



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 5, 2008

The Honorable Dianne Feinstein
United States Senate
Washington, D.C. 20510

Dear Senator Feinstein:

This letter is to confirm the Administration's support of the modified version of S. 980 (Ryan Haight Online Pharmacy Consumer Protection Act of 2007), attached hereto. The Administration has greatly appreciated the opportunity to work with you and your staff regarding the important issues addressed by this legislation.

The Internet has supplied a valuable service in providing prescription drugs to consumers. Individuals with valid prescriptions have benefitted from the ease of having prescriptions filled via the Internet and those in remote areas or with limited mobility have been provided access to needed medications they may not otherwise readily obtain. Unfortunately, the Internet has also provided illegal drug traffickers with a means of diverting powerful controlled substances from the legitimate marketplace for illicit use. The Internet has become an important way to divert huge quantities of controlled substance pharmaceuticals for non-medical purposes, which is especially concerning in light of the alarming increases in non-medical abuse of prescription drugs. Nationally, over the last two years, abuse of prescription drugs has been second only to marijuana among Americans age 12 or older.

The Controlled Substances Act (CSA) was written prior to the creation of the Internet, and its drafters did not contemplate such advances in technology. As a result, the CSA does not currently provide law enforcement with the updated tools needed to combat drug traffickers using the Internet for illicit purposes.

S. 980, as attached, balances the legitimate benefits derived from using the Internet to provide consumers with controlled substances obtained through valid prescriptions with the need to combat the illegal online diversion of these same drugs. The bill updates the Controlled Substances Act to set forth both permissible and impermissible conduct for Internet web site operators, medical practitioners, and pharmacists involved in the distribution of controlled substances by means of the Internet.

We call upon Congress to enact this important piece of legislation. The Office of Management and Budget has advised that there is no objection to the presentation of this letter from the standpoint of the Administration's programs.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

cc: The Honorable Jeff Sessions
United States Senate

1 Title: To amend the Controlled Substances Act to address online pharmacies.
2
3

4 Be it enacted by the Senate and House of Representatives of the United States of
5 America in Congress assembled,

6 SECTION 1. SHORT TITLE.

7 This Act may be cited as the “Ryan Haight Online Pharmacy Consumer Protection Act
8 of 2007”.

9 SEC. 2. REQUIREMENT OF A VALID PRESCRIPTION
10 FOR CONTROLLED SUBSTANCES DISPENSED BY
11 MEANS OF THE INTERNET.

12 Section 309 of the Controlled Substances Act (21 U.S.C. 829) is amended by adding at
13 the end the following new subsection:

14 “(e) Controlled Substances Dispensed by Means of the Internet.—

15 “(1) No controlled substance may be delivered, distributed, or dispensed by
16 means of the Internet without a valid prescription.

17 “(2) As used in this subsection:

18 “(A) The term ‘valid prescription’ means a prescription that is issued for a
19 legitimate medical purpose in the usual course of professional practice by—

20 “(i) a practitioner who has conducted at least one in-person medical
21 evaluation of the patient; or

22 “(ii) a covering practitioner.

23 “(B)(i) The term ‘in-person medical evaluation’ means a medical evaluation
24 that is conducted with the patient in the physical presence of the practitioner,
25 without regard to whether portions of the evaluation are conducted by other
26 health professionals.

27 “(ii) Nothing in clause (i) shall be construed to imply that one in-person
28 medical evaluation demonstrates that a prescription has been issued for a
29 legitimate medical purpose within the usual course of professional practice.

30 “(C) The term ‘covering practitioner’ means, with respect to a patient, a
31 practitioner who conducts a medical evaluation (other than an in-person
32 medical evaluation) at the request of a practitioner who—

33 “(i) has conducted at least one in-person medical evaluation of the
34 patient or an evaluation of the patient through the practice of telemedicine
35 as defined in section 102(54), within the previous 24 months; and

36 “(ii) is temporarily unavailable to conduct the evaluation of the patient.

37 “(3) Nothing in this subsection shall apply to—

1 “(A) the delivery, distribution, or dispensing of a controlled substance
2 by a practitioner engaged in the practice of telemedicine as defined in
3 section 102(54); or

4 “(B) the dispensing or selling of a controlled substance pursuant to
5 practices as determined by the Attorney General by regulation, which shall
6 be consistent with effective controls against diversion.”.

