

112TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To enhance access to controlled substances for residents of institutional long-term care facilities, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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Mr. KOHL introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To enhance access to controlled substances for residents of institutional long-term care facilities, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Nursing Home Resi-  
5 dent Pain Relief Act of 2011”.

6 **SEC. 2. DEFINITIONS.**

7       Section 102 of the Controlled Substances Act (21  
8 U.S.C. 802) is amended—

1 (1) in paragraph (3), by adding at the end the  
2 following: “Solely for purposes of section 309(f), the  
3 term ‘agent’ includes a facility designee.”; and

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

5 “(57) The term ‘institutional long-term care fa-  
6 cility’ means—

7 “(A) a facility certified to participate in  
8 the Medicare or Medicaid programs as a nurs-  
9 ing facility, as defined in section 1919(a) of the  
10 Social Security Act (42 U.S.C. 1396r(a));

11 “(B) a skilled nursing facility, as defined  
12 in section 1819(a) of the Social Security Act  
13 (42 U.S.C. 1395i–3(a)); or

14 “(C) any other entity of a type designated  
15 by the Attorney General by regulation.

16 “(58) The term ‘administrator of an institu-  
17 tional long-term care facility’ means—

18 “(A) a corporation, company, partnership,  
19 or other entity that—

20 “(i) owns, operates, or manages an in-  
21 stitutional long-term care facility; and

22 “(ii) may be held liable, by law or by  
23 consent, for the acts or omissions of the  
24 facility designees who are delegated au-  
25 thority by the institutional long-term care

1 facility in connection with the dispensing  
2 of controlled substances, including liability  
3 for any civil penalties authorized under  
4 part D of this title; and

5 “(B) an individual who—

6 “(i) has been designated as a co-ad-  
7 ministrator by an entity described in sub-  
8 paragraph (A);

9 “(ii) is responsible for managing, su-  
10 pervising, or overseeing the care provided  
11 to residents of the institutional long-term  
12 care facility or the work of the employees  
13 of the institutional long-term care facility;  
14 and

15 “(iii) can be held personally liable,  
16 along with the entity described in subpara-  
17 graph (A), at law or by consent, for the  
18 acts or omissions of the facility designees  
19 of the institutional long-term care facility  
20 in connection with the dispensing of con-  
21 trolled substances, including liability for  
22 any civil penalties authorized under section  
23 402.”.

1 **SEC. 3. ORAL COMMUNICATION OF PRESCRIPTION INFOR-**  
2 **MATION FOR RESIDENTS OF INSTITUTIONAL**  
3 **LONG-TERM CARE FACILITIES.**

4 Section 309 of the Controlled Substances Act (21  
5 U.S.C. 829) is amended—

6 (1) in subsection (a), in the first sentence, by  
7 inserting “except as provided in subsection (f) and”  
8 after “without the written prescription of a practi-  
9 tioner”; and

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

11 “(f) CONTROLLED SUBSTANCES DISPENSED TO  
12 RESIDENTS OF INSTITUTIONAL LONG-TERM CARE FA-  
13 CILITIES THROUGH THE USE OF FACILITY DESIGNEES.—

14 “(1) DEFINITIONS.—In this subsection—

15 “(A) the term ‘authorizing agreement’  
16 means a written agreement—

17 “(i) between—

18 “(I) an individual practitioner  
19 providing medical care to, or super-  
20 vising medical care being provided to,  
21 a resident of an institutional long-  
22 term care facility whose care is pro-  
23 vided or supervised by the practi-  
24 tioner; and

25 “(II) an administrator of the in-  
26 stitutional long-term care facility;

1                   “(ii) that authorizes the administrator  
2                   to designate 1 or more qualified individuals  
3                   to act as facility designees for the purpose  
4                   of dispensing a controlled substance to the  
5                   resident; and

6                   “(iii) that includes a written author-  
7                   ization from the practitioner, in a form  
8                   and manner specified by the Attorney Gen-  
9                   eral, that specifies whether the scope of the  
10                  authorization is for—

11                   “(I) controlled substances in  
12                   schedule II only; or

13                   “(II) all controlled substances,  
14                   regardless of schedule; and

15                   “(B) the term ‘facility designee’ means an  
16                   individual designated by the administrator to  
17                   whom the authority to act as an agent of a  
18                   practitioner is delegated under paragraph  
19                   (3)(A).

