The Network for Public Health Law

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DRUG OVERDOSE PREVENTION IN PENNSYLVANIA

ACT 139 FACT SHEET

Background

Drug overdose is a nationwide epidemic that claims the lives of over 36,000 Americans every year.[1] Pennsylvania is not immune from its devastating effects. Overdose rates in the state have increased by 89 percent since 1999, and in 2011 it had the country's 14th highest overdose mortality rate.[2] That rate continues to climb, increasing by a startling 23 percent between 2010 and 2012.[3] This rise is mostly driven by prescription opioids such as OxyContin and hydrocodone, which account for more overdose deaths than heroin and cocaine combined.[4]

Opioid overdose is typically reversible through the timely administration of naloxone, a safe and effective medication that reverses the effects of opioids, and the provision of other emergency care.[5] While naloxone is not a controlled substance, it is a prescription medication. This has made it difficult in some cases for those likely to be in a position to aid an overdose victim to carry the medication. Additionally, existing laws intended to reduce drug abuse often discourage overdose bystanders from calling for help, leading to avoidable overdose deaths.[6] In some circumstances, the first responders dispatched to help overdose victims do not carry naloxone and are not trained in its use. In an attempt to reverse the unprecedented increase in preventable overdose deaths, a number of states have recently amended their laws to address these problems and increase access to emergency care and treatment for opiate overdose.[7]

In 2014, Pennsylvania joined their ranks. Senate Bill 1164 was passed unanimously in the summer of 2014 and was signed by the Governor on September 30, when it became known as Act 139. The law went into effect on November 28, 2014. As explained in more detail below, Act 139 provides limited immunity from charge and prosecution for possession of drugs and drug paraphernalia for individuals who experience a drug overdose and are in need of medical care, and for those who seek medical care in good faith for a person experiencing an overdose so long as certain conditions are met. Such persons are also relieved from penalties for violations of probation or parole.

The law expands access to naloxone in several ways. Perhaps most importantly, it permits medical professionals to dispense, prescribe or distribute the medication, either directly or via a standing order, to family members, friends, and others who might be in a position to assist in an overdose. It also permits emergency services personnel including law enforcement officers, firefighters, and EMS workers to carry and administer the medication. Additionally, the Act provides civil, criminal and professional immunity for medical professionals who prescribe naloxone, and law enforcement agencies, fire departments, fire companies and laypeople who administer it to a person suspected of suffering from an opioid overdose.

Drug Overdose Response Immunity

In many cases, overdose bystanders may fail to summon medical assistance because they are afraid that doing so may put them at risk of being charged and prosecuted for drug-related crimes, or being sent to jail or prison for violating the terms of probation or parole.[8] Act 139 attempts to address this problem by providing limited immunity from charge and prosecution for certain drug crimes for both a person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose and the person suffering from the overdose. This immunity applies only where law

enforcement officers became aware of the crime because either a) the Good Samaritan transported the person experiencing the overdose to a law enforcement agency, campus security office or health care facility, or b) the Good Samaritan reported the overdose in good faith to a law enforcement officer, the 911 system, a campus security officer or emergency services personnel and "the report was made on the reasonable belief that another person was in need of immediate medical attention and was necessary to prevent death or serious bodily injury due to a drug overdose; (ii) the person provided his own name and location and cooperated with the law enforcement officer, 911 system, campus security officer or emergency services personnel; and (iii) the person remained with the person needing immediate medical attention until a law enforcement officer, a campus security officer or emergency services personnel arrived." The victim is provided the protection only if the Good Samaritan qualifies for immunity.

The immunity only applies to the following crimes:[9]

- Unlawful possession of a controlled or counterfeit substance;
- Unlawful purchase or receipt of a controlled substance;
- The possession or non-sale distribution of 30 grams or less of marijuana or 8 grams or less of hashish[10];
- The use of, or possession with intent to use, drug paraphernalia;
- The delivery of, possession with intent to deliver, or manufacture with intent to deliver, drug paraphernalia;
- The unlawful possession of more than thirty doses labeled as a dispensed prescription or more than three trade packages of anabolic steroids.[11]

In layman's terms, these provisions essentially protect a person from being charged or prosecuted for having or buying (but not for selling) small amounts of drugs and using, having, or providing drug paraphernalia.[12] Under the law, a person who meets the criteria is also immune from violations of probation or parole. A law enforcement officer or prosecuting attorney who, acting in good faith, charges a person who is later determined to be entitled to immunity cannot be sued for filing those charges.

