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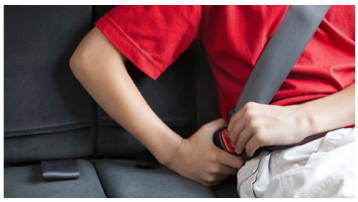

DRUG OVERDOSE PREVENTION
FACT SHEET

Utah Overdose Prevention Legislation

Background

Drug overdose is a nationwide epidemic that claimed the lives of over 47,000 Americans in 2014.[1] Utah ranks fourth in the nation in per capita drug overdose deaths, and the state experienced a nearly 400% increase in prescription drug deaths from 2000 to 2014.[2] Approximately 32% of adult Utahns had been prescribed an opioid medication in a twelve month period from 2013 to 2014, and 24 people die of a prescription drug overdose in the state every month.[3] The majority of these deaths are preventable.

Opioid overdose can be reversed through the timely administration of naloxone, a medication that blocks the effects of opioids, and the provision of other emergency care as necessary.[4] However, some current laws limit access to naloxone by making it difficult for those likely to be in a position to aid an overdose victim to access the medication. Existing law can also discourage those witnessing an overdose from calling for help.[5] As one step toward reducing the unprecedented increase in preventable overdose deaths in the United States, nearly all states have amended their laws to increase access to this life-saving medication.[6]

In 2014, Utah passed a law aimed at increasing emergency medical care for overdose victims by providing limited protection from certain controlled substance offenses to a person who seeks medical assistance in good faith for an individual experiencing a drug-related overdose, as well as the overdose victim.[7] Later that year, Utah passed a separate law designed to increase access to naloxone in the community. That law expands access to naloxone in several ways. First, it permits certain medical professionals to prescribe and dispense naloxone to an individual at risk of opioid overdose, or to a family member, friend, or other person who may be in a position to assist such a person. It also permits those people to administer naloxone in an overdose emergency. Finally, the law provides for various types of immunity for those who engage in the activities authorized by the law.[8] In 2016, this law was amended to further expand naloxone access by permitting the medication to be prescribed and dispensed via the use of non-patient specific standing orders and to be stored and furnished by opioid outreach providers.

Criminal Protections for Certain Controlled Substance Offenses

In many cases, overdose bystanders may fail to summon medical assistance because they are afraid that doing so may put them at risk of arrest and prosecution for drug-related or other crimes.[9] The Overdose Good Samaritan law attempts to address this problem by providing an affirmative defense to the possession of a controlled substance for both a person who seeks medical assistance in good faith for an individual experiencing a drug-related overdose, and the person suffering from the overdose, as long as the alleged offense is committed in the same course of events giving rise to the

reported overdose and the person who sought medical assistance can prove that he fulfilled all the requirements of the law.[10]

To avail himself or herself of the protections afforded by the law, the person who sought medical assistance must show that (1) he or she reasonably believed that an overdose was in process; (2) that he or she reported the overdose, including a location, in good faith to a medical professional, law enforcement officer, or the 911 system; (3) he or she remained at the scene of the overdose until help arrived; and (4) he or she "cooperate[d]" with the responding provider, including providing any available information about the substance(s) used by the person experiencing the overdose. Under the law, this affirmative defense can be raised for charges including: (1) the possession and use of less than 16 ounces of marijuana; (2) the possession or use of a controlled substance other than marijuana; and (3) violations of the Utah Drug Paraphernalia Act or Imitation Controlled Substances Act.[11] Although the Overdose Good Samaritan law does not provide any limit on the amount of a controlled substance other than marijuana for which an affirmative defense is provided, in practice the possession of a large amount of drugs can be and often is charged as possession with intent to distribute, which is not covered by the law.[12]

Similarly, the Overdose Good Samaritan law permits the fact that a defendant made a good faith effort to obtain medical assistance for an individual experiencing a drug-related overdose to be used as a mitigating factor at sentencing after conviction for a controlled substance offense for which an affirmative defense is not provided.[13] The defendant must comply with the same requirements for establishing an affirmative defense. This protection applies to the person experiencing the overdose as well, although, as with the affirmative defense provisions, the victim is only covered by the law if the person who sought assistance fulfilled all the requirements to be granted protection. These restrictions apply even when the victim seeks assistance for him or herself.

Increased Access to Naloxone

Utah law has been modified in several ways to encourage the provision of naloxone to people who may be able to use it in an overdose. First, it authorizes physicians, physician assistants, and advanced practice registered nurses who are otherwise authorized to prescribe an opiate antagonist to prescribe and dispense the antagonist to any individual at increased risk of experiencing an opiate-related overdose, a friend, family member, or other individual who is in a position to assist such an individual, or an overdose outreach provider.[14] These medical professional are authorized to prescribe naloxone either directly or via standing order, without a prescriber-patient relationship. The health care provider who dispensed the naloxone is required to provide education including written instruction on how to recognize and respond to the overdose.[15]

A separate section of law makes clear that physicians may issue standing orders for naloxone, and pharmacists may dispense naloxone via a standing order without any additional prescription.[16] These standing orders permit naloxone to be dispensed to any individual that meets the criteria specific in the order, as opposed to a named person. Like individual prescription orders, standing orders may permit naloxone to be dispensed to individuals at increased risk of overdose as well as friends, family members, and others who is in a position to assist such a person. Standing orders may also permit naloxone to be dispensed to an overdose outreach provider, who is permitted to provide the medication to those individuals or administer it in the event of an overdose. All standing orders are required to list the license numbers of the individuals authorized to dispense under the order, and the physician issuing it is required to review the dispensing practices of the dispensers at least annually. Dispensers who provide naloxone under a standing order are required to retain certain records related to dispensing.[17]