20                  “(2) AUTHORIZATION.—

21                   “(A) IN GENERAL.—A practitioner may  
22                   enter into an authorizing agreement with an ad-  
23                   ministrator of an institutional long-term care  
24                   facility if the administrator has—

1           “(i) adopted written policies and pro-  
2           cedures that specify the duties and respon-  
3           sibilities of a facility designee and that re-  
4           quire documentation of the acceptance of  
5           the duties and responsibilities by a facility  
6           designee, consistent with the authorizing  
7           agreement; and

8           “(ii) provided copies of the policies  
9           and procedures adopted under clause (i) to  
10          the practitioner and to each facility des-  
11          ignee.

12          “(B) RESCISSION OF AUTHORITY.—A  
13          practitioner may in writing, at any time—

14                 “(i) rescind the authorizing agree-  
15                 ment;

16                 “(ii) rescind the authority of a facility  
17                 designee; or

18                 “(iii) modify the scope of the author-  
19                 ization of a facility designee.

20          “(3) DELEGATION OF AUTHORITY.—

21                 “(A) IN GENERAL.—Under an authorizing  
22                 agreement, an administrator of an institutional  
23                 long-term care facility may, in accordance with  
24                 the policies and procedures described in para-  
25                 graph (2)(A)(i) delegate, in writing, the author-

1           ity to act as a facility designee to 1 or more  
2           health care professionals who are qualified  
3           under subparagraph (B).

4           “(B) REQUIREMENTS FOR QUALIFICA-  
5           TION.—To qualify to be a facility designee  
6           under subparagraph (A), a health care profes-  
7           sional shall be—

8                   “(i) directly employed by, and subject  
9                   to the supervision and control of, the insti-  
10                  tutional long-term care facility;

11                   “(ii) lawfully acting within the scope  
12                   of the employment of the individual; and

13                   “(iii) be a registered nurse, advanced  
14                   practice nurse, physician’s assistant, or  
15                   equivalent professional who is licensed, cer-  
16                   tified, registered, or otherwise permitted to  
17                   provide professional nursing or health care  
18                   by the jurisdiction in which the individual  
19                   is employed.

20           “(C) REQUIREMENT.—A written delega-  
21           tion of authority under subparagraph (A) shall  
22           specify, at the option of the practitioner, and in  
23           accordance with the authorizing agreement,  
24           whether the scope of the authorization is for—

1 “(i) schedule II controlled substances  
2 only; or

3 “(ii) all controlled substances, regard-  
4 less of schedule.

5 “(D) SERVICE AS A FACILITY DESIGNEE.—  
6 A facility designee shall act in accordance with  
7 the policies and procedures described in para-  
8 graph (2)(A)(i).

9 “(E) LIST OF AUTHORIZING AGREEMENTS  
10 AND FACILITY DESIGNEES.—

11 “(i) IN GENERAL.—An administrator  
12 of an institutional long-term care facility  
13 shall establish and maintain a current list  
14 of—

15 “(I) all practitioners who have  
16 entered into an authorizing agreement  
17 with the administrator; and

18 “(II) all facility designees of each  
19 practitioner described in subclause (I)  
20 that are employees of the institutional  
21 long-term care facility.