First responder naloxone access

When a person calls 911 or otherwise calls for help in an overdose, it is important that the first responders who come to the victim's aid have naloxone on hand and be trained in how to use it. Unfortunately, this is not always the case. Before Act 139 became effective, the only first responders permitted to administer naloxone were paramedics and intermediate-level EMTs.[13] The law changes this in several ways. First, it directs the Department of Health, which sets the scope of practice for EMS personnel, to permit all certified EMS providers, including non-paramedic EMTs, to administer naloxone.[14] The Department is also charged, in consultation with the Emergency Health Services Council, to implement training, treatment protocols, equipment lists and other policies and procedures regarding naloxone and, in consultation with the Department of Drug and Alcohol Programs, to develop or approve training and instructional trainings and instructional materials, and make them available free on the internet.

The law also permits a law enforcement agency, fire department, or fire company to enter into a written agreement with an EMS agency with the consent of either that agency's medical director or another physician to obtain naloxone and to permit law enforcement officers (LEOs) and firefighters who have received training and instructional materials to administer naloxone in an overdose.[15] It explicitly permits any health care professional authorized to prescribe naloxone to dispense, prescribe, or distribute the medication directly or via standing order to an authorized LEO or firefighter subject to such an agreement. It also exempts LEOs and firefighters who store naloxone pursuant to such an agreement from the provisions of the state Pharmacy Act.

Layperson naloxone access

The law also takes several steps to make it easier for laypeople to access naloxone, making it more likely that it will be immediately available when and where it's needed. Because often it is not the person at risk of overdose who talks to their medical provider about their concerns but rather a friend or family member, the Act permits any health care professional

with prescribing privileges to dispense, prescribe or distribute it to "a person at risk of experiencing an opioid-related overdose, or family member, friend or other person in a position to assist a person at risk of experiencing an opioid-related overdose." It also permits non-profit organizations to distribute naloxone by exempting any person or organization acting at the direction of a health care professional authorized to prescribe naloxone from the provisions of the Pharmacy Act, so long as the activities are undertaken without charge or compensation.[16]

Naloxone-related civil immunity

Although there is no evidence that naloxone prescription or administration is a particularly risky activity, some individuals and groups may be fearful of participating in naloxone access programs because of legal concerns. Act 139 addresses those concerns in a number of ways. First, it protects a licensed health care professional who prescribes or dispenses naloxone in good faith from all civil and criminal liability and any professional disciplinary action for prescribing and dispensing naloxone as well as any outcomes that might result from administration of the medication. The immunity applies so long as the health professional acts without intent to harm or reckless indifference to a substantial risk of harm.

Additionally, any person, law enforcement agency, fire department or fire company who administers naloxone as permitted under Act 139 while acting in good faith and exercising reasonable care to an individual who the person believes is suffering from an opioid-related overdose is immune from criminal prosecution, civil liability, and professional sanction for that administration. Receipt of training and instructional materials approved or provided by the state creates a rebuttable presumption that the person acted with reasonable care in administering the naloxone, but is not necessary for immunity. The law also makes clear that all existing immunities provided to ordinary citizens and emergency responders elsewhere in the law may also apply.

Conclusion

With the passage of Act 139, Pennsylvania joins the rapidly growing number of states that have taken legislative action to increase access to emergency medical care for drug overdose.[17] While reversing the disturbing trend of overdose deaths will likely require a multi-pronged approach including the provision of evidence-based substance use disorder treatment, initial data from other states are encouraging. A recent evaluation of a naloxone distribution program in Massachusetts, which trained over 2,900 potential overdose bystanders, reported that opioid overdose death rates were significantly reduced in communities in which the program was implemented compared to those in which it was not.[18] Initial evidence from Washington State, which passed a Medical Amnesty law in 2010, is also positive, with 88 percent of drug users surveyed indicating that they would be more likely to summon emergency personnel during an overdose as a result of the legal change.[19]

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[1] Margaret Warner, et al., Nat'l Ctr. For Health Statistics, Drug poisoning deaths in the United States, 1980–2008 (2011).

