will do. If you have any language that you suggest I share with him, let me know. I should be able to talk to him in the morning and get back to you then.

---

**From:** Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]  
**Sent:** Thursday, December 14, 2017 4:48 PM  
**To:** Andrew Whitacre  
**Subject:** RE: Email

That sounds good. Let me know what he says.

---

**From:** Andrew Whitacre [mailto:awhitacre@pewtrusts.org]  
**Sent:** Thursday, December 14, 2017 4:22 PM  
**To:** Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>  
**Subject:** RE: Email

I agree with that approach. I can reconnect with Dr. Westlake to that effect. We've talked with him quite a bit, but not on this in particular. He has seen our recommendations in full, but again not this specific legal approach.

---

**From:** Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]  
**Sent:** Thursday, December 14, 2017 4:08 PM  
**To:** Andrew Whitacre  
**Subject:** RE: Email

Well, I think the most legally sound and straightforward option might be to actually require the board to come up with specific rules that specify which training would qualify for purposes of that provision in federal law (*"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."*). To me, the federal law seems to be written in a way in terms of the board making some kind of determination, and not mere acquiescence.

I'm not sure what the board's reaction to that idea would be, but it's certainly possible for me to do language that would require the board to come up with rules and to provide them authority to do so rather quickly. I could certainly try to talk to someone over there if you think that would help. Or maybe you've already done that.

-Mike

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**From:** Andrew Whitacre [mailto:awhitacre@pewtrusts.org]  
**Sent:** Thursday, December 14, 2017 4:00 PM  
**To:** Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>  
**Subject:** RE: Email

I think they could. I think the language could stand as you have it, I just would worry a bit about the breadth. Any other alternatives you can think of?

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**From:** Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]  
**Sent:** Thursday, December 14, 2017 3:53 PM  
**To:** Andrew Whitacre  
**Subject:** RE: Email

When you say "defer to MEB rules" – I don't think the MEB has any such rules on who is a qualifying physician. Is the idea that they would (or could) come up with some?

---

**From:** Andrew Whitacre [mailto:awhitacre@pewtrusts.org]  
**Sent:** Thursday, December 14, 2017 3:49 PM  
**To:** Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>  
**Subject:** RE: Email

I think what you crafted below is right. The only concern I would have is the breadth of "*a physician who holds a license to practice medicine and surgery under s. 448.04 (1) (a) or (ab).*" I'm just thinking of physicians like cardiologists, surgeons of any kind, and other specialties that would never/don't treat opioid use disorders. I'm not sure the alternative there, though. Is there a way to defer to MEB rules on what is a qualifying physician?

I would include the bracketed language, just for the sake of clarity.

---

**From:** Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]  
**Sent:** Thursday, December 14, 2017 3:33 PM  
**To:** Andrew Whitacre  
**Subject:** RE: Email

This is my attempt to put what we discussed into some language. This basically says a physician who has a regular physician license or a license issued under the Interstate Medical Licensure Compact is considered eligible to serve as a qualifying physician, as defined under federal law, for purposes of the supervision/collaboration requirement under federal law. I could also add the bracketed language if you think it's necessary. Let me know what you think.

*With respect to the ability of an advanced practice nurse who is certified to issue prescription orders to obtain and practice under a waiver issued by the federal department of health and human services under 21 USC 823 (g) (2) (A), a physician who holds a license to practice medicine and surgery under s. 448.04 (1) (a) or (ab) shall be considered eligible to serve as a qualifying physician pursuant to 21 USC 823 (g) (2) (G) (ii) for purposes of the requirement under 21 USC 823 (g) (2) (G) (iv) (III), regardless of whether the physician himself or herself holds a waiver.*

Also, I found more regarding what you referenced below at pages 11-13. Although it's somewhat vague, it is consistent with what you said. <https://dsps.wi.gov/Documents/BoardCouncils/MED/20171115MEDOpenSession.pdf>