22 “(ii) REQUIREMENTS.—The list re-  
23 quired under clause (i) shall—

24 “(I) be—

1                   “(aa) dated upon establish-  
2                   ment and each time the list is  
3                   updated; and

4                   “(bb) made readily available  
5                   in appropriate places on the  
6                   premises of the institutional long-  
7                   term care facility to ensure prop-  
8                   er notice of which employees of  
9                   the institutional long-term care  
10                  facility are facility designees for  
11                  which practitioners; and

12                  “(II) include—

13                  “(aa) the name and address  
14                  of the institutional long-term  
15                  care facility and the adminis-  
16                  trator of the institutional long-  
17                  term care facility;

18                  “(bb) the name of each  
19                  practitioner who has entered into  
20                  an authorizing agreement with  
21                  the administrator of the institu-  
22                  tional long-term care facility; and

23                  “(cc) for each practitioner  
24                  listed under item (bb)—

1                   “(AA) the name of each  
2                   facility designee; and

3                   “(BB) whether practi-  
4                   tioner is providing author-  
5                   ization for schedule II con-  
6                   trolled substances only or all  
7                   controlled substances, re-  
8                   gardless of schedule.

9                   “(iii) DISTRIBUTION OF LIST.—An  
10                  administrator of an institutional long-term  
11                  care facility shall provide the list estab-  
12                  lished under clause (i) to—

13                   “(I) all pharmacies to which the  
14                   institutional long-term care facility  
15                   submits prescriptions for dispensing;  
16                   and

17                   “(II) each practitioner who has  
18                   entered into an authorizing agreement  
19                   with the administrator of the institu-  
20                   tional long-term care facility.

21                   “(iv) UPDATES.—The administrator  
22                   of an institutional long-term care facility  
23                   shall promptly update and redistribute a  
24                   list established under clause (i) if—

1                   “(I) there are any changes to the  
2                   information required to be included in  
3                   the list under clause (ii); or

4                   “(II) the authority of any facility  
5                   designee on the list is rescinded or  
6                   modified under paragraph (2)(B).

7                   “(F) PROHIBITION OF REDELEGATION OF  
8                   AUTHORITY.—A facility designee may not re-  
9                   delegate any aspect of the authorization of the  
10                  practitioner to another individual.

11                  “(4) TRANSMISSION BY A FACILITY DESIGNEE  
12                  OF A VALID ORAL PRESCRIPTION ISSUED BY PRACTI-  
13                  TIONER.—

14                  “(A) IN GENERAL.—Except as provided in  
15                  subparagraph (D), a practitioner who is pro-  
16                  viding medical care to, or supervising medical  
17                  care being provided to, a resident of an institu-  
18                  tional long-term care facility may issue an oral  
19                  prescription for the resident for a controlled  
20                  substance which is a prescription drug as deter-  
21                  mined under the Federal Food, Drug, and Cos-  
22                  metic Act (21 U.S.C. 301 et seq.), and the oral  
23                  prescription may be communicated through a  
24                  facility designee acting under the authorizing  
25                  agreement of the practitioner.

1           “(B) POLICIES.—A practitioner or a facil-  
2           ity designee acting under this subsection shall  
3           follow the requirements of this subsection re-  
4           gardless of the schedule of the controlled sub-  
5           stance for which an oral prescription is being  
6           communicated.

7           “(C) REQUIREMENTS.—

8           “(i) RESPONSIBILITIES OF PRACTI-  
9           TIONER.—In issuing an oral prescription  
10          under subparagraph (A), a practitioner  
11          shall provide to the facility designee—

12               “(I) the full name of the resi-  
13               dent;

14               “(II) the drug name, strength,  
15               and dosage form;

16               “(III) the quantity prescribed;

17               “(IV) the directions for use; and

18               “(V) the name, address, and  
19               Drug Enforcement Administration  
20               registration number of the prescribing  
21               practitioner.

