



HARM REDUCTION & OVERDOSE PREVENTION Fact Sheet

Harm Reduction Laws in Idaho


Background

Drug overdose is a continuing epidemic that claimed the lives of over 67,000 Americans in 2018.¹ Opioids, both prescription painkillers and illegal drugs such as heroin and illicitly manufactured fentanyl, were responsible for approximately 70% of these deaths.² Many of the people killed by opioids would be alive today if they had quickly received the medication naloxone and, where needed, other emergency care.³ Unfortunately, many people do not have easy access to naloxone, and people who witness an overdose may be afraid to call for help for fear of being criminally sanctioned for possession of illegal drugs, drug paraphernalia, or other crimes.⁴ Additionally, lack of access to new syringes and other injection equipment increases the risk that people who use drugs, as well as their family and partners, may contract preventable bloodborne diseases including Hepatitis C and HIV.

Idaho is not immune from this crisis. In 2018, 250 people died of drug overdoses in the state, of which 120 involved opioids.⁵ Idaho providers wrote 61.9 opioid prescriptions for every 100 people in the state, compared to a national average of 51.4.⁶ Around 25% of men living with HIV in Idaho contracted the disease either through injection drug use (IDU) or male-to-male sexual contact, while around 28% of women with HIV contracted the disease through IDU.⁷

To help reduce overdoses and other drug-related harms, jurisdictions throughout the country have removed some legal barriers to the health and safety of people who use drugs (PWUD). First, all states have passed at least one law to increase naloxone access. While these vary, they generally permit the medication to be prescribed to people other than the person at risk of overdose, typically through the use of standing orders. Many also permit the medication to be distributed by community organizations and other non-pharmacy access points. Most states have also modified criminal law to provide limited immunity to individuals who seek help in an overdose emergency.⁸ Finally, all but eleven states permit syringe access programs, where people who inject drugs (PWID) can access new injection equipment and dispose of contaminated supplies.⁹

This factsheet briefly summarizes the state of the law in Idaho related to naloxone access, overdose Good Samaritan protections, and access to injection equipment.



Naloxone access law

Idaho was among the earlier states to pass a law designed to increase access to naloxone.¹⁰ Originally enacted in 2015, the law was amended in 2019 to permit any health professional licensed or registered under state law who is acting in good faith and exercising reasonable care to prescribe and dispense naloxone.¹¹ Naloxone may be prescribed or dispensed to a person at risk of experiencing an opiate-related overdose, a person in a position to assist a person at risk of experiencing an opiate-related overdose, a person who, in the course of his official duties or business, may encounter a person experiencing an opiate-related overdose, as well as any other person who the health professional believes “has valid reason to be in the possession of” naloxone.¹²

The law also permits any person who acts in good faith and exercises reasonable care to administer naloxone to another person who seems to be experiencing an opiate-related overdose. Any person who prescribes, dispenses, or administers naloxone as permitted by the law “shall not be liable in a civil or administrative action or subject to criminal prosecution for such acts.”¹³

However, the law does not contain some provisions that might further increase access to naloxone. For example, it does not clearly permit the medication to be dispensed under a standing order, whereby a single provider issues a blanket prescription under which any member of a group of people can access naloxone without personally being seen by the prescriber.¹⁴ Although explicit authorization for standing orders is not necessarily required, it can eliminate ambiguity and encourage their use. Perhaps most importantly, the law does not clearly permit naloxone to be dispensed by someone other than a licensed or registered health professional.¹⁵ Because many people at highest risk of overdose may not feel comfortable accessing the traditional medical system or may be unable to do so because of financial issues, permitting naloxone to be distributed by harm reduction organizations and similar groups would likely increase access to the medication.

Overdose Good Samaritan law

Like most states, Idaho has a law designed to encourage people to call for help if they or someone else are experiencing a drug-related medical emergency.¹⁶ This law, which has been in effect since July 1, 2018, provides several protections for individuals who act in good faith to seek medical assistance for a person who is experiencing a drug-related medical emergency as well as for the person experiencing the emergency.

Specifically, such individuals are immune from charge and prosecution for possession of both controlled substances and drug paraphernalia, so long as the evidence for the charge or prosecution was obtained as a result of the medical emergency and the need for medical assistance. Immunity is also provided from charge and prosecution for using and being under the influence of controlled substances.¹⁷

While these provisions will likely encourage some individuals to call for assistance in the event of an overdose and may save lives, they are less protective than those in many states. It is increasingly common, for example, for overdose Good Samaritan laws to provide that the fact that an individual experienced or was at the scene of an overdose can not be used to revoke or modify that person’s probation, parole, or similar status. This can be important, as many individuals who are concerned about law enforcement action are currently justice-involved. Additionally, the Idaho Good Samaritan law provides protection only from being charged for the listed crimes, and not from being arrested for them. It is therefore possible that an individual will be subjected to the dehumanizing, stigmatizing, and potentially harmful process of being arrested and held before being released.



