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# Changing Law from Barrier to Facilitator of Opioid Overdose Prevention

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## Background

Drug overdose has recently surpassed motor vehicle accidents to become the leading cause of unintentional injury death in the United States.<sup>1</sup> The epidemic is largely driven by opioids such as oxycodone, hydrocodone, and methadone, which kill more Americans than heroin and cocaine combined.<sup>2</sup> The demographics of overdose have changed over the past few decades as well: according to the latest data, the average overdose victim is now a non-Hispanic white man aged 45-54.<sup>3</sup>

These deaths — over 16,000 per year — are almost entirely preventable. Opioid overdose kills by slowly depressing respiration, a process that can take several hours.<sup>4</sup> It can be quickly and effectively reversed by the timely administration of naloxone, an opioid antagonist that works by displacing opioids from the brain receptors to which they attach, reversing their depressant effect.<sup>5</sup> Naloxone, also known as Narcan, has many benefits and minimal risks.<sup>6</sup> Although it is a prescription drug, it is not a controlled substance and has no abuse potential.<sup>7</sup> It is regularly carried by medical first responders, and can be administered by ordinary citizens with little or no formal training.<sup>8</sup> Yet, this life-saving drug is often not available when and where it is needed.

Law is a primary driver of this lack of access. Because opioid overdose often occurs when the victim is with friends or family members, those people may be the best situated to act to save his or her life

by administering naloxone.<sup>9</sup> Unfortunately, neither the victim nor his or her companions typically carry the drug.<sup>10</sup> Naloxone is available only via prescription, and state practice laws generally discourage or prohibit the prescription or dispensing of drugs to a person other than the intended recipient (a process referred to as third-party prescription).<sup>11</sup> But prescribers are in short supply, and people at risk of overdose may be uncomfortable with requesting a naloxone prescription or may not have the knowledge and foresight to do so. Even where the request is made, some prescribers are wary of prescribing naloxone because of liability concerns.<sup>12</sup>

Evidence shows that overdose bystanders are willing and able to safely administer naloxone in an overdose situation.<sup>13</sup> However, since bystanders often do not have the drug, they must call 911 to summon the first responders who do. Unfortunately, they often refrain from doing so because they fear arrest and prosecution — a fear that evidence suggests may be justified.<sup>14</sup> When first responders are summoned, it is often too late: a review of medical examiner data in North Carolina showed that over half of accidental overdose victims died by the time paramedics arrived.<sup>15</sup>

These legal barriers are unintended consequences of attempts to address other problems. The public interest is, in general, served by regulatory control of prescription medications, which may include criminal sanctions to deter unauthorized distribution and use. However, laws directed towards that end have an extraordinarily severe side effect: thousands of preventable deaths every year. These laws can be modified to remove their negative effect while sustaining their original intent, and doing so presents a critical opportunity to save many lives at little or no cost.

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### **Saving Lives by Changing Laws**

Despite the high and rising number of people felled by opioid overdose, this preventable epidemic initially received little notice outside of the occasional celebrity death. This has changed. Perhaps as a result of the shifting demographics of overdose victims combined with increased awareness, a number of states have recently acknowledged and attempted to address the problem by modifying state law.<sup>16</sup> These legislative amendments have two separate but related aims. The first is to encourage the prescription and use of nalox-

An additional two states have passed laws explicitly requiring (AK) or permitting (MD) courts to take the fact that a Good Samaritan summoned medical assistance into account at sentencing even where the Good Samaritan is convicted of a crime. All require that the caller have a good-faith belief that a medical emergency exists when he or she summons aid, and most provide protection only for crimes that were discovered pursuant to the seeking of assistance.

Unlike some earlier attempts to modify laws to reduce health risks to drug users (in the area of

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one by removing the possibility that medical professionals who prescribe the drug and lay administrators (such as the family members and friends of the overdose victim) who administer it will face legal or regulatory sanction for doing so. The second is to encourage bystanders to summon emergency responders by ensuring that they will not face prosecution as a result of that selfless act.