7 **SEC. 3. AMENDMENTS TO THE CONTROLLED**
8 **SUBSTANCES ACT RELATING TO THE DELIVERY**
9 **OF CONTROLLED SUBSTANCES BY MEANS OF THE**
10 **INTERNET.**

11 (a) In General.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is
12 amended by adding at the end the following:

13 “(50) The term ‘Internet’ means collectively the myriad of computer and
14 telecommunications facilities, including equipment and operating software, which
15 comprise the interconnected worldwide network of networks that employ the
16 Transmission Control Protocol/Internet Protocol, or any predecessor or successor
17 protocol to such protocol, to communicate information of all kinds by wire or radio.

18 “(51) The term ‘deliver, distribute, or dispense by means of the Internet’ refers,
19 respectively, to any delivery, distribution, or dispensing of a controlled substance
20 that is caused or facilitated by means of the Internet.

21 “(52) The term ‘online pharmacy’—

22 “(A) means a person, entity, or Internet site, whether in the United States or
23 abroad, that knowingly or intentionally delivers, distributes, or dispenses, or
24 offers or attempts to deliver, distribute, or dispense, a controlled substance by
25 means of the Internet; and

26 “(B) does not include—

27 “(i) manufacturers or distributors registered under subsection (a), (b),
28 (c), or (d) of section 303 who do not dispense controlled substances to an
29 unregistered individual or entity;

30 “(ii) nonpharmacy practitioners who are registered under section 303(f)
31 and whose activities are authorized by that registration;

32 “(iii) any hospital or other medical facility which is operated by an
33 agency of the United States (including all United States Armed Forces),
34 provided such hospital or other facility is registered under subsection
35 303(f) (21 U.S.C. 823(f));

36 “(iv) a health care facility owned or operated by an Indian tribe or tribal
37 organization, only to the extent such facility is carrying out a contract or
38 compact under the Indian Self-Determination and Education Assistance
39 Act. The Secretary shall notify the Attorney General, at such times and in
40 such manner as the Secretary and the Attorney General determine

1 appropriate, of the tribes or tribal organizations with which the Secretary
2 has contracted or compacted under the Indian Self-Determination and
3 Education Assistance Act for the tribes or tribal organization to provide
4 pharmacy services;

5 “(v) any agent or employee of any hospital or facility referred to in
6 clauses (iii) or (iv), provided such agent or employee is lawfully acting in
7 the usual course of business or employment, and within the scope of his
8 official duties, with such hospital or facility, and, with respect to agents or
9 employees of health care facilities specified in clause (iv), only to the
10 extent such individuals are furnishing services pursuant to the contracts or
11 compacts described in such clause;

12 “(vi) mere advertisements that do not attempt to facilitate an actual
13 transaction involving a controlled substance;

14 “(vii) a person, entity, or Internet site which is not in the United States
15 and does not facilitate the delivery, distribution, or dispensing of a
16 controlled substance by means of the Internet to any person in the United
17 States;

18 “(viii) a pharmacy registered under section 303(f) whose dispensing of
19 controlled substances via the Internet consists solely of one or both of the
20 following two activities: refilling prescriptions for controlled substances in
21 schedules III, IV, or V, within the meaning of subclause (I) of this clause;
22 or filling new prescriptions for such controlled substances that meet the
23 criteria of subclause (II) of this clause

24 (I) For purposes of this clause, the term "refilling" refers to the
25 dispensing of a controlled substance pursuant to the refill
26 instructions issued by a practitioner as part of a valid prescription
27 that meets the requirements of section 309(b) or (c) (21 U.S.C.
28 829(b) or (c)). The issuance of a new prescription for the same
29 controlled substance is not a refill. Any transfer between
30 pharmacies of prescription information for a controlled substance
31 must meet the applicable requirements specified in regulations
32 promulgated by the Attorney General under this subchapter.

