



DRUG OVERDOSE PREVENTION FACT SHEET

Illinois Overdose Prevention Legislation

Background


Drug overdose is a nationwide epidemic that claims the lives of over 43,000 Americans every year.¹ Illinois, like many states, has recently experienced a marked increase in both prescription opioid and heroin use,² and a recent report from Roosevelt University found that Chicago ranked first in the nation in the number of emergency department mentions for heroin, ahead of both Boston and New York.³ Over a three-year span, Illinois witnessed at least 900 heroin overdose deaths.⁴ In 2012 alone, more than 400 Illinois residents died from prescription drug overdoses, most (81%) involving opioid painkillers such as OxyContin and hydrocodone.⁵ The majority of these deaths were preventable.

Opioid overdose is reversible through the timely administration of naloxone, a medication that blocks the effects of opioids in the brain, and the provision of other emergency care as necessary.⁶ Unfortunately, laws passed for other purposes often limit access to naloxone, 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 people who witness an overdose from calling for help.⁷ As one step toward reducing the unprecedented increase in preventable overdose deaths in the United States, the majority of states have amended their laws to increase access to this life-saving medication.⁸

Illinois first joined this trend in 2010 when it passed legislation establishing a Drug Overdose Prevention Program, which increased access to naloxone through a variety of mechanisms.⁹ In 2012, it took additional steps to increase emergency care for overdose victims by passing the Emergency Medical Services Access Law (EMSA), which provides 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.¹⁰ The EMSA went into effect on June 1, 2012. On September 9, 2015, the Illinois General Assembly overwhelmingly passed Lali's Law, a comprehensive reform bill that aims to combat the opioid epidemic. The bill, effective as of its passage, expands access to naloxone, improves insurance coverage for substance use disorder (SUD) treatment, enacts multiple educational campaigns designed to spread awareness about drug overdose prevention and legal changes to reduce drug-related harm, makes changes to the states' prescription drug monitoring program (PMP), and broadens access to drug courts that promote treatment over incarceration.¹¹

Limited Immunity for Possession of Controlled Substances

In many cases, overdose bystanders fail to summon medical assistance because they are afraid that doing so will put them at risk of arrest and prosecution for drug-related or other crimes.¹² The EMSA attempts to address this problem by providing limited immunity from charge and prosecution for possession of controlled substances 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 evidence for the charge or prosecution was obtained as a result of the seeking of medical assistance.¹³ The law limits the amount of drugs an individual may possess while still qualifying for immunity. These limits include less than three (3) grams of heroin, morphine, or cocaine, less than forty (40) grams of a Schedule I and II narcotic not specifically addressed in the law, such as OxyContin and hydrocodone,¹⁴ and less than one (1) gram of methamphetamine.¹⁵

While the law does not provide immunity for crimes other than drug possession, it does permit the fact that a defendant sought or obtained medical assistance for an individual experiencing a drug-related overdose to be used as a mitigating factor at sentencing after conviction for other controlled substance crimes, including the manufacture, delivery, and possession of controlled substances in amounts greater than those allowed by the immunity provisions.¹⁶

Prescribing and Dispensing of Naloxone

The Drug Overdose Prevention Program law, passed in 2010, permits health care professionals to prescribe and dispense naloxone either directly or via standing order, in which the prescriber issues a prescription for the medication to be dispensed to any person who meets criteria specified by the prescriber, and provides both the prescriber and dispenser with protection from professional disciplinary action.¹⁷ Lali's Law takes additional steps to make it more likely that naloxone will be available when and where it is needed. First, it authorizes health care professionals to prescribe and dispense naloxone to not only a person at risk of overdose, but also to a family member, friend, or other person who may be in a position to assist such a person and who has received basic instruction in how to administer it.¹⁸ The law also provides criminal immunity for both prescribers and dispensers.¹⁹