**Mike Duchek**  
**Legislative Attorney**  
**Wisconsin Legislative Reference Bureau**  
**(608) 266-0130**

**From:** Andrew Whitacre [<mailto:awhitacre@pewtrusts.org>]  
**Sent:** Thursday, December 14, 2017 2:51 PM  
**To:** Duchek, Michael <[Michael.Duchek@legis.wisconsin.gov](mailto:Michael.Duchek@legis.wisconsin.gov)>  
**Subject:** RE: Email

REQUEST FOR THE MEDICAL EXAMINING BOARD TO PURSUE RULES FOR AUTHORITY INVOLVING  
PHYSICIAN ASSISTANT PRESCRIBING OF BUPRENORPHINE FOR THE TREATMENT OF ADDICTION

MOTION: David Roelke moved, seconded by Lee Ann Lau, that the Board is supportive of medication assisted treatment as another tool to fight the opioid epidemic. Physicians and Physician Assistants must follow the Federal Law (Comprehensive Addiction and Recovery Act [CARA]) relating to training necessary to prescribe buprenorphine. Current state law and administrative code permits a waived physician assistant to be supervised by an unwaivered physician who otherwise meets the qualifications of the Federal Law. Motion carried unanimously.

---

**From:** Duchek, Michael [<mailto:Michael.Duchek@legis.wisconsin.gov>]  
**Sent:** Thursday, December 14, 2017 2:51 PM  
**To:** Andrew Whitacre  
**Subject:** Email

**Duchek, Michael**

---

**From:** Bemis, Zach  
**Sent:** Friday, December 15, 2017 11:03 AM  
**To:** Duchek, Michael  
**Cc:** Borgerding, Chris; Andrew Whitacre  
**Subject:** Re: Language

Yes, this looks good.

Thanks,

Zach

Sent from my iPhone

On Dec 15, 2017, at 10:32 AM, Duchek, Michael <[Michael.Duchek@legis.wisconsin.gov](mailto:Michael.Duchek@legis.wisconsin.gov)> wrote:

See below. To put it in plain English, this is saying that if a PA or APN wants to obtain and practice under a waiver, a physician who meets any of the conditions for serving as a qualifying physician under federal law (i.e., the physician has one of those board certifications, has a waiver, etc.) is considered to be a qualifying physician for purposes of the collaboration/supervision requirement. Does this accomplish what you want to say?

*With respect to the ability of [a physician assistant/an advanced practice nurse who is certified to issue prescription orders] to obtain and practice under a waiver [to be defined above], a physician who satisfies any of the criteria specified in 21 USC 823 (g) (2) (G) (ii) shall be considered eligible to serve as a qualifying physician for purposes of the requirement under 21 USC 823 (g) (2) (G) (iv) (III), regardless of whether the physician himself or herself holds a waiver.*

**Mike Duchek**  
**Legislative Attorney**  
**Wisconsin Legislative Reference Bureau**  
**(608) 266-0130**

**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

1) Name and Title of Person Submitting the Request:  Kimberly Wood, Program Assistant Supervisor		2) Date When Request Submitted:  10/26/2017 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
3) Name of Board, Committee, Council, Sections:  Medical Examining Board			
4) Meeting Date:  11/15/2017	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page?  Request for the Medical Examining Board to Pursue Rules for Authority Involving Physician Assistant Prescribing of Buprenorphine for the Treatment of Addiction	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled?  <input checked="" type="checkbox"/> Yes: Jennifer Jarrett – WI Council on PA-Chair and WAPA Reps: Reid Bowers, MPAS, PA-C; Julie Doyle, MPAS, PA-C; Eric Elliot, MPAS, PA-C; RJ Pirlot <input type="checkbox"/> No	9) Name of Case Advisor(s), if required:  N/A	
10) Describe the issue and action that should be addressed:  The Chair of the Council on Physician Assistants and WAPA Representatives will appear to discuss a request for the pursuit of rules as outlined in the motion below based on receipt of attached correspondence.  <b>MOTION:</b> Jennifer Jarrett moved, seconded by Nadine Miller, to request that the Medical Examining Board amend WI Admin. Code Med Ch. 8 to authorize a physician assistant to exercise prescribing privileges for FDA treatment medications containing buprenorphine, a schedule III controlled substance, irrespective of whether or not their supervising physician has been waived as long as they and their associated physician otherwise meet the requirements of the program. Motion carried unanimously.			
11) <b>Authorization</b>			
<b>Kimberly Wood</b>		<b>10/26/2017</b>	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			





