



LEGAL INTERVENTIONS TO INCREASE ACCESS TO NALOXONE IN INDIANA

Fact Sheet

Background

Drug overdose claimed the lives of more than 63,000 Americans in 2016. The majority of these deaths, over 42,000, involved opioids such as heroin, prescription painkillers, and, increasingly, illicitly manufactured fentanyl.¹ Indiana is not immune to this national crisis. In 2003, for example, only three Indiana residents died from heroin-related overdose. In 2016, the number was 296. Deaths from prescription painkillers increased by about 500% over the same period.² Many of these deaths are preventable with the timely administration of the overdose reversal drug naloxone and the provision of related emergency care.

Unfortunately, in many cases overdose bystanders do not have ready access to naloxone and either do not call for assistance or delay doing so because they are afraid that summoning emergency responders will put them at risk of arrest and prosecution.³ Because the negative effects of overdose become more severe the longer the person experiencing the overdose remains in respiratory depression, delays in emergency response contribute to preventable injury, up to and including death.⁴


Indiana, like most states, has moved to address these problems by passing legislation that both makes it more likely that overdose witnesses will have naloxone on hand and encourages those witnesses to summon emergency assistance by providing immunity for some drug-related crimes.⁵ A separate law allows the fact that an individual called for assistance to be taken into account during sentencing for crimes for which immunity is not provided.⁶

Increased Access to Naloxone

Indiana's combined naloxone access and overdose Good Samaritan law went into effect on July 1, 2016.⁷ Perhaps the most important provision of this law is one that authorizes physicians, physicians' assistants, advance practice registered nurses, the state health commissioner, and public health authorities to prescribe and dispense naloxone, either directly or by standing order, to an individual at risk of opioid-related overdose. The law also permits such prescriptions for a family member, friend, or other individual or entity in a position to assist the individual at risk of an opiate-related overdose.

If the prescriber has not examined the individual to whom the naloxone may be administered, he or she must instruct the individual receiving the medication to summon emergency services either immediately before or immediately after administering the medication, provide education on drug overdose treatment, and provide drug addiction treatment information and referrals to drug treatment programs.⁸

The law also directs the state health department to ensure that a statewide standing order for naloxone dispensing is issued.⁹ Entities that distribute naloxone under a standing order must register with the state or local health department, provide education and training on overdose, provide addiction treatment information and referrals, and submit annual



reports to the state containing amounts and dates of overdose intervention drug sales.¹⁰ While the law itself is ambiguous, sub-regulatory guidance specifies that “non-pharmacy organizations, non-profit entities or individuals that are in a position to assist an individual who, there is reason to believe, is at risk of experiencing an opioid-related overdose” may obtain and dispense naloxone under the statewide standing order.¹¹

Individuals who receive naloxone as permitted by the law will not be considered to be practicing medicine without a license if they obtain the drug from a prescriber or an entity acting under a standing order, administer the drug to an individual experiencing an apparent opioid overdose, and attempt to summon emergency services immediately before or after administration.¹² Individuals or entities authorized to prescribe, dispense, or administer naloxone under the law are immune from civil liability for those actions, except in cases of gross negligence or willful misconduct.¹³

In addition, Indiana’s naloxone access law contains Good Samaritan protections designed to encourage people who witness overdoses to seek medical assistance for those individuals. As explained below, these provisions provide limited criminal immunity for controlled substance and drug paraphernalia possession for individuals who seek help in an overdose.

Limited Immunity

Indiana’s overdose Good Samaritan provisions differ from those in place in most other states in several important ways. First, the state does not have a stand-alone overdose Good Samaritan law; instead, relevant provisions are contained within the state’s naloxone access law.¹⁴ Second, the crimes for which immunity is provided are limited to simple possession of controlled substances. Finally, to obtain the limited immunity offered by the law, the person seeking immunity must do all of the following:

- (1) obtain an overdose intervention drug in accordance with state law;¹⁵
- (2) administer the overdose intervention drug in accordance with state law;
- (3) attempt to summon emergency services immediately before or after administering the drug;
- (4) provide their full name and any other relevant information requested by the responding law enforcement officer;
- (5) remain at the scene with the individual who reasonably appeared to need medical assistance until emergency medical assistance arrives; and
- (6) cooperate with emergency medical assistance personnel and law enforcement officers at the scene.


If a law enforcement officer reasonably believes that a person fits all the above criteria, that officer may not take the person into custody solely for possession of cocaine, methamphetamine, a controlled substance, paraphernalia, marijuana, or a synthetic drug or drug lookalike substance. Further, an individual who meets the above-noted criteria is immune from prosecution for those crimes.¹⁶ Unlike in nearly every other state with an overdose Good Samaritan law, the Indiana legislation provides no protection to the individual who overdosed.

Mitigation

In addition to the limited immunity for minor possession crimes, Indiana law also provides that a judge may, but is not required to, take into account the fact that a person called for help in an overdose when determining the sentence to be imposed when that person is convicted of a crime for which immunity is not provided. Such mitigation can be considered if the person’s arrest or prosecution was “facilitated in part” because they either requested emergency medical assistance or acted in concert with another person who requested emergency medical assistance in the event of an alcohol or controlled substance overdose.¹⁷ This mitigation is only available if the crime of which the person was convicted relates to a controlled substance.

