The Network for Public Health Law

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HARM REDUCTION: OVERDOSE PREVENTION

Fact Sheet

Legality of Dispensing Naloxone to Minors in California

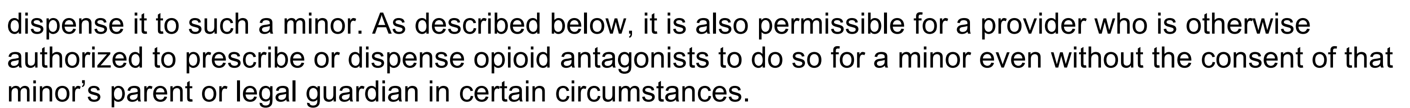
Background

Drug overdose is a nationwide epidemic that claimed the lives of over 107,000 people in the United States in 2021 alone.[1] Opioids, either alone or in combination with other drugs or alcohol, were responsible for approximately 80,000 of these deaths. Many of those people would be alive today if they had been administered the opioid antagonist naloxone and, where needed, other emergency care.[2] In light of the ongoing crisis, all fifty states and the District of Columbia have modified their laws to increase access to naloxone, the standard first-line treatment for opioid overdose.

California law has been modified in several ways to help ensure that naloxone is available where and when it is needed. Among other provisions, the state's law permits naloxone and other opioid antagonists 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.[3] It also permits opioid antagonists to be prescribed via non-patient specific standing order for distribution to any individual who meets the criteria specified in the order.[4] With this authority, the California Department of Public Health (CDPH) issues standing orders to organizations such as harm reduction programs and public health agencies that permit those entities to distribute naloxone to individuals who are at risk of overdose and those who might be in a position to assist in an overdose.[5] Pharmacists are permitted to dispense naloxone prescribed via a traditional prescription as well as pursuant to standing orders and protocols.[6] The law provides protections from civil and criminal liability and professional sanctions to most individuals authorized under the law to prescribe, dispense, and administer naloxone as long as they act in accordance with the law.[7]

There are many reasons a person under the age of 18 may wish to obtain naloxone or another opioid antagonist. Substance use disorders often develop in adolescence, and around 10% of overdoses nationally occur in youth and young adults below 26 years old.[8] In 2020, over 15% (874 out of 5,502) overdose deaths in California occurred in individuals under the age of 25.[9] Additionally, individuals under the age of 18 may be able to intervene in the overdose of an adult, such as a friend or family member.

So long as naloxone or another opioid antagonist 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 also permissible for a provider who is otherwise authorized to prescribe or dispense opioid antagonists to do so for a minor even without the consent of that minor's parent or legal guardian in certain circumstances.

Prescribing and dispensing to minors

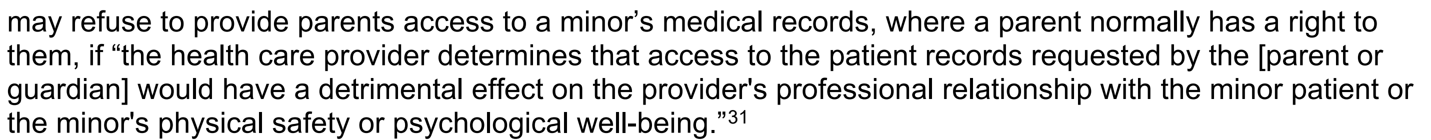
There are no general limitations on the prescribing or dispensing of naloxone to minors. The medication is effective on individuals of any age, and its Food and Drug Administration approval is not limited to adults. However, minors in California are only permitted to consent to medical care in specific circumstances. "Medical care" for the purposes of minor consent is defined as "[x]-ray examination, anesthetic, medical or surgical diagnosis or treatment, and hospital care under the general or special supervision and upon the advice of or to be rendered by a physician and surgeon licensed under the Medical Practice Act."[10] This definition leaves it unclear whether prescribing falls under the definition of medical care, but assuming it does, the prescription of naloxone and other opioid antagonists to minors would generally require parental consent.