33 (II) A new prescription for a controlled substance will be
34 considered to meet the criteria of this clause with respect to a given
35 patient if all of the following conditions are met:

- 36 a. the pharmacy previously dispensed to the patient
37 that same controlled substance other than by
38 means of the Internet and pursuant to the valid
39 prescription of a practitioner (the original
40 prescription) that meets the applicable
41 requirements of sections 309(b) or (c);

1 Substances Provider' by the Secretary. Such designations shall be made
2 only in cases where the Secretary has found that there is a legitimate need
3 for the practitioner to be so designated because the population served by
4 the practitioner is in a sufficiently remote location that access to medical
5 services is limited:

6 “(D) the telemedicine is being conducted during a public health
7 emergency declared by the Secretary under section 319 of the Public
8 Health Service Act (42 U.S.C. 247d) and involves patients located in such
9 areas, and such controlled substances, as the Secretary with the
10 concurrence of the Attorney General, designates. Such designation shall
11 not be subject to the procedures prescribed by subchapter II of chapter 5 of
12 Title 5;

13 “(E) the telemedicine is being conducted by a practitioner who has
14 obtained from the Attorney General a special registration under this
15 subparagraph. An applicant for special registration pursuant to this
16 subparagraph must be registered under section 303(f) of this subchapter
17 (21 U.S.C. 823(f)) in the state in which the patient is located when
18 receiving the telemedicine treatment, and an applicant must demonstrate a
19 legitimate need for the special registration. The Attorney General shall,
20 with the concurrence of the Secretary, promulgate regulations specifying
21 the limited circumstances in which special registrations may be issued and
22 the procedures for obtaining special registrations. Proceedings to deny
23 any application for the special registration shall be in accordance with
24 section 304(c) of this subchapter (21 U.S.C. 824(c));

25 “(F) the telemedicine is being conducted in a medical emergency
26 situation by a practitioner that is an employee or contractor of the Veterans
27 Health Administration acting within the scope of employment or contract,
28 and is either registered under section 303(f) of this subchapter in any state
29 or utilizing the registration of a hospital or clinic operated by the
30 Department of Veterans Affairs registered under section 303(f). The
31 medical emergency must meet all of the following criteria:

32 “(i) The medical emergency prevents the patient from being in the
33 physical presence of a practitioner registered pursuant to section 303(f)
34 of this subchapter who is an employee or contractor of the Veterans
35 Health Administration acting in the usual course of business and
36 employment and within the scope of his official duties or contract;

37 “(ii) The medical emergency prevents the patient from being
38 physically present at a hospital or clinic operated by the Department of
39 Veterans Affairs registered pursuant to section 303(f) of this
40 subchapter;

41 “(iii) The patient’s primary care practitioner or a telemedicine
42 exempt practitioner is unable to provide care or consultation; and

43 “(iv) The medical emergency requires immediate intervention by a

1 a health care practitioner utilizing controlled substances to prevent what
2 the practitioner reasonably believes in good faith will be imminent and
3 serious clinical consequences, such as further injury or death.
4 Controlled substance prescriptions issued in this emergency context
5 shall be limited to a maximum of a 5-day supply and may not be
6 extended or refilled. The prescribing practitioner shall report the
7 authorization of an emergency prescription to the Department of
8 Veterans Affairs as set forth by regulation. The Department of Veterans
9 Affairs shall report the authorization of an emergency prescription to
10 the Attorney General within thirty days of the issuance of the
11 prescription; or

12 “(G) the telemedicine is being conducted under any other circumstances
13 that the Attorney General and the Secretary have jointly, by regulation,
14 determined to be consistent with effective controls against diversion and
15 otherwise consistent with the public health and safety;

16 “except that the requirement in subparagraphs (A), (B) and (E) that a practitioner
17 conducting the practice of telemedicine be registered under section 303(f) in the State in
18 which the patient is located shall not apply if the practitioner either is exempted from
19 such registration in all States under section 302(d) of this subchapter (21 U.S.C. 822(d)),
20 or is an employee or contractor of the United States Department of Veterans Affairs who
21 is acting in the scope of such employment or contract, and is registered under section
22 303(f) in any State or is utilizing the registration of a hospital or clinic operated by the
23 Department of Veterans Affairs.”