22          “(ii) RESPONSIBILITIES OF A FACIL-  
23          ITY DESIGNEE.—A facility designee that  
24          receives an oral prescription issued under  
25          subparagraph (A) shall promptly—

1           “(I) create a document that re-  
2           duces such oral prescription to writ-  
3           ing, which shall include—

4                   “(aa) all of the information  
5                   provided by the practitioner  
6                   under clause (i);

7                   “(bb) the legible full name  
8                   and signature of the facility des-  
9                   ignee;

10                   “(cc) the name and address  
11                   of the institutional long-term  
12                   care facility;

13                   “(dd) the date and time the  
14                   facility designee received the oral  
15                   prescription; and

16                   “(ee) an attestation by the  
17                   covered individual, under penalty  
18                   of perjury as provided in section  
19                   1746 of title 28, United States  
20                   Code, that—

21                           “(AA) the facility des-  
22                           ignee has personally spoken  
23                           with the prescribing practi-  
24                           tioner; and

1                   “(BB) all the informa-  
2                   tion required under clause  
3                   (i) was provided by the prac-  
4                   titioner and is accurately  
5                   and completely recorded by  
6                   the facility designee on the  
7                   document; and

8                   “(II) transmit the written docu-  
9                   ment, or a facsimile thereof, to a  
10                  pharmacy for dispensing.

11                  “(iii) PROHIBITION.—A document de-  
12                  scribed in clause (ii)(I) may not be pre-  
13                  pared, in whole or in part, by a pharmacy.

14                  “(iv) FACSIMILES.—If a facility des-  
15                  ignee transmits a written document de-  
16                  scribed in clause (ii)(I) by facsimile, the  
17                  facsimile shall serve as the original written  
18                  prescription and shall be maintained in ac-  
19                  cordance with regulations promulgated by  
20                  the Attorney General.

21                  “(D) SCHEDULE II CONTROLLED SUB-  
22                  STANCES.—

23                  “(i) IN GENERAL.—An oral prescrip-  
24                  tion for a schedule II controlled substance  
25                  shall only be issued through or transmitted

1 by a facility designee under subparagraph  
2 (A) during an emergency situation, as de-  
3 scribed in subsection (a), and the quantity  
4 prescribed shall be limited to an amount  
5 adequate to treat the patient during the  
6 emergency situation.

7 “(ii) NON-EMERGENCY SITUATIONS.—  
8 A schedule II controlled substance may  
9 only be dispensed for treatment of a resi-  
10 dent of an institutional long-term care fa-  
11 cility in a non-emergency situation if the  
12 prescription is in writing and signed by the  
13 prescribing individual practitioner, as de-  
14 scribed in subsection (a).

15 “(E) RULE OF CONSTRUCTION.—Nothing  
16 in this subsection shall be construed to—

17 “(i) preclude a practitioner from  
18 issuing—

19 “(I) a prescription for a con-  
20 trolled substance and transmitting the  
21 prescription directly to the pharmacy,  
22 as otherwise authorized in subsections  
23 (a), (b), or (c) or by regulations  
24 issued by the Attorney General; or



1                   “(II) maintain the record in a  
2                   written or electronic log at the reg-  
3                   istered location of the practitioner, in  
4                   accordance with section 307.

5                   “(ii) CONTENTS AND RETENTION RE-  
6                   QUIREMENTS.—The Attorney General shall  
7                   specify by regulation the contents and re-  
8                   tention requirements for record required to  
9                   be kept under clause (i).

10                   “(iii) RESPONSIBILITY OF THE PRAC-  
11                   TITIONER.—A practitioner shall be respon-  
12                   sible for the creation of the contempora-  
13                   neous record of the oral prescription re-  
14                   quired under clause (i)(I), and may not  
15                   delegate or assign any responsibilities  
16                   under clause (i), in whole or in part, to—

17                               “(I) a pharmacy;

18                               “(II) a facility designee; or

19                               “(III) an institutional long-term  
20                   care facility (including an employee of  
21                   the institutional long-term care facil-  
22                   ity).

23                   “(H) DEFINITION OF ORAL PRESCRIP-  
24                   TION.—The Attorney General may, if deter-  
25                   mined by the Attorney General to be necessary,

1 define by regulation the term ‘oral prescription’  
2 for purposes of this subsection.