Numerous laws, however, allow for minor consent to medical treatment in certain circumstances. For example, minors can consent to their own medical care if they are 15 or older, live separately from their parents, and manage their own financial affairs.[11] However, treating physicians are allowed to advise the parents or guardians of such minors of the medical treatment given if the physician can locate the parent or guardian[12] Legally emancipated minors (generally 14 years of age or older) may consent to their own care, and a healthcare provider may not share medical information with the patient's parents or guardians without signed authorization from the emancipated minor.[13] Minors may receive care for contraception or abortion at any age, and the treating provider may not notify the parents or guardians regarding such care without signed authorization from the minor.[14] Emergency medical services may be provided without parent or guardian consent,[15] and sexual assault, rape or child abuse treatment and investigations may be performed without consent.[16] However, depending on the circumstances, providers may be authorized to report to the parents[17] or the parents may be notified by child abuse authorities.[18]

California also has several laws that permit minors 12 years of age or older to consent to specific medical treatment without parental consent. These exemptions include infectious, contagious or communicable disease diagnosis and treatment,[19] sexually transmitted disease prevention, diagnosis, and treatment,[20] and AIDS/HIV prevention, testing, diagnosis, and treatment,[21] all of which require the provider to ensure the patient's privacy unless authorized by the patient to inform the patient's parent or guardian.[22] Rape diagnosis and treatment services,[23] services related to intimate partner violence,[24] and outpatient mental health or shelter services[25] may be provided to minors over 12 without consent from their parents or guardian as well, although the provider is either encouraged or required to contact the parents or other authorities depending on the situation.[26]

Most relevant to opioid antagonist distribution, minors 12 and older do not need parental consent to receive medical care and counseling related to the diagnosis and treatment of "a drug- or alcohol-related problem."[27] Naloxone prescribing and dispensing to a minor who is at risk for overdose may fit under this exception. While naloxone and other opioid antagonists may not be considered direct treatment for a "drug- or alcohol-related problem", they are the standard treatment for opioid overdose, an acute medical condition that can be caused by opioid use disorder. Indeed, providers are required by California law to offer a prescription for naloxone when prescribing opioids or benzodiazepines in high doses or to those who are at higher risk of opioid overdose, and the law does not discriminate between minor patients or adults, except youth within the Department of Corrections and Rehabilitation.[28]

The privacy of records associated with treatment for minors receiving substance use disorder treatment is ensured by federal law,[29] unless a treatment program director determines that the patient lacks capacity, is a threat to themselves or others, and that risk can be reduced by the minor's parent or guardian.[30] A provider



may refuse to provide parents access to a minor's medical records, where a parent normally has a right to them, if "the health care provider determines that access to the patient records requested by the [parent or guardian] would have a detrimental effect on the provider's professional relationship with the minor patient or the minor's physical safety or psychological well-being."[31]

California's laws on opioid antagonist access, described above, may supersede general laws related to minor consent. The California legislature could have restricted naloxone prescribing, dispensing, and furnishing to adults, but did not do so. Therefore, it is reasonable to assume that no such restriction was intended. It is possible that a standing order could be issued that did restrict by age; however, the sample standing order issued by the (CDPH) shows no age restriction, and, given the safety and efficacy of naloxone, it is unlikely the CDPH would do so.[32]

It also appears likely that both K-12 schools and universities are authorized to distribute naloxone and other opioid antagonists to their students. While there is no specific law on the subject, both "schools" and "universities" are listed by California's Department of Health Care Services (DHCS) as organizations eligible for the state's Naloxone Distribution Project, making them eligible to administer and distribute naloxone through a valid standing order.[33] Anyone possessing or distributing naloxone pursuant to a standing order is immune from professional review, civil actions, or criminal prosecution.[34] Email inquiry to DHCS confirms that there is "no statute requiring minors to obtain parental or guardian consent prior to receiving naloxone."[35]

Conclusion

Naloxone and other opioid antagonists can be prescribed and dispensed to minors directly or via standing order with the consent of the minor's parent or guardian. It is unclear whether the prescription and dispensing of opioid antagonists to minors is generally permissible without such consent. However, there are several circumstances in which minors can consent to medical care, including the receipt of naloxone and other opioid antagonists. In all cases, 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.

