



## DRUG OVERDOSE PREVENTION

# NALOXONE ACCESS AND OVERDOSE GOOD SAMARITAN LAW IN OHIO

## Introduction

Drug overdose is a nationwide crisis that claimed the lives of more than 63,000 Americans in 2016. The majority of these deaths, over 42,000, involved opioids such as heroin, prescription painkillers, and, increasingly, illicitly produced fentanyl.<sup>1</sup> The epidemic has been more pronounced in Ohio than in many other states. In 2017, over 5,100 Ohioans died of overdose – an increase of approximately 700 from 2016.<sup>2</sup> The latest available data, from January 2018, show that the number of overdose deaths in the state increased by 9.3% from the same period the previous year, compared to 6.6% for the country as a whole.<sup>3</sup>


The good news is that many of these deaths are preventable with the timely administration of the overdose reversal drug naloxone and the provision of related emergency care. The bad news is that, in many cases, overdose bystanders do not have ready access to naloxone and do not call for emergency assistance or delay doing so because they are afraid that summoning emergency responders will put them at risk of negative criminal justice action, including arrest and prosecution for drug-related or other crimes.<sup>4</sup> Because the negative effects of overdose become more severe the longer the person experiencing the overdose remains in respiratory depression, delays in emergency response contribute to preventable injury, up to and including death.<sup>5</sup>

Ohio, like most other states, has moved to address these problems by passing legislation that both makes it easier for people at risk of opioid overdose as well as those close to them to access naloxone and encourages people who witness an overdose to summon emergency assistance. However, the specifics of these laws in Ohio differ from those in most other states in ways that may make them less easy to communicate and possibly less effective.

## Increased Access to Naloxone

Several provisions of Ohio law are intended to make it easier for individuals, including but not limited to physicians, pharmacists, and pharmacy interns, to distribute naloxone to individuals who may be in a position to use it to reverse an opioid-related overdose.

First, Ohio law permits a physician to prescribe naloxone to a person, and personally furnish naloxone to that person, without first having examined the person to whom the naloxone may be administered.<sup>6</sup> “Furnish” is not defined in the code but appears to mean the dispensing of naloxone by a person other than a pharmacist or pharmacy intern. For such “third party” prescribing and/or furnishing to be permitted, the naloxone must be prescribed or furnished to a family member, friend, or other individual who may be in position to assist an individual who may be at risk of experiencing an opioid-related overdose.<sup>7</sup> The physician is also required to instruct the person receiving the naloxone or naloxone prescription to summon emergency services “as soon as practicable” either before or after administering the naloxone.<sup>8</sup> A physician who furnishes naloxone or issues a third party naloxone prescription is immune from any damages in a civil action, prosecution



in any criminal proceeding, or professional disciplinary action for any act or omission of the individual to whom the naloxone is prescribed or furnished.<sup>9</sup>

Further, a physician may establish a protocol that authorizes one or more individuals (authorized individual) to furnish naloxone to an individual who is experiencing or is at risk of experiencing an opioid-related overdose, as well as to a family member, friend, or other individual who may be in a position to assist someone who may be at risk of experiencing an opioid-related overdose.<sup>10</sup> For example, a physician can use such a protocol to authorize an employee or volunteer of a syringe access program to furnish naloxone to a client of that program. In addition to complying with the protocol established by the authorizing physician, the authorized individual must also instruct the individual to whom naloxone is furnished to summon emergency services as soon as practicable either before or after that person administers the naloxone.<sup>11</sup> The state Board of Pharmacy has taken the position that a location that furnishes naloxone under such a protocol must obtain a terminal distributor of drugs license, potentially limiting the impact of this provision.<sup>12</sup> Both the physician and the authorized individual are immune from damages in any civil action, prosecution in any criminal proceeding, or professional disciplinary action for any action or omission of the individual to whom the naloxone is furnished.<sup>13</sup>

