



## DRUG OVERDOSE PREVENTION Fact Sheet

# Legal Interventions to Increase Access to Naloxone in Colorado

## Background

Fatal drug overdose is a nationwide epidemic that claims the lives of an increasing number of Americans every year – over 47,000 in 2014.<sup>1</sup> The majority of these deaths are caused by opioids, both prescription painkillers and heroin. The overdose crisis has not spared Colorado, where nearly 899 people died of drug-related overdoses in 2014, up from 846 in 2013.<sup>2</sup> The state's rate of drug overdose deaths has climbed 68 percent between 2002 and 2014, from 9.7 per 100,000 residents to 16.3 per 100,000 residents.<sup>3</sup> Tragically, most of these deaths are preventable. Opioids kill by depressing respiration, and this opioid-induced respiratory depression can typically be reversed if a generic, relatively inexpensive medication called naloxone is administered in time.<sup>4</sup>

However, access to naloxone and other emergency treatment has historically been limited by laws that make it difficult for those likely to be in a position to reverse an overdose to access the drug and discourage overdose witnesses from calling for help.<sup>5</sup> State practice laws generally discourage or prohibit the prescription of drugs to a person other than the person to whom they will be administered (a process referred to as third-party prescription) or to a person the physician has not personally examined (a process referred to as prescription via standing order). Additionally, some prescribers are wary of prescribing naloxone because of liability concerns.<sup>6</sup> Likewise, even where naloxone is available, bystanders to a drug overdose may be afraid to administer it because of liability concerns.<sup>7</sup> Finally, overdose bystanders sometimes fail to summon medical assistance for fear of being prosecuted for possession of illegal drugs or similar crimes.<sup>8</sup> To reverse the unprecedented increase in preventable overdose deaths, nearly all states have amended their laws to increase access to emergency care and treatment for overdose victims, including the administration of naloxone.<sup>9</sup>

## Increased Access to Naloxone

In 2015, Colorado enacted a law to provide immunity from civil and criminal liability and professional misconduct to physicians, physicians' assistants, advance practice nurses, and pharmacists who prescribe or dispense an opiate antagonist.<sup>10</sup> The law authorizes these medical professionals to prescribe and dispense the medication to the individual at risk; a family member, friend or other person in a position to assist the individual at risk of an opiate-related overdose; an employee or volunteer of a harm reduction organization; or a first responder.<sup>11</sup> Medical professionals may prescribe the medication directly to the individual at risk or by standing order and are "strongly encouraged" to educate the recipient on recognizing overdose symptoms, rescue breathing, calling emergency services, and administration of the medication.<sup>12</sup> The law also authorizes a first responder or employee or volunteer of a harm reduction organization to possess, furnish or administer the opiate antagonist and provides immunity to these individuals from civil or criminal liability. In addition to civil and criminal immunity for medical professionals, laypersons acting in good faith who provide an opiate antagonist to



an individual believed to be suffering an opioid overdose event or an individual who is in a position to assist the individual at risk receive civil immunity.<sup>13</sup>

In addition, in 2012, Colorado passed a Good Samaritan law designed to encourage people who witness overdoses to seek medical assistance for those individuals. As explained below, this law provides limited criminal immunity for controlled substance and drug paraphernalia possession and underage alcohol consumption for individuals who seek help in an overdose, as well as the overdose victim.

## Limited Immunity for Possession of Drugs and Drug Paraphernalia

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 crimes.<sup>14</sup> The 2012 law attempts to address this problem by providing limited immunity from prosecution for drug and drug paraphernalia possession and underage alcohol consumption if the individual in good faith reports an emergency drug or alcohol overdose event to a law enforcement officer, the 911 system, or a medical provider.<sup>15</sup> The reporting individual must also remain at the scene until the arrival of law enforcement or medical assistance and identify himself or herself and cooperate with law enforcement.<sup>16</sup> The individual suffering from the emergency drug or alcohol overdose event also receives immunity if the same conditions are satisfied.<sup>17</sup> For both the individual at risk and the reporting person, the immunity is limited to an offense arising from the same course of events from which the emergency drug or alcohol overdose event arose.<sup>18</sup>

The law extends the immunity from prosecution only to specific criminal offenses, including possession of a controlled substance, marijuana possession, open and public consumption of less than two ounces of marijuana, use or possession of synthetic cannabinoids or salvia divinorum, and underage consumption of alcohol.<sup>19</sup> There is no protection provided for other crimes such as the sale of illegal drugs. The law also provides immunity from criminal prosecution to underage persons for illegal possession or consumption of alcohol and marijuana if the underage person calls 911 and reports that another underage individual needs medical assistance due to alcohol consumption, provides their name to the 911 operator, remains on the scene until medical assistance or law enforcement arrives, and cooperates with medical assistance or law enforcement on the scene.<sup>20</sup> This immunity also extends to the underage person who was in need of medical assistance due to alcohol or marijuana consumption if the previous conditions are satisfied.<sup>21</sup>