3 “(5) PHARMACY VERIFICATION OF ORAL PRE-  
4 SCRIPTIONS TRANSMITTED BY FACILITY DES-  
5 IGNEES.—

6 “(A) IN GENERAL.—Upon receiving an  
7 oral prescription from a practitioner that was  
8 reduced to writing and transmitted under para-  
9 graph (4), a pharmacy shall—

10 “(i) determine whether the institu-  
11 tional long-term care facility employee who  
12 transmitted the prescription is a facility  
13 designee for the prescribing practitioner  
14 for the prescribed controlled substance  
15 based on the most recent list of the facility  
16 designees that the institutional long-term  
17 care facility provided to the pharmacy  
18 under paragraph (3)(E)(iii); and

19 “(ii) document the determination  
20 under clause (i), which shall include a no-  
21 tation on the prescription document to me-  
22 morialize that the cross-check was com-  
23 pleted that includes—

24 “(I) the initials of the verifying  
25 pharmacist; and

1                   “(II) the date and time of the  
2                   verification.

3                   “(B) TRANSMISSION TO PRESCRIBING  
4                   PRACTITIONER.—Not later than 72 hours after  
5                   a pharmacy dispenses a controlled substance  
6                   pursuant to an oral prescription issued under  
7                   paragraph (4), the pharmacy shall transmit a  
8                   copy of the prescription document that the  
9                   pharmacy received from the facility designee  
10                  under paragraph (4)(C)(ii), clearly marked as  
11                  having been dispensed, to the prescribing prac-  
12                  titioner.

13                  “(C) PRACTITIONER REQUIREMENT.—A  
14                  practitioner shall—

15                         “(i) endorse, by physically affixing his  
16                         written signature to the copy of the pre-  
17                         scription the pharmacy transmitted to the  
18                         practitioner under subparagraph (B), if  
19                         the prescription was issued by the practi-  
20                         tioner; and

21                         “(ii) not later than 5 business days  
22                         after receiving the copy of the prescription  
23                         from the pharmacy, return the prescription  
24                         to the pharmacy in accordance with sub-  
25                         paragraph (E).

1                   “(D) ENDORSEMENT OF PRESCRIPTION.—

2                   By endorsing a prescription under subpara-  
3                   graph (C), the practitioner—

4                   “(i) attests that the oral prescription  
5                   memorialized and transmitted by a facility  
6                   designee was authorized by the practitioner  
7                   named on the prescription; and

8                   “(ii) certifies that the prescription in-  
9                   formation conveyed by the facility des-  
10                  ignee—

11                  “(I) was accurate;

12                  “(II) matches the information in  
13                  the record kept by the practitioner  
14                  under paragraph (4)(G); and

15                  “(III) was based on determina-  
16                  tions and instructions made by the  
17                  practitioner.

18                  “(E) RETURN OF ENDORSED PRESCRIP-  
19                  TION TO PHARMACY.—The practitioner may de-  
20                  liver a prescription endorsed under subpara-  
21                  graph (C)(i) to the pharmacy in person, by  
22                  mail, by facsimile, or by other appropriate  
23                  means of delivery, except that if the practitioner  
24                  uses the mail for delivery, the prescription shall

1 be postmarked during the 5-business-day period  
2 described in subparagraph (C)(ii).

3 “(F) ATTACHMENT OF ENDORSEMENT TO  
4 PRESCRIPTION.—A dispensing pharmacy shall  
5 attach a prescription endorsed under subpara-  
6 graph (C)(i) to the prescription document that  
7 the pharmacy received from the facility designee  
8 under paragraph (4)(C).

9 “(G) NONCOMPLIANCE.—

10 “(i) IN GENERAL.—If a pharmacy  
11 does not receive an endorsed prescription  
12 required under this paragraph from a  
13 practitioner within the 5-business-day pe-  
14 riod described in subparagraph (C)(ii), the  
15 pharmacy—

16 “(I) may not dispense any subse-  
17 quent prescriptions for controlled sub-  
18 stances issued by or on behalf of the  
19 practitioner for residents at the insti-  
20 tutional long-term care facility, unless  
21 the prescription is a written prescrip-  
22 tion issued directly by the practi-  
23 tioner, until the required endorsement  
24 of the oral prescription is received;  
25 and

1                   “(II) shall note the limitation de-  
2                   scribed in subclause (I) on the most  
3                   recent copy of the list that the institu-  
4                   tional long-term care facility provided  
5                   to the pharmacy under paragraph  
6                   (3)(E)(iii).

