



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 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 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 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) (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).

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.

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(END)