Discussion

Indiana has joined every other state that has modified law to increase access to naloxone, and approximately 40 other states that provide limited immunity to individuals who summon emergency assistance in an overdose. Perhaps because the Good Samaritan provisions are not a standalone law but rather a subset of the state’s naloxone access law, the immunity is limited to only those individuals who have obtained naloxone through the mechanisms outlined in that law.



This seems to make little empirical sense: while it is important that emergency medical services be called after naloxone is administered, it is even more important that they be called when the caller does not have naloxone on hand. Removing the requirement that a person seeking immunity have obtained and administered naloxone would likely improve the effectiveness of the law, reducing overdose-related morbidity and mortality.

Additionally, the overdose Good Samaritan law provides protection only from prosecution for drug possession and only to the person who summons assistance and not to the person experiencing the overdose, which might make friends of the victim less likely to call for assistance. Recognizing that people refrain from calling for assistance because of other criminal justice related concerns as well, many states have expanded Good Samaritan protections. Most notably, 18 states now provide that a person's probation or parole will not be revoked if the information for that revocation was obtained because the person called for assistance in an emergency. Eight states provide protection from a protective or restraining order, and ten states provide immunity from other controlled substance-related crimes.¹⁸

Finally, the law's naloxone access provisions are not as strong as those in some other states. For example, the law does not clearly permit persons not otherwise authorized to dispense naloxone to obtain, store, and dispense the medication. Clearly specifying in the law that such activities are permitted may increase the number and reach of community-based naloxone distribution in the state. Further, the law does not require that insurers cover naloxone without prior authorization or other restrictions, which may present a barrier to some insured individuals, nor does it require pharmacies to stock the medication. These provisions have been enacted in some other states to further increase access to naloxone, increasing the likelihood that it will be immediately available in an overdose emergency.

Conclusion

Indiana has modified its law to increase access to naloxone by making the medication easier to access and encouraging individuals who obtain naloxone under the law to summon emergency assistance in the event of an overdose. The law's provisions, however, are less supportive of those activities than similar laws in many states.

Because of the limitations in the law's Good Samaritan provisions, it may be difficult to effectively educate the public regarding its reach and scope. Large-scale public education campaigns encouraging individuals to call for assistance by assuring them that they will not face legal sanction may be difficult to create, as such messaging must effectively communicate all the limitations inherent in the law. However, individuals who receive naloxone through a naloxone entity should be informed that they will receive the immunity provided by the law so long as its requirements are met.


SUPPORTERS

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REFERENCES



Robert Wood Johnson Foundation

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- ¹ Centers for Disease Control and Prevention, Drug Overdose Deaths in the United States, 1999–2016. December 2017, <https://www.cdc.gov/nchs/products/databriefs/db294.htm>
- ² Indiana State Department of Health, *Drug overdose deaths involving opioids and other drugs by year, 1999-2016*, http://www.in.gov/isdh/files/Number%20of%20Drug%20Poisoning%20Deaths%20involving%20opioids%20and%20other%20drugs%201999_2016.xls
- ³ 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).
- ⁴ Carine Michiels. *Physiological and pathological responses to hypoxia*. 164(6) AM. J. PATHOL. 1875 (2004).
- ⁵ IND. CODE ANN. § 16-42-27-2(g).
- ⁶ IND. CODE ANN. § 35-38-1-7.1(b)(12).
- ⁷ A previous version of the law went into effect in April, 2015.
- ⁸ IND. CODE ANN. § 16-42-27-2(a)(1)–(4).
- ⁹ IND. CODE ANN. § 16-42-27-3(f). The statewide standing order and related information are available at <https://optin.in.gov/files/Indiana-Statewide-Naloxone-Standing-Order-Toolkit.pdf>.
- ¹⁰ IND. CODE ANN. § 16-42-27-2(e). It is not clear whether this requirement applies to pharmacies and other locations that are otherwise authorized to dispense naloxone.
- ¹¹ See INDIANA STATE DEP'T. OF HEALTH, INDIANA STATEWIDE NALOXONE STANDING ORDER TOOLKIT FOR NALOXONE ENTITIES, <https://optin.in.gov/files/Indiana-Statewide-Naloxone-Standing-Order-Toolkit.pdf>.
- ¹² IND. CODE ANN. § 16-42-27-2(d).
- ¹³ IND. CODE ANN. § 16-42-27-3(c).
- ¹⁴ IND. CODE ANN. § 16-42-27-2(g). The state has a standalone law with similar provisions that is limited to offenses involving alcohol. IND. CODE ANN. § 7.1-5-1-6.5.
- ¹⁵ “Overdose intervention drug” is not defined, but presumably refers to naloxone.
- ¹⁶ IND. CODE ANN. § 16-42-27-2(h).
- ¹⁷ IND. CODE ANN. § 35-38-1-7.1(b)(12).
- ¹⁸ See NETWORK FOR PUBLIC HEALTH LAW, LEGAL INTERVENTIONS TO REDUCE OVERDOSE MORTALITY: NALOXONE ACCESS AND OVERDOSE GOOD SAMARITAN LAWS (July 15, 2017), https://www.networkforphl.org/_asset/qz5pvn/network-naloxone-10-4.pdf