**ASAM** American Society of  
Addiction Medicine

October 13, 2017

Jennifer L. Jarrett, PA-C  
Wisconsin Council on Physician Assistants  
Wisconsin Department of Safety and Professional Services  
P.O. Box 8935  
Madison, Wisconsin 53708

Dear PA Jarrett:

On behalf of the American Society of Addiction Medicine (ASAM), the American Association of Nurse Practitioners (AANP), and the American Academy of Physician Assistants (AAPA), who collectively represent over 350,000 clinicians, we would like to take this opportunity to discuss with you the matter of ensuring Nurse Practitioners (NPs) and Physician Assistants (PAs) are able to prescribe buprenorphine for the treatment of addiction. With the opioid addiction and overdose crisis continuing to significantly impact the country, ASAM, AANP, and AAPA encourage you to facilitate this important new Federal innovation.

ASAM, AANP, and AAPA are dedicated to increasing access to and improving the quality of addiction treatment for patients across the country. We are also committed to promoting the appropriate role of the clinician in the care of patients with addiction. We recognize that States, through laws, regulations, guidelines, and policies significantly impact how substance use disorder and addiction treatment is provided to its citizens.

As you are likely aware, last July President Obama signed the Comprehensive Addiction and Recovery Act (CARA) into law. CARA is a sweeping bill that came together over the course of several years with input from hundreds of addiction treatment advocates. Its provisions address the full continuum of care from primary prevention to recovery support, including significant changes to expand access to addiction treatment services and overdose reversal medications.

One major provision of CARA is the authorization of prescribing privileges to NPs and PAs for FDA approved opioid treatment medications containing buprenorphine, a Schedule III controlled substance. Under CARA, NPs and PAs must complete 24 hours of training to be eligible for a waiver to prescribe and must be supervised by or work in collaboration with a qualifying physician (defined under Federal law as a physician that is an addiction specialist or has taken the appropriate training), *if supervision or collaboration is required by state law*. It is important to realize that ASAM collaborated with the AANP and the AAPA to help develop the curriculum and the training to meet this training requirement.

This is a substantial change in practice, as it was when the Drug Addiction Treatment Act (DATA) of 2000 provided this authority to physicians, reversing a Federal prohibition that had been in place since 1914. As such, many of

our own NP and PA members, as well as those represented by allied stakeholders, have expressed uncertainty about State laws and regulations that may affect their ability to treat patients under this new paradigm.

As such, it would be helpful if the applicable State Boards could issue information to their respective NP or PA licensees to clarify the requirements that these health care professionals need to be aware of as they begin to consider treating patients. This important guidance could be in the form of a Dear Colleague letter, an update in a newsletter, or other methods. In so doing, we encourage regulatory boards to use the least restrictive language possible, and state that NPs and PAs who meet the qualifications, complete the required training, and receive a waiver from the Drug Enforcement Administration (DEA) may prescribe and/or provide buprenorphine for the treatment of opioid addiction as part of medication-assisted treatment (MAT).

Of note, the Substance Abuse and Mental Health Services Administration (SAMHSA) has indicated that if collaboration or supervision *is required by state law* it will interpret CARA in such a way that NPs and PAs will not be required to collaborate with or be supervised by a waived physician as a condition of their own waiver, as long as they and their associated physician otherwise meet the requirements of the program. We urge state regulators to follow this approach, and allow NPs and PAs to practice with an eligible, but unwaivered, qualified physician *if supervision or collaboration is required by state law*.

ASAM, AANP, and AAPA share the States' goal in increasing access to and improving the quality of comprehensive addiction treatment services for all patients, as well as promoting the appropriate role of the clinician in the care of patients with addiction. We are committed to working with you on promoting access to this high quality, evidence-based treatment that best meets the needs of the patient. If AANP, AAPA, and ASAM can be of any assistance passing on information from your state's Board to our members we would be happy to do so. Please do not hesitate to contact Brad Bachman, ASAM's Manager of State Government Relations, at (301) 547-4107 or [bbachman@asam.org](mailto:bbachman@asam.org), if we can be of service to you. We look forward to working with you.