In 2001, New Mexico became the first state to amend its laws to make it easier for medical professionals to provide naloxone, and for lay administrators to use it without fear of legal repercussions.<sup>17</sup> As of January 1, 2013, seven other states (NY, IL, WA, CA, RI, CT, and MA) made similar changes. Most of these laws explicitly remove the possibility of civil liability for prescribers and administrators acting in good faith to prevent overdose, and some remove the possibility of criminal penalties for prescribers and those who possess or administer the drug. Four of the eight also explicitly or implicitly permit third-party prescription.<sup>18</sup>

In 2007, New Mexico again took the lead in amending state law to encourage Good Samaritans to summon aid during an overdose. As of January 1, 2013, nine other states (WA, NY, CT, IL, CO, RI, FL, MA, and CA) have followed suit. The protection offered by these laws varies slightly.<sup>19</sup> While all of the laws protect both the Good Samaritan and victim from prosecution for possession of controlled substances, three extend that protection to drug paraphernalia as well.

syringe exchange, for example), amendments targeted at reducing overdose deaths have seen little organized opposition and have passed in states across the political spectrum. They have received support from a number of governmental and non-governmental actors, including the Office of National Drug Control Policy, the U.S. Conference of Mayors, the American Medical Association, and the American Public Health Association.<sup>20</sup> The Florida Sheriff's Association and the Florida Police Benevolent Association supported Florida's Good Samaritan law, which the state legislature passed nearly unanimously in 2012.<sup>21</sup>

Evaluation of the effects of these laws is urgently needed, but early reports are encouraging. The CDC recently reported that at least 188 community-based overdose prevention programs now distribute naloxone. To date, those programs provided naloxone, as well as training in how to recognize overdose and counteract it, to over 50,000 people, resulting in over 10,000 overdose reversals.<sup>22</sup> A study from Washington, which enacted a Good Samaritan act in 2010, found that 88 percent of drug users surveyed indicated that they would be more likely to summon emergency personnel during an overdose as a result of the legal change.<sup>23</sup>

### **Next Steps**

Other legal barriers should be addressed as well. A chief barrier to greater naloxone access is the drug's

prescription status; if it were available over-the-counter, many of the ancillary legal issues would disappear. The FDA held hearings on this issue in April, 2012, but the process to make a prescription drug available over the counter is lengthy and often expensive.<sup>24</sup> However, alternative policy and regulatory measures can increase access in the meantime. Legislatures and licensing bodies could encourage physicians to prescribe naloxone with every opioid prescription and grant pharmacists the authority to prescribe and dispense it in their stead. Those insurance policies that do not currently cover the drug should be required to do so. Some states do not permit low-level first responders to administer the drug, a shortcoming that can be easily rectified.

In addition, states considering naloxone access and Good Samaritan bills can take steps to enhance the incentives for providing naloxone and seeking emergency help. Naloxone access bills should explicitly permit third party prescription and distribution via standing order, so that the friends and family members of a person at heightened risk of overdose can more easily access the drug. Likewise, Good Samaritan laws should extend their grant of immunity to all minor crimes discovered as a result of the caller seeking help during an overdose emergency, not just those that are drug-related. Furthermore, Good Samaritan laws should provide protection from arrest, as well as charge and prosecution. Bills should also include an education component that targets medical and law enforcement professionals as well as patients and the public. Finally, these laws should be rigorously evaluated to determine if they are having the intended effect, and to suggest changes in their scope or means of implementation.

As with most public health problems, there is no magic bullet for preventing opioid overdose deaths. Initial efforts to combat the epidemic, including monitoring of prescription opioid medications, diversion prevention efforts, improved access to pain care, and drug treatment services have proven insufficient.<sup>25</sup> While those interventions are a part of the solution, they must be combined with common-sense legal change of the type outlined above.

## Conclusion

Opioid overdose kills thousands of Americans every year. Many of these deaths are preventable through the timely provision of a cheap, safe, and effective drug and the summoning of emergency responders. Preliminary evidence and common sense suggest that laws that encourage the prescription and use of naloxone and the transformation of bystanders into Good Samaritans will reduce opioid overdose deaths. Since

such laws have few negative effects, can be implemented at little or no cost, and have the potential to save both lives and resources, they represent some of the lowest-hanging public health fruit available to policymakers today.

