



## HARM REDUCTION & OVERDOSE PREVENTION Fact Sheet

# Legality of Dispensing Naloxone to Minors in Pennsylvania

## 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>

For a variety of reasons, individuals under the age of 18 may wish to access naloxone without knowledge of their parent or guardian. This may be because a parent, friend, or other person with whom they interact is at risk of opioid overdose, or just so that they can be prepared, in the event that they witness an overdose. In 2017, 272 Pennsylvanians under the age of 24 died of opioid overdose, and overdose among this age group has sharply increased since 2015.<sup>5</sup>

## Legality of dispensing naloxone to minors

In Pennsylvania, a person under the age of 18 is generally considered unable to consent to medical treatment. However, there are several exceptions to this general rule. First, a minor is legally capable of consenting to medical care if the minor “has graduated from high school, or has married, or has been pregnant.”<sup>6</sup> The law also allows any minor 14 years of age or older to consent to mental health examination or treatment.<sup>7</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 that the minor “suffers from the use of a controlled or harmful substance,” in which case they “may give consent to furnishing of medical care or counseling related to



diagnosis or treatment.”<sup>8</sup> Further, such consent “shall not be voidable nor subject to later disaffirmance because of minority.” This means that the minor’s parent or guardian may not remove consent that the minor has given. Under this provision, it appears that a patient who “suffers from the use of a controlled harmful substance” where that substance is an opioid may consent to being prescribed or receiving naloxone. However, as this exemption does not apply unless the minor is seeking medical care for themselves, it would not apply to a minor who seeks naloxone for potential use on another person but who does not themselves use opioids.

Pennsylvania also has laws specific to naloxone that supersede general laws related to minor consent. First, under Pennsylvania law, any "health care professional otherwise authorized to prescribe naloxone may dispense, prescribe or distribute naloxone directly or by a standing order to...a person at risk of experiencing an opioid-related overdose or family member, friend or other person in a position to assist a person at risk of experiencing an opioid-related overdose.”<sup>9</sup> To increase access to naloxone, the Secretary of Health has issued a standing order valid at any pharmacy in the state. The standing order allows for any Pennsylvania licensed pharmacist to dispense certain formulations of naloxone to “residents of the Commonwealth of Pennsylvania who are at risk of experiencing an opioid-related overdose, or who are family members, friends or other persons who are in a position to assist a person at risk of experiencing an opioid-related overdose”.<sup>10</sup>

The law also provides that a "A licensed health care professional who, acting in good faith, prescribes or dispenses naloxone shall not be subject to any criminal or civil liability or any professional disciplinary action for (i) such prescribing or dispensing; or (ii) any outcomes resulting from the eventual administration of naloxone.”<sup>11</sup> Because the legislature could have excluded minors from the expanded naloxone prescribing and dispensing provisions of the law or limited the naloxone-related immunity provisions 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 consenting to medical care.<sup>12</sup>

Additionally, Pennsylvania law permits the provision of medical, dental, and health services to minors without parental consent “when, in the physician’s judgment, an attempt to secure consent would result in delay of treatment which would increase the risk to the minor’s life or health.”<sup>13</sup> Therefore, a physician who felt that a delay in prescribing or dispensing of naloxone to a minor would increase the risk to the minor’s life would be permitted under the law to do so.

## **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 Pennsylvania. A healthcare provider who prescribes or dispenses naloxone to any individual, including a minor, in accordance with state law is immune from criminal and civil liability as well as disciplinary action so long as they do so in good faith.

## **SUPPORTERS**

**The Network for Public Health Law is a national initiative of the Robert Wood Johnson.**



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## References

<sup>1</sup> Holly Hedegaard, M.D., et al., *Drug Overdose Deaths in the United States, 1999-2017*, <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  $\kappa$ - and  $\delta$ , and  $\mu$ -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), [http://www.networkforphl.org/\\_asset/qz5pvn/network-naloxone-10-4.pdf](http://www.networkforphl.org/_asset/qz5pvn/network-naloxone-10-4.pdf).

<sup>5</sup> Kaiser Family Foundation, STATE HEALTH FACTS, OPIOID OVERDOSE DEATHS BY AGE GROUP (accessed February 10, 2020)

<https://www.kff.org/other/state-indicator/opioid-overdose-deaths-by-age-group/?activeTab=graph&currentTimeframe=0&startTimeframe=18&selectedDistributions=0-24&selectedRows=%7B%22states%22:%7B%22pennsylvania%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22%22sort%22:%22asc%22%7D>

<sup>6</sup> 35 P.S. § 10101. <https://www.legis.state.pa.us/WU01/LI/LI/US/HTM/1970/0/0010..HTM>

<sup>7</sup> 35 P.S. § 10101.1. <https://www.legis.state.pa.us/WU01/LI/LI/US/HTM/1970/0/0010..HTM>

<sup>8</sup> 71 P.S. § 1690.112. <https://codes.findlaw.com/pa/title-71-ps-state-government/pa-st-sect-71-1690-112.html>

<sup>9</sup> 35 P.S. § 780-113.8(c). <https://codes.findlaw.com/pa/title-35-ps-health-and-safety/pa-st-sect-35-780-113-8.html>. For an in-depth description of Pennsylvania's naloxone access law, please see, NETWORK FOR PUBLIC HEALTH LAW, DRUG OVERDOSE PREVENTION IN PENNSYLVANIA, [https://www.networkforphl.org/\\_asset/9r6xcz/pa-overdose-prevention.pdf](https://www.networkforphl.org/_asset/9r6xcz/pa-overdose-prevention.pdf).

<sup>10</sup> PA Department of Health, STANDING ORDER DOH-002-2018.

<https://www.health.pa.gov/topics/Documents/Opioids/General%20Public%20Standing%20Order.pdf>

<sup>11</sup> 35 P.S. § 780-113.8(e)(1). <https://codes.findlaw.com/pa/title-35-ps-health-and-safety/pa-st-sect-35-780-113-8.html>.

<sup>12</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>13</sup> 35 P.S. § 10104. <https://codes.findlaw.com/pa/title-35-ps-health-and-safety/pa-st-sect-35-10104.html>.