Sincerely,



Kelly J. Clark, MD, MBA, DFAPA, DFASAM  
President, American Society of Addiction Medicine



L. Gail Curtis, MPAS, PA-C, DFAAPA  
President, American Academy of Physician Assistants



Joyce M. Knestrick, PhD, C-FNP, FAANP  
President, American Association of Nurse Practitioners



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-5017/BJ  
MED&TJD:kjf

IN: 12/19

Due Today (H)

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

Insert Analysis

1 AN ACT to create 49.45 (29z), 441.19 and 448.038 of the statutes; relating to:  
2 maintenance and detoxification treatment provided by physician assistants  
3 and advanced practice nurse prescribers and prescribing and dispensing of  
4 buprenorphine <sup>combination products</sup> and naloxone to Medical Assistance recipients.

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

5 SECTION 1. 49.45 (29z) of the statutes is created to read:  
6 49.45 (29z) OPIOID TREATMENT AUTHORIZATION. The department may not require  
7 prior authorization for or other limitation on prescribing and dispensing of  
8 buprenorphine <sup>combination products</sup> and naloxone to a recipient under the Medical Assistance program  
9 under this subchapter by an advanced practice nurse who possesses a valid waiver  
health care provider

*under 21 USC 823*

1 as described under s. 441.19 or a physician assistant who possesses a valid waiver  
2 as described under s. 448.038, if the prior authorization or other limitation is not  
3 required by 21 USC 823.

4 SECTION 2. 441.19 of the statutes is created to read:

5 441.19 Maintenance and detoxification treatment under federal  
6 waiver. (1) In this section, "waiver" means a waiver issued by the federal  
7 department of health and human services under 21 USC 823 (g) (2) (A). *Ins 2-8*

8 (2) Notwithstanding s. 441.16 (3) and any rules promulgated by the board that  
9 require an advanced practice nurse who is certified to issue prescription orders to  
10 work in a collaborative relationship with a physician, and subject to any  
11 requirements and limitations under 21 USC 823, an advanced practice nurse who  
12 is certified to issue prescription orders and who possesses a valid waiver is not  
13 required to work in a collaborative relationship with a physician with respect to any  
14 of the following:

15 (a) The prescribing and dispensing of narcotic drugs to individuals for  
16 maintenance treatment or detoxification treatment as permitted under 21 USC 823

17 (g).

18 (b) Maintenance treatment or detoxification treatment provided to individuals  
19 described in par. (a).

\*\*\*\*NOTE: 21 USC 823 (g) (2) (G) (iv) (III) requires that a nurse practitioner or physician assistant who gets a waiver be supervised by, or work in collaboration with, a qualifying (i.e., waived) physician. Wisconsin is considered to be a collaborative practice state for nurse practitioners, which is a requirement established under s. N 8.10 (7), Wis. Adm. Code. The above language is my attempt to say that such an advanced practice nurse who has a waiver is exempt from that collaboration requirement. Please note the following:

a. I'm not sure if any other states have done something like this, and it may be worth confirming that a state can in fact waive its collaborative practice requirement specifically for this purpose, as the collaboration requirement is part of federal law in order to even be considered a qualifying practitioner in the first place. I would also note

that waiving the collaboration requirement may have other implications for things such as malpractice liability.

b. The federal law does specifically allow states to raise the number of patients that a practitioner may treat under a waiver. Let me know if you want to do something like that.

c. The federal law also specifically allows states to impose additional practice requirements for practitioners with waivers. You may want to have the board establish the parameters of practice under this exemption to make clear for the practitioner and the board (i.e., for professional discipline) what is and is not permitted under this exemption. Note that I tried to include language that would not only cover prescribing/dispensing but also the treatment that goes along with it, but I'm not sure what that would all entail and so it might be helpful to establish parameters to delineate what a nurse practitioner can and cannot do under the exemption.

d. Under the current federal law, the waiver authority will expire in October of 2021. Let me know if you want to specifically include an expiration date for these provisions as well.