Similarly, Ohio law permits physicians to authorize one or more pharmacists and pharmacy interns under their supervision to dispense naloxone under a protocol.<sup>14</sup> Alternatively, a board of health, through the physician serving as the board's health commissioner or medical director, may authorize pharmacists and pharmacy interns practicing in a county that includes all or part of the health district represented by the board to dispense naloxone under a protocol developed by that physician.<sup>15</sup> While the specific protocol is developed by each individual physician, it must meet certain criteria set out in regulation.<sup>16</sup> The state Board of Pharmacy has created a sample protocol that can be used as a template.<sup>17</sup>

When acting under a naloxone protocol, the pharmacist or pharmacy intern may dispense naloxone to an individual "who there is reason to believe" is experiencing or at risk of experiencing an opioid-related overdose, as well as to a family member, friend, or other person in a position to assist an individual who there is reason to believe is at risk of experiencing such an overdose.<sup>18</sup> The pharmacist or pharmacy intern must instruct the person to whom the naloxone is dispensed to summon emergency services as soon as practicable.<sup>19</sup> The relevant physician, board of health, and pharmacist or pharmacy intern are relieved of liability from damages in any civil action, prosecution in any criminal proceeding, or professional disciplinary action for good faith authorization or dispensing of naloxone as permitted by the law for any action or omission of the individual to whom the naloxone is dispensed.<sup>20</sup>

A board of health may also permit an employee, contractor, or volunteer of a service entity to administer naloxone to a person who appears to be experiencing an opioid-related overdose so long as the individual complies with a protocol established by a physician serving as the board's health commissioner or medical director and summons emergency services as soon as practicable before or after administering the naloxone.<sup>21</sup> The protocol must be established by the physician in writing and include a number of components including precautions, limitations, and any training requirements.<sup>22</sup> A board of health that authorizes an individual to administer naloxone in this manner is not liable for damages in any civil action for any act or omission of the authorized individual, and a physician serving as a board's health commissioner or medical director who in good faith authorizes an individual to administer naloxone is immune from damages in any civil action, prosecution in any criminal proceeding, and professional disciplinary action for any act or omission of the authorized individual. The service entity, as well as its employees, volunteers, and contractors are also immune from damages in any civil action, prosecution in any criminal proceeding, or professional disciplinary action for any injury, death, or loss to person or property that allegedly arises from an act or omission associated with procuring, maintaining, accessing, or using naloxone as permitted by the law.<sup>23</sup> Service entities may obtain naloxone for the purpose of administration without first obtaining a terminal distributor of dangerous drugs license.<sup>24</sup>

In addition to the immunity noted above, a family member, friend, or other person in a position to assist an individual who appears to be experiencing an opioid-related overdose cannot be prosecuted for practicing medicine without a license or for most other drug offenses if that person obtains naloxone in a manner permitted by law, administers the naloxone to a person who appears to be experiencing a drug overdose, and attempts to summon emergency services as soon as practicable.<sup>25</sup> Additional criminal immunity may be available for some individuals who summon emergency assistance in an overdose or are the subject of such a request, as described below.



## Limited Criminal Immunity

Ohio's overdose Good Samaritan provisions differ from those in place in most other states in several important ways, including the actions required to receive immunity and the individuals covered. The law provides that an individual may not be arrested, charged, prosecuted, convicted, or penalized for a minor drug possession offense if all of the following conditions are met:<sup>26</sup>

- (1) The individual either:
  - a. acts in good faith to seek or obtain medical assistance for another person who is experiencing a drug overdose;
  - b. is a person who experiences a drug overdose and who seeks medical assistance for that overdose, or
  - c. is a person who is the subject of another person seeking or obtaining medical assistance for that overdose;<sup>27</sup>
- (2) The individual is not on community control or post-release control;
- (3) The evidence of the obtaining, possession, or use of the controlled substance or controlled substance analog that would be the basis of the offense was obtained as a result of the individual seeking medical assistance or experiencing an overdose and needing medical assistance;<sup>28</sup>
- (4) Within thirty days after seeking or obtaining medical assistance, the person seeking immunity "seeks and obtains a screening and receives a referral for treatment from a community addiction services provider or a properly credentialed addiction treatment professional";<sup>29</sup>
- (5) The individual seeking immunity has not been granted immunity under the Good Samaritan law more than two times previously.<sup>30</sup>