Notably, Lali's Law authorizes licensed pharmacists to dispense naloxone under a statewide protocol.²⁰ Under this provision, trained pharmacists will be permitted to dispense naloxone without the recipient first receiving a prescription for the medication.²¹ Because pharmacists are highly trusted health professionals, and are often more accessible than physicians and other clinical providers, this change will make it more likely that naloxone will be available when and where it is needed.²² In addition to the protection from criminal liability and professional disciplinary action available to all health professionals dispensing naloxone, the new law also provides pharmacists dispensing naloxone under either the statewide protocol or a standing order with protection from civil liability.²³

Insurance Coverage, Possession, and Administration of Naloxone

Lali's Law also addresses several other barriers to naloxone access. First, the law permits any person who has received patient information and who acts in good faith to administer naloxone to a person who he or she believes is suffering an opioid-related overdose.²⁴ Anyone who does so is immune from criminal prosecution, civil liability, and sanction under professional licensing statutes.²⁵

The law requires that all individual and group accident and health insurance plans amended, delivered, issued, or renewed after September 9, 2015, that otherwise cover prescription drugs, including those purchased on the state's Affordable Care Act Marketplace, to cover at least one opioid antagonist such as naloxone.²⁶ Moreover, the state Medicaid program is mandated to cover all opioid antagonists including the medication product, administration device, and any pharmacy fees related to the dispensing and administration of the opioid antagonist.²⁷

The law also permits first responders, including law enforcement, firefighters, and emergency medical personnel, as well as school nurses or other trained school personnel, to obtain, possess, and administer naloxone to any person who appears to be suffering an opioid-related overdose.²⁸ Indeed, all state and local government agencies that employ a law enforcement officer or firefighter,²⁹ and both public and private emergency medical service agencies, are *required* to establish policies for the acquisition, storage, transportation, and administration of naloxone and to provide training in the administration of naloxone. The law authorizes grants to fund such programs,³⁰ and first responders are protected from civil liability for administering naloxone, except in cases of willful or wanton misconduct.³¹



Substance Use Disorder (SUD) Treatment,

According to a recent report from Roosevelt University, between 2007 and 2012 Illinois ranked first in the nation in *decreases* in SUD treatment capacity.³² Lali's Law includes several provisions designed to reverse this trend. First, the law requires that all individual and group accident and health insurance plans amended, delivered, issued, or renewed after September 9, 2015, offer coverage for both medically necessary acute and longer-term clinical stabilization SUD treatment services,³³ and insurance companies may not use any patient placement criteria other than those established by the American Society of Addiction Medicine when determining medical necessity.³⁴ Moreover, the law requires that insurance companies treat SUD treatment drugs no less favorably than other drugs when electing to cover the drugs and placing them on the insurance company's drug formulary.³⁵

Under Lali's Law, the state Medicaid program must cover *all* FDA approved forms of medication-assisted treatment (MAT) prescribed for the treatment of alcohol or opioid dependence.³⁶ This coverage may not be subject to any pre-authorization requirements, lifetime benefit limits, or any other use controls other than patient placement criteria established by the American Society of Addiction Medicine.³⁷

Educational Initiatives, Drug Courts, PMP, and Data Reporting

Recognizing the need for a more holistic approach to combating the opioid overdose epidemic, Lali's Law includes several important reforms addressing educational initiatives, the state's prescription drug monitoring program, and opportunities to expand drug courts that promote treatment over incarceration. The law mandates that the Illinois Department of Human Services develop four different educational initiatives:

- A public education program designed to educate the public about the Emergency Medical Services Access Law that grants immunity from criminal charge and prosecution for certain controlled substance offenses when the evidence is obtained as a result of the person seeking or obtaining emergency medical assistance in good faith for an individual experiencing a drug-related overdose.³⁸
- Educational materials for individuals receiving opiate prescriptions about the dangers of children and teenagers gaining access to these medications, including how the abuse of prescription opiates can lead to heroin use.³⁹
- A three-year pilot program that offers educational materials and instructions on heroin and opioid abuse to all Illinois school districts for their voluntary use at their respective public elementary and secondary schools.⁴⁰
- A consumer education campaign on the requirement that insurance plans treat mental health services, including those related to SUDs, no less favorably than other types of services.