1 SECTION 3. 448.038 of the statutes is created to read:

2 448.038 Maintenance and detoxification treatment under federal

3 waiver. (1) In this section, "waiver" means a waiver issued by the federal  
4 department of health and human services under 21 USC 823 (g) (2) (A). *plus 3-5*

5 (2) Notwithstanding ss. 448.01 (6) and 448.21 and any rules promulgated by  
6 the board that require a physician assistant to be supervised by a physician and  
7 subject to any requirements and limitations under 21 USC 823, a physician assistant  
8 who possesses a valid waiver is not required to be supervised by a physician with  
9 respect to any of the following:

10 (a) The prescribing and dispensing of narcotic drugs to individuals for  
11 maintenance treatment or detoxification treatment as permitted under 21 USC 823

12 (g).

13 (b) Maintenance treatment or detoxification treatment provided to individuals  
14 described in par. (a).

\*\*\*\*NOTE: 21 USC 823 (g) (2) (G) (iv) (III) requires that a nurse practitioner or physician assistant who gets a waiver be supervised by, or work in collaboration with, a qualifying (i.e., waived) physician. Wisconsin is considered to be a supervision state for physician assistants, which is built into the definition of what a physician is under s. 448.01 (6). Section 448.21 also contains a number of limitations on physician assistants. The above language is my attempt to say that such a physician assistant who has a waiver

is exempt from that supervision requirement. However, see my notes above with respect to nurse practitioners, which apply equally here.

1

(END)

2017-2018 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-5017/P2ins  
MED:...

INSERT 2-8

X Under current federal law, the federal Drug Enforcement Administration (DEA) registers health care practitioners to <sup>to</sup> dispense controlled substances, and practitioners who dispense narcotic drugs to individuals for addiction treatment must additionally obtain a separate DEA registration for that purpose. However, qualifying health care practitioners may, subject to certain requirements and limitations, obtain a waiver from the requirement to obtain a separate DEA registration to dispense those drugs for addiction treatment. Health care practitioners eligible to obtain and practice under such a waiver include qualifying physicians and, until October 1, 2021, qualifying physician assistants and nurse practitioners. In order to qualify for a waiver, a nurse practitioner or physician assistant must be supervised by, or work in collaboration with, a qualifying physician, if the nurse practitioner or physician assistant is required by state law to act in collaboration with or under the supervision of a physician.

Under rules promulgated by the state Medical Examining Board, the practice of a physician assistant must be under the supervision of one or more physicians, and under rules promulgated by the state Board of Nursing, advanced practice nurse prescribers must work in a collaborative relationship with a physician.

This bill provides that, with respect to the ability of an advanced practice nurse prescriber or physician assistant to obtain and practice under a waiver, a physician who satisfies any of the criteria specified in federal law to be eligible to obtain a waiver is considered eligible to serve as a qualifying physician for purposes of the collaboration or supervision requirement under federal law, regardless of whether the physician himself or herself holds a waiver. (X)

INSERT 2-8

Insert JD analysis

- 1 With respect to the ability of an advanced practice nurse who is certified to issue
- 2 prescription orders to obtain and practice under a waiver, a physician who meets any
- 3 of the conditions specified in 21 USC 823 (g) (2) (G) (ii) shall be considered eligible
- 4 to serve as a qualifying physician for purposes of the requirement under 21 USC 823
- 5 (g) (2) (G) (iv) (III), regardless of whether the physician himself or herself holds a
- 6 waiver.

INSERT 3-5

- 7 With respect to the ability of a physician assistant to obtain and practice under
- 8 a waiver, a physician who meets any of the conditions specified in 21 USC 823 (g) (2)
- 9 (G) (ii) shall be considered eligible to serve as a qualifying physician for purposes of

1 the requirement under 21 USC 823 (g) (2) (G) (iv) (III), regardless of whether the  
2 physician himself or herself holds a waiver.



