Opioid-related Public Health Emergency Declarations

as of December 1, 2018

James G. Hodge, Jr., JD, LLM
Professor of Public Health Law & Ethics
Director, Western Region Office,
Network for Public Health Law
Sandra Day O’Connor College of Law
Arizona State University
james.hodge.1@asu.edu

Chelsea Gulinson, JD
Staff Attorney,
Western Region Office,
Network for Public Health Law
Sandra Day O’Connor College of Law
Arizona State University
chelsea.gulinson@asu.edu
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Opioid Crisis Timeline

- Mar 18 2016: CDC publishes Opioid Prescribing Guidelines
- Mar 29 2017: President Trump issues Executive Order establishing White House Commission on Combating Drug Addiction and the Opioid Crisis
- Jul 31 2017: Commission recommends national emergency declaration
- Aug 10 2017: President Trump states initial intention to declare emergency
- Oct 26 2017: President Trump announces HHS Public Health Emergency declaration
- Oct 21 2018: HHS PHE extended a 4th time for 90 more days
- Nov 1 2017: Final White House Commission Report issued
- Dec 30 2016: CDC reports annual opioid overdose deaths hit record-high of >33,000
An Escalating Crisis

- From 2014-2015, deaths from synthetic opioids (other than methadone) increased 72%; teen overdose deaths (15-19 years) increased ~ 20%
- About 4 of 5 new heroin users start by misusing prescription opioids
- 2016 deaths involving synthetic opioids (19,413) outnumbered those involving prescription opioids (17,087) and heroin (15,469)
- By 2017 over half of opioid overdose deaths (47,232) involved synthetic opioids (28,526)
Overdose Deaths 1999-2015

Profile of Opioid Deaths

- **20%** of deaths in persons age 25-34 were opioid-related (2016)
- **67%** of fatal overdoses are among males (2015)
- **82%** identify as Caucasian/Non-Hispanic (2015)
- **45%** more fatal overdoses occur in rural vs urban areas (2015)
- **62%** are diagnosed with chronic pain in the last year of life (2017)
- **60%** of opioid deaths involve synthetic opioids (2017)
Reframing the Opioid Epidemic as a National Emergency

On August 10, 2017, President Trump announced his intention to declare a national emergency following the recommendation of the President’s Commission on Combating Drug Addiction and the Opioid Crisis. Opioid abuse is among the most consequential preventable public health threats facing the nation. More than 600,000 deaths have occurred to date, with 180,000 more predicted by 2020. Of the 20.5 million US residents 12 years or older with substance use disorders in 2015, 2 million were addicted to prescription pain relievers. A declaration of a national emergency authorizes public health powers, mobilizes resources, and facilitates innovative strategies to curb a rapidly escalating public health crisis.

The Opioid Crisis
Approximately one-third of individuals in the United States report experiencing chronic pain, and many receive prescription opioids such as oxycodone and acetaminophen/hydrocodone. Opioids are among the most heavily prescribed pharmaceuticals, and they are highly opioid epidemic (health care, labor, and criminal justice costs) was estimated at $92 billion in 2016 (an increase of 67% over a decade ago). Enhanced public health prevention nationally not only would reduce death and morbidity, but would likely also be highly cost-effective.

Expanding Conceptions of Public Health Emergencies
Modern public health emergency declarations typically focus on rapidly spreading infectious diseases such as West Nile virus (2002), severe acute respiratory syndrome (2003), H1N1 influenza (2009), Ebola virus (2014), and Zika virus (2016). They are also understood to include biosecurity threats such as anthrax (2001) or smallpox. Humanitarian disasters in the United States, such as hurricanes Katrina (2005) and Sandy (2012), have also triggered public health emergency declarations, particularly at the state level.

This traditional model of public health emergencies, however, is beginning to change. In the past decade states and localities have declared emergencies
October 26, 2017: President Trump directs acting HHS Secretary Eric D. Hargan to declare the opioid crisis a national PHE to:

- Overcome IMD exclusions for Medicaid coverage
- Mobilize public and private organizations
- Provide best prescribing practices and training
- Remove high-risk opioids from the market
- Prevent overseas illicit drug trafficking
- Initiate lawsuits against drug companies
- Deploy NIH funding to fight drug addiction

**Determination that a Public Health Emergency Exists**

As a result of the consequences of the opioid crisis affecting our Nation, on this date and after consultation with public health officials as necessary, I, Eric D. Hargan, Acting Secretary of Health and Human Services, pursuant to the authority vested in me under section 319 of the Public Health Service Act, do hereby determine that a public health emergency exists nationwide.

