



## HARM REDUCTION: OVERDOSE PREVENTION Fact Sheet

# Legality of Dispensing Naloxone to Minors in Maryland

## Background

Drug overdose is a nationwide epidemic that claimed the lives of nearly 72,000 Americans in 2017.<sup>1</sup> Opioids, both prescription painkillers and illegal drugs such as heroin and illicitly manufactured fentanyl, are responsible for most of these deaths – almost 48,000 in 2017 alone.<sup>2</sup> Many of these deaths are preventable. Opioid overdose is reversible through the timely administration of the medication naloxone and, where needed, the provision of other emergency care.<sup>3</sup> In an attempt to reverse this epidemic of preventable overdose deaths, every state and the District of Columbia have modified their laws to increase access to naloxone, the standard first-line treatment for opioid overdose.<sup>4</sup>

Like many states, Maryland now permits naloxone to be prescribed and dispensed to third parties – individuals who are not themselves at risk of overdose but may be in a position to assist those who are – and via non-patient specific standing order, whereby the medication may be dispensed to any individual who meets the criteria specified in the order.<sup>5</sup> Further, the Maryland Department of Health's Assistant Secretary of Health has issued a statewide standing order that authorizes any Maryland-licensed pharmacist to dispense naloxone to "any individual" in the state.<sup>6</sup>

## Dispensing of naloxone to minors

In Maryland, a person under the age of 18 is generally considered unable to consent to medical treatment.<sup>7</sup> However, there are several exceptions to this general rule. First, a minor is legally capable of consenting to medical care if they are a parent, are married, or are both a) "living separate and apart from the minor's parent, parents, or guardian, whether with or without consent of the minor's parent, parents, or guardian," and b) self-supporting. A 15 year old, for example, can consent to any medical treatment if they have a child.<sup>8</sup>

Additionally, a person who is under 18 but does not meet the above criteria can consent to treatment for specific conditions. One of these conditions is "treatment for or advice about drug abuse."<sup>9</sup> In many cases, naloxone dispensing may fit under this exception. While naloxone is not treatment for "drug abuse" itself, it is

treatment for opioid overdose, a medical condition related to "drug abuse." Further, it is reasonable for a medical provider to advise a patient who has consulted that provider for information regarding opioid misuse on the potential benefits of carrying naloxone, and to prescribe the medication for use in the event of opioid overdose.<sup>10</sup>

Maryland also has laws specific to naloxone that supersede general laws related to minor consent. First, Maryland law permits any "licensed health care provider with prescribing authority" to prescribe and dispense naloxone to an individual who: (1) Is believed by the licensed health care provider to be at risk of experiencing an opioid overdose; or (2) Is in a position to assist an individual at risk of experiencing an opioid overdose."<sup>11</sup> Further, Maryland law permits any "individual" to "receive from any licensed health care provider with prescribing authority a prescription for naloxone and the necessary supplies for the administration of naloxone."<sup>12</sup> The law also provides that a "cause of action may not arise against any licensed health care provider with prescribing authority or pharmacist for any act or omission when the health care provider with prescribing authority or pharmacist in good faith prescribes or dispenses naloxone..." which provides those medical professionals with protection from civil liability when they provide naloxone as permitted by the law.<sup>13</sup>

Because the legislature could have restricted such prescribing and dispensing to adults and did not do so, it is reasonable to assume that no such restriction was intended. Under general rules of statutory construction, a law specific to a particular situation, like the provision of naloxone, prevails over a law of general application, like the general prohibition on minors receiving care.<sup>14</sup> Further, guidance issued by the Maryland Department of Public Health regarding the state-issued standing order for pharmacy naloxone dispensing clearly states that the order "allows dispensing to any individual. There are no age restrictions."<sup>15</sup> Under Maryland law, a "licensed health care practitioner who treats a minor is not liable for civil damages or subject to any criminal or disciplinary penalty solely because the minor did not have capacity to consent under this section."

## Conclusion

For these reasons, it appears likely that it is permissible for any individual, including those under age 18, to obtain naloxone via a patient-specific or non-patient specific prescription without parental consent in Maryland. Further, no civil, criminal, or professional liability attaches to a health care practitioner who treats a minor even if the minor lacked the capacity to consent to treatment.

## SUPPORTERS

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**This document was developed by Corey Davis, J.D., M.S.P.H., at the Network for Public Health Law's Harm Reduction Legal Project ([cdavis@networkforphl.org](mailto:cdavis@networkforphl.org)). The Network for Public Health Law provides information and technical assistance on issues related to public health. 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.**

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<sup>1</sup> Holly Hedegaard, M.D., et al., *Drug Overdose Deaths in the United States, 1999-2017*, available at <https://www.cdc.gov/nchs/data/databriefs/db329-h.pdf> (last visited Jan. 12, 2019).

<sup>2</sup> *Id.*

<sup>3</sup> Opioid overdose is caused by excessive depression of the respiratory and central nervous systems. Naloxone, a κ- and δ, and μ-opioid receptor competitive antagonist, works by displacing opioids from these receptors, thereby reversing their depressant effect. See J. M. Chamberlain & B. L. Klein, *A comprehensive review of naloxone for the emergency physician*, 12 AM J EMERG MED (1994).

<sup>4</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 (2018), available at <http://www.networkforphl.org/asset/qz5pvn/network-naloxone-10-4.pdf>.

<sup>5</sup> Relevant Maryland law is located at Md. Code Ann., Health-Gen. §§ 13-3101 – 13-3109.

<sup>6</sup> The order is available at <https://bha.health.maryland.gov/Documents/Standing%20Order%20Dr.%20Chan.pdf>.

<sup>7</sup> See generally Md. Code Ann., Health-Gen. § 20-102.

<sup>8</sup> Presumably the statute refers to a biological child, but it does not specify.

<sup>9</sup> Md. Code Ann., Health-Gen. § 20-102(c)(1).

<sup>10</sup> Because this exception is limited to advice and treatment for "drug abuse," it would likely not apply to individuals who may be at increased risk for other reasons, such as an individual who is receiving high-dose opioids and using them as prescribed.

<sup>11</sup> Md. Code Ann., Health-Gen. § 13-3106(a).

<sup>12</sup> Md. Code Ann., Health-Gen. § 13-3105.

<sup>13</sup> Md. Code Ann., Health-Gen. § 13-3108(b).

<sup>14</sup> "Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment." *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976), citing *Morton v. Mancari*, 417 U.S. 535, 550-551 (1974).

<sup>15</sup> MARYLAND DEPARTMENT OF PUBLIC HEALTH, STATEWIDE NALOXONE STANDING ORDER – GUIDANCE FOR PHARMACY DISPENSING, available at [https://bha.health.maryland.gov/Documents/Standing%20order%20guidance%20edited%205\\_29\\_2019.pdf](https://bha.health.maryland.gov/Documents/Standing%20order%20guidance%20edited%205_29_2019.pdf).