## Resources

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7. 21 U.S.C. § 801 (1970), 21 C.F.R. § 1308 (1985).
8. C. Baca, et al., "Take-home Naloxone to Reduce Heroin Death," *Addiction* 100, no. 12 (2005): 1823-1831, at 1824; Centers for Disease Control and Prevention, "Community-Based Opioid Overdose Prevention Programs Providing Naloxone - United States, 2010," *Morbidity and Mortality Weekly Report* 61, no. 6 (2012): 101-105.
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10. K. Tobin et al., "Calling Emergency Medical Services during Drug Overdose: An Examination of Individual, Social and Setting Correlates," *Addiction* 100, no. 3 (2005): 397-404; R. A. Pollini et al., "Response to Overdose among Injection Drug Users," *American Journal of Preventive Medicine* 31, no. 3 (2006): 261-264, at 262.
11. See Beletsky, *infra* note 12; S. Burris et al., "Stopping an Invisible Epidemic: Legal Issues in the Provision of Naloxone to Prevent Opioid Overdose," *Drexel Law Review* 1 (2009): 273-339.
12. L. Beletsky et al., "Physicians' Knowledge of and Willingness to Prescribe Naloxone to Reverse Accidental Opiate Overdose: Challenges and Opportunities," *Journal of Urban Health* 84, no. 1 (2007): 126-136, at 127; S. Burris et al., "Legal Aspects of Providing Naloxone to Heroin Users in the United States," *International Journal of Drug Policy* 12, no. 3 (2001): 237-248.
13. See K. H. Seal et al., "Attitudes about Prescribing Take-Home Naloxone to Injection Drug Users for the Management of Heroin Overdose: A Survey of Street-Recruited Injectors in the San Francisco Bay Area," *Journal of Urban Health: Bulletin of the New York Academy of Medicine* 80, no. 2 (2003): 291-301; Lagu et al., *supra* note 9.
14. K. Tobin, et al., "Calling Emergency Medical Services during Drug Overdose: An Examination of Individual, Social and Setting Correlates," *Addiction* 100, no. 3 (2005): 397-404, at 398.
15. C. Sanford, ed., *Findings and Recommendations of the Task Force to Prevent Deaths From Unintentional Drug Overdoses in North Carolina, 2003*, available at <<http://www.injuryfrenc.ncdhhs.gov/About/TaskForceToPreventDrugDeaths.pdf>> (last visited January 8, 2013).
16. For an updated interactive database of these laws, visit the "Naloxone OD Prevention Laws Map," available at <<http://lawatlas.org/>> (last visited January 8, 2013).
17. N.M. STAT. ANN. § 24-23-1 (West 2008); N.M. STAT. ANN. § 24-23-2 (West 2008).
18. For an updated interactive database of these laws, visit the "Naloxone OD Prevention Laws Map," available at <<http://lawatlas.org/>> (last visited January 8, 2013).
19. *Id.*

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20. See "U.S. Conference of Mayors, 2008 Adopted Resolutions - Saving Lives, Saving Money: City-Coordinated Drug Overdose Prevention," available at <[http://www.usmayors.org/resolutions/76th\\_conference/chhs\\_16.asp](http://www.usmayors.org/resolutions/76th_conference/chhs_16.asp)> (last visited January 8, 2013); "AMA Adopts New Policies at Annual Meeting," available at <<http://www.ama-assn.org/ama/pub/news/news/2012-06-19-ama-adopts-new-policies.page>> (last visited January 8, 2013); "Preventing Overdose Through Education and Naloxone Distribution," available at <<http://www.apha.org/advocacy/policy/>> (last visited January 8, 2013); A. Knopf, "Kerlikowske Promotes Naloxone in Face of FDA Barriers," *Alcohol and Drug Abuse Weekly* 24 (August 27, 2012), available at <<http://www.alcoholismdrugabuseweekly.com/sample-article/kerlikowske-promotes-naloxone-in-face-of-fda-barriers.aspx>> (last visited January 8, 2013).
21. See "911 Good Samaritan Act Bill Protects Those Who Seek Help," available at <<http://www.tampabay.com/opinion/letters/wednesdays-letters-bill-protects-those-who-seek-help/1223270>> (last visited January 8, 2013).
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