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LEGAL INTERVENTIONS TO REDUCE OVERDOSE MORTALITY: NALOXONE ACCESS AND OVERDOSE GOOD SAMARITAN LAWS

Background

Fatal drug overdose has increased more than six-fold in the past three decades, and now claims the lives of over 36,000 Americans every year.[1] The epidemic is largely driven by prescription opioids, which were responsible for over 16,000 deaths in 2010.[2] This increase is mostly driven by prescription opioids such as OxyContin and hydrocodone, which now account for more overdose deaths than heroin and cocaine combined.[3] Opioid overdose is typically reversible through the timely administration of the medication naloxone and the provision of emergency care.[4] However, access to naloxone and other emergency treatment is often limited by laws and regulations and that pre-date the overdose epidemic. In an attempt to reverse this unprecedented increase in preventable overdose deaths, a number of states have recently amended those laws to increase access to emergency care and treatment for opiate overdose.

Law as both problem and solution

Although naloxone (commonly known by its trade name, Narcan) is a prescription drug, it is not a controlled substance and has no abuse potential.[5] It is regularly carried by medical first responders and can be administered by ordinary citizens with little or no formal training.[6] Yet, it is often not available when and where it is needed. 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. Unfortunately, neither the victim nor his companions typically carry the drug. Law is at least partially responsible for this lack of access. State practice laws generally discourage or prohibit the prescription of drugs to a person other than the intended recipient (a process referred to as third-party prescription) or to a person the physician has not personally examined (a process referred to as prescription via standing order). Additionally, some prescribers are wary of prescribing naloxone because of liability concerns.[7] Likewise, even where naloxone is available, bystanders to a drug overdose may be afraid to administer it for fear of legal repercussions.[8] Finally, overdose bystanders may fail to summon medical assistance for fear of legal consequences.[9]

Since most of these barriers are rooted in unintended consequences of laws passed for other purposes, they may be addressed through relatively simple changes to those laws. At the urging of organizations including the U.S. Conference of Mayors, the American Medical Association and the American Public Health Association, a number of states have addressed the overdose epidemic by removing some legal barriers to the seeking of emergency medical care and the timely administration of naloxone.[10] These changes come in two general varieties: the first encourages the wider prescription and use of naloxone by clarifying that prescribers acting in good faith may prescribe the drug to persons who may be able to use it to reverse overdose and by removing the possibility of negative legal action against prescribers and lay administrators.[11] The second type encourages bystanders to become "Good Samaritans" by summoning emergency responders without fear of arrest or other negative legal consequences.[12]

Overview of naloxone access and Good Samaritan laws

In 2001, New Mexico became the first state to amend its laws to make it easier for medical professionals to prescribe and dispense naloxone, and for lay administrators to use it without fear of legal repercussions. [13] As of December 15, 2014, twenty-six other states (NY, IL, WA, CA, RI, CT, MA, NC, OR, CO, VA, KY, MD, VT, NJ, OK, UT, TN, ME, GA, WI, MN, OH, DE, PA and MI) and the District of Columbia have made similar changes (28 total).[14] Based partly on these changes, at least 188 community-based overdose prevention programs now distribute naloxone. As of 2010, those programs had provided training and naloxone to over 50,000 people, resulting in over 10,000 overdose reversals.[15] A recent evaluation of one such 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.[16]

In 2007, New Mexico became the first state to amend its laws to encourage Good Samaritans to summon aid in the event of an overdose. As of December 15, 2014, nineteen other states (WA, NY, CT, IL, CO, RI, FL, MA, CA, NC, NJ, VT, DE, MN, GA,WI, AK, LA, MD, and PA) and the District of Columbia have followed suit (22 total).[17] Additionally, Indiana[18] permits courts to consider the fact that a Good Samaritan summoned medical assistance in mitigation, and Utah law provides that a person who reports an overdose and takes other steps may use that fact as an affirmative defense to some offenses, and can be raised as a mitigating factor at sentencing for others.[19] Initial evidence from Washington state, which amended its law in 2010, is positive, with 88 percent of drug users surveyed indicating that they would be more likely to summon emergency personnel during an overdose as a result of the legal change.[20]

The following tables document laws that have been amended or enacted to increase access to naloxone and encourage bystanders to summon medical assistance in the event of overdose. Tables 1 and 1a cover laws aimed at increasing lay access to naloxone by reducing barriers to prescription and administration ("state naloxone access laws"). Tables 2 and 2a address criminal concerns for Good Samaritans who summon aid in overdose situations ("state overdose Good Samaritan laws"). Tables 1 and 2 are broken down into columns, with each column identifying whether a particular state law addresses a certain characteristic. Tables 1a and 2a provide more detailed descriptions of each law, with quotes from those laws where practicable. For those states that have passed laws too recently for those laws to have been codified, only the relevant bill is listed. This chart will be updated regularly to reflect changes in this rapidly evolving area of law.

Note that these tables cover only laws that were passed specifically to address drug overdose. That does not necessarily mean the activities covered by the laws in these tables are not permitted in other states, only that they are not explicitly authorized by laws created for that purpose. For example, North Carolina's Project Lazarus, which has seen marked success using an integrated model that includes partnering with local physicians, pharmacists and law enforcement officials, operated for many years without the benefit of explicit authorizing legislation.[21] The categories listed were chosen because of their prevalence in existing laws and may not necessarily reflect best practices.[22]

Conclusion

Opioid overdose kills thousands of Americans every year. Many of those deaths are preventable through the timely provision of a relatively cheap, safe and effective drug and the summoning of emergency responders. As with most public health problems, there is no magic bullet to preventing overdose deaths. A comprehensive solution that includes input and active involvement from medical providers, policymakers and public health, law enforcement and elected officials is likely necessary to create large-scale, lasting change. Evaluation is necessary to ensure that legal changes have the intended effect and to suggest additional amendments.[23]

However, it is reasonable to believe that laws that encourage the prescription and use of naloxone and the timely seeking of emergency medical assistance will have the intended effect of reducing opioid overdose deaths. Since such laws have few if any foreseeable negative effects, can be implemented at little or no cost, and will likely save both lives and resources, they may represent some of the lowest-hanging public health fruit available to policymakers today.