

## HARM REDUCTION: OVERDOSE PREVENTION Fact Sheet

# Legality of Dispensing Naloxone to Minors in Colorado


## Background

Drug overdose is a nationwide epidemic. Opioids, both prescription painkillers such as OxyContin and non-prescribed drugs such as heroin and fentanyl, are responsible for most of these deaths – nearly 47,000 in 2018 alone.<sup>1</sup> Provisional data show that overdose-related deaths have accelerated since then, with more deaths recorded in the twelve-month period ending May 2020 than in any other twelve-month period on record.<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> To help address this epidemic of preventable overdose deaths, every state and the District of Columbia has modified relevant law to increase access to naloxone, the standard first-line treatment for opioid overdose.<sup>4</sup>

Like many states, Colorado law permits naloxone to be prescribed and dispensed to third parties – individuals who are not themselves at risk of an 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> Colorado law permits authorized prescribers to issue standing orders to certain entities.<sup>6</sup> With this authority, the Colorado Department of Health’s Chief Medical Officer issues standing orders to organizations such as harm reduction programs and public health agencies upon request.<sup>7</sup> Pharmacists are permitted to dispense naloxone prescribed via a traditional prescription order as well as pursuant to standing orders and protocols.<sup>8</sup> The law provides protections from civil and criminal liability to most individuals and organizations authorized under the law to prescribe, dispense, and administer naloxone as long as they act in accordance with the law.<sup>9</sup>

There are many reasons a person under the age of 18 may wish to obtain naloxone. Substance use disorders often develop in adolescence, and around 10% of overdoses nationally occur in youth and young adults below 26 years old.<sup>10</sup> In 2019, 101 out of 1,062 overdose deaths occurred in individuals under the age of 25.<sup>11</sup>

So long as naloxone is medically indicated, it is permissible for a provider to prescribe it to a minor with the consent of the minor’s parent or legal guardian, and for a pharmacist to dispense it to such a minor. As



described below, it is likely also permissible for a provider who is otherwise authorized to prescribe or dispense naloxone to prescribe or dispense the medication to a minor even without the consent of that minor's parent or legal guardian.

## **Prescribing and dispensing of naloxone to minors**

In Colorado, a person under the age of 18 is generally considered unable to consent to decisions about their body.<sup>12</sup> There are several exceptions to this general rule. A minor aged 15 or older is legally capable of consenting to medical care if they are married, or are both a) managing their own finances, and b) living apart from their parents.<sup>13</sup> Although a minor parent does not automatically obtain the right to consent to their own medical treatment unless they fall into one of the exceptions above, the law does recognize a minor's capacity to consent to the medical treatment of their child.<sup>14</sup>

Even if an individual under 18 does not meet the above criteria, they may consent to treatment for specific conditions. One of these conditions is "medical care and treatment for use of drugs or a substance use disorder".<sup>15</sup> The relevant law authorizes a licensed physician to "examine, prescribe for, and treat the minor patient for use of drugs or a substance use disorder" with the minor patient's consent.<sup>16</sup> Naloxone prescribing and dispensing to a minor who is at risk for overdose likely fits under this exception. In this case, naloxone is a prescription for the patient's "use of drugs". While naloxone is not a treatment for a "substance use disorder" itself, it is a treatment for opioid overdose, an acute medical condition that can be caused by substance use disorder or use of drugs. The physician and any other person acting pursuant to the minor's direction is immune from civil or criminal liability for providing a prescription or treatment under this exception so long as they do not act negligently.<sup>17</sup>

Colorado also has specific laws that supersede general laws related to minor consent. First, Colorado law permits licensed physicians or other health professionals with prescribing authority to prescribe or dispense naloxone to individuals: (1) at risk of experiencing an opioid overdose; or (2) in a position to assist an individual at risk of experiencing an opioid overdose.<sup>18</sup> Next, Colorado law permits organizations including harm reduction organizations, law enforcement agencies, and "school district[s], school[s] or employee[s] or agent[s] of a school" to furnish naloxone to individuals who are in positions to assist an individual at risk of opiate-related overdose, pursuant to a standing order.<sup>19</sup> The statute defines "schools" to include elementary or secondary schools that have adopted and implemented a naloxone training policy.<sup>20</sup> The law provides protection from civil and criminal liability to all individuals and organizations permitted to prescribe, dispense, furnish, or administer naloxone as long as they act in accordance with the law.<sup>21</sup>

The Colorado legislature could have restricted such prescribing, dispensing, and furnishing to adults but did not do so. Therefore, it is reasonable to assume that no such restriction was intended. Indeed, the statute explicitly permits elementary and secondary schools to furnish naloxone as long as they adopt and follow certain policies. Neither does the Colorado Department of Public Health restrict the age of individuals who may receive naloxone under its sample standing orders, which may be used and signed by a "medical provider with prescriptive authority on staff" or by Colorado's Chief Medical Officer.<sup>22</sup> Under general rules of statutory construction, a law specific to a particular situation prevails over a law of general application, like the general prohibition on minors receiving medical care without parental consent.<sup>23</sup>



## Conclusion

For these reasons, it is likely 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 Colorado. Further, no civil, criminal, or professional liability attaches to a health care practitioner who provides or dispenses naloxone to a person who meets the criteria in the law to receive it.