January 19, 2018: Acting Sec. Hargan renews PHE (effective 1/23/18)
April 20, 2018: Sec. Azar renews PHE a second time (effective 4/24/18)
July 19, 2018: Sec. Azar renews PHE a third time (effective 7/23/18)
October 18, 2018: Sec. Azar renews PHE a fourth time (effective 10/21/18)
Opioids in the Headlines

**USA TODAY**  11/05/18

FDA approves opioid painkiller 1,000 times stronger than morphine

**TIME**  11/17/18

Florida Is Suing CVS and Walgreens Over Their Role in the Opioid Crisis

**The New York Times**  11/29/18

‘The Numbers Are So Staggering.’ Overdose Deaths Set a Record Last Year.
The Combatting Illicit Fentanyl Act is introduced in the House, calling for presidential sanctions on individuals in China involved in fentanyl production and trafficking.

House Committee on Energy and Commerce held a hearing to investigate how the substance use treatment industry markets and obtains patient referrals.


The House and Senate passed HR 6157 to grant $250 million to NIDA for research in opioid addiction, alternatives, pain management, and addiction treatment.

SUPPORT for Patients and Communities Act combines numerous opioid bills proposed by various lawmakers (see next slide).

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Key Elements:
- Expansion of Medicare and Medicaid coverage and services
- Prevention, treatment, recovery grants and programs
- MAT prescribing changes
- FDA requirements for non-addictive drug development

Criticism:
- Insufficient funding
- Lacks focus on root causes of opioid crisis
- No real increased access to naloxone and buprenorphine
- Weak guidance on FDA opioid packaging
Select Federal Agency Responses

**August 30, 2018**: U.S. Deputy Attorney General Rod Rosenstein releases statement maintaining that supervised drug injection sites violate federal law

**September 20, 2018**: SAMHSA publishes fact sheets to support clinical treatment of women with an opioid use disorder who are also pregnant or recent mothers

**September 19, 2018**: CDC announces $155 million in new funding distributed to states and 4 territories to better characterize and address the opioid crisis

**October 23, 2018**: CMS announces a new Medicaid payment model for up to 12 states to better coordinate care for pregnant women and new mothers with opioid use disorder

**October 25, 2018**: HHS Office of Civil Rights announces an educational campaign to increase nondiscrimination law compliance in providing medication assisted treatment
Select FY2017 Appropriations

The **Consolidated Appropriations Act, 2017** provides HHS with $20 million for CARA-authorized programs, including 2 opioid-specific programs.

Congress provides $103 million for “comprehensive opioid abuse reduction activities” from the DOJ [State and Local Law Enforcement Assistance](#) account.

Under the [Department of Veterans Affairs](#), $50 million was provided to bolster opioid and substance abuse prevention and treatment.

The explanatory statement accompanying the **Consolidated Appropriations Act, 2017** specifies $56 million for SAMHSA’s Medication Assisted Treatment for Prescription Drug and Opioid Addiction program.
State, Tribal and Local Opioid Emergency Declarations

State opioid emergency declarations
★ Tribal government declarations
● Local government declarations

- AK – Alaska
- HI - Hawaii
- PR - (Puerto Rico)
- VI - (U.S. Virgin Islands)
# State Emergency Declaration Actions

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<th>Action</th>
<th>MA</th>
<th>VA</th>
<th>AK</th>
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*Eventually overturned in court
Public Health Emergency declared on March 27, 2014 which:

- Empowers Massachusetts’ public health commissioner to use emergency powers to expand access to naloxone
- Requires physicians and pharmacists to check PDMPs in some situations
- Prohibits prescribing and dispensing of hydrocodone-only medication (subject to ongoing litigation)
- Created a task force to find new paths to treatment, reduce stigma, and impose prescription opioid limits
On November 21, 2016, Marissa Levine, MD, Commissioner of Health, declared a public health emergency to address the opioid crisis, supported by Governor Terry McAuliffe*

- Allows the public to obtain naloxone in emergency situations
- Reduces stigma toward those suffering from addiction
- Attributed to slowing the rate of opioid-related deaths

*The Commissioner comments on the declaration, noting it has no force of law and is not a Governor’s emergency declaration
Alaska issued a Declaration of Disaster Emergency on February 14, 2017:

- Authorizes the Commissioner and State Medical Officer of the Department of Health and Social Services to coordinate a statewide Overdose Response Program (ORP)
- Issuance of a state-wide medical standing order allowing HCWs, first responders, and the public to dispense and administer naloxone
- Operationalizes state-wide incident command system
Maryland Governor Hogan issued Executive Order regarding the Heroin, Opioid, and Fentanyl Overdose Crisis Declaration of Emergency on March 1, 2017:

- Committed $50 million in new spending over 5 years coordinated by state emergency management authority with local jurisdictions to ensure community involvement
- Expands and coordinates resources to combat the opioid epidemic
- Establishes 24 opioid intervention teams at local levels
- Encourages long-term system changes to improve the public’s health
- Authorizes 70+ specific projects with key measurements for success
Executive Order Number 17-146 issued on May 3, 2017