Lali's Law also expands access to drug courts.⁴¹ Under the new law, when a first-time defendant commits certain non-violent offenses, including, among others, drug possession and probationable felony theft, and the court finds that the defendant suffers from a SUD, the court may refer the defendant to a drug court.⁴² Notably, while in the past the prosecutor had to agree to such an outcome, the new law now allows a defendant to be admitted into a drug court program upon the agreement of only the defendant and the court.⁴³

Moreover, the new law introduces numerous reforms to the state PMP, including reducing the mandatory reporting time from seven days to one day, instituting programs to integrate PMP data with electronic health records (EHR), automatically creating login information for prescribers and dispensers when they receive a controlled substance license, allowing prescribers and dispensers to delegate access to the PMP, and providing periodic information updates to prescribers and dispensers.⁴⁴ It implements new prescription drug take-back programs and modifies existing law to permit household waste drop-off points to accept controlled substances in accordance with federal law.⁴⁵ Finally, the new law will facilitate better research into the opioid epidemic by requiring that coroners and medical examiners report to the Department of Public Health every case in which a drug overdose is determined to be the cause or a contributing factor in the death, and for hospital emergency departments to report non-patient identifiable data to the Department of Public Health after providing treatment for a drug overdose.⁴⁶

Conclusion

With the passage of the Emergency Medical Services Access Law and Lali's Law, Illinois has built on its previous efforts to increase access to emergency medical care for drug overdose.⁴⁷ While it is too early to tell whether these changes 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.⁴⁸ Initial evidence from Washington State, which passed a Medical Amnesty law in 2010, is also positive, with 88 percent of people who use drugs surveyed indicating that they would be more likely to summon emergency personnel during an overdose as a result of the legal change.⁴⁹ Taken together with more comprehensive reforms addressing SUD treatment, education, PMPs, drug courts, and drug take-back initiatives, Lali's Law represents a significant step in saving lives, reducing drug-related harm, and pursuing a more public health-oriented approach to the opioid epidemic.

SUPPORTERS



Robert Wood Johnson Foundation

The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation with direction and technical assistance by the Public Health Law Center at William Mitchell College of Law.

This document was developed by Corey Davis, J.D., M.S.P.H., Deputy Director at the Network for Public Health Law – Southeastern Region at the National Health Law Program (cdavis@networkforphl.org) and Derek Carr, J.D. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.

References

- ¹ Chen LH, Hedegaard H, Warner M. QuickStats: Rates of deaths from drug poisoning and drug poisoning involving opioid analgesics—United States, 1999–2013, 64 MORBIDITY AND MORTALITY WEEKLY REPORT 32 (2015), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6401a10.htm>.
- ² Rose A. Rudd et al., *Increases in Heroin Overdose Deaths – 28 States, 2010 to 2012*, 64 MORBIDITY AND MORTALITY WKLY. REP. 849 (2014), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6339a1.htm>.
- ³ KATHLEEN KANE-WILLIS ET AL., DIMINISHING CAPACITY: THE HEROIN CRISIS AND ILLINOIS TREATMENT IN NATIONAL PERSPECTIVE (2015), <http://www.roosevelt.edu/~media/Files/pdfs/CAS/IMA/ICDP/DiminishingCapacity.ashx?la=en>.
- ⁴ Carol Marin & Don Moseley, *Illinois Lawmakers Study Heroin “Epidemic”*, July 8, 2014, <http://www.nbcchicago.com/investigations/Illinois-Lawmakers-Study-Heroin-Epidemic-266254021.html>.
- ⁵ Chris Coffey, *Illinois Battles Prescription Pain-Pill Epidemic*, NBC 5 CHI., Feb. 20, 2015, <http://www.nbcchicago.com/news/local/Illinois-Battles-Pain-Pill-Epidemic-293107921.html>.
- ⁶ 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).
- ⁷ 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).
- ⁸ 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.
- ⁹ 20 ILL. COMP. STAT. ANN. 301/5-23.
- ¹⁰ 720 ILL. COMP. STAT. ANN. 570/414, available at <http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=072005700K414>; 720 ILL. COMP. STAT. ANN. 646/115, available at <http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=072006460K115>; 730 ILL. COMP. STAT. ANN. 5/5-5-3.1, available at <http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=073000050K5-5-3.1>.
- ¹¹ The full text of the law is available at <http://www.ilga.gov/legislation/publicacts/99/099-0480.htm>.
- ¹² 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).
- ¹³ 720 ILL. COMP. STAT. ANN. 570/414; 720 ILL. COMP. STAT. ANN. 646/115.