24 (b) Registration Requirements.—Section 303(f) of the Controlled Substances Act (21
25 U.S.C. 823(f)) is amended by changing its first paragraph as follows:

26 (1) in the first sentence, by adding after “schedule II, III, IV, or V,” the following:
27 “and shall modify the registrations of pharmacies so registered to authorize them
28 to dispense controlled substances by means of the Internet”; and

29 (2) in the second sentence, by replacing “if he determines that the issuance of
30 such registration” with “or such modification of registration if he determines that
31 the issuance of such registration or modification”.

32 (c) Reporting Requirements.—Section 307(d) of the Controlled Substances Act (21
33 U.S.C. 827(d)) is amended [by—

34 (1) designating the text as paragraph (1); and

35 (2) inserting after paragraph (1), as so designated by this Act, the following new
36 paragraph:

37 “(2) Each pharmacy with a modified registration that authorizes the delivery,
38 distribution or dispensation of controlled substances by means of the internet
39 shall report to the Attorney General the controlled substances it dispenses, in
40 the amount specified, and in such time and manner as the Attorney General by
41 regulation shall require, except that the Attorney General, under this
42 paragraph, may not require any pharmacy to report any information other than
43 the total quantity of each controlled substance that the pharmacy has

1 dispensed each month. For purposes of this subsection, no reporting shall be
2 required unless the pharmacy has met one of the following thresholds in the
3 month for which the reporting is required:

- 4
5 (i) 100 or more prescriptions dispensed; or
6 (ii) 5000 or more dosage units of all controlled substances
7 combined.

8 (d) Online Prescription Requirements.—The Controlled Substances Act is amended]
9 by inserting after section 310 (21 U.S.C. 830) the following:

10 “ONLINE PHARMACY LICENSING AND DISCLOSURE REQUIREMENTS

11 “Sec. 311. (a) In General.—An online pharmacy shall display in a visible and clear
12 manner on its homepage a statement that it complies with the requirements of this section
13 with respect to the delivery or sale or offer for sale of controlled substances and shall at
14 all times display on the homepage of its Internet site a declaration of compliance in
15 accordance with this section.

16 “(b) Licensure.—Each online pharmacy shall comply with the requirements of State
17 law concerning the licensure of pharmacies in each State from which it, and in each State
18 to which it, delivers, distributes or dispenses or offers to deliver, distribute or dispense
19 controlled substances by means of the Internet, pursuant to applicable licensure
20 requirements as determined by each such State.

21 “(c) Internet Pharmacy Site Disclosure Information.—Each online pharmacy shall post
22 in a visible and clear manner on the homepage of each Internet site it operates, or on a
23 page directly linked thereto in which the hyperlink is also visible and clear on the
24 homepage, the following information for each pharmacy that delivers, distributes or
25 dispenses controlled substances pursuant to orders made on, through, or on behalf of, that
26 website:

27 “(1) The name and address of the pharmacy as it appears on the pharmacy’s DEA
28 registration;

29 “(2) The pharmacy’s telephone number and email address;

30 “(3) The name, professional degree, and states of licensure of the pharmacist-in-
31 charge, and a telephone number at which the pharmacist-in-charge can be contacted;

32 “(4) A list of the States in which the pharmacy is licensed to dispense controlled
33 substances;

34 “(5) A certification that the pharmacy is registered under this part to deliver,
35 distribute, or dispense by means of the Internet controlled substances.

36 “(6) The name, address, telephone number, professional degree, and states of
37 licensure of any practitioner who has a contractual relationship to provide medical
38 evaluations or issue prescriptions for controlled substances, through referrals from
39 the website or at the request of the owner or operator of the website, or any
40 employee or agent thereof; and

41 “(7) The following statement, unless revised by the Attorney General by
42 regulation: ‘This online pharmacy will only dispense a controlled substance to a

1 person who has a valid prescription issued for a legitimate medical purpose based
2 upon a medical relationship with a prescribing practitioner. This includes at least
3 one prior in-person medical evaluation or medical evaluation via telemedicine in
4 accordance with applicable requirements of section 309 of the Controlled
5 Substances Act (21 U.S.C. 829).’