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

Robert Wood Johnson Foundation

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[1] Farida B. Ahmad, Lauren M. Rossen & Paul Sutton, *Provisional Drug Overdose Death Counts*, NATIONAL CENTER FOR HEALTH STATISTICS, https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm. 2021 (last reviewed July 5, 2022).
[2] 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* James M.Chamberlain & Bruce L. Klein, *A Comprehensive Review of Naloxone for the Emergency Physician*. 12 AM. J. EMERGENCY MED. 650 (1994).
[3] CAL. CIV. CODE § 1714.22(b). While the law is often referred to as a "naloxone access law," it applies to all opioid antagonists, which are defined as "naloxone hydrochloride or any other opioid antagonist that is approved by the United States Food and Drug Administration for the treatment of an opioid overdose." CAL. CIV. CODE § 1714.22(a)(1).
[4] CAL. CIV. CODE § 1714.22(c)(1). Individuals who obtain an opioid antagonist under a standing order are required to receive training from an opioid prevention and treatment training program. CAL. CIV. CODE § 1714.22(d).
[5] *Statewide Standing Order for Naloxone*, CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, https://www.cdph.ca.gov/Programs/CCDPHP/sapb/Pages/Naloxone-Standing-Order.aspx (last updated Aug. 25, 2021).
[6] CAL. BUS. & PROF. CODE § 4052.01.
[7] CAL. CIV. CODE § 1714.22(e), (f).
[8] Nicholas Chadi & Scott E. Hadland, *Youth Access to Naloxone: The Next Frontier?*, 65 J. Adolescent Health 571, 571 (2019).
[9] *California Overdose Surveillance Dashboard*, CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, https://skylab.cdph.ca.gov/ODdash/ (last updated May 24, 2022).
[10] CAL. FAM. CODE § 6902.
[11] CAL. FAM. CODE § 6922(a).
[12] CAL. FAM. CODE § 6922(c).
[13] CAL. FAM. CODE § 7050(e); CAL. HEALTH & SAFETY CODE §§ 123110(a), 123115; CAL. CIV. CODE §§ 56.10, 56.11
[14] CAL. FAM. CODE § 6925; *Am. Acad. of Pediatrics v. Lungren*, 940 P.2d 797 (Cal. 1997).
[15] CAL. BUS. & PROF. CODE § 2397.
[16] CAL. FAM. CODE § 6928; CAL. PENAL CODE § 11171.2.
[17] Parents or guardians usually have the right to inspect a minor's records CAL. HEALTH & SAFETY CODE § 123110(a); however providers may choose to refuse access to those records if they believe it would be detrimental to the minor. CAL. HEALTH & SAFETY CODE § 123115(a)(2).
[18] Because rape and sexual assault are considered child abuse under California law, mandated reporters including health providers must report it to the child abuse authorities, who may disclose to parents that a report was made. CAL. PEN. CODE § 11169(c).
[19] CAL. FAM. CODE § 6926(a).
[20] CAL. FAM. CODE § 6926(b).
[21] CAL. HEALTH & SAFETY CODE § 121020(a).
[22] CAL. HEALTH & SAFETY CODE § 123110,123115(a); CAL. CIV. CODE §§ 56.10, 56.11
[23] CAL. FAM. CODE § 6927.
[24] CAL. FAM. CODE § 6930.
[25] CAL. FAM. CODE § 6922; CAL. HEALTH & SAFETY CODE §124260.
[26] For example, with regards to mental health treatment, treatment of a minor "shall include involvement of the minor's parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate." CAL. FAM. CODE § 6924(d).
[27] CAL. FAM. CODE § 6929(b).
[28] "Notwithstanding any other law, when prescribing an opioid or benzodiazepine medication to a patient, a prescriber shall do the following: (1) Offer the patient a prescription for naloxone hydrochloride or another drug approved by the United States Food and Drug Administration for the complete or partial reversal of opioid-induced respiratory depression when one or more of the following conditions are present: (A) The prescription dosage for the patient is 90 or more morphine milligram equivalents of an opioid medication per day. (B) An opioid medication is prescribed within a year from the date a prescription for benzodiazepine has been dispensed to the patient. (C) The patient presents with an increased risk for opioid overdose, including a patient with a history of opioid overdose, a patient with a history of opioid use disorder, or a patient at risk for returning to a high dose of opioid medication to which the patient is no longer tolerant." CAL. BUS. & PROF. CODE § 741(a).
[29] 42 C.F.R. §§ 2.11, 2.12.
[30] 42 C.F.R. § 2.14.
[31] CAL. HEALTH & SAFETY CODE § 123115(a)(2).
[32] California Department of Public Health, Naloxone Standing Order (Jul. 8, 2021), http://www.buttecounty.net/Portals/21/EPPortal/Shelter/Resources/StandingOrder_Naloxone.pdf?ver=2019-05-29-095429-693.
[33] *Naloxone Distribution Project*, CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES, https://www.dhcs.ca.gov/individuals/Pages/Naloxone_Distribution_Project.aspx (last modified January 26, 2022).
[34] CAL. CIV. CODE § 1714.22(f).
[35] E-mail from California Department of Health Care Services to Kayla Larkin, Northeastern University School of Law (June 6, 2022, 03:29 PDT) (on file with author).