Finally, Utah law permits overdose outreach providers to obtain naloxone from a health care provider, pharmacist, or pharmacy intern, store the medication, and furnish it to an individual at risk of overdose or a family member, friend, or other individual who may be in a position to assist such a person.[18] The overdose outreach provider is required to provide the recipient with written instructions received from the prescriber or any written patient counseling received from a pharmacist or pharmacy intern, and is permitted to provide additional instruction on how to recognize and respond appropriately to an overdose.[19]

Under the law, providers are immune from civil liability for any acts or omissions made "as a result of prescribing or dispensing the opiate antagonist in good faith,"[20] and overdose outreach providers are immune from civil liability for "acts or omissions made as a result of furnishing the opioid antagonist in good faith."[21] The law also provides protection from civil liability for individuals and organizations other than health care facilities and providers who administer naloxone to a person that the individual believes is suffering an opioid-related overdose, so long as the individual acts in good faith.[22] Health care providers such as physicians, physician assistants, and advanced practice registered nurses are provided protection from civil liability for administering naloxone in good faith when they are not acting under a legal duty or within the scope of their professional responsibilities.[23] This means, for example, that a health care provider *would* receive protection from civil liability when administering naloxone if he or she simply happens to come across an individual they believe are experiencing an overdose, but would *not* receive such protection when treating a patient in the course of their usual medical practice.

Conclusion

Utah has joined the majority of states that have taken legislative action to increase access to emergency medical care for drug overdose.[24] While it is too early to tell whether these laws will reduce overdose deaths, initial data from other states are encouraging. A recent evaluation of a naloxone distribution program in Massachusetts, which trained over 2,900 potential overdose bystanders, reported that opioid overdose death rates were significantly reduced in communities in which the program was implemented compared to those in which it was not.[25]

Although Utah's Good Samaritan law may encourage some overdose witnesses to summon emergency responders when they otherwise would not, its protections are not as broad as those provided in most states that have passed similar laws. It is possible that more comprehensive protections, such as protection from arrest and prosecution for minor drug crimes, would encourage more overdose witnesses to call 911. To date, approximately 30 states have passed laws providing this protection, with promising initial results. For example, in Washington State, which passed such a law in 2010, 88 percent of people who use drugs surveyed indicated that they would be more likely to summon emergency personnel during an overdose as a result of the legal change.[26]

SUPPORTERS

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[2] UTAH DEPARTMENT OF HEALTH, VIOLENCE & INJURY PREVENTION PROGRAM, *Prescription Drug Overdoses,* available at http://www.health.utah.gov/vipp/topics/prescription-drug-overdoses/.

[3] Id.

[4] See C. Baca, et al., *Take-home Naloxone to Reduce Heroin Death*, 100 ADDICTION 1823 (2005); Ctrs. for Disease Control and Prevention, *Community-Based Opioid Overdose Prevention Programs Providing Naloxone – United States, 2010*, 61 MORBIDITY AND MORTALITY WEEKLY REPORT 101 (2012).

[5] See Davis CS, Webb D, Burris S. *Changing Law from Barrier to Facilitator of Opioid Overdose Prevention*, 41 JOURNAL OF LAW, MEDICINE AND ETHICS 33 (2013).

[6] 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 (2015), *available at* https://www.networkforphl.org/_asset/qz5pvn/legal-interventions-to-reduce-overdose.pdf.

[7] UTAH CODE ANN. §§ 58-37-8(16); 76-3-203.11. The full text of the law is available at http://le.utah.gov/~2014/bills/static/HB0011.html.

[8] The full text of the law is available at http://le.utah.gov/~2014/bills/static/HB0119.html.

[9] 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).

[10] UTAH CODE ANN. § 58-37-8(16)(a).

[11] UTAH CODE ANN. § 58-37-8(16)(b).

[12] UTAH CODE ANN. § 58-37-8(1)(a)(iii)

[13] UTAH CODE ANN. § 76-3-203.11.

[14] UTAH CODE ANN. § 26-55-104(2).

[15] UTAH CODE ANN. § 26-55-104(3).

[16] UTAH CODE ANN. § 26-55-105.

[17] UTAH CODE ANN. § 26-55-105(2)(d).

[18] UTAH CODE ANN. § 26-55-106.

[19] UTAH CODE ANN. § 26-55-106(2).

[20] UTAH CODE ANN. § 26-55-104(2)(c).

[21] UTAH CODE ANN. § 26-55-106(1)(c)(ii).

[22] UTAH CODE ANN. § 26-55-104(1)(a).

[23] UTAH CODE ANN. § 26-55-104(1)(b).

[24] 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 (2015), available at https://www.networkforphl.org/_asset/qz5pvn/legal-interventions-to-reduce-overdose.pdf.

[25] Alex Walley, et al., *Opioid overdose rates and implementation of overdose education and nasal naloxone distribution in Massachusetts: interrupted time series analysis*, 346 BMJ f174 (2013).