6 “(d) Notification.—(1) Thirty days prior to offering a controlled substance for sale,
7 delivery, distribution, or dispensing, the online pharmacy shall notify the Attorney
8 General, in the form and manner as the Attorney General shall determine, and the State
9 boards of pharmacy in any States in which the online pharmacy offers to sell, deliver,
10 distribute, or dispense controlled substances.

11 “(2) The notification required under paragraph (1) shall include—

12 “(A) the information required to be posted on the online pharmacy’s Internet site
13 under subsection (d) and shall notify the Attorney General and the applicable State
14 boards of pharmacy, under penalty of perjury, that the information disclosed on its
15 Internet site under to subsection (d) is true and accurate;

16 “(B) the online pharmacy’s Internet site address and a certification that the online
17 pharmacy shall notify the Attorney General of any change in the address at least 30
18 days in advance; and

19 “(C) the Drug Enforcement Administration registration numbers of any
20 pharmacies and practitioners referred to in subsection (d), as applicable.

21 “(3) An online pharmacy that is already operational as of the effective date of this
22 section, shall notify the Attorney General and applicable State boards of pharmacy in
23 accordance with this subsection not later than 30 days after the effective date of this
24 section.

25 “(e) Declaration of Compliance.—On and after the date on which it makes the
26 notification under subsection (d), each online pharmacy shall display on the homepage of
27 its Internet site, in such form as the Attorney General shall by regulation require, a
28 declaration that it has made such notification to the Attorney General.

29 “(f) Reports.—Any statement, declaration, notification, or disclosure required under
30 this section shall be considered a report required to be kept under this part.”.

31 (e) Offenses Involving Controlled Substances in Schedules III, IV, and V.—Section
32 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)) is amended—

33 (1) in paragraph (1)—

34 (A) in subparagraph (C), by striking “1 gram of” before “flunitrazepam”;

35 (B) in subparagraph (D), by striking “or in the case of any controlled
36 substance in schedule III (other than gamma hydroxybutyric acid), or 30
37 milligrams of flunitrazepam”; and

38 (C) by adding at the end the following:

39 “(E)(i) In the case of any controlled substance in schedule III, such person shall
40 be sentenced to a term of imprisonment of not more than 10 years and if death or

1 serious bodily injury results from the use of such substance shall be sentenced to a
2 term of imprisonment of not more than 20 years, a fine not to exceed the greater of
3 that authorized in accordance with the provisions of title 18, or \$500,000 if the
4 defendant is an individual or \$2,500,000 if the defendant is other than an individual,
5 or both.

6 “(ii) If any person commits such a violation after a prior conviction for a felony
7 drug offense has become final, such person shall be sentenced to a term of
8 imprisonment of not more than 20 years and if death or serious bodily injury results
9 from the use of such substance shall be sentenced to a term of imprisonment of not
10 more than 30 years, a fine not to exceed the greater of twice that authorized in
11 accordance with the provisions of title 18, or \$1,000,000 if the defendant is an
12 individual or \$5,000,000 if the defendant is other than an individual, or both.

13 “(iii) Any sentence imposing a term of imprisonment under this subparagraph
14 shall, in the absence of such a prior conviction, impose a term of supervised release
15 of at least 2 years in addition to such term of imprisonment and shall, if there was
16 such a prior conviction, impose a term of supervised release of at least 4 years in
17 addition to such term of imprisonment”;

18 (2) in paragraph (2) by—

19 (A) striking “3 years” and inserting “5 years”;

20 (B) striking “6 years” and inserting “10 years”;

21 (C) striking “after one or more prior convictions” and all that follows
22 through “have become final,” and inserting “after a prior conviction for a
23 felony drug offense has become final,”; and

24 (3) in paragraph (3) by—

25 (A) striking “2 years” and inserting “6 years”;

26 (B) striking “after one or more convictions” and all that follows through
27 “have become final,” and inserting “after a prior conviction for a felony drug
28 offense has become final,”; and

29 (C) adding at the end the following “Any sentence imposing a term of
30 imprisonment under this paragraph may, if there was a prior conviction, impose
31 a term of supervised release of not more than 1 year, in addition to such term of
32 imprisonment.”