• Department of Children and Families, Department of Health, and Department of Law Enforcement can suspend any statute, rule, ordinance, or order to procure necessary supplies, services, and temporary premises

• Governor is empowered to spend $ immediately without legislative approval to expedite public health responses

• Provides better coordination between state, local and private-sector partners to distribute naloxone (including standing orders)
• Enhances real-time surveillance for increased reporting of overdose deaths
• Develops guidelines to educate HCWs on responsible prescribing practices
• Generates 12 point action plan
• Enables fast-track regulatory reforms

On January 25, 2018, the Arizona Legislature unanimously passed the Arizona Opioid Epidemic Act, establishing increased treatment funding, prescription limits, and Good Samaritan protections.
South Carolina declared a Public Health Emergency on December 18, 2017
- Establishes the “Opioid Emergency Response Team” consisting of multiple stakeholders to optimize information gathering/sharing and reduce addiction-related stigma
- Directs the Response Team to hold monthly meetings and develop a strategic plan to address the statewide crisis
- Limits initial opioid prescriptions for acute and post-operative pain to a maximum of 5 days for state Medicaid recipients

On June 4, 2018, the S.C. legislature enacted 9 bills addressing prescription limits and fraud, naloxone access, addiction counselor licensing, confidentiality exceptions, and controlled substance scheduling
Pennsylvania issued a Declaration of Disaster on January 10, 2018

- Waives regulations creating barriers to opioid addiction treatment and prevention
- Expands state agency access to PDMP
- Requires medical providers & medical examiners to report cases of overdose or neonatal abstinence syndrome
- Permits nurses to admit patients for drug addiction treatment
- Allows emergency responders to leave behind naloxone after responding to an overdose
- Tightens criminal penalties for fentanyl derivative

Proposed legislation in Pennsylvania would allow the Governor to specifically declare a public health emergency over opioids; currently cleared the state Senate.
Tribal Emergency Declarations

Red Lake Nation
2011 and 7/11/17
Public Health Emergency

Mashpee Wampanoag Tribe
7/16/16
Public Health Emergency

Leech Lake, Band of Chippewa Indians
4/18/11
Public Health Emergency

Bad River Band of Lake Superior Chippewas
11/1/17
Public Health Emergency

White Earth Nation
2011
Public Health Emergency
Increased Data Collection: Announcing the PHE on 10/26/17, President Trump indicated several forthcoming research partnerships that may result in increased collection of data related to addiction and overdose.

Eased Data Sharing: SUPPORT Act removed the House provision aligning privacy rules for substance use disorder records (42 CFR Part II) with the HIPAA Privacy Rule.


HIPAA and Overdose Notification: A House proposal enabling providers to notify families and other providers of a patient’s non-fatal overdose was removed from the Senate version of prior legislation.
Topical Legal Issues

**Product Liability:** In Nov. 2018, Purdue Pharma challenged a NY State law taxing opioid distributors and manufacturers, arguing the ongoing NY state lawsuit should first run its course.

**Distributor Liability:** In Nov. 2018, Florida added CVS and Walgreens in their suit against opioid distributors for failing “to stop suspicious orders of opioids they received” and dispensing “unreasonable quantities of opioids from their pharmacies.”

**Private Liability:** Tucson (AZ) Medical Center sued more than two dozen pharmaceutical companies for negligence, fraud, and conspiracy. Purdue Pharma published a letter in Aug. 2018 acknowledging the hazards of opioids.

**Federal Prosecution:** DOJ’s Opioid Fraud and Abuse Detection Unit uses enhanced data analytics to identify and prosecute healthcare fraud cases of wrongful or over-prescription; 600 HCWs charged in June 2018.
Update: AZ, ID, IA, OK, MO, and SC have also implemented GS Overdose Immunity laws

Opioid Prescription Limitation: Starting 1/1/18, a North Carolina law forbids doctors in the state from prescribing more than a 5-day supply of opioids for acute pain, or a 7-day supply following surgery.

Safe Injection Facilities (SIFs): In Aug., CA’s legislature approved a bill for a SIF pilot program in San Fran, but it was vetoed by the Governor 9/20/18. Multiple additional jurisdictions are considering SIFs (see next slide).

Medical Marijuana: New Jersey, New York, and Pennsylvania have added opioid use disorder as a basis for obtaining a medical marijuana license in their respective jurisdictions.

Naloxone Access: Rhode Island was the 1st state to implement NaloxBox (a kit similar to an AED that contains naloxone nasal spray, masks, and medical gloves) in public spaces to help increase naloxone access.
Passed legislation, but vetoed
Approved
Introduced legislation, but failed
Early stages

Acknowledgments/More Information

- Ask the Network regarding questions or comments:
  
  James G. Hodge, Jr., JD, LLM
  jhodge@networkforphl.org
  
  Chelsea Gulinson, J.D.
  cgulinson@networkforphl.org

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