- 14 720 ILL. COMP. STAT. ANN. 570/414(d). The full list includes: “(1) less than 3 grams of a substance containing heroin; (2) less than 3 grams of a substance containing cocaine; (3) less than 3 grams of a substance containing morphine; (4) less than 40 grams of a substance containing peyote; (5) less than 40 grams of a substance containing a derivative of barbituric acid or any of the salts of a derivative of barbituric acid; (6) less than 40 grams of a substance containing amphetamine or any salt of an optical isomer of amphetamine; (7) less than 3 grams of a substance containing lysergic acid diethylamide (LSD), or an analog thereof; (8) less than 6 grams of a substance containing pentazocine or any of the salts, isomers and salts of isomers of pentazocine, or an analog thereof; (9) less than 6 grams of a substance containing methaqualone or any of the salts, isomers and salts of isomers of methaqualone; (10) less than 6 grams of a substance containing phencyclidine or any of the salts, isomers and salts of isomers of phencyclidine (PCP); (11) less than 6 grams of a substance containing ketamine or any of the salts, isomers and salts of isomers of ketamine; (12) less than 40 grams of a substance containing a substance classified as a narcotic drug in Schedules I or II, or an analog thereof, which is not otherwise included in this subsection.” *Id.*
- 15 720 ILL. COMP. STAT. ANN. 646/115(c).
- 16 Specifically, mitigation can be considered for a “Class 3 felony or higher possession, manufacture, or delivery of a controlled, counterfeit, or look-alike substance or a controlled substance analog under the Illinois Controlled Substances Act or a Class 2 felony or higher possession, manufacture or delivery of methamphetamine under the Methamphetamine Control and Community Protection Act.” 730 ILL. COMP. STAT. ANN. 5/5-5-3.1(a)(14).
- 17 20 ILL. COMP. STAT. ANN. 301/5-23(d)(1).
- 18 2015 Ill. Leg. Serv. P.A. 99-480, 7 (to be codified at 20 ILL. COMP. STAT. ANN. 301/5-23(d)(1)).
- 19 The immunity applies as long as the professional does not engage in willful or wonton misconduct. *Id.*
- 20 *Id.* at 1 (to be codified at 225 ILL. COMP. STAT. ANN. 85/19.1).
- 21 *Id.*
- 22 Aimee Simone, *Pharmacists Among Most Widely Trusted Professionals, Gallup Poll Finds*, PHARMACY TIMES, Dec. 18, 2013, <http://www.pharmacytimes.com/resource-centers/pharmacy-management/pharmacists-among-most-widely-trusted-professionals-gallup-poll-finds>.
- 23 The immunity for dispensing under a standing order only applies if the pharmacist is not paid or otherwise compensated. In all cases the pharmacist must act without willful or wanton misconduct. 2015 Ill. Leg. Serv. P.A. 99-480, 102 (to be codified at 745 ILL. COMP. STAT. ANN. 49/36).
- 24 *Id.* at 7 (to be codified at 20 ILL. COMP. STAT. ANN. 301/5-23(d)(2)). “Patient Information” includes “information provided to the patient on drug overdose prevention and recognition; how to perform rescue breathing and resuscitation; opioid antagonist dosage and administration; the importance of calling 911; care for the overdose victim after administration of the overdose antagonist; and other issues as necessary.” *Id.* at 8.