33 (f) Offenses Involving Dispensing of Controlled Substances by Means of the
34 Internet.—Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended by
35 adding at the end the following:

36 “(h) Offenses Involving Dispensing of Controlled Substances by Means of the
37 Internet.—(1) It shall be unlawful for any person to knowingly or intentionally:

38 (A) deliver, distribute, or dispense a controlled substance by means of the
39 Internet, except as authorized by this title; or

40 (B) aid or abet (as such terms are used in section 2 of title 18, United

1 States Code) any activity described in (A) that is not authorized by
2 this title.

3 “(2) Examples of activities that violate paragraph (1) include, but are not limited to,
4 knowingly or intentionally—

5 “(A) delivering, distributing, or dispensing a controlled substance by means of the
6 Internet by an online pharmacy that is not validly registered with a modification
7 authorizing such activity as required by section 303(f) (unless exempt from such
8 registration);

9 “(B) writing a prescription for a controlled substance for the purpose of delivery,
10 distribution, or dispensation by means of the Internet in violation of subsection
11 309(e);

12 “(C) serving as an agent, intermediary, or other entity that causes the Internet to
13 be used to bring together a buyer and seller to engage in the dispensing of a
14 controlled substance in a manner not authorized by sections 303(f) or 309(e);

15 “(D) offering to fill a prescription for a controlled substance based solely on a
16 consumer’s completion of an online medical questionnaire; and

17 “(E) making a material false, fictitious, or fraudulent statement or representation
18 in the submission to the Attorney General under section 311.

19 “(3)(A) This subsection does not apply to—

20 “(i) the delivery, distribution, or dispensation of controlled substances by
21 nonpractitioners to the extent authorized by their registration under this title;

22 “(ii) the placement on the Internet of material that merely advocates the use of a
23 controlled substance or includes pricing information without attempting to propose
24 or facilitate an actual transaction involving a controlled substance; or

25 “(iii) except as provided in subparagraph (B), any activity that is limited to—

26 “(I) the provision of a telecommunications service, or of an Internet access
27 service or Internet information location tool (as those terms are defined in
28 section 231 of the Communications Act of 1934 (47 U.S.C. 231)); or

29 “(II) the transmission, storage, retrieval, hosting, formatting, or translation
30 (or any combination thereof) of a communication, without selection or
31 alteration of the content of the communication, except that deletion of a
32 particular communication or material made by another person in a manner
33 consistent with section 230(c) of the Communications Act of 1934 (47 U.S.C.
34 230(c)) shall not constitute such selection or alteration of the content of the
35 communication.

36 “(B) The exceptions under subclauses (I) and (II) of subparagraph (A)(iii) shall not
37 apply to a person acting in concert with a person who violates paragraph (1) of this
38 subsection.

39 “(4) Any person who knowingly or intentionally violates this subsection shall be
40 sentenced in accordance with subsection (b) of this section.”.

1 (g) Publication.—Section 403(c) of the Controlled Substances Act (21 U.S.C. 843(c))
2 is amended by—

3 (1) designating the text as paragraph (1); and

4 (2) adding at the end the following:

5 “(2)(A) Except as authorized by this title, it shall be unlawful for any person by means
6 of the Internet, to knowingly advertise the sale or distribution of, or to offer to sell,
7 distribute, or dispense, a controlled substance.

8 “(B) Examples of activities that violate subparagraph (A) include, but are not limited
9 to, knowingly or intentionally causing the placement on the Internet of an advertisement
10 that refers to or directs prospective buyers to Internet sellers of controlled substances who
11 are not registered with a modification under section 303(f).

12 “(C) Subparagraph (A) does not apply to material that either—

13 “(i) merely advertises the distribution of controlled substances by nonpractitioners
14 to the extent authorized by their registration under this title; or

15 “(ii) merely advocates the use of a controlled substance or includes pricing
16 information without attempting to facilitate an actual transaction involving a
17 controlled substance.”.