Syringe access law

As is the case in most states, syringes are classified as drug paraphernalia in Idaho.¹⁸ It is generally illegal to use or possess with intent to use drug paraphernalia to inject or otherwise introduce a controlled substance into the body.¹⁹ It is also illegal to deliver or possess with intent to deliver drug paraphernalia to inject or otherwise introduce a controlled substance into the body.²⁰ However, like most states, Idaho has authorized the operation of syringe access programs.²¹

As of July 1, 2019, Idaho law permits entities to operate, procure supplies for, and supply materials to a “syringe and needle exchange program” (Program) so long as they comply with both the statute and any relevant rules created by the Department of Health and Welfare.²² An entity operating such a Program is required to facilitate the exchange of used syringes or needles for new ones, and ensure that the recipient of a new syringe or needle is “given verbal and written instruction” on methods for preventing the transmission of blood-borne disease, as well as options for obtaining treatment for substance use disorder, testing for blood-borne disease, and naloxone. The entity operating the program is required to report certain metrics to the Department on an annual basis.²³

The syringe and needle exchange program law lacks a key component: it does not provide criminal immunity for individuals who access supplies through a Program, nor does it clearly provide immunity for individuals who supply injection materials through the programs. While it is a reasonable assumption that the law, which states that “an entity may operate...” a Program “notwithstanding any provision of law to the contrary,” was intended to provide criminal liability protection for individuals employed by or volunteering with such an entity, the law does not clearly state that such immunity is provided.²⁴

Perhaps more importantly, the text of the law does not provide any immunity for individuals who obtain injection-related materials from a Program. A person arguing that the law should be read to provide criminal immunity for Program clients would likely note that the legislature’s stated goal in enacting the law was “to prevent the transmission of disease and to reduce morbidity and mortality among individuals who inject drugs” and that the law would likely only have that effect if it is read to provide individuals who access materials from a Program with immunity.²⁵ It is not clear, however, how a court might rule on that question, and as of this writing there are no relevant reported cases.

Conclusion

Like most states, Idaho has enacted laws designed to increase access to naloxone, to encourage people to seek help in a drug-related emergency, and to increase syringe access. These laws are generally weaker than similar laws in other states. It is possible that modifying the state’s harm reduction laws to permit non-medical providers to distribute naloxone, to add additional protections to those who call for help in an overdose, and to provide criminal immunity to individuals who are attempting to reduce their bloodborne disease risk by accessing injection supplies through a syringe and needle exchange program would reduce drug-related harm and related expenditures in the state.



Robert Wood Johnson Foundation

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References

- ¹ N. Wilson, et al., *Drug and Opioid-Involved Overdose Deaths - United States, 2017-2018*, 69 MMWR MORB MORTAL WKLY REP (2020).
- ² *Id.*
- ³ 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).
- ⁴ 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).
- ⁵ NATIONAL INSTITUTE ON DRUG ABUSE, IDAHO: OPIOID-INVOLVED DEATHS AND RELATED HARMS (2020); *available at* <https://www.drugabuse.gov/drug-topics/opioids/opioid-summaries-by-state/idaho-opioid-involved-deaths-related-harms>.
- ⁶ *Id.*
- ⁷ *Id.*
- ⁸ For a comprehensive list of state naloxone access laws, 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/wp-content/uploads/2020/01/legal-interventions-to-reduce-overdose.pdf>.
- ⁹ LAWATLAS, SYRINGE SERVICE PROGRAM LAWS (2020), *available at* <http://lawatlas.org/datasets/syringe-services-programs-laws>.
- ¹⁰ Idaho Code Ann. § 54-1733B.
- ¹¹ Under the current law, “any health professional licensed or registered under this title, acting in good faith and exercising reasonable care, may prescribe and dispense an opioid antagonist... Previously language was limited to physicians and pharmacists. Idaho Code Ann. § 54-1733B(1).
- ¹² The law uses the term “opioid antagonist,” which is defined as “naloxone hydrochloride or any other similarly acting and equally safe drug approved by the federal food and drug administration for the treatment of drug overdose.” Idaho Code Ann. § 54-1733B(4).
- ¹³ Idaho Code Ann. § 54-1733B(3).
- ¹⁴ For a list of states with standing orders and similar mechanisms that permit naloxone to be dispensed without a patient-specific prescription, see NETWORK FOR PUBLIC HEALTH LAW, CHARACTERISTICS OF STATEWIDE NALOXONE DISTRIBUTION MECHANISMS, *available at* <https://www.networkforphl.org/wp-content/uploads/2020/08/50-State-Survey-Characteristics-of-Statewide-Naloxone-Distribution-Mechanisms.pdf>.
- ¹⁵ The state operates a mini-grant program that provides naloxone to first responders and other eligible agencies both to administer in the event of an overdose and for distribution “to clients, patients, and individuals being released from correctional facilities who are at risk of an overdose, as well as their friends and family”. See IDAHO OFFICE OF DRUG POLICY, NALOXONE MINI-GRANT PROGRAM, *available at* <https://prevention.odp.idaho.gov/naloxone-distribution/>. Grantees distributed 179 doses of naloxone under the program in federal fiscal year 2019. See IDAHO OFFICE OF DRUG POLICY, NALOXONE MINI-GRANT OUTCOMES REPORT FY 2019, *available at* https://odp.idaho.gov/wp-content/uploads/sites/114/2019/12/NaloxoneMiniGrant_OutcomesReportFY19_Final.pdf.
- ¹⁶ Idaho Code Ann. § 37-2739C.
- ¹⁷ Idaho Code Ann. § 37-2739C(1).
- ¹⁸ Idaho Code Ann. § 37-2701 (n)(11).
- ¹⁹ Idaho Code Ann. § 37-2734A.
- ²⁰ Idaho Code Ann. § 37-2734B.

²¹ Idaho Code Ann. § 37-3401 *et seq.*

²² *Id.* As of this writing, no such rules have been promulgated, although the Department has issued non-binding recommendations.

²³ Idaho Code Ann. § 37-3404.

²⁴ Indeed, “entity” is defined as the Department of Health and Welfare, a government entity, or a private organization. Idaho Code Ann. § 37-3403(3).

²⁵ Idaho Code Ann. § 37-3402 (“In adopting this chapter, it is the intent of the legislature to prevent the transmission of disease and to reduce morbidity and mortality among individuals who inject drugs.”).