**2017-2018 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-5017/P2insTD  
TJD:...

1 TJD ANALYSIS INSERT (Insert after MED analysis)

The bill prohibits the Department of Health Services from requiring prior authorization for or another limitation on prescribing and dispensing of buprenorphine combination products to a Medical Assistance recipient by a health care provider who possesses a valid waiver, if the prior authorization or other limitation is not required under the federal law.

2 END TJD ANALYSIS INSERT

**Dodge, Tamara**

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**From:** Bemis, Zach  
**Sent:** Tuesday, December 19, 2017 2:29 PM  
**To:** Dodge, Tamara  
**Subject:** RE: Draft review: LRB -5017/P2

Thanks, Tami. Talking with Andrew I think it is good to add this clarification. Please add the language ensure prior authorization is permissible in the case of pregnant women.

Zach

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**From:** Dodge, Tamara  
**Sent:** Tuesday, December 19, 2017 2:18 PM  
**To:** Bemis, Zach <Zach.Bemis@legis.wisconsin.gov>  
**Subject:** RE: Draft review: LRB -5017/P2

Zach,

I was under the impression from my conversation with Andrew that limiting the bill to buprenorphine combinations products (instead of buprenorphine alone) addressed the issues of pregnant women since they are often prescribed buprenorphine alone. That said, I could add some language to ensure that the limitation on prior authorization does not apply to pregnant women if you'd like.

Tami

**Tamara J. Dodge**  
Senior Legislative Attorney  
Wisconsin Legislative Reference Bureau  
P.O. Box 2037  
Madison, WI 53701-2037  
(608) 267 - 7380  
[tamara.dodge@legis.wisconsin.gov](mailto:tamara.dodge@legis.wisconsin.gov)

---

**From:** Bemis, Zach  
**Sent:** Tuesday, December 19, 2017 1:56 PM  
**To:** Dodge, Tamara <[Tamara.Dodge@legis.wisconsin.gov](mailto:Tamara.Dodge@legis.wisconsin.gov)>  
**Cc:** Borgerding, Chris <[Chris.Borgerding@legis.wisconsin.gov](mailto:Chris.Borgerding@legis.wisconsin.gov)>; Suhr, Daniel R - LTGOV <[Daniel.Suhr@wisconsin.gov](mailto:Daniel.Suhr@wisconsin.gov)>; Glenn Wright <[gwright@pewtrusts.org](mailto:gwright@pewtrusts.org)>; Andrew Whitacre <[awhitacre@pewtrusts.org](mailto:awhitacre@pewtrusts.org)>  
**Subject:** FW: Draft review: LRB -5017/P2

Hi Tami,

We have one clarification. Our goal is to preserve the ability for a prior authorization for pregnant women. It is our understanding that there is some value in the prior authorization for this population. Can we make sure the bill allows for that to continue?

Thanks,

Zach

---

**From:** Borgerding, Chris

**Sent:** Tuesday, December 19, 2017 12:36 PM

**To:** Bemis, Zach <[Zach.Bemis@legis.wisconsin.gov](mailto:Zach.Bemis@legis.wisconsin.gov)>; Suhr, Daniel R - LTGOV <[Daniel.Suhr@wisconsin.gov](mailto:Daniel.Suhr@wisconsin.gov)>; Andrew Whitacre <[awhitacre@pewtrusts.org](mailto:awhitacre@pewtrusts.org)>; Glenn Wright <[gwright@pewtrusts.org](mailto:gwright@pewtrusts.org)>

**Subject:** FW: Draft review: LRB -5017/P2

Buprenorphine prior authorization and waiver bill draft attached.

Please let me know your thoughts.