18 (h) Injunctive Relief.—Section 512 of the Controlled Substances Act (21 U.S.C. 882)
19 is amended by adding to the end of the section the following new subsection:

20 “(c) State Cause of Action Pertaining to Online Pharmacies.—(1) In any case in which
21 the State has reason to believe that an interest of the residents of that State has been or is
22 being threatened or adversely affected by the action of a person, entity, or Internet site
23 that violates the provisions of section 303(f), 309(e), or 311, the State may bring a civil
24 action on behalf of such residents in a district court of the United States with appropriate
25 jurisdiction—

26 “(A) to enjoin the conduct which violates this section;

27 “(B) to enforce compliance with this section;

28 “(C) to obtain damages, restitution, or other compensation, including civil
29 penalties under section 402(b); and

30 “(D) to obtain such other legal or equitable relief as the court may find
31 appropriate.

32 “(2)(A) Prior to filing a complaint under paragraph (1), the State shall serve a copy of
33 the complaint upon the Attorney General and upon the United States Attorney for the
34 judicial district in which the complaint is to be filed. In any case where such prior service
35 is not feasible, the State shall serve the complaint on the Attorney General and the
36 appropriate United States Attorney on the same day that the State’s complaint is filed in
37 Federal district court of the United States. Such proceedings shall be independent of, and
38 not in lieu of, criminal prosecutions or any other proceedings under this title or any other
39 laws of the United States.

40 “(B) Upon receiving notice respecting a civil action pursuant to this section, the United

1 States shall have the right to intervene in such action; upon so intervening, to be heard on
2 all matters arising therein; and to file petitions for appeal.

3 “(C) Service of a State’s complaint on the United States as required in this paragraph
4 shall be made in accord with the requirements of Federal Rule of Civil Procedure 4(i)(1).

5 “(3) For purposes of bringing any civil action under paragraph (1), nothing in this Act
6 shall prevent an attorney general of a State from exercising the powers conferred on the
7 attorney general of a State by the laws of such State to conduct investigations or to
8 administer oaths or affirmations or to compel the attendance of witnesses of or the
9 production of documentary or other evidence.

10 “(4) Any civil action brought under paragraph (1) in a district court of the United
11 States may be brought in the district in which the defendant is found, is an inhabitant, or
12 transacts business or wherever venue is proper under section 1391 of title 28, United
13 States Code. Process in such action may be served in any district in which the defendant
14 is an inhabitant or in which the defendant may be found.

15 “(5) No private right of action is created under this subsection.”.

16 “(6) Actions Barred Against United States and certain Indian tribes and tribal
17 organizations--No civil action may be brought under paragraph (1) against:

18 “(A) the United States;

19 “(B) an Indian Tribe or tribal organization, to the extent such tribe or tribal
20 organization is lawfully carrying out a contract or compact under the Indian Self-
21 Determination and Education Assistance Act. The Secretary shall notify the Attorney
22 General, at such times and in such manner as the Secretary and the Attorney General
23 determine appropriate, of the tribes or tribal organizations with which the Secretary has
24 contracted or compacted under the Indian Self-Determination and Education Assistance
25 Act for the tribes or tribal organization to provide pharmacy services; or

26 “(C) any employee of the United States or such Indian tribe or tribal organization,
27 provided such agent or employee is acting in the usual course of business or employment,
28 and within the scope of his official duties therewith.”

29 (i) Forfeiture of Facilitating Property in Drug Cases.—Section 511(a)(4) of the
30 Controlled Substances Act (21 U.S.C. 881(a)(4)) is amended to read as follows:

31 “(4) Any property, real or personal, tangible or intangible, used or intended to be
32 used to commit, or to facilitate the commission, of a violation of this title or title III,
33 and any property traceable thereto.”.

34 (j) Import and Export Act.—Section 1010(b) of the Controlled Substances Import and
35 Export Act (21 U.S.C. 960(b)) is amended—

36 (1) in paragraph (4) by—

37 (A) striking “or any quantity of a controlled substance in schedule III, IV, or
38 V, (except a violation involving flunitrazepam and except a violation involving
39 gamma hydroxybutyric acid)”;

40 (B) inserting “, or” before “less than one kilogram of hashish oil”; and

1 (C) striking “imprisoned” and all that follows through the end of the
2 paragraph and inserting “sentenced in accordance with section 401(b)(1)(D) of
3 this title (21 U.S.C. 841(b)(1)(E)).”;

4 (2) by adding at the end the following:

5 “(5) In the case of a violation of subsection (a) of this section involving a controlled
6 substance in schedule III, such person shall be sentenced in accordance with section
7 401(b)(1)(E).