In addition to the limited immunity for minor possession crimes, Ohio law also provides that, where a person is found to be in violation of any community control or post-release sanction that is a result of seeking or obtaining medical assistance in good faith for a person experiencing a drug overdose or being the subject of such a call, the judge must first consider ordering the person's participation or continued participation in a drug treatment program or mitigating the penalty that would otherwise be imposed.<sup>31</sup>

## Discussion

Ohio has joined every other state that has modified law to increase access to naloxone, and approximately 45 other states that provide limited immunity to individuals who summon emergency assistance in an overdose emergency. Ohio's provisions and actions are generally less supportive of emergency overdose care than those in most other states. For example, in the majority of states the director of the state health department or a similarly situated public official has issued a statewide standing order for naloxone to be distributed via pharmacies, while Ohio has devolved that function to individual physicians and local health departments. A statewide solution would likely be less administratively burdensome and would likely increase access to naloxone. The law also requires that facilities that wish to dispense naloxone obtain a license to distribute dangerous drugs, a cumbersome burden that limits the locations where naloxone can be distributed. Further, the law does not require that insurers cover naloxone without prior authorization or other restrictions, which may present a barrier to some insured individuals, nor does it require pharmacies to stock the medication. These provisions have been enacted in some other states, increasing the likelihood that the medication will be immediately available in an overdose emergency.

The overdose Good Samaritan law provides protection only from minor drug possession crimes, and contains several key exclusions. Most notably, the protections do not apply to individuals who are on community control or post-release control or to individuals who have received the benefit of the law twice previously. This appears to make little sense from a public health standpoint, since those individuals may be at highest risk of experiencing or witnessing an overdose and most concerned about a criminal sanction for seeking or receiving professional assistance in an overdose. Further, an individual who is screened for substance use disorder but is, for whatever reason, not found to be appropriate for treatment referral would be excluded from the immunity provided by the law. It is hard to imagine how these exclusions would not result in more lives lost from overdose in the state.



## Conclusion

Ohio has modified law to increase access to naloxone by making the medication easier to access and encouraging individuals who obtain naloxone under the law to summon emergency assistance in the event of an overdose. The law's provisions, however, are less supportive of those activities than similar laws in many states. Modifying state law to make it easier for Ohioans to access naloxone outside of a pharmacy, to remove impediments to accessing immunity under the Good Samaritan law, and to expand the scope of crimes covered under that law would likely improve the effectiveness of these efforts.