---

**From:** Rep.Nygren

**Sent:** Tuesday, December 19, 2017 12:28 PM

**To:** Borgerding, Chris <[Chris.Borgerding@legis.wisconsin.gov](mailto:Chris.Borgerding@legis.wisconsin.gov)>

**Subject:** FW: Draft review: LRB -5017/P2

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**From:** LRB.Legal

**Sent:** Tuesday, December 19, 2017 12:01 PM

**To:** Rep.Nygren <[Rep.Nygren@legis.wisconsin.gov](mailto:Rep.Nygren@legis.wisconsin.gov)>

**Subject:** Draft review: LRB -5017/P2

**Following is the PDF version of draft LRB -5017/P2.**



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-5017/P2 e P3  
MED&TJD:kjf

In: 12/19

Due Today (H)

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

Reyn

1 **AN ACT to create** 49.45 (29z), 441.19 and 448.038 of the statutes; **relating to:**  
 2 maintenance and detoxification treatment provided by physician assistants  
 3 and advanced practice nurse prescribers and prescribing and dispensing of  
 4 buprenorphine combination products to Medical Assistance recipients.

***Analysis by the Legislative Reference Bureau***

Under current federal law, the federal Drug Enforcement Administration (DEA) registers health care practitioners to dispense controlled substances, and practitioners who dispense narcotic drugs to individuals for addiction treatment must additionally obtain a separate DEA registration for that purpose. However, qualifying health care practitioners may, subject to certain requirements and limitations, obtain a waiver from the requirement to obtain a separate DEA registration to dispense those drugs for addiction treatment. Health care practitioners eligible to obtain and practice under such a waiver include qualifying physicians and, until October 1, 2021, qualifying physician assistants and nurse practitioners. In order to qualify for a waiver, a nurse practitioner or physician assistant must be supervised by, or work in collaboration with, a qualifying physician, if the nurse practitioner or physician assistant is required by state law to act in collaboration with or under the supervision of a physician.

Under rules promulgated by the state Medical Examining Board, the practice of a physician assistant must be under the supervision of one or more physicians, and under rules promulgated by the state Board of Nursing, advanced practice nurse prescribers must work in a collaborative relationship with a physician.

This bill provides that, with respect to the ability of an advanced practice nurse prescriber or physician assistant to obtain and practice under a waiver, a physician who satisfies any of the criteria specified in federal law to be eligible to obtain a waiver is considered eligible to serve as a qualifying physician for purposes of the collaboration or supervision requirement under federal law, regardless of whether the physician himself or herself holds a waiver.

The bill prohibits the Department of Health Services from requiring prior authorization for or another limitation on prescribing and dispensing of buprenorphine combination products to a Medical Assistance recipient by a health care provider who possesses a valid waiver, if the prior authorization or other limitation is not required under the federal law.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 49.45 (29z) of the statutes is created to read:

2           49.45 (29z) OPIOID TREATMENT AUTHORIZATION. The department may not require  
3 prior authorization for or other limitation on prescribing and dispensing of  
4 buprenorphine combination products to a recipient under the Medical Assistance  
5 program under this subchapter by a health care provider who possesses a valid  
6 waiver under 21 USC 823, if the prior authorization or other limitation is not  
7 required by 21 USC 823.

8           **SECTION 2.** 441.19 of the statutes is created to read:

9           **441.19 Maintenance and detoxification treatment under federal**  
10 **waiver.** (1) In this section, "waiver" means a waiver issued by the federal  
11 department of health and human services under 21 USC 823 (g) (2) (A).

12           (2) With respect to the ability of an advanced practice nurse who is certified to  
13 issue prescription orders to obtain and practice under a waiver, a physician who  
14 meets any of the conditions specified in 21 USC 823 (g) (2) (G) (ii) shall be considered  
15 eligible to serve as a qualifying physician for purposes of the requirement under 21

^ who is not pregnant ^

1 USC 823 (g) (2) (G) (iv) (III), regardless of whether the physician himself or herself  
2 holds a waiver.

3 **SECTION 3.** 448.038 of the statutes is created to read:

4 **448.038 Maintenance and detoxification treatment under federal**  
5 **waiver.** (1) In this section, "waiver" means a waiver issued by the federal  
6 department of health and human services under 21 USC 823 (g) (2) (A).

7 (2) With respect to the ability of a physician assistant to obtain and practice  
8 under a waiver, a physician who meets any of the conditions specified in 21 USC 823  
9 (g) (2) (G) (ii) shall be considered eligible to serve as a qualifying physician for  
10 purposes of the requirement under 21 USC 823 (g) (2) (G) (iv) (III), regardless of  
11 whether the physician himself or herself holds a waiver.