8 “(6) In the case of a violation of subsection (a) of this section involving a controlled
9 substance in schedule IV (except a violation involving flunitrazepam), such person shall
10 be sentenced in accordance with section 401(b)(2).

11 “(7) In the case of a violation of subsection (a) of this section involving a controlled
12 substance in schedule V, such person shall be sentenced in accordance with section
13 401(b)(3).”; and

14 (3) in paragraph (3), by striking “, nor shall a person so sentenced be eligible for
15 parole during the term of such a sentence” in the final sentence.

16 (k) Effective Date.—

17 (1) In general – The amendments made by this Act shall become effective 180
18 days after the date of enactment, except as provided in paragraph (2).

19 (2) Until the earlier of three months after the date on which regulations are
20 promulgated in implementing section 102(54)(E) of the Controlled Substances Act (21
21 U.S.C. section 802(54)(E)) or 15 months after the date of enactment, the definition of the
22 term ‘practice of telemedicine’ set forth in paragraph (3) of this subsection shall apply in
23 lieu of the definition of this term set forth in Section 3(a) of this Act.

24 (3) Temporary phase-in of telemedicine regulation – During the period specified
25 in paragraph (2), the term ‘practice of telemedicine’ means the practice of medicine in
26 accordance with applicable Federal and State laws by a practitioner (other than a
27 pharmacist) who is at a location remote from the patient and is communicating with the
28 patient, or health care professional who is treating the patient, using a
29 telecommunications system referred to in section 1834(m) of the Social Security Act (42
30 U.S.C. 1395m(m)), provided further that the practitioner is using an interactive
31 telecommunications system that satisfies the requirements of 42 CFR 410.78(a)(3).
32 Nothing in this section shall be construed as creating precedent for any particular
33 telemedicine practice to be authorized for the delivery, distribution or dispensing of
34 controlled substances under this Act after the effective date described in paragraph (2).

35 (l) Guidelines and Regulations.—

36 (1) IN GENERAL.—The Attorney General may promulgate and enforce any rules,
37 regulations, and procedures which may be necessary and appropriate for the efficient
38 execution of functions under this subtitle, and, with the concurrence of the Secretary
39 of Health and Human Services where this Act so provides, promulgate any interim
40 rules necessary for the implementation of this Act, prior to its effective date.

41 (2) SENTENCING GUIDELINES.—The United States Sentencing Commission, in

1 determining whether to amend, or establish new, guidelines or policy statements, to
2 conform the Federal sentencing guidelines and policy statements to this Act and the
3 amendments made by this Act—

4 (A) shall consult with the Department of Justice, experts and other affected
5 parties concerning which penalties for scheduled substances amended by this
6 Act should be reflected in the Federal sentencing guidelines; and

7 (B) should not construe any change in the maximum penalty for a violation
8 involving a controlled substance in a particular schedule as being the sole
9 reason to amend a, or establish a new, guideline or policy statement.

10 (m) Annual Report.—Not later than 180 days after the date of enactment of this Act,
11 and annually for 2 years after the initial report, the Drug Enforcement Administration, in
12 consultation with the Department of State, shall submit to Congress a report describing—

13 (1) the foreign supply chains and sources of controlled substances offered for sale
14 without a valid prescription on the Internet;

15 (2) the efforts and strategy of the Drug Enforcement Administration to decrease
16 the foreign supply chain and sources of controlled substances offered for sale
17 without a valid prescription on the Internet; and

18 (3) the efforts of the Drug Enforcement Administration to work with domestic and
19 multinational pharmaceutical companies and others to build international
20 cooperation and a commitment to fight on a global scale the problem of distribution
21 of controlled substances over the Internet without a valid prescription.

22 SEC. 4. RULE OF CONSTRUCTION

23 Nothing in this Act shall be construed as authorizing, prohibiting or limiting the
24 use of electronic prescriptions for controlled substances.

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