## Conclusion

Colorado has joined the majority of states that have taken legislative action to increase access to emergency medical care for drug overdose and has also extended access to emergency care for underage alcohol and marijuana consumption. While it is too early to tell whether these changes 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.<sup>22</sup> Initial evidence from Washington State, which passed an overdose Good Samaritan law in 2010, is 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.<sup>23</sup>

## SUPPORTERS



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The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.

## REFERENCES

- <sup>1</sup> R. Rudd et al., *Increases in Drug and Opioid Overdose Deaths – United States, 2000-2014*, 64 MORBIDITY AND MORTALITY WEEKLY REPORT 1378 (2015).
- <sup>2</sup> Id.
- <sup>3</sup> Keeney, Y. & Bailey, M., *Colorado Drug Death Rates Tops U.S. Average*. Colorado Health Institute (2016), available at [http://coloradohealthinstitute.org/uploads/downloads/Drug\\_deaths\\_2\\_pager.pdf](http://coloradohealthinstitute.org/uploads/downloads/Drug_deaths_2_pager.pdf).
- <sup>4</sup> See C. Baca, et al., *Take-home Naloxone to Reduce Heroin Death*, 100 ADDICTION 1823; 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).
- <sup>5</sup> 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).
- <sup>6</sup> See L. Beletsky, et al., *Physicians' Knowledge of and Willingness to Prescribe Naloxone to Reverse Accidental Opiate Overdose: Challenges and Opportunities*, 84 Journal of Urban Health 126 (2007).
- <sup>7</sup> For an excellent review of the ways in which law and law enforcement hinder access to naloxone, see Scott Burris, et al, *Stopping An Invisible Epidemic: Legal Issues In The Provision Of Naloxone To Prevent Opioid Overdose*, 1 DREXEL LAW REVIEW 273 (2009).
- <sup>8</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). They may, of course, fear arrest for other reasons (such as existing warrants or non-drug crimes) as well, but the immunity provided in most of the recently enacted laws is limited to drug (and in some cases, alcohol) crimes.
- <sup>9</sup> 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](http://www.networkforphl.org/_asset/qz5pvn/network-naloxone-10-4.pdf) and C. S. Davis & D. Carr, *Legal Changes to Increase Access to Naloxone for Opioid Overdose Reversal in the United States*, 157 DRUG ALCOHOL DEPEND 112 (2015).
- <sup>10</sup> Colo. Rev. Stat. §§ 12-36-117.7(3)&(4) (2015); Colo. Rev. Stat. §§ 12-38-125.5(3)&(4) (2015); Colo. Rev. Stat. §§ 12-42.5-120(3)(c)(I) & (3)(c)(II) (2015).
- <sup>11</sup> Colo. Rev. Stat. § 12-36-117.7(1) (2015); Colo. Rev. Stat. § 12-38-125.5(1) (2015); Colo. Rev. Stat. § 12-42.5-120(3) (2015). First responders are defined as peace officers, firefighters, and volunteer firefighters. Colo. Rev. Stat. § 12-36-177.7(6)(a) (2015); Colo. Rev. Stat. § 12-38-125.5(6)(a) (2015); Colo. Rev. Stat. § 12-42.5-120(3)(e) (2015).
- <sup>12</sup> Colo. Rev. Stat. § 12-36-117.7(2) (2015); Colo. Rev. Stat. § 12-38-125.5(2) (2015); Colo. Rev. Stat. § 12-42.5-120(3)(b) (2015).
- <sup>13</sup> Colo. Rev. Stat. § 13-21-108.7(3) (2015).
- <sup>14</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>15</sup> Colo. Rev. Stat. § 18-1-711(1)(a) (2012).
- <sup>16</sup> Colo. Rev. Stat. § 18-1-711(1)(b)&(c) (2012).
- <sup>17</sup> Colo. Rev. Stat. § 18-1-711(2)
- <sup>18</sup> Colo. Rev. Stat. § 18-1-711(1)(d) (2012).
- <sup>19</sup> Colo. Rev. Stat. § 18-1-711(3) (2012).
- <sup>20</sup> Colo. Rev. Stat. § 18-13-122(2)(a) (2012).
- <sup>21</sup> Colo. Rev. Stat. § 18-13-122(7)(b) (2012).
- <sup>22</sup> 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).
- <sup>23</sup> 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>