7                   “(ii) NOTICE TO DEA.—A pharmacy  
8                   shall notify the nearest office of the Drug  
9                   Enforcement Administration if the phar-  
10                  macy does not receive an endorsed pre-  
11                  scription from a practitioner by the end of  
12                  the 10-business-day period beginning on  
13                  the date on which the pharmacy trans-  
14                  mitted notice to the practitioner under  
15                  subparagraph (B).

16                  “(6) RECORDKEEPING.—

17                  “(A) IN GENERAL.—Each institutional  
18                  long-term care facility shall—

19                  “(i) maintain a readily retrievable  
20                  written or electronic logbook, in which it  
21                  records each instance in which a facility  
22                  designee memorializes and transmits an  
23                  oral prescription for a controlled substance  
24                  to a pharmacy on behalf of a practitioner  
25                  under paragraph (4); and

1                   “(ii) keep, on the premises of the in-  
2                   stitutional long-term care facility—

3                   “(I) the logbook described in  
4                   clause (i); and

5                   “(II) copies of—

6                   “(aa) any authorizing agree-  
7                   ments;

8                   “(bb) any policies and proce-  
9                   dures issued by the institutional  
10                  long-term care facility under  
11                  paragraph (2)(A)(i);

12                  “(cc) any notice of rescission  
13                  or modification of the authority  
14                  of a facility designee;

15                  “(dd) each list prepared by  
16                  the administrator of the institu-  
17                  tional long-term care facility  
18                  under paragraph (3)(E); and

19                  “(ee) all documents created  
20                  by facility designees to reduce  
21                  oral prescriptions to writing,  
22                  under paragraph (4)(C)(ii)(I).

23                  “(B) RETENTION OF COPIES.—An institu-  
24                  tional long-term care facility shall—

1                   “(i) retain a copy of any document de-  
2                   scribed in subparagraph (A)(ii)(II) until  
3                   the end of the 5-year period beginning on  
4                   the date on which the document was cre-  
5                   ated; and

6                   “(ii) whether retained in written or  
7                   electronic form, make available for inspec-  
8                   tion and copying by the Attorney General  
9                   under section 510—

10                   “(I) the logbook described in sub-  
11                   paragraph (A)(i); and

12                   “(II) copies of the documents de-  
13                   scribed in subparagraph (A)(ii)(II).

14                   “(C) PROHIBITION.—The logbook required  
15                   under subparagraph (A)(i) may not be pre-  
16                   pared, maintained, or updated, in whole or in  
17                   part, by a pharmacy.

18                   “(D) CONTENTS OF LOGBOOK.—The log-  
19                   book shall contain, at a minimum—

20                   “(i) all of the information required  
21                   under paragraph (4)(C); and

22                   “(ii) the name, address, and telephone  
23                   number of the pharmacy to which each  
24                   prescription was transmitted.

1           “(E) RULEMAKING AUTHORITY.—The At-  
2           torney General may promulgate rules relating  
3           to the formatting, content, and updating of the  
4           logbook required to be kept under clause (A)(i).

5           “(7) RULE OF CONSTRUCTION.—Nothing in  
6           this subsection shall be construed to allow an insti-  
7           tutional long-term care facility, or an administrator,  
8           employee, or agent of an institutional long-term care  
9           facility, who is not a practitioner, to prescribe, ad-  
10          minister, dispense, distribute, deliver, possess, main-  
11          tain, stock, or otherwise use a controlled substance  
12          except as expressly provided by this title.”.