- 25 *Id.*
- 26 2015 Ill. Leg. Serv. P.A. 99-480, 28 (to be codified at 215 ILL. COMP. STAT. ANN. 5/356z.23).
- 27 *Id.* at 48-49 (to be codified at 305 ILL. COMP. STAT. ANN. 5/5-5).
- 28 *Id.* at 8, 10 (to be codified at 20 ILL. COMP. STAT. ANN. 301/5-23(e), 2605/2605-97; 50 ILL. COMP. STAT. ANN. 705/7(a), 705/10.17, 740/8(c), 740/12.5; 105 ILL. COMP. STAT. ANN. 5/22-30(b-10)(iv), (e-10), (f), (f-5), (f-10), (g), (h-5)).
- 29 This requirement does not apply to a “State or local government agency that employs a fireman ... but does not respond to emergency medical calls or provide medical services...” *Id.* at 8 (to be codified at 20 ILL. COMP. STAT. ANN. 301/5-23(e)).
- 30 *Id.*
- 31 *Id.* at 102-103 (to be codified at 745 ILL. COMP. STAT. ANN. 49/70).
- 32 KATHLEEN KANE-WILLIS ET AL., *supra* note 3.
- 33 2015 Ill. Leg. Serv. P.A. 99-480, 31 (to be codified at 215 ILL. COMP. STAT. ANN. 5/370c(5.5)). “‘Acute treatment services’ means 24-hour medically supervised addiction treatment that provides evaluation and withdrawal management and may include biopsychosocial assessment, individual and group counseling, psychoeducational groups, and discharge planning. ‘Clinical stabilization services’ means 24-hour treatment, usually following acute treatment services for substance abuse, which may include intensive education and counseling regarding the nature of addiction and its consequences, relapse prevention, outreach to families and significant others, and aftercare planning for individuals beginning to engage in recovery from addiction.” *Id.*
- 34 2015 Ill. Leg. Serv. P.A. 99-480, 31 (to be codified at 215 ILL. COMP. STAT. ANN. 5/370c(3)).
- 35 *Id.* at 34 (to be codified at 215 ILL. COMP. STAT. ANN. 5/370c.1(d)).
- 36 *Id.* at 48 (to be codified at 305 ILL. COMP. STAT. ANN. 5/5-5).
- 37 *Id.*
- 38 *Id.* at 9 (to be codified at 20 ILL. COMP. STAT. ANN. 301/20-20).
- 39 *Id.* at 8 (to be codified at 20 ILL. COMP. STAT. ANN. 301/5-24).
- 40 *Id.* at 21 (to be codified at 105 ILL. COMP. STAT. ANN. 5/22-80).
- 41 *Drug Courts*, ILL. ATT’Y GEN, <http://www.illinoisattorneygeneral.gov/methnet/fightmeth/courts.html> (last visited Sept. 29, 2015).
- 42 2015 Ill. Leg. Serv. P.A. 99-480, 64, 91, 93, 96, 97, 101-103.
- 43 *Id.* at 100 (to be codified at 730 ILL. COMP. STAT. ANN. 166/20(a)).
- 44 *Id.* at 80, 84, 85.
- 45 *Id.* at 27, 50, 52.
- 46 *Id.* at 14, 26 (to be codified at 55 ILL. COMP. STAT. ANN. 5/3-3013; 210 ILL. COMP. STAT. ANN. 85/6.14g).
- 47 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>.
- 48 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).
- 49 Banta-Green, C. Washington’s 911 Good Samaritan Overdose Law: Initial Evaluation Results (Nov. 2011), available at <http://adai.uw.edu/pubs/infobriefs/ADAI-IB-2011-05.pdf>