## SUPPORTERS



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## References

- <sup>1</sup> Nana Wilson et al., *Drug and Opioid-Involved Overdose Deaths – United States, 2017-2018*, 69 MORBIDITY & MORTALITY WK'LY REP. 290, 292 (2020).
- <sup>2</sup> Press Release, Ctr. for Disease Control & Prevention, *Overdose Deaths Accelerating During COVID-19* (Dec. 17, 2020), <https://www.cdc.gov/media/releases/2020/p1218-overdose-deaths-covid-19.html>.
- <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 James M. Chamberlain & Bruce L. Klein, *A Comprehensive Review of Naloxone for the Emergency Physician*, 12 AM. J. EMERG. MED. 650, 650 (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 OVERDOSE GOOD SAMARITAN LAWS 3–7 (2018), <https://www.networkforphl.org/wp-content/uploads/2020/01/legal-interventions-to-reduce-overdose.pdf>.
- <sup>5</sup> Relevant Colorado law is located at COLO. REV. STAT ANN. § 12-30-110 (2021).
- <sup>6</sup> *Id.*
- <sup>7</sup> See *Naloxone Standing Orders*, COLO. DEP'T PUB. HEALTH & ENV'T, <https://cdphe.colorado.gov/prevention-and-wellness/injury-prevention/overdose-prevention/naloxone-standing-orders> (last visited June 14, 2021).
- <sup>8</sup> COLO. REV. STAT ANN. § 12-30-110(1)(a) (2021).
- <sup>9</sup> *Id.* §§ 12-30-110(4), 13-21-108.7(3).
- <sup>10</sup> Nicholas Chadi & Scott E. Hadland, *Youth Access to Naloxone: The Next Frontier?*, 65 J. Adolescent Health 571, 571 (2019).
- <sup>11</sup> Counts of Drug Overdose Deaths Due to Any Drug in Colorado, 2019-2019, COLO. DEP'T PUB. HEALTH & ENV'T, [HTTPS://COHEALTHVIZ.DPHE.STATE.CO.US/T/PSDVIP-MHPPUBLIC/VIEWS/DRUGOVERDOSEDASHBOARD/POISONINGDEATHFREQUENCIES?IFRAMESIZEDTOWINDOW=TRUE&%3ADISPLAY\\_COUNT=N&%3ASHOWAPPBANNER=FALSE&%3AORIGIN=VIZ\\_SHARE\\_LINK&%3ASHOWVIZHOME=N&%3AISGUESTREDIRECTFROMVIZPORTAL=Y&%3AEMBED=Y](https://cohealthviz.dphe.state.co.us/t/PSDVIP-MHPPUBLIC/VIEWS/DRUGOVERDOSEDASHBOARD/POISONINGDEATHFREQUENCIES?IFRAMESIZEDTOWINDOW=TRUE&%3ADISPLAY_COUNT=N&%3ASHOWAPPBANNER=FALSE&%3AORIGIN=VIZ_SHARE_LINK&%3ASHOWVIZHOME=N&%3AISGUESTREDIRECTFROMVIZPORTAL=Y&%3AEMBED=Y) (last visited June 28, 2021).
- <sup>12</sup> COLO. REV. STAT. ANN. § 13-22-101(d) (2021).
- <sup>13</sup> *Id.* § 13-22-103(1).
- <sup>14</sup> *Id.* § 13-22-103(3).

<sup>15</sup> *Id.* § 13-22-102.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* § 12-30-110(1)(a). Other individuals are also eligible to receive naloxone, such as law enforcement officers. *Id.*

<sup>19</sup> *Id.* § 12-30-110(1)(b)(2).

<sup>20</sup> *Id.* §§ 12-30-110(7)(i.5), 22-1-119.1.

<sup>21</sup> *Id.* §§ 12-30-110(4), 13-21-108.7(3).

<sup>22</sup> *Naloxone Standing Orders*, COLO. DEP'T PUB. HEALTH & ENV'T, <https://cdphe.colorado.gov/prevention-and-wellness/injury-prevention/overdose-prevention/naloxone-standing-orders> (last visited June 14, 2021).

<sup>23</sup> "If statutes addressing the same subject cannot be harmonized, we ordinarily favor a specific statute over a general one as it is a clearer indication of the General Assembly's intent in a specific area." *In re Marriage of Zander*, 486 P.3d 352, 355 (2019) (citing *Telluride Resort & Spa, L.P. v. Colorado Dep't of Revenue*, 40 P.3d 1260, 1265 (Colo. 2002)).