12

(END)



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-5017/P3  
MED&TJD:kjf

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT to create** 49.45 (29z), 441.19 and 448.038 of the statutes; **relating to:**  
2             maintenance and detoxification treatment provided by physician assistants  
3             and advanced practice nurse prescribers and prescribing and dispensing of  
4             buprenorphine combination products to Medical Assistance recipients.

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***Analysis by the Legislative Reference Bureau***

Under current federal law, the federal Drug Enforcement Administration (DEA) registers health care practitioners to dispense controlled substances, and practitioners who dispense narcotic drugs to individuals for addiction treatment must additionally obtain a separate DEA registration for that purpose. However, qualifying health care practitioners may, subject to certain requirements and limitations, obtain a waiver from the requirement to obtain a separate DEA registration to dispense those drugs for addiction treatment. Health care practitioners eligible to obtain and practice under such a waiver include qualifying physicians and, until October 1, 2021, qualifying physician assistants and nurse practitioners. In order to qualify for a waiver, a nurse practitioner or physician assistant must be supervised by, or work in collaboration with, a qualifying physician, if the nurse practitioner or physician assistant is required by state law to act in collaboration with or under the supervision of a physician.

Under rules promulgated by the state Medical Examining Board, the practice of a physician assistant must be under the supervision of one or more physicians, and under rules promulgated by the state Board of Nursing, advanced practice nurse prescribers must work in a collaborative relationship with a physician.

This bill provides that, with respect to the ability of an advanced practice nurse prescriber or physician assistant to obtain and practice under a waiver, a physician who satisfies any of the criteria specified in federal law to be eligible to obtain a waiver is considered eligible to serve as a qualifying physician for purposes of the collaboration or supervision requirement under federal law, regardless of whether the physician himself or herself holds a waiver.

The bill prohibits the Department of Health Services from requiring prior authorization for or another limitation on prescribing and dispensing of buprenorphine combination products to a Medical Assistance recipient, who is not pregnant, by a health care provider who possesses a valid waiver, if the prior authorization or other limitation is not required under the federal law.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 49.45 (29z) of the statutes is created to read:

2           **49.45 (29z) OPIOID TREATMENT AUTHORIZATION.** The department may not require  
3 prior authorization for or other limitation on prescribing and dispensing of  
4 buprenorphine combination products to a recipient, who is not pregnant, under the  
5 Medical Assistance program under this subchapter by a health care provider who  
6 possesses a valid waiver under 21 USC 823, if the prior authorization or other  
7 limitation is not required by 21 USC 823.

8           **SECTION 2.** 441.19 of the statutes is created to read:

9           **441.19 Maintenance and detoxification treatment under federal**  
10 **waiver.** (1) In this section, "waiver" means a waiver issued by the federal  
11 department of health and human services under 21 USC 823 (g) (2) (A).

12           (2) With respect to the ability of an advanced practice nurse who is certified to  
13 issue prescription orders to obtain and practice under a waiver, a physician who  
14 meets any of the conditions specified in 21 USC 823 (g) (2) (G) (ii) shall be considered  
15 eligible to serve as a qualifying physician for purposes of the requirement under 21



1 USC 823 (g) (2) (G) (iv) (III), regardless of whether the physician himself or herself  
2 holds a waiver.

3 SECTION 3. 448.038 of the statutes is created to read:

4 **448.038 Maintenance and detoxification treatment under federal**  
5 **waiver.** (1) In this section, "waiver" means a waiver issued by the federal  
6 department of health and human services under 21 USC 823 (g) (2) (A).

7 (2) With respect to the ability of a physician assistant to obtain and practice  
8 under a waiver, a physician who meets any of the conditions specified in 21 USC 823  
9 (g) (2) (G) (ii) shall be considered eligible to serve as a qualifying physician for  
10 purposes of the requirement under 21 USC 823 (g) (2) (G) (iv) (III), regardless of  
11 whether the physician himself or herself holds a waiver.

12

(END)