



DRUG OVERDOSE PREVENTION FACT SHEET

Florida's Overdose Prevention Legislation

Background

Drug overdose is a nationwide epidemic that claims the lives of over 43,000 Americans every year.¹ More than 2,600 Floridians were killed by drug overdose in 2012.² The majority of these deaths were due to prescription opioids such as OxyContin and hydrocodone, which now account for more overdose deaths than heroin, cocaine, and alcohol combined.³


Opioid overdose is typically reversible through the timely administration of naloxone, a medication that blocks the effects of opioids in the brain, and the provision of other emergency care as necessary.⁴ However, some current laws limit access to naloxone by making it difficult for those likely to be in a position to aid an overdose victim to access the medication. Existing law can also discourage those witnessing an overdose from calling for help.⁵ Additionally, many of the first responders dispatched to assist overdose victims do not carry naloxone and are not trained in its use. As one step toward reducing the unprecedented increase in preventable overdose deaths in the United States, the majority of states have amended their laws to increase access to this life-saving medication.⁶

Florida has passed two laws aimed at increasing emergency medical care for overdose victims. The first, the "911 Good Samaritan Act," was passed in 2012 and went into effect on October 1st of that year.⁷ As explained in more detail below, the Act protects a person who seeks medical assistance in good faith for an individual experiencing a drug-related overdose from charge, prosecution, or other penalties for possession of a controlled substance if the evidence against them was obtained as a result of the person's seeking medical assistance for an overdose victim. The same immunity applies to the victim.

In 2015, Florida passed a separate law designed to increase access to naloxone in the community. House Bill 751, known as the Emergency Treatment and Recovery Act, was passed overwhelmingly by the legislature and went into effect on June 10, 2015. The law expands access to naloxone in several ways. First, it permits medical professionals who are permitted to prescribe drugs to prescribe and dispense naloxone to a patient or a family member, friend, or other person who has contact with a person at risk of opioid overdose. It also permits those people to administer naloxone in an emergency. The law also permits emergency responders, including law enforcement officers and emergency medical technicians (EMTs) to possess, store, and administer naloxone in an emergency. Finally, the law provides for various types of immunity for those who engage in the activities authorized by the law.⁸

Limited Immunity for Possession of Controlled Substances

In many cases, overdose bystanders may fail to summon medical assistance because they are afraid that doing so may put them at risk of arrest and prosecution for drug-related or other crimes.⁹ The 911 Good Samaritan law attempts to address this problem by providing limited immunity from charge, prosecution, and penalty for possession of controlled substances for both a person who seeks medical assistance in good faith for an individual experiencing a drug-related



overdose, and the person suffering from the overdose, as long as the evidence for the charge or prosecution was obtained as a result of the seeking of medical assistance. Although the 911 Good Samaritan law does not provide any limit on the amount of a controlled substance for which immunity is provided, in practice the possession of a large amount of drugs can be and often is charged as possession with intent to sell.¹⁰ Under these circumstances, the limited immunity provisions of the law do not apply and a person may be prosecuted for the more serious charges.

While the law does not provide immunity for crimes other than possession, it does permit the fact that a defendant made a good faith effort to obtain or provide medical assistance for an individual experience a drug-related overdose to be used as a mitigating factor at sentencing after conviction for a different crime.¹¹

Increased Access to Naloxone

The Emergency Treatment and Recovery Act takes several steps to make it more likely that naloxone will be available when and where it's needed. First, it authorizes medical professionals who are authorized to prescribe medications to prescribe and dispense naloxone to a patient or caregiver, and for pharmacists to dispense naloxone under such prescriptions.¹² "Caregiver" is defined in the law as a "family member, friend or person in a position to have recurring contact with a person at risk of experiencing an opioid overdose." The patients and caregivers are authorized to "store and possess" the naloxone and to administer it in the event of an overdose when a physician is not immediately available. The law also permits emergency responders, including but not limited to law enforcement officers and EMS personnel, to possess, store, and administer naloxone.

Any person who possesses, administers, prescribes, dispenses or stores naloxone in compliance with the law and the state's civil Good Samaritan Act is provided protection under that Act.¹³ Additionally, a person authorized to prescribe or dispense naloxone under the law who does so while acting in good faith and exercising reasonable care is not subject to discipline or other adverse action under professional licensing statutes or rule, and is immune from any civil or criminal liability.

Conclusion

With the passage of the 911 Good Samaritan Act and the Emergency Treatment and Recovery Act, Florida joins the majority of states that have taken legislative action to increase access to emergency medical care for drug overdose.¹⁴ While it is too early to tell whether this law will reduce overdose deaths, 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.¹⁵ Initial evidence from Washington State, which passed a Medical Amnesty law in 2010, is also positive, with 88 percent of people who use drugs surveyed indicating that they would be more likely to summon emergency personnel during an overdose as a result of the legal change.¹⁶

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References

- ¹ Chen LH, Hedegaard H, Warner M. *QuickStats: Rates of deaths from drug poisoning and drug poisoning involving opioid analgesics—United States, 1999–2013*. 64 MORBIDITY AND MORTALITY WEEKLY REPORT 32 (2015), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6401a10.htm>.
- ² Centers for Disease Control and Prevention, *Decline in Drug Overdose Deaths After State Policy Changes – Florida, 2010-2012*, 63 MORBIDITY AND MORTALITY WEEKLY REPORT 569 (2014).
- ³ *Id.*
- ⁴ 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).
- ⁵ 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).
- ⁶ 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 (2015), available at http://www.networkforphl.org/_asset/qz5pvn/network-naloxone-10-4.pdf.
- ⁷ Fla. Stat. Ann. § 893.21 (2012).
- ⁸ The full text of the law is available at <http://laws.flrules.org/2015/123>.
- ⁹ 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).
- ¹⁰ Fla. Stat. Ann. § 893.13(1)(a) makes it unlawful for a person “to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance...”
- ¹¹ Fla. Stat. Ann. § 921.0026(2)(n) (2012).
- ¹² Fla. Stat. Ann. § 381.887(1)(c).
- ¹³ The Good Samaritan Act provides that “Any person...who gratuitously and in good faith renders emergency care or treatment either in direct response to emergency situations... at the scene of an emergency outside of a hospital, doctor’s office, or other place having proper medical equipment, without objection of the injured victim or victims thereof, shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.” Fla. Stat. Ann. § 768.13.
- ¹⁴ 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 (2015), available at http://www.networkforphl.org/_asset/qz5pvn/network-naloxone-10-4.pdf.
- ¹⁵ 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).
- ¹⁶ 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>