13 **SEC. 4. PRACTITIONER RECORDKEEPING.**

14          Section 307 of the Controlled Substances Act (21  
15          U.S.C. 827) is amended—

16               (1) in subsection (a)—

17                       (A) in paragraph (2), by striking “and” at  
18                       the end;

19                       (B) in paragraph (3), by striking “inven-  
20                       tory.” and inserting “inventory; and”; and

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

22                               “(4) every registrant who prescribes a con-  
23                               trolled substance for a patient residing at an institu-  
24                               tional long-term care facility under section 309(f)

1 shall maintain the prescribing log described in sub-  
2 section (f)(2)(G) of that section.”; and

3 (2) in subsection (c)(1)(A), by adding after  
4 “treatment of an individual” the following: “, or  
5 under section 309(f)”.

6 **SEC. 5. PENALTIES.**

7 (a) IN GENERAL.—Section 402 of the Controlled  
8 Substances Act (21 U.S.C. 842) is amended—

9 (1) by amending subsection (a)(1) to read as  
10 follows:

11 “(1) who is subject to the requirements of part  
12 C, including an institutional long-term care facility  
13 and an administrator or employee of an institutional  
14 long-term care facility who are subject to any of the  
15 requirements under section 309(f), to distribute or  
16 dispense a controlled substance, or to aid in the pre-  
17 scribing or dispensing of a controlled substance, in  
18 violation of section 309;” and

19 (2) in subsection (c)—

20 (A) in paragraph (1)—

21 (i) by amending subparagraph (B) to  
22 read as follows:

23 “(B) In the case of a violation of para-  
24 graph (5) or (10) of subsection (a) of this sec-  
25 tion, the civil penalty for each violation shall

1 not exceed \$10,000, except that if a person re-  
2 fuses or negligently fails to make any record,  
3 report, notification, declaration, or statement  
4 required by section 309(f), the civil penalty for  
5 each violation shall be not less than \$3,000 and  
6 not more than \$10,000.”; and

7 (ii) by adding at the end the fol-  
8 lowing:

9 “(C) In the case of a violation of sub-  
10 section (a)(1), the civil penalty shall be not less  
11 than \$5,000 for each violation.”; and

12 (B) in paragraph (2)—

13 (i) in subparagraph (A), by striking  
14 “sentenced to imprisonment of not more  
15 than one year” and inserting “sentenced to  
16 a term of imprisonment of not more than  
17 3 years”; and

18 (ii) in subparagraph (B), by striking  
19 “2 years” and inserting “5 years”.

20 (b) DIRECTIVE TO THE UNITED STATES SEN-  
21 TENCING COMMISSION.—

22 (1) IN GENERAL.—Pursuant to its authority  
23 under section 994 of title 28, United States Code,  
24 and in accordance with this subsection, the United  
25 States Sentencing Commission shall review and, if

1 appropriate, amend the Federal Sentencing Guide-  
2 lines and policy statements to conform to the  
3 amendments made by this Act.

4 (2) REQUIREMENTS.—In carrying out this sub-  
5 section, the Commission shall—

6 (A) establish new guidelines and policy  
7 statements, as warranted, in order to imple-  
8 ment new or revised criminal offenses created  
9 under this title;

10 (B) assure reasonable consistency with  
11 other relevant directives and with other sen-  
12 tencing guidelines;

13 (C) account for any additional aggravating  
14 or mitigating circumstances that might justify  
15 exceptions to the generally applicable sentencing  
16 ranges;

17 (D) make any necessary conforming  
18 changes to the sentencing guidelines; and

19 (E) assure that the guidelines adequately  
20 meet the purposes of sentencing under section  
21 3553(a)(2) of title 18, United States Code.

22 **SEC. 6. RULE OF CONSTRUCTION.**

23 Nothing in this Act or in the amendments made by  
24 this Act shall be construed to alter or eliminate the re-  
25 quirements relating to electronic prescriptions for con-

1 trolled substances in effect on the date of enactment of  
2 this Act, as established by the Attorney General.