[2] Trust for America's Health, Pennsylvania State Report (2013), *available at* http://healthyamericans.org/reports/drugabuse2013/release.php?stateid=PA

[3] Don Sapatkin, Overdose Deaths Rise in PA, NJ. *Philadelphia Inquirer*, Oct. 22. 2014. *Available at* http://articles.philly.com/2014-10-22/news/55284974_1_drug-overdoses-narcan-naloxone (accessed December 25, 2014).

[4] *Supra* note 1.

[5] *See* C. Baca, et al., *Take-home Naloxone to Reduce Heroin Death*, 100 Addiction 1823 (2005); Centers for Disease Control and Prevention, *Community-Based Opioid Overdose Prevention Programs Providing Naloxone – United States,* 2010, 61 Morbidity and Mortality Weekly Report 101 (2012).

[6] *See* Davis CS, Webb D, Burris S. *Changing Law from Barrier to Facilitator of Opioid Overdose Prevention,* 41 Journal of Law, Medicine and Ethics 33 (2013).

[7] For a comprehensive list of other state efforts, *see* Network for Public Health Law, Legal Interventions to Reduce Overdose Mortality: Naloxone Access and Good Samaritan Laws (2014), *available at* http://www.networkforphl.org/_asset/qz5pvn/network-naloxone-10-4.pdf.

[8] 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).

[9] Namely, those of sections 13(a)(5), (16), (19), (31), (32), (33) and (37) of the state Controlled Substance, Drug, Device and Cosmetic Act.

[10] Like many states, Pennsylvania treats marijuana differently than most other controlled substances.

[11] The Act also provides immunity for "The dissemination or publication of any false or materially misleading advertisement," which seems unlikely to be utilized.

[12] The law doesn't specifically limit the amount of drugs other than anabolic steroids, marijuana, and hashish that a person can have and still qualify for immunity, but a person found with a large amount of drugs or other evidence that the person was engaged in drug sales can be charged under 35 P.S. 780-113(a)(30) (commonly referred to as PWID, for Possession with Intent to Deliver) which is not covered by the law.

[13] Network for Public Health Law, Legal Interventions to Reduce Overdose Mortality: emergency medical services naloxone access (2014), *available at* https://www.networkforphl.org/_asset/8b7kmi/EMS-naloxone-overview.pdf.

[14] EMTs are emergency medical responders with a lower level of training than paramedics. Many rural and volunteer departments are largely staffed by EMTs.

[15] The state has created a guidance toolkit for non-EMS first responder agencies regarding naloxone access, available at http://www.portal.state.pa.us/portal/server.pt/document/1461089/first_responders_guidance_toolkit_doc, and a sample agreement, available at http://www.portal.state.pa.us/portal/server.pt/document/1461088/ems_agreement_template_doc. "Law enforcement officer" includes any "person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or a person on active State duty under 51 Pa.C.S. § 508 (relating to active duty for emergency)."

[16] This doesn't mean that the individuals involved must be volunteers, but rather that there must be no charge to the recipient for the naloxone and any accompanying consultation.

[17] For a comprehensive list of other state efforts, *see* Network for Public Health Law, Legal Interventions to Reduce Overdose Mortality: Naloxone Access and Good Samaritan Laws (2014), *available at* http://www.networkforphl.org/_asset/qz5pvn/network-naloxone-10-4.pdf.

[18] Alex Walley, et al., *Opioid overdose rates and implementation of overdose education and nasal naloxone distribution in Massachusetts: interrupted time series analysis*, 346 BMJ f174 (2013).

[19] Banta-Green, C. Washington's 911 Good Samaritan Overdose Law: Initial Evaluation Results (Nov. 2011), *available at* http://adai.uw.edu/pubs/infobriefs/ADAI-IB-2011-05.pdf