## SUPPORTERS



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## Notes

- <sup>1</sup> Centers for Disease Control and Prevention, *Drug Overdose Deaths in the United States, 1999–2016*. December 2017, <https://www.cdc.gov/nchs/products/databriefs/db294.htm>
- <sup>2</sup> Centers for Disease Control and Prevention, *Vital Statistics Rapid Release: Provisional Drug Overdose Death Counts*. August 2018, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>.
- <sup>3</sup> *Id.*
- <sup>4</sup> Karin Tobin, et al., *Calling emergency medical services during drug overdose: an examination of individual, social and setting correlates*, 100 ADDICTION 397 (2005); Robin A. Pollini, et al., *Response to Overdose Among Injection Drug Users*, 31 AMERICAN JOURNAL OF PREVENTIVE MEDICINE 261 (2006).
- <sup>5</sup> Carine Michiels. *Physiological and pathological responses to hypoxia*. 164(6) AM. J. PATHOL. 1875 (2004).
- <sup>6</sup> OHIO REV. CODE ANN. § 4731.94. The authority to issue such prescriptions is limited to physicians; it does not apply to other medical professionals who are permitted to issue traditional prescriptions for naloxone.
- <sup>7</sup> OHIO REV. CODE ANN. § 4731.94(B)(1).
- <sup>8</sup> OHIO REV. CODE ANN. § 4731.94(B)(2).
- <sup>9</sup> OHIO REV. CODE ANN. § 4731.94(C).
- <sup>10</sup> OHIO REV. CODE ANN. § 4731.94(A)(1).
- <sup>11</sup> OHIO REV. CODE ANN. § 4731.94(B).
- <sup>12</sup> State of Ohio Board of Pharmacy, *Naloxone for Administration by Service Entity Personnel* (2018), <https://www.pharmacy.ohio.gov/Documents/Pubs/Naloxone/Service%20Entity%20Resources/Guidance%20Document%20-%20Naloxone%20for%20Administration%20by%20Service%20Entity%20Personnel.pdf>
- <sup>13</sup> OHIO REV. CODE ANN. § 4731.94(D).
- <sup>14</sup> OHIO REV. CODE ANN. § 4731.94.
- <sup>15</sup> OHIO REV. CODE ANN. § 3707.56.
- <sup>16</sup> Ohio Admin. Code § 4729-5-39(B).
- <sup>17</sup> See *Protocol for Dispensing Naloxone to Individuals at Risk of Experiencing or Witnessing an Opioid-Related Overdose*, available at <https://www.pharmacy.ohio.gov/Documents/Pubs/Naloxone/Pharmacist/Sample%20Naloxone%20Dispensing%20Protocol%20for%20Pharmacies.pdf>
- <sup>18</sup> OHIO REV. CODE ANN. § 4729.44(B).
- <sup>19</sup> OHIO REV. CODE ANN. § 4729.44(C).
- <sup>20</sup> OHIO REV. CODE ANN. § 4729.44(F).
- <sup>21</sup> OHIO REV. CODE ANN. § 3707.562. “Service entity” is defined as a public or private entity that provides services to individuals who there is reason to believe may be at risk of experiencing an opioid-related overdose, and includes a college or university, school, local health department, community addiction services provider, court, probation department, halfway house, prison, jail, community residential center, homeless shelter, or similar entity. OHIO REV. CODE ANN. § 4729.514(A).
- <sup>22</sup> OHIO REV. CODE ANN. § 3707.562.
- <sup>23</sup> The immunity does not apply in cases of willful or wanton misconduct. OHIO REV. CODE ANN. § 3707.562. Service entities are permitted to procure naloxone for use in emergency situations. OHIO REV. CODE ANN. § 4729.514(B).
- <sup>24</sup> OHIO REV. CODE ANN. § 4729.541(12).
- <sup>25</sup> OHIO REV. CODE ANN. § 2925.61. Although the plain text of the law appears to provide immunity from the entirety of Chapter 2925 (which covers most drug offenses) to a person who obtains naloxone, administers naloxone, and attempts to summon emergency services without limitation, it seems likely that the intent was to provide criminal immunity only for acts directly related to the possession and administration of naloxone.
- <sup>26</sup> “Minor drug possession offense” is defined as a drug possession offense that is a misdemeanor or a felony of the fifth degree. OHIO REV. CODE ANN. § 2925.11(B)(2)(a).
- <sup>27</sup> “Seek or obtain medical assistance” includes, but is not limited to making a 911 call, contacting in person or by telephone call an on-duty peace officer, or transporting or presenting a person to a health care facility. OHIO REV. CODE ANN. § 2925.11(B)(2)(a)(ix).
- <sup>28</sup> OHIO REV. CODE ANN. § 2925.11(B)(2)(b)(i).
- <sup>29</sup> Under the terms of this provision, neither the caller nor overdose victim would qualify for immunity if the screening determines that they do not need a treatment referral. OHIO REV. CODE ANN. § 2925.11(B)(2)(b)(ii). Upon request of the prosecuting attorney, the individual must submit documentation of the date and time the screening was obtained and the referral received. Ohio Rev. Code Ann. § 2925.11(B)(2)(b)(iii).
- <sup>30</sup> OHIO REV. CODE ANN. § 2925.11(B)(2)(f).
- <sup>31</sup> Presumably the intent is that the judge is required to consider mitigation when the violation was discovered because of the overdose or the seeking of assistance. The judge is not required to modify his or her decision; he or she is only required to “first consider” those actions. OHIO REV. CODE ANN. § 2925.11(B)(2)(c)-(d).